



Yukon  
Ombudsman



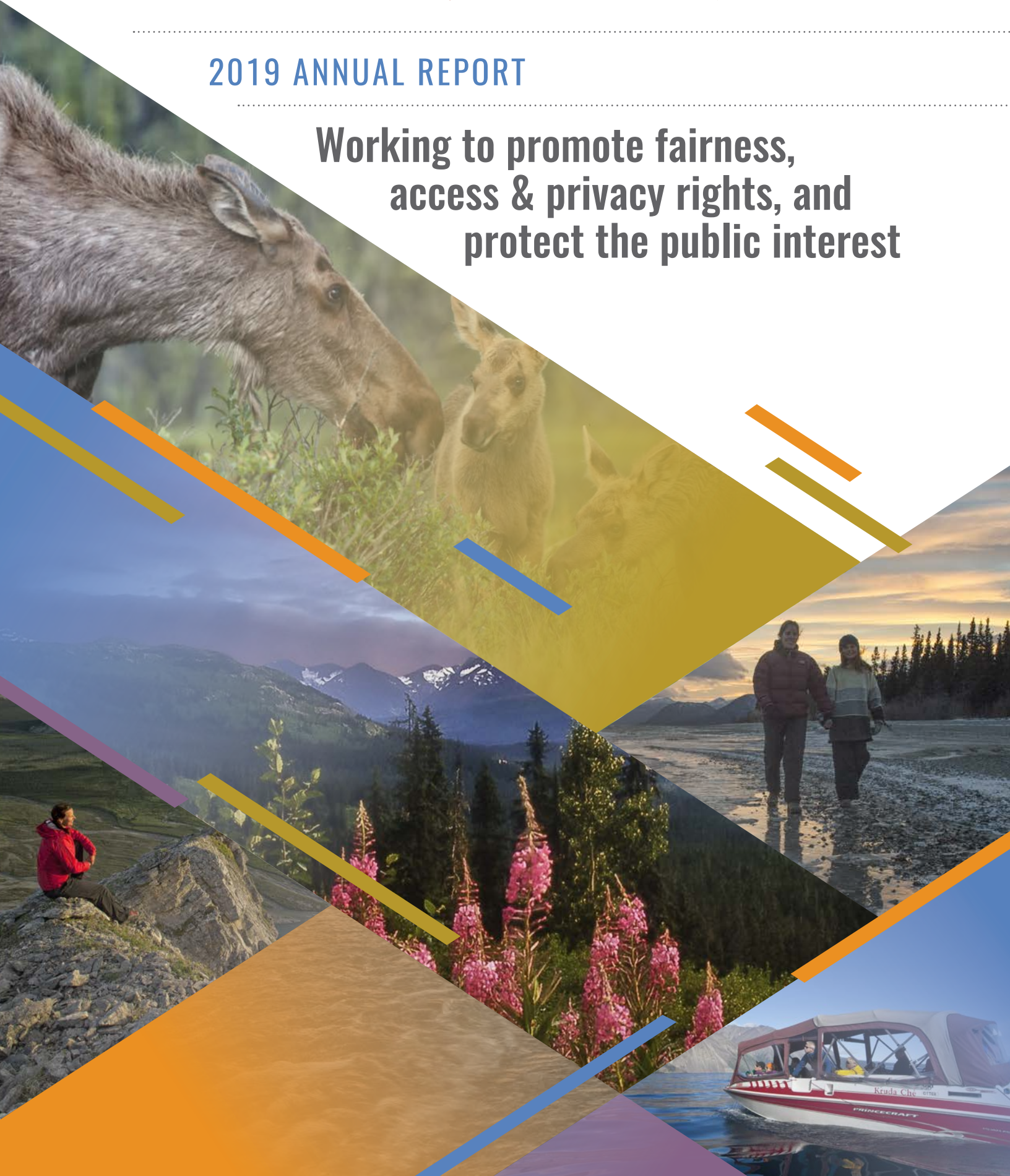
Yukon  
Information  
and Privacy  
Commissioner



Yukon  
Public Interest  
Disclosure  
Commissioner

## 2019 ANNUAL REPORT

**Working to promote fairness,  
access & privacy rights, and  
protect the public interest**



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

We welcome your feedback on our annual report, including the method of delivery.



Diane McLeod-McKay  
Yukon Ombudsman,  
Information and Privacy  
Commissioner, and  
Public Interest Disclosure  
Commissioner

**2019** was another busy year for my office, which fills three key public service roles in Yukon, serving as Office of the Ombudsman, Office of the Information and Privacy Commissioner and Office of the Public Interest Disclosure Commissioner. Our role is set out in four pieces of legislation, the *Ombudsman Act*, the *Access to Information and Protection of Privacy Act* (ATIPPA), the *Health Information Privacy and Management Act* (HIPMA) and the *Public Interest Disclosure of Wrongdoing Act* (PIDWA).

We opened 139 files and, although we were able to close the same amount, we still had 136 files open at the end of the year, which we will continue to work on in 2020. Compared to 2018, we opened 180 files and had just 81 open by the end of that year. Of the files we are carrying forward into 2020, eight are wrongdoing files and two are reprisal files. These files are complex and have taken a significant amount of time and resources to manage.

## Workload management

In 2019, I made a modification to my staffing structure in our informal case resolution team to better manage intakes. The intake process was modified such that there are now two investigator and compliance review officers (ICROs) assigned to manage all intakes. ICROs have the necessary skill-set to inform individuals about all our mandates and to address matters of jurisdiction. I also added another ICRO to my investigation and compliance review team. In my 2019-2020 budget, I was given an allocation for one additional ICRO position. As I indicated in my 2018 Annual Report, I was not given any budget dollars when the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) went into effect in 2015. In the past two years alone, we have opened up 23 files under PIDWA. The majority of PIDWA files are assigned to my investigation and compliance review team, which is responsible under all our mandates to conduct formal investigations and to provide advice. With the added ICRO and our new intake structure, we are better positioned to more effectively manage our cases.

I anticipate that the new *Access to Information and Protection of Privacy Act* will significantly increase the workload of the office. I will be assessing the impact of the new legislation during 2020 to determine if another ICRO position is required to manage the additional work.

## Update on goals

As set out in past annual reports, I have a number of goals that I am working to achieve during my second term.

The first goal is to establish an oversight office sufficiently skilled to address new challenges and deliver on our multiple mandates. My current staffing complement meets this goal. In 2018, I hired an individual who has expertise in information systems security. A significant part of the work of the Information and Privacy Commissioner now involves evaluating information security practices in general and more specifically technology-related security including cyber security. I hired another two individuals in 2018 who have extensive experience in mediation; one has professional credentials in the field. Both staff work in the informal case resolution team whose focus is to resolve matters informally. Having mediation skills is highly beneficial to this work. Both the ICROs hired in 2019 have law degrees and one is called to the Yukon bar. There are now three lawyers in my office in addition to one staff person who has a law degree. The work we do in this office has a significant focus on matters

of law and having these resources has proven beneficial in managing these challenges. All staff hired, with the exception of one, were staff replacements.

The seventh goal is to deliver on my outreach strategy to increase knowledge amongst the public, within government and public organizations, and within the health sector on the mandates of the office and to inform the public about their rights. In my 2019-2020 budget, I was given a small increase in contractor dollars. I used these dollars to hire a communications contractor to help me develop and deliver on my outreach strategy. We made significant progress on the strategy in 2019 and the result was increased communications to the public, including the use of social media and an information card distributed throughout Yukon. We will continue to work on the strategy in 2020.

The other six goals are as follows:

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

Updated information about my progress in meeting these six goals are in the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner messages in this document. I am pleased to report that I have made solid progress on most of these goals.

## 2019 Annual Reports

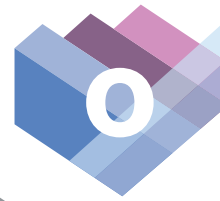
Specific information about the year 2019 for each of my mandates can be found in my 2019 Annual Reports for the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner, which are included within this document. I hope you find the information within the reports informative.

Kind regards,



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





## 2019 ANNUAL REPORT OF THE YUKON OMBUDSMAN



The Honourable Nils Clarke  
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 2019.

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

Kind regards,

Diane McLeod-McKay,  
Yukon Ombudsman

# OVERVIEW OF OUR WORK

2019 was a moderately busy year for the Office of the Ombudsman. We opened 19 case files, which is down from the 2018 total of 30. All 19 files were resolved successfully by our informal case resolution team (ICR team).

The range of issues investigated was broad and involved 10 different authorities. In most of our investigations, we found that the authority acted fairly. We did, however, make a number of recommendations to improve processes, all of which were

to identify this problem, which led to the wrong department responding to the complaint. Both departments acknowledged the issue and agreed to work together to develop a clear process that would identify the authority of each and outline how they would work together to handle future concerns relating to mining access roads.

In another investigation involving a complaint about the lack of procedure for an employee who worked in the Respectful Workplace



accepted by the authorities.

There were a few investigations in 2019 that are worth highlighting. During our investigation of a complaint regarding a complainant's inability to access their mining claim as a result of a pipe that blocked a resource access road, it became clear that there was confusion around which Yukon government department (the Department of Energy Mines and Resources or the Department of Highways and Public Works) was responsible for enforcement of access to roads to mining claims. Through the work of our ICR team, we were able

Office (RWO), we determined that the Yukon government's RWO policy did not include any process for an employee of the RWO to engage the services of that office, services which are available to all other Yukon government employees. Our ICR team brought this gap to the attention of the Public Service Commission, which acknowledged it as an oversight and promptly addressed it. These and other stories can be found in the SAMPLES OF OUR WORK section of this annual report.

## Performance Measures

We are meeting our performance target in just under 50% of our case files for informal case resolution, which is set at 90 days. This is positive. However, we need to continue to work toward increasing this percentage. We now have three employees dedicated to resolving complaints informally. This should help us improve our ability to meet this performance target. At the end of 2019, we had just two Ombudsman formal investigation files open. Both are beyond the one-year performance target set for investigations. With the addition of one resource on our investigation team in 2019, we are better positioned to meet this target.

## Facilitating Fairness

In 2019, the Yukon Ombudsman, together with the other Ombuds across Canada, launched a fairness evaluation tool called *Fairness by Design: An Administrative Fairness Self-Assessment Guide*. The idea for the guide stemmed from my experience, in my role as Yukon Information and Privacy Commissioner, with privacy impact assessments and their value in promoting proactive compliance. I made the suggestion to my colleagues that we work collaboratively to



develop a similar resource for our work, and the guide was then developed jointly by Ombuds offices in Yukon, Saskatchewan, Manitoba, Nova Scotia and British Columbia.

*Fairness by Design* is designed as a self-assessment tool for use by an authority to proactively evaluate the fairness of its systems, policies and practices. When used, the tool assists authorities in designing programs and services that are delivered fairly by applying the standards identified in the guide. The Office of the Yukon Ombudsman also uses these standards to evaluate fairness when complaints are received.

In 2020, a copy of the guide will be distributed to the heads of Yukon authorities subject to the *Ombudsman Act*, for their use. It is also available on our website.

## Review Of Ombudsman Legislation

In prior annual reports, I have indicated the need for a review of the *Ombudsman Act*. Specifically, I have noted that the Yukon Ombudsman is the only Parliamentary Ombudsman in Canada who cannot initiate an investigation on their own motion. For example, in a neighbouring jurisdiction, the Northwest Territories (NWT), its *Ombud Act* came into effect in November 2019, providing the NWT Office of the Ombud with authority to commence a complaint on its own motion. We also discovered by researching Ombuds laws around the world that we appear to be the only jurisdiction in the world with ombudsman legislation that does not include own motion authority.

The existing powers of the Ombudsman under the *Ombudsman Act* also require review. The *Public Interest Disclosure of Wrongdoing Act* incorporates the powers of the Ombudsman for investigation by reference. As mentioned

in my Public Interest Disclosure Commissioner Annual Report for 2019, there is a need to clarify the powers of the Ombudsman to ensure there is no confusion about the authority of the Ombudsman and the Public Interest Disclosure Commissioner (PIDC) to compel the production of documents, including those containing personal information, and the authority of the Ombudsman and PIDC to conduct investigations in private.

In addition, the scope of the *Ombudsman Act* should be expanded. Municipalities in Yukon should be added to the jurisdiction of the Ombudsman. A matter arose in 2019 wherein the City of Whitehorse proposed a policy to hold its council and senior management (CASM) meetings in a forum closed to the public. At the point of proposing the change, CASM meetings were open to the public. Our office was contacted about the proposed policy but could not investigate the matter as I have no jurisdiction over municipalities. I will note that, in the end, the policy was

not approved by Whitehorse City Council.

In 2019, I began examining Ombuds laws across Canada and internationally in preparation for submitting comments to the Speaker of the Yukon Legislative Assembly about proposed amendments to the *Ombudsman Act*. I anticipate I will conclude this work in 2020. Once complete, I will issue my comments to the Speaker.

## Update On Goals

In my 2018 Annual Report, I noted the goal of enhancing fairness within authorities, through the use of proactive measures. The completion, distribution and use of the *Fairness by Design* guide facilitates my ability to meet this goal.

As indicated in this report's introductory general message for all three of my roles, I am working to meet Goal #7, outlined in my 2018 Annual Report, which is to deliver on my outreach strategy to increase the public's knowledge of the work of the Ombudsman. In this regard, in 2019 we developed an information card about the work of our office and distributed it to households across Yukon. We were subsequently contacted by a number of individuals who indicated that they did not know about our office or our work. In addition, in the autumn of 2019, we established a Twitter account to assist in our outreach work. I will also continue to work with my communications manager to find ways to better inform the public about the work of the Ombudsman.

## Concluding Remarks

In the SAMPLES OF OUR WORK section of this report, you will find more information about our investigations and recommendations. You will also find additional detail about our performance in carrying out our duties under the *Ombudsman Act*, in the HOW WE MEASURED UP section of this report.

Diane McLeod-McKay  
Ombudsman



All 19 files that came to the Office of the Ombudsman in 2019 were resolved successfully by our informal case resolution team. In most of the investigations, we found that the authority acted fairly. However, we did make a number of recommendations for improvement, all of which were accepted.

This section of the annual report gives examples, from actual files we worked on this year, that illustrate the work we do. Actual names of individuals have not been used in these stories and any information that would serve to identify the complainants has been removed, in order to protect their privacy.

### ▶ Respect for the Respectful Workplace Office

ADAM CAME TO US WITH A UNIQUE ISSUE INVOLVING THE RESPECTFUL WORKPLACE OFFICE (RWO). ESSENTIALLY, HE DREW ATTENTION TO THE FACT THAT THE SERVICES OFFERED BY THE RWO TO ALL EMPLOYEES OF THE YUKON GOVERNMENT (YG) WERE NOT AVAILABLE TO ANYONE WORKING IN THE RWO ITSELF.

Adam is a former employee of the RWO, which is a branch of the Public Service Commission that offers

confidential services to YG workers who are experiencing a workplace conflict or disrespectful behaviour, or who wish to prevent or manage work-related conflicts. He felt it was unclear how the government's respectful workplace policy applied within the RWO. Any conflicts in that office were being dealt with internally without any guidance or recourse on how to proceed if the matter remained unresolved. As well, he felt it was a conflict of interest to have the Director of the RWO manage complaints pertaining to themselves.

When we began discussing this complaint with the Public Service Commission, it immediately recognized that there was a gap in policy and agreed to update it with a process for how the respectful workplace policy should be applied for those working within its office. Within a few months, the RWO provided our office with a draft guidance document for our review and feedback. We found it comprehensively addressed the issue including processes for dealing with conflict and mechanisms for employees to seek guidance outside the office when necessary.

**We closed this file after the RWO informed us that the new process had been communicated to staff,**

**discussed, and implemented, and that all employees were pleased with the outcome.**

### ▶ A taxing tax on shelter

XAVIER CAME TO US WITH A COMPLAINT THAT THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES (HSS) HAD TREATED HIM UNFAIRLY. HE WAS A RECIPIENT OF THE YUKON GOVERNMENT'S SOCIAL ASSISTANCE PROGRAM AND LIVED IN A RENTED TRAILER THAT WAS SITUATED ON LAND HE HAD PURCHASED IN A YUKON COMMUNITY. AT THE TIME OF THE PURCHASE, XAVIER'S CASEWORKER HAD ASSURED HIM THAT HE WAS ELIGIBLE TO HAVE HIS YEARLY PROPERTY TAXES COVERED THROUGH THE SOCIAL ASSISTANCE PROGRAM. FOR THE NEXT TWO YEARS, THAT'S WHAT HAPPENED.



Then, in June 2019, when Xavier presented his latest property tax invoice to HSS, he was told he was no longer eligible for this benefit and that, in fact, the past payments of his property tax bill were incorrect.

Xavier was unhappy for several reasons. He said HSS had not notified him that the previous payments were made in error, that he did not have enough time to make alternate arrangements, that he could not afford to make the tax payment, and that interest on the debt was now growing.





When we looked into the case, we found that the *Social Assistance Act* (SA) and regulations give Health and Social Services discretion to issue emergency funds. Because securing stable housing in smaller Yukon communities can be quite difficult, a common use of emergency funds is to assist with shelter, including for payment of property taxes. We also found that the reason for the department’s new position that Xavier’s property taxes should not have been covered was due to a supervisor’s interpretation of the SA regulations. The supervisor’s interpretation was that because Xavier’s property was designated as commercial, he was not eligible for this benefit.

Health and Social Services was quick to respond to this complaint by acknowledging that Xavier had a valid complaint, and working to resolve it quickly. Xavier was told that the payment of his property taxes would occur, despite the classification of the land as commercial. The department also took steps to ensure that staff understood the HSS interpretation of the SA and its regulations and amended its policy on payment of property taxes for both commercial and residential land.

**Health and Social Services took swift and adequate measures to deal with Xavier’s situation and to avoid a recurrence of this type of problem. Xavier was satisfied with the outcome of his case.**

## ▶ Crossed wires across borders

MARY LOUISE IS A RESIDENT OF BRITISH COLUMBIA WHOSE EX-SPOUSE LIVES IN YUKON. HER COMPLAINT WAS IN REGARD TO THE YUKON MAINTENANCE ENFORCEMENT PROGRAM (YMEP) ADMINISTERED BY THE DEPARTMENT OF JUSTICE. YMEP IS A SERVICE THAT ENFORCES COURT ORDERS OR COURT-FILED AGREEMENTS THAT REQUIRE SUPPORT TO BE PAID FOR A CHILD OR SPOUSE. IT CAN TAKE STEPS TO COLLECT PAYMENT WHEN VOLUNTARY PAYMENTS ARE NOT MADE.



Since separating from her spouse in 2010, Mary Louise had experienced trouble obtaining her child support payments. Because she lives in BC, she had been dealing with the inter-jurisdictional office in Victoria, and she felt there had been considerable confusion regarding her situation. Her complaint was that the Yukon Department of Justice, in particular the Maintenance Enforcement Program, was not following its procedures, resulting in unfairness. Mary Louise said that enforcement actions were not being taken in regard to her file, that she was not receiving timely updates and that an amount for “special and extraordinary expenses” outlined in the court order had been removed by YMEP.

When we looked into Mary Louise’s complaint, we found that the BC Family Maintenance Enforcement Program (FMEP) is the lead administrative body for her file and that YMEP does not have authority to communicate directly with her. Instead she must engage with FMEP and her ex-spouse must engage with YMEP. In addition, for reasons of confidentiality, Mary Louise cannot be privy to the specific enforcement actions taken by YMEP against her ex-spouse.

Our investigation found that her complaint of no enforcement actions was not substantiated. In fact, YMEP had taken numerous enforcement actions in the past few years. While YMEP was informing FMEP in British Columbia of these activities, that information was not always being

passed to Mary Louise. We suggested that she take this up with FMEP. In addition, we found that the removal of the amount for “special and extraordinary expenses” had originated with FMEP, not YMEP.

**Our office found no evidence of unfairness by Justice and so we made no recommendations. While the outcome was somewhat disappointing for Mary Louise, she thanked us for providing some much-needed clarity regarding the roles and responsibilities of each jurisdiction in regard to her support order.**

## ▶ The road to clarity

LARRY HAD BEEN HAVING TROUBLE FOR A NUMBER OF YEARS GETTING ACCESS TO HIS PLACER MINING CLAIM VIA A RESOURCE ACCESS ROAD. A PIPELINE FROM A NEIGHBOURING CLAIM HAD BLOCKED THE ACCESS ROAD TO LARRY’S CLAIM AT MULTIPLE TIMES OVER SEVERAL YEARS. HE HAD REPORTED THE PROBLEM TO THE DEPARTMENT OF ENERGY, MINES AND RESOURCES (EMR) SEVERAL TIMES BUT THE DEPARTMENT’S RESPONSE TOOK DAYS OR WEEKS AND THE PROBLEM KEPT RECURRING. LARRY WAS NOT HAPPY AND BROUGHT HIS COMPLAINT TO OUR OFFICE.

During our investigation, it became clear that there was confusion around which Yukon government department was responsible for access roads. Although Larry had raised his concern with EMR and the department had made attempts to resolve it, it turned out that EMR did not actually have the authority on this matter.



Because the mining access road connected directly with a main highway, it was considered a highway under the *Highways Act*, and the department with jurisdiction was the Department of Highways and Public Works (HPW), not EMR.

Our investigation revealed that EMR was frequently handling issues regarding resource access roads without the legislative authority to do so, instead of referring these matters to HPW.

Both departments acknowledged the issue and agreed to work together to develop a clear process that would identify their specific responsibilities and outline how they would work together to handle future concerns relating to mining access roads.

**Our office suggested that the complainant reach out to HPW directly if a similar problem occurred in the 2020 mining season. We also recommended that EMR contact the claim owner who had blocked the road to say that any future issues would be handled by HPW.**

## ▶ A complaint about the complaint process

JUDY CAME TO OUR OFFICE WITH A CONCERN ABOUT THE COMPLAINT PROCESS AT THE WHITEHORSE GENERAL HOSPITAL, WHICH IS RUN BY THE YUKON HOSPITAL CORPORATION (YHC).

Judy's husband had died in the hospital and she was unhappy with the way hospital staff treated him in his final

days. She had taken her concerns to hospital management but was not satisfied that the hospital was actually following its complaint procedures. Judy found the process that she went through confusing and she was not informed of the outcome.

When Judy came to us, we explained that we had no jurisdiction to investigate the care given to her husband but that we could look into the way the hospital handled her complaint.

When a death occurs at a hospital run by YHC, it undertakes a review using its Quality Improvement Risk Management (QIRM) process. This is a confidential process that, for the benefit of quality health care, allows those involved to speak openly about

the care provided to the patient without any fear of reprisal. The goal of QIRM is to address any problems in the delivery of care and to improve health outcomes.

Our investigation was challenging because there was crossover between the complaints process and the QIRM process. Because of the confidential nature of the QIRM process, we were provided with limited information about what occurred in relation to the complaint. We did learn through our investigation that the established complaint process was not followed. Instead, senior management and medical staff were involved in addressing the complaint.

Despite this, we did not find any unfairness in the way the hospital responded to the complaint, because the matter received sufficient attention.

**However, we did make a recommendation in regard to the hospital's complaint process. Because that process is entwined with the QIRM process, some aspects of managing a complaint are done within QIRM, which is confidential and therefore non-transparent. This can leave a complainant in the dark about how a complaint is being managed. For that reason, we recommended that the hospital undertake a review to determine if a parallel process**





for managing complaints should be developed, separate and outside the QIRM process, to provide increased fairness and transparency for complainants. Our recommendation was accepted and the hospital updated its complaints process.

### ▶ Getting your priorities straight

JONATHAN BROUGHT A COMPLAINT TO US ABOUT THE WAY THE YUKON HOUSING CORPORATION (YHC) WAS PRIORITIZING CERTAIN APPLICANTS.

YHC allows applicants for social housing to apply to be given higher priority for medical reasons. Jonathan felt that the medical accommodation process, as it is called, was unfair because those with mobility issues and those over the age of 65 with recognized disabilities are eligible but not those with debilitating rare diseases.

Jonathan himself had applied for social housing, as someone who had been diagnosed with a rare disease, which he described as significantly impairing and requiring prolonged treatment. He was not given priority through the medical accommodation process. Although Jonathan subsequently found housing through another program, he brought his complaint to us because he felt the YHC medical accommodation process was unfair.

When we looked into his complaint, the YHC informed us that the medical accommodation policy had been updated, after Jonathan’s application

had been dealt with. The upgraded policy uses broader language, includes “severe, chronic, or acute medical/health problem(s)” and waives the age requirement. The motivation behind these changes was in part Jonathan’s application for housing, as well as similar cases. The YHC had felt that the outcomes in these cases were unfair and began making efforts to develop an improved policy.

Under the new policy, YHC confirmed that applicants such as Jonathan may be granted priority. In light of these clear efforts to make the policy more flexible and inclusive, we were satisfied that the new process is reasonable and fair.

**We did note that the relevant policy and form were not easily available online and that the language describing the medical accommodation process appeared**

to be outdated and unclear. Our office suggested that this be improved and the YHC began the process of updating its online materials while our investigation was still underway.

### ▶ Fair access to an access road

ASPEN CONTACTED OUR OFFICE WITH A CONCERN THAT THE DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS (HPW) HAD NOT GRANTED HER A PERMIT TO BUILD AN ACCESS ROAD TO HER GRAVEL QUARRY, WHICH SHE FELT WAS UNFAIR. SHE SAID THAT HPW’S POSITION WAS THAT HER PROPOSED ROAD DID NOT MEET THE MINIMUM SPACING REQUIREMENTS AND COULD NOT BE APPROVED. INSTEAD, IT WAS PROPOSED THAT ASPEN USE AN EXISTING CITY-OWNED ACCESS ROAD TO GET TO THE QUARRY. WHILE ASPEN DID NOT STRONGLY OBJECT TO THIS PLAN, SHE WAS WORRIED IT WOULD NOT GIVE HER



A GUARANTEED RIGHT OF ACCESS, IN PERPETUITY.

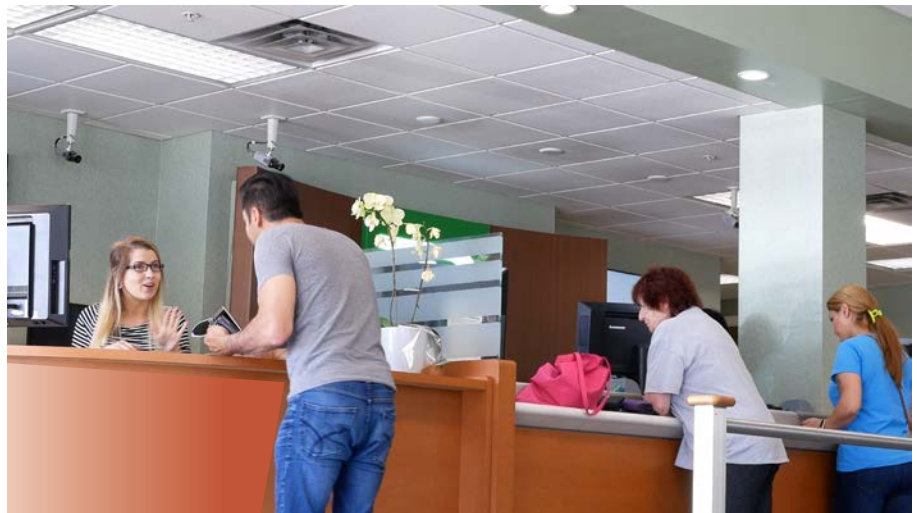
While looking into this case, we discovered that Aspen had not yet submitted a permit application to HPW. Instead, an application for a new access road was submitted to the Yukon Environmental and Socio-economic Assessment Board (YESAB) as part of the required assessment for a land application to develop a quarry. During the YESAB process, HPW had submitted comments stating that the proposed access road into the site did not comply with spacing requirements.

Even though Aspen had not yet submitted her permit application to HPW, we did investigate the relevant spacing policies in regard to access roads and found that Aspen's proposed road did not meet the requirements.

**No evidence of unfairness was found.**

▶ **Showing up for health care**

JAI CONTACTED OUR OFFICE TO COMPLAIN ABOUT A REQUIREMENT MADE BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES (HSS) INSURED HEALTH SERVICES BRANCH. THE BRANCH REQUIRED THAT INDIVIDUALS VISIT ITS OFFICE IN PERSON TO CONFIRM THEIR RETURN TO YUKON AFTER A TEMPORARY ABSENCE.



Jai understood why this requirement was in place, namely to determine and confirm eligibility for insured health services. However, he felt that the rule was not being applied equitably and was not fair to those who may have health issues, mobility problems, fewer resources and no access to a vehicle.

After examining the *Health Care Insurance Plan Act* and regulations which govern these matters, and after discussions with Health and Social Services, our investigation determined that the department does not currently have the authority to require that individuals present themselves in person after a temporary absence from the territory.

**To resolve the issue, HSS determined that the temporary absence form should be amended to include a signed oath confirming that the information provided by the individual was true. The department re-drafted the form, but there have been extensive delays in implementation. Our office continues to follow up with HSS on this matter.**



# HOW WE MEASURED UP IN 2019

## Skills development

The Ombudsman attended the Canadian Council of Parliamentary Ombudsman (CCPO) meeting along with her colleagues across Canada. The meeting this year was held in Victoria, B.C. These meetings are attended by Ombuds across Canada and provide an opportunity for discussion among the Ombuds about experiences, challenges and solutions. A new member of the CCPO from the Northwest Territories (NWT) attended this year's CCPO meeting as the NWT for the first time has an Ombudsman after its *Ombud Act* came fully into force as of November 18, 2019.

One staff member attended the Essentials for Ombuds course at York University. This course helps students become conversant with both the theory and practice of the Ombuds role and develop a deeper understanding of requirements and expectations by exploring and examining the myriad of evolving issues in the Ombuds field today and by learning best practices from across Canada.

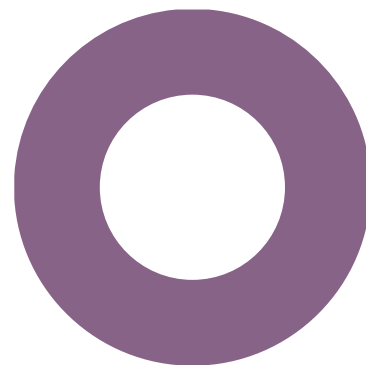
## Complaints against the Ombudsman

None

Ombudsman Act 2019 activity	
<b>Resolved at intake - no file opened</b>	
Request for information	44
Informal complaint resolution	28
No jurisdiction	1
Referred-back	14
<b>Total</b>	<b>87</b>
Settlement files opened	19
Investigation files opened	0
<b>Total</b>	<b>19</b>
All files opened in 2019	19
Files carried over from previous years	14
Files closed in 2019	28
Files to be carried forward	5

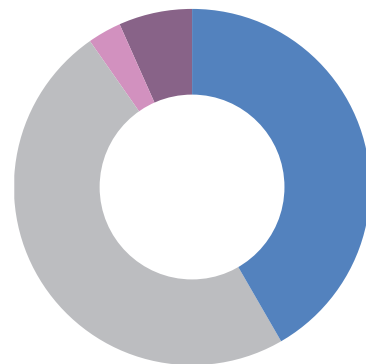
## Ombudsman investigation - 1 year target

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



## Ombudsman settlement - 90 day target

Closed (within 90 days)	13
Closed (over 90 days)	15
Still open (under 90 days)	1
Still open (over 90 days)	2



## Files opened in 2019 by authority

Authority	Number of files			Recommendations		
	Informal case resolution	Investigation	Total	Formal*	Accepted	Not yet implemented (includes from prior years)
Department of Education	1	0	1			
Department of Energy, Mines and Resources	2	0	2			
Department of Finance	1	0	1			
Department of Health and Social Services	7	0	7			
Department of Justice	3	0	3			
Public Service Commission	1	0	1			
Yukon Arts Centre Corporation	1	0	1			
Yukon Housing Corporation	1	0	1			
Yukon Liquor Corporation	1	0	1			
Yukon Workers' Compensation Health and Safety Board	1	0	1			

\*Formal recommendations are those made by the Ombudsman in a formal Investigation Report issued in 2019.





## 2019 ANNUAL REPORT OF THE YUKON INFORMATION AND PRIVACY COMMISSIONER



The Honourable Nils Clarke  
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:

As required by section 47 of the *Access to Information and Protection of Privacy Act* and Section 97 of the *Health Information Privacy and Management Act*, I am pleased to submit the Annual Report of the Information and Privacy Commissioner for the calendar year 2019.

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

Kind regards,

Diane McLeod-McKay,  
Yukon Information and Privacy Commissioner

# OVERVIEW OF OUR WORK

It was a busy year for the Office of the Information and Privacy Commissioner (IPC). Our office opened and dealt with 111 files. This is a slight drop from 2018 when 136 files were opened but it is still up significantly from the years 2013 to 2017 when an average of 46 files were opened per year. This suggests a steady increase in work for the IPC.

The majority of the files opened in 2019 were requests for review under the *Access to Information and Protection of Privacy Act* (ATIPP Act). Eleven requests for review could not be settled and were moved to inquiry and adjudication by the IPC under the ATIPP Act. This sets a record for the highest number of ATIPP Act adjudication cases in a one-year period. In addition, I issued four inquiry reports and one decision under the ATIPP Act.

In my capacity as IPC, I also considered two complaints and issued two consideration reports under the *Health Information Privacy and Management Act* (HIPMA).

This volume of work is significant, given that only 10 adjudication reports were issued in the five years prior to 2019. The reason for the high number of adjudication files is primarily that public bodies and custodians are failing to provide us with the evidence required in time to settle matters under the review or complaint processes.

## Performance Measures

### ATIPP Act

We are consistently meeting our performance target to settle matters under review under the ATIPP Act within 90 days. In the majority of the cases, if a matter under review is not settled within the 90 days, it is referred for adjudication. For six of 48 reviews, my informal case resolution team (ICR team) continued to try to settle reviews that went beyond the 90 days and were successful in doing so, before adjudication began. For investigations under the ATIPP Act, we need to improve our file management,

as the majority of these case files exceeded the timelines established for completion.

### HIPMA

We successfully met our performance measure for all 17 of the complaint files that were investigated and settled by our ICR team. Under HIPMA, we have 90 days to settle a complaint.

## Problems Persist with Access to Information

Based on our experience over the past year, the access to information program operated by the Yukon government is in need of repair. Through our work in reviewing decisions made by public bodies in regard to the access to information provisions of the ATIPP Act and HIPMA, and through our examination of processes used to facilitate access to information, we have identified a number of significant problems, noted in the sections that follow.

### Confusion about access to information

Throughout 2019, we continued to see considerable confusion amongst access to information (ATI) coordinators at public bodies about how to apply the access to information provisions of the ATIPP Act. This made settling matters under review extremely challenging. During the review process, an investigator in our informal case resolution team (ICR team) requests evidence from the ATI coordinator that is sufficient to establish that an exception claimed to the right of access applies. The burden of proving that an exception applies rests with the public body. Unfortunately, the evidence provided in many of the reviews undertaken in 2019 was insufficient to determine whether the public body had authority to apply the exception. The ICR team was forced to make multiple requests for information and have numerous face-to-face meetings with the ATI coordinators and other department officials, in order to attempt to obtain the evidence needed to form an opinion about whether the exception applies.





For 10 review files that went to adjudication involving concurrent access requests for the same department (public body), the ICR team was challenged with reviewing



thousands of records responsive to these 10 access requests. Under normal circumstances, the sheer volume would prove challenging; however, the work was further complicated when we discovered that the public body's responses to the access requests had been done incorrectly. Instead of a line-by-line review, entire records were withheld. The task became not only one of reviewing records, but of educating the public body on how to process access requests, how to interpret the ATIPP Act and what information we require in order to do our reviews. Because we are permitted only 90 days to settle a matter under review, eventually, we simply ran out of time.

This lack of understanding amongst public bodies and their staff about the access to information provisions of the ATIPP Act led to lengthy delays in providing access to information to applicants.

### Improper searches

In my 2018 Annual Report, I indicated that searches for records are not being conducted properly. Inadequate searches continued to be a problem in 2019. Our investigations into allegations of inadequate search demonstrated that some public bodies need to establish better procedures to

locate records subject to an access to information request.

### Delays in providing information

We reviewed 10 case files in which the public body or custodian had not met the timelines for responding to access requests, which meant that the applicant had to wait a significant amount of time to receive a response (see *Delays impact right to access to information* on p. 22 of this annual report).



### Confusion about records

While attempting to settle several cases, we ran into circumstances where it was unclear which public body had custody or control of the relevant records. In one case, the confusion stemmed from an amalgamation of the human resources function from four departments into one. In another case, there was confusion about whether a territorial or federal public body had custody or control of the records. It is essential that public bodies and custodians are clear about the records they are responsible for, from both the access to information and privacy perspectives.

### Involvement of records manager

On numerous occasions, I have stated that involving the records manager at the Yukon government in processing access to information requests is problematic. We saw several instances in 2019 where the records manager's involvement led to applicants receiving

information about their access requests that was inaccurate.

### Working to improve access to information

Through our work in 2019 and in previous years, we know that more training is needed on the access to information (ATI) provisions of the ATIPP Act, both for those involved in processing access requests and for senior department officials. For that reason, we undertook a number of initiatives in 2019, which were designed to help public bodies improve their ATI processes. These included:

- spending time with ATI coordinators and department officials, helping them better understand the ATI provisions of the ATIPP Act and how to apply them;
- establishing guidance on how to conduct an adequate search;
- conducting workshops on how to conduct an adequate search;
- holding regular meetings with the ATIPP Office; and
- establishing a mentoring program with ATI coordinators who, through this program, work alongside us in the office to improve their knowledge about how to apply the ATI provisions when processing an access request.

This work will help us achieve Goal # 3 set out in my 2018 Annual Report, which is to improve access to information by working with public bodies to make increased information accessible without an access request and by improving the knowledge of those responsible for processing formal access to information requests.

In 2020, we will continue this work. In addition, we will assist ATI coordinators with their understanding of the new ATIPP Act once it is brought into force.

## Privacy in Progress

Privacy awareness continues to build in Yukon, both within organizations, such as public bodies and custodians,

and amongst members of the public. Increasingly, we are receiving questions about the responsibilities of public bodies and custodians under the ATIPP Act and HIPMA. These questions come from staff within these organizations and from the public. This is encouraging.

We did receive a number of complaints in 2019 about privacy, 18 in total. The majority of these were complaints about unauthorized disclosure of personal information or personal health information, which were found to be privacy breaches. One breach resulted in a custodian having to notify the individual affected by the breach, which is necessary under HIPMA when it is possible that the breach may cause significant harm to the individual.

Several of the breaches involved personal information collected for the purpose of workplace accommodation. I was troubled to see this, given the work our office has done with the Public Service Commission (PSC) and Yukon government departments on developing privacy impact assessments, which improve the protection of personal information, including by limiting its collection, use and disclosure.

As a result of these complaints, in particular because they were substantiated, I intend to meet in 2020 with the PSC and human resources directors of Yukon government departments to discuss these complaints and have them re-evaluate their privacy protection measures for any personal information collected for accommodation purposes.

An increase in the number of reported privacy breaches is not necessarily a bad thing. It is often a sign that employees and members of the public are becoming aware of their privacy rights and responsibilities under the ATIPP Act and HIPMA. I will note, however, that we received only one mandatory breach report under HIPMA in 2019 by a custodian. This tells me there is more work to be done to ensure custodians are recognizing privacy breaches and are fulfilling

their notification requirements under HIPMA.

In an effort to increase awareness about HIPMA, we gave a number of presentations to different groups, including the Department of Health and Social Services, several physicians at Whitehorse General Hospital and several smaller custodians. Following the meeting with physicians, we were invited to work with the Yukon Medical Association (YMA) to develop tools to help smaller custodians meet their obligations under HIPMA. We were also invited by two health facilities to audit their compliance with HIPMA. We are currently developing a set of audit tools to conduct these audits. We intend to use the results of the audits to develop, in partnership with the YMA, a tool kit for physicians and smaller custodians.

The work that we undertook in 2019, and which we will continue to do in 2020, will help in achieving two more of the goals set out in my 2018 Annual Report:

Goal # 2 - to support the development of privacy management programs for public bodies and custodians; and

Goal # 7 - to deliver on my outreach strategy to increase knowledge amongst the public and within the health sector on the mandates of the office and to inform the public about their rights.

## New ATIPP Act

We were informed in late 2019 that the new ATIPP Act will be brought into force in the spring of 2020. In October 2019, we were provided a copy of some of the draft regulations and we then provided comments to the Department of Highways and Public Works. As of the end of 2019, we had

not yet received a complete version of the draft regulations.

We will be working hard in the first part of 2020 getting ready for the implementation of the new ATIPP Act, which we anticipate will substantially increase the work of our office.

## HIPMA Review

A review of HIPMA is scheduled to begin sometime before August 31, 2020. There are a number of recommendations that I intend to make to improve HIPMA, including recommendations that will improve citizens' privacy rights and increase the powers of the IPC. (See *Plight of the toothless tiger* on p.28 of this annual report.)



Participating in the review of HIPMA will help me to meet Goal # 8, as set out in my 2018 Annual Report, which includes participating in the review of HIPMA in 2020.

## Concluding Remarks

In the SAMPLES OF OUR WORK section of this 2019 Annual Report, you will find more information about our office's activities under the ATIPP Act and HIPMA. You will also find additional information about our performance in carrying out our duties under these laws, in the HOW WE MEASURED UP section of this report.

Diane McLeod-McKay  
Information and Privacy Commissioner

Through our work on individual files in 2019, under the *Access to Information and Protection of Privacy Act* (ATIPP Act) and the *Health Information Privacy and Management Act* (HIPMA), we were able to identify a number of recurring issues that led to complaints. These issues include:

- Under the ATIPP Act
  - Confusion about access to information
  - Improper searches
  - Confusion about records
  - Involvement of records manager
- Privacy complaints and breaches under both the ATIPP Act and HIPMA.

This section of the annual report highlights these ongoing problems by providing examples, from actual files we worked on this year, that illustrate what has been happening. Actual names of individuals have not been used in these stories and any information that would serve to identify the complainants has been removed, in order to protect their privacy.

## CONFUSION ABOUT ACCESS TO INFORMATION

Throughout 2019, we experienced considerable challenges in settling complaints about access to information because access to information coordinators at public bodies are confused about how to apply the access to information provisions of the ATIPP Act. This lack of understanding led to lengthy delays in providing access to information to applicants.

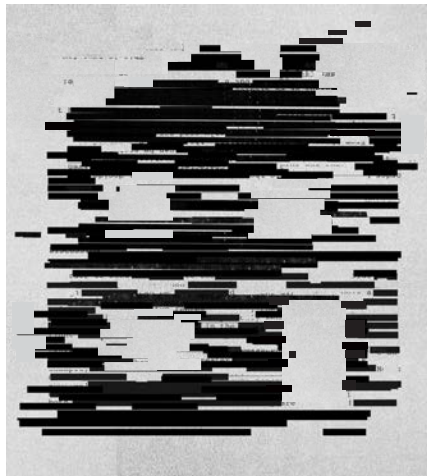
▶ **The department didn't get it wrong... but could have gotten closer to right!**

JERRY SENT AN ACCESS REQUEST TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES FOR INFORMATION ABOUT RENTAL HOUSING, INCLUDING VACANT HOUSING, SOCIAL HOUSING, COSTS TO RENT FROM PRIVATE OWNERS, AND SPECIFIC INFORMATION ABOUT ONE PRIVATELY-OWNED UNIT WHICH HAD BEEN RENTED BY THE YUKON GOVERNMENT.

The department granted partial access to the records, but Jerry asked our office to review what he received. Our first approach, which is typical, was to work through our informal case resolution process. We asked for the records, but the department provided only one page of records, identified by Jerry as being in dispute. Our office reached out several times to explain that we have authority to review relevant records in their

entirety; otherwise, we are unable to make a determination. Despite this, the full unredacted records were not provided to us until the Information and Privacy Commissioner issued a formal notice to produce records. It is very rare and possibly unprecedented for this step to be required as part of an informal case resolution process.

With the full records at hand, we determined that some redactions had been done properly, in order to protect the personal information of



individuals under the care of Adult Disability Services. We also decided that some of the redactions could have been done to achieve a better balance between the applicant's right of access and the personal privacy of the residents. Normally we would have recommended that the department release our suggested version of the records, but there was a catch. Because of the records that

had already been provided to the applicant, combining those with our suggested version would have equated to sharing an unredacted version of the records in full, which would have violated the ATIPP Act.

**Because of the way the redactions had been done in the first place, we had to recommend the department continue to withhold the information at issue from the applicant. That said, we shared our observations with the department, explained how the redactions could have been done differently, and asked them to review their methodology for redacting documents to ensure applicants' rights of access are balanced adequately with personal privacy.**

▶ **If you don't know... train, train, train**

ANNE BROUGHT A COMPLAINT TO OUR OFFICE AFTER MAKING A REQUEST FOR INFORMATION TO THE PORTER CREEK SECONDARY SCHOOL (PCSS). THE SCHOOL IS PART OF THE DEPARTMENT OF EDUCATION, WHICH IS A PUBLIC BODY UNDER THE ATIPP ACT. PCSS HAD NOT PROVIDED A RESPONSE TO ANNE'S ACCESS REQUEST WITHIN THE 30-DAY TIMELINE SET OUT IN THE LEGISLATION. INSTEAD, ANNE HAD RECEIVED A LETTER FROM THE DEPARTMENT, SAYING THAT IT WAS WORKING ON THE REQUEST, BUT COULD NOT FINISH IT IN THE LEGISLATED TIMELINE.

When we looked into it, the department explained that employees



at the school who were involved in the access request were unfamiliar with the process of producing records under the ATIPP Act, which resulted in the delay.

The school had originally redacted information before sending the records to the department's privacy management coordinator, who then explained the records should have been provided to her in unredacted form and that it is her role to make any necessary redactions. Then, the school modified the unredacted records before sending them to the coordinator, by adding dates and page numbers, prompting the coordinator

to explain that the records need to be provided to her without modification.

**When it became clear that there was a lack of knowledge about how to provide access to information under the ATIPP Act, the department expressed interest in providing information about the legislation to the school's administration, in order to address this issue. A presentation on the ATIPP Act was made to the management team, and the privacy management coordinator offered to send out additional information on the ATIPP Act to all schools and on how to manage access requests.**

## IMPROPER SEARCHES

Our investigations in 2019 into allegations of inadequate searches demonstrated a continuing problem in this area. Some public bodies need to establish better procedures to locate records subject to an access to information request.

### ▶ When memory doesn't serve us well

CHRIS MADE A REQUEST FOR HIS OWN PERSONAL INFORMATION FROM THE DEPARTMENT OF TOURISM AND CULTURE. AFTER RECEIVING SOME RECORDS AND CHATTING WITH AN EMPLOYEE AT THE DEPARTMENT, CHRIS GOT WORRIED. HE BELIEVED SOME OF THE RECORDS HE WAS LOOKING FOR MIGHT HAVE BEEN MISSED. HE ALSO FOUND IT STRANGE THAT THERE WAS A SIX-MONTH PERIOD DURING WHICH NO RESPONSIVE RECORDS WERE FOUND.

After speaking with the department, Chris became even more concerned, as it seemed that the criteria for determining what records to search for and where to look was based primarily on the memory of one person, the ATIPP coordinator at the department.

During our investigation, the department said that after a previous investigation by our office, it had identified gaps in its ATIPP request process and had then developed

detailed written procedures and tools to help employees. As well, the department committed to ensuring staff were adequately trained on their ATIPP Act obligations. We determined that Chris' request was completed before the new processes were implemented.

Despite this, the department was adamant that nothing had been missed when doing the search for Chris' request. Only when faced with additional prompting and specific details did the department concede that records had indeed been missed.

While the department's approach was generally on the right path, it did not initially meet its obligations to provide Chris with a response that was open, accurate and complete. Its process did not account for the possibility that employees previously in a position may have some of the responsive records. As well, the department did not advise the records manager that because an employee had changed jobs, additional responsive records were likely within the custody and control of another public body.

This shows how important it is for public bodies to have processes in place to ensure adequate searches are conducted. It also demonstrates an underlying problem. There is a lack



of comprehensive Yukon government policy to govern information management across departments and a general lack of adequate training. If this does not change, our office will continue to see similar complaints.

**This case was resolved when the department provided Chris with an amended response including the missing records and it agreed to implement our recommendations. One was that the department establish a more structured approach toward searches for records, which relies on employees' memories as little as possible, and includes a written procedure, how-to guidelines, an advanced search checklist and a document tracker. The other was**

to be forthcoming with the records manager, for example, if they believe responsive records may be within the custody and control of another public body.

## ▶ Search and ye shall find... but only when the filing is done right

WE RECEIVED A COMPLAINT FROM REBECCA ABOUT THE DEPARTMENT OF JUSTICE'S RESPONSE TO HER ACCESS REQUEST. SHE FELT THE DEPARTMENT DID NOT CONDUCT A

PROPER SEARCH FOR RECORDS THAT WERE RESPONSIVE TO THE REQUEST. IN PARTICULAR, REBECCA BELIEVED THAT "INFORMATION REPORTS" AND "USE OF FORCE REPORTS" WERE MISSING FOR A NUMBER OF DATES.

After we enquired, the department contacted the Whitehorse Correctional Centre to ask about the records at issue. It turned out that the records did exist, but had been improperly filed and had been missed in the initial search for records, all due to human error. The result was that 37 pages of additional responsive records were found and provided to the applicant.

The department dealt with this matter very quickly. The amended response was provided to the applicant the day after we received the complaint. In addition, to avoid a recurrence of this problem, Justice accepted our recommendation to ensure that Whitehorse Correctional Centre employees who have responsibility for information management have adequate training, including guidance materials.

## CONFUSION ABOUT RECORDS

In several cases that we dealt with in 2019, we encountered situations where it wasn't clear which public body had custody or control of the relevant records. This confusion occurred for a variety of reasons, but it highlights why it is so important for public bodies and custodians to be clear about the records they are responsible for.

### ▶ What, no records?

JEFF, AN INMATE OF THE WHITEHORSE CORRECTIONAL CENTRE (WCC), BROUGHT A COMPLAINT TO US REGARDING HIS REQUEST FOR ACCESS TO RECORDS, INCLUDING A VIDEO OF HIS ARRIVAL AT THE CORRECTIONAL CENTRE AFTER BEING ARRESTED. JEFF WAS VERY UPSET WITH THE WAY HE WAS TREATED, DESCRIBING IT AS VIOLENT AND FRIGHTENING. HE WANTED TO HAVE ACCESS TO THE VIDEO OF THIS INCIDENT.

The Department of Justice responded to Jeff's access request by saying it did not have custody or control of the responsive records. When we investigated, we found evidence that suggested the department's response was incorrect. For example, the video Jeff requested was taken in the Arrest Processing Unit, which is a joint initiative of the territorial government (through Justice and WCC) and the federal government (through the



RCMP), and the video feed is directed to both the WCC and RCMP servers.

**Justice did amend its response to Jeff, saying it did have custody and control of the video. Ultimately, it denied him access to the video, but we were at least able to resolve the jurisdictional issue over who had the records Jeff was seeking.**

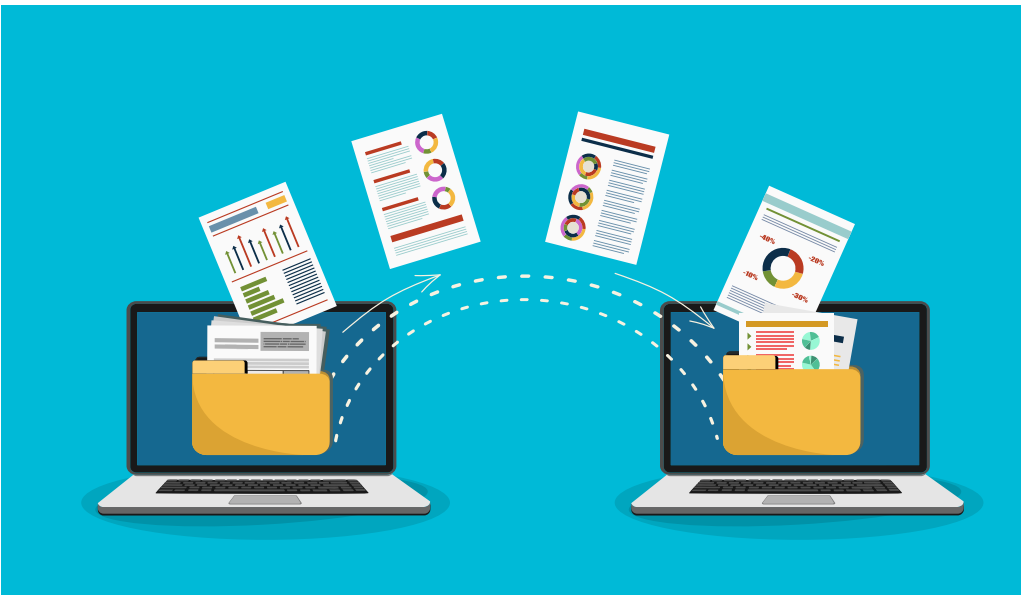
### ▶ Where are those files again?

ELSA HAD SPENT SOME TIME WORKING FOR BOTH THE YUKON LIQUOR CORPORATION (YLC) AND LOTTERIES YUKON. SHE ASKED THEM BOTH FOR

RECORDS THAT RELATED TO HER OR HER WORK AT BOTH PUBLIC BODIES. ELSA RECEIVED SOME RECORDS, BUT WAS CONCERNED THAT THE SEARCH FOR HER RECORDS HAD NOT BEEN ADEQUATE AND THAT THERE WERE MORE RECORDS TO BE FOUND. SHE SPECIFICALLY KNEW ABOUT SEVERAL RECORDS THAT SHOULD HAVE BEEN PART OF WHAT SHE WAS GIVEN, BUT WERE NOT. SO SHE BROUGHT THE MATTER TO OUR OFFICE.

At first, this seemed like a simple request, but there was a twist.

After Elsa brought her case to us, we found out that YLC, Lotteries, the Department of Finance and the Executive Council Office (ECO) had



consolidated their Human Resources departments and records into one branch, housed under ECO, which provides shared services to all four departments. As well, by the time we received the complaint, that branch had been moved from ECO to the Public Service Commission. This made things quite complicated.

First, we determined that ECO's search for Elsa's records was not adequate. This was due to a combination of factors, including human error, a lack of understanding about the shared human resources program, and the fact that Elsa had worked at not only YLC and Lotteries, but also ECO, which meant all three public bodies had some human resources files about her.

Once we decided that there were likely records missing, we hit a dead end because ECO no longer had custody or control of the records in question. We circled back to PSC, to complete a new search for records. That resulted in about 40 additional pages of responsive records, which PSC provided to Elsa.

The applicant was satisfied with the outcome. We, however, had some remaining concerns. In particular we were concerned that there was significant potential for confusion about access requests amongst the consolidated human resources branch and the public bodies using the combined program.

**While the PSC was not responsible for the initial issue, our recommendation was for PSC to work with the ATIPP Office to clarify the role of the consolidated branch to make sure that future access requests for human resources records involving the participating departments would be directed to the PSC. The PSC agreed and the recommendation was implemented.**

### ▶ Reviewing records in a rush

**RICKEY SUBMITTED AN ACCESS REQUEST TO OBTAIN SOME OF HIS PERSONAL INFORMATION WHICH WAS HELD BY THE DEPARTMENT OF JUSTICE.**

Two DVR records and more than 100 pages of written records were found. Initially, Justice provided access to only some of the written records, saying that the redactions were to prevent unreasonable invasion of personal

privacy to third party individuals. No access was given to the two DVR records, with Justice indicating that releasing the information could be harmful to law enforcement. Rickey asked us to review Justice's decision.

As our office worked with Justice, the department either released the requested records to Rickey, or we agreed with the department's decision to withhold or redact records.

Our office ultimately managed to settle this review, but it was not without challenge. Toward the late stages of our review, we discovered that Justice had not provided us with all the responsive records and we reminded the department of its obligation to provide us with all the responsive records when we are conducting a review.

As well, toward the end of the time frame set out for mediation, Justice advised us twice that one of the DVR records had been purged from the system and we proceeded with closing the file. Only upon receiving our closing letter did Justice inform us that there had been a mistake. The recording was not purged but was being withheld by the department. That meant we were required to re-open the file with very little time left to complete an analysis.

**Erroneous information and delays in receiving information can significantly hinder our ability to investigate and reach settlement within the prescribed 90-day time frame. We took this opportunity to remind Justice of its obligation to ensure the accuracy of the information provided to our office.**



## INVOLVEMENT OF RECORDS MANAGER

In the view of this office, the need to involve the records manager at the Yukon government in processing access to information requests is problematic and should be changed. The role of the records manager is set out in the ATIPP Act, and the position, along with the central ATIPP Office, is housed within the Department of Highways and Public Works. The records manager serves as the gatekeeper for access requests. All requests go through that position and are then passed to the public body in question along with the due date.

Here are several examples from 2019 in which the records manager's intermediary role led to applicants receiving information about their access requests that was inaccurate.

### ► Who's on first... the records manager or the public body?

**SUSIE ASKED OUR OFFICE TO REVIEW A DECISION MADE BY THE RECORDS MANAGER TO EXTEND THE TIMELINE FOR HER ACCESS REQUEST TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES. SHE WASN'T SURE THE EXTENSION WAS JUSTIFIED.**

We found that the department had requested an extension from the records manager within the prescribed time and that the records manager had approved the extension within the time limit. However, due to a clerical error, Susie was not told about the extension until two days after the deadline and because of that, the extension was not valid.

That meant the original deadline for providing the records was still in place, but it had already passed. As well, Health and Social Services was still operating under the assumption it had more time, which was no longer the case.

The use of a records manager in the access to information process is unique to Yukon. As the Information and Privacy Commissioner has stated



numerous times, having the records manager as an intermediary between applicants and public bodies can cause confusion. It can make it difficult to assess which party is responsible for what, and when, especially when steps are missed, which was the case with Susie's request.

**The records manager confirmed to us that Susie was notified of the extension after the deadline, and took measures to prevent recurrence of this problem. However, it is an example of the problems that can arise due to this model of shared responsibility between the public bodies and the records manager.**

### ► Communication breakdown

**TOM GOT IN TOUCH WITH OUR OFFICE AFTER RECEIVING A LETTER FROM THE RECORDS MANAGER SAYING THAT THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES HAD NOT RESPONDED TO HIS ACCESS TO INFORMATION REQUEST WITHIN THE 30-DAY DEADLINE. UNDER THE ATIPP ACT, THIS IS TREATED AS A DECISION TO REFUSE ACCESS, OR A "DEEMED REFUSAL".**

Our investigation found that the deemed refusal was due to confusion amongst the department, the records manager and Tom. On the day that the original access request was activated, Health and Social Services asked for clarification about it from the records manager, who then passed on the request for clarification to Tom. Tom never responded.

Under the ATIPP Act, when a clarification request is made, the timeline for response is suspended until the applicant makes the clarification. For that reason, the letter that the records manager sent to Tom, indicating that the department had missed its deadline, was sent in error. This is because, in fact, the access request was in suspension.

In addition, our investigation found that neither the records manager nor the department followed up when they did not receive clarification from Tom. This meant the request was in suspension for more than five weeks, with no action whatsoever. We also found that there was confusion about what clarifying information the department needed from Tom and how

the request for clarification had been sent to Tom by the records manager.

**We recommended that the records manager confer with the department to clarify what information was needed from Tom and then re-send the request for clarification.**

## ▶ Every word counts

AVERY HAD MADE A REQUEST FOR RECORDS TO THE DEPARTMENT OF TOURISM AND CULTURE. WHEN SHE GOT HER RESPONSE BACK, SHE WAS CONCERNED THAT SOME RECORDS WERE MISSING, IN PARTICULAR COMMUNICATIONS BETWEEN TWO SPECIFIC PUBLIC BODIES. IN ADDITION, SHE WAS PUZZLED ABOUT A REFERENCE BY THE RECORDS MANAGER TO A "PROCEEDING FOR ADJUDICATION" BEING THE REASON THAT SOME RECORDS HAD BEEN WITHHELD. AVERY HAD NO KNOWLEDGE OF ANY SUCH PROCEEDING.

After we reviewed Avery's case, we found that the department had met its obligations by providing a response that was open, accurate and complete, including a schedule of records. The reason that the communications between the two specific public bodies were not included was that the entire set of records had been redacted, which resulted in confusion for Avery.

**We also found that part of the problem was caused by a mistake made by the records manager. The department had never referenced a "proceeding for adjudication" as a reason for withholding some of the records. Instead, the records manager had erroneously included this statement in its reply to Avery on behalf of the department, which led to further confusion for her. The ATIPP Office acknowledged the records manager's mistake, determined it was due to human error and provided Avery with an amended response.**

## Delays impact right of access to information

In 2019, we saw a spike in the number of deemed refusals to access to information requests under both the ATIPP Act and HIPMA. Under both pieces of legislation, a deemed refusal occurs when the timelines are not met for providing a response to an applicant's request for access to information.

In 2019, we opened nine deemed refusal case files for one specific department after applicants made

(See "The plight of the toothless tiger" section of this annual report.)

The inability of this department to meet its timelines for response led to significant delays for applicants in receiving responses to their access to information requests.

Laws with access to information rights include the right of an applicant to receive a response to their access request in a timely manner. What constitutes timely is set out in HIPMA and the ATIPP Act. Specifically, an applicant under both laws has the right to receive a response to an access request within 30 days of making

the request. In certain limited circumstances, they may have to wait an additional 60 days, if the timeline for response is extended. There are a number of circumstances in HIPMA and the ATIPP Act that authorize a public body or custodian to extend the time to respond by up to 60 days.

One circumstance that is commonly being used by public bodies and custodians to extend timelines is when "completing the required work within the initial 30 day period would unreasonably interfere with the operations of a custodian" under HIPMA and where "a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of a public body" under the ATIPP Act.

A public body or custodian cannot rely on either of these authorities to extend the timeline to respond unless the threshold identified in the circumstance is met. It is not enough for a public body or custodian to determine that processing an access to information request within the timelines will interfere with its operations; it must 'unreasonably' interfere with its operations. This is an



complaints to our office about missed timelines. This number is significant, given that only one other deemed refusal case file was opened in all of 2019.

The missed timelines by this department led to a significant amount of work for my office and our ability to work with the department to expedite a response to the access requests was hampered by a lack of cooperation.



intentionally high threshold, given the rights at stake.

Public bodies and custodians are expected to adequately resource their access to information programs to meet the timelines set out in HIPMA and the ATIPP Act, and to ensure their access to information programs operate effectively. They are also required to have proper records management systems where information can be found within a relatively short time frame.

A lack of resources, a poorly-managed access to information program, and poor record-keeping are not factors to consider in determining whether processing an access to information request will unreasonably interfere with the operations of a public body or custodian.

In Consideration Report HIP18-24i, I set out the factors that a public body or custodian is to consider in determining whether processing an access to information request within the initial 30 days would “unreasonably interfere” with its operations.

*If a public body [or custodian] asserts that completing the work required to respond to an access request within the initial 30-day period would unreasonably interfere with its operations, then it must make a determination to that effect. Such a determination first requires engaging in a process that brings forward evidence sufficient in breadth and depth to support its assertion. I am of the view that the following four questions...frame that process.*

1. *Is the human resource capacity of the public body [or custodian] sufficient to meet the operational demands of processing access requests generally?*
2. *How do the number of access requests by the applicant compare with the total number of access requests that the public body [or custodian] must process in the same time frame?*

3. *What is the degree of complexity presented by the applicant’s access request(s) in comparison to all the other access requests being processed by the public body [or custodian] in the same time frame?*

4. *Is the time spent in processing the applicant’s access request(s) significantly disproportionate in comparison to all the other access requests being processed by the public body [or custodian] in the same time frame?<sup>1</sup>*

*In answering these four questions, it is the totality of the circumstances specific to each case that determines whether a public body’s assertion of unreasonable operational interference can be sustained.*

Unfortunately, we have seen a number of cases in which the unreasonable interference circumstance is being relied on to extend timelines without authority because the interference, if any, does not meet the threshold of “unreasonable.”

Processing access to information requests is becoming more and more challenging given the vast amount of information held by public bodies and custodians. However, the timelines in HIPMA and the ATIPP Act exist for a reason and cannot simply be ignored. In discussing the delays in processing access to information requests with one department, we were informed that non-compliance with the timelines in the ATIPP Act is a risk it is willing to carry. While this is troubling, it is not surprising. There are no real consequences to public bodies or custodians that fail to meet the timelines for response. The IPC has no authority to require a public body or custodian to respond within a specific timeframe and there are no substantive penalties for failure to respond in time. Within the existing access to information regimes under the ATIPP Act and HIPMA, the consequences of delay rest solely with the applicant whose only choice is to wait for a response.

In an effort to improve timely access to information, I strongly encourage public bodies and custodians to evaluate their access to information programs to determine if there are any systemic challenges to providing responses to access to information requests within the timelines set out in the ATIPP Act and HIPMA. As part of evaluating these programs, a public body or custodian should determine if:

- its access to information program is adequately resourced;
- its human resources are adequately skilled;
  - there are adequate policies and procedures to assist its human resources in applying the access to information provisions in HIPMA and the ATIPP Act properly;
  - its human resources are adequately trained on the policies and procedures;
  - its records, including emails and digital records, are being managed properly such that they can be found within a reasonably short time frame; and
  - its processes, including any decision-making by employees within the public body or custodian in respect of the access request, are not causing delays in response.

Following the evaluation, the public body or custodian should identify any issues with the operation and management of its access to information program that may be causing delays and preventing it from responding within the legislated timelines. The public body or custodian should then establish a plan with reasonable timelines to address the issues.

<sup>1</sup> At para 83.

# PRIVACY COMPLAINTS AND BREACHES

Our office received 18 complaints about privacy in 2019. Examples of these complaints are described in the stories below.

Several of the complaints involved personal information collected for the purpose of workplace accommodation, which is concerning. As a result of these complaints, the IPC plans to reach out to Yukon government departments and the Public Service Commission in 2020 to help them re-evaluate their privacy protection measures for any personal information collected for accommodation purposes.

## ▶ An email goes astray

LUCY RECEIVED AN EMAIL FROM HER EMPLOYER, THE YUKON LIQUOR CORPORATION (YLC), CONTAINING A VARIETY OF PERSONAL INFORMATION ABOUT ANOTHER YLC EMPLOYEE, INCLUDING MEDICATIONS, MEDICAL RESTRICTIONS AND LIMITATIONS, AND DETAILS ABOUT A DISABILITY MANAGEMENT PLAN IN THE WORKPLACE. INITIALS WERE USED RATHER THAN A NAME, SO THE YLC EMPLOYEE IN QUESTION WAS NOT IDENTIFIED. BECAUSE SOME OF THE INFORMATION WAS SIMILAR TO HER OWN, LUCY ASSUMED THE EMAIL WAS FOR HER AND FORWARDED IT TO HER UNION REPRESENTATIVE.



Within a few minutes, the sender of the email realized he had sent it to the wrong person, and emailed Lucy explaining what had happened. Lucy and her union representative both deleted the emails and any copies.

OOPS

However, Lucy was still concerned and brought a complaint to our office, asking if a disclosure of personal information had occurred contrary to the ATIPP Act and if so, what steps were taken to mitigate the breach. Even though a name was not given, she believed she could identify the other employee through initials alone.

When we began to look into it, we found that the YLC did acknowledge that two privacy breaches had occurred, when the sender emailed Lucy and again when Lucy forwarded the email to the union. Because all involved indicated that the emails had been deleted, we were satisfied that the breach was reported, contained and mitigated in accordance with protocol and within an acceptable time frame.

In this case, the ATIPP Act does not require the YLC to notify the person whose information was breached because there was no risk of significant harm. However, it was our opinion that under these circumstances, in such a small office and in a small jurisdiction, the YLC should notify the affected person. This was done.

**The YLC also agreed to implement our recommendation that communications involving sensitive personal information are adequately anonymized, perhaps by using a file number, rather than initials. We also observed that the YLC may want to look into disabling the “auto-fill” feature in the Outlook email program, for staff who regularly use and disclose sensitive personal information.**

## ▶ If it's personal, don't overshare

PAT CONTACTED OUR OFFICE WHEN HE WAS CONCERNED THAT THE PUBLIC SERVICE COMMISSION (PSC) HAD USED AND DISCLOSED HIS PERSONAL INFORMATION CONTRARY TO THE ATIPP ACT.



As part of a workplace accommodation done with the Yukon Workers' Compensation Health and Safety Board (YWCHSB) and the PSC's Disability Management Unit, Pat had undergone a medical assessment. Because of another investigation done by our office, we knew that the YWCHSB had not sufficiently redacted sensitive medical information from the assessment before disclosing it to other public bodies, including the PSC, resulting in a confirmed privacy breach.



The Disability Management Unit had also reviewed Pat's insufficiently-redacted medical assessment and reduced it to a summary document. Pat was concerned the summary had been shared with his employer and possibly others. He wanted to be sure that all copies of the summary document were located and destroyed.

**Our analysis determined that the PSC was authorized to collect, use and disclose Pat's personal information in order to determine eligibility for benefits and develop an accommodation (or return-to-work) plan. However, PSC acknowledged that it may have inadvertently used and disclosed more information than necessary, and it confirmed that all copies of the summary document were destroyed.**

## ▶ When “everyone” knows, it’s still not OK to share



RYNE CONTACTED OUR OFFICE BECAUSE HE WAS CONCERNED THAT HIS SUPERVISOR IN THE DEPARTMENT OF JUSTICE HAD SHARED DETAILS OF HIS WORK ACCOMMODATION PLAN WITH HIS CO-WORKERS.

As part of our investigation, we interviewed the supervisor, who was adamant that he had done nothing wrong. He said the entire workplace was already fully aware of Ryne’s accommodation plan and it had been the topic of several inter-office meetings.

Our investigation found that the supervisor had indeed breached Ryne’s privacy. Whether the information was commonly known is not relevant and it does not allow the disclosure of personal information without the proper authority under the ATIPP Act.

**The department acknowledged the breach and accepted our recommendations that the supervisor complete a privacy breach report, take a refresher course on the ATIPP Act and discuss the incident with the department’s privacy officer.**

## ▶ An educational process



JENNIFER WAS ENROLLING HER CHILD IN THE AURORA VIRTUAL SCHOOL (AVS), A DIGITAL SCHOOL DESIGNED TO ENCOURAGE HOME SCHOOLING ON A VIRTUAL PLATFORM. AVS IS RUN BY THE DEPARTMENT OF EDUCATION, AS ARE OTHER PUBLIC SCHOOLS IN THE TERRITORY.

Jennifer came to us because she felt that AVS did not have adequate security measures to cover the collection of personal information during student registration. She also felt that AVS was over-collecting personal information, since she had already delivered some of the same information to the Department of Education when her child was enrolled previously in a public school.

During our work on this file, we found that AVS collects personal information about students in several ways: by fax, mail, email or in person. Parents are asked to email registration information to a standard Government of Yukon email address, with no additional security arrangements. No alternate way of digitally providing the personal information is offered. In our view, this meant the information is vulnerable while it is being transmitted.

We also found that AVS has several different categories under which a student may apply; each category requires different information. In addition, we noted that AVS was providing an out-dated student enrolment form on its website.



AVS was very interested in working with us to improve information security and in avoiding future complaints. We suggested AVS take the following actions:

- Provide the most recent student enrolment form on its website;
- Work with the Information and Communications Technology Branch of the Yukon government to implement a secure method for the digital collection of personal information;
- In the interim, include a warning on its registration page that emails could be intercepted and providing alternate methods of submitting the information; and
- Include on its registration page a list of student enrolment categories, outlining the varying types of information that must be submitted for each.

**We also provided AVS with information on how to submit a privacy impact assessment, which would help it be proactive in addressing potential privacy concerns.**



## ▶ Before you press send, double check

A LOCAL NEWSPAPER CONTACTED OUR OFFICE TO REPORT A POTENTIAL SECURITY BREACH OF SOMEONE’S PERSONAL HEALTH INFORMATION.

A fax containing a person’s name, date of birth, address, phone number, health care number and diagnosis was received at the office of the newspaper. It came from a local medical clinic.

After being made aware of the breach, the clinic fulfilled its obligations under HIPMA. It determined that there was a risk of significant harm to the affected individual and notified them of the breach, as well as notifying our office and providing us with a written breach report.

The breach occurred because of human error. A relatively new employee sent a fax using the machine’s programmed address book but accidentally selected the number for the newspaper.

To avoid a recurrence, the clinic committed to retrain all staff who use the fax machine, and implement procedures to ensure fax numbers are double-checked before being sent. It also indicated it would remind employees of their obligations under HIPMA and maintain ongoing training.

In this case, the unintended recipient acted correctly by securing the document from further breach and reporting the incident. The clinic was cooperative and with the help of our office, it was able to rapidly contain and mitigate the security breach. Our office was satisfied that the clinic put tangible measures in place to reduce the risk of this happening again.

**While the outcome illustrates a best case scenario for a security breach, it highlights how moments of slight inattention can have potentially serious consequences. It is imperative for health care information custodians to have adequate security measures and procedures to counterbalance the risks of human error.**

## ▶ Too much information? Yes!

CALLIE GOT IN TOUCH WITH OUR OFFICE WITH CONCERNS THAT THREE MEDICAL CLINICS IN THE TERRITORY WERE DISCLOSING TOO MUCH PERSONAL HEALTH INFORMATION WHEN INVOICING THE DEPARTMENT OF COMMUNITY SERVICES.

The invoices from the clinics were for medical exams required for employment in positions such as ambulance drivers and fire fighters. The invoices included such things as name, date of birth, mailing address and patient ID number.

During our investigation, we learned that Community Services requires minimal information to authorize a payment for medical services and did not need patient information. Instead, a separate form is filled out by the medical practitioner showing whether the driver is fit for duty. That form is submitted directly to the department's human resources staff, who link the health information to the employee's file.



We determined that the clinics were indeed acting contrary to HIPMA, by disclosing more information than was necessary.

**The clinics were cooperative and accepted our recommendations to immediately stop putting personal health information on invoices to Community Services, to inform all staff who do this work that personal health information is not to be included, and to develop and implement written procedures for staff on these matters.**

## ▶ Can you ask that?

COURTNEY AND CHARLIE CAME TO OUR OFFICE WITH A COMPLAINT ABOUT WHITEHORSE GENERAL HOSPITAL. THEY WERE CONCERNED THAT THE HOSPITAL MIGHT NOT BE COMPLYING WITH HIPMA WHEN IT ASKS PATIENTS IF THEY SELF-IDENTIFY AS FIRST NATION.

Both individuals wanted to remain anonymous, so our investigation was limited to the hospital's overall processes with regard to collection, use and disclosure of First Nation status.

We did not look into the specific details of how Courtney's and Charlie's information was handled.

Our investigation found that the hospital was in compliance with HIPMA. The hospital confirmed it does ask first-time registrants if they wish to self-identify as First Nation.

That information is kept on file in perpetuity unless the patients request to change that information in their file.

The purpose of collecting that information is to determine if they are eligible for First Nation health programming, which offers specialized support for First Nations, Inuit and Metis patients. The hospital acknowledged that the details of these programs are not actively discussed with registrants. The hospital was relying on a section of HIPMA which authorizes the collection of information if there is a notice posted in registration areas of the hospital.

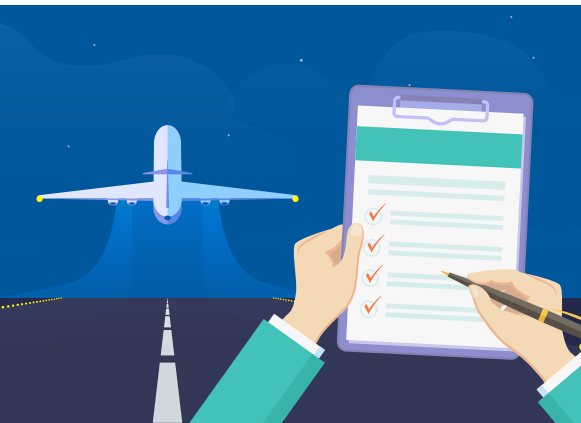
The opinion of the investigator involved determined that the notice met all the requirements of HIPMA for obtaining knowledgeable consent. This included a description of the purpose of the collection, use and disclosure and the advice that patients have the right to give or withhold consent and to withdraw consent at a later date.

**We didn't make any recommendations in this case but we did make an observation that the hospital could increase awareness and transparency by providing additional information about First Nation health programming in a pamphlet or a posted notice. The hospital was cooperative during our investigation and advised it would look for ways to make information on these programs more readily available to patients.**



## ▶ The government does not always need to know

RYAN CONTACTED OUR OFFICE WITH CONCERNS THAT THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES WAS OVER-COLLECTING PERSONAL INFORMATION ON A “TEMPORARY ABSENCE” FORM THAT YUKONERS MUST FILL OUT WHEN LEAVING THE TERRITORY FOR MORE THAN THREE MONTHS. THE FORM ASKS FOR THE REASON FOR THE ABSENCE AS WELL AS A TEMPORARY ADDRESS WHILE AWAY. RYAN FELT THIS WAS UNNECESSARY AND NOT AUTHORIZED BY LAW.



Our investigation determined that the department was in fact collecting more information than was necessary for carrying out its stated purpose. Under the *Health Care Insurance Plan Act* and regulations, there is no requirement for individuals to provide a reason for their absence as long as they intend to return to the territory and the absence does not exceed 12 months. The department agreed to change the form. It would remove the section on reason for absence and include a disclaimer for absences longer than a year, at which point more information may be required. It would also provide additional information on the form, including its authority under HIPMA to collect personal health information, the purpose of the collection, that it is only collecting the minimum amount of information necessary and that individuals may refuse or withdraw consent for the collection.

The department indicated that the request for a temporary address was still necessary on the form to ensure that the individual received any important paperwork, such as renewal notices or new cards. Our office found that this was reasonable so that aspect of the form was not changed.

## ▶ On the right side of the law

OUR OFFICE RECEIVED A COMPLAINT FROM JOHN ABOUT THE COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION BY THE KWANLIN DUN HEALTH CENTRE.

In this case, a social worker at the health centre obtained a copy of John’s psychological assessment. John’s understanding was that the assessment would be used to access funding in order to benefit from ongoing counselling.

John believed that the social worker had shared his psychological assessment with at least one other employee at the health centre and possibly with others outside the centre, without John’s consent and without authority under HIPMA.

**Our investigation found that the personal health information was collected with John’s consent and used only for the stated purpose of obtaining funding for counselling, and was in compliance with HIPMA. We found no evidence that the personal health information was shared outside of the health centre.**

## ▶ Sometimes partial information is all that’s needed

JODY CONTACTED OUR OFFICE TO COMPLAIN ABOUT THE AMOUNT OF PERSONAL HEALTH INFORMATION THAT WAS BEING COLLECTED BY HER FAMILY DOCTOR FROM HER PSYCHOLOGIST.

The family doctor indicated the information was being requested to better understand the general psychological health of their patient, and to be aware of any changes in diagnosis and medication to ensure the doctor could properly and safely care for Jody.

Under HIPMA, a family doctor may collect personal health information as long as it is limited to the minimum amount necessary to achieve their purpose, which would be to provide adequate care. When we looked into the case, our discussions focussed around that issue, which would mean the doctor would not require the “full file”. Jody’s concern was that her family doctor had requested her full file, but the doctor denied asking for this.

**We were able to reach an agreement that the family doctor would clearly list the information required from the psychologist in order to provide care, including updates on diagnosis, changes to prescriptions and any information that may be required if a continuing referral is needed.**



# The plight of the toothless tiger



This year, in my capacity as the Information and Privacy Commissioner (IPC), I experienced some significant challenges with one Yukon government department that raise some important issues about the powers of the IPC. Of particular concern is the lack of consequences for non-compliance by a public body or custodian with the ATIPP Act and HIPMA.

In my experience as the IPC, now more than six years, it is my view that public bodies and custodians are committed, in general, to complying with their responsibilities under these laws. The majority of the time, public bodies and custodians work cooperatively with my office to resolve issues and to settle investigations and reviews. When recommendations are made following an investigation or review under these laws, public bodies and custodians largely accept the recommendations and follow them. In some cases, it may take longer than anticipated to implement a recommendation, particularly when the recommendation involves budget dollars that are not easily accessible, but there is usually communication with my office about any delays and their causes. My experience supports that, for the most part, the powers of the IPC are sufficient and the consequences

reasonable enough to ensure that public bodies and custodians comply with the ATIPP Act and HIPMA.

However, what happens when a public body or custodian does not cooperate with the IPC to resolve compliance issues, does not cooperate during investigations or reviews, and does not follow recommendations it accepted? Well, nothing!

During 2019, a particular Yukon government department did just that, which left the IPC, who must act in the public interest, essentially powerless.

Under the ATIPP Act and HIPMA, the IPC has certain important powers to facilitate her work, but lacks others. The IPC has the power to conduct investigations (called “considerations” under HIPMA) and review decisions by public bodies in applying the access to information provisions of the ATIPP Act. (A complainant or applicant must initiate the investigation and review.) When conducting an investigation or review in Yukon, the IPC has the power to issue notices to produce documents. If the IPC issues a notice to produce documents, these laws require a public body to produce them within 10 days and a custodian to produce them within 15 days. However, if a public body or custodian fails to comply, there

is no penalty under either law and the IPC is essentially powerless to enforce compliance.

During 2019, I saw a consistent lack of cooperation by one Yukon government department that resulted in my inability to settle investigations and requests for reviews, due to delays in providing evidence. In many cases, requests for information to settle these matters went unanswered. This same department challenged the IPC’s jurisdiction on multiple occasions to investigate two complaints, despite the fact that it was clear I had the necessary jurisdiction. It then ignored my notice to produce documents for the investigation. It also agreed to follow 10 recommendations made in two reports issued by the IPC, but then missed all the deadlines to follow those recommendations and, in the end, failed to follow two of them. It also refused a meeting with the IPC to discuss whether there were compliance issues related to the acquisition of highly sensitive records.

What occurred in these cases raises the question of whether the current powers of the IPC are sufficient to meet the IPC’s mandated obligations under the ATIPP Act and HIPMA, including that the IPC is required to **ensure their purposes are achieved** (ATIPP Act section 42 and HIPMA section 92).

The new ATIPP Act expands the authority of the IPC by granting her what is called “own motion” authority to conduct investigations and to audit privacy practices, but it does not go as far as to grant the IPC order-making powers.

HIPMA is scheduled for review in 2020 and I intend to recommend that the IPC be granted “own motion” authority under that law as well. I am also planning to recommend that the IPC be given order-making powers under the new version of HIPMA that are enforceable by the courts, together with enforceable notices to produce.

Discussion about the need to increase the powers of IPCs is occurring across

Canada. The discussion centres on the need to ensure compliance with access to information and privacy laws, given the massive data breaches that are occurring and the diminishing trust of Canadians in the ability of organizations, including government, to adequately protect their personal information. Another impetus for these changes is to build trust amongst Canadians in support of a burgeoning digital economy. The following is an example of the discussions that are occurring.

In “Part 3: Enhancing Enforcement and Oversight in Strengthening Privacy of the Digital Age”, in the document “Proposals to modernize the *Personal Information Protection and Electronic Documents Act*,” issued by Innovation, Science and Economic Development Canada ([https://www.ic.gc.ca/eic/site/062.nsf/eng/h\\_00107.html](https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00107.html)), it states:

*There is a growing view that the ombudsman model and enforcement of PIPEDA, which relies largely on recommendations, naming of organizations in the public interest, and recourse to the Federal Court, to effect compliance with privacy laws, is outdated and does not incentivize compliance, especially when compared to the latest generation of privacy laws. **The current state of affairs cannot continue; meaningful but reasoned enforcement is required to ensure that there are real consequences when the law is not followed.** [My emphasis]*

The recommendations in the document referenced above are to increase the powers of Canada’s Privacy Commissioner in PIPEDA, by giving the commissioner, among other things, the power to issue binding orders. I will note here that HIPMA was written to be substantially similar to PIPEDA (PIPEDA is the federal *Personal Information and Protection of Electronic Documents Act*), which is the privacy law referenced in the foregoing document.

In the document “Effective privacy and access to information legislation in a data driven society,” a resolution of Canada’s federal, provincial and territorial Information and Privacy Commissioners issued in November 2019, it states:

*Privacy and access to information are quasi-constitutional rights that are fundamental to individual self-determination, democracy and good government. New technologies have numerous potential benefits for society but they have impacted fundamental democratic principles and human rights, including privacy, access to information, freedom of expression and electoral processes.*

*Increasingly, the public is concerned about the use and exploitation of personal information by both governments and private businesses and, in particular, the opaqueness of information handling practices. Security breaches are happening more often and have impacted millions of citizens.*

*While it is important to acknowledge that there have been legislative advances made in some Canadian jurisdictions, there is still ongoing work required to enhance and establish consistent modernization. Most Canadian access and privacy laws have not been fundamentally changed since their passage, some more than 35 years ago. They have sadly fallen behind the laws of many other countries in the level of privacy protection provided to citizens.*

Among the recommendations to strengthen Canada’s access to information and privacy laws is that “Effective independent oversight offices are sufficiently funded and can rely on extensive and appropriate enforcement powers adapted to the digital environment, such as the power to conduct own-motion investigations and audits, the power to compel records and witnesses as necessary for reviews and investigations, the power to issue orders, and the power

to impose penalties, fines or sanctions[.]”

The recent investigation by Canada’s and British Columbia’s Privacy Commissioners into the election tampering activities of a British Columbia based organization, AggregateIQ, only highlights the need for stronger enforcement authority by IPCs in Canada. In a Globe and Mail article, “AggregateIQ will not face financial penalties in Canada after investigation finds it broke privacy laws,” published on November 26, 2019, and written by Justine Hunter, it states the following:

*Daniel Therrien, Privacy Commissioner of Canada, said the investigation underscores the urgent need for privacy-law reforms, including the option for significant fines to act as a deterrent for companies that improperly use or keep personal data for the purpose of influencing voters.*

*“With AIQ, we now have a Canadian player playing a key role in the troubling ecosystem of political campaigns in the digital era,” Mr. Therrien said. “Canadians expect and deserve to have their privacy respected as they exercise their democratic rights. Reform is urgently needed to maintain public trust in political parties and our democratic system.”*

In order to protect and preserve Yukoners’ rights under these laws, the IPC must be given sufficient authority to ensure that public bodies and custodians are complying with the ATIPP Act and HIPMA. In my view, the time has come to increase the powers of the IPC in Yukon in order to achieve this objective.



## ATIPP Act Compliance Review Activities

### Improving information security in government

Employees of the Information Communications and Technology (ICT) branch in the Department of Highways and Public Works met with staff in our office on a number of occasions in 2019 to consult with us on the development of the Yukon government's information security program. As part of these consultations, we offered feedback and guidance on the program. We are pleased to see the ICT branch taking steps to improve information security throughout the government. However, considerable work remains to be done. Our office looks forward to continuing this work with the ICT branch, including a review of the policies and procedures, once drafted.

### Open data portal

Our office was pleased to see the Yukon government launch its open data portal in June 2019. The portal provides access to over 1000 data sets, which are now easily accessible to the public. This is a positive step in promoting transparency in government operations. The implementation of the portal also positions the government to meet its obligations for open access under the new ATIPP Act, which we view as proactive preparation for compliance on this front.

### Privacy impact assessments (PIAs)

The ATIPP Office in the Department of Highways and Public Works worked with our office on the completion of a privacy impact assessment on the procedures of its records manager. As of the end of 2019, the ATIPP Office has implemented all our recommendations and we have accepted its PIA.

The Public Service Commission (PSC) worked diligently on its compliance with the ATIPP Act by providing our

office with two PIAs, one regarding the Aprendo learning system and one regarding its human resources management system. The PSC accepted our recommendations on both PIAs and is in the process of implementing them. If the PSC follows through on the recommendations from our office, we expect to accept both PIAs in early 2020.

(HPW), which is the department responsible for the administration of SharePoint, about the potential breach. We recommended that the department conduct an evaluation of whether a breach of privacy occurred and immediately restrict access to the documents. As of the end of 2019, one issue was classified and reported to our office as a breach. As well, access



### Sharing too much through SharePoint

During 2019, our office learned that the Yukon government's Intranet made a number of documents widely accessible via SharePoint. These documents contained sensitive information and pages containing personal information that should have been properly secured with access restricted to the public body with control over the information and to those employees who need the information to carry out their work.

Our office informed the Deputy Minister of Highways and Public Works

to some of the documents and pages had been removed or restricted, and the Information Communications and Technology (ICT) branch in HPW agreed to audit its SharePoint content and practices to prevent future breaches.



# HOW WE MEASURED UP IN 2019

## Skills development

The Information and Privacy Commissioner (IPC) attended the national federal/provincial/territorial meeting for information and privacy commissioners across Canada. The meeting was held in Charlottetown, Prince Edward Island and was attended by commissioners from every jurisdiction in Canada. The purpose of these meetings is to share experiences and challenges and work toward improving access to information and protection of privacy in Canada.

The IPC also attended the Privacy and Access Council of Canada Congress held in Calgary, Alberta. This conference brings together access

and privacy professionals and other organizations to discuss access to information and privacy experiences and challenges. At the congress, the IPC participated in a panel with the Information and Privacy Commissioners of British Columbia and Alberta.

The IPC and one staff member, who has information security expertise, attended the Privacy and Security Conference hosted by the Government of British Columbia. This conference brings together privacy and information security experts and professionals from around the world to discuss the latest impacts of technology on privacy and security, as well as challenges and solutions.

Two staff members attended the Access and Privacy Conference hosted by the University of Alberta. This conference is attended by those working in the fields of access to information and protection of privacy and provides an excellent opportunity to improve skills in this field of work.

Two staff members are training for professional privacy certifications offered by the International Association of Privacy Professionals.

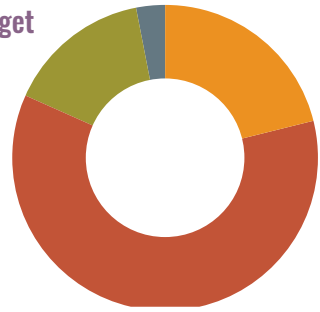
## Complaints against the IPC

None

ATIPP Act - 2019 activity	
<b>Resolved at intake - no file opened</b>	
Requests for information	31
Informal complaint resolution	5
Non-jurisdiction	1
Referred-back	2
<b>Total</b>	<b>39</b>
<b>Files opened by type</b>	
Requests for review	48
Requests for comment	9
Complaint investigation	22
Requests for decision	0
<b>Total</b>	<b>79</b>
All files opened in 2019	79
Files carried over from previous years	84
Files closed in 2019	83
<b>Files to be carried forward</b>	<b>80</b>

## ATIPP Act investigation (settlement) - 90 day target

<span style="color: orange;">■</span>	Closed (within 90 days)	7
<span style="color: red;">■</span>	Closed (over 90 days)	20
<span style="color: olive;">■</span>	Still open (under 90 days)	5
<span style="color: blue;">■</span>	Still open (over 90 days)	1



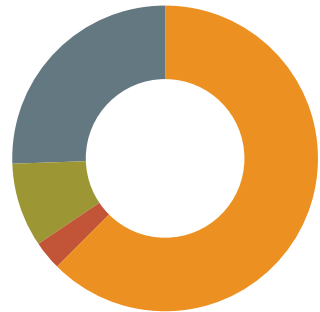
## ATIPP Act investigation (formal)- 1 year target

<span style="color: orange;">■</span>	Closed (within 1 year)	0
<span style="color: red;">■</span>	Closed (over 1 year)	0
<span style="color: olive;">■</span>	Still open (within 1 year)	4
<span style="color: blue;">■</span>	Still open (over 1 year)	6



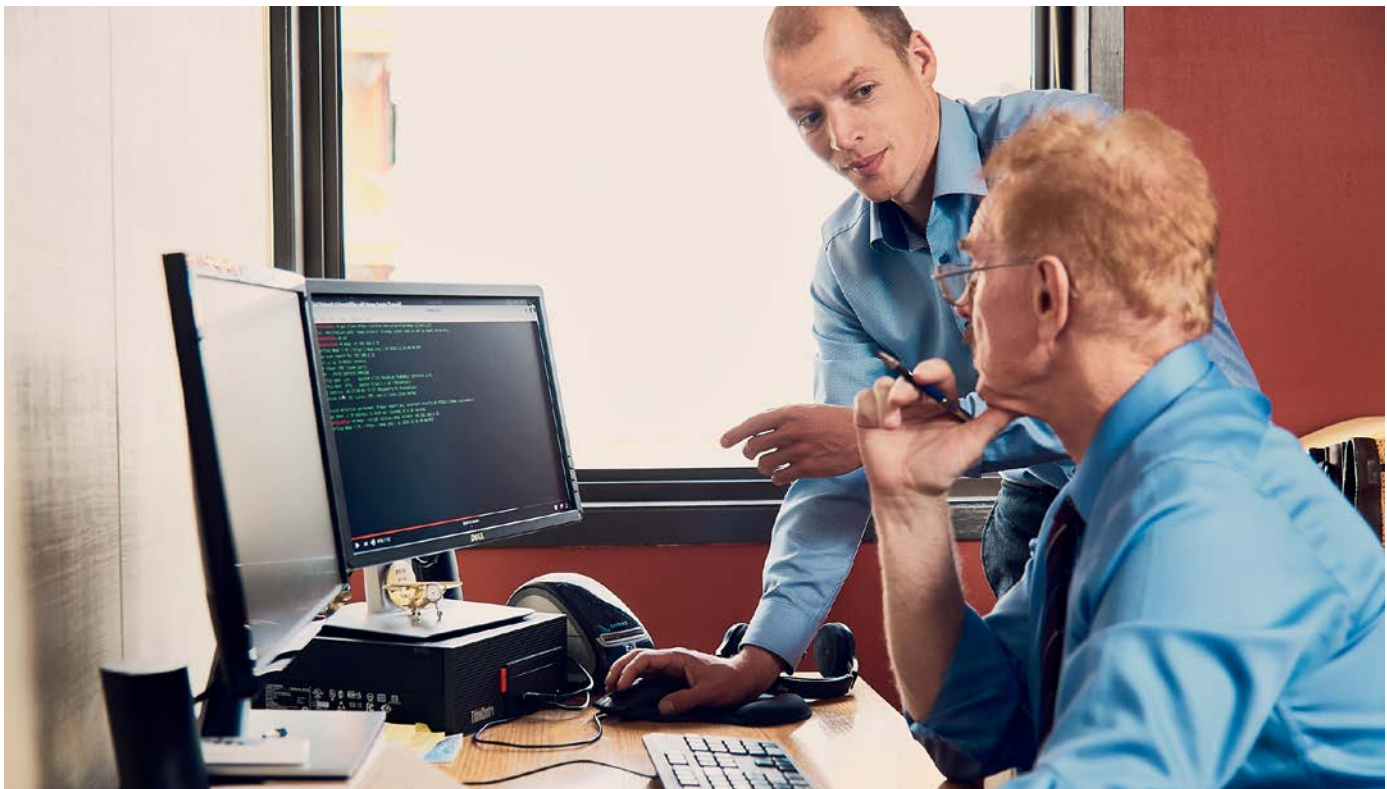
## ATIPP Act review - 90 day target

<span style="color: orange;">■</span>	Settled (within 90 days)	42
<span style="color: red;">■</span>	Still open (within 90 days)	2
<span style="color: olive;">■</span>	Closed (over 90 days)	6
<span style="color: blue;">■</span>	Not settled (formal hearing)	17



ATIPP Act files opened in 2019 by public body							Recommendations		
Public body	Number of files						Formal*	Accepted	NYI - Not yet implemented (includes from prior years) or FTF - failed to follow
	Investigation complaints	Decision	Comments	Review	Inquiry	Total			
Department of Community Services				1		1	1	1	0
Department of Economic Development				3		3			
Department of Education				2		2			
Department of Environment				1		1	6	6	0
Department of Finance				13	10	23			
Department of Health and Social Services	2			13	1	16			
Department of Highways and Public Works	3		2-Privacy breach	7		12			
Department of Justice			1-Privacy breach	2		3			1 NYI
Department of Tourism & Culture				1		1			
Executive Council Office				2		2			
Public Service Commission			2-PIA	1		3	1	1	1 NYI
Yukon Energy Corporation			1-PIA			1			
Yukon Workers' Compensation Health and Safety Board				2		2			

\*Formal recommendations are those made by the IPC in an Inquiry or Investigation Report issued in 2019.



## ATIPP Act compliance review activities

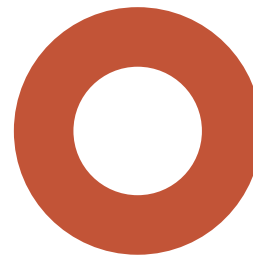
Public body	PIA submitted, year submitted	Status A - Accepted NYA - Not Yet Accepted NR - No Review
Department of Community Services	Building Safety, 2015	NYA
	Personal Property Security Registry, 2015	NYA
Department of Education	ASPEN, 2015	NYA
	Challenge Day Program, 2015	NYA
	Education Employment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

HIPMA compliance review activities		
Custodian	PIA submitted, year submitted	Status A - Accepted NYA - Not Yet Accepted NR- No Review
Department of Community Services	Electronic Patient Care Records (ePCR), 2018	NYA
Department of Health and Social Services	Aladtech Scheduling Software, 2018	NYA
	Chronic Disease Management Toolkit, 2017	NYA
	Community Nursing Logbook, 2018	NYA
	E-Health Client Registry with Plexia Addudum, 2016	NYA
	GENIE, 2017	NYA
	Medigent - Claims Processing	NYA
	Medigent - Drug Information System, 2016	NYA
	Opioid Surveillance Program, 2019	NYA
	Lab Information System (LIS) Connect Phase 1, 2015	NYA
	Virtual Home Visits Pilot Project, 2017	NYA
	Vitalware, 2017	NYA
	Yukon Home Health Monitoring Pilot Project (COPD), 2016	NYA
	Yukon Home Health Monitoring Pilot Project (COPD), 2016	NYA
Yukon Hospital Corporation	eHealth Client Registry, 2016	NYA
	Lab Information System (LIS) Connect Phase 2, 2016	NYA

HIPMA - 2019 activity	
<b>Resolved at intake - no file opened</b>	
Request for information	21
Informal complaint resolution	3
Non-jurisdiction	1
Referred-back	0
<b>Total</b>	<b>25</b>
<b>Files opened by type</b>	
Consideration files opened	17
Request for comment	10
Request for advice	5
<b>Total</b>	<b>32</b>
All files opened in 2019	32
Files carried over from previous years	31
Files closed in 2019	27
<b>Files to be carried forward</b>	<b>36</b>

### Consideration informal – 90 day target

Settled (within 90 days)	17
Still open (within 90 days)	0
Not settled (formal hearing)	0



Custodian	Number of files					Recommendations		
	Complaints		Comments	Request for advice	Total	Formal*	Accepted	Not yet implemented (NYI) (includes from prior years) or failed to follow (FTF)
	Informal resolution	Consideration						
Child Development Centre				1	1			
Department of Community Services	1		1-Policy Review		2			
Department of Health and Social Services	3		3-PIA 2-Privacy breach 1-Policy review	1	10	10	10	2 FTF
Health Facility - Psychiatry	1				1			
Health Facility - Medical	3		1-Privacy breach	2	6			
Health Facility - Medical	1				1			
Kwanlin Dun Health Centre	1				1			
Laboratory			1-Privacy breach		1			
Physician	1				1			
Yukon Hospital Corporation	7				7			

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



## 2019 ANNUAL REPORT OF THE YUKON PUBLIC INTEREST DISCLOSURE COMMISSIONER



The Honourable Nils Clarke  
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 2019.

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

Kind regards,

A handwritten signature in black ink, reading 'Diane McLeod-McKay'.

Diane McLeod-McKay,  
Yukon Public Interest Disclosure  
Commissioner

# OVERVIEW OF OUR WORK

The year 2019 proved to be another busy year for the Office of the Yukon Public Interest Disclosure Commissioner (PIDC). Throughout the course of the year, we opened nine files. Of these, three are disclosures of wrongdoing.

At the beginning of 2019, we had eight files that we carried over from 2018. Two of these files are allegations of reprisal that we are still investigating. We were able to close two disclosure of wrongdoing files in 2019. At the end of this year, we had a total of 14 files open under the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) that we will continue to work on in 2020.

As I indicated in my 2018 Annual Report, disclosure of wrongdoing and reprisal investigation files are proving very complex and resource-intensive. When PIDWA came into effect in June 2015, our office was not given any budget dollars nor any human resources to carry out the additional work under PIDWA. I am pleased to note that my 2019-2020 budget included funding for one additional full-time employee. In July 2019, I hired one additional investigator and compliance review officer and I now have two full-time investigators who comprise my formal investigation team. With the addition of this employee, I am pleased to report that we are more effectively managing our caseload.

An additional measure we are undertaking to better manage our caseload is to work with public entities in an effort to informally resolve some of our disclosure of wrongdoing cases, where the circumstances warrant it. We are working through this process in three cases and we are making good progress.

## Performance Measures

In 2018, we established a period of one year as our target for completing PIDWA disclosure and complaint of reprisal files. For the majority of these files we have not been successful in meeting this target. We will continue

to work toward this objective. As noted above, the addition of an investigator and compliance review officer to assist in this work will better position us to achieve this target.

## Group Home Report

In 2019, I released a special investigation report entitled *Allegations of Wrongdoing in the Delivery of Group Home Care*. The report was the result of an investigation into two disclosures of wrongdoing involving seven children and group home care. At the conclusion of my investigation, I found wrongdoing occurred for one of the children under subsection 3 (a) and paragraph 3 (b)(i) of PIDWA. Wrongdoing is defined in section 3 of PIDWA as:

- (a) *contravention of an Act, a regulation made under an Act, an Act of Parliament, or a regulation made under an Act of Parliament;*
- (b) *an act or omission that creates a substantial and specific danger (i) to the life, health or safety of individuals, other than a danger that is inherent in the performance of the duties or functions of an employee, or (ii) to the environment;*
- (c) *gross mismanagement of public funds or a public asset;*
- (d) *knowingly directing or counselling an individual to commit a wrongdoing described in any of paragraphs (a) to (c).*

The wrongdoing that was substantiated was that a youth in care was evicted from a group home without suitable alternative accommodation, contrary to the *Child and Family Services Act* and that the eviction created a substantial and specific danger to the life, health or safety of the youth.

I made eight recommendations to the Department of Health and Social Services to remedy the wrongdoing. The first two recommendations were that the department investigate to determine the underlying cause of the wrongdoing and to prepare a detailed investigation report. The department had six months from the date it received my report to provide my office with a copy of its investigation report. In October 2019, by the deadline indicated, the department provided me with a copy of its investigation report and department officials met with me to review it. Subsequent to this, I was satisfied that the department



followed recommendations 1, 2 and 8 (a). As of the date of compiling this annual report, the department had not yet followed the remaining recommendations and the deadlines for doing so had not passed. The department has until April 2020 to demonstrate it has followed recommendations 3, 4, 5, 6 and 8 (b), and until October 2020 to demonstrate it has followed recommendations 7 and 8 (c).

I would like to note that despite the challenges experienced in conducting this investigation, as described in my special investigation report located on our website, the department has been very cooperative during the process of implementing the recommendations and has indicated that it will also work to address the observations I made in the report. This is positive.

## Guidance For Making Disclosures

In March 2018, news stories aired about problems in group home care. The reporters indicated in their news reports that the sources of these stories were employees of the Health and Social Services (HSS) department. The identities of these sources were never revealed. Shortly after the media coverage began, the department announced publicly that HSS employees could make a disclosure of wrongdoing involving the department to its Minister or to the Minister of the Public Service Commission. Unfortunately, the process described in the public announcement was not the one set out in PIDWA, which must be followed for making a disclosure and receiving reprisal protection.

Under PIDWA, an employee of a public entity must make a disclosure to their “supervisor”, which is defined in PIDWA as their “immediate supervisor” or their “chief executive of the public entity.” “Chief executive” means, in respect of a department, the Deputy Minister. Failure to follow the process could jeopardize an employee’s reprisal protection afforded to them under PIDWA.

Given the misinformation, I issued a news release explaining the proper procedure to be followed. I also made an observation in my special investigation report about what appeared to be confusion within the Department of Health and Social Services about how to make disclosures and suggested the department develop disclosure procedures in accordance with the requirements in PIDWA.

As I was finalizing my report, the Public Service Commissioner contacted me to discuss an approach to managing disclosures within public entities. The Public Service Commissioner expressed the view that the preferred approach was to establish guidelines regarding the disclosure of wrongdoing. The reason provided was that guidelines would enable employees of public entities to still go directly to the PIDC if they wanted to make a disclosure, rather than be forced to utilize internal

disclosure procedures. PIDWA stipulates that if disclosure procedures are developed in accordance with PIDWA’s requirements, then an employee must use the internal disclosure procedure before being authorized to disclose to the PIDC. More about disclosure procedures is set out below.

Following these discussions, the Public Service Commission (PSC) developed draft guidelines and worked with our office to finalize them. The key issues we raised with the PSC were that the process needs to be clearly structured; there must be robust security to protect the identity of the discloser; and investigations into disclosures of wrongdoing must be managed by the chief executive. We also stressed the need for public entity supervisors and chief executives to be thoroughly trained on how to recognize when information being conveyed to them by an employee may be a disclosure of wrongdoing and to first evaluate whether this is the case, before steering employees down another path, such as filing a grievance with their union. We also highlighted that under PIDWA there is no requirement for an employee to state that they are making a disclosure. Rather, it is up to the public entity supervisors to recognize that a disclosure is being made, to treat it as such, to take immediate steps to protect the identity of the discloser, and to investigate whether wrongdoing has occurred.

The PSC was very receptive to our recommendations and implemented the majority of them. It also committed to reviewing the guidelines for effectiveness from time to time and to working with us on any amendments.

## Disclosure Procedures

Section 5 of PIDWA establishes a process that a chief executive must follow to develop disclosure procedures and sets out what the procedures must include. Before finalizing the procedures, subsection 6 (2) requires the chief executive to provide a draft of the procedures to the PIDC for comment. Subsection 6 (3) requires the chief executive to

provide to the PIDC for comment any proposed amendments to existing procedures. As part of its procedures, a public entity must designate a senior official to receive and investigate disclosures of wrongdoing. This individual is referred to in PIDWA as the “designated officer.”

If a public entity creates disclosure procedures in accordance with PIDWA’s requirements, the PIDC has no authority to investigate a disclosure made to the PIDC, until the employee has made a disclosure in accordance with the public entity’s disclosure procedures. An employee may only make a disclosure to the PIDC after utilizing the procedures and upon being dissatisfied with the decision or action of the public entity in respect of the disclosure, or when an unreasonable amount of time has elapsed since the disclosure was made and the public entity has not completed the investigation. This limitation on the PIDC’s authority to investigate is set out in subsection 19 (1).

There are certain limited circumstances in subsection 19 (2), which give the PIDC authority to investigate when a public entity has disclosure procedures. These are if the subject matter of the disclosure involves the employee’s chief executive or designated officer, or if the PIDC determines it would not be appropriate in the circumstances to require the employee to make the disclosure to their public entity.

One public entity in Yukon, Yukon Hospital Corporation, has disclosure procedures which were created as set out in PIDWA.

## PIDWA Review by June 2020

Subsection 55 (1) of PIDWA requires the Minister of the Public Service Commission to begin a review of PIDWA within five years of the legislation coming into force. PIDWA came into force on June 15, 2015. As such, the Minister must begin the review prior to June 15, 2020.

## HOW WE MEASURED UP IN 2019

### Skills development

In 2019, the Public Interest Disclosure Commissioner (PIDC) and her lead investigator for the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) attended the national meeting in Halifax on public interest disclosure. These meetings are held annually by those provinces and territories with public interest disclosure legislation.

The majority of provinces and territories in Canada now have public interest disclosure laws. There is also legislation at the federal level. The national meetings are well attended and include commissioners from all jurisdictions. Senior staff at each commissioner's office also attend. The purpose of these meetings is to share our respective experience and to improve our ability to deliver on our respective mandates. Hosting the national meeting is a shared responsibility. Next year, in 2020, Yukon will be hosting the national meeting in Dawson City.

As indicated in my report, throughout my investigation into the allegations of wrongdoing involving children and group home care, we were met with numerous legal challenges to our authority to obtain documents. As well, Yukon government lawyers insisted on attending the interviews of department officials. These challenges caused considerable delay in my ability to complete the investigation in a timely manner and, in my view, negatively affected the quality of the evidence received.

In my investigation report, I made an observation stating that there is a need for the authority of the PIDC under PIDWA to be reviewed and clarified. During PIDWA's review, I intend to bring my concerns in this regard to those responsible for the review, with the goal of clarifying the PIDC's powers.

### Update On Goals

There are three goals related to PIDWA, identified in my 2018 Annual Report, which I am working to achieve during my current term as PIDC. They are as follows.

Goal # 1 - to establish an oversight office sufficiently skilled to address new challenges and deliver on our multiple mandates;

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

Goal # 8 - to participate in the review of PIDWA.

In terms of the first goal, I recruited two investigator and compliance review officers in 2019. One joined my formal investigation team and the other joined my informal case resolution team. Both have law degrees and one is a lawyer. During recruitment, I specifically sought candidates with law credentials, given the legal nature of the work we do and the legal challenges we have experienced. This means that we now have three lawyers (including myself) in the office, along with a fourth employee who has a law degree. Having these skills in our office will help us achieve one aspect of Goal # 1, that is, to ensure my office has adequate skills to address the legal challenges we are experiencing in carrying out our responsibilities under PIDWA.

For Goal # 6, the work we undertook with the PSC and some additional communications we issued (about how to disclose a wrongdoing and reprisal protection) will increase understanding by public entities and employees about what a disclosure is, how to make one, and reprisal protection.

For Goal # 8, as indicated above, I intend to participate in the review of PIDWA that must begin prior to June 15, 2020.

### Concluding Remarks

In the HOW WE MEASURED UP section of this report, you will find additional detail about our performance in carrying out our duties under PIDWA.

Diane McLeod-McKay  
Public Interest Disclosure Commissioner

### PIDWA - 2019 activity

#### Resolved at intake - no file opened

Requests for information	3
Informal complaint resolution	0
Non-jurisdiction	0
Referred-back	0

**Total 3**

Advice files opened	3
Comment files opened	3
Disclosure files opened	3
Reprisal files opened	0

**Total 9**

All files opened in 2019	9
Files carried over from previous years	7
Files closed in 2019	2
Files to be carried forward	14



### 2019 PIDWA reporting by public entity

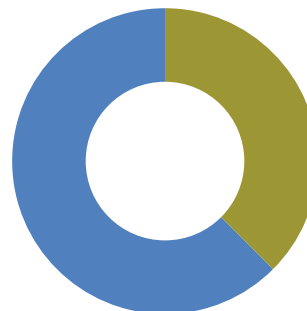
There are 24 public entities subject to PIDWA. Twenty-three public entities reported that no disclosures were received in 2019. One public entity, the Department of Highways and Public Works, reported that one disclosure was made internally. It also reported that the disclosure was resolved without the need for investigation.

A list of the public entities subject to PIDWA is below:

- Department of Community Services
- Department of Economic Development
- Department of Education
- Department of Energy, Mines and Resources
- Department of Environment
- Department of Finance
- Department of Health and Social Services
- Department of Highways and Public Works
- Department of Justice
- Department of Tourism and Culture
- Executive Council Office
- French Language Services Directorate
- Office of the Chief Electoral Officer
- Office of the Child and Youth Advocate
- Office of the Yukon Legislative Assembly
- Public Service Commission
- Women's Directorate
- Yukon College
- Yukon Development Corporation
- Yukon Energy Corporation
- Yukon Hospital Corporation
- Yukon Housing Corporation
- Yukon Liquor Corporation
- Yukon Workers' Compensation Health and Safety Board

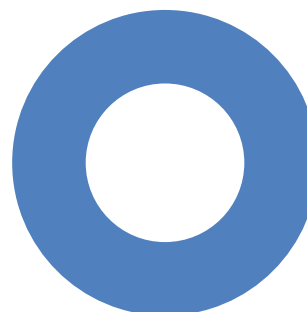
### Disclosure of wrongdoing – target 1 year

Closed (within 1 year)	0
Closed (over 1 year)	0
Still open (within 1 year)	3
Still open (over 1 year)	5



### Reprisal complaint – target 1 year

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



Public entity	Files opened in 2019 by public entity							Recommendations	
	Disclosure	Reprisal	Comment	Advice	Total	Formal*	Not yet implemented (includes from prior years)		
Department of Education	1		1		2				
Department of Health and Social Services	1			1	2	8	5 2/3		
Department of Highways and Public Works	1			1	2		11		
Department of Justice				1	1				
Public Service Commission			2		2				

\*Formal recommendations are those made by the Public Interest Disclosure Commissioner in a formal Investigation Report issued in 2019.



Yukon  
Ombudsman



Yukon  
Information  
and Privacy  
Commissioner



Yukon  
Public Interest  
Disclosure  
Commissioner

## Financial report

The budget for the Office of the Ombudsman, Information and Privacy Commissioner (IPC) and Public Interest Disclosure Commissioner (PIDC) covers the period from April 1, 2019 to March 31, 2020.

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

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

For accounting purposes, capital and personnel expenses are reported jointly for the office. The “other” budget

is the operational costs required for performing the mandated functions under the *Ombudsman Act*, the *Access to Information and Protection of Privacy Act*, the *Health Information Privacy and Management Act*, and the *Public Interest Disclosure of Wrongdoing Act*. These costs must be accounted for separately under law and, therefore, are reported separately.

In the 2019-2020 budget, there was a slight increase in personnel dollars to provide staff with a small increase in line with public servants. The increase in O&M “other” was for additional contract dollars to be used for communications support to facilitate increased awareness of the Acts. The small increase in capital dollars was to replace outdated computer equipment and to purchase new equipment for one staff hired in 2019.

### 2019-2020 Budget

Personnel	Joint	\$	1,019,000
Capital	Joint	\$	22,000
Other	Ombudsman	\$	123,000
Other	IPC	\$	150,000
Other	PIDC	\$	22,000
<b>Total</b>		<b>\$</b>	<b>1,336,000</b>

### 2018-2019 Budget

Personnel	Joint	\$	944,000
Capital	Joint	\$	13,000
Other	Ombudsman	\$	107,000
Other	IPC	\$	131,000
Other	PIDC	\$	*69,000
<b>Total</b>		<b>\$</b>	<b>*1,264,000</b>

\*A one-time amount of 50,000 was provided to the PIDC in 2018 for the purposes of conducting the group home investigation.