Yukon Ombudsman

Yukon Information and Privacy Commissioner

Yukon Public Interest Disclosure Commissioner

2022 ANNUAL REPORT

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Contact us

867-667-8468
1-800-661-0408 ext.8468 (toll free)
info@yukonombudsman.ca
www.yukonombudsman.ca
3162 Third Avenue, main floor
Whitehorse, Yukon Y1A 1G3

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.

Cover photo: Government of Yukon

Message from the Yukon Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner, Jason Pedlar

I am pleased to issue my first annual report since being appointed for a five-year term as Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner by the Legislative Assembly on October 14, 2022. On July 29, 2022, Ombudsman/Commissioner McLeod-McKay resigned from her roles to become the Information and Privacy Commissioner for Alberta.

I have been in the dispute resolution field for over 20 years as an organizational ombudsman, mediator, and educator. I joined this office in 2018, originally hired as Director of Intake and Informal Case Resolution. As Director, and then as the office's first Deputy Ombudsman and Commissioner, I focused on improving the work and efficiency of the informal stage of complaint resolution, modernized our operations, developed processes to ensure we could deliver on our mandates in a timely way, and build relationships with our stakeholders.

In 2022, I became the successful candidate recommended by an all-party hiring committee to represent all three mandates. I am the first person to be appointed as an officer of the Yukon Legislative Assembly from within their office. This allowed me to hit the ground running and for a seamless transition.The knowledge and experience I have gained leading the Informal Case Resolution Team will be invaluable as I implement my vision for the next five years.

A lasting legacy

I would be remise if I didn't take the time to acknowledge and highlight the remarkable accomplishments of my predecessor, Diane McLeod-McKay.

Diane was appointed as the Territory's first full-time Ombudsman and Information and Privacy Commissioner in 2013, and subsequently the Public Interest Disclosure Commissioner in 2015, and reappointed to all mandates in 2018.

Her experience and expertise in access and privacy was invaluable to the Territory during a period that included the enactment of the *Health Information Privacy and Management Act* (HIPMA), the review and subsequent passing of the new *Access to Information and Protection of Privacy Act* (ATIPPA), in an ever-growing digital world.

It was through her stewardship that Yukon became the benefactor of modern access and privacy legislation - protecting the rights of Yukoners and ensuring the rightful access to information and the protection of personal information, including health information in the custody or control of government departments and *custodians*.

Her term also saw the enactment of the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) and she led the Territory's first investigations under this new and important legislation.

During her nearly two terms, she issued over 25 formal reports containing hundreds of recommendations for such things as: the release of information, compliance in the protection and security of personal information, and recommendations for the fair treatment in the administration of government programs and services. It only takes a review of each of her past annual reports to see the lasting impact that she has made on the Yukon.

I thank Ms. McLeod-McKay for her dedication and commitment and wish her all the best as Alberta's Information and Privacy Commissioner. She has left big shoes to fill.

Our three mandates

In most Canadian jurisdictions, the work of the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner is done by two or three distinct offices. In the Yukon, and two other jurisdictions in Canada, these three mandates are handled by a single office. In essence we are three offices in one – a one-stop shop!

Each mandate is broad and unique, and often the work that we do under each of them is not well understood. Even more concerning, some Yukoners may not be aware of our office and the services we provide. One of my priorities is to increase awareness of the work we do and broaden our outreach across the Territory.

Yukon Ombudsman

The Yukon Ombudsman is established by the *Ombudsman Act* as an impartial investigator who receives public complaints of unfairness in programs and services associated with Government of Yukon or other public *authorities*. The Ombudsman is an Officer of the Legislative Assembly and is independent of government and political parties. The Ombudsman is neither an advocate for a complainant nor a defender of government actions.

The mission of the Yukon Ombudsman's Office is to provide an independent, impartial means by which public complaints concerning *the authorities* can be heard and investigated with the goal of promoting fairness, openness, and accountability in public administration.

Every day, public *authorities* make decisions that affect people's lives. If you believe that an *authority's* decision or process is unfair, you should first try to resolve the matter using whatever complaint or appeal mechanism that may exist. If after these attempts your complaint remains unresolved, you may complain to the Ombudsman as an office of last resort. Through an investigation, the Ombudsman can independently and impartially look at the matter to identify whether you have been treated fairly.

Yukon Information and Privacy Commissioner

The Access to Information and Protection of Privacy Act (ATIPPA) and the Health Information Privacy and Management Act (HIPMA) are the two laws that provide Yukoners with both access to information and privacy rights. These laws establish rules that *public bodies* and health sector *custodians* must follow to collect, use, disclose, secure, and manage personal and health information. Under the ATIPPA, with some limited exceptions, the public has the right to access any records held by *public bodies*. Under the HIPMA, individuals have the right to access their own personal health information.

The Information and Privacy Commissioner (IPC) is responsible for ensuring *public bodies* and health sector *custodians* comply with these laws. The IPC has the power to investigate complaints about non-compliance and to make recommendations on their findings as well as other responsibilities including informing the public about their rights under these laws.

Yukon Public Interest Disclosure Commissioner

The *Public Interest Disclosure of Wrongdoing Act* (PIDWA) is intended to promote public confidence by enabling employees of *public entities* to disclose wrongdoings that occur in *public entities* and protecting these employees from reprisal. The PIDWA also establishes the office of the Public Interest Disclosure Commissioner (PIDC).

Employees of *public entities* can make disclosures of wrongdoings that are in the public interest without fear of reprisal. Employees have options about who they can disclose to, including a supervisor, a designated officer in their *public entity*, or the PIDC.

Along with the PIDCs authority to investigate wrongdoing disclosures and reprisals, he can provide confidential advice to employees who are considering making a wrongdoing disclosure.

Our work

We resolve complaints quicker and more efficiently through a process that we use for all three mandates (Ombudsman, IPC, and PIDC). Timely resolution benefits us all.

Early Complaint Resolution

During this stage, we identify whether the complaint is within our jurisdiction and offer referrals if it isn't. We often provide support to the complainant by calling the authority on their behalf or offering other resources for resolution.

Informal Case Resolution investigation (ICR)

When a complaint file (investigation) is opened, it starts, and most often ends, with our ICR team. **ICR resolves approximately 90% of the complaints we receive.** Our Director describes the ICR process in more detail below.

Formal Investigation

If we are unable to reach a resolution in ICR, or if we believe that a matter may be systemic, widespread, or have broad public interest, the complaint advances to our Formal Investigation team. Formal investigations involve compelling documents, interviewing witnesses, and result in a public report being issued.

Compliance and advice

Under both the ATIPPA and HIPMA, we are also responsible for providing advice and ensuring compliance with the Acts. See Compliance in the IPC section of this report.

Government of Yukon

Our commitment to training and outreach

Our staff are well-educated, trained and highly skilled to deal with complaints and queries under all three of our mandates. This includes being knowledgeable about all four of our home Acts; responding to inquiries in a helpful and confidential manner; conducting fair and thorough investigations (both formal and informal); and writing clear and concise reports and summaries of these investigations.

To assist our staff in gaining and maintaining this important knowledge and skill set, we provide regular opportunities for staff education and development, including training, conferences, webinars, etc.

Another aspect of our work is outreach to citizens - raising awareness of our mandates and how they benefit Yukoners. We also strive to increase knowledge about our work amongst Yukon legislators and government representatives, leaders, and staff over which we have jurisdiction.
We do this in a variety of ways, including media relations and interviews; news releases; updates on our website; posts on social media such as Facebook, Twitter, and LinkedIn; paid advertising; editorials in Yukon newspapers; podcasts; and publication of both investigation and annual reports.

Under our IPC mandate, we issue advisories and guidance on privacy and access matters including emerging threats to privacy and how best to safeguard personal information. In 2022, and in previous years, this included providing resources for youth and educators on the protection of privacy.

We also make ourselves available to speak to groups or attend meetings to share what we do. As well, we collaborate with similar offices throughout Canada to provide broad-based information and guidance on issues that are of significance across the country and often, in other parts of the world.

In addition to these priorities, I will highlight some legislation-specific focus points in each mandate's section in this report.

Operations for 2022

With the departure of the former Ombudsman/ Commissioner, my subsequent appointment, an internal promotion for the role of Director, and the loss of two investigators in 2022, we had three investigator vacancies to fill in 2022. Due to our three mandates and four governing Acts, it can be difficult to find qualified and experienced staff, and usually requires significant training and resources for their successful onboarding.

I am pleased to report that by the end of 2022, we filled all vacant positions, less one investigator who has accepted a job offer and is to start in January of 2023.

Fully staffed, our office has five investigators who work both on the formal and informal teams. The Director of Intake and Informal Case Resolution (ICR) oversees the ICR process while I oversee the Formal Investigation team and our office's operations. We also have an administrative assistant and a part-time communications manager that keep us on track.

As I continue to develop and implement my strategic plan, introduce efficiencies in our processes and monitor our case volumes, I will evaluate whether we are sufficiently staffed to successfully fulfill my mandates.

I wish to acknowledge each one of my employees for their hard work and dedication. When we bump up against challenges or delays, I remind them of the difference they are making in the lives of Yukoners, and to be proud of the work that they do.

Despite staffing shortages and employee transitions I am pleased to report that we were able to meet our statutory timelines and, in most cases, our own internal time standards. In the section below, I have included some statistics of our operations. Detailed statistics specific to each of our mandates (Ombudsman, Information and Privacy Commissioner and Public Interest Disclosure Commissioner) can be found in their respective sections of this report.

The evolution of our Annual Report

Although we are obligated under our Acts to report specific details annually to the Legislative Assembly, equally important is for this report to serve as a tool to inform the public of the important work that we do; to highlight our successes, challenges, and areas of opportunity. Soon we will align our annual reports with our fiscal year, April 1 to March 31, which means that our next annual report will be for the 2023/24 fiscal year.

Stats at a glance

As part of this evolution, we are now providing statistics in a more digestible way - to paint a clearer picture of what we do. One example is to capture the important work that we do when we answer the phone, respond to email, explain our mandate(s) and when appropriate, provide guidance, or refer to an alternative resource. Another example is highlighting our work under each Act that goes beyond just resolving complaints. This work includes providing advice and recommendations to public bodies seeking our input. We also evaluate compliance with several Acts which includes conducting audits, and we develop guidelines and tools to assist both the public and the *authority, public body, custodian,* or *public entity* in applying the legislation to their programs and services. Starting with this report, look for key statistics and infographics showcasing the work that we do for each of our three mandates.

Substantiated vs. unsubstantiated

Another new statistic that we are reporting is whether a complaint is substantiated – meaning that upon investigation we feel that there is some validity to the concern raised. For example, under the Ombudsman mandate, if we find that a process was unfair to the complainant, we will indicate that the complaint is substantiated or partially substantiated. If, in our view the process was fair, we will indicate that the complaint is unsubstantiated. For complaints to the IPC about an access or privacy matter, we will also capture whether the complaint was substantiated, partially substantiated, or unsubstantiated. This information is useful in understanding the impact of our work in making a difference and ensuring fairness; upholding access to information and privacy rights; and ensuring integrity and accountability in public administration.

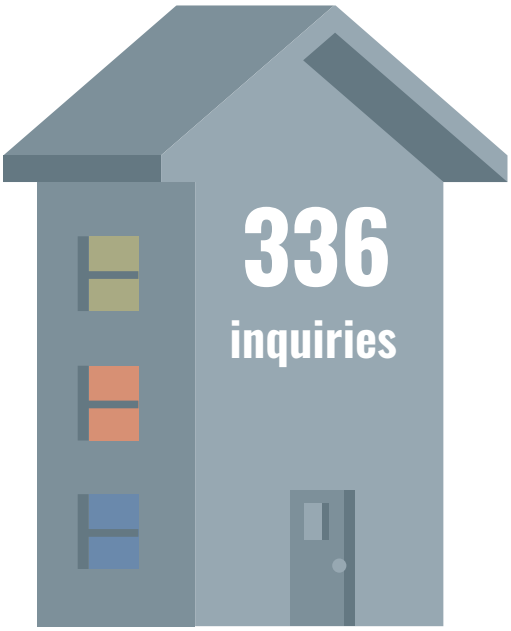
We hope that you find the infographics in this and future reports to be more useful and valuable in understanding our statistical data.

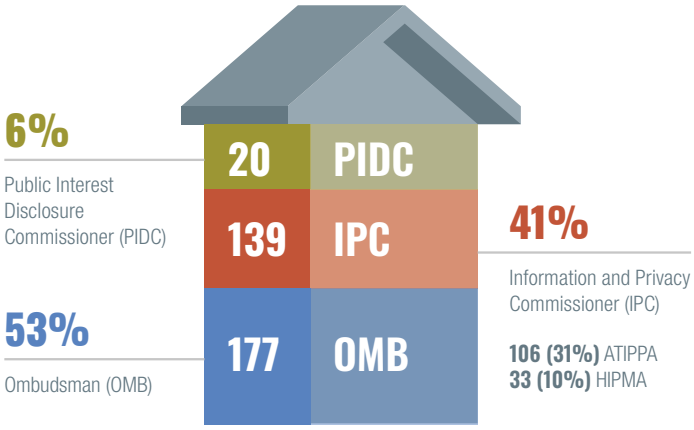
Sincerely,

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

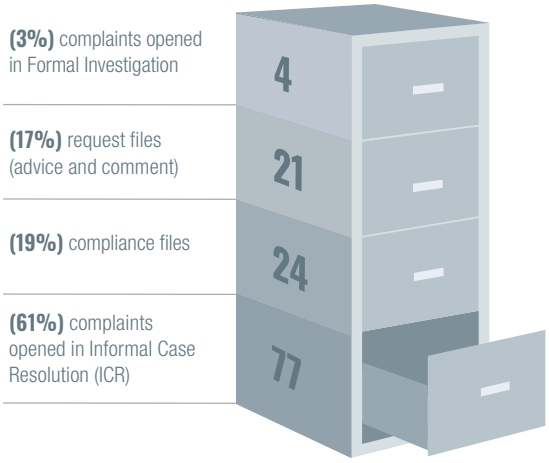
Stats at a glance 2022

all three mandates





Inquiries by mandate



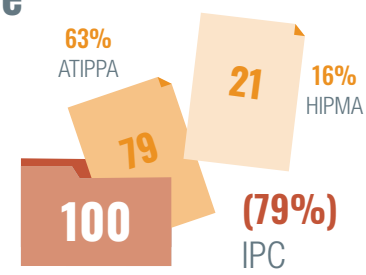
126
files opened

100% IPC
4 (80%) ATIPPA
1 (20%) HIPMA

5
public reports issued

Files opened by mandate

(19%)
OMB



(79%)
IPC

2%
PIDC

Message from the Director of Intake and Informal Case Resolution, Tara Martin

I would like to take a moment to shine a spotlight on the outstanding job of our Informal Case Resolution (ICR) team. The work of the ICR team is significant, yet the outcomes and contributions don't often appear in public reports or in news stories. In fact, the ICR team works hard to resolve disputes as informally and as expediently as possible and resolves over 90% of our complaint files through this process!

Intake and Informal Case Resolution

Who is the ICR team?

I came into the role of Director of Intake and Informal Case Resolution in September 2022 after the then acting Ombudsman & Commissioner became the successful candidate, to replace the outgoing Ombudsman & Commissioner. The ICR team consists of two investigators and me, along with our administrative assistant who helps support the ICR team. Our team attempts to work collaboratively with Government of Yukon and others we oversee in each of our mandates, to resolve complaints as informally and efficiently as possible.

What is ICR?

Complaints received under any of our three mandates – Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner – proceed through our Informal Case Resolution (ICR) process. As part of the ICR process we conduct an intake discussion with the complainant to make sure we understand the concerns that have been raised. We also assess whether we are the correct office to investigate a matter and ensure that we have jurisdiction over the entity that is being complained against. Once we accept the complaint, we notify the *authority*, *public body*, *custodian*, or *public entity*, about the complaint and the issues for investigation. The ICR process is confidential, and we do not identify complainants unless it is necessary for the investigation and only after receiving approval from the complainant.

The ICR team then makes inquiries to get a sense of what may have occurred, request relevant documentation, and engage in discussions to determine whether the complaint is substantiated, and if so, what action needs to be taken to correct the issue and/or prevent a recurrence.

In some instances, an ICR investigation may not be necessary to resolve the matter. In such cases, the ICR team may ask the complainant's permission to make some initial inquiries on their behalf, to help get the ball rolling. We refer to this process as Early Complaint Resolution, and it also forms part of the ICR process.

Where we do not have jurisdiction to accept a complaint, or if we don't think our office is the best avenue for resolution, the ICR team will refer individuals to an appropriate resource. For this reason, we encourage members of the public to contact us even if they are unsure whether we can investigate the matter.

ICRs success is partially based on fostering productive working relationships with the stakeholders associated with each of our mandates. This means our investigators spend more time resolving the issues, and less time going back and forth explaining our process and our authority.

What are the benefits of ICR?

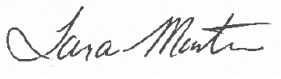
Getting it right from the beginning:
Our ICR investigators conduct intake on a rotational basis which allows them to handle a complaint from beginning to end. In the early stages, the investigator can help identify which aspects of a concern we may be able to assist with and walk individuals through the steps of filing a complaint. This also saves individuals from having to repeat their concerns multiple times and allows an investigator to conduct a preliminary assessment of our jurisdiction and whether the ICR process would be appropriate for handing the complaint. It also means that in most cases, who the complainant initially speaks to will be the person who will investigate the matter.

Faster resolution: ICR investigators conduct their work through phone calls, email, and in person. This ensures that the process is efficient and avoids delays caused by sending formal letters and legal notices. This benefits the complainant because our work is often completed in a matter of weeks, as opposed to months or even years, as can sometimes be the case under a Formal Investigation process.

Less resources: Formal investigations are very resource-intensive for our small office. Formal processes involve making written submissions and writing lengthy investigation reports. By leveraging the ICR process whenever possible, we can free up our office's limited resources to focus on systemic issues and matters of broader public interest. We often find that organizations have the same resource challenges, and therefore resolving matters informally benefits them as well.

As we like to say, we are small but mighty!

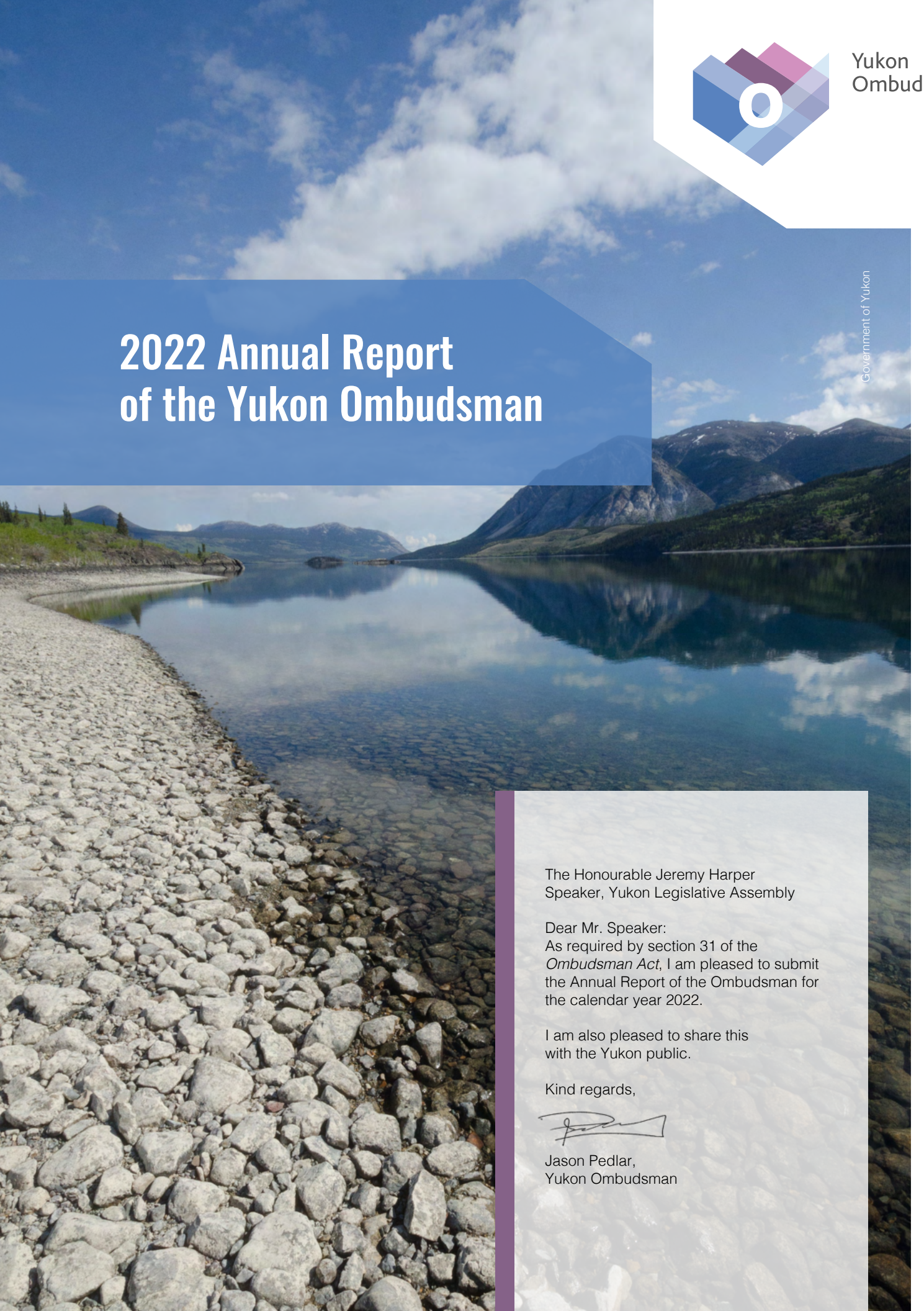
Sincerely,



Tara Martin
Director of Intake and
Informal Case Resolution

Yukon
Ombudsman

2022 Annual Report of the Yukon Ombudsman



Government of Yukon

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 2022.

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

Kind regards,

Jason Pedlar,
Yukon Ombudsman

Promoting and protecting fairness in the delivery of public services

The Yukon Ombudsman is an impartial investigator who investigates complaints of unfairness in programs or services associated with Government of Yukon or other public *authorities*. The Ombudsman is an Officer of the Legislative Assembly and is independent of government and political parties. The Ombudsman is neither an advocate for a complainant nor a defender of government actions.

The mission of the Office of the Yukon Ombudsman is to provide an independent, impartial means by which public complaints concerning the Government of Yukon and other public organizations, collectively referred to as *authorities*, can be heard and investigated with the goal of promoting fairness, openness, and accountability in public administration.

Every day, public *authorities* make decisions that affect people's lives. If you believe that an *authority's* decision or process is unfair, you should first try to resolve the matter using whatever complaint or appeal mechanism that may exist. If after these attempts your complaint remains unresolved, you may complain to the Ombudsman as an office of last resort. Through an investigation of your complaint, the Ombudsman can independently and impartially look at the matter to identify whether you have been treated fairly. The Ombudsman can make recommendations to effect change if there has been an unfairness. This will benefit you and others in a similar situation, as well as the *authorities* and citizens of the Yukon generally.

Message from the Ombudsman, Jason Pedlar

Our complaint volume increased from 18 cases in 2021 to 24 in 2022. In addition, we opened 26 Early Complaint Resolution files where we assisted complainants in connecting directly with an *authority*. In total we had 177 inquiries to our office regarding the Ombudsman mandate and made referrals to external organizations 51 times. We make referrals when we do not have the jurisdiction to investigate a matter. For example, we received 3 complaints against Yukon municipalities that we referred to the municipality for resolution. I speak more about this below in "*Ombudsman Act* requires revision".

Of the 24 Ombudsman complaints that we investigated, our Informal Case Resolution (ICR) process resolved 100% of them preventing us from having to conduct a Formal Investigation.

Ombudsman Act requires revisions

My predecessors have spoken of the need for revisions to the *Ombudsman Act*, which was first passed in 1995 and has not undergone any substantive revisions since.

There are several key areas of expanded authority that I feel are needed and in the best interest of Yukoners: the ability to conduct "own motion" investigations and the expansion of my jurisdiction to include municipalities.

Own motion authority would allow my office to proactively investigate a matter without having received a complaint. This power would reduce barriers in investigating concerns that come to our attention, but where for a variety of reasons, individuals may not file a complaint. This would also allow my office to investigate when we hear of an issue in the media. Investigations of this nature are often broader in scope and may affect a larger number of citizens.

Secondly, all levels of government and other public authorities should be subject to an oversight and accountability mechanism like an Ombudsman, promoting fairness, transparency, and accountability in the work within their authority. For this reason, I am of the view that municipalities should be included in our oversight. There simply isn't a good reason not to.

Provincial and territorial ombuds offices in all other areas of Canada have own motion power, with the majority having jurisdiction over municipalities. These powers align with international best practices identified through the Venice Principles on the Protection and Promotion of the Ombudsman Institutions adopted by the Venice Commission.

I intend to provide the Legislative Assembly with my recommendations on these and other changes to the Ombudsman Act in the future.

Raise the Bar ombuds training

I co-developed and implemented an advanced training seminar called, Raise the Bar, with representatives from four other ombuds offices across Canada. This seminar was attended by investigators from our office and other ombuds offices across Canada.

The Raise the Bar training initiative came from the Canadian Council of Parliamentary Ombudsman (CCPO) that is comprised of all provincial and territorial ombuds across Canada whose mandate is to ensure the fair delivery of public services.

The sessions, which were a first for the CCPO, provided advanced training for experienced investigators and managers within ombuds offices across Canada. The training consisted of interactive, experiential, participant-driven seminars, presented by seasoned ombuds staff, allowing advanced investigators and managers to share their expertise and experience with others working in the field. Topics included areas of advanced skill development, sharing best practices, and the future evolution of ombudship.

More than 30 representatives from ombuds offices in Canada took part in both English and French. The virtual sessions provided opportunities for learning, mentorship, networking, cross-collaboration, and sharing the wealth of knowledge that exists within ombuds offices across the country.

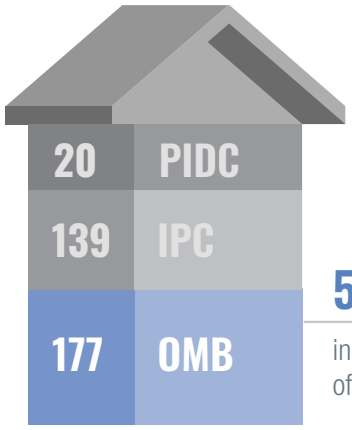
Concluding remarks

You can find more information about the type of complaints we have handled and statical information in the pages that follow.

Jason Pedlar,
Ombudsman

Stats at a glance 2022 Ombudsman

Note that our complete statistics can be found at the end of the Ombudsman section of this report.



53%
inquiries
of all madates

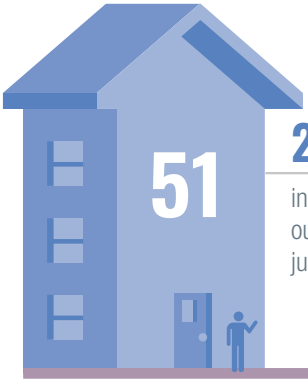
Inquiries

>50%
about his role

~19%
complaint
investigations

15%
Early Complaint Resolution

Referrals

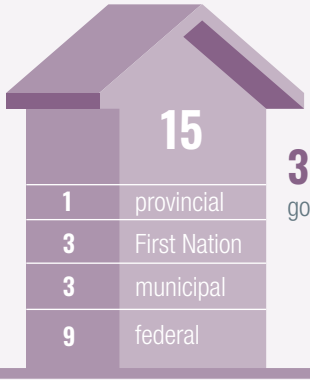


29%
inquiries referred
outside of our
jurisdiction

Top 3 referrals

22%
civil dispute

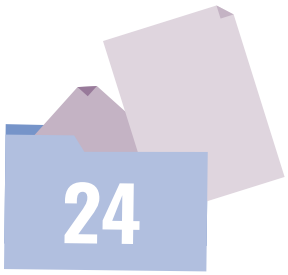
24%
business/
consumer
matter



30%
government

Of interest! We referred 75% of our non-jurisdictional files to one of these 3 categories.

Complaint files opened



24 (100%)
Informal Case Resolution

0 Formal Investigation

Of interest! 100% of OMB complaint files were resolved by the Informal Case Resolution team.

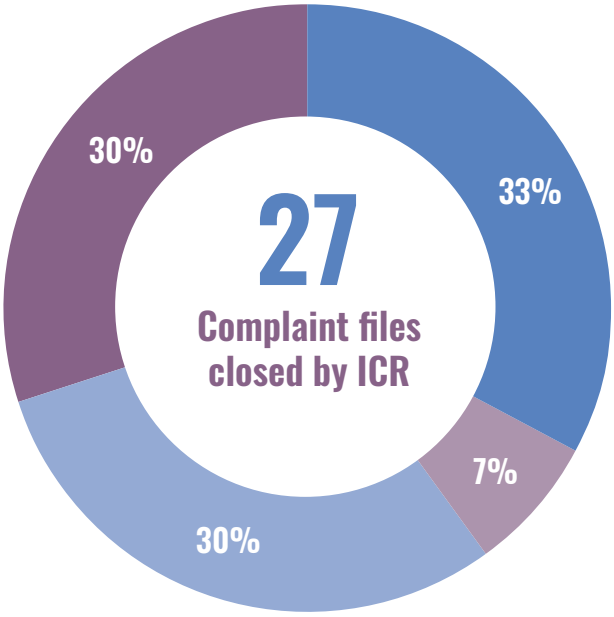
Complaint files closed

27 (93%)
Informal Case Resolution

2 (7%)
Formal Investigation

Of interest! 3 ICR complaint files and 2 FIs were carried over from the previous year.

Stats at a glance 2022 Ombudsman



63% of complaints were substantiated or partially substantiated.

Determination

As part of our investigation process, the ICR team determines whether the complaint was substantiated, unsubstantiated, or partially substantiated.

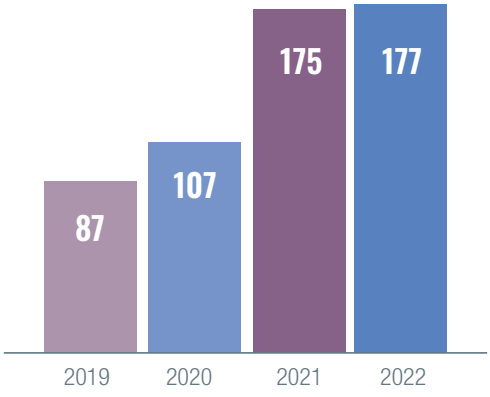
9 **(33%) substantiated**
We agreed with the complainant that there was unfairness or non-compliance that needed to be addressed.

8 **(30%) partially substantiated**
We agreed with the complainant on some matters, but not everything.

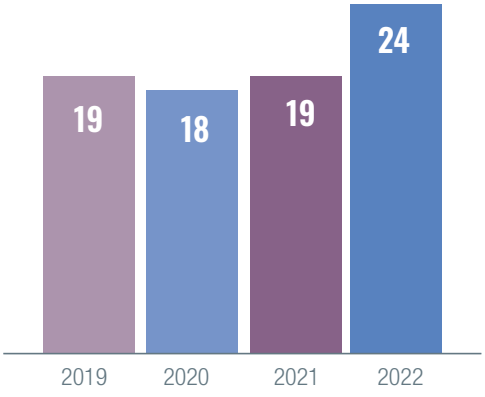
2 **(30%) unsubstantiated**
We did not find evidence of unfairness or non-compliance.

8 **(7%) N/A**
We were unable to make a determination about the complaint. This might include complaints that were withdrawn during the investigation process, or upon closer examination of an issue, we declined to investigate further.

Inquiries



Complaint files opened



Of interest! Our numbers are consistently trending upwards over the last 4 years.

Your stories - Informal Case Resolution

Finding fairness for inmates during the COVID-19 pandemic

Authority: Department of Justice

In January 2022, we received a complaint from an inmate at the Whitehorse Correctional Centre (WCC) regarding the Department of Justice, the *authority* in this case.

The complainant, a resident of the WCC, told our investigator that due to COVID-19 protocols, all residents were locked in their cells 23.5 hours per day and let out for 30 minutes a day, on a rotational basis.

The complainant said that WCC administrators denied their request to be let out of their cell during a time that coincided with their family's availability, so that they could speak with them on the phone. They filed an inmate complaint with WCC but was unsatisfied with the response and believed that WCCs refusal to accommodate their request was unfair.

The complainant also stated that the unit correctional officers "can't take paper" from the inmates, which they felt represented an additional unfairness as this new requirement did not seem to align with any advice from the Chief Medical Officer of Health regarding COVID-19 safety measures.

Regarding the first issue, our investigation confirmed that between December 10 and 21, 2021, a COVID-19 outbreak was declared at WCC. During this time, the superintendent communicated to inmates, through four different memos, that they would be receiving 30 minutes per day to leave their cells. When the outbreak ended, WCC reverted to its regular policy, which allows inmates "reasonable access to telephones." We learned from speaking with the superintendent that inmates generally have access to phones during most of the day.

The evidence confirmed that on December 13, 2021, WCC did not accommodate the complainant's request to be let out of their cell at a later time. In our view, this decision was reasonable under the circumstances of a confirmed COVID-19 outbreak, during which WCC needed to protect the health and safety of inmates and staff. We did not find an unfairness and no recommendations were made.

Regarding the second issue, that of handling of paper documents within WCC, our investigation found that between Dec 15 and 20, 2021, WCC employees were transcribing requests, complaints, and documents on behalf of inmates in order to avoid handling and exchanging paper between individuals.

In our view, this practice was unfair because it could have resulted in compromising the privileged communication between inmates and our office, as well as the Yukon Human Rights Commission, legal counsel, the Investigation Standards Office, etc.

The *authority* acknowledged that this practice was not consistent with its own COVID-19 protocols and was not based on any guidance from the Chief Medical Officer of Health. When the WCC superintendent learned staff were transcribing paper documents on behalf of inmates, he recognized the severity of the problem and took immediate actions to address it. He also worked to address the issue with his supervisory staff to determine how this decision was made and issued clear directives to staff to ensure the situation does not recur. The Superintendent had taken these actions and resolved the unfairness before the complaint was filed with our office.

After discussing the matter with the *authority*, we were satisfied that the unfairness had been resolved and no recommendations were made.

You're hired! Oops, maybe not...

Authority: Health and Social Services

A complainant came to our office with concerns about the process for hiring new employees at the Department of Health and Social Services (HSS), the *authority* in this case. The individual stated that they were offered a position with HSS and had travelled to Whitehorse from another area of Canada to begin work. They arrived at the workplace on what they believed was their first day of work and was informed that they did not in fact have the position. The complainant was informed that they had been "decertified." They had since left Whitehorse but remained unclear as to what had occurred and was unsuccessful in obtaining clarification from the *authority*.

The complainant also said HSS had offered to reimburse them for certain travel expenses if receipts were provided, which they had done. Several months passed, with no reimbursement. Our investigator spoke with the *authority's* Human Resources branch to find out what had happened and to assess whether it was unfair. Our investigation focused on the hiring process and reimbursement, and not on the *authority's* hiring decision itself.

We learned that the complainant was decertified from the position on the grounds that they did not have the necessary qualifications. This determination was based on comments made to the Human Resources branch during the reference check process and following advice on the matter from the Public Service Commission. As references had not been contacted prior to offering the complainant the position, the effect of this was to decertify the complainant from the role, rather than to not offer the position in the first place. In our view, conducting the hiring process in this way was unreasonably burdensome for a candidate and unfair.

The complainant had travelled to Whitehorse on the assumption that they were the successful candidate. Concerns about their suitability for the position were not communicated until after they had physically arrived in the office. Although the complainant had directed questions to the *authority* prior to this, via email, many of these were not responded to. We found that the decertification process itself was not clearly communicated to the complainant. Fair service requires that questions be responded to in a timely manner and that concerns be promptly communicated wherever appropriate, especially where the information may negatively impact someone.

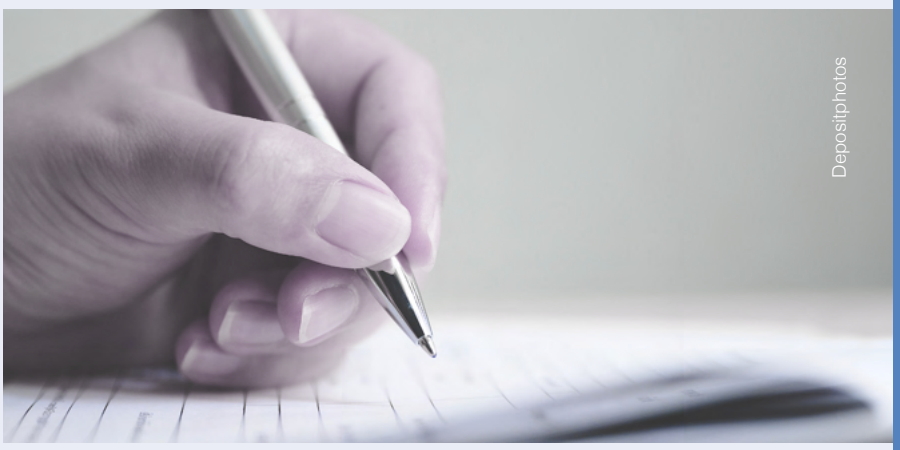
We also found that HSS had retained little documentation to reflect the actions taken or documents to support how and why the decision was made, and by whom. As such, in response to the complainant's requests for information to clarify what had occurred, HSS was unable to provide any documentation to support its decision. Documenting decisions and the reasons for them is an integral component of a fair and transparent process.

Our investigator was informed that the delays in providing the reimbursement were due to staff turnover. As a result, the complainant was made to wait almost a year before receiving it. As well, although the complainant had made efforts to work directly with HSS to obtain the reimbursement, it was ultimately provided only after we investigated the matter. Such delays are also unfair.

The *authority* had taken some steps to remedy its hiring process after this complainant was decertified (for example, by contacting references prior to offering a position and amending its written process to reflect this). If HSS had not already done this, our investigator would likely have made a recommendation to this effect.

Our investigator did recommend to HSS that it retain appropriate documentation, communicate decisions and the reasons for them to candidates in a clear manner, standardize the language in an offer of employment, and have human resources staff available to address questions or share concerns with a candidate in an established time frame. The *authority* accepted these recommendations and agreed to document the new practices in a written process.

Fairness includes good communication, documentation, transparency and clear policies & procedures



Authority: Economic Development

A complainant came to our office with concerns that a decision to restrict their access to the Yukon Nominee Program (YNP) indefinitely, with no recourse, was unfair.

The complainant owns and operates a business in Whitehorse, and regularly hired employees through the YNP. The YNP is run by Economic Development, the *authority* in this case, in partnership with federal immigration programs. The program allows Yukon businesses to hire foreign nationals (nominees under the YNP) while providing a streamlined pathway for the nominees to become Canadian permanent residents. In July 2021, the immigration unit within Economic Development advised the business owner (our complainant) of complaints from several of their employees who were nominees. The unit informed them that until the investigation of the complaints was complete, their applications to the YNP would not be processed.

The complainant said they repeatedly asked the *authority* for details about the complaints against them, the investigation process, and timelines. They indicated that the *authority* had refused to provide this information and almost nine months had passed with no movement on the matter.

When our investigator met with Economic Development representatives, the *authority's* perspective was that the situation had been handled according to its policies and procedures but did acknowledge there had been challenges and there was likely room for improvement.

The *authority* explained that YNP applications from the complainant had been put on hold because its policy states that this should be done when a formal investigation is underway. Though not explicitly stated in the policy, the *authority's* interpretation of a formal investigation is when a matter is referred to an outside agency, which had occurred in this case. Our investigator disagreed with the Department's interpretation because it seemed to contradict other sections of the policy and because it is unfair to block access to a government program with no validation that the employer has done anything wrong and with no visibility or control over the outside agency's process.

The investigator also concluded that other aspects of the Department's handling of the situation did not meet fairness standards, including communication and documentation of reasons for a decision, provision of adequate information about the decision-making process, and timely decision-making.

After extensive discussions, the *authority* did agree that the complainant's situation had not been handled well and that staff members involved were confused about what was expected of them regarding our office's informal investigation. It took several months but we were able to find common ground and resolved the file successfully with the *authority* accepting our two recommendations.

Our first recommendation was that the *authority* consider the complainant's case and propose a resolution that complies with fairness standards. This recommendation was implemented immediately. The *authority* re-instated the complainant's access to the nominee program, so that they could once again apply to it.

Our second recommendation was that the *authority* evaluate its application of the YNP to ensure it complies with fairness standards, with implementation within one year, which would be the fall of 2023. Our investigator asked the *authority* to consider elements such as documentation of evidence and rationale; a maximum time limit for applications to be on hold; inclusion of circumstances that cause applications to be put on hold, citing legislative or policy authority; explanation of decision-making criteria and process; roles and responsibilities; an appeal or review mechanism; and

continued...

communication in writing of any decisions, with an explanation. Under the Department's current model, there is no mechanism for assessing whether a complaint about an employer is founded or not. A complaint is taken at face value, resulting in the employer having its YNP applications put on hold with no recourse. The investigator recommended that this aspect be evaluated, along with the purpose and value of placing applications on hold.

Since both employer and nominees are clients of the YNP, our investigator suggested that when complaints are raised, the Department may want to have different employees within its immigration unit act on behalf of each party, to ensure fair treatment. As well, because similar programs operate in other parts of Canada, we suggested that the *authority* evaluate best practices from other jurisdictions regarding management of this type of situation.

Government of Yukon

A missed deadline leads to process improvements

Authority: Department of Education

In May 2022, we received a complaint about the Department of Education, the *authority* in this case, failing to meet its legislative time limit to issue a decision notice regarding an employee's appeal hearing under the *Public Service Act*.

In October 2021, the complainant had been let go from their job at Education. The employee asked for a hearing with the deputy head, as set out in the *Public Service Act*. The hearing took place in January 2022.

The *Public Service Act* requires the deputy head to notify the employee of their final decision within "10 working days" of the hearing. As of May 2022, the complainant had not received the decision, even though they had followed up with the Department several times. They felt this lack of response was unfair and contrary to the law.

We reached out to our department contact, provided an overview of the complaint, and noted that this appeared to be a relatively straightforward issue which could be resolved in a timely manner. Our contact agreed and committed to getting back to our investigator quickly with the necessary information and the names of the people who could help.

Within a week of opening the complaint, the Department provided a detailed written response, confirming that the complainant's decision had not yet been issued, that the legislated timeline for notifying the appellant of the decision was missed.

In reviewing the underlying reasons for the missed deadline, Education found that appeal hearing deadlines were not being tracked and that the Deputy Minister did not have enough time allocated in her calendar to complete her analysis and issue the decision, due to a combination of competing operational priorities and human error/oversight. In response, the Department committed to implementing several process improvements, including detailed tracking of appeal hearing requests, timelines and legislated due dates; to ensure adequate time is allotted in the Deputy Minister's schedule for making the decisions; and to clarify roles and responsibilities within the department including identifying employees responsible for communicating with appellants.

We were able to resolve the file in less than two weeks because of the Department's swift action. This positive outcome was possible because the Department is familiar with the work of the Ombudsman's Office. This means the investigator does not need to spend time explaining our process, jurisdiction, authority to compel information, etc., which streamlines the process. In addition, the Department immediately acknowledged it was in the wrong and took quick action to rectify the complaint and address the underlying cause.

This is good news not only for this complainant, but for any others in the same position. It should also prevent similar complaints in the future.

Our office can help *authorities* examine their policies and procedures to identify gaps and understand how to embed the principles of administrative fairness into their service delivery. However, there is no "one-size-fits-all" solution. In most cases, departments themselves are best equipped to identify which measures will be most effective and feasible within their individual branches.

This case clearly demonstrates that fairness and doing the right thing doesn't need to be complicated, or time consuming; a few targeted steps can go a long way.

This file was resolved with the Department's commitment to operationalize the new process in a written procedure within 30 days and to provide the complainant with their appeal hearing decision no later than June 24, 2022.

A property assessment complaint demonstrates that fair decision-making is based on clear consistent criteria and diligent documentation

Authority: Department of Community Services

Our office received a complaint from a property owner regarding their 2021 property assessment. The complainant stated that their 2021 assessment indicated that the completion percentage of a dwelling on their property was 100%, which increased their tax bill. They stated that their 2020 assessment had shown a significantly lower completion percentage. They were concerned about this change because the state of their home was largely unchanged.

Outside of city limits, property assessments in the Yukon are managed by the Property Assessment and Taxation Branch of the Department of Community Services, the *authority* in the case. Prior to reaching out to our office, the complainant had contacted the branch to request further information but did not feel they received an adequate explanation for the change in completion percentage.

During our investigation, we examined the *authority's* process for conducting property assessments. We found that the *authority* had some material available for its assessors to provide guidance on how to support their assessments. However, we also learned that the assessors were not required to reference any criteria they considered, or to record their decisions in a standardized way. We also noted that there was no guidance available on determining completion percentages.

The *authority* did provide the complainant with information relevant to their property assessment, however in our view, the assessor's notes did not include enough information to support their decision. As a result, the *authority* couldn't properly explain the decision to the complainant.

Where decisions are made that affect an individual, it is important that the reasons for making the decision are clearly documented. Further, to ensure decisions are made in a consistent manner, decision-makers should be provided with objective criteria and guidance to support the decision-making process.

We recommended that the *authority* develop standard assessment criteria that must be referenced when conducting property assessments, and that decisions made following a property assessment be documented in a consistent manner that includes reasons. We also recommended that the *authority* make these reasons available to property owners.

In this case, we found that while the *authority* had made clear efforts to communicate with property owners, the lack of documentation in the assessor's notes meant that applicable standards of administrative fairness were not met. To fix this going forward, we recommended that the *authority* develop a written policy to ensure a consistent method of communicating decisions to property owners.

As part of our informal complaint resolution, we discussed our Fairness by Design resource with the *authority* and considered what administrative fairness might look like in practice for this situation. The *authority* was receptive to our comments and, in addition to promptly implementing all recommendations, took the additional step of familiarizing its staff with the Fairness by Design resource.

Ensuring fairness in land lotteries means ensuring there is authority for actions taken

Authority: *Department of Energy Mines and Resources*

In March 2022, an individual applied for a lot in the Whistle Bend Land Lottery, and also applied for a lot on a family member's behalf. The family member in question has mobility issues and was unable to drop the application off themselves.

The Yukon Land Lottery Guidelines state that an applicant may authorize an agent to act on their behalf; however, an agent may represent only one applicant and may not submit their own application. When the complainant came to us, they admitted to knowingly breaking this "agent rule" but objected to the forfeiture of their $300 application fee by the Lands Branch of the Department of Energy Mines and Resources (EMR), the *authority* in this case. They argued that the rules do not state that if an applicant is found to have broken the agent rule, their application fee will be forfeited. The complainant also questioned the rationale for the rule, suggesting that it may be unfair and that it should be changed to allow an agent to act on behalf of both themselves and one other person.

We met with the Lands Branch to obtain a better understanding of the land lottery process and to get its perspective on this case and on the rationale for the agent rule. We learned that much of the land lottery process is dictated by the *Lands Act* and the *Lands Regulations* and that the regulations clearly state that a person acting as an agent may not act for anyone else, including themselves. Although no rationale was provided, there was no question that the rule was prescribed in law and that EMR had no choice but to enforce it. In addition, we found that the land lottery guidelines state that if an application is disqualified, the administrative deposit is forfeited. However, we also found that the legislation and regulations do not explicitly authorize the forfeiture of the administrative deposit in these circumstances. Instead, the legislation seemed to create an obligation for EMR to refund the administrative deposit if an application is not chosen. Our opinion was that the guidelines document was not binding and that forfeiting administrative deposits in this manner may be contrary to law. Upon review, EMR agreed with us.

We made six recommendations and three observations to help improve the overall fairness and transparency of the lottery process, which were all accepted by EMR. The *authority* committed to implementing them before the next land lottery process. The changes include:

- EMR will refund all applicants who had deposits forfeited for not following the guidelines and regulations for the Whistle Bend Lottery in March 2022.
- EMR will cease its practice of withholding the administrative deposit unless it determines it has legislative authority to do so.
- EMR will ensure that the lottery package provided to applicants is unique for each lottery including a version of the lottery guidelines that is dated and labelled as belonging to the specific lottery and that will be available to the public after the lottery.
- If EMR reinstates an administrative penalty for failing to comply with guidelines, it will ensure it has the authority to do so and to outline that authority in the lottery guidelines.
- EMR will develop a standardized process for evaluating lottery applications including how applications are disqualified.
- When a decision is made that adversely affects an individual, EMR must provide information about the decision-making process and criteria; document its decision and the reasons for it; ensure that the documentation is adequate to demonstrate that the decision was not arbitrary, or improperly discriminatory.

continued...

We also made observations to EMR that it should consider reviewing past land lotteries to evaluate whether other applicants who had their administrative deposits forfeited should be refunded; that EMR should consider implementing an appeal or review mechanism if an applicant disputes a decision to disqualify their application; and that EMR should review the provision stating that an agent may not also act for themselves, as it may be inconsistent with fairness standards.

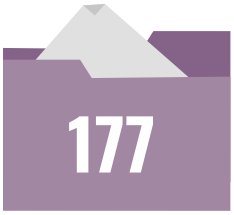
It is worth noting that we were able to resolve this complaint in less than 2 months, because the *authority* fully cooperated with our process. EMR was receptive to our comments, worked to provide us with timely responses, and regularly made themselves available to meet with the investigator as required. As a result, our office was able to effect meaningful change for future land lotteries.

Formal Investigations

There were no Formal Investigations initiated in 2022. We administratively closed two files that were opened in 2016 and 2018 respectively but had been held in abeyance. We determined that the issues leading to the complaint had been resolved without the need of an investigation. There is also an ongoing investigation that was launched by the former Ombudsman in October of 2021, relating to the allegation of unfairness over the lack of communication to parents of the sexualized abuse that occurred at Hidden Valley Elementary School.

Government of Yukon

2022 Statistics Ombudsman



Inquiries

26	Early Complaint Resolution	84	Information about mandate	16	No jurisdiction/wrong office/ incorrect referral
5	Comments from public	11	Information about Ombudsman office	29	Pending complaint
4	General process questions	0	Office complaint	1	Other

Complaint files

Complaint files - Informal Case Resolution (ICR)	
Files opened	24
Files closed (includes files from previous years)	27

Complaint files - Formal Investigations (FI)	
Files opened	0
Files closed (includes files from previous years)	2

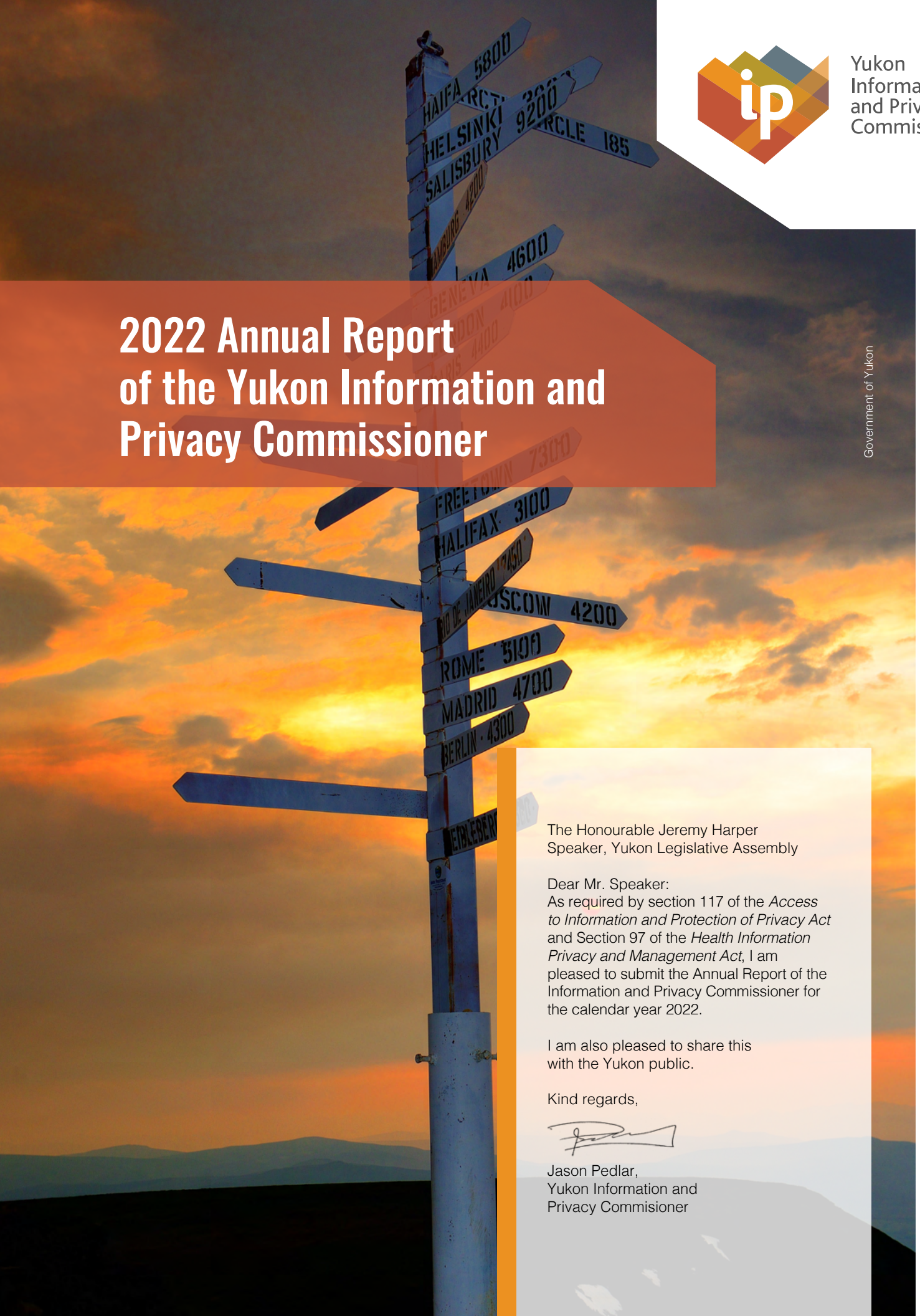
Total complaint files	
Files opened	24
Files closed (includes files from previous years)	29
Files to be carried forward	6

Total files opened in 2022

	Number of complaint files		
Authority	Informal Case Resolution	Formal Investigation	Total
Community Services	1	0	1
Economic Development	2	0	2
Education	2	0	2
Energy, Mines and Resources	2	0	2
Environment	1	0	1
Housing Corporation	1	0	1
Highways and Public Works	1	0	1
Health and Social Services	3	0	3
Human Rights Commision	1	0	1
Justice	6	0	6
Public Service Commission	3	0	3
Yukon Association of Education Professionals	1	0	1
	24	0	24

Yukon Information and Privacy Commissioner

2022 Annual Report of the Yukon Information and Privacy Commissioner



Government of Yukon

The Honourable Jeremy Harper
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 117 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 2022.

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

Kind regards,

Jason Pedlar,
Yukon Information and
Privacy Commisioner

Working on safeguarding the privacy and information rights of Yukoners

The *Access to Information and Protection of Privacy Act* (ATIPPA) and the *Health Information Privacy and Management Act* (HIPMA) are the two laws in Yukon that provide access to information rights and protection of privacy rights to Yukoners. These laws establish rules that *public bodies* and health sector *custodians* must follow to collect, use, disclose, secure, and manage personal and health information. Under ATIPPA, the public has the right to access any records held by *public bodies*. Under HIPMA, individuals have the right to access their own personal health information.

The Information and Privacy Commissioner (IPC) is responsible for ensuring that *public bodies* and health sector *custodians* comply with these laws. The IPC has the power to investigate complaints about non-compliance and other responsibilities including to inform the public about these laws.

Message from the Information and Privacy Commissioner, Jason Pedlar

It was a busy year for the Information and Privacy Commissioner (IPC) as the total file volume increased by 20% from 83 cases in 2021 (ATIPPA 60, HIPMA 23) to 100 in 2022 (ATIPPA 79; HIPMA 21). IPC handles over 41% of the inquiries of all three mandates combined, with a total of 139; 106 under ATIPPA and 33 under HIPMA.

These inquiries often result in providing individuals with complaint forms – many of which are not returned as the individual has chosen not to proceed with a complaint.

Our Informal Case Resolution team closed 47 ATIPPA files and 10 HIPMA files this year. They had an average handle time of 36 days for ATIPPA files compared to the Acts allowance of 60 days! Our team also did well with HIPMA files with an average handle time of 64 days compared to the Acts allowance of 90 days. All Formal Investigations that were opened this year, were closed by year end.

This year we saw an increase of 32% in ATIPPA complaint files, as compared to 2021.

We also made a big push this year to clear our backlog of open privacy impact assessments.

Recommendations continue to be rejected

Of the 21 recommendations made in four Formal Investigation reports, the Department fully accepted only four, partially accepted six, and rejected the remaining 11 recommendations entirely. As has been mentioned in previous annual reports by my predecessor, this is problematic.

In the Yukon, and similar to several other jurisdictions in Canada, the IPC only has recommendation power. This Ombudsman style recommendation model is intended to give discretion to the *public body* to ultimately decide what information is released, but *public bodies* must duly consider the recommendation of the IPC and provide reasons why they do not agree with our recommendations. Where a *public body* rejects the IPCs recommendations, the only recourse for a complainant is to seek a judicial review from the Yukon Supreme Court; something that is done infrequently due to the cost and resources required.

As I continue to meet with *public body* leadership over the next year, I intend to raise this concern with them. In addition, there are several pending court decisions challenging the *public body's* decision not to accept our recommendations that may help to clarify the process and improve acceptance.

Privacy Impact Assessments

Privacy Impact Assessments (PIAs) are evaluations done on a system or program that considers the privacy implications of how personal or health information is managed within that system or program. Think of it like a privacy blueprint. The blueprint maps out the flow of data that contains personal information in and out of the program and cites the *public body's* authority in legislation for collecting the personal information, its use, and any disclosure of information.

The PIA blueprint is proactive, and the intention is to ensure that privacy requirements in ATIPPA and HIPMA, and privacy preserving principles are considered at the start when a program or service is first being envisioned or when undergoing changes.

Under ATIPPA, the *public body* is required to submit their PIA to us for our comments and recommendations in certain circumstances. In many situations however, the *public body* is not required to submit their PIA to us, but despite not needing to, we still receive several "non-mandatory" PIAs that we are only too happy to review and to share our expertise and opinions.

Over the past several months, I have made some changes to the way we handle PIAs that are submitted to our office. I hope to improve our efficiency and to be able to provide responses back to *public bodies* in a timelier manner so that our recommendations can be considered prior to system or program implementation. There is still work to be done over the next several years to improve upon our process for providing recommendations; to build our resources to assist *public bodies* in writing their PIAs so that they are comprehensive and complete, and reducing the amount of time spent going back and forth with the *public body* to fill in gaps in their assessment.

Guidance to assist *public bodies* and *custodians* with obligations to log and audit electronic systems

Our IPC office developed new guidance to help *public bodies* and health *custodians* in the Yukon fulfill their obligation to perform logging and auditing on their electronic systems that contain personal information (PI) or personal health information (PHI).

This obligation is set out for *custodians* under the *Health Information Privacy and Management Act* and for *public bodies* in the *Access to Information and Protection of Privacy Act Regulation*.

Logging is the creation of a record that shows any access to, creation of, addition to, alteration of, or deletion of PI or PHI. Auditing is the process of formally examining these logs to investigate the confidentiality and integrity of the PI or PHI. Having appropriate logging and auditing in place serves to deter and detect improper activity, such as unauthorized access or use of PI or PHI.

The guidance can be found on our website.

Compliance

Under the *Access to Information and Protection of Privacy Act* (ATIPPA) and the *Health Information and Privacy Management Act* (HIPMA) our office handles several types of compliance files including privacy impact assessments (PIA), security threat risk assessments (STRA), and privacy breach evaluations.

Both the ATIPPA and HIPMA make it mandatory for *public bodies* and *custodians* to conduct a PIA in certain circumstances, for example, when they are implementing a new program or activity, or if they are making significant changes to an existing program or activity that involves the collection, use or disclosure of personal information. Depending on the type of program or activity being carried out, *public bodies* and *custodians* must also submit a copy of their PIA to our office for review and comment.

Privacy impact assessments (PIA)

A PIA is a risk assessment process that examines the flow of personal information within a given program or activity. PIAs helps *public bodies* and *custodians* ensure they meet their legislative requirements and identifies the impacts their programs and activities may have on individuals' privacy. PIAs help reduce the risk of unauthorized collection, use, disclosure, retention, or disposal of personal information by identifying and mitigating privacy risks throughout the data life cycle.

Security threat risk assessment (STRA)

A STRA is the overall activity of assessing and reporting security risks for a given information system to make risk-based decisions. Like a PIA, a STRA maps out the data flows for a given information system to identify security risks, but with a particular lens on technical vulnerabilities. Examples might include risks to the confidentiality, integrity and availability of information stored in a system, as well as vulnerabilities related to malware, ransomware attacks, hacking, etc. The ATIPPA makes it mandatory for *public bodies* to conduct a STRA and submit it to our office for review before carrying out personal identity services (also known as digital ID), integrated services, data-linking activities, information management services, or a significant change to any of the above noted types of information systems. Evaluating STRAs requires a certain level of technical expertise.

Privacy Breach Evaluations

A privacy breach (or security breach) means that personal information was collected, used, or disclosed without authority under the ATIPPA or HIPMA. If a *public body* or *custodian* assesses that a breach occurred and determines there is a risk of significant harm to anyone as a result of the breach, they are required to notify our office and provide a copy of their breach report for review and comment.

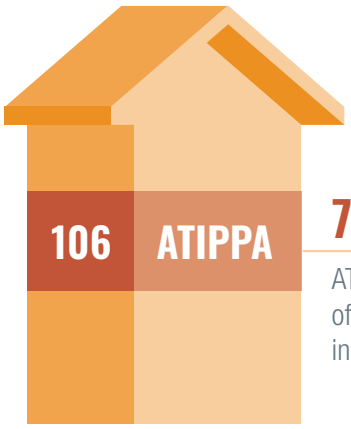
Concluding remarks

You can find more information about the type of files we have handled and statical information in the pages that follow.

Jason Pedlar,
Information and Privacy Commissioner

Stats at a glance 2022 Access to Information and Protection of Privacy Act (ATIPPA)

Note that our complete statistics can be found at the end of the IPC section of this report.



76%
ATIPPA inquiries of 139 IPC inquiries

Inquiries

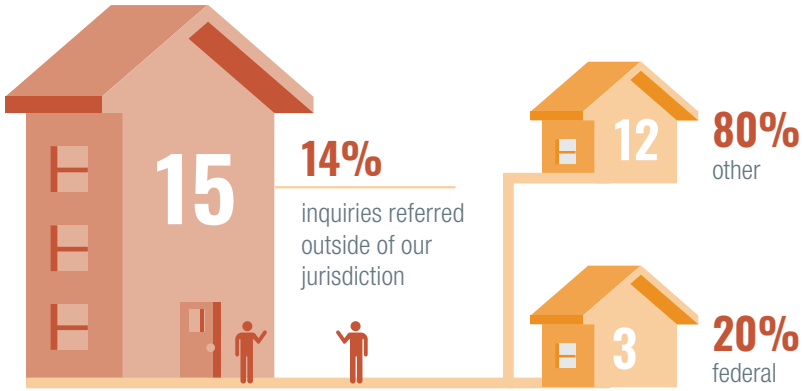
45 (42%) access

61 (58%) privacy

0 administration

4%
Early Complaint Resolution

Referrals



14%
inquiries referred outside of our jurisdiction

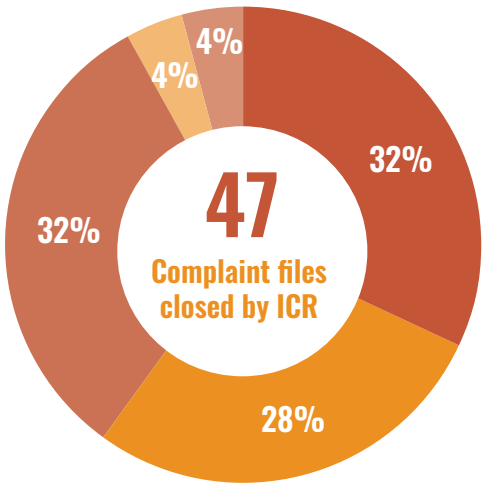
80% other

20% federal

Complaint files opened at Informal Case Resolution (ICR)

34 (77%) access | **10 (23%)** privacy | **0** administration

Of Interest! The majority of our ATIPPA complaints are related to access to information requests.



Determination

As part of our investigation process, the ICR team determines whether the complaint was substantiated, unsubstantiated, or partially substantiated.

15 **(32%) substantiated**
We agreed with the complainant that there was unfairness or non-compliance that needed to be addressed.

15 **(32%) partially substantiated**
We agreed with the complainant on some matters, but not everything.

13 **(28%) unsubstantiated**
We did not find evidence of unfairness or non-compliance.

2 **(4%) escalated to Formal Investigation**

2 **(4%) N/A**
We were unable to make a determination about the complaint. This might include complaints that were withdrawn during the investigation process, or upon closer examination of an issue, we declined to investigate further.

Stats at a glance 2022 Access to Information and Protection of Privacy Act (ATIPPA)

Information and Privacy Commissioner

60 DAYS statutory deadline

36 DAYS our average handle time

Formal Investigations opened

4

3 (75%) access

1 (25%) privacy

0 administrative

Formal Investigations closed

9

Of interest! No complaints were unsubstantiated. Files were escalated to Formal Investigation for a valid reason.

7 (78%) substantiated

0 unsubstantiated

1 (11%) partially substantiated

1 (11%) N/A

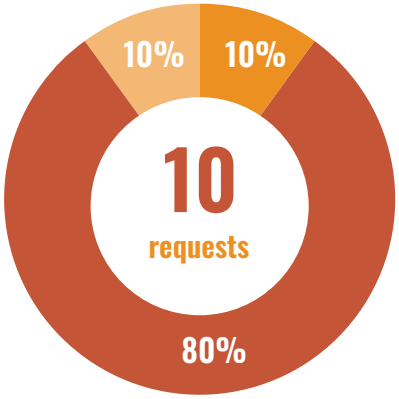
Compliance files opened

21

1 (5%) own motion compliance audit

7 (33%) privacy breaches

13 (62%) deemed refusal



Of interest! The majority of the PIAs aren't mandatory – our advice and expertise are valued and respected.

1 (10%) advice (best practices)

8 (80%) comment

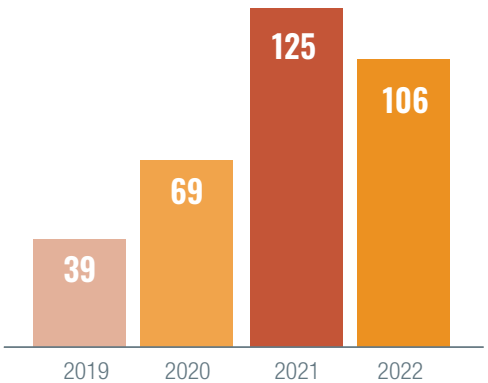
PIA requests: **7**

- **2** mandatory
- **5** voluntary

review of act: **1**

1 (10%) decision (time extension request)

Inquiries



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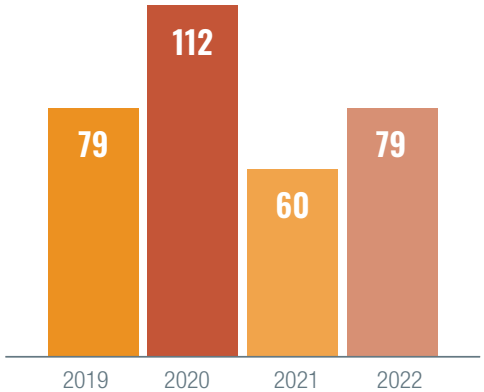


Your ATIPPA stories - Informal Case Resolution

The ways in which *public bodies* share information has evolved in recent years, with newer kinds of technology often coming into play. Similarly, the types of access and privacy complaints that we receive at our office have also evolved. In looking at some of the cases that were handled by our Informal Case Resolution team in 2022, it's apparent that the use of technologies such as video recording can become central to resolving a complaint. We also had a steady flow of complaints about the need to improve documentation of government decisions. As we've seen in many cases over the years, consistent and thorough training of employees in privacy and access matters is what's needed.

Below are some examples of the cases dealt with by our Informal Case Resolution team throughout 2022.

Transparency in decision-making is key

Public Body: Department of Highways and Public Works

The individual who brought this complaint to us made an access request for information related to a change in the minimum requirements for becoming a certified Periodic Motor Vehicle Inspection (PMVI) inspector. The Carrier Compliance Unit within the Transport Services Branch of the Department of Highways and Public Works (HPW), the *public body* in this case, was identified as having records responsive to this request.

The complainant received a small number of records in response to the access request. One of the records said that a policy review had been conducted, which was related to the change in requirements. The complainant felt that if a policy review had been conducted, there ought to have been further records identified as responsive. They believed that the search for records was inadequate.

Our investigator spoke with HPWs designated access officer (DAO) who had dealt with this request. The DAO indicated that, because of an administrative error, some records that were responsive to the request had not been given to the complainant. The DAO also confirmed that the Carrier Compliance Unit had indicated that many meetings relating to the PMVI process were conducted "behind closed doors" and did not produce any records.

Our investigator spoke with the Carrier Compliance Unit to learn more about what was meant by "behind closed doors". A meeting behind closed doors is not itself a reason to withhold information – although exceptions to the right of access to information may apply, for example, if the document is a Cabinet record.

The unit described the policy review regarding the PMVI to our investigator, including the steps taken and the points at which records were created. We found that the unit had not kept very thorough documentation about the review process, or the changes made, so there were few records to produce.

Our investigator was ultimately satisfied that the *public body* had provided all responsive records but was concerned with the lack of documentation. The PMVI policy review led to a decision that affected several individuals and if a *public body* makes a decision that affects people, the reasons for that decision should be documented and transparent. This principle holds true even for small units or branches, where all employees are aware of the changes, as was the case here.

Our investigator asked the *public body* to prepare an amended response for the complainant, containing the records that were omitted. Because the amended response was completed while this complaint remained open, it was not necessary to make a recommendation.

Our investigator also spoke with the Carrier Compliance Unit about the concerns that were identified and learned that steps were already underway to maintain more thorough documentation and to improve practices in the future.

Personal information can be disclosed for law enforcement purposes only when necessary

Public Body: Department of Justice

In January 2022, a complainant came to our office with a concern that an employee of the Department of Justice, the *public body* in this case, had disclosed their personal information without authority.

Justice had been tasked with conducting investigations into possible offenses under the Civil Emergency Measures Act (CEMA) and the complainant was concerned that their personal information was disclosed to a third party in a phone call during a CEMA investigation.

The complainant was also concerned about how the employee would have obtained the personal information, and if this was something that Justice employees routinely had access to.

Although the CEMA enforcement program was terminated shortly after our receipt of this complaint, we investigated the matter to determine if there had been any non-compliance with the *Access to Information and Protection of Privacy Act* (ATIPPA), whether any further action would be required, and if there were any compliance issues that ought to be remedied, if the program resumed in the future.

Our investigator spoke with the *public body* to learn how information is collected and disclosed during a CEMA investigation, as well as the steps taken when Justice investigated this case.

We learned that a CEMA investigation could be initiated when Justice received a complaint form about an alleged violation of CEMA – these complaint forms often contained personal information.

In some cases, Justice might require additional information for an investigation, which could be obtained from third parties. When an alleged violation of CEMA concerned an individual's COVID-19 vaccination status, information about their vaccination record would be requested from the Department of Health and Social Services (HSS). Justice employees did not otherwise have access to this information, which was provided only on request.

Our investigator verified that Justice had investigated the complainant on receipt of a complaint form, and that personal information had been requested from HSS. We also confirmed that after the Justice employee had collected information from HSS, they had contacted a third party for additional information. Sensitive personal information was disclosed to the third party in that phone call.

ATIPPA authorizes the collection of personal information for law enforcement purposes, including for CEMA investigations. In our view, the authority to collect this information included information on the complaint forms that was obtained from HSS. However, disclosure is authorized in this context only when it is necessary for the investigation. A *public body* should carefully consider whether it can achieve its purpose without having to collect or disclose certain information.

Our investigation concluded that more information was disclosed to the third party than was necessary, leading to our conclusion that the information was disclosed without authority under the ATIPPA.

In addition, our investigator learned that Justice employees had not been provided with training on ATIPPA. We asked that training be provided if the enforcement program was resumed.

Our investigator also learned that CEMA complaint forms were stored in a ledger that could be accessed by certain Justice employees. As this information came to light in the latter part of our investigation, it was unclear whether there were appropriate controls in place to restrict access to this information. Our investigator asked that Justice evaluate this issue and give it further consideration should the enforcement program resume.

Having the right technology and the right process can make all the difference

Public Body: Department of Health and Social Services

In this case, a complainant came to us in April 2022, after he had submitted an access request for video footage of themself in a facility operated by the Department of Health and Social Services (HSS), the *public body* in this case. The footage also contained images of third parties. The *public body*'s position was that it was prohibited from releasing the third-party information under section 70 of the *Access to Information and Protection of Privacy Act* (ATIPPA) because it would be an unreasonable invasion of the third parties' privacy. HSS did not have the technology to sever the third parties' information – for example, by blurring their image and because of this, access was refused in full.

When an access request is made for information that contains third party personal information, it can sometimes be appropriate to allow the applicant to view the footage, rather than provide them with a copy. This helps to balance an individual's right to privacy with the right of access to information, both of which are set out in ATIPPA. Depending on the information, viewing the footage (but not receiving a copy) may not be an unreasonable invasion of privacy. In this case, however, the complainant did not wish to view the footage, but instead wanted a copy. Our investigator spoke with HSS to learn about the technology it had available for processing video footage. We found that the video footage was usually accessed via software with limited functionality. Video feeds could be navigated with standard controls such as pause, play, and fast forward, but there was no ability to redact a video record, for example by cropping or blurring. However, we found that HSS did possess other software that enabled splicing of video footage so that the images of third parties could be removed.

As HSS had the technology available to provide a more fulsome response without unduly burdening their operations, it was our view that its response to the access request was incomplete, and that HSS had not met its obligations under section 64 of ATIPPA. HSS agreed to provide the complainant with an amended response using the spliced footage. It was our view that this was sufficient to provide a complete response to the complainant.

Although in this case the footage at issue was relatively easy to splice into an amended response, this may not be the case in all instances, and the technology available was poorly equipped to handle such scenarios.

Our investigator made two observations to the *public body*.

First, through its adoption of this video surveillance software with limited functionality, HSS had effectively introduced a means of collecting information that would impede a right of access to information. When a *public body* collects information, consideration must be given as to how the right of access is being preserved. This did not appear to have been contemplated in this instance.

In addition, we noted that access requests for video records may be infrequent and can present unique considerations. A written process can be helpful in ensuring such requests are managed appropriately. We found that although HSS did not have a written process in this regard, this issue had already been identified and HSS was working to include language in its written process to address it.

When sharing goes too far

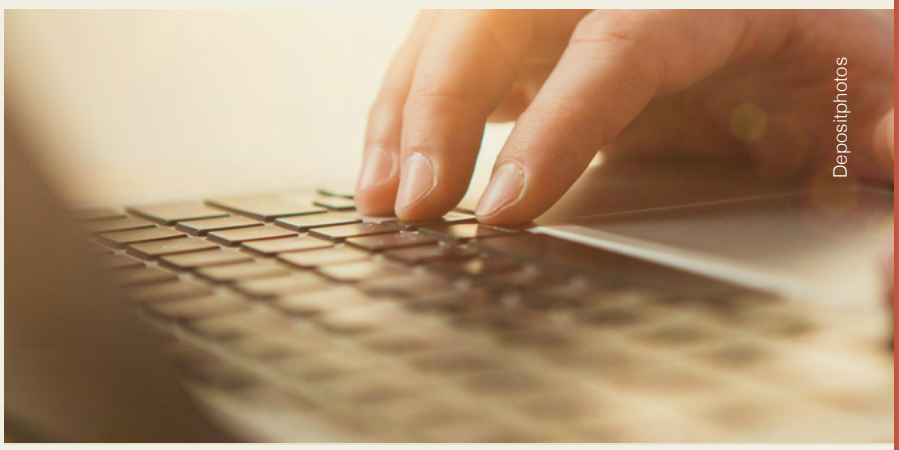
Public Body: Department of Health and Social Services

In November 2022, we received a privacy complaint about the Department of Health and Social Services (HSS), the *public body* in this case. The complainant believed that HSS had disclosed their personal information without authority under the *Access to Information and Protection of Privacy Act* (ATIPPA), when it posted an unredacted letter about them, which came from another *public body* to a shared computer drive. The shared drive was accessible to many people in their workplace and department.

The complainant also explained that their supervisor within HSS had emailed several employees with a link to the letter in the shared drive. When the complainant voiced their concerns, no action was taken. Instead, the supervisor maintained that they were authorized to disclose this information, and that they couldn't change the contents of a letter from another *public body*.

To get the matter sorted, our investigator spoke with the designated privacy officer (DPO) at HSS and found that she was already aware of this case. The *public body* proactively took several steps in response to the complaint while our investigation was still underway:

- The letter was taken off the shared drive and replaced with a redacted version.



- Employees were notified that the letter had been removed and replaced with the redacted version; were directed not to disclose the original unredacted information; and were asked to confirm that they kept no copy of the unredacted information, nor had they shared it with anyone.
- The complainant was notified that the original letter was replaced with a redacted version.

Our investigator concluded that HSS did not have the legal authority under the ATIPPA to disclose the letter in its entirety and had failed to act when the complainant initially flagged the issue. Sixteen days had passed before HSS identified the incident as a privacy breach. A further 12 days elapsed before the letter was removed from the shared computer drive. Therefore, the complainant's privacy complaint was substantiated.

Our investigator made the following recommendations which the *public body* accepted in full:

- Within 60 days, HSS should review relevant policies and procedures to ensure that any posting of information complies with the ATIPPA.
- HSS should immediately review the contents of the shared drive, remove any other letters that may contain employee personal information and have them redacted before re-posting.

Video surveillance at schools – two cases that illustrate access and privacy aspects of this technology

Public Body: Department of Education

Case #1

In December 2021, a complainant came to us who was a lawyer acting on behalf of a client. The lawyer had submitted an access request to the Department of Education, the *public body* in this case, for video footage of an incident that occurred at a school and that involved their client.

The Department had indicated that one digital video record (DVR) had been located, but refused to grant access to it because it had determined that this would be an unreasonable invasion of a third party's privacy, as set out in subsection 70 (1) of the *Access to Information and Protection of Privacy Act* (ATIPPA). The complainant asked for a review of the *public body*'s decision to refuse access.

An individual's image captured through video surveillance is their personal information. A fundamental right under ATIPPA is that individuals can access their own personal information that is in the custody or control of *public bodies*. However, exercising this right can be complicated when an individual's personal information is intertwined with that of another person(s), so that the two cannot be easily separated, as was the case with this video record.

Our office previously dealt with a similar situation which was described in an inquiry report issued in 2016 (ATP15-055AR). An individual had asked the Department of Justice, the *public body* in that case, for access to DVR footage from the Whitehorse Correctional Centre (WCC). The footage also contained third party personal information of other individuals including WCC employees and other inmates. At the time, the Information and Privacy Commissioner (IPC) found that releasing the DVR records to the applicant would constitute an unreasonable invasion of the third parties' personal privacy, as well as potentially compromise WCC security. The IPC affirmed Justice's decision to refuse to provide a copy of the record to the applicant. However, the IPC also found that the applicant should be allowed to view the record (without receiving a copy), as this struck an appropriate balance between the applicant's right of access and protection of third parties' personal privacy.

In the complaint against Education, we understood that at least one other person, aside from the complainant's client, appeared in the record. We also understood that the video footage in question pertained to a situation that was now the subject of a civil legal proceeding.

Our office asked Education whether it had offered the complainant an opportunity to view the footage at issue. We learned that Education was not aware of the inquiry report noted above, or that allowing a complainant to view the video record was an option.

We shared the inquiry report with Education and said that barring any new information, we agreed with the decision to refuse access to the video record. However, using the rationale in the 2016 inquiry report, we recommended that the complainant and their client be given an opportunity to view the record, without receiving a copy.

Education accepted our recommendation and proactively went the extra mile by updating its internal procedures for managing access requests to note that, in some circumstances, it may be appropriate to allow an applicant to view a record even if it did not provide them with a copy.

Public bodies are bound by IPC interpretations of the ATIPPA and have a duty to be familiar with IPC decisions and their impacts on the management of access and privacy files. However, we recognize that implementing this can be difficult, particularly where there is a high rate of employee turnover and a lack of adequate training for staff who manage access requests. This case was not the first time we have encountered situations in which staff were not aware of an IPC decision that could significantly impact the rights of an applicant. With that said, our office was pleased with the *public body's*

continued...

cooperation on this file, in particular its efforts to proactively address future instances. The case was concluded in January 2022.

Case #2

Through previous complaints, including the case mentioned above, we learned that the Department of Education was using video surveillance technology (VST) to monitor the activities of students and other individuals, including teachers, parents, and visitors in some Yukon schools.

The Information and Privacy Commissioner (IPC) decided to investigate the *public body* for the use of this technology and conduct an own motion compliance audit to evaluate whether the personal information collected through the Department's use of VST in schools is adequately protected in accordance with the requirements of the *Access to Information and Protection of Privacy Act* (ATIPPA) and its regulation.

The IPC examined the Department's policies, procedures, and practices for the use and disclosure of personal information collected via VST in a school; the storage, retention, and destruction practices; and the rules regarding access, breach reporting, and management. The IPC also evaluated certain security requirements, including who has access to this personal information and why, as well as the controls used to assure the confidentiality, integrity, and availability of the records created through VST.

The IPC determined that the Department was not fully meeting its obligations under section 30 of the ATIPPA and section 9 of the regulation and that the Department should implement additional security measures to prevent unauthorized access to the VST records and to adequately protect the personal information in the records.

The IPC made several recommendations to Education, including that the Department update its VST policy to meet the requirements of the ATIPPA and its regulation. The recommendations included specifics about how the policy should be improved, including to state that only a reasonable amount of personal information in the VST records may be used or disclosed, and only in order to address significant or serious incidents that threaten the health or safety of students, or to address significant and serious damage to school property. In addition, examples should be given in the policy to help employees make this determination.

Another aspect of the recommendations is that the policy should clarify that unauthorized use or disclosure of personal information in the records is a reportable privacy breach and may be an offence under law. As well, the policy should include specific details on retention and destruction of the VST records; rules for accessing and managing VST records; requirements to report breaches; the title of a person within the department responsible for ensuring that a privacy impact assessment be completed and approved for any planned use of VST in a school, prior to its use; and specific requirements regarding giving notice to individuals where VST is being used.

The IPC also recommended that the storage device(s) for the VST records have controls regarding who has access and is secure, including adequate locks, encryption and so on.

Education accepted 22 of the 24 recommendations and agreed to begin work on implementing them. Regarding two of the recommendations, Education committed to implement them in full in any new VST systems as they are deployed and to implement them as soon as possible in existing VST systems.

Government of Yukon

ATIPPA Formal Investigation reports

We issued four formal investigation reports that are summarized below.

Video surveillance in schools: ATP-ADJ-2022-02-044 Investigation Report

Public body: Department of Education
As a result of a complaint about the use of video surveillance technology (VST) in a Yukon school made to the Information and Privacy Commissioner (IPC) in February of 2022, the IPC learned that video surveillance technology is being used in several Yukon schools.

Considering the privacy sensitive nature of information collected using VST, the vulnerability of the population subject to surveillance (children) and, the precedents of incidents harmful to privacy involving video surveillance, the IPC decided to exercise it's own motion under the *Access to Information and Protection of Privacy Act* (ATIPPA) to investigate the Department's authority under the ATIPPA to collect, use and disclose personal information through its use of VST in Yukon schools. In its submissions, the Department identified that it is using VST in seven Yukon schools.

After reviewing the Department of Education's submissions and supporting documents, the IPC found that the Department is not authorized to collect the personal information that it is collecting through the use of VST in the seven schools. The IPC further determined that the Department has not properly limited the amount of personal information collected through the use of VST to the minimum amount that is reasonably necessary for the purpose of the collection as required under the ATIPPA and under the Department's own video surveillance policy.

The IPC recommended that the Department immediately cease collecting personal information using VST and that it securely destroys any personal information that it has collected through the use of VST.

The IPC also recommended that if the Department intends to recommence using VST in any of the seven schools, that it submits a privacy impact assessment to the Office of the IPC for review and comment prior to such use.

The IPC made four recommendations. The Department rejected all of them.

Access to VIN records: ATP-ADJ-2022-02-045

Public body: Department of Highways and Public Works
Investigation Report ATP-ADJ-2022-02-045 to the Department of Highways and Public Works, June 22, 2022, regarding access to vehicle identification number records.

The IPC made two recommendations. The Department rejected all of them.

GPS collar data for Yukon North Slope grizzly bears: ATP-ADJ-2022-02-053 Investigation Report

Public body: Department of Environment
Investigation ATP-ADJ-2022-02-053 to the Department of Environment, August 5, 2022. The IPC recommended that all the requested information be released to the complainant.

The Department rejected the recommendation.

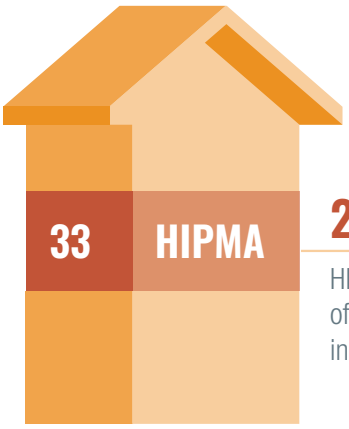
Renovation Grant evaluation process: ATP-ADJ-2022-04-133 Investigation Report

Public body: Department of Economic Development
Investigation ATP-ADJ-2022-04-133 to the Department of Economic Development, October 26, 2022.

The IPC made 12 recommendations. The Department accepted four recommendations, partially accepted six recommendations, and rejected two recommendations.

Stats at a glance 2022 Health Information Privacy and Management Act (HIPMA)

Note that our complete statistics can be found at the end of the IPC section of this report.



24%
HIPMA inquiries of 139 IPC inquiries

Inquiries

11 (33%) access

21 (63%) privacy

1 (3%) administration

Complaint files opened at Informal Case Resolution

7 (88%) access

1 (12%) privacy

0 administrative

Determination

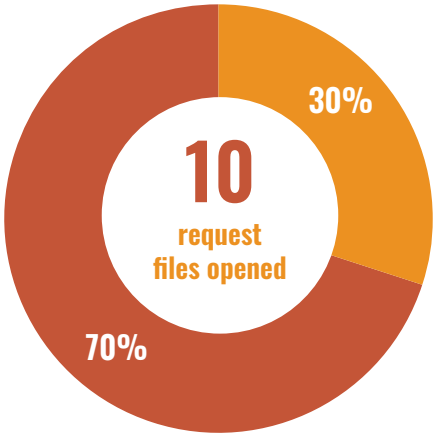
3 **33% substantiated**

3 **33% partially substantiated**

3 **33% unsubstantiated**

statutory deadline

our average handle time



Request files opened

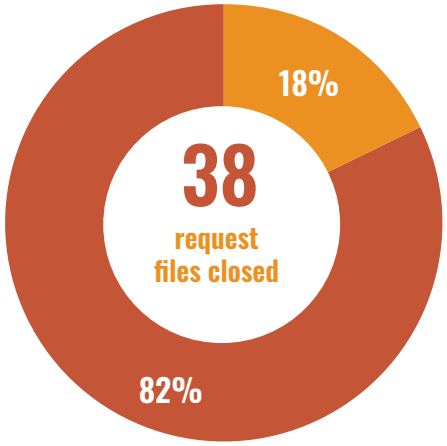
3 (30%)
advice

7 (70%) comment
PIA requests: **4**
- **4** mandatory
- **0** voluntary

Implications for the protection of privacy of existing legislative schemes or programs of Government of Yukon: **2**
External request for response on related topic: **1**

0 Decision

Stats at a glance 2022 Health Information Privacy and Management Act (HIPMA)



Of Interest! We made a big push this year to clear our backlog of open privacy impact assessments!

Request files closed

7 (18%)
advice

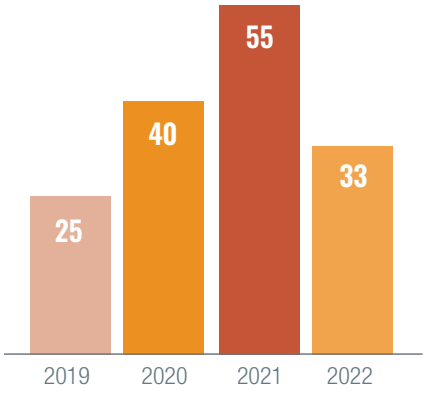
31 (82%) comment
PIA requests: **22**
policy review: **1**
review of Act: **1**
promote best practices: **1**
general files: **3**
implications for the protection of privacy of proposed legislative schemes or programs of the Government of Yukon: **3**

0 formal Considerations

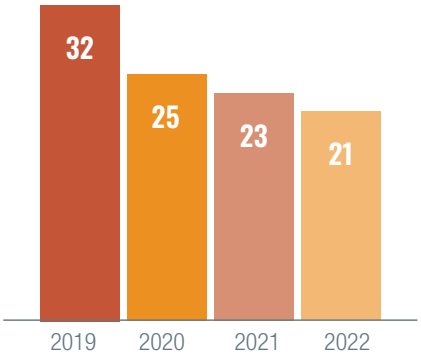
A HIPMA formal investigation is called a Consideration.

100%
HIPMA files were resolved by ICR

Inquiries



Files opened



compliance files opened

(100%)
privacy breaches

Of interest! With hundreds of *custodians* across the Territory, this very low number suggests that breaches are not being reported, despite a requirement to do so.

Your HIPMA stories - Informal Case Resolution

Complaints received under HIPMA have to do with the collection, use, and disclosure of personal health information (PHI). PHI is often very sensitive, therefore *custodians* must be extremely cautious in determining how to handle this information. In these two examples of complaints dealt with by our Informal Case Resolution team in 2022, our findings were that the *custodians* in both cases did not have authority to disclose the personal health information at issue. The following are samples of some of the cases that may serve as useful examples for all *custodians* as they carry out their responsibilities under HIPMA.

A high threshold for collecting personal health information

Custodian: Department of Health and Social Services

We received a complaint from an individual who received treatment in the medical examination room at the Whitehorse Emergency Shelter (WES), which at the time was operated by the Department of Health and Social Services (HSS), the *custodian* in this case.

After receiving treatment, the complainant learned that there was a video camera in the medical examination room. The complainant was concerned about this because footage of medical treatment is sensitive information, and in their case, they had been in a state of undress during the treatment. They stated that they were not aware that a video camera was in the room and were concerned that the *custodian* might not have the authority to use video surveillance in that room while a patient is receiving treatment.

The *custodian* confirmed that there was a camera in the medical examination room. The camera was collecting health information, and because the Department of Health and Social Services is a *custodian*, we evaluated this case under the *Health Information Privacy and Management Act* (HIPMA). Under HIPMA, the collection of personal health information through a video camera is considered a direct collection of information. In such cases, any provisions that might authorize the *custodian* to collect this information require that the *custodian* demonstrate that the collection is necessary, and that the individual consents to the collection.

The threshold of necessity is rather high and is also contextual. Where the information is particularly sensitive – such as video footage of an individual undergoing a medical procedure – that threshold is higher still. After discussing the matter with the *custodian*, our investigator did not believe that HSS had provided sufficient evidence to support its claim that the video camera was necessary. Our conclusion was that HSS was not authorized under the HIPMA to collect health information in this way.

Our investigator recommended that the *custodian* disconnect this video camera, which HSS agreed to do. This action was taken promptly which resolved the complaint.

A series of unfortunate events... contradictions, delays, and a privacy breach

Custodian: Department of Health and Social Services

In June 2022 we received a complaint about the Department of Health and Social Services (HSS), the *custodian* in this case. The complaint was about the Mental Wellness and Substance Use (MWSU) branch's disclosure of the complainant's personal health information (PHI).

The complainant explained that while at the Whitehorse Correctional Centre (WCC), their MWSU counsellor disclosed their PHI to their WCC case manager through phone calls in March 2022. The PHI at issue included details that the complainant shared with their counsellor during a telephone counselling session. It was the complainant's understanding that these conversations with their counsellor were confidential. They told our investigator that they never signed a release of information form and that they never consented, verbally or otherwise, to the disclosure of their PHI to anyone – and certainly not to WCC. The complainant believed that their counsellor disclosed their PHI in contravention of the *Health Information Privacy and Management Act* (HIPMA), resulting in a breach of their privacy.

In support of their concerns, the complainant provided four pages of evidence that they obtained via an access to information request. The evidence consisted of notes taken by the WCC case manager during two phone calls with the MWSU counsellor.

Initially, the *custodian* told the investigator that they had relied on a section of the HIPMA that allows for disclosure of PHI without an individual's consent to an official of a "penal institution" for the purpose of providing health care to the individual. This information appeared inconsistent with the evidence from the complainant because the WCC case manager's call notes did not contain any reference to arranging healthcare for the complainant.

The HSS Designated Privacy Officer (DPO) then met with MWSU to discuss what had occurred. MWSU was adamant that they had not disclosed any PHI to WCC, but rather that it was WCC who had disclosed PHI to them. Again, this appeared inconsistent with the initial response provided by HSS – that they had disclosed the complainant's PHI to WCC with authority under the HIPMA – and with the evidence from the complainant.

To sort out the matter, we provided HSS with a copy of the evidence from the complainant for their review and consideration. Despite following up on several occasions, we did not hear back for several weeks. When we did hear back, we learned that HSS designated privacy officer, our primary contact person within HSS, was away from the office for an additional two weeks.

HIPMA only allows for a maximum of 90 days to informally resolve complaints before they escalate to a formal Consideration. Up to this point, the information we had received from HSS was contradictory, and we did not have a clear understanding of what had occurred.

With the statutory time limit running short, the investigator made attempts to reach out to individuals within HSS who were familiar with the case and learned that HSS was now relying on a section of the HIPMA which authorizes the disclosure of PHI without an individual's consent to prevent a risk of serious harm to the health or safety of another individual. However, no details were provided about how MWSU had arrived at this conclusion. This was yet another new version of events from HSS.

Our investigator then followed up with several others, including the counsellor and their supervisor, only to find additional contradictions in the versions of events being presented. HSS also refused to meet with our investigator until the HSS' designated privacy officer was back in the office – well beyond the statutory time limit for informal resolution.

With the matter having reached this standstill, as a last effort the investigator reached out to the MWSU director and was finally able

continued...

to achieve some progress through a meeting with those involved. After the meeting, the investigator also obtained copies of MWSU's relevant policies and procedures.

With very little time left for informal resolution, the investigator was finally able to conclude that the *custodian* did indeed disclose the complainant's PHI to a case manager at WCC, without consent, and contrary to the HIPMA. While the counsellor took issue with how the conversations had been documented by the WCC case manager, they acknowledged that these calls occurred, and that the complainant's PHI was disclosed. The counsellor also confirmed they had not documented the calls and was therefore unable to substantiate their version of events, or that the complainant had consented to the disclosure.

Our investigator also concluded that MWSU's policies and procedures are not sufficiently detailed to demonstrate that it is meeting the requirements of the HIPMA.

The investigator made several recommendations, including:

- HSS should immediately conduct a privacy breach assessment in accordance with HIPMA regarding the disclosure of the complainant's PHI.
- MWSU should develop and implement detailed written policies and procedures that require staff to document, validate, and update a person's consent for the collection, use, and disclosure of PHI and set out a process for when a client refuses or withdraws consent.
- MWSU should develop and implement a written policy and procedure to comply with the HIPMA that requires staff to document any instance where PHI is disclosed without patient consent.
- The investigator also made two observations:
  - If one does not already exist, MWSU may want to consider developing and implementing a policy and procedure specifically for dealing with individuals who are involved with the legal system.
  - If one does not already exist, MWSU may want to consider having a written policy and procedure requiring staff to keep accurate and up to date records of conversations with stakeholders, including documenting phone calls, case notes, email correspondence, etc.

Government of Yukon

HIPMA formal Consideration report

There were no formal Considerations opened in 2022 because 100% of our complaint files were resolved by our Informal Case Resolution team. However, the following report was from a file opened in 2020 that we closed this year.

Custody and control of patient records of a *custodian*: HIP20-03i Consideration Report

A person made a complaint to the Information and Privacy Commissioner (IPC) alleging that a breach of the *Health Information Privacy and Management Act* (HIPMA) had occurred because a physician left the Yukon without securing a successor *custodian* for the patient records within his custody or control, the location of which are unknown, and failed to notify anyone of their subsequent location.

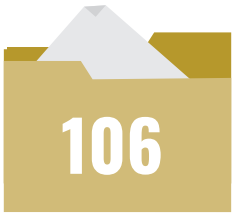
The IPC found that, the *custodian* retained custody or control of the records after closing his medical practice and had no legal obligation to transfer his patient's records. The IPC also found that the *custodian* did not meet his obligations to properly secure his patients' records that are stored in a storage unit, that he failed to make available a written statement about his information practices available to the public as required, and that he failed to enter into an information agreement with Plexia, his information manager, for his electronic patient records.

To remedy the non-compliance with the HIPMA, the IPC recommended that the *custodian* provide the IPC with his current contact information, the location of the records, the identity of any persons who had or has access to the records, and documents demonstrating compliance with the HIPMA. The IPC also recommended that the *custodian* take immediate steps to address the breaches of security identified because of the *custodian* failing to meet his obligations to establish agency relationships with those persons accessing the records contrary to the HIPMA and to provide a report containing the *custodian's* assessment about whether any of his patients are at risk of significant harm because of the security breaches. The IPC gave the *custodian* 60 days to provide the documentation identified in the recommendations.

The recommendations were not accepted.

2022 Statistics Access to Information and Protection of Privacy Act (ATIPPA)

Information and Privacy Commissioner



Inquiries

4	Early Complaint Resolution	34	Information about mandate	6	No jurisdiction/wrong office/incorrect referral
2	Comments from public	8	Information about office	44	Pending complaint
5	General process questions	1	Office complaint	2	Other

Complaint files

Complaint files - Informal Case Resolution	
Files opened	44
Access	34
Privacy	10
Files closed (includes files from previous years)	47

Complaint files - Formal Investigations	
Files opened	4
Access	3
Privacy	1
Files closed (includes files from previous years)	9

Compliance files	
Files opened	21
deemed refusal	13
privacy breaches	7
compliance audit	1
Files closed (includes files from previous years)	27

Formal Investigations by recommendations

		Recommendations			
Public body	Formal Investigations opened and closed	Total	Accepted	Not Accepted	Partially Accepted
Highways and Public Works	1	2		2	
Department of Environment	1	3		3	
Department of Economic Development	1	12	4	2	6
Education	1	4		4	
Total	4	21	4	11	6

Total files (complaint/compliance/request)	
Files opened	79
Files closed (includes files from previous years)	120
Files to be carried forward	22

Privacy Impact Assessment review activities

Public body	PIA submissions	Status
Education	Student Protection Policy	Review not yet complete
Highways and Public Works	ATIPP office - Case Management System	Review complete
Highways and Public Works	Online Driver Registration Program	Review not yet complete
Highways and Public Works	Infolinx	Review not yet complete
Highways and Public Works	Apprendo	Review not yet complete
Public Service Commission	MyYukon	Review not yet complete
Yukon Housing Corporation	Video Surveillance	Review complete

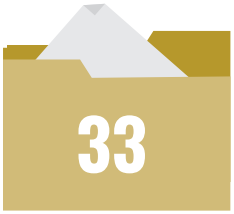
Request files	
Files opened	10
Advice	1
Comment	8
-PIA	7
-review of act	1
Decision	1
Files closed (includes files from previous years)	36

Total files opened in 2022

	Number of files							
Public body	Informal Case Resolution complaint files	Compliance			Request files		Formal Investigation complaint files	Total
		Deemed refusal notices	Privacy breaches	Audit	Decision	Comments/ Advice		
Community Services	1		1					2
Economic Development	1						1	2
Education	17	7	3	1		1	1	30
Energy, Mines and Resources	2							2
Environment			1				1	2
Health and Social Services	11	6	1		1			19
Highways and Public Works	2					6	1	9
Justice	4							4
Public Service Commission	3					1		4
Workers' Compensation Health and Safety Board	2							2
Yukon Housing Corporation	1					1		2
No jurisdiction			1					1
	44	13	7	1	1	9	4	79

2022 Statistics Health Information Privacy and Management Act (HIPMA)

Information and Privacy Commissioner



Inquiries

1	Early Complaint Resolution	21	Information about mandate	0	No jurisdiction/wrong office/incorrect referral
1	Comments from public	2	Information about office	6	Pending complaint
1	General process questions	0	Office complaint	1	Office complaint

Compliance files	
Files opened	3
Privacy breaches	3
Research	0
Files closed (includes files from previous years)	10

Total files (complaint/compliance/ requests)	
Files opened	21
Files closed (includes files from previous years)	58
Files to be carried forward	4

Request files	
Files opened	10
Advice	3
Comment	7
PIA	4
Implications for the Protection of Privacy of Existing Legislative Schemes or Programs of the Government of Yukon	2
External request for response on related topic	1
Decision	0
Files closed (includes files from previous years)	38

Privacy Impact Assessment review activities

Custodian	PIA submissions	Status
Health and Social Services	Homeless Individuals and Families Information System (HIFIS)	Review not yet complete
Health and Social Services	Panorama	Review not yet complete
Health and Social Services	Infolinx companion PIA	Review not yet complete
Health and Social Services	Sexual Assault Response Team	Review not yet complete

Complaint files opened in 2022

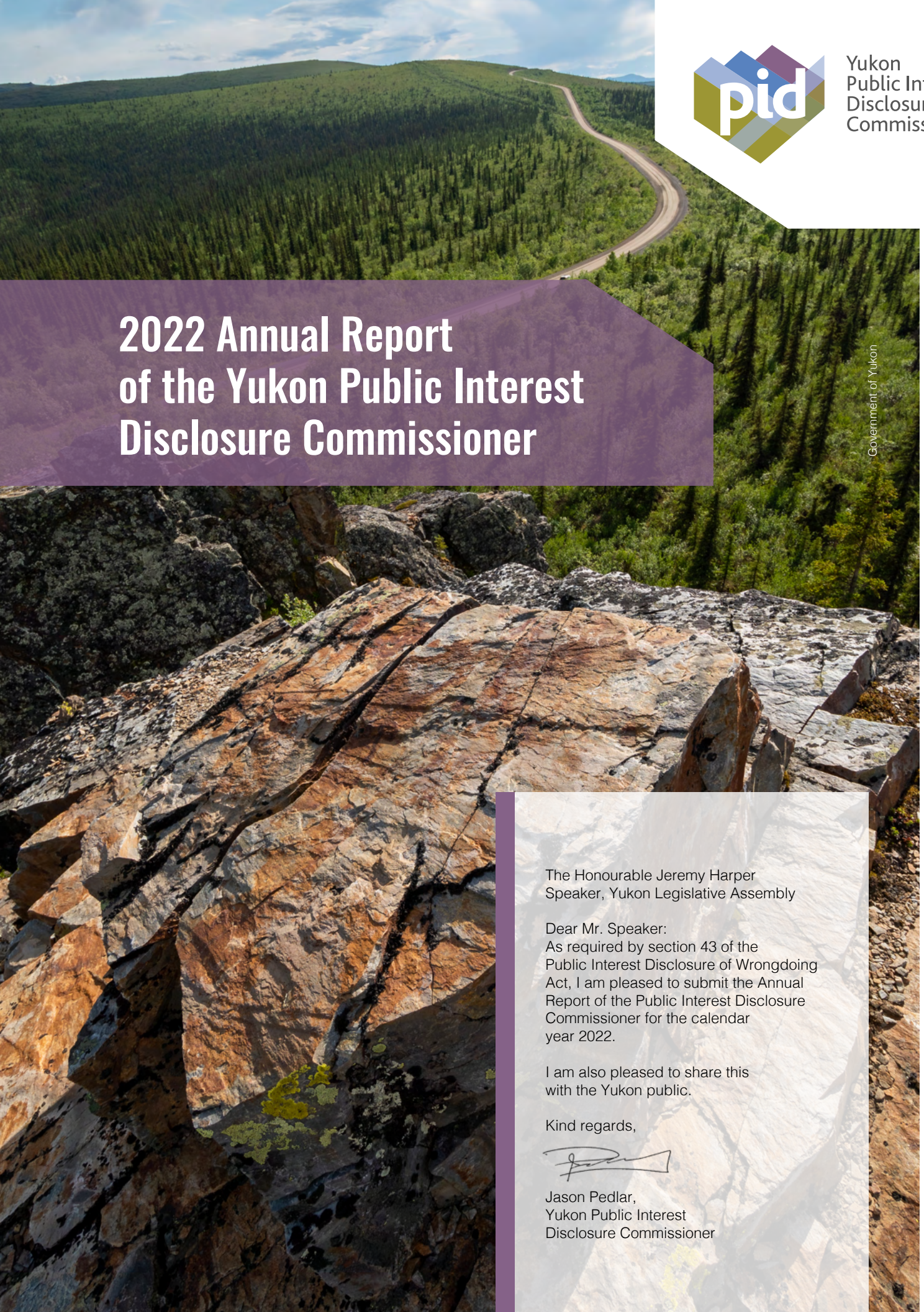
Custodian	Complaint files		Request files		Total files
	Informal Case Resolution complaint files	Formal Considerations	Comments	Advice	
Health and Social Services	8		6	1	15
Summit Health				1	1
True North Respiratory				1	1
	8	0	6	3	17

Complaint files - Informal Case Resolution	
Files opened	8
Access	7
Privacy	1
Files closed (includes files from previous years)	9

Formal Considerations	
Files opened	0
Considerations closed (includes files from previous years)	1

Yukon
Public Interest
Disclosure
Commissioner

2022 Annual Report of the Yukon Public Interest Disclosure Commissioner



Government of Yukon

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 2022.

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

Kind regards,

Jason Pedlar,
Yukon Public Interest
Disclosure Commissioner

Working to protect public interest when whistleblowers report wrongdoing

The Public Interest Disclosure of Wrongdoing Act (PIDWA) went into effect on June 15, 2015. Its purpose is to promote public confidence by enabling employees of *public entities* to disclose wrongdoings that occur in *public entities* and protecting these employees from reprisal. The PIDWA also establishes the office of the Public Interest Disclosure Commissioner.

Employees of *public entities* can disclose wrongdoings that are in the public interest without fear of reprisal. Employees have options about who they can disclose to including a supervisor, a designated officer in their *public entity*, or the Public Interest Disclosure Commissioner.

Along with the Public Interest Disclosure Commissioner's authority to investigate wrongdoing disclosures and reprisals, he can provide confidential advice to employees who are considering making a wrongdoing disclosure.

Message from the Public Interest Disclosure Commissioner, Jason Pedlar

I would like to start out by congratulating the PIDC team for their accomplishments this year. It was their priority to close any outstanding files carried over from previous years. While only one file was opened this year, our team successfully closed 14; nine were requests for comment or advice, one was a complaint file through our Informal Case Resolution team, and four were Formal Investigations. Our team is pleased to report that only one file will be carried over into 2023.

In addition to clearing our backlog of PIDC files, inquiries to the PIDC office almost tripled this year which made our team even busier.

Yukon hosted the PID Commissioners in Whitehorse

Each year, Public Interest Commissioners from across Canada meet to facilitate the sharing of best practices, common challenges, and potential solutions. This is the third year in a row that the Yukon has hosted and organized the meeting. In both 2020 and 2021, the meeting was held virtually due to the COVID-19 pandemic.

The two-day conference included representatives from jurisdictions across Canada, all of whom have responsibility for overseeing legislation that facilitates the disclosure by employees of potential wrongdoings within their organizations. There are 12 such offices in Canada: Newfoundland and Labrador, New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Nunavut, and the Yukon, as well as the federal office.

Second annual Whistleblower Awareness Day

Whistleblower Awareness Day, which fell on March 24 this year, was created in 2021 by offices in Canada which oversee legislation that facilitates disclosure by employees of potential wrongdoings within their organizations. In the Yukon, this legislation is the Public Interest Disclosure of Wrongdoing Act (PIDWA), which has been in effect since 2015. The Act requires that it be reviewed within five years of coming into force and the PIDC took the opportunity to provide feedback.

With nearly seven years of experience working with PIDWA, we have noted several issues with the legislation, some of which were highlighted in our 2019 PIDC Annual Report.

In our view, some of the issues that are hindering achievement of the PIDWAs purposes include:

- lack of clarity regarding the PIDCs authority to obtain records and evidence in the course of an investigation, which has led to challenges from government lawyers to this authority and caused delays in completing investigations;
- disclosures by employees to supervisors who do not recognize them as disclosures and treat them as HR matters;
- lack of procedures within *public entities* to effectively manage the disclosure process or to adequately protect the identity of the discloser, which puts disclosers at risk of possible reprisal; and
- lack of adequate training for employees of *public entities* on how to make or recognize and manage a disclosure.

Depositphotos

PIDWA statutory review underway

In April 2022, the Minister responsible for the Public Service Commission tabled in the Legislative Assembly the Review of the Public Interest Disclosure of Wrongdoing Act Interim Progress Report which detailed the findings of the first of two phases of review.

The second phase began in the fall and involved two components:

- a survey of employees of *public entities* covered by the Act; and
- a formal request for feedback from *public entities* covered by the Act and other stakeholders.

The purposes of PIDWA are to:

- facilitate the disclosure by employees of potential wrongdoings that may be unlawful, dangerous or injurious to the public interest;
- protect employees who make disclosures; and
- promote public confidence in the administration of *public entities*.

The *public entities* covered by PIDWA include all departments of the Yukon government and the Yukon Legislative Assembly.

As Public Interest Disclosure Commissioner with the mandate to oversee the PIDWA, we will be providing our recommendations and feedback for improvements to the Act in early 2023.

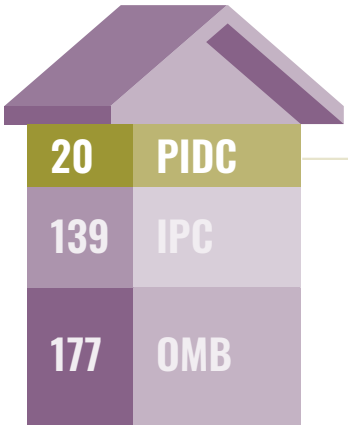
Concluding remarks

You can find more information about the type of files we have handled and statical information in the pages that follow.

Jason Pedlar,
Public Interest Disclosure Commissioner

Government of Yukon

Stats at a glance 2022 Public Interest Disclosure Commissioner (PIDC)



Inquiries

6%

inquiries
of all mandates

Formal Investigations

Files closed

9 (64%)
request for advice

1 (7%)
complaint files in ICR (reprisal)

4 (29%)
complaint files in Formal Investigation (from previous years)

Of interest! We cleared our backlog of PIDC files.

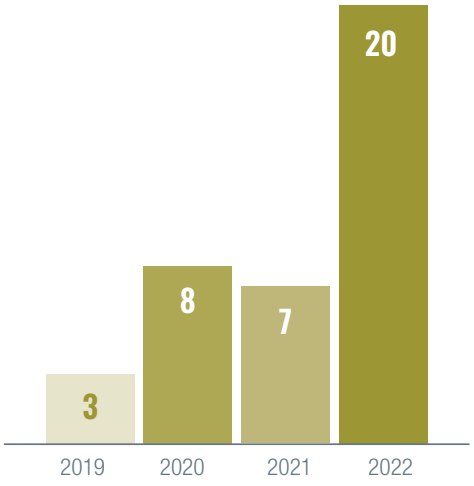
Files opened

1 (50%)
request for comment (Act Review)

1 (50%)
complaint files opened in Informal Case Resolution

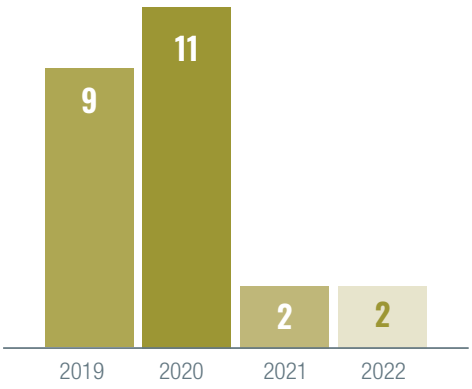
Investigation found we did not have jurisdiction.

Inquiries



Files opened

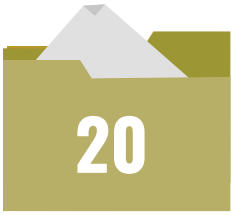
(complaint/request)



Disclosure reporting

Disclosures reported within a *public entity* must be reported to PIDC on an annual basis.The Department of Health and Social Services:**1**

2022 Statistics Yukon Public Interest Disclosure Commissioner (PIDC)



Inquiries

0	Comments from the public	3	Information about office	2	Pending complaint
2	General process questions	0	Office complaint	1	Other
11	Information about mandate	1	No jurisdiction/wrong office/ Incorrect referral		

Total files opened in 2022

Public entity	Number of complaint files				
	Complaint files		Request files		Total
	Disclosures	Reprisal	Comments	Advice	
Public Service Commission			1		1
Highways and Public Works		1			1

Complaint files - Informal Case Resolution	
Files opened	1
Reprisal complaint (not acted upon)	1
Disclosures	0
ICR files closed	1

Complaint files - Formal Investigation	
Files opened	0
Reprisal complaint	0
Disclosures	0
Files closed (includes files from previous years)	4

Request files	
Files opened	1
Comment - review of act	1
Advice	0
Decision	0
Files closed (includes files from previous years)	9

Total files (complaint/request)	
Files opened	2
Files closed (includes files from previous years)	13
Files to be carried forward	1

Financial Report

	2022-23 budget	2021-22 budget
Personnel joint	$1,204,000	$1,135,800
Capital joint	$3,000	$5000
Operating expenses for Ombudsman	$148,000	$145,400
Operating expenses for Information and Privacy Commissioner	$161,000	$156,400
Operating expenses for Public Interest Disclosure Commissioner	$53,000	$98,400
Total	$1,569,000	$1,541,000

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