



Yukon Information and Privacy Commissioner



Yukon Public Interest Disclosure Commissioner

# 2024 ANNUAL REPORT



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## **Contact us**

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All photos are by Tyler Symonds, unless otherwise indicated.



I am pleased to provide my 2024 Annual Report for all three of our mandates.

Our three-in-one office continues to see yearly case increases with more Yukoners submitting fairness complaints (Ombudsman), access and privacy concerns (Information and Privacy Commissioner), or disclosures of wrongdoing (Public Interest Disclosure Commissioner) for us to investigate. In 2024, we closed 46% more files and opened 17% more than the previous year. Our Informal Case Resolution team's case volume increased nearly 47% in 2024.

To manage this increase, we streamlined our processes to improve efficiency and worked proactively with stakeholders to support them. Process improvements only go so far to handle increasing cases; in September we presented our draft budget proposal to the all-party Members' Services Board of the Legislative Assembly, requesting an additional full-time position.

Without additional resources, we will not be able to continue providing the timely service that Yukoners have come to expect, nor meet our legislative timelines for handling complaints under Access to Information and Protection of Privacy Act and Health Information Privacy and Management Act.

#### Independence of legislative officers

In Canada, like most democratic countries, our system of government consists of three branches: the executive, the legislative and the judicial. The executive branch, also known as the government, is responsible for running the affairs of the jurisdiction they are elected in. The legislative branch – the Legislative Assembly for the Yukon – is responsible to propose laws (known as bills), debate them, and then pass them into law. The judiciary is responsible for interpreting the laws and it involves our court system. Separation of these branches is a system of checks and balances to ensure a properly functioning democracy without interference.

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

Each of my roles – Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner – were created by the Legislative Assembly as independent officers. My office oversees four legislations that outline these roles. I report to the Legislative Assembly, which is an important distinction. My office needs to remain at arm's-length so we can do our work and voice my opinions without threat of reprisal or pressure from the government of the day. The Legislative Assembly drafted each of my governing Acts to ensure that my offices are independent and can operate free from government interference.

#### Independence of the budgeting process

As an independent officer of the Yukon Legislative Assembly, my annual budgets are reviewed by an allparty board of the Legislative Assembly known as the Members' Services Board (MSB). Its mandate includes considering budget submissions for the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner, and other legislative officers. Once the MSB agrees with the proposed budget, the Ombudsman Act states that *"the Speaker shall transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly."* To ensure independence, the Legislative Assembly has the final say on budgets, and the executive branch of the government should have no role in the budgeting process of legislative officers.

For reasons unclear to me, I received notice in October that the Management Board Secretariat (which operates under the Department of Finance) was reviewing my budget submissions after they were already reviewed and recommended by the MSB. Management Board then proposed reductions in the amounts that the finance minister would recommend to the Legislative Assembly. This unprecedented interference by the executive branch of government compromises my independence. As in other jurisdictions in Canada, the Ombudsman Act sets out a process where budget recommendations must be tabled to the Legislative Assembly for its consideration. The Legislative Assembly alone has the authority to decide on an independent officer's budget. I intend to challenge the government's involvement in this process in court.

## **Our mandates**

The <u>Ombudsman</u> promotes and protects fairness in the delivery of public services provided by public authorities, as identified in the <u>Ombudsman Act</u>.

The <u>Information and Privacy Commissioner (IPC)</u> is responsible for ensuring that individuals have access to information, including their personal or health information that is held by public bodies or health custodians and that this information is maintained in a secure way. We are also responsible for providing advice and ensuring compliance with the <u>Access to Information and Protection of Privacy</u> <u>Act</u> and the <u>Health Information Privacy and Management Act</u>. See Compliance in the IPC section of this report.

The <u>Public Interest Disclosure Commissioner (PIDC)</u> investigates disclosures of wrongdoing, commonly referred to as "whistleblowing," and complaints about reprisal under the <u>Public Interest Disclosure</u> and <u>Wrongdoing Act</u>. Employees of public entities can make disclosures of wrongdoing that are in the public interest without fear of reprisal. The PIDC also supports employers with disclosure resources and reviews their annual disclosure reports.

#### Terms for those we oversee:

Ombudsman: authorities

Information and Privacy Commissioner (IPC)

Access to Information and Protection of Privacy Act (ATIPPA): **public bodies** 

Health Information Privacy and Management Act (HIPMA): custodians

Public Interest Disclosure Commissioner (PIDC): **public entities** 

## Our work

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

#### Intake

Our Informal Case Resolution (ICR) team determines if the complaint is within our jurisdiction and offers referrals if it is not. We often resolve the matter with minimal involvement. For example, we may identify an escalation or appeal process within the public organization or encourage the public organization to respond to the complainant directly regarding delays or a lack of response. This gentle touch is referred to as Early Complaint Resolution.

### Informal Case Resolution investigation (ICR)

When a complaint file (investigation) is opened, it starts – and most often ends – with our ICR investigators. They typically resolve over 90% of the complaints we receive.

### Formal Investigation (FI)

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

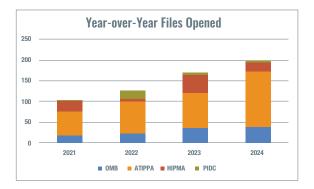
#### Compliance

We are also responsible for ensuring compliance within each mandate. See Compliance in the IPC section of this report.

## **Operations for 2024**

**90% increase in cases over the past three years** Our caseload increased by 34% in 2023 and by 17% this year. To meet this demand, we requested an additional full-time investigator. The all-party Members' Services Board approved our request for the 2025/2026 budget.

The most significant driver of this year's increase was a 61% increase in ATIPPA complaints files. Our office has worked hard to keep up with this increase and prevent a backlog; we closed 46% more files than last year.



### Community support and involvement

Our employees supported the Whitehorse Foodbank, United Way, Bare Essentials, and Share the Spirit. Employees participated through direct donation or by purchasing gifts or supplies for one of the campaign drives. Employees earn 'dress down days' with each donation to encourage participation.

### **Outreach and communications**

It was a busy year for our Communications and Outreach Analyst who started in this new position in December 2023. I created this full-time position so that people better understand what we do and how we can help them. Reaching our audience is a priority, and in 2024 we accomplished the following:

- redeveloped our website with user-friendly content (launching in 2025)
- released the 2022 and 2023 annual reports with significant design changes, including infographics, that illustrate our work and our impact
- revitalized our social media channels
- released and promoted numerous reports and resources for public organizations
- began outreach initiatives

In 2025 we will launch our new website and an outreach strategy. We look forward to connecting with new people and sharing how our three mandates support the rights of individuals and the public organizations who serve them.

### Staffing

When fully staffed, we have five investigators who work on formal and informal investigations. In 2024, we filled three investigator vacancies and hired an office administrator.

Tara Martin was promoted to Deputy Ombudsman and Commissioners in July. She was hired in 2018 as an Investigator and Compliance Review Officer and was promoted to Director of Intake and Informal Case Resolution in 2022. As deputy, she has increased responsibilities with more involvement in the day-to-day operations of our office and will act on my behalf when I am unavailable. I would like to thank Tara for the hard work, skill and professionalism that she brings to the office each day and recognize the hard work of all my investigators.

### **Training and conferences**

We regularly attend online and in-person training to stay up to date on industry best practices and trends. In 2024, we participated in:

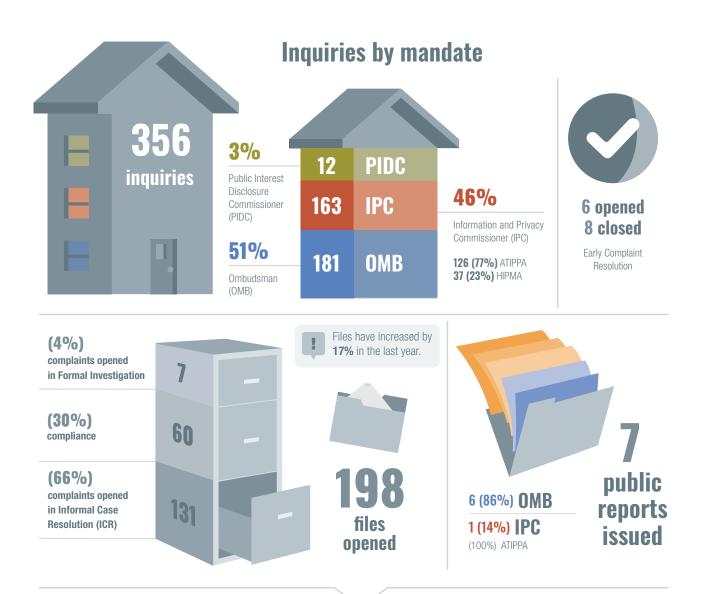
- Canadian Council of Parliamentary
  Ombudsman's monthly lunch and learns
- Federal, Provincial and Territorial IPC's Annual Investigator Conference
- International Association of Privacy Professionals certification programs
- 26th Annual Vancouver International Privacy & Security Summit

I also attended annual national meetings for each mandate. This year the Le Protecteur du citoyen hosted the Ombudsman meeting in Quebec City, Ontario's Commissioner hosted the Information and Privacy Commissioners meeting, and Newfoundland and Labrador's Office of the Citizens' Representative hosted the Public Interest Disclosure Commissioners meeting.

Sincerely,

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

## Stats at a glance 2024 All three mandates



## Files opened by mandate





Message from Deputy Ombudsman, Information and Privacy Commissioner, and the Public Interest Disclosure Commissioner Tara Martin

Our Informal Case Resolution (ICR) team works collaboratively with public organizations in each of our mandates to resolve complaints as quickly and efficiently as possible.

In July 2024, I was promoted to Deputy Ombudsman and have taken a more active role in our office's operations, including strategic planning and budgeting. I am grateful to the Ombudsman and Commissioner for the opportunity to take on these new challenges and continue my professional development.

Two ICR investigators hired in 2024 are new to the role. Kudos to them for hitting the ground running, for learning an immense amount in a very short time, and for coming together as a team to face challenges head-on. We also hired a new office administrator in July who is being trained to help relieve some of the administrative pressures we face with an increasing caseload.

This year, the ICR team saw a 47% increase in complaints. As a result, our average handling time rose from 52 days in 2023 to 92 days in 2024. Increased caseload and staff turnover has made it more challenging to meet our legislated deadlines and service standards, with only two ICR investigators handling all three of our mandates.

This year we also saw a tenfold increase in public bodies applying for time extensions to respond to requests under the *Access to Information and Protection of Privacy Act* (ATIPPA). We received 11 requests compared to only one last year. This increase in extension applications presents additional challenges as the Act requires that we approve or deny the extension request within three business days.

I commend the ICR team for their dedication, expertise and commitment to upholding the rights of Yukoners under all our mandates.

Sincerely,

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**Tara Martin** Deputy Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner



## Financial report for all three mandates

	2024-2025	2023-2024	2022-2023	2021-2022
Personnel (all mandates)	\$1,403,700	\$1,243,900	\$1,204,000	\$1,135,800
Capital (all mandates)	\$32,000	\$3,000	\$3,000	\$5,000
Operating expenses for Ombudsman	\$164,000	\$148,000	\$148,000	\$145,400
Operating expenses for Information and Privacy Commissioner	\$173,400	\$161,500	\$161,000	\$156,400
Operating expenses for the Public Interest Disclosure Commissioner	\$56,900	\$52,600	\$53,000	\$98,400
Total	\$1,830,000	\$1,609,000	\$1,569,000	\$1,541,000



## 2024 Annual Report of the Yukon Ombudsman

The Honourable Jeremy Harper Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:

As required by section 31 of the *Ombudsman Act*, I am pleased to submit the 2024 Annual Report of the Yukon Ombudsman. I am also happy to share this with Yukoners.

Kind regards,

Jason Pedlar, Yukon Ombudsman

Promoting and protecting fairness in the delivery of public services

The Yukon Ombudsman promotes fairness in public organizations by investigating complaints and supporting public organizations with resources and recommendations. They are an Officer of the Legislative Assembly and independent of government and political parties. The Ombudsman is neither an advocate for a complainant nor a defender of government actions.

The Ombudsman can identify whether one has been treated fairly and make recommendations to effect change if there has been an unfairness. This will benefit the individual and others in a similar situation, as well as the authorities and citizens of the Yukon generally.

## Message from the Ombudsman Jason Pedlar

For several years we have been experiencing a steady increase in complaint files. I anticipate this annual increase will become the new normal as we expand our outreach efforts and people become more aware of the work that we do. This will put more pressure on our Informal Case Resolution team who resolve most of these files. Our formal investigators will continue to investigate complaints that are more systemic in nature.

In 2024 we released three formal investigation reports from complaints opened in previous years. Formal investigations take time to conduct interviews, review evidence and reach conclusions. Complex investigations often require multiple rounds of interviews, issuing notices to produce records, and thorough evaluation with a fairness lens.

Cooperation from authorities greatly improves the efficiency of our investigations. I would like to thank the authorities who make our work easier by responding to our requests in a timely and cooperative manner. We appreciate your willingness to participate and consider our recommendations as opportunities for improvement. We recently presented our *Fairness by Design* tool to a Yukon government department at their request. This resource is designed to help authorities evaluate their programs with a fairness focus and it can be found on our website. We provide this training to any authority that requests it.

*Fairness by Design (FBD)* is a guide that helps authorities evaluate the fairness of their programs and services. We use the FBD standards when we investigate a complaint of unfairness under the *Ombudsman Act*.

FBD standards can be broken down into three types of unfairness:

**Process:** a fair process involves the ability to meaningfully participate in the process and to be heard. It also requires impartiality and integrity of the decision maker.

**Decision:** a fair decision requires that all applicable laws and rules are followed, that any decisions are reasoned, and all decisions should be viewed with an equity lens.

**Service:** fair service means that the authority is accessible and responsive and that they are accountable for their actions and inactions.

When conducting an investigation, we consider these three fairness types and their sub-categories found in the guide. We use FBD to help an authority understand our concerns and build fairness into their programs and services.

# How we determine fairness



Request for updates to the *Ombudsman Act* 

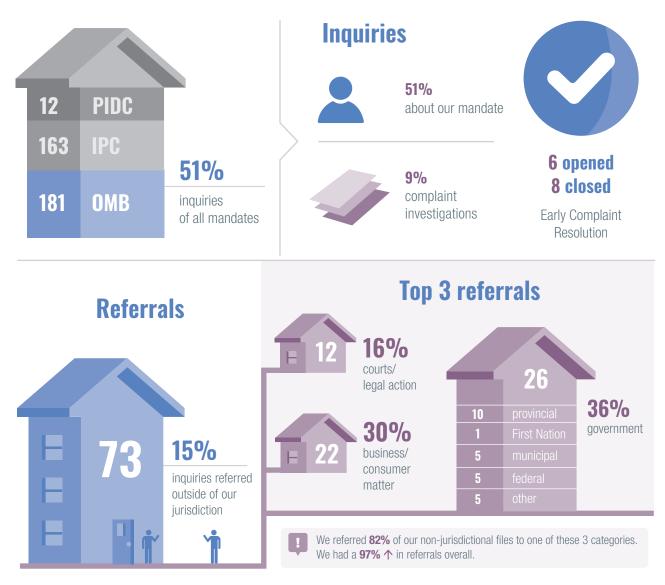
The Act has not undergone any substantive changes since it was passed 29 years ago. As a result, we face some challenges to our ability to initiate and conduct investigations. When we become aware of a potential unfairness, we cannot launch our own investigation. Another example is the exclusion of municipalities from our jurisdiction. As well, the Act could benefit from clarifications that reduce ambiguity in our authority and how we administer the Act.

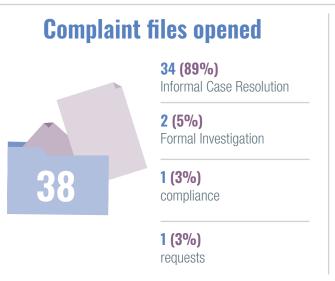
On April 10, 2024, I released a *report* to the Legislative Assembly requesting amendments to the *Ombudsman Act* that include updating the Act to meet international standards. Our proposed changes include giving us the authority to initiate investigations without a formal complaint (own motion authority). I met the all-party Members' Services Board (MSB) of the Legislative Assembly on August 7 to request permission to draft amendments to the *Ombudsman Act*. The MSB deferred the decision to a later date. I am hopeful that we can begin this important work in the near future.

In the following pages you can find statistics and more information about the type of complaints we handled this year.

## Stats at a glance 2024 Ombudsman

Find more Ombudsman statistics at the end of this section.





## **Complaint files closed**

44 (86%) Informal Case Resolution

**5 (10%)** Formal Investigation

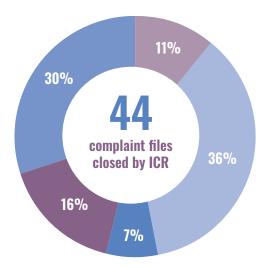
**1 (2%)** compliance

We closed **168%** more files due to clearing a backlog from 2023.

51

**1 (2%)** requests

## Stats at a glance 2024 Ombudsman



## **Determination**

3

#### (7%) substantiated

We agreed with the complainant that there was unfairness or non-compliance that needed to be addressed.



#### (16%) partially substantiated

We agreed with the complainant on some matters, but not everything.



#### (30%) unsubstantiated

We did not find evidence of unfairness or non-compliance.



#### (11%) N/A

We were unable to make a determination about the complaint. This might include complaints that were withdrawn during the investigation process, or upon closer examination of an issue, we declined to investigate further.



#### (36%) refusal to investigate

**23%** of complaints were substantiated or partially substantiated. One complaint was escalated to Formal Investigation.

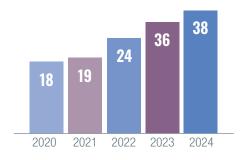


ICR average handling time

Inquiries



## **Complaint files opened**



## Your stories - Informal Case Resolution



## **Clear communication is fair**

Authority: Department of Highways and Public Works Complaint type: Fair Process

#### **Complaint:**

An individual (the complainant) felt that the Drivers Control Board (DCB), a branch of the Authority, unfairly administered policies and decision-making, and lacked communication.

#### Investigation:

After reviewing the legislation and the communication between the parties, it was clear there was a disconnect between what the complainant thought the DCB was authorized to do and what the board could do pursuant to their mandate and legislated framework. Our review also found that DCB can do more to help individuals navigate the process and understand the board's role.

Our investigation also found that the Authority lacked policies and procedures with respect to their work and had no redundancies in place when employees were on leave.

#### Decision: unfairness substantiated

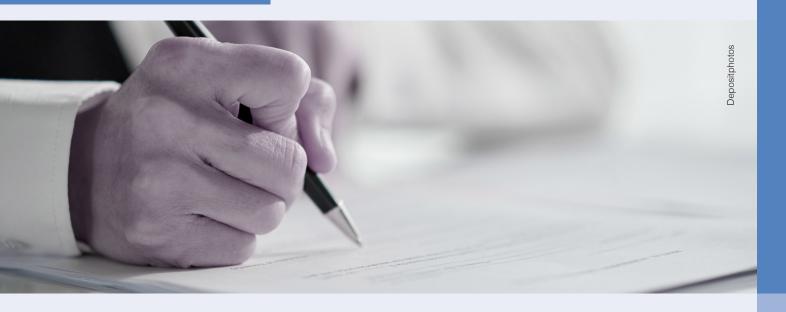
Our investigation found no unfairness in the DCB's decision-making with respect to the complainant; however, we found that their lack of accessible information was unfair and had directly contributed to the complainant's frustrations.

#### **Recommendations: accepted**

We made two recommendations and one observation to the Authority.

We recommended that the Authority develop internal training and guidance documents for DCB administrative staff. We also recommended that they improve the resources available to potential applicants who want to know DCB's role in reinstating driving privileges. Highways and Public Works accepted both recommendations and will implement them within 12 months. We also suggested that DCB use plain language writing to improve its communications.

## Your stories



## An application process is not unfair

Authority: Department of Health and Social Services Complaint type: Fair Process

#### **Complaint:**

An individual needed to replace a wheelchair that they had obtained through the Yukon Pharmacare program.

The complainant stated that they had experienced challenges and delays in attempting to obtain a functional wheelchair and alleged unfair treatment by the Authority.

#### Investigation:

We investigated the complainant's request for a new wheelchair, including the Authority's criteria for allocating wheelchairs through the Pharmacare program.

We found that the complainant may have been eligible for a new wheelchair through Pharmacare, but they had not applied. Health and Social Services had communicated the necessary steps and provided them with application forms.

#### **Decision: unsubstantiated**

Because the complainant did not follow the application process to obtain a wheelchair, their eligibility could not be determined.

Application processes that assess eligibility for a program or service are not inherently unfair, unless they are unreasonably burdensome.

In this case, we did not find the Authority's actions to be unfair, so we made no recommendations.

#### **Recommendations: not applicable**

## Formal investigations



### Left in the Dark Report 2 – Safer Schools Action Plan Assessment

#### Authority: Department of Education

In 2024 the Ombudsman released his second report related to sexualized abuse of a student at Hidden Valley Elementary School (HVES). This report investigated a complaint that the Authority's delay of 19 months to inform parents about the abuse was unfair. It evaluated the Authority's *Safer Schools Action Plan* that was created in response to its acceptance of the Rogers Report recommendations. The action plan was an external investigation commissioned by the department on the HVES matter. The Rogers recommendations were designed to improve the handling of serious incidents like the sexualized abuse of a student, including how to appropriately inform and support parents.

The Ombudsman's *first report* substantiated the Department of Education's communications failure, and this second report examines whether the department's commitments in the action plan are sufficient to meet the Rogers recommendations. Our investigator continues to follow up with the Authority as it implements our recommendations, which is expected to be complete in August 2025.



### Yukon Human Rights Commission complaints

Authority: Yukon Human Rights Commission

Our office investigated three separate complaints against the Yukon Human Rights Commission (HRC). The investigation found unfairness in the organization's operations and made eight recommendations to the Human Rights Commission and the Department of Justice, the HRC's overseeing authority. The *HRC* accepted all five recommendations and the *department* accepted two of three, as Justice determined that the first recommendation was outside their authority. The implementation timeline of these <u>recommendations</u> ranges from six to twelve months after the date of the report.



### Site saving in Yukon campgrounds

Authority: Department of Environment

We completed a formal investigation into the practice of site saving at Yukon Parks campgrounds. The investigation concluded that the Department of Environment's lack of enforcement due to insufficient tracking of site saving is unfair. We made six <u>recommendations</u> that the department agreed to implement during the 2025 camping season.

## **2024 Statistics Ombudsman**



	17	Comments from public	9	Information about Ombudsman office	17	Pending complaint
$\rangle$	16	General process questions	28	No jurisdiction/wrong office/incorrect referral	1	Other
	92	Information about mandate	1	Office complaint		

Early Complaint Resolution	
Files opened	6
Files closed	8

Complain	Compliance		
	Informal Case Resolution	Formal Investigation	
Files opened	34	2	2

Total files			
Files opened	36	2	
Files closed (includes files from previous years)	49	2	
Files to be carried forward	10		

Total files opened	Number	r of complaints	
Authority	Informal Case Resolution	Formal Investigation	Total
Energy, Mines and Resources	2		2
Health and Social Services	11		11
Highways and Public Works	5		5
Housing Corporation	2		2
Public Service Commission	5		5
Workers' Safety and Compensation Board Yukon	3		3
Yukon Association of Education Professionals	3	1	4
Yukon Human Rights Commission	1		1
Yukon First Nation (section 11 (5) referral from a First Nation)		1	1
Determined no jurisdiction	2		2
Total	32	4	36

Formal Investigations by recommendations				
Authority	Recommendations			
	Accepted	Partially accepted	Not accepted	
Education	8			
Environment	6			
Yukon Human Rights Commission	8			
Total	22			



Yukon Information and Privacy Commissioner

## 2024 Annual Report of the Yukon Information and Privacy Commissioner

The Honourable Jeremy Harper Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:

As required by section 117 of the *Access to Information and Protection of Privacy Act* and Section 97 of the *Health Information Privacy and Management Act*, I am pleased to submit the 2024 Annual Report of the Yukon Information and Privacy Commissioner. I am also happy to share this with the Yukon public.

Kind regards,

Jason Pedlar, Yukon Ombudsman

Working on safeguarding the privacy and information rights of Yukoners

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

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

Message from Information and Privacy Commissioner Jason Pedlar

#### Facial recognition technology excluded from our request for review

In spring 2024, the Department of Highways and Public Works (HPW) requested that we review four provisions of the draft Traffic Safety Act (Bill No. 44) intended to replace the *Motor Vehicles Act*. My office provided written comments outlining concerns with the Act's broad language and its insufficient definition of the purposes for collecting, using and disclosing personal information. The government did not respond to our comments, and it also did not inform us of the Act's facial recognition technology (FRT) provision.

In early October, we discovered the FRT provision while listening to the debate in the assembly – a routine practice to ensure that draft bills align with our mandates and best practices. We learned that the Bill was tabled, proceeded through first and second reading, and was debated in the Committee of the Whole without asking for our feedback on the facial recognition technology provision. It is customary for the government to request our review when contemplating or modifying an Act that is relevant to our mandates.

On October 10, I <u>wrote</u> to the Minister of Highways and Public Works. I copied opposition leaders due to the sensitive nature of this biometric information and because the passing of the Bill was imminent.

I would like to clarify that my office was not informed or consulted about the contemplated authorization for use of facial recognition technology as part of Bill 44. Other jurisdictions have found that facial recognition software constitutes "biometric information." Biometric information is personal information, and in our view, is highly sensitive. While use of such Biometric information has been approved by other Privacy Commissioners, the use case for it was generally very narrow.

Under the Access to Information and Protection of Privacy Act (ATIPPA), public bodies can only collect, use, and disclose personal information to the extent that it is reasonably necessary to carry out their stated purpose. The stated purpose must be well defined and discernable. As well, public bodies must consider the sensitivity of the personal information they collect, use, and disclose – the more sensitive the information, the more scrutiny should be applied to whether the collection, use, and disclosure of this personal information is reasonably necessary to a well-defined purpose.

Pursuant to section 11 of the ATIPPA, public bodies are required to complete a privacy impact assessment (PIA) before carrying out a significant change to the manner in which an existing program or activity collects, uses or discloses personal information. Our office would be happy to review the Department's PIA and provide comments and feedback upon request.

After bringing this matter to light, the Authority contacted our office to discuss our concerns. After several meetings, the Authority agreed to make amendments to the Bill that would address our concerns. On October 21 I <u>wrote</u> to the Minister:

Thank you for the letter of October 17, 2024 from Deputy Minister Allen. I have looked at the proposed draft revisions to section 215 of Bill No. 44 and am pleased to see that HPW has meaningfully addressed my concerns.

The revisions, in my view, properly limit the scope of the registrar's use of 'Facial Recognition Technology' (FRT) solely to the execution of their duties and functions under Bill No. 44, currently before the Legislature.

I am also pleased to note that the revisions now limit the use of FRT to the comparison of photos only contained within the registry. Importantly, the modifications to subsection 215(4) allow the registrar to make FRT available to 'issuers' as defined in section 210. This significantly reduces my concerns about the potential for such highly invasive technology to be implemented outside its intended purpose.

Together, I am of the opinion that these proposed draft revisions conform more closely with the limitation principles of the ATIPPA. As you know, public bodies can only collect, use, or disclose personal information that is reasonably necessary for carrying out a stated purpose.

I appreciate HPW's timely, detailed and thorough response to our comments and I look forward receiving and reviewing your Privacy Impact Assessment(s) prior to operationalizing section 215 and the use of FRT software.

In the subsequent debate in the Legislative Assembly, the Minister responsible for Highways and Public Works acknowledged what he regarded as an oversight and welcomed our input.

#### **HIPMA statutory review – restarting**

In late 2024, the Department of Health and Social Services met with our office and informed us that they were resuming the statutory review of the Health Information Privacy and Management Act (HIPMA). We look forward to working with the Department in 2025 and sharing our expertise and experience. As part of this work, we will review and update our office's previous <u>recommendations</u> to further strengthen the Act and Regulations:

- Require custodians to adopt security standards to regulate uses such as:
  - the use of medical devices and other technology that is connected to the internet (internet of things)
  - the use of cloud computing
  - the use of artificial intelligence (AI)

#### internet of things: the

interconnection via the internet of computing devices embedded in everyday objects, enabling them to send and receive data. (Oxford Languages)

- Require mandatory privacy impact assessments for private custodians.
- Give additional authority to the IPC, similar to what was provided under ATIPPA, to conduct own motion investigations and compliance audits.
- Give the IPC order-making authority to remedy any non-compliance with HIPMA or require that a custodian must apply to court to refuse to accept any recommendations of the IPC.

In 2021 we received notice that the Department of Health and Social Services had started its review of HIPMA, as required under Section 138. The Minister of Health and Social Services is required to conduct a review by the fourth anniversary of when the Act came into force, which was August 31, 2020. The review was delayed by the COVID pandemic. In response, my predecessor provided <u>recommendations</u> to the Department to be considered as part of the HIPMA review.

HIPMA was brought into force on August 31, 2016 and for the first time created a made-in-the-Yukon law to regulate the protection of personal health information. Prior to the passing of HIPMA, medical practitioners only needed to comply with federal legislation (PIPEDA) that has limited application to personal health information and its collection, use, and disclosure by custodians. HIPMA also established oversight by the Yukon IPC with several responsibilities and authorities.

#### Low HIPMA complaint numbers and the need for outreach

HIPMA complaint numbers remain low, and we have not conducted a formal investigation, called a Consideration, since 2021 as all complaints have been resolved under our Informal Case Resolution process. We can only investigate matters where we have received a complaint because we do not have the authority to conduct audits or own motion investigations. See recommendations for HIPMA statutory review as above.

We continue to support custodians by providing advice when they reach out to us and by evaluating privacy breaches that are reported to our office.

We spoke at the 2024 annual general meeting of the Yukon Medical Association to connect with custodians and to share our resources. In 2025 we continue to develop our outreach strategy which includes engaging health custodians (physicians, nurses, dentists, psychologists, pharmacists, optometrists, occupational therapists, midwives, naturopaths, physiotherapists, chiropractors, etc.) Find a list of custodians on our *website*.

### Compliance

An essential part of our work is helping public bodies and health custodians comply with the requirements for managing personal data under the *Access to Information and Protection of Privacy Act* (ATIPPA) and the *Health Information and Privacy Management Act* (HIPMA). We handle several types of compliance files including privacy impact assessments (PIA), security threat risk assessments (STRA), privacy breach evaluations, and requests for comment, advice, or decisions.

Most of these files are submitted to our office voluntarily, which indicates that our subject matter expertise is valued by public bodies and custodians. Mandatory submissions to the IPC are triggered if there is a risk of significant harm to impacted individuals.

#### Privacy impact assessments (PIA)

The most common compliance file submitted to our office is a PIA. In this reporting year, we closed five PIAs under ATIPPA and nine under HIPMA. A PIA is a risk assessment process that examines the flow of personal information within a given program or activity. PIAs help public bodies and custodians ensure they meet their legislative requirements and identify the impacts their programs and activities may have on individuals' privacy. PIAs help reduce the risk of unauthorized collection, use, disclosure, retention, or disposal of personal information by identifying and mitigating privacy risks throughout the data life cycle.

To help streamline the review process for public bodies and custodians, we launched a  $\underline{PIA \ checklist}$  in spring 2024 .

#### Security threat risk assessment

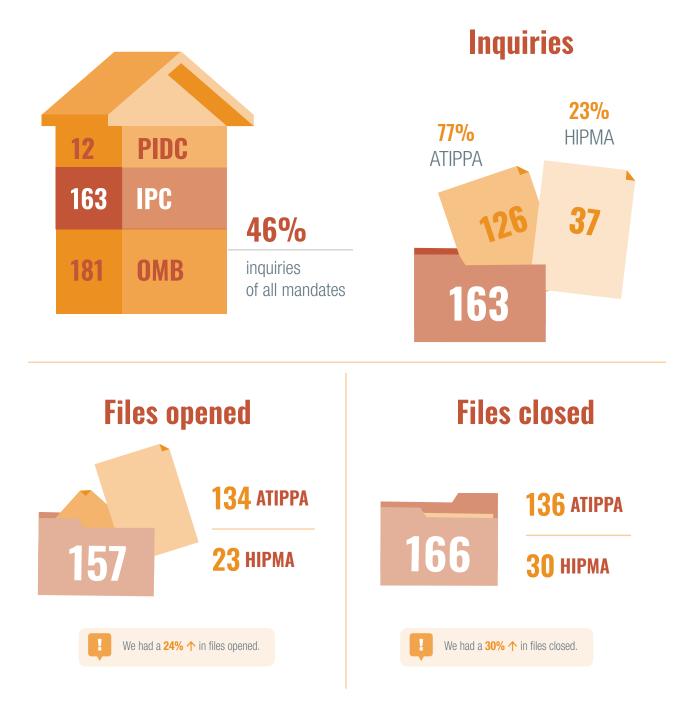
A security threat risk assessment (STRA) is the process of assessing and reporting security risks for an information system to make risk-based decisions. Like a PIA, an STRA maps out the data flows for an information system to identify security risks, but with a particular lens on technical vulnerabilities. The ATIPPA makes it mandatory for public bodies to conduct an STRA and submit it to our office for review before carrying out personal identity services (also known as digital ID), integrated services, data-linking activities, information management services, or a significant change to any of the above types of information systems.

#### **Privacy breach evaluations**

A privacy breach (or security breach) means that personal information was collected, used, or disclosed without authority under the ATIPPA or HIPMA. If a public body or custodian assesses that a breach occurred and determines there is a risk of significant harm to anyone because of the breach, they are required to notify our office and provide a copy of their breach report for review and comment. In 2024 we received five breach notices under ATIPPA and seven breach notices under HIPMA.

In the following pages you can find statistics and more information about the type of complaints we handled this year.

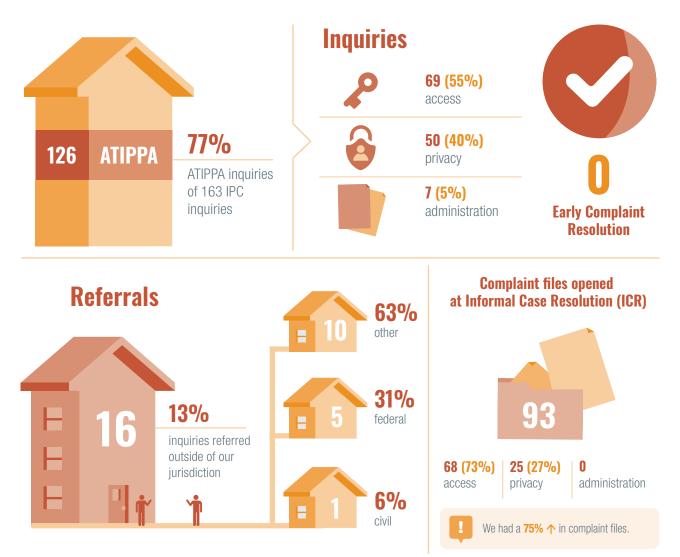
## Stats at a glance 2024 Information and Privacy Commissioner

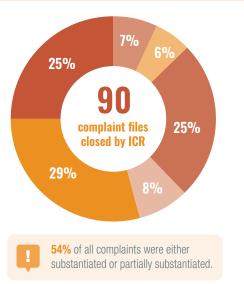


## Stats at a glance 2024 Access to Information and Protection of Privacy Act (ATIPPA)

More ATIPPA statistics can be found at the end of the IPC section of this report.

#### Information and Privacy Commissioner





## **Determination**



26

23

(25%) substantiated We agreed with the

complainant that there was unfairness or non-compliance that needed to be addressed.

## (29%) partially substantiated

We agreed with the complainant on some matters, but not everything.

#### (25%) unsubstantiated

We did not find evidence of unfairness or non-compliance.



#### (7%) escalated to Formal Investigation



(6%) N/A We were unable to make

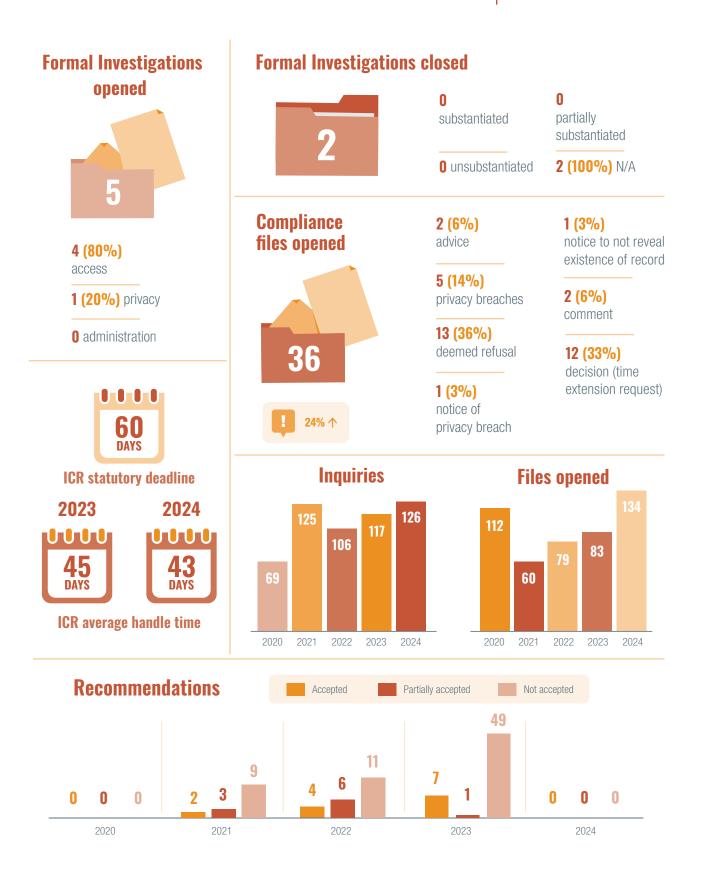
a determination about the complaint. This might include complaints that were withdrawn during the investigation process, or upon closer examination of an issue, we declined to investigate further.



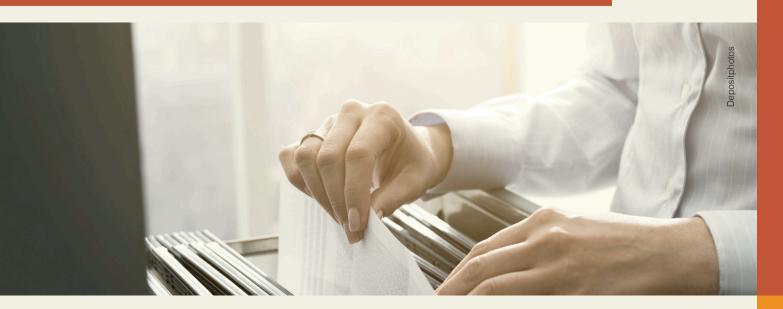
## (8%) refused to investigate

## Stats at a glance 2024 Access to Information and Protection of Privacy Act (ATIPPA)

#### Information and Privacy Commissioner



## Your ATIPPA stories Informal Case Resolution



## Adequate does not mean every record

Public body: Department of Education Complaint type: access

#### Complaint:

An individual complained that they did not receive every record related to their access to information request from the public body. The complainant had personal knowledge of correspondence between two employees that they felt should have been included in the responsive records, but it was not.

#### Investigation:

Public bodies have a duty under the ATIPPA to respond to each applicant in an "open, accurate and complete manner." This means conducting a reasonable search for responsive records, which is the effort expected of any fair and sensible person searching where records are likely to be stored.

Our investigators determine whether a search is adequate by reviewing the steps the public body took when searching for responsive records, including which program areas hold the requested information, which individuals were contacted to search for potentially responsive information, and which electronic databases were searched.

#### **Decision: compliant**

The public body confirmed the missing records were deleted because they were transitory.

Public bodies are not obliged to keep transitory records that have no business value, such as draft documents, duplicates, or emails. They are also not expected to keep every record in perpetuity. It may happen that one party keeps a copy of a correspondence while the other party does not. This does not mean that they are non-compliant with the ATIPPA.

In this case, we found that the public body's search for records adequately met its obligations under the Act, and they had responded to the complainant openly, accurately, and completely.

#### **Recommendations: not applicable**

## Your stories

## Your personal information has been served to someone else

Public body: Department of Justice Complaint type: privacy

#### **Complaint:**

The Sheriff's Office served a confidential document containing the complainant's personal information to a relative's house when they were not there. The document was not in an envelope and was left in plain view in a common area of the house where guests were present.

#### Investigation:

It was not immediately clear whether the Sherriff's Office is captured under the ATIPPA because the Court operates independently of government. The parties agreed to resolve the matter without determining jurisdiction and with the facts set out in the complaint.

#### **Decision: non-compliant**

Justice agreed that leaving the confidential documents with someone other than the intended recipient did not align with the ATIPPA or with privacy best practices.

#### **Recommendations: accepted**

The public body accepted our recommendation to place confidential personal information into an envelope when serving documents to a person other than the intended recipient.

## **ATIPPA Formal Investigation reports**

The Information and Privacy Commissioner issued one Formal Investigation report which was a privacy compliance audit.

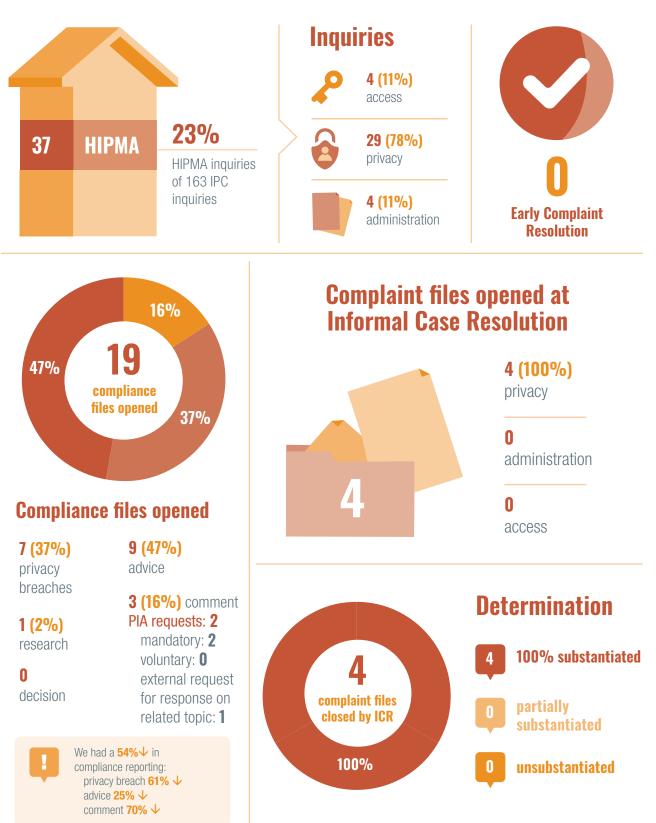
### **Physical records destruction process**

Public body: Department of Highways and Public Works The IPC made six recommendations that were accepted by the Public Body.

## Stats at a glance 2024 *Health Information Privacy and Management Act* (HIPMA)

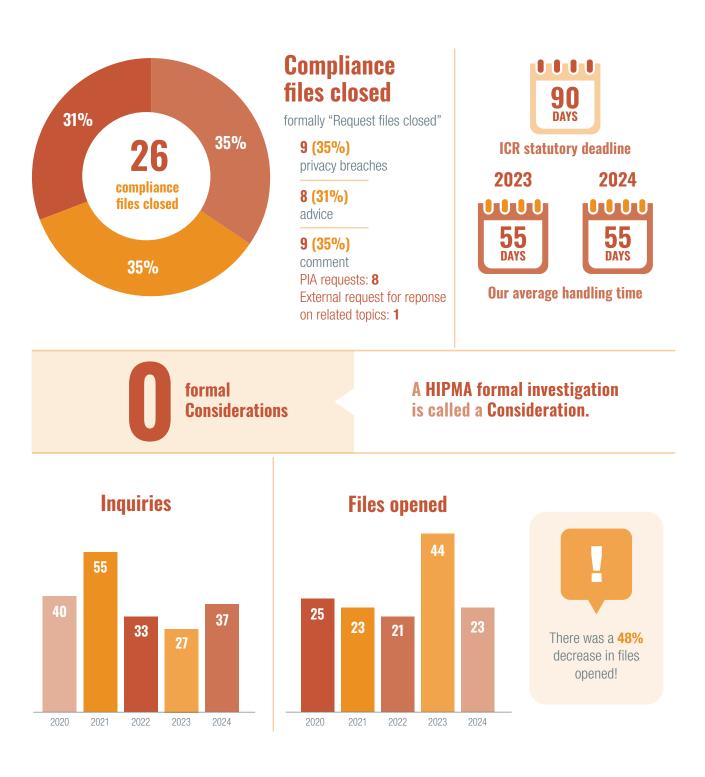
More HIPMA statistics can be found at the end of the IPC section of this report.

#### Information and Privacy Commissioner



## **Stats at a glance 2024** *Health Information Privacy and Management Act* (HIPMA)

Information and Privacy Commissioner



## Your HIPMA stories Informal Case Resolution



## Parents are not entitled to their adult child's health information

Custodian: Yukon Hospital Corporation Complaint type: privacy

#### Complaint:

The custodian shared the complainant's highly sensitive personal health information (PHI) with their parents who were not listed as their emergency contacts.

The complainant pointed out that, unless there is consent, under section 59 of HIPMA a release of PHI to an immediate family member is limited to their name, general health condition and location. The complainant alleged that the PHI disclosed by the custodian far exceeded this information.

#### Investigation:

We substantiated the privacy breach as the custodian had disclosed the complainant's PHI without authority under HIPMA.

#### **Decision: non-compliant**

This privacy breach resulted from a lack of staff training about their obligations under HIPMA and consent requirements. This finding is common with privacy breaches.

#### **Recommendations: accepted**

The custodian accepted our recommendation to implement staff training on HIPMA consent provisions.

## Your stories



# Doing the right thing with a privacy breach

Custodian: Department of Health and Social Services Complaint type: privacy

#### **Complaint:**

The custodian allegedly disclosed the complainant's personal health information (PHI) to their emergency contact.

The custodian had investigated the complainant (the parent) due to a reported child protection concern that was quickly determined to be unfounded. They intended to phone the parent to report that the file was now closed but accidentally phoned the parent's emergency contact who has the same name. When they identified that they were calling from Family and Children's Services about their child, the emergency contact stated that they did not have a child.

#### Investigation:

The employee recognized that there had been a privacy breach and reported the matter to their designated privacy officer, as required by HIPMA. We also found that the custodian conducted a breach analysis and notified the complainant as required where there is a risk of significant harm to an affected person. Finally, we found that the erroneous contact information had been provided to the custodian by a third party and could not be validated in advance. Though minimal personal information was disclosed to the emergency contact, simply knowing that the complainant was receiving a call from Family and Children's Services about their child is sensitive personal information.

#### **Decision: non-compliant**

The disclosure of PHI to the emergency contact was not authorized, but the custodian complied with its obligations under the HIPMA: reporting the breach to the designated privacy officer, assessing if there was risk of significant harm, notifying the affected person and providing our office with a copy of the breach report.

Privacy breaches will occur from time to time. Our role is to ensure that custodians have reasonable safeguards in place to prevent them in the future and, if they do occur, that they have appropriate policies and procedures to manage them.

#### **Recommendations: accepted**

As the custodian complied with its obligation, our office closed the complaint file without making any recommendations. However, we will evaluate the custodian's breach report to assess their mitigations and we may provide recommendations.

#### **HIPMA formal Considerations**

There were no formal Considerations opened in 2024 because 100% of our complaint files were resolved by our Informal Case Resolution team.

## **2024** Statistics *Access to Information and Protection of Privacy Act* (ATIPPA)

Information and Privacy Commissioner

126	
Inquiries	

15	Comments from public	4	Information about office	17	Pending complaint
25	General process questions	16	No jurisdiction/wrong office/incorrect referral	3	Other
45	Information about mandate	1	Office complaint		

Early Complaint Resolution	
Files closed	0
Compliance	
Files opened	36
deemed refusal	13
privacy breaches	5
compliance audit	0
notices received	2
advice	2
comment	2
Implications for proposed policy, program or activity, specialized service or data-linking activity	1
Security threat risk assessment- STRA [regs s.9(s)]	1
decision	12
access time extension	12
Files closed (includes files from previous years)	44

Informal Case Resolution	Formal Investigation
93	5
68	4
25	1
90	2
	Resolution 93 68 25

Total (complaint/compliance)	
Files opened	134
Files closed (includes files from previous years)	136
Files to be carried forward	12

Recommendations (Formal Investigations/Compliance Audits)						
	Public body					
Public body	Accepted	Partially accepted	Rejected			
Highways and Public Works	6	0	0			
Total	6	0	0			

### Access to Information and Protection of Privacy Act (ATIPPA)

## **Privacy Impact Assessment review activities**

Public body	PIA submissions	Voluntary	Mandatory	Status
Education	Policy regarding reporting child safety concerns (2022)	Х		review complete
Environment	POSSE e-licensing system (2023)		Х	review complete
Executive Council Office	Yukon Water Board - website update (2023)	n/a	n/a	no jurisdiction
Highways and Public Works	Microsoft 365 Cloud Services (2021)	Х		review complete
Public Service Commission	Apprendo Learning Management System (2022)	Х		decision not to continue
Yukon Energy Corporation	Customer billing system (2023)	Х		review complete

### Total files opened

Iotal mes obenen				N	umber of file	S				
	Con	ıplaints			Co	mpliance	_			
Public body	Informal Case Resolution	Formal Investigation	Deemed refusal notices	Public notice of privacy breach	Notice to not reveal existence of record	Privacy breaches	Audit	Decision	Comment/ advice	Total
Community Services	4									4
Economic Development	1	1								2
Education	16	1				3				20
Educational Appeal Tribunal	1									1
Energy, Mines and Resources	13		7					11		31
Executive Council Office	1		1							2
Health and Social Services	9		3					1		13
Highways and Public Works	6								1	7
Justice	11	2	1	1	1	1				17
Public Service Commission	20					1			1	22
Tourism and Culture	2									2
Workers' Safety and Compensation Board Yukon	4	1	1						1	7
Worker's Compensation Appeal Tribunal									1	1
Yukon Hospital Corporation	2									2
Yukon Liquor Corporation	1									1
Yukon University	1									1
No Jurisdiction	1									1
	93	5	13				0	12		134

## **2024 Statistics Health Information Privacy** and Management Act (HIPMA)

1

Information and Privacy Commissioner



13	General process questions
10	Information about

Information about office

Pending complaint

Δ

16 Information about mandate

**3** Comments from public

### Inquiries

Early Complaint Resolut	ion	
Files closed		0
Complaints	Informal Case Resolution	Formal Investigation
Files opened	4	0
Privacy	4	0
Files closed (includes files from previous years)	4	0

Compliance		
Files opened (total)		19
Privacy breaches		7
Research		0
Requests		12
Advice	9	
Comment	3	
Privacy Impact Assessments	2	
New Operation of an Information System Intended to Process Personal Health Information	6	
Significant Change to Existing Information System	4	
External request for response on related topics	1	
Files closed (includes files from previous years)		26

Total (complaint/compliance)	
Files opened	23
Files closed (includes files from previous years)	30
Files to be carried forward	7

Custodian	PIA submissions	Voluntary	Mandatory	Status
Health and Social Services	Sexualized Assault Response Team (2022)		yes	review complete
Health and Social Services	customized back end system - online portal (2023)		yes	review complete
Health and Social Services	iMazing - text transfer from phone to computer (2023)		yes	review complete
Health and Social Services	Vitalware (2023)		yes	review complete
Health and Social Services	LanguageLine (2023)		yes	review complete
Health and Social Services	Cambian Online Scheduler (2023)		yes	review complete
Health and Social Services	ColonCheck program (2023)		yes	review complete
Health and Social Services	Panorama Addendum - PHIX (2023)		yes	review complete
Health and Social Services	ColonCheck program (2023)		yes	review complete
Yukon Hospital Corporation	QIRM client feedback forms (2024)	yes		review not yet complete

### Privacy Impact Assessment review activities

Total files opened				Nun	nber of files	S	
	Con	nplaint	Compliance				
Custodian	Informal Case Resolution	Formal Considerations	Comments	Advice	Research	Privacy	Total
Child Development Centre (prescribed custodian)				1			1
Health and Social Services	1		2	1		5	9
Information Manager of a custodian				1			1
Medical clinics	2			3		2	7
Private Medical Practitioners				2			2
Yukon Hospital Corporation	1		1	1			3
Yukon Registered Nurses Association							
Totals	4		3	9		7	23



Yukon Public Interest Disclosure Commissioner

## 2024 Annual Report of the Yukon Public Interest Disclosure Commissioner

The Honourable Jeremy Harper Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:

As required by section 43 of the *Public Interest Disclosure of Wrongdoing Act*, I am pleased to submit the 2024 Annual Report of the Yukon Public Interest Disclosure Commissioner. I am also happy to share this with the Yukon public.

Kind regards,

Jason Pedlar, Yukon Ombudsman

Working to protect public interest when whistleblowers report wrongdoing

The <u>Public Interest Disclosure of Wrongdoing Act (PIDWA)</u> went into effect in 2015 and established the office of the Public Interest Disclosure Commissioner (PIDC). The purpose of the Act is to promote public confidence by enabling employees of public entities to disclose wrongdoings that occur in their workplace and protect them from reprisal. These employees can disclose to a supervisor, a designated officer in their public entity, or the PIDC. Along with the Commissioner's authority to investigate wrongdoing disclosures and reprisals, they can provide confidential advice to employees who are considering making a wrongdoing disclosure.

Message from Public Interest Disclosure Commissioner Jason Pedlar A disclosure of wrongdoing or an allegation of reprisal for making a disclosure is a serious matter. As a first step we meet with the individual to better understand the concern. We provide advice on whether the matter is captured under the Act and whether we have jurisdiction to investigate the matter, and to clarify the process.

In 2024, we received three requests for advice from employees who were considering whether to make a disclosure to our office. None of these requests for advice resulted in a disclosure of wrongdoing to our office.

In 2023, I reported that the number of disclosures we receive, and the number of disclosures reported to us by public entities is lower than I would expect. This trend continued in 2024. It may be related to the lack of disclosure procedures within public entities and limited staff awareness about the Act and their obligations to report wrongdoings. I hope these *shortcomings of the Act* will be corrected as part of the Public Service Commission's statutory review that is underway.

Led by the Public Service Commissioner, the statutory review began in 2020 and consultation continued in 2023. I have not received updates on any anticipated changes to PIDWA.

Investigations

Last year, we opened one Formal Investigation and we handled one investigation as part of our ICR process. We have made very little progress with the formal investigation for reasons discussed below; however, we did complete our ICR investigation under PIDWA involving the Department of Health and Social Services.

Although we concluded that a wrongdoing had not occurred, we provided recommendations for improving accountability and transparency. We also reinforced the need for staff training on PIDWA.

I thank the Department for their cooperation and their full acceptance and implementation of our recommendations.

### Formal Investigation roadblocks – a failure to provide records

In November 2023, we received a disclosure involving the Department of Environment. In December we compelled records which included text messages from mobile phones issued by the Department.

The messages in question were sent and received over a three-month period and were directly related to the disclosure we were investigating. In February 2024, the Department of Justice – acting on behalf of the Department of Environment – notified us that they had located the records but deemed only one record (text message) relevant to our investigation.

I met with the Deputy Minister of the Department of Justice in April, but I was unable to negotiate the release of the records. This situation is problematic.

The independence of our investigation depends on our ability to determine what records may or may not be relevant. We compromise the integrity of our investigation if this decision is left to the department we are investigating or their legal representatives. We cannot conclusively opine whether a wrongdoing has or has not occurred if we cannot review all the records that may shed light on the matter.

Our authority to compel records is broad. Section 46(1)(c) grants the Public Interest Disclosure Commissioner the same power as a board of inquiry under the *Public Inquiries Act*. Section 5(c) of the *Public Inquiries Act* provides a board of inquiry with the power of a court. By failing to provide all the records responsive to my order to produce, the Department is compromising the ability of my office to effectively investigate disclosures.

We launched a court action to compel the department to provide all responsive records, and we also sought a court declaration that determining what records are relevant to an investigation must remain at the discretion of the PIDC.

In December 2024, the Department revised their response and provided the records. In their letter they explained that "[i]n the interests of avoiding the unnecessary use of judicial resources, Yukon encloses a revised response."

Relevancy has been raised before under our PIDWA and Ombudsman mandates, and I intend to continue with our court action to clarify the matter.

### Public entities must report all disclosures annually

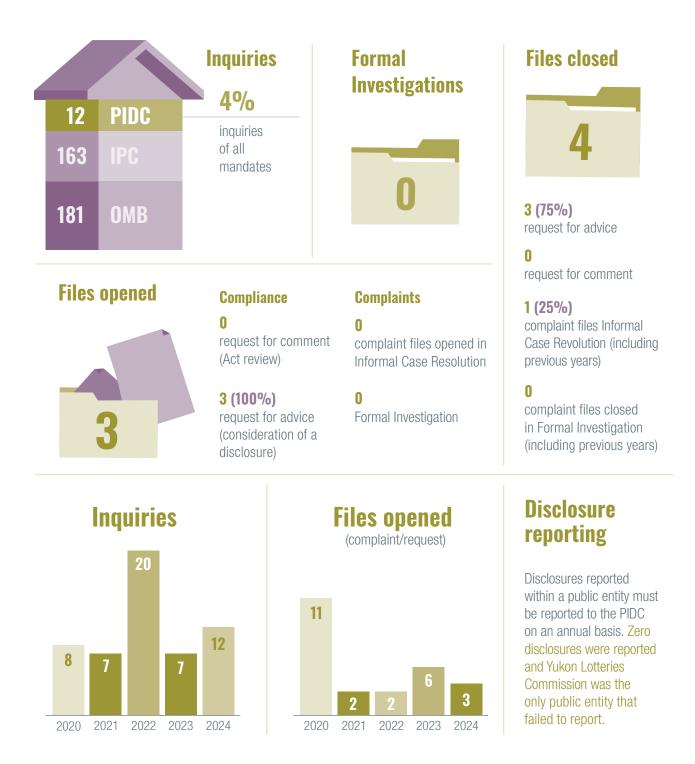
Each year, public entities are required to report the number of disclosures of wrongdoing they received, the number of investigations conducted, and details about their response to any disclosure found to be substantiated, even if none were received. PIDWA requires the chief executive of a public entity to report this information to the Minister responsible. In the case of a corporation, the chief executive reports it to the chair of the governing board (section 42).

In 2023, a number of public entities failed to provide disclosures to our office – on time or at all – as required by the Act. This year, we sent a reminder to all public entities in December 2024, and a follow-up email in January 2025, reminding them of their obligations to provide a disclosure report to our office for inclusion in this annual report.

Yukon Lotteries Commission did not provide their disclosures to our office by January 31, 2025, as required under PIDWA.

In the following pages you can find statistics and more information about the type of complaints we handled this year.

## Stats at a glance 2024 Public Interest Disclosure Commissioner (PIDC)



## **2024 Statistics Public Interest Disclosure Commissioner (PIDC)**

_		
	12	

9	Information about mandate	1	Information about office
1	General process questions	1	Other

## Inquiries

Complaints	Informal Case Resolution	Formal Investigation
Files opened		
Reprisal complaint		
acted upon		
not acted upon		
Disclosures		
acted upon		
not acted upon		
Files closed (includes files from previous years)		
Files to be carried forward (includes files from previous years)		1

Compliance	
Files opened	
Comment - review of act	
Advice - consideration of disclosure	3
Decision	
Files closed (includes files from previous years)	
Files to be carried forward	

Total (complaint/compliance)			
Files opened	3		
Files closed (includes files from previous years)			
Files to be carried forward	2		

## **Total files opened**

	Complaints		Requests		Total
Public entity	Disclosures	Reprisal	Comments	Advice	
Energy, Mines and Resources				1	1
Community Services				2	2
Total					3

## YukonAccountability.ca

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- f @YukonIPC
- X @YukonOmbIPCPIDC
- in @YukonOmbIPCPIDC