Yukon Ombudsman

Yukon Information and Privacy Commissioner

Yukon Public Interest Disclosure Commissioner

2020 ANNUAL REPORT

A year of new challenges: Promoting fairness and access & privacy rights and protecting the public interest during a global pandemic

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All services of the Office of the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner are free and confidential.

We welcome your feedback on our annual report.

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Diane McLeod-McKay

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

I am pleased to issue my Annual Report for 2020 for the Offices of the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner for the Yukon.

The mandates for the offices are found in the *Ombudsman Act*, the *Access to Information and Protection of Privacy Act* (the ATIPP Act), the *Health Information Privacy and Management Act* (HIPMA), and the *Public Interest Disclosure of Wrongdoing Act* (PIDWA).

2020 was a challenging year for all Yukon businesses, given that in March of 2020, a public health emergency was declared in the Yukon and most employees were sent home to work.

When this happened, businesses, including government service providers and health care custodians, were left scrambling to find ways to deliver services remotely. In addition, many decisions were being made in a very short time frame to manage the pandemic. Our office felt the impacts of what was unfolding around us immediately, as we recognized that the environment in which we were all working was prone to risks, including to privacy and access to information and to fairness in delivering services remotely during a pandemic.

During the early days of the pandemic, we worked directly with custodians and public body employees, including within the Yukon government, to help them mitigate these risks. We also issued numerous guidance documents to inform public bodies and custodians about the risks and how to address them. This kept our office very busy as a new issue would present itself nearly every day that required our attention. I must give credit to those custodians and public bodies that we worked with, given that they recognized certain risks and reached out to us for help, which we were happy to provide.

Impacts of COVID-19 on our operations

When we were sent home to work, the impact on our office's ability to continue to deliver our services and do our work was minimal.

Prior to 2020, we had organized our operations such that the majority of our staff could work remotely. We had established secure means to do so and had policy and procedures in place to ensure our work would be conducted confidentially and securely.

To ensure we could return to work safely when allowed to do so, we implemented a safety plan. We also recognized the need to develop an emergency management plan, which we are in the process of completing.

We moved in 2020

Just before the state of emergency was issued in the Yukon, we had set in motion our plan to relocate our office. The logistics of the move became challenging. Completing our move with the health and safety measures in place meant we had to stagger activities to enable us, and those working with us on the move, to comply with these measures. Despite the challenges, our office relocated successfully at the beginning of May in 2020. Our new address is shown on the opposite page.

Workload in 2020

Although we thought a slowdown in our work may occur due to the pandemic, this was not the case. In fact, we opened more files in 2020 than we did in 2019. We opened 166 files in 2020, compared to 139 in 2019. We were able to close 132 files by the end of 2020 with 163 files remaining open.

Among the files opened, 11 were PIDWA files. The majority of the files were requests for advice, with one disclosure of wrongdoing file opened. At the end of 2019, we had three wrongdoing files still open, along with two complaints of reprisal. Investigation of these allegations continued throughout 2020 and were not yet complete at the end of the year. Heading into 2021, we have six investigations under PIDWA to complete. As I've stated in prior annual reports, these investigations are complex and resource-intensive.

At present, our current complement of staff is being challenged to manage the size of our workload. I have seven full-time employees and one part-time contractor. My fulltime employees consist of one director, five investigator and compliance review officers, and one administrative assistant. The contractor is my communications manager. With the new ATIPP Act coming into effect in 2021, I anticipate our resources will no longer be sufficient given the expanded authority and duties of the Information and Privacy Commissioner under that Act. I will be monitoring this impact in 2021 to determine if I require additional resources in order to meet my mandated obligations under the ATIPP Act and under the other three Acts for which I am responsible.

Update on goals

As indicated in my annual reports beginning in 2018, when I began my second five-year term, I identified eight goals to deliver on during my second term.

In my last annual report, I indicated that I had met my first goal to establish an oversight office sufficiently skilled to address new challenges and deliver on our multiple mandates. Because my mandates are expanding and because of the increased use of technology, including the use of artificial intelligence to deliver public and health services, I will continue to monitor whether our skills are sufficient to deliver on our mandates and take necessary action to ensure we continue to meet this goal.

My seventh goal is to deliver on my outreach strategy to increase knowledge amongst the public, within government and public organizations, and within the health sector on the mandates of the office and to inform the public about their rights. We did a significant amount of outreach in 2020 in support of meeting this goal. Some of this work is set out below.

Within the Office of the IPC, we:

- developed and launched a youth page on our website that contains information and fun activities to help youth learn about how to protect their privacy while online. Included on the page are resources for teachers to use in the classroom to enhance students' privacy awareness.
- participated in an interview with Max Zimmerman, host of *Global Action, Local Voices,* to discuss online privacy concerns and good practices for youth. The interview is available on the Yukon Child and Youth Advocate's website.
- issued nine guidance documents related to COVID-19 to inform public bodies and custodians about how to protect privacy and preserve access rights during the pandemic.
- issued guidance on the risks of ransomware applicable to all businesses in the Yukon.
- began developing a toolkit to help small health care custodians operationalize HIPMA.

Within the Office of the Ombudsman, we:

- ran a media campaign designed to educate the public on the kinds of problems that the office of the Ombudsman can help with.

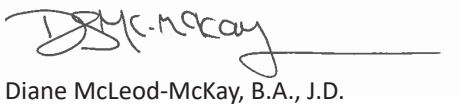
The other six goals set out in 2018 are as follows:

2. to support the development of privacy management programs for public bodies and custodians;
3. to improve access to information by working with public bodies to make increased information accessible without an access request and by improving the knowledge of those responsible for processing formal access to information requests;
4. to assist public bodies in implementing the new ATIPP Act;
5. to enhance fairness in authorities, through the use of proactive measures;
6. to increase the understanding by public entities and employees about what a disclosure is, how to make one, and reprisal protection;
8. to participate in the review of HIPMA (to be initiated by August 2020) and PIDWA (to be initiated by June 2020).

Updated information about my progress in meeting these goals can be found in the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner messages in this document. I am pleased to report that in 2020 I made significant headway in achieving most of these goals.

Specific information about the year 2020 for each of my mandates can be found in my 2020 Annual Reports for the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner, which are included within this document. I hope you find the information within the reports informative.

Kind regards,



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

Yukon
Ombudsman

2020 ANNUAL REPORT OF THE YUKON OMBUDSMAN

The Honourable Jeremy Harper
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 31 of the *Ombudsman Act*, I am pleased to submit the Annual Report of the Ombudsman for the calendar year 2020.

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

Kind regards,

Diane McLeod-McKay,
Yukon Ombudsman

OVERVIEW OF OUR WORK

In 2020, we opened 18 files under the *Ombudsman Act*, which is similar to the number of files opened in 2019, which was 19. All 18 files were settled by our informal case resolution team. The majority were closed within 90 days with just a few cases exceeding that target. We had four formal investigations that we were working on in 2020 that exceeded the one-year target. As indicated, we had numerous PIDWA files and ten formal investigations under the ATIPP Act ongoing in 2020 with just two staff to carry out this work. The amount of work required to conduct these investigations caused us to exceed our performance targets. We will continue to look for ways to meet these targets in 2021.

The work we do under the *Ombudsman Act* requires that we learn about and examine a number of different and sometimes very complex legislative and policy frameworks to determine if complaints about unfairness are founded. For example, in 2020 we examined the frameworks for fuel tax exemptions, impounding motor vehicles, and land use planning. We also examined decision-making associated with the restriction on entertainment after the pandemic emergency was declared in the Yukon, decisions made about the termination of cellular services to cell phones that were issued to women at risk as a result of the pandemic, and the decision to implement a blended learning approach for students in grades 10 through 12.

Details about these cases can be found on pages 5 through 10 of this report.

Update on goals

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

In the summer of 2020, I launched a media campaign to raise awareness about the work of the Yukon Ombudsman. During and after our campaign, we were contacted by a number of individuals to enquire about our office, which is positive.

On international Ombuds Day, celebrated on October 8th, I wrote an op-ed for a local newspaper to inform Yukoners about the role of an Ombudsman, our work, and our development and use of the *Fairness By Design* tool to promote fair service delivery.

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

In my 2019 Annual Report, I highlighted the work we did in collaboration with several Ombuds offices across the country in developing an evaluation tool known as *Fairness by Design* (referenced above), a self-assessment checklist used to evaluate fairness of the policies and practices of an authority. In 2020 we made the tool available to Yukon authorities and posted it on our website. We also began to use it internally as a way to evaluate a complaint and to communicate any fairness concerns we may have had relating to a complaint. By providing the *Fairness by Design* tool to authorities during a complaint investigation, we are able to better highlight any gaps or improvements that could be made relating to fairness. Overall, this tool was well-received and I trust that authorities will continue to use it when developing or evaluating their programs and procedures.

Ombudsman goes to court

In December of 2020, the Yukon Ombudsman filed a petition with the Supreme Court of Yukon seeking the following declarations by the court.

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

(b) The Ombudsman has the jurisdiction to require the

disclosure of full and unredacted documents from a person or authority, except

(i.) to the extent sections 18 and 20 of the *Ombudsman Act* provide otherwise, and

(ii.) to the extent a court may, upon application of the authority, order otherwise; and

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

The petition stemmed from some significant challenges we experienced in investigating a complaint made by a father who alleged that the Family and Children's Services Branch of the Department of Health and Social Services had failed to follow its procedures and failed to take action, thereby creating a risk of harm to his child and himself. The petition was filed with the court on December 11, 2020 and will be heard in 2021.

Review of the *Ombudsman Act*

During 2020, we continued to draft our comments related to this legislation and will update our comments pending the decision of the court in the case noted above, which is expected in 2021.

Concluding remarks

In the *What we worked on in 2020* section of this report, you will find more information about our investigations and recommendations. You will also find additional detail about our performance in carrying out our duties under the *Ombudsman Act*, in the *How we measured up* section of this report.

Diane McLeod-McKay
Ombudsman

WHAT WE WORKED ON IN 2020

EXAMPLE 1

A citizen came to us with several complaints of unfairness regarding the Department of Community Services' Building Safety Branch (the authority). They complained that the authority did not get back to them after they left messages and that it repeatedly gave them incorrect, vague, and, at times, conflicting information regarding permit requirements for their shed, solar panels, and primary residence. The citizen described the experience as continuously being given the proverbial "run around" whereby the rules changed every time they spoke to a different person.

The complainant bought land in a subdivision of a small Yukon community and built a shed there, which was intended to store tools while building a primary residence. They did not obtain a building permit for the shed because the Building Safety Branch website indicated it was not necessary, which was confirmed verbally by staff of the branch.

The citizen later installed solar panels on the shed, and subsequently tried to claim a solar panel rebate from the Yukon government. This led to a number of problems. They were advised that in order to claim the rebate, an electrical permit was required and were later ordered to remove the solar panels because no electrical permit had been obtained. In order to get the electrical permit, they were then told a building permit was needed, which is normally obtained before construction begins. Because the tool shed had already been erected, they were told to hire an engineer, at their own cost, to certify that the building was to code. After doing this, the engineer advised that bringing the shed to code would cost approximately $1000, in addition to the $500 professional fee. This led the citizen to believe that the Building Safety Branch had referred them to the engineer in bad faith, because the branch was already aware the shed was not to code.

After their email enquiries went unanswered for several weeks, they grew frustrated and took the matter to the media. Shortly after the story ran, they received an answer to their emails.

Our investigation found that some of the information on the government website was applicable to most Yukon residents but was not applicable to the complainant because of the area in which they live. They did receive incorrect, incomplete and conflicting information from the government, both verbally and on its website, regarding permit requirements for building the tool shed. However, the complainant also failed to research the need for various permits to install solar panels on the shed.

Our office made a number of recommendations, which were accepted by Community Services. This included ensuring 1) that their website includes accurate, complete and up-to-date information; 2) implementation of a service standard to ensure that responses to citizens' enquiries are given in a timely fashion; 3) implementation of a service standard to ensure that building permits are processed in a timely fashion; and 4) development and implementation of training materials and written procedures to ensure that staff are equipped to respond to enquiries accurately and completely.

The complainant was pleased with the outcome of the complaint and believes it may prevent others from a similarly frustrating experience.

Our office made two observations to Community Services for its consideration. The authority may want to consider whether "first come, first served" is the most efficient way to process permits. Instead, a process that includes evaluating the size and complexity of requests and the time frame required for completion may allow requests to be completed in

a timely manner. The authority may want to consider implementing a standardized procedure for managing email enquiries from the public.

EXAMPLE 2

Our office received a complaint about the Department of Finance's *Fuel Tax Exemption Permit* process. The complainant is a commercial farmer, who had previously qualified for a permit but in 2019, the permit was denied. The complainant said that they were not provided with a clear explanation from the department (the authority) as to the reasons why their permit was denied.

During our investigation, we found that permit applications are governed by the *Fuel Oil Tax Act*, which allows for the granting of permits in certain circumstances, including that the fuel be used for activities conducted with the intention of earning income. To determine eligibility, the application form asked questions about the applicant's intent to earn income and about their previous and forecast profits, with one line provided for elaboration. The complainant was concerned that there was no opportunity to provide supplementary evidence to explain their intent to earn profit despite a year of loss, and that they had not been provided with any information about what evidence might be beneficial or relevant to their application. The authority maintained that the onus is on the complainant to provide this information.

Our office concluded that the burden is indeed on the applicant to provide information that is relevant to their file, but also that the authority had not made it clear what could be provided to support an application, what test was being used to evaluate applicants, what weight is given to various criteria, or whether further information could be provided to show how they meet those criteria. This amounts to an unfair process.

We recommended that the authority develop language that clearly sets out the process for deciding on applications for the *Fuel Tax Exemption Permit* and make this available to all applicants at the onset of their application. This included the criteria used and the weight given to each. We also recommended that it be made clear that an applicant has the ability to submit supplementary evidence if they feel it would support these criteria.

The Department of Finance agreed to this recommendation and implemented it. The complainant was ultimately granted a refund in the same amount as the tax exemption would have been.

During our investigation we learned that the department has an appeal mechanism available for these permits. In this case, the complainant had not had success through the appeal mechanism, subsequently coming to our office for assistance. However, we found that applicants have not been advised of the appeal mechanism, or the option to submit additional evidence. It is our view that applicants should be made aware of these avenues available to dispute the results of an application. After this complaint was opened, the authority amended the denial letter to provide clarity on the appeal mechanism.

EXAMPLE 3

A citizen complained to our office that the Motor Vehicles Branch (MVB) of the Department of Highways and Public Works (the authority) had acted unfairly during the process of impounding and disposing of two of their vehicles. The complainant alleged they were not notified prior to this happening and that the MVB could not provide them with any documentation, information or details about the impoundment.

During our investigation, we found that the notification process is described in detail in the authority's *Abandoned Vehicles Policy* and that this process was followed in this case. The authority had attempted to contact the complainant via telephone and was unsuccessful. On that same day, a registered letter was then sent out to the address on file for the complainant, as per their process. When the complainant did not respond within 30 days, a second letter was sent, notifying the complainant that the two vehicles had been disposed of.

It turns out that the complainant no longer resided at the address on file at the MVB but had not provided the new address, even though the *Motor Vehicles Act* requires that an individual notify the authority of any changes in address.

We did not find that this was unfair.

We also found that the authority does keep documentation of all essential components of this process. The MVB provided our office with the complete records of the complainant's vehicle files, including the details sought by the complainant. The authority reported that they had made an unsuccessful effort to provide these records to the complainant upon his request, but that the complainant was argumentative and confrontational.

With permission from the MVB, our office shared the records with the complainant and this resolved that portion of the complaint. This is an example of how our informal

resolution process can help to facilitate a conversation and provide clarity.

Following our review of its internal policy, we noted a discrepancy between the *Motor Vehicles Act* and the policy. Specifically, the policy used a definition of "owner" that was narrower than the definition in the legislation. This definition did not include individuals who were required to register their vehicle but had not yet done so. The authority agreed to update the policy to ensure the definition of an "owner" reflected the language in the *Motor Vehicles Act*.

EXAMPLE 4

In June 2020, our office received a complaint from a person involved in the Yukon music industry. In response to the COVID-19 pandemic, the Yukon government had issued a guideline against "live music and entertainment" in bars, pubs, lounges and nightclubs stating that "businesses must not… permit live music or entertainment, including karaoke." The complainant expressed concern that they were being negatively affected by this guideline.

In a letter to the Yukon's Chief Medical Officer of Health within the Department of Health and Social Services (the authority) regarding this complaint, our office provided the following information highlighting some of the inconsistencies in the information available to the public about the live music guideline:

- There are specific guidelines for the re-opening of food premises which are silent on live music or entertainment.
- There are specific guidelines for faith-based services that permit singing and live music although it is stated in the guidelines that singing and the playing of woodwind instruments are high-risk activities. There is a recommendation in the guidelines that singing is not recommended but if it is to occur that safety precautions must be taken.
- There are specific guidelines on operating businesses safely during COVID-19 which are silent on live music and entertainment.
- In a document titled "Prohibited Services in Yukon During COVID-19," live music and entertainment are not identified as prohibited services.
- Jurisdictions across Canada have adopted differing approaches to restricting certain forms of live music and entertainment.
- All provinces in Canada allow some form of live music or entertainment with differing rules that apply. The other two territories have taken a similar approach to the Yukon and have restricted "live music" and "concerts."

In our view, the initial restrictions on live music and entertainment in bars lacked transparency about the decision-making process and evaluation criteria, and were not adequately communicated, resulting in unfairness for the complainant as well as the broader public.

The Chief Medical Officer of Health adequately addressed the identified unfairness by easing the restrictions and providing a guidance document for businesses to allow for live music and entertainment with conditions in place to ensure public safety.

While we recognize that the implementation of the live music restrictions were time-sensitive and made with the public interest in mind, it was nonetheless our opinion that these factors did not negate the authority's responsibility to ensure that decisions are made in accordance with the principles of administrative fairness. This is particularly important as the COVID-19 pandemic is ongoing which may require new measures or restrictions in the future. We encouraged the use of our fairness assessment tool to evaluate the fairness of any decision made.

Our office made a number of observations in regard to this investigation. Specifically, we suggested that the authority may want to consider rewording or clarifying the following points in the live music guidance document:

- In the reference to physical distancing of 2 metres (or a physical barrier) between musicians and patrons, there may be the opportunity to clarify that musicians/performers are not required to stay 2 metres away from each other if they are members of the same "bubble".
- In the reference to musicians and performers being screened for illness before performance, there may be an opportunity to clarify that performers are responsible for completing the COVID-19 self-assessment screening prior to performing, rather than business owners being responsible for screening musicians.
- In the reference to ensuring that musicians and performers are practicing frequent hand hygiene, there may be an opportunity to clarify that business owners should ensure that musicians and performers have access to hand sanitizer on or near the performance area, rather than ensuring that musicians and performers are frequently washing their hands.

EXAMPLE 5

Around the start of the COVID-19 pandemic in March 2020, the Yukon government shut down most public Wi-Fi hotspots, such as the Whitehorse Public Library, leaving many vulnerable people without Internet access.

Later that month, the government partnered with the Yukon Status of Women Council and Northwestel to provide 325 cellular phones to vulnerable women during the pandemic. The program's focus was to ensure that these women could safely access the Internet for important tasks such as accessing financial supports (for example, the Canada Emergency Response Benefit) and staying informed of the latest COVID-19 developments. The program was scheduled to last from April 1, 2020 to

July 31, 2020, with an option for users to take over the phones in their own names afterwards.

In mid-July, our office received a complaint about the Yukon government's Women's Directorate (the authority) and its decision to suspend and then terminate the cellular data services on the phone plans issued to women. The complainant felt this decision was unfair.

In our investigation, we found, as had been reported in the media, that the Yukon government had cut off service for all 325 lines at the end of May due to significant fees for overuse of data. The government announced that it was working to reinstate voice and text service (but not data) for all users until the planned end of the program on July 31, 2020.

The complainant told us that she had received no information from the government regarding data or any limits on its use. She was also not given any information on how to manage data on a cellular phone. She was not notified prior to the phone being disconnected, and she felt this left her at risk. She also felt that the authority's comments made to media about the phone suspension characterized program participants such as herself in a negative light and resulted in unfairness in the form of public shaming. It is important to note that for some of the program participants, this was their first cell phone.

Our investigation found that the Women's Directorate implemented the phone program very quickly (within a few weeks), and in doing so, failed to do its due diligence to ensure the program would run successfully for all involved.

- No transfer payment agreement was signed between the Yukon government and the Yukon Status of Women Council.
- Nothing had been set out in the form of an outline, scope of work, delineation of roles and responsibilities or deliverables.
- The authority conducted a risk assessment prior to implementing the program. However, there were insufficient mechanisms in place to mitigate the most significant risk identified, data overages.

In the view of our office, the authority's actions did not follow some of the most basic principles of procedural fairness, such as advance notice of an action or decision, adequate information about the decision-making process and criteria, documenting and communicating decisions, providing an opportunity for participants to be heard.

We made two key recommendations. For all future funding initiatives to non-government organizations, the authority must follow its procedures, including development of a transfer payment agreement, a project outline, scope of work, delineation of roles and responsibilities, and clear deliverables. Secondly, in instances where a risk assessment is conducted as part of a project, the authority must take tangible action to mitigate any identified risks.

We also made an observation to the Women's Directorate, that it consider releasing a public statement regarding the phone program to restore the confidence of the participants and the public in this authority.

The work of our office found strong evidence that the authority had good intentions when establishing this program. However, this case illustrates the importance of following processes, even when it may take extra time and effort. As was the case here, failing to do so not only caused unfairness but also harmed the authority's reputation.

EXAMPLE 6

Our office received a complaint of unfairness about the decision by the Department of Education (the authority) to implement a blended learning approach in the 2020/2021 school year for students in Grades 10 through 12.

After opening this file, we received a second complaint with similar concerns, although narrower in scope. These two complaints were investigated together.

On July 9, 2020, parents received a letter from the authority, notifying them that Whitehorse students in Grades 10 through 12 will receive half-day in-class instruction and half-day learning away from school, five days per week, during the 2020/2021 school year. This letter was the first notification that parents received of this decision.

The complainants were concerned that the authority did not consult with Yukon parents about these changes to the education plan; did not provide sufficient accommodation (i.e. a study hall) for out-of-town students to remain at school for self-guided study; and that the commute for students living outside of Whitehorse is unreasonable for a half-day of supervision. They also felt the plan placed an unreasonable burden on parents to assist in the ongoing supervision and education of their children and that it was unfair to introduce this plan to only those students in Grades 10 through 12.

The complainants were unable to resolve this matter directly with the authority and expressed significant challenges in obtaining clarity about this approach and having their questions answered. Frustrated with the lack of response from the authority, the complainants came to our office.

This investigation presented an opportunity to delineate the issues in accordance with the three elements of administrative fairness identified in our *Fairness by Design* tool.

- Fairness in decision-making process: Did the authority sufficiently consult with stakeholders (i.e. parents) in making this decision? Was the process fair?
- Fairness in result: Was the decision a fair decision?
- Fairness in service: Were the authority's communications open and transparent?

Regarding fairness in process, our office did not find any obligation to

consult in legislation that would be relevant to this matter. We did find that the authority did seek input from parents through the school councils, which reviewed and subsequently approved the operational plans. School councils are elected and one of their purposes is to provide representation for parents. We found that the degree of consultation that took place via school councils was fair. That said, under normal circumstances (when there is more time for decisions

and there is no pandemic), a higher degree of consultation may have been appropriate. However, the pandemic created a number of unique considerations, including a pressing time constraint, and strict health and safety guidelines that the authority was required to follow.

Regarding fairness in result, the authority confirmed that while other approaches were identified, the blended learning approach for students in grades 10 through 12 had been viewed as the ideal approach for several reasons. First, the authority sought how best to accommodate students and their chosen graduation pathways with a full curriculum and without cancellations of electives.

Secondly, the blended learning approach allowed the authority to remain adaptable to the public health guidelines, which were only available in draft form at the time the operational plans were being developed.

The complainants had concerns that it was arbitrary to adopt a blended learning approach in some grades but not in others. Our investigation found that there was rationale for choosing Grades 10 through 12, including an increased demand for varied courses and classroom space in the higher grades and the importance of classmate support in the transitional Grades 8 and 9.

The complainant also cited a lack of supports. We confirmed that there were study halls available, both virtually and in person.

Although we recognize that the decision was not ideal, it was fair given the context of the pandemic.

Regarding fairness in service, one complainant had been unable to speak with anyone within the Department of Education about the blended learning approach to obtain more information and their concerns remained unanswered. Our office concluded this was unfair. The authority also acknowledged that although an information phone line had been established, it was resourced insufficiently and questions were not always answered, which amounted to unfairness. We asked the authority to ensure that a dedicated employee is available to answer questions from the public about the decision, the supports that are available to parents, and how to access these supports. The authority agreed to this.

It is important to recognize the substantial effect of the pandemic in our evaluation of these complaints. Absent a pandemic, there may have been an unfairness in the process followed, if not the decision itself. Generally, one would expect that decisions of this magnitude have a higher level of consultation.

These complaints highlight the important point that although decisions had to be made during the pandemic that were unusual, open communication could have helped to reduce stress and frustration amongst members of the public.

EXAMPLE 7

Sunnydale/West Dawson is an unincorporated community near Dawson City. The complainant owns a parcel of land there and in December 2019, they received a notice from the Department of Energy, Mines and Resources' Land Planning Branch (the authority) advising of a subdivision application for an adjacent property. The owner of a neighboring lot had applied to subdivide his land into 11 agricultural parcels.

The complainant attended the public consultations with the authority and submitted comments in writing. When the subdivision application was approved, the complainant and another neighbor engaged in lengthy exchanges with the authority by email, letter, and phone, in which they raised concerns.

After receiving what they felt were inadequate responses from the authority, the complainant filed a complaint with our office.

The first concern was regarding the public consultation process. The complainant learned that the authority was under no obligation to act on feedback from these consultations and was only seeking very specific types of technical information. The complainant said this had not been conveyed to community members, making the consultation process lacking in transparency and potentially unfair.

Our investigation found that the complainant's concerns were founded. During our conversations with the authority, they acknowledged that when consultations on subdivisions take place, there is often a sense that "everything is on the table", which is not the case, and that there may be an opportunity to clarify the consultation process for the public. The notices we reviewed which are sent to adjacent properties in regard to a subdivision application included no information on what types of input the authority would or would not be considering.

The second concern was that the authority advised the complainant that sections of the local area plan for Sunnydale/West Dawson only applied to larger public subdivision development by the Yukon government or the Tr'ondëk Hwëch'in Government. The complainant felt that this was confusing and potentially unfair and asked our office to validate the authority's position. The complainant also felt there was an opportunity for the authority to clarify to whom the local area plan applies and in what circumstances, and to make this information available and easily accessible to the public.

In this regard, our investigation did not find any evidence of unfairness. We did find that land planning in the Yukon is complex. The term "local area plan" is not consistent across the relevant legislation and other related documents and can be referred to in other ways, which could make it difficult for a lay person to navigate how a local area plan relates to the *Subdivision Act* and its *Regulations*, as well as other relevant legislation.

The complainant's understanding that the Sunnydale and West Dawson Local Area Plan only applied to public developments by the Yukon government or the Tr'ondëk Hwëch'in Government was incorrect. The local area plan applies to all activity within the designated boundary; however, the way in which the plan applies to a given situation varies depending on land use designation, whether the project is private or public, etc.

The third concern was regarding the recent approval of a subdivision in Sunnydale/West Dawson. The complainant felt they had not received adequate responses from the authority regarding how it had assessed road standards and infrastructure, and wildland fire risk mitigation.

In this instance, our investigation found the complainant's concerns were founded. The *Subdivision Regulation* specifies numerous criteria that a subdivision approval officer must consider before a project moves forward, including wildland fire, road infrastructure, soil characteristics, layout and design, etc. In the paperwork provided by the authority for review of this matter, we identified gaps in the authority's process for confirming that each of these criteria had been considered.

Our main concern was that the process for consulting with other departments did not require the other department to explicitly respond with their approval. Rather, in the absence of a response from the other department, it was assumed there were no comments or concerns, and the project would proceed accordingly. We discussed with the authority why we felt their practices lacked transparency and were potentially unfair, as well as the fact that we did not feel the current practices were sufficient to meet their legislated obligations.

The authority accepted our recommendations that it 1) update the notice provided during public consultations to clarify what types of information or comments will and will not be taken into consideration and 2) that it develop and implement a written procedure to ensure that it has considered the criteria outlined in the *Subdivision Regulation*, and could demonstrate as such.

We also made the observation that in developing future local area plan documents, the authority may want to consider including information on how the local area plan applies to subdivision applications.

The authority was quick to acknowledge these gaps and accepted our recommendations to remedy the potential unfairness. During these discussions, the authority took the time to thank our office for our feedback and expressed that they appreciated our suggestions and felt that it had been useful to have an outside perspective in respect of their policies and procedures.

HOW WE MEASURED UP IN 2020

Skills development

The Ombudsman attended the annual meeting of the Canadian Council of Parliamentary Ombudsman (CCPO) for two days in June, joining her colleagues from across the country. In 2020, the meeting was held virtually via the Teams application, due to the COVID-19 pandemic. These meetings provide an opportunity for Ombuds to share information on their experiences, challenges and solutions.

All Ombudsman staff participated in workshops delivered throughout the year by CCPO offices. Topics included issues common to complaints involving government corrections facilities, the role of the Ombudsman during a crisis, a report on ministerial orders in response to the COVID-19 pandemic, and outreach to northern communities.

In addition, legal counsel within CCPO offices meet quarterly. Our office has two legal counsel who participate in these sessions.

Staff within our office also take part in training that applies to work under all of our mandates. This includes quarterly in-services provided to all staff to improve knowledge of information security.

Staff who are lawyers attended Canadian Bar Association webinars (which are required to maintain their license to practice) on topics such as how to deal with difficult people, pandemic management and privacy implications, overview and practical tips regarding the *Mental Health Act*, and a new approach to the standard of review.

All staff of our office attended webinars on various topics including ethical interviews, writing reports, and conducting remote investigations.

One person on our staff attained their adjudication certification this year.

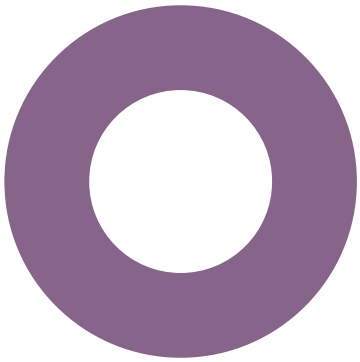
Complaints against the Ombudsman

None

Ombudsman Act 2020 activity	
Resolved at intake - no file opened	
Request for information	47
Informal complaint resolution	28
Non-jurisdiction	11
Referred-back	21
Total	**107**
Settlement files opened	18
Investigation files opened	0
Total	**18**
All files opened in 2020	18
Files carried over from previous years	5
Files closed in 2020	14
Files to be carried forward	9

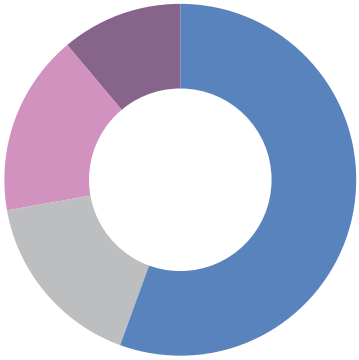
Ombudsman investigation - 1 year target

Closed (within 1 year)	0
Closed (over 1 year)	0
Still open (within 1 year)	0
Still open (over 1 year)	4



Ombudsman settlement - 90 day target

Closed (within 90 days)	10
Closed (over 90 days)	3
Still open (under 90 days)	3
Still open (over 90 days)	2



Files opened in 2020 by authority

Authority	Number of files			Recommendations		
	Informal case resolution	Investigation	Total	Formal*	Accepted	Not yet implemented (includes from prior years)
Department of Community Services	3	0	3			
Department of Economic Development	1	0	1			
Department of Education	3	0	3			
Department of Energy, Mines and Resources	1	0	1			
Department of Finance	1	0	1			
Department of Health and Social Services	4	0	4			
Department of Highways and Public Works	1	0	1			
Department of Justice	1	0	1			
Women's Directorate	1	0	1			
Yukon Housing Corporation	1	0	1			
Yukon University	1	0	1			

*Formal recommendations are those made by the Ombudsman in a formal Investigation Report in 2020.

United Way Breakfast 2020, outdoors at the Whitehorse Shipyards Park due to COVID-19.

Seats are reserved to create space on a Whitehorse city bus during the COVID-19 pandemic.

Yukon Information and Privacy Commissioner

2020 ANNUAL REPORT OF THE YUKON INFORMATION AND PRIVACY COMMISSIONER

The Honourable Jeremy Harper
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 47 of the *Access to Information and Protection of Privacy Act* and Section 97 of the *Health Information Privacy and Management Act*, I am pleased to submit the Annual Report of the Information and Privacy Commissioner for the calendar year 2020.

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

Kind regards,

Diane McLeod-McKay,
Yukon Information and Privacy Commissioner

OVERVIEW OF OUR WORK

The Office of the IPC was very busy in 2020. As I noted in my general message, this office was busy supporting public bodies and custodians in meeting their obligations under the ATIPP Act and HIPMA while delivering services in a modified way due to the pandemic.

As indicated, we issued nine documents related to COVID-19, which are discussed at pages 31 and 32 of this report.

We attended numerous meetings virtually and by phone to assist public bodies and custodians in meeting their obligations in a modified work environment that required services be delivered remotely.

We met with public bodies regarding their use of Zoom to deliver services.

We met with health care providers to discuss the use of video conferencing applications to deliver health care services.

We met with representatives from the Department of Health and Social Services and the Department of Community Services, which is responsible for the *Civil Emergency Measures Act*, to discuss several initiatives related to management of personal health information during the pandemic.

We worked with representatives from the ATIPP Office on the development of guidance related to the management of access requests while staff are working remotely.

We met with representatives from the Department of Health and Social Services to discuss their management of access requests while staff are working remotely.

We met on several occasions with Community Services and Health and Social Services employees to assist them in developing guidance for the collection of personal information by bars and restaurants for contact tracing.

We met numerous times with our federal/provincial/territorial counterparts to address the risks posed to privacy from activity related to COVID-19 involving governments and the private sector (including the health sector). The work resulting from these activities is discussed in more detail on page 32 of this report.

Performance measures

We opened a total of 112 files under the ATIPP Act in 2020. Of these files, 54 were reviews and 48 were investigations. Compared to 2019, the number of files opened increased from 70 last year to 112 this year.

The majority of these files were resolved through our informal case resolution process within our target of 90 days. We had 10 investigation files open in 2020 in which we were unable to meet our target of closing the files within one year. We will need to continue to work towards achieving our targets for our investigations. We have just two staff who conduct formal investigations in our office. These staff also conduct investigations under PIDWA and the *Ombudsman Act*. They are also responsible for providing advice under PIDWA. As indicated in my general message at the start of this document, the amount of PIDWA files we received in 2020 impacted our ability to meet our performance measures for these and other investigation files.

The matters that we reviewed or investigated in 2020 fell within eight themes. Summaries of some of our work associated with these cases can be found on pages 16 through 28 of this report.

Under HIPMA, we opened just seven consideration files, which is down from the 17 files we opened in 2019. Six of these files were closed within the 90-day target. One went to formal consideration and was still open at the end of 2020.

Summaries of some of our HIPMA case work can be found on pages 29 through 30 of this report.

Relationship building proves positive

In my 2019 Annual Report, I highlighted a number of challenges we were having with one Yukon government department in resolving issues arising from our case work with them under the ATIPP Act and HIPMA. To address these challenges, a senior department official and I agreed to meet monthly to discuss issues as they arise. I am pleased to report that the issues we had in 2019 concerning this department have mostly been alleviated through this new process. Our meetings have resulted in a cooperative working relationship that has strengthened my ability to monitor compliance by the department with the ATIPP Act and HIPMA.

Also in 2020, we met often with officials from the Information Communications and Technology (ICT) branch in the Department of Highways and Public Works, which is responsible for developing and implementing information security policy and procedure for the Yukon government. In prior annual reports, I have expressed concern about the lack of policy and procedure and the need for their development to meet the security requirements for Yukon government public bodies and custodians in the ATIPP Act and HIPMA. I am pleased to report that in 2020 we were presented with a draft information security and management plan (ISMP) developed by ICT inclusive of a comprehensive set of policies and procedure. Details about our work with ICT related to their ISMP can be found on page 31 of this report.

In my role as IPC, I was invited to meet with the Association of Yukon Communities to discuss the implications of being subject to the ATIPP Act, which they currently are not. The focus of our presentation was to explain the importance of access

to information and privacy laws in a democratic society and to provide information on how these laws operate in the Yukon. We also explained that being subject to these laws promotes trust in government, and that there are many benefits to being subject to these laws. We also discussed the challenges and how they can be managed with proper planning. The participants asked numerous questions and explained some of their concerns about being subject to these laws. We did our best to alleviate these concerns. All in all, it was a good meeting that I hope will lead to these organizations becoming subject to the ATIPP Act in the near future.

Update on goals

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

During 2020, we met often with representatives responsible for the development of the regulations under the new ATIPP Act. We worked with these officials on the design of the regulations in a number of areas, including on the requirements for privacy management programs in public bodies subject to the Act. We made a number of recommendations, most of which were accepted. These new requirements will facilitate better privacy protection by public bodies in the Yukon, which will be required to establish privacy management programs once the new Act is proclaimed into force.

In recognition that some of the smaller custodians were struggling to operationalize HIPMA, we began drafting a tool kit for smaller custodians to help them meet their obligations under HIPMA. We expect to have the tool kit complete and ready for use in early 2021.

To support custodian compliance, we also met with officials with Community Services to explore if we could collaborate on finding ways to inform custodians of their responsibilities under HIPMA through registration and licensing services offered by Community Services. We will continue this work in 2021.

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

As can be seen from the examples in the *What we worked on in 2020* section of this report, management of access to information requests by Yukon public bodies, including those in government, still needs work.

In 2020, we developed two sets of guidance documents to help public bodies better meet their obligations for processing access requests. Staff in our informal case resolution team also spent a significant amount of time with certain public bodies to help them better understand their duties. This together with our review case work revealed that public bodies need more support to help improve access to information in the Yukon. I am strongly encouraging the Yukon government and other public bodies to audit their access to information programs, identify gaps, and provide the assistance that is necessary to improve these programs. The ATIPP Office may be able to assist in providing support for this work as can my office. The public's ability to access information as provided for in the ATIPP Act depends on the proper functioning of these programs.

4. to assist public bodies in implementing the new ATIPP Act

At the end of 2020, the new Act was not in force. Our office provided extensive comments and recommendations on the development of the regulations that were finalized by the end of 2020. Most of our recommendations were accepted. Once the new Act is in force, we will look for ways to help public bodies meet their obligations.

8. to participate in the review of HIPMA

In the summer of 2020, I was informed by the Department of Health and Social Services that the HIPMA review had been launched. Given this, I began drafting my comments and recommendations and will provide them to the department in 2021.

Anticipating future risks to privacy

In 2020, I was invited to attend two workshops about the use of artificial

intelligence (AI). In one, experts from across Canada including IPCs, legal scholars, and representatives from a number of sectors, examined the use of consent in AI and looked at ways to optimize privacy protection when this technology is used. The other, which was focused on the use of AI in health care, had similar participation but also included physicians. We examined the benefits, challenges and a host of legal issues that arise when this technology is used to deliver health care.

In recognition of the anticipated increased use of AI in Canada and the Yukon, and the risks to privacy and fairness posed by this technology, the Offices of the Yukon IPC and Yukon Ombudsman, together with the British Columbia (BC) Ombudsperson and the Information and Privacy Commissioner for BC began developing a report on responsible use of artificial intelligence (AI). The purpose of the report is to provide guidance to our respective governments on how to create and utilize AI in a responsible manner that garners public trust.

The document, which will also address the risks to fairness in public service delivery, which the Ombudsman is responsible to investigate, will be completed in 2021 and then tabled in our respective legislative assemblies.

Concluding remarks

In the *What we worked on in 2020* section of this annual report, you will find more information about our IPC office's activities under the ATIPP Act and HIPMA. You will also find additional information about our performance in carrying out our duties under these laws in the *How we measured up* section of this report.

Diane McLeod-McKay
Information and Privacy Commissioner

WHAT WE WORKED ON IN 2020

In my role as Information and Privacy Commissioner, my office has responsibility and jurisdiction under the *Access to Information and Protection of Privacy Act* (ATIPP Act) and the *Health Information Privacy and Management Act* (HIPMA). In reviewing our work during 2020, I found a number of recurring themes which highlight ongoing issues experienced by those who have made requests or complaints under both pieces of legislation. This section highlights those themes, as reflected by the cases we dealt with throughout the year.

Our work under the ATIPP Act
Trends and issues

In our work under the *Access to Information and Protection of Privacy Act* (ATIPP Act), we identified seven main themes that led to complaints during 2020. These are:

- COVID-related cases
- Administration of cases by the ATIPP Office
- Duty to assist
- Long delays in providing records and deemed refusals
- Estimates of costs
- Inadequate search
- Reviews
- Privacy issues

COVID-related cases

The year 2020 was unique for individuals and organizations around the globe due to the COVID-19 pandemic. Our office was no exception. On pages 31 and 32, we outline some of the special work we undertook during 2020 due to the pandemic. We also had some complaints that related to COVID-19.

EXAMPLE 1

In one case, the IPC received a request for review under the *Access to Information and Protection of Privacy Act* (ATIPP Act) regarding a decision by the Department of Health and Social Services (HSS) to refuse access to records. The request was for information pertaining to COVID-19 tests (i.e. how long tests took to be processed). HSS responded to the applicant that in order to answer the request, it would need to access the personal health information of individuals and the *Health Information Privacy and Management Act* (HIPMA) does not authorize the department to use and/or disclose personal health information, including information related to testing, without the individual's consent. During our review, we determined that HSS did not have the technical ability to provide responsive records and that the Yukon Hospital Corporation (YHC) did. We concluded that HSS was justified in not providing the applicant with records but brought a number of concerns to the department's attention. For example, the HSS response to the applicant should have indicated it did not have the technical ability to provide responsive records, not that it did not have the authority to do so. As well, HSS should have referred the applicant to YHC, or the Records Manager at the ATIPP Office should have referred the applicant to YHC, in accordance with their duty to assist.

EXAMPLE 2

In another COVID-19 related case, we received a complaint that the COVID-19 declaration forms for those entering the Yukon, which were issued by the Department of Community Services, did not meet the department's obligations under the ATIPP Act. The complainant stated that the form was missing

several key elements, including contact information for the department should there be questions from the person filling out the form; an indication of who will have access to the information, how long it will be retained and how it will be destroyed; and an explanation of how the information will be used.

As a first step, we needed to determine whether the department agreed that the ATIPP Act applied to the declaration forms, which had also been authorized under the *Civil Emergency Measures Act* (CEMA). The department did agree and noted there was no inconsistency between the provisions of the ATIPP Act and CEMA in this context.

The information being collected on the form included name and address, travel history and questions about COVID-19 symptoms. This does constitute personal information under the ATIPP Act. (Because the Department of Community Services is not a custodian under HIPMA, that Act does not apply.) In several regards, the department had met its obligations under the ATIPP Act, for example, by stating its authority under the Act, and the purposes for collection. In addition, some of the elements that the complainant noted were missing are not actually required under the Act (for example, who will have access to the personal information and how long it will be retained). However, the form did not include contact information for the department and in this regard, the department had not satisfied its duties under the ATIPP Act.

We recommended the department re-do its declaration forms to fix this problem and the department agreed.

EXAMPLE 3

This example relates to a reporter's request to the Yukon Liquor Corporation (YLC) for data on its sales of Corona beverages such as beer.

The reporter asked the YLC for gross sales numbers, per month, for Corona products and for all products sold by YLC, during the time period from January 2018 through July 2020, as well as the number of litres sold, per month, for Corona products and all products. In anticipation that there may be costs associated with processing the access request, the reporter included specific ways to reduce the scope of the search and the time required for it. The reporter specifically said they did not want to pay for any search costs.

In response, the reporter was given a record with some of the information broken down by year, instead of by month. As well, the gross sales numbers for all products sold by the YLC were not included or mentioned at all. Nor was there any explanation of why the record provided did not correspond to the parameters of the request. When the reporter tried to get in touch with the contact person identified in the YLC's final response, no one ever got back to them.

The reporter complained to our office in August 2020. Our first thought was that the YLC might have misunderstood the applicant's request, but this turned out not to be the case. Instead, the YLC indicated to us that it had determined that there were no responsive records to the request and that creating a record from their database would incur a cost, which the applicant had specifically indicated they did not want to pay. However, the YLC had recently created a partially responsive record in response to an unrelated media request and that is the record that was released to the reporter.

Regarding the applicant's unsuccessful attempt to communicate with the contact person identified in the final response, the YLC confirmed that the employee in question was working remotely and had experienced technical problems forwarding the line to an alternate number. It was also confirmed that the employee's voicemail greeting did not state that the employee was working remotely and that voice messages were not being actively monitored, nor did it provide an alternate contact number. As such, the phone number indicated in its final response to the applicant was, for all intents and purposes, not valid.

Our conclusion was that the public body had not fulfilled its duties under the ATIPP Act to ensure that the response to the applicant is open, accurate and complete. Our recommendation was that the YLC provide the applicant with an amended response with all the relevant information and explanation, which was accepted.

It was also evident to the applicant, to our office and ultimately to the YLC as well, that this complaint could have been avoided entirely if the YLC had provided adequate information in its response, as the ATIPP Act requires.

Administration of cases by the ATIPP Office

A number of cases that our office dealt with during 2020 related to the work of the ATIPP Office and the office's records manager, which are entities established within the Government of Yukon Department of Highways and Public Works to deal with all access to information requests made to all Yukon government departments and other public bodies.

This year, as in many other past years, we have observed and noted significant shortcomings of this model. Key issues this year include the ATIPP Office missing deadlines set out in the ATIPP Act and failing to communicate, as well as a number of instances where the ATIPP Office did not follow its own rules.

The following examples illustrate these issues.

EXAMPLE 1

This is a case in which the ATIPP Office did not follow its own procedures.

We received a complaint from an applicant about an email sent to them by the ATIPP Office related to two access requests to the Department of Education. More than a year after the requests were made, the applicant reached out to the ATIPP Office via email, which then replied to say that if the applicant was still interested

in receiving the information, they must withdraw and re-submit their two requests so that the access to information process could be re-started. When we looked into the case, the ATIPP Office indicated that the case was unique and that they had received pushback from the Department of Education, which was unwilling to continue work on the requests and which had suggested that the applicant withdraw their requests. The ATIPP Office agreed with this suggestion.

After looking into this case, our office concluded that it was not reasonable for the ATIPP Office to agree with the department and that the ATIPP Office should have reinforced with the department that work on the request should continue. The ATIPP Office procedures do contemplate this exact scenario and provide guidance which was not followed. We recommended that staff be trained to ensure these procedures are followed.

Following this incident, the department amended the notices sent out to applicants after a request has been deemed refused, such that they are only sent out once, at the time of deemed refusal, and no longer indicate if a department is continuing work. The ATIPP Office stated that it did not want to be held accountable for departments which stopped work on access requests. We recommended that the ATIPP Office re-instate the practice of sending notices that indicate if public bodies are continuing work on requests and that such notices be sent out every 30 days, in the interest of providing applicants with open and transparent communication and informing them of their right to a review.

To ensure there are no further access requests that have been in deemed refusal for an extended period of time, and require action by the public body, it was also recommended that the ATIPP Office audit for open requests requiring action, and action these appropriately. Several other cases were then identified by the ATIPP Office and were dealt with.

EXAMPLE 2

Our office received a complaint from an applicant that the ATIPP Office had not sent them a final response to an access to information request they had made. The applicant stated that they had not received a formal notification when their response was deemed refused, but instead received an email indicating that a formal letter would follow. Several days passed, and the applicant then received a final response with the information they had requested. No deemed refusal notification was sent.

We looked into the case and noted that whether or not a department has provided any records to the ATIPP Office, the records manager has an obligation under the ATIPP Act to provide a response to an applicant within 30 days after a request is received, unless the time has been extended. Under the legislation, the response has to include certain elements, including the reasons for refusal, or deemed refusal; contact information for an employee of the public body who can answer the applicant's questions about the refusal; and the advice that the applicant has the right to request a review of the refusal or deemed refusal by our office. This piece is critical in promoting an applicant's rights, since many are not aware of the role of our office.

The ATIPP Office stated that sending a complete notice to the complainant, and to other applicants whose requests had been deemed refused, had not been a priority. This was because it had received a large number of access requests around that time, which had kept them busy.

As a result of this complaint, the ATIPP Office agreed to prioritize deemed refusal notices, such that they would be sent out promptly, in accordance with their own internal service standards. The ATIPP Office also agreed to ensure that notices in future contain all the legislated requirements, including how to contact our office to request a review.

EXAMPLE 3

An applicant came to our office with a complaint after their access request had been deemed refused by the Department of Health and Social Services (HSS). We reached out to the public body to advise of the complaint and to ask when they expected to provide the records to the applicant.

Almost immediately, we received a call from the public body, which was surprised to learn of the deemed refusal status. According to their records, HSS had issued an estimate of cost for this access request approximately 3 days after receiving it. The public body had not heard back from the ATIPP Office about the fee estimate and had not followed up with the office but had wondered why the ATIPP Office had not been in touch.

We reached out to the ATIPP Office to clarify what had occurred. They explained there had been some confusion in email communications regarding this access request and another request. For this reason, the estimate of cost was never sent to the applicant. As well, the estimate of cost had been stored in the wrong folder, and the oversight was never identified until our office began looking into the case.

After our office explained to HSS what had happened, the department expressed frustration that the ATIPP Office had not fulfilled its duties,

resulting in a deemed refusal complaint against them. The applicant had also been negatively impacted, because they had been waiting over a month for a response and were never made aware there would be a cost associated with it.

Although there was no obligation for HSS to consider this, our office asked whether HSS would be willing to forgo the costs for providing its response, in order to make things right for the applicant. Despite the error not being theirs, HSS graciously agreed to forgo the costs and provided its response to the applicant.

EXAMPLE 4

We received a complaint from an applicant who had made an access to information request to the Department of Energy, Mines and Resources (EMR). The applicant explained that they had received correspondence from the ATIPP Office stating that the department had not responded within the legislated time limit and so was deemed to have refused to provide the information. The applicant was also advised by the ATIPP Office that the department was continuing to work on the request. Feeling reassured that the information would be forthcoming, the applicant did not request a review from the IPC at that point.

However, more than six weeks later, having still not received any response from EMR or the ATIPP Office, the applicant emailed our office to request a review. Although the deadline for requesting a review from the IPC had passed, in light of the circumstances, the IPC exercised her discretion to accept the review outside the normal 30-day time frame.

During our review, we asked EMR when it intended to provide its response. EMR wrote back almost immediately, expressing confusion. It said it had responded to the request within a few days, indicating it had found no records and suggested the applicant try the Executive Council Office instead. (It was later determined that the department had forgotten to deliver that response to the ATIPP Office.)

In our discussions with the ATIPP Office on this case, we asked if the office had contacted EMR before sending out the deemed refusal letter. The answer was no. Our next question to the ATIPP Office was why the email to the applicant had indicated that the department was still working on the request when they had not been in touch with EMR and therefore had no knowledge of whether work continued or not. The ATIPP Office explained that they had simply "assumed" the public body was continuing work on the request.

We pointed out that had the ATIPP Office followed up with the public body (as per the ATIPP Office's own procedures) this entire situation would have been avoided and the applicant would not have had to wait an additional eight weeks for a response.

EXAMPLE 5

In this case, an applicant for access to information complained to our office about the records manager within the ATIPP Office. The complainant stated that the records manager had miscalculated the public body's due date for responding to their request. They had received a letter stating the deadline was April 27, 2020 and the complainant believed the date to be one week earlier than that. As well, the complainant said the records manager did not meet their legislated obligation to respond within the time limit and that the complainant had to repeatedly follow up with the records manager when deadlines had passed. Finally, the complainant alleged that the records manager had informally extended the public body's deadline without authority to do so.

Our review found several gaps within the ATIPP Office's management of this access request.

First, where there is an estimate of cost regarding an access request, the ATIPP Office must communicate the estimate to the applicant "in writing." The ATIPP Office process is to advise applicants about cost estimates via formal letter. However, when an applicant accepts an estimate of cost, the ATIPP Office process is to confirm the acceptance via email, along with the public body's new due date. This process is inconsistent (letter for some circumstances and email for others) and may be confusing for applicants, as was the case here.

Secondly, throughout the entirety of this process, the applicant had to follow up with the ATIPP Office of their own accord to get updates on their request when the deadlines had passed.

Thirdly, when the public body's due date for response had passed, the ATIPP Office advised the applicant they could file a complaint or request for review with our office. However, this was communicated to the applicant via email as opposed to a formal deemed refusal letter, which is the correct procedure.

In response to the identified issues, the records manager agreed that the estimate of cost process was not consistent for applicants and agreed to update the ATIPP Office process to

include sending a letter to applicants to confirm when an estimate of costs is accepted and the new due date.

As well, the records manager agreed that proper procedures were not followed in respect of this file. He acknowledged a deemed refusal letter should have been sent out when the initial deadline had passed (as opposed to an email) and that the applicant should not have had to follow up on their request of their own accord, as this is the ATIPP Office's responsibility.

The records manager followed up directly with the employee in question, confirmed there were some gaps in training in respect of the ATIPP Office policies and procedures, and later confirmed that the employee had been appropriately coached on the processes to reasonably avoid a recurrence.

Our office was satisfied that the records manager had taken sufficient measures to address the identified issues.

EXAMPLE 6

In this case, a complainant said that the ATIPP Office had failed to respond to two access requests within the time frame set out in the ATIPP Act. The complainant also alleged that their personal information was disclosed by the ATIPP Office to a third party on two occasions, in the course of correspondence sent out for two different access requests. The applicant also noted that they had experienced repeated instances of delayed correspondence and unauthorized disclosure of personal information with the ATIPP Office and expressed an interest in filing a complaint to examine these issues more closely.

In regard to the complainant's concerns about delays, these issues were addressed through recommendations from our office to the ATIPP Office regarding its policies and procedures, to ensure that there are clear guidelines for staff to follow regarding such matters as turnaround times, due dates, and other areas of concern that might give rise to similar recurring complaints. In addition, we asked that audit procedures be implemented to ensure compliance with the policies and procedures is being appropriately monitored, and finally, that ATIPP Office staff receive training on these changes.

The ATIPP Office, on its own initiative, had been developing internal guidance materials, by means of a desk manual. The recommendations address potential blind spots.

The recommendations were accepted and implemented; however, there have been subsequent problems where the new procedures were not followed.

In regard to the complainant's concerns regarding unauthorized disclosure of their personal information, two instances in which their privacy was breached were identified and acknowledged by the ATIPP Office. One was due to an email auto population issue, which led staff of the ATIPP Office to send the office's final response to a third party rather than to the complainant. The second incident occurred involving the same ATIPP Office staff member. A letter addressed to the complainant/applicant was sent to another applicant.

Duty to assist

Under the ATIPP Act, public bodies have a duty to assist the records manager in responding to an applicant's access request in an open and complete fashion.

EXAMPLE

An applicant was looking for a specific document that was referenced in a report that had been publicly released. Although the Department of Finance was aware of the specific report and understood what the applicant was looking for, the time period requested did not match the report's issuance. Instead of advising the applicant of this and assisting them, the department responded that no responsive records were found.

The department readily acknowledged that it was aware of exactly the information that the applicant was seeking and that access was refused solely because of the narrow time frame indicated on the access request.

Our findings were that the applicant had provided sufficient detail for the department to identify the records being sought and that the use of a time frame on an access request is meant to help the public body find the information; it is not meant to be a barrier to provision of the information. A public body's duty to assist, as set out in the ATIPP Act, provides that it make reasonable efforts to assist the records manager to respond to the applicant's access request in an open and complete fashion. An appropriate step in this case would have been to ask the records manager to seek clarification from the applicant.

In this case, we recommended that the public body amend its search process accordingly, and it agreed.

Long delays/deemed refusals

In my 2019 annual report, I included a special article highlighting how delays impact the right to access information. During 2020, delays continued to be a challenge in this regard.

EXAMPLE 1

During 2020, we received a request for review in regard to two access to information requests to the Department of Education. No responses had been received, even though the requests dated back to August 2019.

In late 2019, the ATIPP Office had sent a letter to the applicant, indicating that the public body was continuing work on the two requests. When the applicant later emailed about this with the ATIPP Office, they received the unusual response that in order for the department to continue work on the requests, the applicant must withdraw and re-submit both requests, so the process could be restarted. This prompted the applicant to come to our office.

The ATIPP Act provides a right of access to records, within time limits set in the legislation. If the public body or

department fails to respond within this timeline, the request is considered to have been "deemed refused". This particular public body (the Department of Education) was under the mistaken impression that when a request is deemed refused, there is no longer a requirement to continue work on the request. The public body further explained that submitting a new request would allow the applicant to provide current dates and result in more accurate information. With these two things in mind, the suggestion was made to the applicant to withdraw and re-submit the two requests.

Our view is that the public body's handling of this case did not fulfill its duty to assist. We also discovered that the department did not have any current written procedures for handling ATIPP Act access requests, and recommended that these be developed, ensuring that they capture the duty to assist. The public body accepted this recommendation.

In another aspect of this case, opposition MLAs who were part of the Yukon Party (YP) identified during Question Period in the Yukon Legislative Assembly that they had made the access requests and had brought the request for review to our office because of the long delay. During Question Period, the YP correctly stated that the substantial time by which final responses were delayed was not reflective of the right to access furnished by the ATIPP Act, and correctly pointed out that they had only received a response after submitting a complaint to our office.

Upon determining that these requests were in fact still active, we asked the public body to continue work on the requests, which the department agreed to do. These requests were then prioritized and a response was provided. Ultimately, we found that each request was more than 400 days late.

For information on other aspects of this case, please see Example 1 under the section above, entitled *Administration of Cases by the ATIPP Office* on pages 17 and 18.

EXAMPLE 2

In this case, an access to information applicant came to us after a request had been made to Yukon University. They filed a request for review about four months after their access request was made, since they still had not received a response from the university. It was also about a month after the last time the applicant had heard from the ATIPP Office, after they inquired about the status of their request.

Our investigation found that the delay was brought about by poor internal coordination of the request. Several individuals had been assigned to work on the request, who were variously either on leave, or no longer with Yukon University. The request ultimately fell to an individual who was unfamiliar with the ATIPP Act.

In addition, the public body was unclear on the access to information process, which adversely affected the response time. For example, when a response was finally provided by the university to the ATIPP Office, it was not an actual record, but came in the form of a letter providing answers to the questions set out in the access request and much of the letter had been redacted. This was an unusual response and the ATIPP Office directed the public body to retrieve responsive records as set out in the legislation.

Because the public body was largely unfamiliar with the ATIPP Act, we provided guidance during this review, as well as the guidance documents that our office has created about conducting searches, and the review process. We encouraged the public body to work closely with the ATIPP Office, which it did, and suggested that the public body ensure all individuals involved be trained on their ATIPP Act procedures, which it agreed to do. The university later requested a training presentation from our office.

During this review, we noted several concerns with the involvement of the ATIPP Office.

- The applicant was not issued a formal letter advising that the request was late. This was acknowledged by the ATIPP Office.
- The applicant received notice via email from the ATIPP Office after one extension had expired, but not at the end of a review period, as it should have done.
- The ATIPP Office did not follow up with the public body when this request was deemed refused. The public body was not aware of this fact until it contacted the ATIPP Office to find out what the deadline was, which, as indicated, had passed.

EXAMPLE 3

In this case, an access to information request to the Department of Health and Social Services yielded more than 12,000 pages. After the applicant adjusted their request to narrow the scope, the response yielded more than 4000 pages.

The access request was activated in June; on October 1, the applicant filed a request for review with our office, regarding the department's failure to respond to their request. During the intervening time, two extensions were granted by the ATIPP Office but the public body was still unable to meet the final due date.

In our conversations with the public body, they indicated that they were not sufficiently resourced to process this request in the required time, even after the request had been narrowed in scope. A staff member had been

working on the weekends to complete this request (which, ultimately, still did not meet the legislated timeline).

In this case, the responsive records were finally provided to the applicant in early October.

EXAMPLE 4

In this case, an access to information applicant asked for a request for review because of the failure of the Department of Energy Mines and Resources (EMR) to respond to their access request within the legislated timelines under the ATIPP Act.

There was no dispute that EMR had not met the legislated time limit for responding to the request. In our view, several factors contributed to the delay. There were minimal staff in the office due to the COVID-19 pandemic. Our investigation confirmed there were internal issues relating to employees managing childcare and confusion about which employees were physically in the office and available to gather records. In addition, a large volume of records was responsive to the request, more than 3000 pages, with records spanning a 45-year period.

Most of the records were in paper format requiring employees to undertake the work of manually scanning and organizing them into chronological order, in addition to their regular tasks.

The department's ATIPP coordinator explained that by the time she was able to properly assess the volume of responsive records and the amount of manual scanning required, the 30-day time limit for responding had already passed, and it was no longer possible for a time extension to be granted.

Instead, the department regularly communicated directly with the applicant to advise them of the delays and expected time frame for completion of the request. The department also made sure to keep records of all the correspondence relating to the file in case the applicant filed a complaint to the IPC.

Also, as a result of the delays in respect to this access request, EMR pro-actively made the decision to forgo costs for the applicant.

While these factors do not negate EMR's responsibilities under the ATIPP Act, the department's response was reasonable in the circumstances and as such, we made no recommendations on this file.

Our office is satisfied that EMR has adequate policies and procedures in place for managing access to information requests and to meet its obligations under the ATIPP Act. This view is supported by the department's lack of previous complaints to our office in respect to access to information. At that time, there had been no complaints about EMR in more than 3 years.

The access request was filed in March and EMR provided the responsive records to the applicant in July.

The applicant also filed a complaint regarding EMR's administration of the ATIPP Act to investigate the reasons for the delay as well as the department's process for managing access to information requests, which was resolved.

An additional note regarding delays

In three cases that we reviewed during 2020, the Department of Health and Social Services (HSS) had difficulty meeting their timelines for response, leading to lengthy delays for applicants to learn about their requests. The delays meant that HSS was deemed to have refused to provide access to the requested information, as set out in the ATIPP Act, simply because the department did not meet its deadlines under the Act, sometimes because of confusion amongst the department, the records manager and the applicants. The length of the "deemed refusal" status in these cases was 81 days, 88 days and 108 days. This is concerning.

Estimates of costs

Under the ATIPP Act, public bodies may request an applicant to pay fees for processing an access request when the work for gathering and processing the responsive records exceeds 3 hours. The estimate of costs is communicated to the applicant via the records manager. The applicant may then decide whether to pay the cost and proceed with the request, either in full or in part, or may apply to the records manager for a waiver of partial or full costs. If the estimate is zero, the processing of the access request is to proceed immediately. The following examples are related to the calculation of estimates of costs by public bodies that were provided to applicants.

EXAMPLE 1

An applicant who had made an access request came to our office after receiving an estimate of costs from the Department of Environment of $721,050 for processing the access request. The applicant was concerned that the estimate was unreasonably high and amounted to a denial of access to the requested records.

The applicant had requested relatively comprehensive documentation relating to a business with which the department had substantial interactions.

After looking into it, we discovered that the problem was due to costs associated with data from shared drives. Environment had found 19 gigabytes of data within the shared drives and determined that 1 GB was equivalent to 75,000 printed pages which produced an estimated page count of 1,430,000.

Environment did not have a clear reason for using this formula. In fact, the ATIPP Office fee calculation guidelines, relied on elsewhere by this public body, explicitly state not to calculate a page count based on file size in this manner.

Our investigator took the view that the estimate was not in accordance with the public body's duty to assist. We recommended that Environment issue a revised estimate of costs for this access request, including an estimated page count that takes into account the contents of the responsive shared drives. We asked that the estimated page count not be based on total storage space for the shared drives.

Our office confirmed that Environment modified its approach in accordance with our suggestions and an amended estimate of cost was issued for $49,625.00, lower than the original estimate by $671,425.00. Although this new figure was still high, it was reasonable given the scope of the request and the amount of responsive information.

In addition, Environment had broken down the responsive information by file type to help the applicant further lower the cost and select which costs they sought to approve.

EXAMPLE 2

In this case, an applicant requested records of site visits and inspections of mining camps over a five-year period.

The estimate of costs provided to the applicant by Community Services for gathering the requested information was $133,500. The department explained that it would need to open every record within its database (89,000 records) to determine whether it was responsive to the request. The department estimated that the task would take 5340 hours, based on an estimate of one minute per record.

The applicant brought the case to our office, stating that the size of the estimate amounted to a denial to provide the documents.

We found several issues.

1. First, the fee estimate had been miscalculated, in that 89,000 minutes actually amounts to 1483 hours, not 5340 hours. This represents a difference of 3857 hours, or $96,425, which is 72 % of the total estimated costs quoted to the applicant. This significant oversight resulted in a considerably inflated cost estimate.

When this was brought to the attention of the department's ATIPP coordinator, he acknowledged the miscalculation, explaining that he had "multiplied instead of divided," but also stated that 89,000 minutes was only the "bare minimum" amount of time that would be required to process the access request and that examining each data point would likely take much longer. For that reason, despite the error, he maintained that the estimated fee of $133,500 would remain the same.

This conversation was concerning to our office. Failing to accurately set out what fees are being charged for what services would be a violation of the ATIPP Act. In this case, 3857 hours were unaccounted for. At no time did the ATIPP coordinator offer to provide additional information to support his position, or to prepare a revised estimate of costs. In addition, if one accepts the statement that the request would take much longer than 89,000 minutes to process, this implies that the original estimate was knowingly inaccurate.

2. Our office also questioned the assertion that gathering the requested information required opening each data point. Typically, searching for records within an electronic database does not require much work effort. On this point, Community Services confirmed it had not consulted with IT staff before issuing the estimate of costs.

After receiving insufficient explanation about the particulars of the database, we requested a meeting with the ATIPP coordinator and someone from IT familiar with the database. The goal was to learn more about the database and to determine if there might be another way to gather the requested information. During the meeting, no IT staff were present, despite our request. The department maintained its position that without more specifics from the applicant, this was the only way to gather the records.

The case was not resolved until after a department manager became actively involved and it was confirmed by IT staff that Community Services was able to complete a data dump of the database to a searchable electronic format, which reduced the estimate of costs to $342.50, or roughly one percent of the initial estimate.

While this resolved the complaint, this file illustrates a serious breakdown in the department's access to information program on a multitude of levels. Issuing such a large fee estimate, which then turned out to be hugely inaccurate, has a significant impact on an applicant's right of access to information, as it becomes a barrier to the exercise of that right.

Before issuing an estimate of costs, the public body has a duty to explore all available options for obtaining the requested data in the most efficient manner possible. In our view, the department did not initially fulfill this duty.

Further, this case raises the question of what would have happened had the applicant not filed a complaint with our office and had paid the initial estimate. An additional concern is whether other applicants may have been affected by similar circumstances without their knowledge.

The public body accepted our recommendation to re-evaluate its approach and provide the applicant with a revised estimate of costs in the amount of $342.50.

EXAMPLE 3

Our office received a complaint about the Department of Environment's administration of the ATIPP Act, in respect of seven access requests.

The department had issued a single estimate of cost for all seven access requests. As a result, the complainant was unable to obtain records for any of the access requests, without paying for all seven, and was unable to make an informed decision about whether to change any of the requests.

The complainant alleged that the public body's decision to group the seven access requests into one estimate of costs is a violation of the ATIPP Act.

The public body explained that because the searches would be similar, if not identical, for each of the requests, it had combined them into one estimate for ease of administration.

After looking into it, our office determined that nothing in the ATIPP Act or Regulation authorizes a public body to combine estimates of costs for multiple requests into one. We also pointed out to the department that applicants are entitled to three free hours of work per request. By combining the requests into one estimate, the public body was only providing the applicant with three free hours for all seven requests, which we believed was in contravention of the ATIPP Act.

We recommended that Environment issue one estimate of cost for each access request, including three free hours per request and the public body confirmed its acceptance of the recommendation.

EXAMPLE 4

In this case, an applicant disputed the estimate of costs provided by the Department of Environment for three access requests. The cost was calculated on the basis of reviewing each page of an Excel spreadsheet. The applicant's view was that the department did not need to review each cell in the spreadsheet but rather the row and column headings. The applicant also complained that the department did not have the right to charge fees for severing information from records.

In discussions with our office regarding the complaints, the department identified three columns in the responsive records (the Excel spreadsheets) containing third party personal information. Third party personal information may be subject to a mandatory exception in the ATIPP Act, thus requiring the public body to review and sever information in individual cells of the spreadsheet.

The department confirmed that if the applicant did not require any of the information in the three identified columns, there would no longer be any cost associated with the access request.

After clarifying the nature of the information in the identified columns, the applicant confirmed they did not require this information and amended their access request to exclude the three columns, thereby resolving the complaint and allowing the department to provide the records at no cost.

This case is a good illustration of the need for public bodies and the records manager at the ATIPP Office to fulfill their duty to assist applicants in obtaining requested records. Applicants need as much information as possible in order to appropriately narrow their request and only pay fees for information they require. Had the department provided more specific information about what information required severing and the reasons for it, the complaint to our office may have been avoided. In this case, the applicant may have paid fees for information they did not require, had our office not become involved.

As noted above, the applicant had also raised a concern about charges for severing information. This issue was not explored, as the records were provided at no charge.

Inadequate search

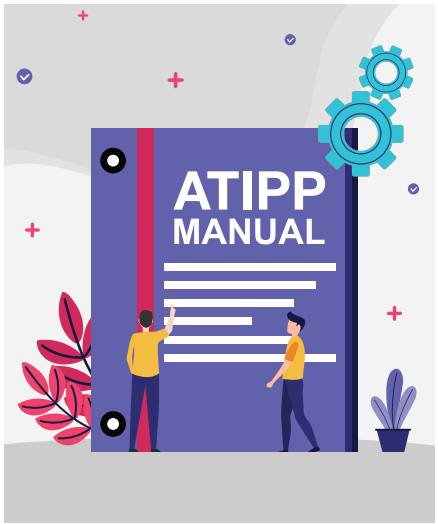
EXAMPLE 1

An applicant came to our office with a complaint that the public body, the Executive Council Office (ECO), had not completed a full search for records in response to their access request.

The applicant noted that, following a final response by ECO stating that there were no responsive records found, the applicant received an amended response containing a responsive record.

Our office confirmed that ECO had a detailed process for searching for responsive records. The public body explained that the record in question was not produced initially as a result of an "administrative error". In brief, a step in the search process was missed by a new records officer responsible for compiling records.

While the ECO search process was detailed and reasonable in our view, it was not written down or otherwise recorded. Our regular contact at ECO had a clear understanding of their practices, and so was able to follow



them consistently, but when someone newer to their role (i.e. a new records officer) worked on a search, the lack of written process created a risk of error.

To ensure that the public body's procedures are clear, and that the chances of missing a step in the search procedure are minimized in future, we recommended that ECO develop written ATIPP Act search procedures to provide clear guidance on the actions to be taken when conducting a search.

The public body accepted this recommendation. Prior to agreeing to the recommendation, the ECO had also provided training to the records officer responsible for the error to help prevent a recurrence.

EXAMPLE 2

In this case, an applicant filed a complaint with our office alleging that the public body, the Department of Health and Social Services (HSS), did not perform an adequate search in response to their access request.

When we looked into it, we found that the applicant used broad language in their access request and posed general questions. The questions did not identify a record, or the type of record, that the applicant was seeking. For example, the questions did not ask for correspondence about X, documents describing the details of X, records of discussion about X in a given time frame, etc.

Because the language used did not request a record and because it asked questions not suited to the nature of an access request, it was our view that HSS could not reasonably be expected to produce any records responsive to this request.

Our investigator spoke with the applicant about the type of language best suited to making access requests. The applicant was satisfied to receive guidance on this matter and was in agreement that no further investigation was needed.

This case highlights an issue that the Information and Privacy Commissioner has noted in the past, regarding the records manager's duty to assist, as set out in the ATIPP Act. When access requests are made, public bodies and the records manager within the ATIPP Office have a duty to adequately assist applicants, so that their requests contain enough detail to identify the record sought as is required by subsection 6 (2). This case demonstrates that this issue has not been dealt with by the ATIPP Office, or, in this case, the department.

EXAMPLE 3

In this case, an applicant came to us alleging that Yukon Energy did not conduct an adequate search for records responsive to their access request. They had asked for records about fuel usage during a cold snap, including a 9-hour power outage, and they expressed concern that no responsive records were found.

After looking into the case, it was our view that the public body did not initially fulfill its duty under the ATIPP Act to respond to the applicant openly, accurately, and completely. As well, there were gaps in the public body's search efforts. This was supported by the fact that Yukon Energy found responsive records after completing a new search using a more methodical approach.

Our investigation found that the access request was sent to three people at Yukon Energy who were identified as having potentially responsive records. They searched their email using the following key words: fuel usage; inventory levels; delivery delays; fuel shortage.

The efforts found some potentially responsive records and the ATIPP coordinator determined that a third-party consultation might apply to some of the information and engaged the ATIPP Office to help with this. In their response to Yukon Energy, the third party pointed out that all the responsive records provided to them fell outside the timeline of the access request and as such, were not responsive. The ATIPP coordinator acknowledged that she had not noticed this and that the third-party consultation had not actually been necessary.

Upon further inquiry, Yukon Energy acknowledged that the employees searching for records had not been provided with any instructions on how to conduct the search. The coordinator

was not sure if the searches had been done appropriately or not.

We provided the ATIPP coordinator with our office's guidance document on searching for records and asked that the three employees each conduct a new search using the guidance provided.

Upon completion of a new search by the three employees, roughly ten pages of responsive records were found. The applicant was provided with an amended response via the ATIPP Office.

While the public body was cooperative and we have no indication that anyone acted in bad faith, it is likely that had the applicant not filed a complaint to our office, they never would have received the records in question.

This case is yet another example of how important it is for public bodies to take concrete measures, including implementing written policies and procedures, to ensure that searches for responsive records are thorough, detailed, and methodical. Failing to do so directly impacts the public's right of access to information and goes against the spirit of the ATIPP Act.

Reviews: Misunderstandings and incorrect use of the ATIPP Act

EXAMPLE 1

In this case, an applicant requested a significant amount of personal information from the Public Service Commission (PSC). The PSC withheld 206 pages, which the applicant asked our office to review.

While working on this review, our investigator experienced significant delays in obtaining the required evidence from the PSC. It took 48 days to receive part of the evidence, with the rest not arriving until 74 days into the review.

After receiving all the information, our office had significant concerns with the PSC's approach to the access request. We found that many of the pages that had been withheld in their entirety could have been provided with line-by-line redactions, a right set out in the ATIPP Act. In addition, we found that the PSC had misconstrued provisions in the Act and used them inappropriately. As a result, our investigator spent a great deal of time working with the PSC to provide guidance on appropriate uses of various provisions in the Act.

Ultimately, after much discussion, and after numerous suggestions from our office to the PSC regarding the application of the ATIPP Act, the PSC agreed to release a substantial amount of information that had been previously withheld, which satisfied the applicant.

EXAMPLE 2

In this case, an applicant made an access request to the Public Service Commission (PSC) and received the response that PSC was using a section of the ATIPP Act that provides authority to refuse to confirm or deny the existence of a record containing personal information.

The applicant asked our office to review this response.

The section that the PSC was relying upon does authorize a public body to refuse to confirm or deny the existence of "a record containing personal information." However, in one of her previous decisions that involved the PSC, the IPC has interpreted that this provision has a specific and limited application and should be exercised by public bodies only in rare cases.

After several conversations with the PSC regarding its handling of this access request, it became clear that it had misapplied the cited provision. The PSC ATIPP coordinator explained that they did not have the responsive records because they did not conduct a search for them. The coordinator's position was that they were not authorized to look in the personnel files of employees. For these reasons, they simply relied on the subsection noted above, since they did not know whether any responsive records exist,

how many responsive records there might be, or whether they could be released to the applicant.

The PSC had not gathered or reviewed any records; it had not referred to the IPC decision noted above; no analysis was conducted; no work had been done in regard to this access request.

The PSC accepted our recommendation to re-examine and process the access request and provide the applicant with an amended response.

Even so, our office was left with significant concerns:

- The public body and its ATIPP coordinator misunderstood the ATIPP Act to an alarming degree.
- This incident raises the issue of how often this public body (or others) may have provided applicants with incorrect responses due to misinterpreting the Act. (Our office is only aware of problems if and when complaints are filed.)
- The public body was not aware that it was bound by the IPC's previous interpretations of the ATIPP Act. Instead, it regarded the IPC's findings as simply one opinion among others.

While our office took the opportunity to educate the ATIPP coordinator in this case, we will never know how many other applicants may have had their rights violated due to this kind of misunderstanding.

EXAMPLE 3

In this case, we received a request for review of a decision by the Department of Environment to release certain information as a result of an access request.

As part of the processing of a request for access to information, Environment intended to release the business information of a third party, including the business name and information from a trip report provided to the department, such as start date, activities, location, etc. This third party complained to our office, saying that the information that was to be released was confidential business information that should be withheld as the ATIPP Act requires.

However, the Information and Privacy Commissioner has previously ruled that information provided to a department as part of a compulsory reporting requirement does not constitute confidential information that was supplied "in confidence" because a third party cannot impose conditions on a compulsory supply of information. During our review of this case, we found that the business information that was to be released had been supplied as part of a compulsory reporting requirement under the *General Regulation* of the *Wilderness Tourism Licensing Act*.

Our conclusion in this case was that the Act had been applied appropriately by the department, as it would not have been authorized to withhold the third party's information that was at issue.

EXAMPLE 4

Our office worked on several aspects of this case. Actions taken by the Vital Statistics Office (VSO) in the Department of Health and Social Services (HSS) (in response to an access request) resulted in various complaints of different kinds.

An applicant complained to our office and asked for a review of a decision by HSS in regard to the applicant's request for information about suicides in the Yukon by month and by year, both within and outside Whitehorse.

The department refused to provide access to this information, saying that it was subject to the *Vital Statistics Act,* which prohibits the release of some information despite the ATIPP Act. No other reference was made to the ATIPP Act in the department's response. We found that the response from HSS was problematic, because the *Vital Statistics Act* allows for the release of statistical information that is not about any particular person. As the applicant had requested statistical information only, the two Acts did not conflict with each other, and a response should have been provided following the standard access to information process. We found that HSS was not compliant with the ATIPP Act and asked that the department process the access request again. The department agreed and issued an amended response but still refused access under a section of the ATIPP Act, which prompted a second review of the case.

The second refusal was based on the department's position that creating the requested record would be time-consuming and would unreasonably interfere with HSS operations. HSS said the record would need to be created after reviewing approximately 4000 paper registrations of death. In our investigation, we learned that death information in the Yukon is stored in a digital database and that there were ways to run a report to produce the information being requested, using either coding or a keyword search. This would not require sifting through every death certificate, as the VSO initially indicated, and would not cause unreasonable interference in the public body's operations. We asked HSS to conduct a search for the requested information by running reports in the database, and the department agreed to do so.

The third complaint that we received in regard to this case occurred after that response had been provided to the applicant. They complained to us that the response did not break down the data far enough, and that it could have been broken down further without violating the privacy of any individual.

When we looked into it, we found that the VSO views any figures from a dataset that are smaller than 5 as non-statistical and possibly risking identification. This type of non-statistical information is prohibited from release by the *Vital Statistics Act*. The data provided by the office to the applicant was thereby broken down into the smallest figures possible (i.e. no lower than 5). After reviewing the public body's position, our office determined that this was reasonable and that the VSO had attempted to provide the applicant with as much information as possible given the constraints of the *Vital Statistics Act*.

The applicant had also complained that the public body had not cited any sections of the ATIPP Act when data was withheld. We found that the data was withheld under the authority of the *Vital Statistics Act*, as noted above. It is our view that the public body was not obligated to cite a provision of the ATIPP Act in these circumstances, as the record that was created by the VSO did not include this information to begin with. Nothing was withheld under the ATIPP Act.

The VSO has a unique constraint in its ability to provide access to information, set out in section 37 of the *Vital Statistics Act*. Although not prohibited from providing access to information, this provision requires that the information be "statistical information". As such, the VSO is authorized to provide a response to an access request for statistical information, as in the case at hand.

Because access requests involving the VSO framework, which can be (and was) a source of confusion, they require more than a cursory explanation to an applicant about how this framework applies in the context of an access request under the ATIPP Act. By failing to provide the applicant with this information, it is our view that the public body did not fulfil its duty to assist.

We recommended that the Vital Statistics Office develop written

procedures to provide clear guidance on how to manage access requests that have been submitted under the ATIPP Act, to help ensure that applicants are provided with an accurate understanding about the unique role of the Vital Statistics Office, and the impact this may have on a response. HSS accepted this recommendation.

Privacy issues

EXAMPLE 1

In May 2020, an employee of the Yukon Hospital Corporation (YHC) complained to us that the YHC had collected their personal information without authority under the ATIPP Act. In particular, the employee said that the Human Resources branch of YHC had collected and retained private text message exchanges and personal pictures contained in these exchanges, without the employee's consent. The YHC had not provided the employee with their authority to collect this information.

In looking into the matter, we confirmed that the YHC was provided with copies of a Messenger exchange between the complainant and a co-worker, on their personal devices. The information was provided to the YHC by the co-worker. We determined that the information was indeed personal information.

We also came to the conclusion that the YHC had the authority to collect most of the messages in question, because it was necessary as part of an investigation, discipline and penalty related to workplace conduct and safety. However, we also found that collection of the photos was not authorized.

In our first meeting with representatives of the YHC, they said they had not yet considered their authority for collecting the information. When they provided this information a number of weeks later, the YHC did not cite the correct legislation. This was a concern for us, which we relayed to the YHC.

The YHC agreed with our findings on all points and committed to take action on all of them. This included the destruction of all photos of the complainant included in the messages; the development of policies and procedures to clearly describe their authority under the ATIPP Act with regard to the collection, use and disclosure of personal information; and the evaluation of staff training, including the Human Resources branch, to ensure that ATIPP Act policies and procedures are understood and complied with.

EXAMPLE 2

This complaint came to us from a person who is an emergency contact for a child enrolled in a Yukon school. In January 2020, the Department of Education sent out a number of text messages, through a third party communication service called *SchoolMessenger*, to parents and guardians enrolled at public schools in the territory. The complainant received one of these text messages.

The complainant told us that this was not the purpose for which they had given their personal information to Education and that they had not given permission to Education to share this information to the third party service or for any other purpose other than being an emergency contact.

The department acknowledged that emergency contact information has a specific purpose and the use and disclosure of this information for another purpose is unauthorized. The disclosure was instead an unintended result of a process used to provide the third party communication service with parent/guardian contact information. This happened because of the way Education stored contact information for parents and guardians and for emergency contacts. In sending out the contact information for parents and guardians to the third party, the data report included some emergency contact information when only one parent/guardian was listed.

Education acknowledged that the data sent to the third party was not reviewed before being uploaded, that this was an unauthorized disclosure, and that the complainant's case was not an isolated incident.

The department has re-designed the process by which parent/guardian information is provided to the third party. This new process uses a separate dataset, controlled at the district level (rather than by the individual schools), which consists exclusively of parent/guardian information.

Our view was that the new process is reasonable and addresses any concerns of this problem recurring.

Our work under HIPMA

The cases we dealt with under the *Health Information Privacy and Management Act* (HIPMA) fell under two main themes, that of privacy and inadequate search. The examples of our work in 2020 shown below illustrate these themes.

EXAMPLE 1

In January 2020, our office received a complaint in regard to a legal proceeding in which the complainant had been called as a witness. They said that the Department of Health and Social Services (HSS), also involved in the legal proceeding, had disclosed the complainant's personal health information to the lawyer for a third party involved in the proceeding. The complainant said they did not consent to the disclosure and had not been informed of the disclosure prior to its occurrence.

During our investigation, we found that HSS had disclosed to its own lawyer for the legal proceeding two specific records containing the complainant's personal health information, that were directly related to the complainant's testimony at the proceeding. We found that the records were not disclosed to either the third party or its lawyer.

HSS does have authority under HIPMA to disclose health information to its counsel for the purpose of a proceeding where HSS is a party. Our finding was that the custodian, HSS, was compliant with HIPMA and that an unauthorized disclosure to a third party did not occur.

Although the case was resolved as noted above, our office experienced delays and difficulties in obtaining the information we required to do our work. The file was opened on January 30, 2020 and we made our first contact with Health and Social Services the next day. We received no information at all until February 25th and even then, the answers to our fact-finding questions posed on February 6 were still not answered. Other delays ensued and it was not until April 7th that we received complete answers to our fact-finding questions, which allowed our investigator to finally begin work in earnest toward closing the file.

EXAMPLE 2

In June 2020, our office received a complaint about the unauthorized disclosure of a patient's personal health information by a custodian that operates a clinic. Earlier that spring, the complainant had discovered that their medical assessment forms were mailed to an incorrect address. They immediately enquired with the clinic as to how this mistake had occurred, considering that the clinic regularly confirms address and contact information and that the complainant has been at the same address for many years. The clinic was unable to provide an explanation and suggested that the complainant check with their family doctor's office, which may have updated the address. The family doctor's office confirmed that it had the correct address on file and that no recent modifications had been made.

The complainant then brought the matter to our office.

After our initial discussion with the clinic, it agreed to look into it. A few days later, we received a written response explaining what had happened.

The clinic confirmed that the complainant's medical assessment forms had indeed been mailed to an incorrect address. While completing the billing after the complainant's most recent visit to the clinic, the physician noticed the health care card on file was expired. (Physicians cannot bill for their services without a valid health care card number.)

To obtain the complainant's new expiry date, the physician accessed the Yukon Health Information Network (YHIN), to which many custodians have access. The physician noticed a discrepancy between the address that the clinic had for the patient and the one in YHIN, and wrongly assumed that YHIN had the most up-to-date information. The physician updated the clinic's patient information accordingly and the medical assessment forms were then mailed to the incorrect address obtained from YHIN.

After providing us with this information, the clinic evaluated the situation to determine if there was a risk of significant harm to the complainant as a result of the breach and determined that there was not, for several reasons, including that the medical assessment forms contained little information aside from the complainant's name and an assessment of their ability to lift while working. We agreed with this assessment.

To prevent a recurrence in the future, the clinic will cross-reference patients' registration information with YHIN to ensure accuracy. When there is a discrepancy, the clinic will confer directly with the patient.

Our office was satisfied with the clinic's cooperative approach and its plan to prevent future problems, as well as the prompt, clear and detailed description of what had happened. The case was resolved in less than two weeks and no recommendations were made.

We did note to the clinic that it may have avoided the complaint altogether, had it initially taken the time to investigate what had happened and provided the complainant with an adequate explanation before they contacted our office.

EXAMPLE 3

In November 2020, we received a complaint about a privacy breach involving personal health information being mailed to the wrong address.

In this case, the complainant said that her and her partner's personal health information had been mailed by Insured Health and Hearing Services (IHHS) within the Department of Health and Social Services (HSS), a fact she learned from HSS.

We found that two letters containing the couple's personal health information were sent to the wrong address. This occurred because of a discrepancy between the address in IHHS records and an address in an application for benefits under the Chronic Disease and Disability Benefits Program (CDP), which came from the couple's physician.

The personal health information contained in the letter consisted of name, address, medication approved for coverage, and the fact these individuals were involved with the CDP. The name of the drug is highly sensitive because it could be used to ascertain that an individual has a particular chronic disease. For the same reason, knowledge of participation in the CDP is also highly sensitive.

In this case, both letters were returned to IHHS unopened.

Our investigation found that IHHS had no process to address discrepancies between the patient contact information provided on the CDP application, and the information in their internal system. Rather, they relied solely on the information stored in their internal system, assuming this information was the most up-to-date.

To avoid a recurrence, IHHS took several actions to reduce the risk of this type of breach in the future.

Going forward, when there is a discrepancy in patient contact information, an employee from IHHS will contact the patient directly to confirm the address and to alert the patient to the possibility of their physician having an incorrect address. As well, decision letters about coverage under CDP will include limited personal health information to reduce the likelihood of a risk of significant harm from a breach of this information. Finally, the director of IHHS hired an outside consulting firm to complete a review of the extended benefit programs, including identifying and addressing any privacy-related concerns.

In our view, these actions will reasonably avoid a recurrence. In addition, IHHS accepted our recommendation that it develop a written procedure for managing CDP applications to include cross-referencing patient contact information.

EXAMPLE 4

In this case, a complainant alleged that the custodian, Insured Health and Hearing Services (IHHS) within the Department of Health and Social Services, did not conduct an adequate search for records in response to the complainant's application for access to personal health information.

In support of their position, the complainant identified several records that should have been included in the final response package.

IHHS provided our office with a detailed description of the search efforts, including what records were searched, the scope of the request, and the individuals identified as having potentially responsive records.

Upon review, we were satisfied the IHHS search for records was adequate and that it had met its obligations under HIPMA.

During our investigation, the custodian noted that the applicant had reached out to them to express concerns about the search efforts, prior to reaching out to our office. IHHS acknowledged that because it did not reply to the applicant in a timely fashion, this may have contributed to the applicant's decision to file a complaint to our office.

As well, we noted that the requested records related to a particular situation involving IHHS that was still ongoing. As such, we noted to the applicant that as the matter was not complete, there may be additional responsive records available, that were not available at the time of the initial request.

ATIPP Act compliance review activities

Breaches

No breaches were reported under the ATIPP Act in 2020. This is concerning because although reporting to the IPC is voluntary under the ATIPP Act, by policy the Yukon government requires departments to report breaches to the IPC that may result in a risk of significant harm to an individual affected by the breach. While breaches of this nature may be rare, it is unlikely that no breaches involving a risk of significant harm occurred in any YG departments in all of 2020. It is important to note that engaging the IPC in the breach review process can limit the impact of a breach and help public bodies learn from any breaches that have occurred so as to prevent recurrence.

PIAs

We worked with numerous public bodies on the completion and improvement of their privacy impact assessments (PIAs). One area that we are looking at is the Department of Highways and Public Works (HPW) adoption of Office 365 for government-wide use. We know that this project is underway, and we expect to receive a draft PIA in 2021. We have also been working with HPW on their client-identity management plan and also expect to see a draft of this PIA in 2021.

Review of ATIPP regulations

We were informed in late 2020 that the new ATIPP Act would be brought into force in the spring of 2021. Throughout 2020, we were provided with copies of the draft regulations on which we provided comments. We met with those responsible for drafting the regulations on numerous occasions throughout 2020. Included in our recommendations, was the need to strengthen the information security requirements for public bodies, particularly in light of the extensive use of technology to process personal information. We were pleased that most of our recommendations in regard to information security were implemented.

Comments on ISMP, vulnerability, and patch management policies

The Department of Highways and Public Works (HPW) provided us with several policy documents on its Information Security Management Plan (ISMP), and vulnerability and patch management, on which our office provided comments and recommendations.

We were pleased to see that vulnerability and patch management policies have been developed.

We also received an early draft of the ISMP that is being developed. In previous annual reports, the IPC commented on the need for the Yukon government to develop and implement an ISMP. I am pleased to report that solid progress on this work has begun. As part of the implementation, we encouraged HPW to project manage its implementation and use a phased-in approach. We also encouraged them to continue to work with our office on the plan to implement the ISMP.

HIPMA compliance review activities

Breaches

Under HIPMA, custodians are required to report to our office if a breach of personal health information occurs that may result in a risk of significant harm to any individual. In all of 2020, just one breach was reported. The breach was reported in December 2020. The investigation into this breach is still ongoing.

It is concerning that no other breaches were reported by custodians in the Yukon, of which there are many. The lack of reports suggests that custodians may not recognize a reportable breach. At the end of 2020, we were developing guidance to assist custodians in meeting their obligations under HIPMA, including for breach reporting.

Audits

According to the HIPMA general regulation s.14(1)(c)), custodians are obligated to self-audit their information practices every two years. In 2020, it had been four years since HIPMA came into effect. As in 2018, our office distributed an audit tool in 2020 to help custodians meet their obligations to self-audit. This year's audit tool has been updated to help raise awareness amongst custodians regarding their ongoing responsibilities for personal health information when they retire or stop practicing in the Yukon. Our office may request a copy of the audit if it is relevant to our work under HIPMA.

Outreach and guidance regarding HIPMA and the ATIPP Act

The COVID-19 pandemic has affected how work is done by many people, ranging from employees of public bodies and custodians to cyber-

criminals, each adapting in their own way. Our office produced numerous guidance documents to help Yukoners adjust to this situation without falling victim to the many security and privacy pitfalls resulting from the new situation. We created a new COVID-19 page on our website so that viewers could easily find these documents.

In the first weeks of the pandemic, we published guidance on how to work from home while ensuring privacy and security of communications. We also distributed guidance on specific emerging scams and ransomware used by cyber criminals to take advantage of the pandemic and the increased number of employees working from home. In addition, we published information for the public about their rights to access to information and privacy during the COVID-19 public health emergency, as well as for public bodies and custodians about their continuing responsibilities under the ATIPP Act and HIPMA.

We issued a specific advisory around video conference solutions, with specific attention to the vulnerabilities and design problems then present in the Zoom platform. We issued guidance to help custodians meet their obligations for access to information in the event their offices were closed.

We took calls from custodians who were seeking to find secure technological solutions to providing remote care and provided our assistance to help them facilitate the same. We met with custodians to evaluate programs or activities associated with COVID response to ensure compliance with HIPMA or other privacy laws.

An example of this work is our support to the Department of Health and Social Services and the private sector in understanding the requirements of the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) to better protect the privacy of Yukoners when contact tracing in restaurants and bars became a requirement.

Finally, we issued guidance related to the use of the Covid Alert app launched by the Government of Canada in the summer of 2020.

Cooperative activities with other offices

Monitoring of COVID-19 contact tracing app implementation (COVID Alert)

Because of the significant impact that COVID-19 had on the privacy rights of Canadians in all jurisdictions, the federal, provincial and territorial information and privacy commissioners met often in 2020 to address issues as they arose. We discussed numerous topics including the development and implementation of Public Health Canada's COVID-19 exposure alert application (COVID Alert). Together with other commissioners, our office provided questions and comments regarding the technical implementation and were pleased to see that a model which best preserves privacy was chosen.

Commissioners from across the country issued a joint statement about the use of these and other similar apps.

Cloud usage guidance

Together with our provincial and territorial counterparts, we helped with the Office of the Privacy Commissioner of Canada's development of guidance for cloud usage. This guidance is especially relevant for our private sector HIPMA custodians because they are subject to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), and because the Yukon legislation (HIPMA) is modelled on PIPEDA.

The work on the guidance was mostly completed in 2020. It will be published in the second half of 2021, after it goes through a review process.

Research into the impact of AI

Our office initiated and worked with the BC Ombudsperson and the BC IPC on a report regarding the impact of artificial intelligence (AI) on administrative fairness and privacy. Some of the recommendations contained in the report are focused on legislative reform of ombuds and privacy laws.

Our office, together with our BC counterparts, co-presented the information contained in the report to the offices of privacy commissioners and ombuds in Canada, as well as internationally to the Global Privacy Enforcement Network (GPEN). The report will be tabled in the Yukon legislature during the 2021 fall sitting.

HOW WE MEASURED UP IN 2020

Skills development

The Information and Privacy Commissioner (IPC) participated in a two-day design workshop exploring solutions to data privacy and meaningful consent in a connected society. The session was held in early March at the University of Ottawa and was co-hosted by the British Columbia Freedom of Information and Privacy Association (BC FIPA), the Office of the Privacy Commissioner of Canada, and the Vancouver Design Nerds Society. The event brought together representatives from academia, civil society, government and industry, and explored solutions to data privacy and meaning consent in the context of expanded use of technology, including artificial intelligence (AI), for processing personal information.

The IPC also attended (via videoconference) a forum hosted in Ottawa on AI and health care, along with representatives from across Canada from academia, medical science, technology and law. The focus of the event was to examine the risks and benefits of AI in health care delivery.

The Office of the IPC became a member of the Global Privacy Enforcement Network. The network is comprised of data protection authorities from over 50 countries. The IPC and her staff attended monthly meetings with international counterparts on several topics including AI and COVID-19.

All staff attended "lunch and learn" workshops hosted by IPC counterparts across Canada. Topics included the General Data Protection Regulation (GDPR)/ Schrems decision and regulation of technology giants.

One IPC employee obtained accreditation as a certified information and privacy professional.

Complaints against the Information and Privacy Commissioner

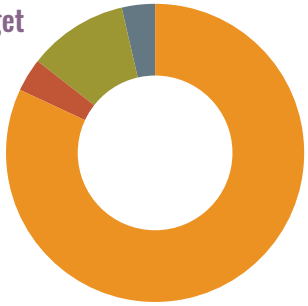
None

ATIPP Act - 2020 activity	
Resolved at intake - no file opened	
Requests for information	46
Informal complaint resolution	9
Non-jurisdiction	11
Referred-back	3
Total	**69**
Files opened by type	
Requests for review	54
Requests for comment	10
Complaint investigation	48
Requests for decision	0
Total	**112**
All files opened in 2020	112
Files carried over from previous years	78*
Files closed in 2020	95
Files to be carried forward	**95**

*incorrectly reported in 2019

ATIPP Act investigation (settlement) - 90 day target

Closed (within 90 days)	46
Closed (over 90 days)	2
Still open (under 90 days)	6
Still open (over 90 days)	2

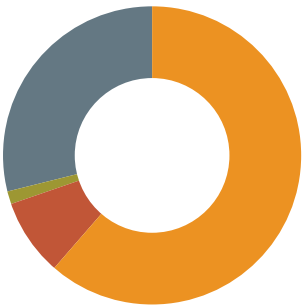


ATIPP Act investigation (formal)- 1 year target

Closed (within 1 year)	0
Closed (over 1 year)	0
Still open (within 1 year)	0
Still open (over 1 year)	10

ATIPP Act review - 90 day target

Settled (within 90 days)	45
Still open (within 90 days)	6
Closed (over 90 days)	1
Not settled (formal hearing)	21



ATIPP Act files opened in 2020 by public body							Recommendations		
Public body	Number of files						Formal*	Accepted	NYI - Not yet implemented (includes from prior years) or FTF - failed to follow
	Investigation complaints	Decision	Comments	Review	Inquiry	Total			
Department of Community Services	3			2		5			
Department of Education	4			2		6			
Department of Energy, Mines and Resources	2			2		4			
Department of Environment	12			10	4	26			
Department of Finance	1			2		3			
Department of Health and Social Services	10			16		26			
Department of Highways and Public Works	5		8	9		22			
Department of Justice	4		1	2		7			
Executive Council Office	3					3			
Public Service Commission				6		6			
Yukon Energy Corporation	2					2			
Yukon Hospital Corporation	1					1			
Yukon Liquor Corporation	1			1	1	3			
Yukon University				1		1			
Yukon Workers' Compensation Health and Safety Board				1		1			
Non Public Body			1			1			

*Formal recommendations are those made by the IPC in an Inquiry or Investigation Report in 2020.

Lineup outside the Whitehorse liquor store, as the store limited the number of customers inside the store in response to COVID-19.

ATIPP Act compliance review activities

Public body	PIA submitted, year submitted	Status A - Accepted NYA - Not Yet Accepted NR - No Review
Department of Community Services	Building Safety, 2015	NYA
	Personal Property Security Registry, 2015	NYA
Department of Education	ASPEN, 2015	NYA
	Challenge Day Program, 2015	NYA
	Education Employment Assistance Database, 2012	NYA
	Google Apps, 2015	NYA
Department of Environment	Electronic and Online Licensing System, 2015	NYA
Department of Finance	Online Accounts Receivable Payments, 2016	NYA
Department of Health and Social Services	Electronic Incident Management Report Program, 2015	NYA
	Lab Information System, 2015	NYA
	Panorama Project, 2013	NYA
	Pioneer Utility Grant Program, 2015	NR
Department of Highways and Public Works	Government Services Account, 2015	NYA
	Infolinx, 2020	NYA
	Motor Vehicles IDRIV system, 2014	NYA
	MyYukon Service digital ID	NYA
	Simple Accommodation Cases, 2017	NYA
Department of Justice	Forum for Operational Collaborative and United Services Table (FOCUS) Project, 2018	NYA
	Land Titles Registration, 2016	NYA
	Sex Offenders Therapy Pilot Project	NYA
	Video Surveillance System, 2016	NYA
Public Service Commission	Learning management system, Aprendo: online registration; online content delivery and learning; and a history of course completion, 2019	NYA
	PeopleSoft 2019	NYA
Yukon Energy Corporation	Smart Meter Pilot Project	NYA
Yukon Hospital Corporation	Lab Information System, 2015	NYA
Yukon Liquor Corporation	BARS-C, 2018	NYA
	BARS-L, 2018	NYA
	Cannabis e-Commerce, 2018	NYA
	Cannabis Video Surveillance, 2018	NYA
Yukon University	Energy Peak Times, 2019	NR

HIPMA compliance review activities

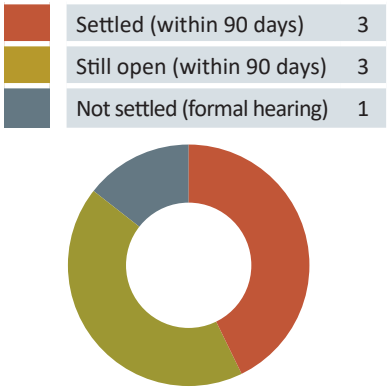
Custodian	PIA submitted, year submitted	Status A - Accepted NYA - Not Yet Accepted NR- No Review
Department of Community Services	Electronic Patient Care Records (ePCR), 2018	NYA
Department of Health and Social Services	Aladtech Scheduling Software, 2018	NYA
	Chronic Disease Management Toolkit, 2017	NYA
	Community Nursing Logbook, 2018	NYA
	E-Health Client Registry with Plexia Addudum, 2016	NYA
	Find A Family Doctor	NYA
	GENIE, 2017	NYA
	Medigent - Claims Processing	NYA
	Medigent - Drug Information System, 2016	NYA
	(MWSU) Electronic Medical Record (EMR), 2019	NYA
	Lab Information System (LIS) Connect Phase 1, 2015	NYA
	Opioid Surveillance Program, 2019	NYA
	Panorama, 2020	NYA
	Remote Patient Care, 2020	NYA
	Sample Manager Laboratory Management Information System, 2020	NYA
	Vitalware, 2017	NYA
Yukon Hospital Corporation	eHealth Client Registry, 2016	NYA
	Lab Information System (LIS) Connect Phase 2, 2016	NYA

HIPMA - 2020 activity

Resolved at intake - no file opened	
Request for information	27
Informal complaint resolution	10
Non-jurisdiction	3
Referred-back	0
Total	**40**
Files opened by type	
Consideration files opened	7
Request for comment	6
Request for advice	12
Total	**25**
All files opened in 2020	25
Files carried over from previous years	33*
Files closed in 2020	15
Files to be carried forward	**43**

*incorrectly reported in 2019

Consideration informal – 90 day target



HIPMA files opened in 2020 by custodian

Recommendations

Custodian	Number of files					Formal*	Accepted	Not yet implemented (NYI) (includes from prior years) or failed to follow (FTF)
	Complaints		Comments	Request for advice	Total			
	Informal resolution	Consideration						
Department of Community Services			1		1			
Department of Health and Social Services	5		4	6	15			
Health Facility - Medical				4	4			
Health Facility - Psychiatry		1			1			
Yukon Hospital Corporation			1		1			
Yukon Surgical Clinic	1				1			
Non Custodian				2	2			

*Formal recommendations are those made by the IPC in a Consideration Report issued in 2019.

Yukon
Public Interest
Disclosure
Commissioner

2020 ANNUAL REPORT OF THE YUKON PUBLIC INTEREST DISCLOSURE COMMISSIONER

The Honourable Jeremy Harper
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 43 of the *Public Interest Disclosure of Wrongdoing Act*, I am pleased to submit the Annual Report of the Public Interest Disclosure Commissioner for the calendar year 2020.

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

Kind regards,

Diane McLeod-McKay,
Yukon Public Interest Disclosure Commissioner

OVERVIEW OF OUR WORK

In 2020, we opened 11 files under PIDWA. They consisted of nine request for advice files, one comment file and one disclosure file. The number of files opened increased marginally from 2019, when nine files were opened. At the end of 2020, our open files included seven advice files, four disclosure of wrongdoing files, and two reprisal files.

The work involved in investigating allegations of wrongdoing and reprisal is very resource intensive. There are just two staff dedicated to this work in my office.

One has been working almost exclusively on the two reprisal investigations, which has taken the majority of this person's time due to the ongoing legal challenges we face in our efforts to complete this investigation. This person is also legal counsel for the office and was extremely busy helping us navigate our various legal issues that arose in 2020, including with the Ombudsman's court petition.

The other person, who also provides legal support to the office, was left managing the remaining advice files along with all the formal investigations under the ATIPP Act. This demanding workload has caused us to exceed our performance targets for all our investigation files, an issue that we are working to remedy.

Request for advice files

As part of our process under PIDWA, we strongly encourage any person who contacts our office alleging wrongdoing to seek advice about whether what they are alleging *may* be a wrongdoing. In conducting this work, we analyze the allegation and evaluate whether it *could* be a wrongdoing as that term is defined in PIDWA. We included this step in our process in recognition that the risks for disclosers are significant, even with reprisal protection. By providing these individuals with this advice, it allows them to decide whether they wish to proceed in making a disclosure.

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

In 2020, I received a response from the Department of Health and Social Services regarding the group home report and recommendations, which advised that it had implemented all the recommendations contained in the report. The department also indicated that it had made changes in response to the observations made in the report issued by the PIDC. At the end of 2020, I was evaluating its response and will provide an update in my 2021 Annual Report.

Update on goals

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

We did not make any progress with this goal in 2020. I note, however, that the increase in our file work suggests that employees are learning about PIDWA, which is positive. I will continue to work on this goal in the coming years.

8. to participate in the review of PIDWA (to be initiated by June 2020)

June of 2020 marked the fifth year that PIDWA has been in force. The Act requires that it be reviewed within five years of coming into force. I was notified in June of 2020 that the review had been launched but that it would take time to complete given the strain that the pandemic was having on service delivery. I was informed that it would occur in phases and that I would be invited to participate in the process. At the end of 2020, I had heard nothing further about the review. Despite that, I began writing my comments and recommendations in anticipation of the review. I will finalize them after I receive the court decision in regard to the Ombudsman petition. This is because the powers of the Public Interest Disclosure Commissioner in conducting investigations under PIDWA come from the *Ombudsman Act.*

Concluding remarks

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

Diane McLeod-McKay
Public Interest Disclosure Commissioner

HOW WE MEASURED UP IN 2020

Skills development

The Public Interest Disclosure Commissioner (PIDC) participated in two one-day conferences hosted by the BC Ombudsperson. The first one, which the PIDC attended in person, included such topics as strengthening ethics in the public service, building a positive and engaging culture to "end the sound of silence" and using public interest disclosure legislation to support a "speak up" culture. The second conference, which was held by videoconference, focused on how to encourage a "speak up" culture in the workplace.

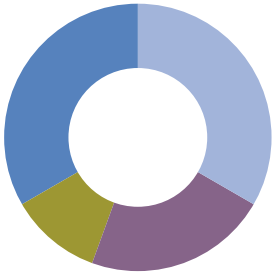
The Yukon PIDC also hosted (via videoconference) the annual two-day conference for public interest disclosure commissioners across Canada. These meetings are held every year by jurisdictions in Canada with public interest disclosure legislation, in order to share experiences from across the country and to improve each jurisdiction's ability to deliver on their respective mandates. Hosting the national meeting is a shared responsibility.

Complaints against the Public Interest Disclosure Commissioner

None

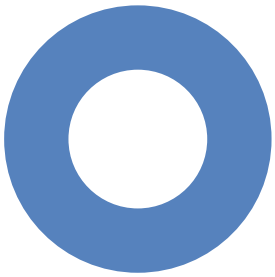
Disclosure of wrongdoing – target 1 year

Closed (within 1 year)	3
Closed (over 1 year)	2
Still open (within 1 year)	1
Still open (over 1 year)	3



Reprisal complaint – target 1 year

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



PIDWA - 2020 activity

Resolved at intake - no file opened	
Requests for information	3
Informal complaint resolution	5
Non-jurisdiction	0
Referred-back	0
Total	**8**
Advice files opened	9
Comment files opened	1
Disclosure files opened	1
Reprisal files opened	0
Total	**11**
All files opened in 2020	11
Files carried over from previous years	13*
Files closed in 2020	8
Files to be carried forward	16

*incorrectly reported in 2019

2020 PIDWA reporting

There are 24 public entities subject to PIDWA as set out in the Schedule in PIDWA. Twenty-three public entities reported that no disclosures were received in 2020. One public entity, the Department of Justice (Justice), reported that one disclosure was made internally and that it was acted on and investigated. Justice reported that the investigation found that wrongdoing had occurred, specifically, that fees applied within the Land Titles Office were not applied as per the Regulations. Program changes were made to ensure compliance and Regulation amendments are underway to align the fee structure and its application with the use of technology. Justice reported that it received no complaints of reprisal in 2020.

Files opened in 2020 by public entity — Recommendations

Public entity	Disclosures received and acted on	Reprisal	Comment	Advice	Total	Formal*	Not yet implemented (includes from prior years)
Department of Education	1			1	2		
Department of Energy, Mines and Resources				4	4		
Department of Finance				3	3		
Department of Health and Social Services				1	1		
Public Service Commission			1		1		

*Formal recommendations are those made by the Public Interest Disclosure Commissioner in a formal Investigation Report issued in 2020.

Yukon Ombudsman

Yukon Information and Privacy Commissioner

Yukon Public Interest Disclosure Commissioner

Financial report

The budget for the Office of the Ombudsman, Information and Privacy Commissioner (IPC) and Public Interest Disclosure Commissioner (PIDC) covers the period from April 1, 2020 to March 31, 2021.

Operations and maintenance (O&M) are expenditures for day-to-day activities. A capital expenditure is for items that last longer than a year and are relatively expensive, such as office furniture and computers.

Personnel costs comprise the largest part of our annual O&M budget and include salaries, wages, and employee benefits. Expenses described as "other" include such things as rent, contract services, supplies, travel and communications.

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

In the 2020-21 budget, personnel dollars increased to provide staff with a small increase in line with public servants as well as to fund our new administrative assistant position. Our O&M dollars decreased slightly for this budget year as did our capital dollars. Overall, our total budget increase for the 2020-21 budget was $55,000.

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

2019-2020 Budget			
Personnel	Joint	$	1,019,000
Capital	Joint	$	22,000
Other	Ombudsman	$	123,000
Other	IPC	$	150,000
Other	PIDC	$	22,000
Total		**$**	**1,336,000**