



Yukon
Information
and Privacy
Commissioner

Privacy management coming into focus

2015 Annual Report



Diane McLeod-McKay

The Honorable David Laxton
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 47 of the *Access to Information and Protection of Privacy Act*, I am pleased to submit my Annual Report of the Information and Privacy Commissioner for the calendar year 2015.

In keeping with past practices, I am also pleased to share this with the Yukon public.

Kind regards,

Diane McLeod-McKay,
Yukon Information and Privacy Commissioner

Improving privacy, access and performance

Making progress in privacy protection

In my Annual Report last year, I committed to making sure that public bodies worked towards the improvement of privacy protection and access to information in five key ways. The first was embedding privacy rights into the design of programs and systems. The second was adopting administrative and technological safeguards to reduce privacy risks. The third was setting up clear accountability processes for managing personal information throughout its lifecycle from collection to disposal. The fourth was ensuring employees are trained in how to handle information and protect privacy. The last was moving towards open government where information is more accessible. My comments below touch generally on these points.

Meeting ATIPP privacy requirements

In my 2014 Annual Report, I stated that Yukon public bodies had a lot of work to do in meeting the privacy requirements contained in the *Access to Information and Protection of Privacy Act* (ATIPP). I pointed out that they needed to start developing privacy management programs and putting them into operation. I also said that I'd monitor and report on progress in future Annual Reports. ATIPP defines a 'public body' as any Yukon government department, executive agency, or a public body made by regulation, such as the Child & Youth Advocate, the Yukon Workers' Compensation Health & Safety Board, Yukon College and the Yukon public corporations concerned with development, energy, hospitals, housing, liquor and lottery. It doesn't include the Yukon Legislative Assembly, officers under the Elections Act and the courts.

Good news!

I'm now pleased to report that the Yukon government took a very positive step forward. In October 2015, it put into effect a corporate-wide Privacy Management Policy. I've summarized **three main highlights**.

The first is about promoting compliance with ATIPP. The ATIPP Office within Highways & Public Works will take the lead in developing the

government-wide privacy policy. As part of this, it'll prepare guidelines to assist public bodies in creating their own privacy management programs. Health & Social Services will take the lead in promoting compliance with the new *Health Information Privacy and Management Act* when it becomes law.

The second is about identifying those key things that make up a privacy management program. This means identifying where personal information is held, as well as establishing privacy policies and procedures. It also means including privacy controls in contracts and checking to make sure they're working. In addition, it means using privacy impact assessments, handling breaches and overseeing compliance, reporting on the effectiveness of privacy management, and training employees.

The third is about action. Each Deputy Minister or other senior official is responsible for a number of goals. The most important one is to make privacy protection a priority. They also have to adopt privacy management practices, implement government-wide policy, train employees, and ensure contractors comply with privacy obligations. In addition, they have to appoint privacy officers, establish responsibilities for privacy, and approve privacy impact assessments, as well as privacy management plans.

As a result of this new Yukon government policy, I expect to see public bodies making great strides towards developing their privacy management programs in 2016. For those that aren't subject to this policy, such as Yukon College or the Yukon Hospital Corporation, I'd like to remind them that they still need to develop privacy management programs to make sure they're complying with ATIPP.

Some public bodies already have a head-start on developing these programs. In my 2014 Annual Report, I mentioned that the Yukon Workers' Compensation Health & Safety Board had done some good work, such as designating a privacy officer, developing privacy policy, and training employees. In 2015, the Department of Health & Social Services began developing

privacy policies and procedures. Other departments, such as Education, developed privacy breach protocols.

In 2015, several Yukon government public bodies completed privacy impact assessments (PIA) for new programs or systems involving personal information. Completing a PIA is key to making sure privacy protection is built into the design of a new program or information system. That's because they help identify and manage any risks to privacy. In 2015, public bodies submitted 12 PIAs to my office for review and comment, up from five in 2014. That's more than a two-fold increase! And I want this positive trend to continue! But I'm concerned that I may not be getting PIAs from all Yukon government public bodies so I hope to see more of them in 2016.

Improvement needed for information access

Public bodies need to improve their access to information programs. Fortunately, this need coincides with a Yukon government plan to review ATIPP sometime between 2016 and 2017. As I stated in my 2015 ATIPP Review comments, I recommended a re-evaluation of the current ATIPP model for accessing information. For example, the central Yukon government records manager should be removed from this process to make sure that accountability for information access rests solely with each public body. Right now a records manager is fully responsible for helping an applicant access information. The public body is only responsible for assisting the records manager. If the records manager is removed, the role of the ATIPP coordinator within a public body would need to be strengthened. In addition, the identity of applicants would have to remain unspecified when accessing non-personal information held by a public body to protect against any potential interference with their request.

Other ways to improve information access is to strengthen information management practices. For example, there should be a requirement that information involving a public body and stored on mobile devices, such as a cell phone, must be transferred to information management systems within the public body so it can be made accessible. A duty to document public

body decisions should also be required. This would make sure that all decisions made by employees of public bodies are accessible.

There's still work to be done

Some very good work is being done by the Yukon government to assist its public bodies in improving privacy protection for Yukoners. But much of this work is just beginning. If we want effective privacy management, all Yukon public bodies must commit to develop, maintain and evaluate privacy management programs. As I've said many times before, privacy doesn't manage itself. A failure to manage privacy will certainly result in privacy breaches.

The access to information model has been in place for over two decades and it needs an overhaul. Many of the current procedures have problems that get in the way of rightfully obtaining information under ATIPP. I encourage the Yukon government to make modifications to remove the holdups. In the meantime, I'll continue to offer my support to public bodies in helping them improve privacy protection and access to information. I'll report in 2016 on any progress made by them towards these goals.

ATIPP review called

On December 15, 2015, the Minister of Highways & Public Works announced a full review of ATIPP sometime between 2016 and 2017. I've provided the Minister with my written submission. In addition to the recommendations already mentioned, I'd like to highlight some others. ATIPP should be amended to enable the sharing of information between public bodies. This would improve service delivery. But the amendment should also increase both my oversight and public body accountability to make sure that any information being shared this way will be adequately protected.

The scope of ATIPP should be expanded to include municipalities because they're a form of public government that collects, uses and discloses personal information. Currently, there's no requirement to protect the privacy of individuals or a right



to access information being held by a municipality.

In addition, ATIPP should be amended to remove unnecessary exemptions, such as the ministerial briefing record exemption. There are other ways to separate factual information from the need to protect policy advice and Cabinet confidences.

My ATIPP Review comments are on my website at www.ombudsman.yk.ca/review-legislation.

HIPMA, coming soon

In the fall of 2015, the Minister of Health & Social Services announced a public consultation on developing regulations under the *Health Information Privacy and Management*

Act (HIPMA). My formal comments are on the same website address as my ATIPP Review comments. The department has indicated that HIPMA may become law early in 2016 when it completes the regulations. My office has prepared for this by starting to meet with custodians. A 'custodian' is defined, for example, as Health & Social Services, the operator of a hospital or health facility, and other health care providers.

Updating our goals

In the last two Annual Reports, I talked about how we were succeeding on three long-term goals that came out of a 2012 review. Improvement is a continuous process. That's why it's important to tell you how we did in 2015.

Building relationships

We continued working with public bodies to improve privacy protection. A large part of this focused on resolving complaints or requests for review through our Early Case Resolution process, as well as working with public bodies on PIAs. We'll continue this work in 2016.

Performance

As you will see on our statistics page, our performance in managing files through Early Case Resolution (settlement) is similar to 2014. So is our performance on conducting full investigations. We will continue our work in 2016 on trying to improve our performance in managing complaints and requests for review.

Showing our work

In 2015, I completed a PIA on my new case management system. An independent consultant is reviewing this PIA. When this is done, I'll work on reducing the privacy risks. I'll also update my privacy management program and policies, as well as train my staff on the updates. My office is also developing policies and procedures to improve how we manage our processes, including access to information.

Please see our stats page for the type and amount of files we managed in 2015.



Diane McLeod-McKay
Information and Privacy
Commissioner

▶ PIAs, in the trenches!

Government employees share the following thoughts on their experience completing privacy impact assessments (PIAs).

The PIA process is challenging but valuable

It is challenging for program areas to comprehend the PIA process because it is a new way to approach program design. It is very granular. It makes people think at a level of detail they aren't used to.

The first thing I do when I begin a PIA is help the project team understand that the project will involve privacy risks that need to be addressed. Next, I help them map out their business processes and information flows. Defining these processes are key to identifying privacy risks. It is critical the project team understand this and that the right people participate in this work. Privacy protection will only occur if the business processes and flow of information are clearly defined.

Doing PIAs has really helped us better define how we do our business and has brought significant value. (For example, if a PIA is completed before an information system is purchased, the business processes will be clearly defined which helps identify a system to better support work flow.) Doing PIAs are about evaluating existing business processes which reinforces privacy. These things are intrinsically linked.

In the long run doing a PIA will save Yukon government money due to the upfront planning required by the PIA process. Having this information before purchasing a system informs what is actually needed. It prevents poor purchasing. It all works together.

When we first started doing PIAs, people expressed frustration at the amount of work involved. Now people want to do them and are taking them on. This is a real shift. People are interested in doing them because they see the value! People are starting to say that "privacy analysis is part of the cost of doing business." They weren't saying that before.

PIAs protect Yukoners' privacy

Doing PIAs helps us discover where we need to focus to improve privacy protection. It highlights our weaknesses as well as our strengths.

When we do PIAs, we delve into the personal information we are collecting and often discover we are over collecting. This helps us to stop over collecting.

We have become better stewards of information. We are able to provide assurances to the public that we are collecting, using and disclosing personal information within the existing legal framework.

PIAs are a valuable communication tool. We can use PIAs to tell people how we are collecting, using and disclosing their personal information. This instills confidence in staff when they are able to provide answers to questions about privacy.

PIAs have improved our knowledge of the ATIPP

PIAs have helped us move beyond an understanding of privacy principles to a greater understanding of how prescriptive the ATIPP is about privacy protection. We are more equipped to make informed decisions about privacy protection.

PIAs force us to talk about privacy. The more we talk about it, the more understanding people have and the more privacy will be protected. Public servants want to protect privacy – PIAs helps them walk through how.

Between 2012 and now we are leaps and bounds ahead. Are we there yet? Definitely not, but we have seen a big improvement.

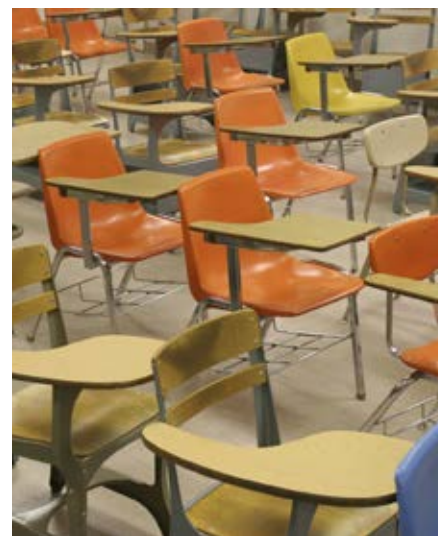
A description of what a PIA is can be found on the last page.

▶ Better record practices needed

IF SOMEONE IN GOVERNMENT SAYS WE HAVE THE INFORMATION YOU WANT BUT WE JUST CAN'T GET AT IT RIGHT NOW, CHANCES ARE SOMEONE'S MISSED THE POINT

Ken approached us with a complaint about a response he received to his request for access to records held by Education. The response didn't include records Ken believed existed and were responsive to his request.

We investigated whether Education had done an adequate search and learned that it couldn't provide Ken access to some records in the time allowed by ATIPP. That's because some school personnel had the records and were on summer break.



During our investigation, Education realized that its inability to produce these records pointed to a lack of understanding about ATIPP requirements by principals and vice-principals. When someone requests a record, school administrators have a duty to make sure it's accessible within the proper time frame.

Education agreed to create a process for making sure records are accessible when school personnel are away. It also agreed to train school administrators on meeting their ATIPP duties. Finally, we cautioned Education about the security risks of storing ATIPP records outside of Education's facilities, especially records containing personal information.

Under ATIPP, you have the right of timely access to records held by a public body. A public body is responsible for putting in place good information management practices to make sure it meets this timeliness.



▶ Time lines need watching!

RECORDS THAT SHOULD HAVE TAKEN A MAXIMUM OF 90 DAYS TO RECEIVE, TOOK MORE THAN FIVE MONTHS

Sheila applied for access to some records held by Education. The records manager sent her a letter confirming she would receive a response to her request within 30 days. Education needed more time and asked the records manager for an extension. The records manager agreed and sent Sheila another letter extending the response deadline 30 more days. Twenty-one days before the second deadline for response was to expire, Education realized there was personal information about a third party in some records and asked the records manager to consult the third party about releasing them. ATIPP allows 30 days for this kind of consultation. The consultation would go beyond the second response deadline.

On the day of the deadline, Sheila received some records but was informed the others would not be provided until the third party consultation was complete. Fifteen days later, Sheila received a letter from the records manager informing her that the response deadline was extended an additional 30 days. Sheila asked us to review this extension.

We investigated and discovered there was some confusion about time lines. Third party consultations must occur within the timelines allowed for response, which did not occur in this case. Once the deadline for response expired, the records manager had no authority to extend the timeline further and the records were considered by the ATIPP as refused by Education.

Once refused, Sheila could have requested my office review the refusal. Unfortunately, due to the confusion between Education and the records manager about the timelines, Sheila was misled into thinking the records manager had authority to extend the response deadline. Sheila didn't get her records until 5 months after she first requested access to them.

This case demonstrates there needs to be more accountability by public bodies in processing access requests and that having the records manager in the middle is problematic and needs to be rethought.

▶ Collect only what's necessary!

IF YOU GIVE A COPY OF YOUR BIRTH CERTIFICATE TO THE GOVERNMENT, YOU MAY BE GIVING MORE INFORMATION THAN NEEDED

Haley made a complaint to us after the Public Service Commission requested that she provide them with a copy of her birth certificate as part of her spouse's application for employee benefits. They claimed this information was required to enroll her as a dependant under her spouse's employee extended healthcare benefit plan.



We investigated. The Public Service Commission identified that many Yukoners use different names to identify themselves. As such, it required a copy of dependants' birth certificates to verify their legal names and dates-of-birth. The Public Service Commission was unable to show it required an actual copy of a birth certificate for this purpose. We asked the Public Service Commission to stop collecting copies of dependants' birth certificates and to destroy any on file. They complied.

A birth certificate is a highly sensitive document, especially where identify theft and fraud are concerned. Collection should only occur when it is necessary to have a copy of this information and when less sensitive information won't do the job. In most cases, it will suffice to examine the information for verification rather than to take a file copy.

▶ Budget summary

The office of the Information and Privacy Commissioner (IPC) budget covers the period from April 1, 2015 to March 31, 2016.

Operations and maintenance (O&M) are expenditures used in carrying out day-to-day activities. A 'capital' expenditure is used to buy things that last longer than a year and are quite expensive, such as office furniture and computers.

'Personnel' is the largest part of our annual O&M budget. It includes salaries, wages and employee benefits. For accounting purposes, 'Personnel' is reported jointly for the offices of the Information and Privacy Commissioner

(IPC), the Ombudsman, and the Public Interest Disclosure Commissioner (PIDC) because all staff have duties in these three areas. We also received funds under 'Personnel' to hire a new position. The *Health Information, Privacy and Management Act* will soon become law and we'll be filling this position shortly. In addition, we received a small 'cost-of-living' increase for staff.

'Other' includes such things as rent, contract services, supplies, travel and advertising. It's possible to report separately on the IPC's expenditures. Please see the third row in the budget

table at right. We also received a small increase in funding to manage the new costs associated with the new *Public Interest Disclosure of Wrongdoing Act*.

For accounting purposes, 'Capital' is also reported jointly for the three offices because all staff use these assets in their work. The capital budget in 2014 included \$100,000 to purchase a case management system. This means we'll be able to handle case files and perform other work more effectively. It's taken longer than expected to obtain this asset so the Legislature has carried the funds forward. We expect to have the system in place sometime this year.

2014/15 Budget	
Personnel (combined)	\$ 645,000
Other (Ombudsman's office)	\$ 81,000
Other (IPC's office)	\$ 134,000
Capital Items	\$ 12,000
Total	\$ 872,000

* 100,000 was revoted to 2015/16

2015/16 Budget	
Personnel (combined)	\$ 765,000
Other (Ombudsman's office)	\$ 104,200
Other (IPC's office)	\$ 131,000
Other (PIDC's office)	\$ 17,800
Capital (combined)	\$ 34,000
Total	\$ 1,052,000

▶ 2015 accountability metrics

File management goals

- See diagrams below.

Proactive compliance work

- Delivered four workshops: How to develop a privacy management program, How to complete a PIA, Privacy under ATIPP, and Privacy policy and program development.
- Gave three presentations: Yukon government Human Resources Managers, University of Alberta

Access and Privacy Conference and Rotary Club.

- Attended five local and national meetings: Federal, Provincial and Territorial Access and Privacy Commissioners meeting, meetings with the Information and Privacy Commissioners of Nova Scotia and Ontario, meetings with Yukon Pharmacists Association and Yukon Registered Nurses Association.

- Participated in three national access and privacy working groups.
- Identified three guidance needs.
- Issued guidance to assist public bodies develop privacy management programs, and on reviews of PIAs by the IPC.
- Issued comments on the ATIPP review, the development of the *Health Information Privacy and Management Act* regulations, the *Personal Property*

Security Act amendments, and the *Pharmacy and Drug Act*.

Skills development

We hosted workshops which my staff attended, two national access and privacy conferences, three webinars, and some attended training to improve their skills on interpreting legislation.

Complaints

We received no complaints in 2015.

ATIPP - 2015 activity

Resolved at intake - no file opened

Non-jurisdiction	27
Referred-back	15
Requests for information	44
Informal complaint resolution	6
Total	92

Complaints and review files opened by type

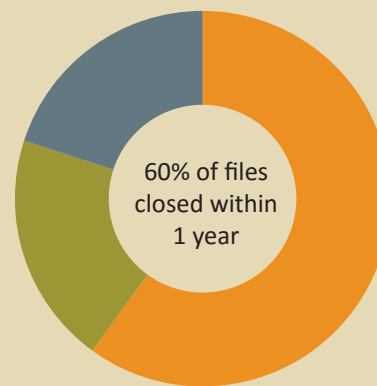
42(b) administration complaint	9
48(1)(a) refusal request for review	6
48(1)(b) separation or obliteration request for review	5
48(1)(b.1) abandoned request for review	0
48(1)(c) time extension request for review	2
48(1)(d) fee request for review	0
48(2) correction/annotation request for review	0
48(3) improper collection/use/disclosure of personal information request for review	0
48(4) disclosure of third party business information request for review	6
Total	28

Comment files opened - 42(c)

Total ATIPP files opened in 2015	57
Total ATIPP files carried over from prior years	36
Total ATIPP files closed in 2015	52
Total files open as of December 2015 (includes carry over from prior years)	41

Investigation performance

Files opened in 2015 and those carried over from 2014	Closed (within 1 year)	Closed (over 1 year)	Still open (under 1 year)	Still open (over 1 year)
5	3	0	1	1
1 from 2015	0	0	1	0
4 from 2014	3	0	0	1

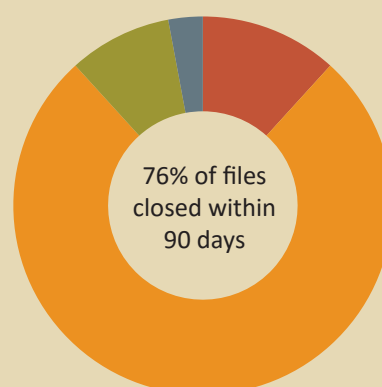


ATIPP investigation - 1 year target

- Closed (within 1 year)
- Closed (over 1 year)
- Still open (under 1 year)
- Still open (over 1 year)

Settlement performance

Files opened in 2015 and those carried over from 2014	Closed (within 90 days)	Closed (over 90 days)	Still open (under 90 days)	Still open (over 90 days)
34	26	4	3	1
26 from 2015	22	0	3	1
8 from 2014	4	4	0	0

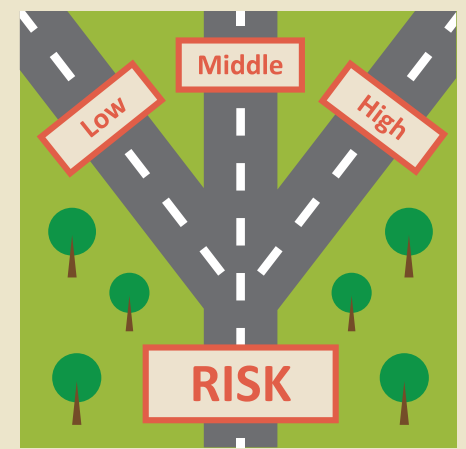


ATIPP settlement - 90 day target

- Closed (within 90 days)
- Closed (over 90 days)
- Still open (under 90 days)
- Still open (over 90 days)

Compliance review activities

Public body	*PIAs submitted (year submitted)	Status - accepted/not yet accepted (NYA)/ expected/ no review	*ISAs submitted (year submitted)	Status - accepted/not accepted/in progress/no review
Community Services	Corporate On-line Registry (2015)	NYA		
	Personal Property Security Registry (2015)	NYA		
	Building Safety (2015)	NYA		
Education	Aspen	Expected		
	Google Apps	Expected		
	ICMS: Education Employment Assistance Database (2012)	NYA		
	Challenge Day Program (2015)	NYA		
Environment	Electronic and Online Licensing System (2015)	NYA		
Health and Social Services	Pioneer Utility Grant (2015)	NYA		
	eHealth	Expected		
	Incident Reporting System (2015)	NYA		
	Panorama Project (2013)	NYA		
	Meditech: Lab Information Systems (2015)	NYA		
Highways and Public Works	Government Services Account (2015)	NYA		
			ISA for Motor Vehicle and Driver Records (2014)	No review
	Identity Management (2015)	NYA		
	Access to Information and Program (2015)	NYA		
Yukon Hospital Corp.	HIS Connect: Lab Info System (2014)	NYA		



What is a PIA?

A PIA (privacy impact assessment) is a tool which can be used by a public body to evaluate the risks of non-compliance with the ATIPP for any new or modified collection, use and disclosure of personal information. Completing a PIA enables a public body, prior to collection, use or disclosure of personal information or any modification, to identify risks to privacy and develop a strategy to mitigate those risks. If the PIA is submitted to the Office of the Information and Privacy Commissioner (OIPC), the PIA will be reviewed and comments and recommendations provided as needed to assist the public body meet its compliance obligations. The ATIPP does not require a public body to submit a PIA to the OIPC. However, it is beneficial for a public to have the OIPC review a PIA for several reasons. A public body is able to draw on the experience of the OIPC in interpreting and applying the ATIPP. It enables the public body to receive feedback from the OIPC about whether the project poses risks to the privacy of personal information. It demonstrates the public body's accountability for ensuring the risks to privacy for projects involving personal information are being appropriately managed. The OIPC recommends a public body complete a PIA for all new projects involving the collection, use and disclosure of personal information, such as in a new electronic information system, or where there is significant modification to an existing system, program or activity.

What is an ISA?

An ISA (information sharing agreement) is an agreement commonly used when sharing personal information between a public body and another public body or private sector business. An ISA usually identifies the authorities for collection, use and disclosure of personal information and establishes the rules agreed to between the parties to protect the personal information. An ISA should be completed for any collection, use and disclosure between public bodies and with the private sector. Like PIAs there is no requirement to submit ISAs to the OIPC for review. However, the benefits of doing so are the same as those identified for submitting PIAs.

Files opened by type

Recommendations

Public body	Number of files				Formal*	Accepted	Not yet implemented (includes from prior years)
	42(b) Complaints	42(c) Comments	48 Reviews	Total			
Child & Youth Advocate Office			1 - 48(1)(a)	1			
Community Services		2 - legislation 3 - PIA	1 - 48(4)	6			
Education	1 - 42(b)	3 - PIA 2 - privacy breach 1 - policy/protocol	1 - 48(1)(c) 2 - 48(4) 2 - 48(1)(a)	12			
Elections		1 - legislation		1			
Energy, Mines & Resources			2 - 48(4)	2			
Environment	1 - 42(b)	1 - PIA		2			
Health & Social Services	2 - 42(b)	1 - privacy breach 4 - PIA 2 - policy/protocol 1 - legislation	2 - 48(1)(b)	12	2	2	2
Highways & Public Works	3 - 42(b)	2 - policy/protocol 3 - PIA	1 - 48(1)(b) 1 - 48(4)	10	2	2	0
Justice	2 - 42(b)	1 - privacy breach	2 - 48(1)(a) 1 - 48(1)(b) 1 - 48(1)(c)	7	1	1	0
Public Service Commission		2 - privacy breach	1 - 48(1)(a)	3	2	2	1
Yukon Housing, Liquor & Lotteries			1 - 48(1)(a)	1			
Total	9	29	19	57	7	7	3

*Formal recommendations are those made by the IPC in an Inquiry or Investigation Report issued in 2015.

2015 Kudos

Shout out to the ATIPP Office in Highways & Public Works for spearheading the development of the Privacy Management Policy and to all employees from other departments who participated in the process. This work represents a major step in Yukon government's commitment to protecting privacy.

Shout out to Community Services, Education, Environment, Health & Social Services, and Highways & Public

Works for being committed to proactive privacy by submitting PIAs to our office for review and for working with us through the process of addressing privacy risks.

Shout out to the Privacy & Access Law Section of the local Branch of the Canadian Bar Association, which began in 2014, for working community-wide to promote access to information and protection of privacy.

Contact us

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All services of the IPC's office are free and confidential.

We welcome your feedback on our Annual Report including the method of delivery.