



Yukon
Information
and Privacy
Commissioner

INVESTIGATION REPORT

**Pursuant to section 66 and 90 of the
*Access to Information and Protection of Privacy Act***

**Health and Social Services
File ATP-ADJ-2025-08-166**

Amy Steele, Adjudicator

January 26, 2026

Summary

This adjudication is about whether records of Yukon's Chief Medical Officer of Health (CMOH) are subject to the [Access to Information and Protection of Privacy Act](#) (ATIPPA).¹

The Complainant requested records about lead in Yukon school water between February 1, 2024, and February 19, 2025 from the Department of Health and Social Services access request #24-701 (Access Request). The department (Public Body) refused to provide some of the requested records, relying on specific exemptions under the ATIPPA.

The Complainant then filed a complaint to the Information and Privacy Commissioner (IPC) about the refusal. The IPC determined during informal resolution (Consultation) that the Public Body should not have denied access to some of the records requested by the Complainant. In response, the Public Body provided these records to the Complainant.

During the Consultation, the Complainant also learned that they had not received any records from the CMOH. The IPC recommended that the Public Body contact the CMOH for responsive records but, on doing so, the CMOH advised that any information in their records about lead in school water fell under their independent statutory duties, functions and powers under the [Public Health and Safety Act](#) and that the CMOH was not working on behalf of HSS in relation to this matter. The Public Body then advised that it had no additional records to provide. This resulted in a second complaint by the Complainant leading to a formal investigation of the matter and the assignment of an adjudicator (Adjudicator).

The issues for consideration were, firstly, whether the CMOH was subject to the ATIPPA and, secondly, was the Public Body authorized under the ATIPPA to refuse to provide, as per the Access Request, responsive records held by the CMOH about lead in Yukon school water between February 1, 2024, and February 19, 2025?

On investigation, the Adjudicator found that the CMOH was subject to the ATIPPA because the CMOH was part of the Public Body over which the minister responsible presides; and was also an employee of the Public Body (both as an officer and service provider of the Public Body).

The Adjudicator then recommended that the Public Body re-process the Access Request to include any responsive records held by the CMOH and then provide the Complainant with an amended response.

¹ SY 2018, c.9.

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Complaint

On August 15, 2025, an individual made a complaint under sections 66 and 90 of the ATIPPA that Health and Social Services (Public Body) refused to provide records held by the Chief Medical Officer of Health (CMOH).

Jurisdiction

The IPC's authority to review the Public Body's decision(s) to refuse to provide an applicant with access to records is set out in section 91.

Statutes and Regulations Cited

[Access to Information and Protection of Privacy Act](#), SY 2018, c.9

[Access To Information and Protection of Privacy Regulation](#), OIC 2021/025

[Government Organization Act](#), RSY 2002, c. 105

[Interpretation Act](#), RSY 2002, c.125

[Assignment of Administration of Enactments Order](#), OIC 2014/174

[Public Health and Safety Act](#), RSY 2002, c. 176

Cases Cited

Cases

[Yukon Medical Council v Information and Privacy Commissioner](#), 2002 YKCA 14 (CanLII)

Explanatory Note

All sections, subsections, paragraphs and the like referred to in this investigation report (Report) are to the ATIPPA, unless otherwise stated.

All references to a "Public Body" mean a Public Body as defined in the ATIPPA.

Burden of Proof

Under section 64, the head of a public body must grant an applicant access to all information relevant to the access request that is held by the responsive Public Body except for information and records the Public Body decides must be withheld under paragraph 64(1)(b).

Paragraph 102(c) sets out the burden of proof relevant to this investigation. It states that the burden is on the head of the public body (Public Body Head) to prove that a complainant has no right to the records or to the information withheld from the records.

Background

[1] The Complainant made an access request, #24-701, (Access Request) to the Public Body asking for all records discussing lead in Yukon school water between February 1, 2024, and February 19, 2025.

[2] On May 14, 2025, the Complainant received records from the Public Body. However, the Public Body withheld some records, relying on subsection 70(1), subparagraphs 72(1)(b)(iii) and (vi), 74 (1)(a) and paragraph 77(1)(c).

[3] On June 9, 2025, the Complainant filed a complaint under sections 66 and 90 about the Public Body's decision.

[4] The Information and Privacy Commissioner (IPC) decided to investigate the matter and notified both the Complainant and the Public Body pursuant to section 93 that the investigation would first begin via informal resolution (Consultation). The IPC assigned it file number ATP-COM-2025-06-120.

[5] During Consultation, the IPC recommended that the Public Body provide some of the records that it had withheld from the Complainant. It agreed with the recommendation.

[6] However, this did not conclude the file. During Consultation, the Complainant noticed that Public Body had not provided records from the CMOH and advised the OIPC about this. An IPC investigator then recommended that Public Body contact the CMOH for these responsive records. The IPC then directed the Public Body to provide an amended response to the applicant no later than August 14, 2025.

[7] On August 4, 2025 the Public Body provided an amended response advising that the CMOH was not subject to the ATIPPA when they are exercising their statutory duties, functions and powers under the [Public Health and Safety Act](#) (PHSA). According to the Public Body, the CMOH

had advised it that any information in their records about lead in school water fell under their statutory duties, functions and powers under the PHSA and that the CMOH was not working on behalf of the Public Body when exercising these duties. Therefore, the Public Body advised the IPC that there were no additional records to provide.

[8] On August 15, 2025, the Complainant made another complaint to IPC under section 66 about the Public Body's refusal to provide records held by the CMOH. The IPC decided to move the complaint directly to formal investigation pursuant to paragraph 93(4)(b). The IPC assigned it file number ATP-ADJ-2025-08-166, the file number of this Report.

[9] On August 20, 2025, the IPC provided the Public Body and the Complainant with a Notice of Written Investigation (Notice) advising that they had decided to formally investigate this complaint under paragraph 91(a)(i). The Notice also called for written submissions.

[10] On September 13, 2025, the Complainant made their submission.

[11] On September 18, 2025, the Public Body made its initial submission.

[12] On October 1, 2025, the Public Body replied to the Complainant's submission.

[13] No parties raised any procedural issues.

[14] On October 22, 2025, the Complainant granted the IPC a 60-day extension under subsection 100(1) to complete the investigation.

Submissions

[15] The Complainant asserted that the CMOH is a contracted employee of the Yukon Government (YG) who relies on YG infrastructure (*e.g.*, government e-mail, office space) and government employees.

[16] The Public Body's submissions largely relied on the legal analysis contained in a 2002 Yukon Court of Appeal case, [Yukon Medical Council v Information and Privacy Commissioner](#), 2002 YKCA 14 (CanLII). The Court found that the Yukon Medical Council was not a YG agent and therefore not subject to the [Access to Information and Protection of Privacy Act](#), SY 1995, c.1.²

[17] In my view, the current ATIPPA's definition of "public body" differs significantly from that in the repealed ATIPPA. In addition, the current ATIPPA does not use the word "agent" in the same way. As well, the CMOH is not a statutory body like the Yukon Medical Council, but an

² The Legislature repealed this statute in 2018 and replaced it with the current ATIPPA.

individual statutory officer, so a different analysis is required. I will therefore not consider these particular submissions for purposes of this Report.

However, the Public Body also asserted that the CMOH is an independent statutory office that must be prescribed as a public body under the [Access To Information and Protection of Privacy Regulation](#) (ATIPPA Regulation) to fall under the ATIPPA³. I will therefore address this part of the Public Body's submissions later in the Report.

Facts

[18] The CMOH is a statutory officer appointed by the Commissioner in Executive Council pursuant to the PHSA. Under its subsection 2.2(1), the Commissioner in Executive Council may appoint a medical officer of health to be the CMOH. A medical officer of health is defined as a medical practitioner under the PHSA.

[19] On June 28, 2022, Order in Council (OIC) 2022/109 appointed Sudit Ranade as the CMOH, effective July 4, 2022. On the same day, OIC 2022/108 appointed him as a medical officer of health for every health district in Yukon, effective July 4, 2022.

[20] According to the YG contract registry⁴, Sudit Ranade has a contract with the Public Body to provide physician services under the PHSA.

[21] The Public Body did not provide a copy of this contract, nor did it provide the IPC with any information about what records the CMOH holds in relation to lead in Yukon school water.

Issues

[22] There are two issues in this adjudication:

- 1) *Is the CMOH subject to the ATIPPA?***
- 2) *Was the Public Body authorized under the ATIPPA to refuse to provide, as per the Access Request, responsive records held by the CMOH about lead in Yukon school water between February 1, 2024, and February 19, 2025?***

³ OIC 2021/025.

⁴ <https://yukon.ca/en/doing-business/government-contracts/search-contract-registry>

Discussion of the Issues

Issue 1 – Is the CMOH subject to the ATIPPA?

[23] To answer this question, I must first consider several sub-questions.

What is the CMOH?

[24] The CMOH is established under the PHSA as a statutory officer responsible for carrying out the duties, functions, and powers assigned to them. The CMOH can only act in accordance with the authority granted in the statute and regulations.

[25] The CMOH's duties and functions are set out in subsection 2.2(2) of the PHSA:

- a) *prevent disease, including monitoring, investigating and responding to a suspected or confirmed communicable disease;*
- b) *promote health, including alleviating the effects of a communicable disease;*
- c) *prevent transmission of a communicable disease, including decreasing or eliminating risks associated with a communicable disease;*
- d) *undertake public health surveillance; and*
- e) *perform such other duties and functions as are assigned to the chief medical officer of health by an enactment or by the Minister.*

[26] Under the PHSA, the CMOH not only has powers as a CMOH, but can also act as a medical officer of health or health officer.⁵ In addition to the duties and functions outlined above in 2.2(2), the PHSA and its regulations also outline the statutory powers of the CMOH in that capacity, inclusive of when they are acting as a medical officer of health or health officer.

[27] The Public Body contracts the CMOH to provide physician services set out by the PHSA.

Analysis

Does the CMOH fit within the definition of “public body” in the ATIPPA?

Statutory Interpretation

[28] The following section 1 definitions apply to this issue:

⁵ Subsection 2.2(1) and section 15.

“Public Body” means –

- a) *a ministerial body;*
- b) *a statutory body prescribed as a public body, or*
- c) *an entity prescribed as a public body.*

[29] The CMOH is not captured by paragraphs (b) and (c) because they are not prescribed as such. That leaves paragraph (a) and I now turn to the following definition.

[30] “Ministerial Body” means –

- a) *the office of a minister responsible for a department;*
- b) *the department over which the minister responsible presides, and*
- c) *each statutory body prescribed as a program or activity of the ministerial body.*

[31] The CMOH is not captured under paragraphs (a) and (c). The CMOH is neither “the office of a minister responsible for a department” nor a statutory body as prescribed above. As such, I will now consider whether the CMOH is captured by paragraph (b).

Is the CMOH part of the department over which the minister responsible presides?

[32] Section 2.2 of the [Government Organization Act](#) (GOA) states that the Commissioner, on the Premier’s advice, can appoint Executive Council members as Ministers to preside over one of more departments. On November 22, 2025, the Commissioner appointed a new Minister to preside over the Public Body.⁶ Meanwhile, the Minister is assigned administration of the PHSA, the CMOH’s governing statute, under OIC 2014/174.

[33] As previously stated, the term “public body” is defined as “a ministerial body.” Schedule 1, Part 1, Column 1 sets out a list of ministerial bodies. The [Department of Health and Social Services] is listed as a ministerial body. It is therefore a public body over which the [Minister of Health and Social Services Minister] responsible for it presides as its head.

[34] “Department” in the ATIPPA has the same meaning as in the [Government Organization Act](#) (GOA). The GOA defines “department” as a “department, board, commission, corporation, council, directorate or office over which a Minister has been appointed to preside.”⁷

⁶ The appointment occurred, in the usual manner, by OIC but, according to the Yukon Legislative Assembly, the specific OIC is in the process of being published at the time of this Report.

⁷ Section 1.

[35] I will first discard of some of these terms because there is nothing in the PHSA to suggest that the CMOH is a board, commissioner, corporation, council or directorate. That leaves the term “office”.

[36] The Public Body asserts in its submissions that the CMOH is an independent statutory office. However, the CMOH’s governing statute, which provides the CMOH all of their powers, does not expressly create a statutory office. There are no provisions in the PHSA allowing the CMOH to hire staff or submit budgets for approval. Therefore, I conclude that the CMOH is a statutory officer but the PHSA does not create a statutory office. This is different from Yukon legislative officers like the Child and Youth Advocate or the Yukon Ombudsman whose home statutes include provisions for an office to be created.⁸ It is also different from the Worker’s Advocate whose governing legislation provides for an Office of the Worker’s Advocate.

Is the CMOH part of the department of Health and Social Services?

[37] The Minister of the Public Body administers the PHSA, under which the CMOH operates. As such, the Minister can require the CMOH to “perform such other duties and functions as are assigned” under paragraph 2.2(2)(e) of the PHSA. The wording “such as” suggests that the duties and functions so assigned is a non-exhaustive list and can be inferred as being very broad.

[38] The PHSA contains no provisions stipulating that the CMOH is independent of the Minister or the Public Body.

[39] There are no PHSA provisions that allow the CMOH to hire staff or submit budgets for approval, as is typical for independent statutory office.⁹

[40] The CMOH is listed as a government employee on the YG website, specifically within the Department of Health and Social Services under the Population and Public Health Evidence and Evaluation Branch.¹⁰ Under the Public Body’s organizational structure chart, the Deputy Minister oversees the Assistant Deputy Minister of Innovation, Quality and Performance who, in turn, oversees the Director of Population and Public Health Evidence and Evaluation Branch (Public Health Branch).¹¹

⁸ [Child and Youth Advocate Act](#); [Ombudsman Act](#); and the [Worker’s Safety and Compensation Act](#).

⁹ See, for example, section 7 of the [Ombudsman Act](#) that allows the Ombudsman to hire staff for their office.

¹⁰ <https://find-employee.service.yukon.ca/en/find-employee/employee-detail/Health-and-Social-Services/Sudit.Ranade>.

¹¹ <https://open.yukon.ca/information/5f786b41-f569-4bac-b223-c6a44028c462/resource/009fbd93-83da-3bb9-b819-43fb2d61fb9e/download/hss-organization-chart-2024-09-en.pdf>.

[41] The Public Body, in its submissions, states that it provides the CMOH with office space, equipment, and an administrative assistant. It also states that the CMOH's office is "co-located" with the Public Health Branch but it does not elaborate on the term "co-located". I infer from this term that the CMOH's office is physically located within the Public Health Branch. I also infer from this that the CMOH draws administrative support from the Public Body.

[42] YG has released CMOH publications on its open government portal.¹² The reports are under the link "Chief Medical Officer of Health and Population and Public Health Reports". The publisher is listed as "Health and Social Services". The custodian is listed as "HSS – Chief Medical Officer of Health and the Population and Public Health Evidence and Evaluation (PPHEE) branch".¹³

[43] The website advises that YG "shares government information and data through the open governmental portal." The open portal website also states the following:

*Open government helps make the government more transparent, supports public participation and creates economic and social benefits.*¹⁴

[44] In my view, these indicia strongly point towards the CMOH being part of the Public Body. The CMOH is a statutory officer who fulfills not only the duties, functions and exercise powers enumerated in the PHSA, but also those duties and functions assigned from time to time by the Minister responsible for the PHSA. There is nothing in the PHSA that expressly confers independence on the CMOH, something that, had the Legislature intended otherwise, it would have done so. The evidence shows that the CMOH is resident in the Public Body and that any information pertaining to the CMOH is housed and managed within it.

[45] For these reasons, I find that the CMOH is captured by the definition of "ministerial body" in its paragraph (b): "department over which the minister responsible [Public Body Minister] presides". It is therefore a "public body" subject to the ATIPPA.

[46] In making this finding, I could stop here but, in the alternative, I will also consider another possibility to determine if the CMOH is subject to the ATIPPA.

¹² <https://open.yukon.ca/>.

¹³ <https://open.yukon.ca/information/chief-medical-officer-of-health-and-population-and-public-health-reports>.

¹⁴ <https://yukon.ca/en/your-government/open-government/learn-about-open-government>.

Employee

[47] I will now consider whether the CMOH meets the definition of “employee” of a public body.

[48] Section 1 sets out the following definitions:

“Employee”, of a Public Body, includes

...

b) *a service provider of the Public Body,*

c) *a director or officer of the Public Body...*

“Service provider”, of a Public Body, means a person who, under contract, provides a service for or on behalf of the public body and includes an employee or agent of the service provider.

[49] I will first look at the term “service provider” in paragraph (b).

Service provider

[50] The CMOH is under contract to provide a service for the Public Body; specifically, the Public Body has contracted the CMOH to provide the services set out in subsection 2.2(2) of the PHSA, over which the Minister administers.¹⁵ In other words, the CMOH has the legal authority to exercise certain statutory powers under the PHSA on behalf of YG for a fixed period under contract.

[51] As such, I find that the CMOH meets the definition of “employee” of the Public Body as a service provider and is therefore subject to the ATIPPA.

[52] I will now look at the term “officer” in paragraph (c).

[53] Officer

[54] Section 1 defines, under “employee”, to include an “officer of the public body.”

[55] However, neither the ATIPPA nor the [Interpretation Act](#) define the term “officer”. As such, I will use a dictionary definition.

[56] Black’s Dictionary defines “officer” to mean:

¹⁵ The YG Contract Registry lists this contract.

*In public affairs, the term refers (especially) to a person holding public office under a national, state, or local government, and authorized by the government to exercise some specific function.*¹⁶

[57] It also defines “public office” as a “position whose occupant has legal authority to exercise a government’s sovereign powers for a fixed period.”¹⁷

[58] I conclude that the CMOH meets the above definition as they are appointed by the Commissioner in Executive Council to hold the public office or position of Chief Medical Officer of Health. In that position, the CMOH has the legal authority to exercise certain statutory duties, functions and powers under the PHSA on behalf of Government of Yukon for a fixed period.

[59] As such, I find that the CMOH meets the definition of “employee” of the Public Body as an officer and is therefore subject to the ATIPPA.

[62] I have now concluded that the CMOH is subject to the ATIPPA because the CMOH meets the definition of Public Body in two ways: (1) as an employee of a Public Body and (2) as the CMOH falling under the Public Body over which the minister responsible presides.

[63] However, I also find it relevant to consider two other issues in this adjudication:

- (a) Are other statutory officers like the CMOH included under the ATIPPA?
- (b) Would it be contrary to the purposes of ATIPPA if the CMOH was not covered by the ATIPPA?

[64] My analysis of these two issues also informs my determination that the CMOH is covered by the ATIPPA.

Are other statutory officers like the CMOH included under the ATIPPA?

[65] The broad category of statutory officer includes a legislative officer, but they differ in a significant manner.

[66] All statutory officers are established under legislation. However, some statutory officers are appointed by the Commissioner in Executive Council to discharge duties and functions in the Executive branch of government. They operate under a statute administered by a Minister and are not independent unless their legislation expressly states as such. Examples include the CMOH, the civil emergency planner under the [Civil Emergency Measures Act](#), the Chief

¹⁶ *Black’s Law Dictionary*, 11th ed., s.v. officer.

¹⁷ *Ibid.* s.v. public office.

Operations Officer under the [Oil and Gas Act](#), and the chief veterinary officer under the [Animal Health Act](#).¹⁸

[67] A legislative officer is also established under legislation to discharge their duties and functions, but they are appointed by members of the Yukon Legislative Assembly. As such, they exercise their powers in the Legislative Branch of government and have independence expressly conferred on them by their enabling legislation. Examples include the Ombudsman, Information and Privacy Commission, the Child and Youth Advocate, and the Chief Electoral Officer.

[68] Under the ATIPPA, legislative officers are explicitly excluded from being subject to the ATIPPA under paragraph 4(1)(d).

[68] Yukon coroners, who are statutory officers like the CMOH, are also excluded from the ATIPPA due to a specific provision of the coroners' governing statute. In particular, the [Coroner's Act](#) specifies that, despite the ATIPPA, neither the coroners service nor any member of it is a public body, or a part or component of a public body, for the purposes of the ATIPPA.¹⁹

[69] Similarly, the Legislative Assembly could have specified in the PHSA that the CMOH was exempt from the ATIPPA, but it did not do so. What it did do was to provide one specific exception of when the ATIPPA does not apply to the CMOH.

[70] In particular, subsection 2.1(2) of the PHSA specifies that:

*Subsection 17(1) of the Access to Information and Protection of Privacy Act does not apply to personal information collected by the Minister or the **chief medical officer** of health if the information is collected during and in relation to a health emergency, and if at the time of the collection it would be unreasonable in all of the circumstances to require the Minister or the **chief medical officer** of health to comply with subsection 17(1) of the Access to Information and Protection of Privacy Act. [Emphasis mine.]*

[71] Subsection 17(1) speaks to providing a notice of direct collection of personal information. The exemption mentioned in subsection 2.1(2) of the PHSA allows for the chief medical officer to forgo the notice provisions of section 17 *only* in relation to a health emergency. At all other times not deemed to be a health emergency, section 17 would be applicable to the CMOH, as would all other provisions of the ATIPPA.

¹⁸ SY 2002, c.34, SY 2002, c.162, and SY 2013, c.10, respectively.

¹⁹ SY 2018, c.10, section 77.

[72] There are similar examples. In looking at the Yukon's chief veterinary officer, a statutory officer appointed by the Commissioner in Executive Council and whose authority comes from the [Animal Health Act](#), there is a provision that carves out the same ATIPPA subsection 17(1).²⁰ However, the [Animal Health Act](#) does not exclude the chief veterinary officer from any other ATIPPA sections.

Would it be contrary to the purposes of ATIPPA if the CMOH was not covered by the ATIPPA?

[73] The ATIPPA has six purposes outlined in section 6:

- a) *to protect the privacy of individuals by controlling and limiting the collection, use and disclosure of personal information by public bodies;*
- b) *to require public bodies to implement security measures designed to prevent privacy breaches in respect of the personal information that they hold;*
- c) *to ensure that individuals have access to their personal information held by public bodies and have a right to request correction of it;*
- d) *to require public bodies to make particular types or classes of information openly accessible so that an access request is not required to access those types or classes of information;*
- e) *to provide the public with a right to access information held by public bodies (subject to specific exceptions) in order to ensure government transparency and to facilitate the public's ability to meaningfully participate in the democratic process; and*
- f) *to provide the commissioner with powers and duties that enable the commissioner to monitor public bodies' compliance with this Act and ensure that public bodies' decision-making is conducted in accordance with the purposes of this Act and that their administration is in accordance with the purposes of this Act.*

[74] The CMOH has broad statutory powers in their capacity as a CMOH, a medical officer of health and a health officer. As such, the actions of the CMOH could potentially and adversely impact the rights of individuals or businesses. For example, the CMOH, acting under their powers as a health officer under section 12 of the PHSA, could shut down a business until a breach under the Act or regulations was rectified. If the CMOH is not subject to the ATIPPA then people or businesses could not make an access request in respect of such decisions.

²⁰ Paragraph 67(1)(b).

[75] If the CMOH is not subject to the ATIPPA, then the IPC could not to require the Public Body to make particular types or classes of information that would otherwise require an access request openly accessible. This would run contrary to the purpose set out in paragraph (d).

[76] Meanwhile, the public would have no ability, if the CMOH is not subject to the ATIPPA, to obtain access to any CMOH records concerning an emergency declaration unless the CMOH decided to release them. In my view, this would, run contrary to the purpose set out in paragraph (e).

Conclusion: Issue 1

[77] For these reasons, I find that the CMOH is subject to the ATIPPA.

Issue 2 – Was the Public Body authorized under the ATIPPA to refuse to provide, as per the Access Request, all responsive records held by the CMOH about lead in Yukon school water between February 1, 2024, and February 19, 2025?

Analysis

[78] Under subsection 44(1), any person may make an access request for information held by a public body.

[79] The presumption under the ATIPPA is that the public body will provide all information relevant to the access request that it holds unless certain exceptions apply under section 38 and sections 67 to 71. The head of a public body also has the discretion to deny access to some information outlined in sections 72 to 81.

[80] Section 1 defines “hold”, in respect of information, as having “custody or control of the information.”

[81] If a public body employee holds information or a record, then it is deemed under paragraph 5(2)(b) to be held for, or on behalf of, the public body.

[82] Since the CMOH is part of the Public Body and, in addition, meets the definition of “employee” of a public body, any responsive records that the CMOH holds are deemed to be held by the Public Body.

[83] As such, the head of a public body pursuant to section 64 must grant the Complainant access to all responsive records relevant to their Access Request except for those records that the Public Body decides must be withheld under paragraph 64(1)(b).

Conclusion: Issue 2

[84] In my view, any records responsive to the Access Request and held by the CMOH should be considered as held by the Public Body and therefore must be disclosed to the Complainant, subject to any applicable exceptions to the right of access under the ATIPPA.

Findings

In summary, I make the following findings.

Issue 1

I find that the CMOH is subject to the ATIPPA because the CMOH is:

- 1) part of the Public Body over which the minister responsible presides; and
- 2) an employee of the Public Body (as both an officer and service provider of the Public Body).

Issue 2

Since the CMOH is part of the Public Body, any records responsive to the Access Request and held by the CMOH should be considered as held by the Public Body and therefore disclosed to the Complainant.

Recommendations

I recommend that the Public Body Head re-processes the Complainant's Access Request to include any responsive records held by the CMOH and provide an amended response to the Complainant no later than 30 days of the date of this Report.

Public Body Head's Response to Report

Section 104 requires the Public Body Head to do the following after receiving an Investigation report.

104(1) Not later than 15 business days after the day on which an investigation report is provided to a respondent under subparagraph 101(b)(ii), the respondent must, in respect of each recommendation set out in the investigation report

(a) decide whether to

(i) accept the recommendation in accordance with subsection (2), or

(ii) reject the recommendation; and

(b) provide

(i) a notice to the complainant that includes

(A) their decision, and

(B) in the case of the rejection of a recommendation, their reasons for the rejection and a statement notifying the complainant of their right to apply to the Court for a review of the decision or matter to which the recommendation relates, and

(ii) a copy of the notice to the commissioner.

(2) If a respondent accepts a recommendation set out in an investigation report, the respondent must comply with the recommendation not later than

(a) if the respondent is the access and privacy officer, 15 business days after the day on which the notice of acceptance under subparagraph (1)(b)(i) is provided to the complainant; or

(b) if the respondent is the head of a public body

(i) 15 business days after the day on which the notice of acceptance under subparagraph (1)(b)(i) is provided to the complainant, or

(ii) if an extension is granted by the commissioner under subparagraph (4)(a)(i), the date specified in the notice of extension provided under paragraph (4)(b).

Subsection 104(3) authorizes the Public Body Head to seek an extension of the time to comply with a recommendation as follows.

(3) If the head of a public body reasonably believes that the Public Body is unable to comply with a recommendation in accordance with subparagraph (2)(b)(i), the head may, not later than 10 business days before the end of the period referred to in that subparagraph, make a

written request to the commissioner for an extension of the time within which the head must comply with the recommendation

Subsection 104(5) deems the Public Body Head to have rejected a recommendation if they do not provide notice as required or does not comply with it in accordance with the specified timeframes.

Complainant's Right to Court Review

If the Public Body Head rejects a recommendation in an investigation report, or is considered to have done so, then subsection 105(1) gives the Complainant a right to apply to the Yukon Supreme Court for a review of the decision or matter to which the recommendation relates.



Amy Steele, BA, BJ, JD, Adjudicator
Office of the Information and Privacy Commissioner

Distribution List:

- Public Body Head
- Complainant