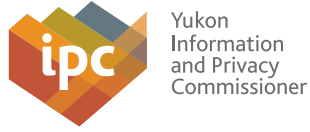




Yukon
Ombudsman



Yukon
Information
and Privacy
Commissioner



Yukon
Public Interest
Disclosure
Commissioner

2023 ANNUAL REPORT



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

We welcome your feedback on our annual report.

All photos are by Tyler Symonds, unless otherwise indicated.



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

I am pleased to provide my 2023 Annual Report for all three of our mandates.

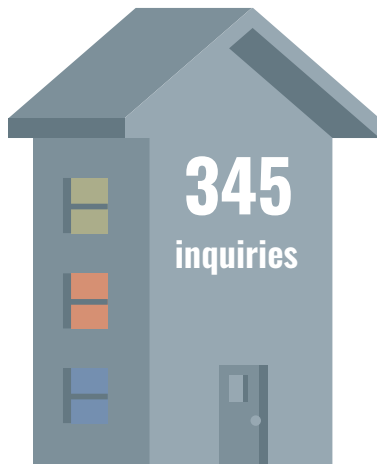
It continues to be important for me to showcase the work that we do through infographics. “Stats at a glance” was a section that was added to my first report, the 2022 Annual Report, and can be found throughout this one.

One image that I especially like is the building with three separate floors differentiated by colour. This reflects the three distinct mandates of our office (Ombudsman, Information and Privacy Commissioner, Public Interest Disclosure Commissioner), each operating independently but realizing efficiencies by sharing resources, like staff, office space, and infrastructure.

The Yukon Ombudsman promotes and protects fairness in the delivery of public services provided by Government of Yukon and other public authorities, as identified in the *Ombudsman Act*.

The Information and Privacy Commissioner (IPC) is responsible for ensuring that citizens have access to information held by public bodies, or their personal or health information 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 *Access to Information and Protection of Privacy Act* and the *Health Information Privacy and Management Act*. See Compliance in the IPC section of this report.

The Public Interest Disclosure Commissioner (PIDC) investigates disclosures of wrongdoing, commonly referred to as “whistleblowing,” and complaints about reprisal under the *Public Interest Disclosure and Wrongdoing Act*. Employees of public entities can make disclosures of wrongdoing that are in the public interest without fear of reprisal.



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

During this stage, our Informal Case Resolution (ICR) team identifies whether the complaint is within our jurisdiction and offers referrals if it isn't. Depending on the details of the complaint, we may be able to help resolve the matter with minimal involvement, commonly by finding out if there is an escalation or appeal process within the authority or for matters regarding delays or a lack of response, we may pick up the phone and ask the authority to follow up with the complainant directly. 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, interviewing witnesses, and typically result in a public report being issued.

Compliance

We are also responsible for ensuring compliance with the *Access to Information and Protection of Privacy Act* and *Health Information Privacy and Management Act*. See Compliance in the IPC section of this report.



Operations for 2023

The work under our three mandates is broad and complex and requires our investigators to be subject matter experts in four separate acts with a broad set of skills and experience in conducting both formal and informal investigations, dispute resolution, legal interpretation and analysis, and report writing, just to name a few. Recruiting and onboarding staff can take significant time and resources because of the unique and specialized nature of our work.

Fully staffed, our office has five investigators who work both on the formal and informal teams. The Director of Intake and Informal Case Resolution (ICR) oversees the ICR process while I oversee the Formal Investigation (FI) team and our office operations. In late 2023 we had one investigator vacancy on each team and began to recruit for each. We also filled an office administrator vacancy.

We created a Communications and Outreach Analyst position to build and implement our outreach strategy, lead the development of resource materials including the redevelopment of our website, and to share the work that we do with our stakeholders, as part of our budgeting process for 2024/25. We were fortunate enough to find someone in late 2023 and start her employment prior to April 1st using existing budget dollars for 2023/24.

I wish to acknowledge each one of my employees for their hard work and dedication. As well, I want to commend the ICR Director, Tara Martin, for her efforts in managing an increased file load while navigating staffing shortages.

I would also like to recognize the hard work performed by the investigators on the FI team. The work under all our mandates involves conducting comprehensive investigations and issuing formal adjudication reports or drafting investigation reports. In 2023, we issued two Ombudsman reports and received two complaints related to the same authority, that were escalated from ICR. A third complaint was later added to this formal investigation. Under the IPC mandate we issued one adjudicative report, five inquiry reports (old ATIPP Act) and one privacy compliance audit. We were also actively involved in researching and drafting a report on our proposed amendments to the *Public Interest Disclosure of Wrongdoing Act*.

Increasing case load

In 2023, our case load increased 34% from the previous year. The most significant drivers of this increase were a 50% increase in Ombudsman complaints files and a 110% increase in HIPMA files driven by reported privacy breaches, privacy impact assessments and requests for advice. We also issued 75% more formal reports, and our compliance work went up 64%.

We continue to meet our statutory timelines under ATIPPA and HIPMA, however, to meet these legislated obligations may sometimes mean that we have to deprioritize ombudsman or public interest disclosure complaints that don't have legislative timelines. When the new ATIPPA was brought into force in 2021, it shortened the time we had to resolve complaints under our ICR process. We are incredibly successful at resolving complaints informally, but reducing the time to do so added additional pressures and negatively impacted our other mandates.

Each of our mandates are equally important and should be handled in the order they are received and prioritized as such. I therefore ask that law makers consider increasing the "consultation" period under ATIPPA from 60 to 90 days, consistent with the former ATIPP Act and the current HIPMA. Additional staffing resources may be required to meet our growing case volume and ensure that we manage these files in an equitable way. I discuss this impact on ombudsman complaints in the Ombudsman section of this report.

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.



Website Update

We have begun planning a website redevelopment to make our site more user friendly and to ensure that our content remains a valuable resource to both the public and the stakeholders we oversee. Stay tuned for an updated website in late 2024!

Training and conferences

We regularly attend online and in-person training to ensure we remain up to date on the latest industry best practices and trends from across the country. In 2023, staff participated in:

- Canadian Council of Parliamentary Ombudsman monthly lunch and learns
- Federal, Provincial and Territorial IPCs Annual Investigator Conference
- International Association of Privacy Professionals certification programs

In addition, I attended annual meetings for each mandate. This year the Ombudsman meeting was hosted by the Ontario Ombudsman, the Information and Privacy Commissioners meeting by Commission d'accès à l'information du Québec, and the Public Interest Disclosure Commissioners by OmbudsPEI.

Sincerely,

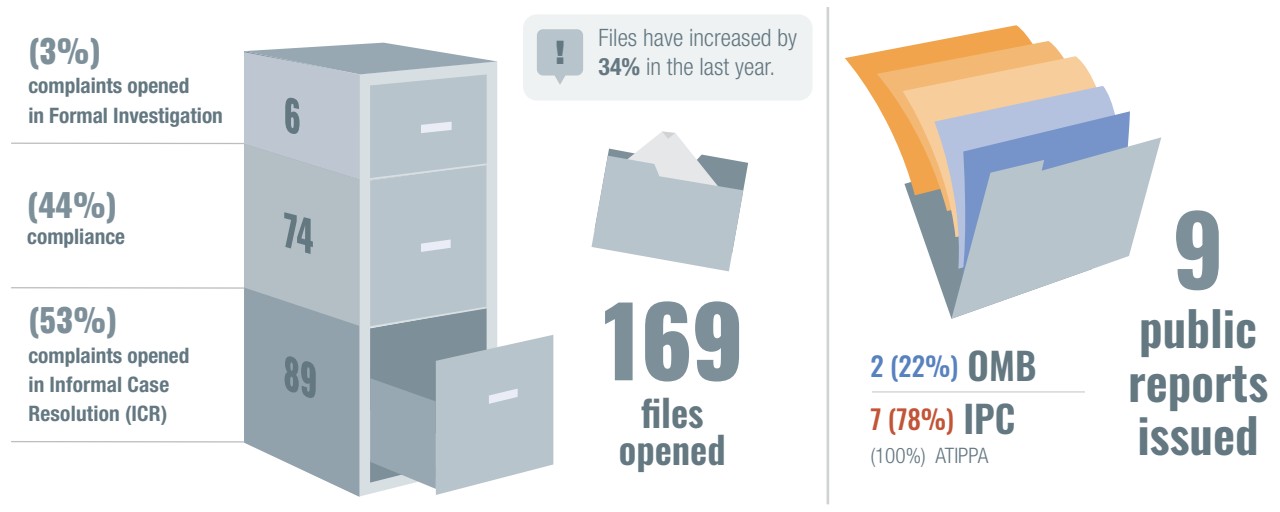
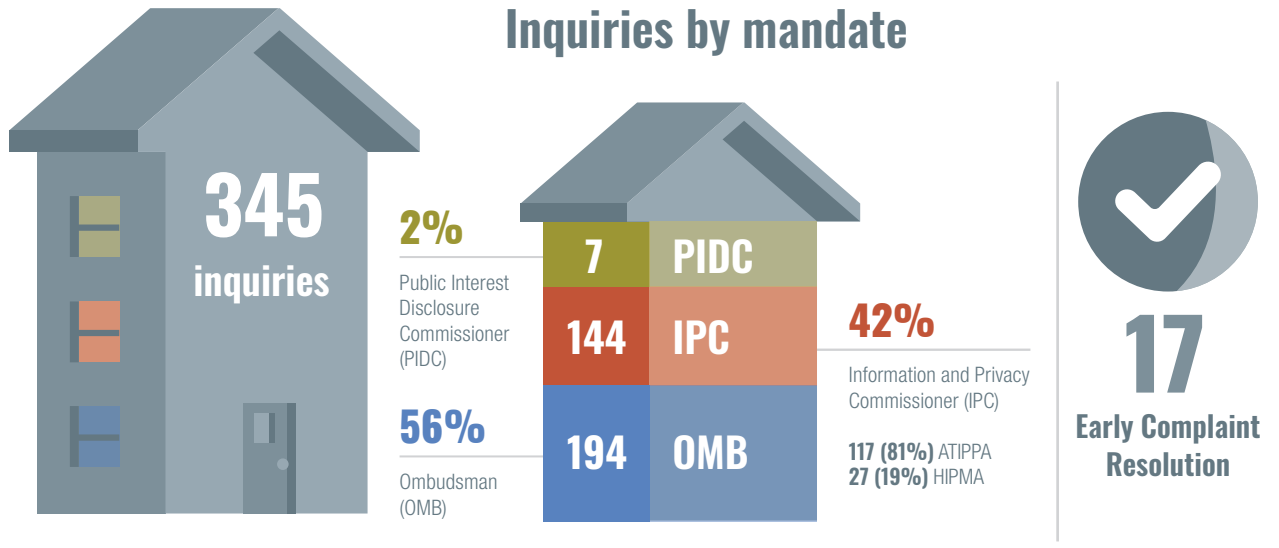


Jason Pedlar

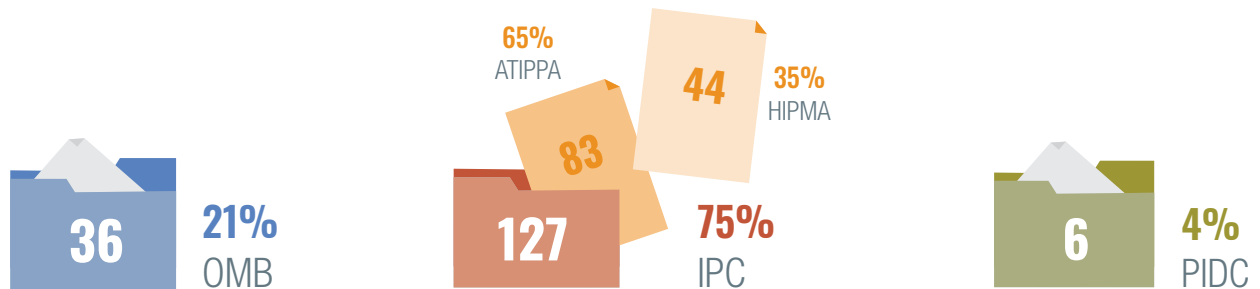
Yukon Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner

Stats at a glance 2023

All three mandates



Files opened by mandate





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

The Informal Case Resolution (ICR) team consists of two investigators and me, along with support from our office administrator. We work collaboratively with Government of Yukon and the other public organizations we oversee in each of our mandates to resolve complaints as quickly and efficiently as possible. This year, 97% of our complaints were either resolved at ICR or are still being worked on by the ICR team. This is a remarkable achievement, especially considering that we saw an increase in complaints coupled with staffing shortages.

Last year, I outlined that ICRs success is partially based on fostering productive working relationships with the stakeholders under each of our mandates. This year, I'd like to elaborate on this by highlighting those we oversee who consistently and meaningfully collaborate with the ICR team, day in and day out. This is particularly true under the ATIPPA and HIPMA mandates where the tight statutory timelines require public bodies (ATIPPA) and custodians (HIPMA) to work with us, very often under pressure, to resolve files. Our deadlines effectively become their deadlines!

The effort required by public bodies and custodians to resolve files at ICR takes many forms. This includes quick turnaround times to review and respond to our recommendations and organizing meetings with high-level government officials to discuss our analysis and conclusions. This is in addition to managing their own heavy workloads. It also requires public bodies and custodians to be available on short notice, and to foster honest and transparent communication with the ICR team.

Without the dedicated access and privacy officers across government who regularly work with our team, the ICR process would not be as successful as it is. To the dedicated officers and analysts who work hard and go above and beyond to support access to information and protection of privacy for Yukoners, thank you!

Sincerely,

A handwritten signature in black ink that reads "Tara Martin". The signature is fluid and cursive.

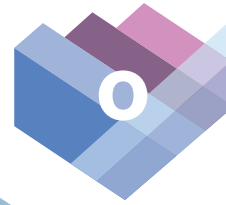
Tara Martin

Director of Intake and
Informal Case Resolution



Financial Report

	2023-24	2022-23	2021-22
Personnel (all mandates)	\$1,243,900	\$1,204,000	\$1,135,800
Capital (all mandates)	\$3,000	\$3,000	\$5,000
Operating expenses for Ombudsman	\$148,000	\$148,000	\$145,400
Operating expenses for Information and Privacy Commissioner	\$161,500	\$161,000	\$156,400
Operating expenses for Public Interest Disclosure Commissioner	\$52,600	\$53,000	\$98,400
Total	\$1,609,000	\$1,569,000	\$1,541,000



Yukon
Ombudsman



2023 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 2023 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 impartially investigates complaints of unfairness in programs or services associated with Government of Yukon or other public authorities with the goal of promoting fairness, openness, and accountability in public administration. The Ombudsman is an Officer of the Legislative Assembly and is independent of government and political parties. The Ombudsman is neither an advocate for a complainant nor a defender of government actions.

The 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

Complaint trends and increasing the visibility of our work

We saw a 50% increase in complaint files from the previous year and an 89% increase over the last two years.

We also began publishing our Formal Investigation reports to provide additional transparency and accountability on the issues we investigate. If, in my opinion, it is in the public interest, I can issue a Special Report to the Legislative Assembly or comment publicly on a particular case we have investigated. In 2023, I released two public reports, one of which was also tabled with the Legislative Assembly.

Increasing complaints and its impact on the Ombudsman mandate

Ombudsman complaint investigations typically take longer to complete than those under the other mandates. Our investigators often prioritize files under the IPC mandate to ensure they can be resolved within the statutory deadlines, as neither the *Ombudsman Act* nor the *Public Interest Disclosure and Wrongdoing Act* have statutory deadlines. Resources must then be triaged to ensure we meet the deadlines under ATIPPA and HIPMA which is ultimately impacted by our resources (the number of investigators) and our case volume at any point in time.

To ensure that we meet our timelines, either prescribed in legislation or our internal service standards, I will be monitoring and reporting on our average time for the handling of ICR complaints under all three mandates, and the success rate of resolving a matter within our timelines.

Updating the *Ombudsman Act*

In celebration of International Ombuds Day, I spoke of the need to update the Act in a podcast organized by the Canadian Council of Parliamentary Ombudsman.

The *Ombudsman Act* hasn't undergone any substantive changes since it was passed 27 years ago. One area of significance is the need for expanded authority: the ability to conduct investigations without a formal complaint (own motion) and expand my jurisdiction to include municipalities. These changes align with international standards and are in the best interest of Yukoners.

My team of subject matter experts has begun preparing recommendations on how to modernize the Act that will be tabled in the Legislative Assembly in 2024. I look forward to sharing it with you.

IOI membership



The Yukon Ombudsman's office became a member of the International Ombudsman Institute (IOI) in June. This global organization was established in 1978 and has the membership of more than 200 independent Ombudsman institutions in more than 100 countries worldwide. The IOI supports members with training, research, and in providing regional subsidies for projects.

To share or not to share - conflicting requirements for confidentiality

The Ombudsman has broad powers to compel an authority to produce records for an investigation. Despite this, some authorities have confidentiality provisions in their own statutes. What happens when these two collide? Such a situation occurred in 2020 during an investigation of the Family and Child Services branch of the Department of Health and Social Services. Unable to resolve the matter through negotiations, we petitioned the Yukon Supreme Court seeking clarity on the law in the form of three declarations: the right to communicate and question the authority directly without legal counsel; the right to request and receive unredacted documents, and a declaration that sections 178 and 179 of the *Child and Family Services Act* did not prevent the director from disclosing records requested as part of our investigation.

In May of 2023, we received a decision from the court, resulting in mixed success. Justice E.M. Campbell granted the declaration clarifying that the director was not prevented from providing the records sought by our office. While the court offered valuable guidance regarding the other two declarations, they were ultimately determined to be too broad.

The Authority provided the records we had originally sought and we continued our investigation under our ICR process. We found no unfairness had occurred.

Certification Report

The *Ombudsman Act* gives the Ombudsman broad powers to access evidence from authorities to independently investigate matters of administrative unfairness under section 16. However, an authority can exclude—'certify'—certain types of information under section 18 of the Act. This is believed to be the first instance that the certification provision has been used in the 28-year history of the Act.

As part of our formal investigation of the Human Rights Commission (HRC), we sought records from the Department of Justice who funds the HRC through its budgeting process. In response, the Department provided some records but certified others.

18 If the Minister of Justice certifies that the entry on premises, the giving of information, the answering of a question, or the production of a document or thing might

*(a) interfere with or impede the investigation or detection of an offence;
(b) result in or involve the disclosure of deliberations of the Executive Council; or*

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest, the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in the Ombudsman's next annual report.

As required, I have submitted my Certification Report to the Legislative Assembly.

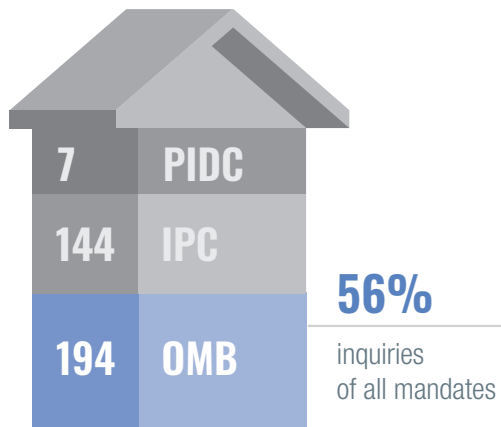
Concluding remarks

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

Jason Pedlar,
Ombudsman

Stats at a glance 2023 Ombudsman

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



Inquiries

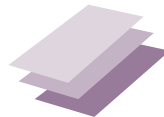


46%
about this mandate



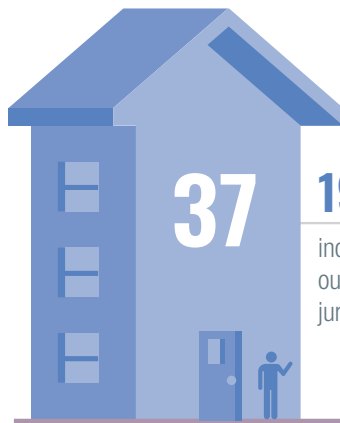
14

Early Complaint Resolution

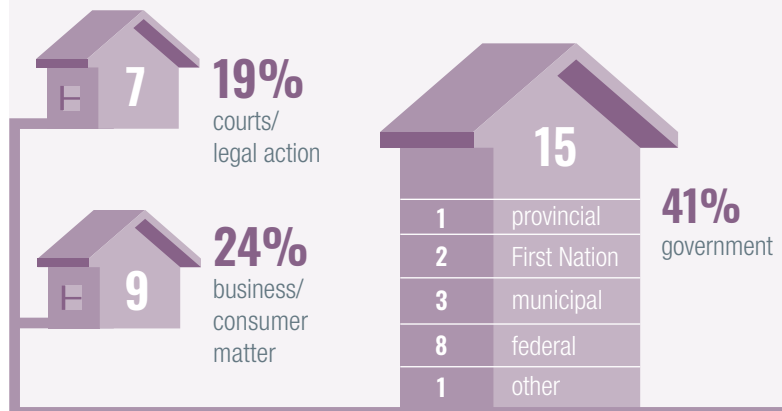


~16%
complaint investigations

Referrals

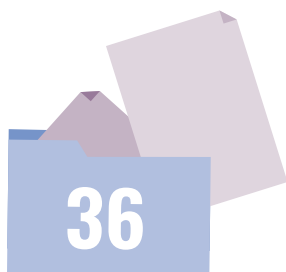


Top 3 referrals



! We referred **84%** of our non-jurisdictional files to one of these 3 categories.

Complaint files opened



32 (89%)
Informal Case Resolution

4 (11%)
Formal Investigation

! File numbers increased by **50%** in the last year.

Complaint files closed

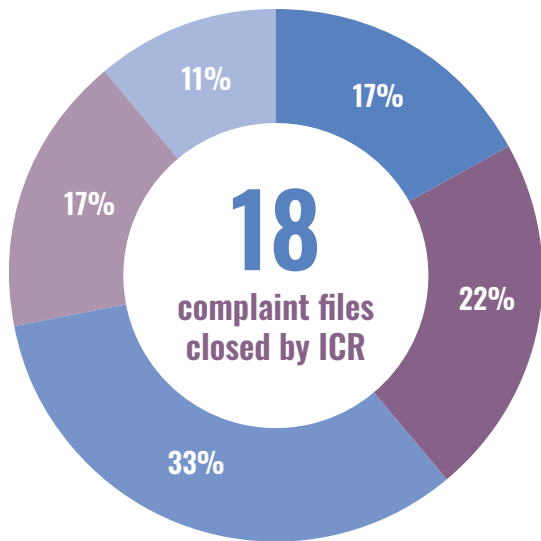


18 (95%)
Informal Case Resolution

1 (5%)
Formal Investigation

! 17 ICR complaint files have been carried over into 2024 due to longer investigations and staffing shortages.

Stats at a glance 2023 Ombudsman



Determination

- 3 (17%) substantiated**
We agreed with the complainant that there was unfairness or non-compliance that needed to be addressed.
 - 4 (22%) partially substantiated**
We agreed with the complainant on some matters, but not everything.
 - 6 (33%) unsubstantiated**
We did not find evidence of unfairness or non-compliance.
 - 3 (17%) 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.
 - 2 (11%) refusal to investigate**
- !** 39% of complaints were substantiated or partially substantiated.



our service standard

2022

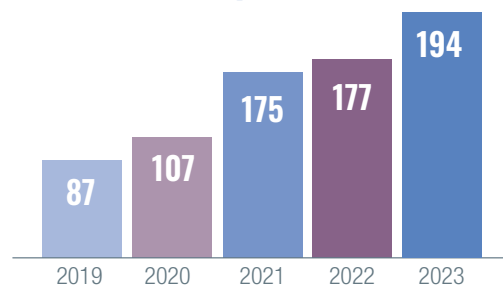


2023

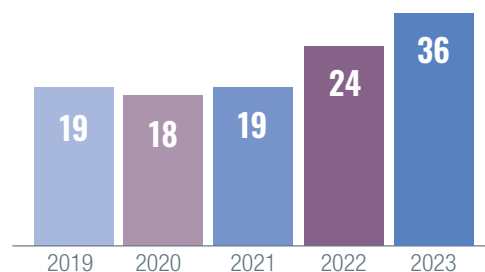


ICR average handle time

Inquiries



Complaint files opened



Your stories - Informal Case Resolution



Fairly serving social housing applicants

Authority: Yukon Housing Corporation
Fairness complaint type: process

Complaint:

An individual who was accepted into the Authority's social housing program filed a complaint with us because they felt that the program eligibility requirements were poorly communicated to them, which may have affected their status on the waitlist.

Investigation:

In discussion with the Authority, we found that information was provided inconsistently – some applicants received information and others, only upon request. The Authority did not have a process to support the standardized delivery of program information, including how decisions are made. This ultimately affected the complainant, who had been surprised by a decision the Authority made about their eligibility.

Decision: unfairness substantiated

The Authority's process for communicating program information was inconsistent and therefore administratively unfair. Program applicants must be given information to help them understand the decision-making process that affects them - like decisions about eligibility or placement into a social housing unit. Ensuring transparent and consistent service is a key component of fairness.

Recommendations: accepted

The Authority accepted our recommendations to develop a process for consistently sharing social housing program information to all program applicants and potential applicants. They also agreed to provide training to staff on this process, to ensure accuracy and consistency in the delivery of program information.



Depositphotos

Mitigating a potential conflict of interest

Authority: Department of Energy, Mines and Resources
Fairness complaint type: process

Complaint:

An individual filed a complaint with our office alleging that the Authority had not taken appropriate steps to mitigate an employee's potential conflict of interest. The complainant was concerned that this employee would be responsible for making decisions about a matter the employee was personally involved in - that the employee may have access to information that was not available to the public, and that they may influence their co-workers in the decision-making process.

Investigation:

During our investigation, we considered what steps the Authority had taken or would take with respect to the potential conflict.

The Government of Yukon has a conflict of interest policy but does not provide specifics on how to address a conflict. Therefore, it is the responsibility of the department or program area to determine what is appropriate in the circumstances, on a case-by-case basis.

In assessing whether the potential conflict had been effectively mitigated, we considered whether access to non-public information was restricted, and what steps were taken to ensure that the matter was not discussed between the employee and their colleagues. We also considered who would be making the final decision on the matter, and whether the Authority had delegated the decision-making to someone impartial.

Decision: unsubstantiated

Our investigation found that the Authority had given appropriate consideration on how to best manage the conflict and acted accordingly.

Recommendations: not applicable

Without revealing the employee's personal information, we conveyed to the complainant that we felt the Authority had taken reasonable steps to address the potential conflict. This resolved the matter.



Depositphotos

Unclear hiring process

Authority: Department of Community Services

Fairness complaint type: decision

Complaint:

An individual applied for a position as a wildland firefighter through a third party but was told that they weren't selected because the Authority's Wildland Fire Management branch rejected their registration as a firefighter. When the individual contacted the Authority to understand how they were involved in the hiring process, they received little information. They filed a complaint with our office alleging that the Authority was unfairly involved in the third party's hiring process.

Investigation:

The Authority has agreements in place with Yukon First Nations with respect to the hiring of wildland firefighters. While the Authority is not responsible for making these hiring decisions, they have a responsibility to ensure that prospective firefighters meet certain standards relevant to wildland firefighting. In keeping with that responsibility, the Authority can make a recommendation to the hiring body about an applicant (e.g. if the standards have not been met). In this case, we found that the Authority could not adequately demonstrate what, if any, recommendation they had made to the hiring body about the complainant.

Decision: unfairness substantiated

Although the Authority was not responsible for the hiring process, their recommendation still affected the complainant. Decisions that affect members of the public should be made in a manner that is administratively fair. This includes being able to demonstrate the basis upon which a decision is made and communicating this to the affected individual.

Recommendations: accepted

The Authority agreed to develop a written policy reflecting the standards they evaluate, and to ensure that any comments made to hiring bodies are documented with clear reference to the policy standards. The Authority also agreed to make this information available to the affected individuals.

Formal investigations

Human Rights Commission complaints (x3)

We received three separate complaints over a two-year period that had similar allegations of unfair delays, settlement bias, and an unfair process by the Human Rights Commission (HRC). The investigation began after the Yukon Supreme Court confirmed in 2022 that the HRC fell within our jurisdiction (as reported in our last annual report). After unsuccessfully resolving the matter informally, I escalated the complaints to a formal investigation that were managed as one.

It is anticipated that our report will be issued in 2024.

Reports issued

Lot enlargement policy

Authority: Department of Energy, Mines and Resources

Our investigation found that the lot enlargement process did not contain sufficient detail or mechanisms to ensure a fair, consistent, and transparent process. We made four recommendations that were accepted by the Authority.

Left in the Dark - A Special Report on the Hidden Valley Elementary School sexualized assault

Authority: Department of Education

The first of two investigative reports found unfairness in the Department's delay in communicating with parents of students at Hidden Valley Elementary School about allegations that a staff member sexually abused a student, depriving parents of the opportunity to take timely action to help their children.

The second investigation focused on evaluating the Department's Safer Schools Action Plan, developed in response to the communications failure. The Ombudsman issued his draft report to the Department in December 2023, and as required under the Act, gave them the opportunity to review and provide comment by January 31, 2024.

2023 Statistics Ombudsman

194
Inquiries

5 Comments from public	46 Information about Ombudsman office	31 Pending complaint
5 General process questions	15 No jurisdiction/wrong office/incorrect referral	2 Other
90 Information about mandate		

Early Complaint Resolution	
Files closed	14

Complaints	Informal Case Resolution	Formal Investigation
Files opened	32	4
Files closed (includes files from previous years)	18	1

Total complaints	
Files opened	36
Files closed (includes files from previous years)	19
Files to be carried forward	23

Authority	Number of complaints		
	Informal Case Resolution	Formal Investigation	Total
Community Services	2	0	2
Economic Development	1	0	1
Energy, Mines and Resources	4	0	4
Environment	1	1	2
Finance	1	0	1
Health and Social Services	6	0	6
Highways and Public Works	3	0	3
Housing Corporation	1	0	1
Justice	4	0	4
Public Service Commission	1	0	1
Yukon Workers' Safety and Compensation Board	5	0	5
Yukon Association of Education Professionals	1	0	1
Yukon Human Rights Commission	1	3	4
Yukon Medical Council	1	0	1
Total	32	4	36

Formal Investigations by recommendations			
Authority	Recommendations		
	Accepted	Partially accepted	Not accepted
Energy, Mines and Resources	4		



Yukon
Information
and Privacy
Commissioner

Jason Pedlar

2023 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 2023 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) are laws that provide access to information rights and protection of privacy rights to Yukoners. These laws establish rules that public bodies and health sector custodians must follow to collect, use, disclose, secure, and manage personal and health information. 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 non-compliance and to make recommendations on their findings, as well as other responsibilities, including to inform the public about these laws.

Message from the Information and Privacy Commissioner, Jason Pedlar

It was another busy year for the office of the Information and Privacy Commissioner with an increase in cases, complaint files, and substantiated complaints. Our case volume under ATIPPA was up 27% and increased 110% for HIPMA files, driven by privacy breach notices and requests for advice. We saw a 20% increase in the number of complaint files under ATIPPA and the complaints we investigated were substantiated or partially substantiated with the complainant 77% of the time. This means we felt more information should be released in response to an access request or agreed that the privacy protection requirements under ATIPPA were not complied with, most often relating to a privacy breach.

Compliance realignment of resources

We may be most recognized for our work in complaint resolution; however, a substantial part of our workload involves promoting and ensuring compliance with ATIPPA and HIPMA. Compliance files make up 44% of the work we do.

Compliance files include reviewing privacy impact assessments (PIAs) and security threat assessments (STRAs) and evaluating privacy breach reports submitted to us, as highlighted in our Annual Report. Depending on the situation, it is either mandatory or voluntary for public bodies or custodians to provide PIAs or STRAs for our review and comment. We welcome non-mandatory requests for advice and are pleased to be seen as a valuable resource for public bodies and custodians when they are implementing new systems or programs.

We are of greatest benefit to public bodies and custodians when we respond to their requests in a timely manner so they can incorporate our feedback in meaningful ways. I implemented several measures to address this.

- A contractor was hired on a short-term basis in late 2023 to help with a backlog of PIAs.
- Additional staffing resources were allocated to manage compliance files. These files are now distributed across all our Investigator and Compliance Review Officers, instead of just one or two dedicated investigators.
- We are improving the PIA and STRA evaluation process to minimize the back and forth that has occurred in the past.

Starting in early 2024, we will only accept PIAs and STRAs that are complete and include all required documentation. Once this process is in place, we will establish service standards for compliance work and commit to faster turnaround times.

Rejection of recommendations – recommendation-based approach no longer working under ATIPPA

One of my roles is to oversee compliance with ATIPPA and HIPMA and ensure that personal information is protected and accessed by those entitled to it. ATIPPA provides me “... with powers and duties that enable the commissioner to monitor public bodies’ compliance with this Act and that their administration is in accordance with the purposes of this Act.” My ability and effectiveness in meeting the stated purposes is dependent on the public body following our recommendations when they are noncompliant with the Act. Currently this is not the case with investigations that proceed to adjudication.

The Act requires that the public body duly consider the recommendations of the IPC and provide reasons why they do not agree with them. If a public body rejects the IPCs recommendations, the only recourse for a complainant is to seek a judicial review from the Yukon Supreme Court; something that is done infrequently due to the cost and resources required. There was one such case brought to the Yukon Supreme Court this year and is discussed below.

In November 2023, we released a formal investigation report on a records review complaint against the Department of Highways and Public Works related to the withholding of information of a public bidding process for the awarding of a contract. In our 53-page report, we made 33 recommendations for the release of information that we found was inappropriately withheld. The public body rejected all our recommendations. More about this specific investigation report can be found in our Formal Investigation section of this report.

An unfair burden

Access to information is a quasi-constitutional right of citizens to hold governments to account. ATIPPA creates the role of Information and Privacy Commissioner, among other things, to ensure that public bodies share information that should be shared – to act as a referee. If the IPC has decided and recommended that information should be released, it is unfair and an abuse of process to require an applicant to take the public body to court to gain access to this information. This is further reflected in Deputy Justice Crerar's court decision discussed in the next section.

To counter this trend, ATIPPA should be amended to give the IPC authority to issue orders of compliance instead of recommendation-making power. This would require a public body to comply with our order or, where they disagree with our findings, to seek a judicial review from the Supreme Court. This would put the burden to challenge our findings on the public body and not on the applicant seeking the rightful access to information held by the public body. Yukon is one of the few remaining jurisdictions in Canada without order-making power.

Court case - VIN Audit

When a public body does not accept the recommendations of the IPC, the only recourse for an applicant is to have their refusal judicially reviewed by the Yukon Supreme Court. As mentioned above in Rejections of Recommendations we conducted an adjudication regarding the withholding of vehicle identification numbers by the Department of Highways and Public Works, detailed in our 2022 Annual Report. In this case, the adjudicator made two recommendations to release records that the Public Body did not have authority to withhold. The Public Body did not accept our recommendations.

The applicant brought about a judicial review against the Government of Yukon (Department of Highways and Public Works), pursuant to section 105 of ATIPPA, with the Information and Privacy Commissioner (IPC) as an intervener. Intervenor status allows for someone who isn't party to a proceeding to participate. This was the first time since the 2021 ATIPPA went into force that a judicial review was commenced and the first time that the IPC was able to participate as an intervener.

In his ruling, dated December 21, 2023, Deputy Justice Crerar overturned the decision of the Deputy Minister of Highways and Public Works to reject the recommendations of the IPC and ordered the Public Body to release the requested information. In effect, the Court's decision affirms the IPC's findings and recommendations.

It further acknowledges that, not only did the Public Body decide not to accept the IPC's recommendations, it also did not provide sufficient reasoning for its decision, as required. Justice Crerar stated at paragraph 87:

To conclude, apart from “respectfully disagree[ing]” with the adjudicator’s recommendations and analysis, ...the Decision [not to accept the IPC’s recommendations] does not consider or rebut the comprehensive analysis of the adjudicator’s Report. The Decision fails to provide a transparent, intelligible, justifiable, and reasonable basis for rejecting the content of that Report; it largely ignores them.

It goes on to say:

The respondent's perfunctory and conclusory four-paragraph response to the thorough 47-page Report borders on contempt towards the presumptive rights of the Yukon public to government information, towards the statutory regime designed to facilitate that access, and towards the Office of the Commissioner statutorily entrusted to uphold that legislation and realize its goals."

Low HIPMA complaint numbers and the need for outreach

There were no formal Considerations (formal investigations) under HIPMA in 2023 and only three complaints received in Informal Case Resolution (ICR). This is down from what were already considered low numbers in 2022 (eight ICR complaints and zero Considerations). The reasons for these low numbers remain unclear; however in response, we intend to increase our outreach efforts to ensure that both patients and custodians understand their rights and responsibilities for the protection of personal health information.

We did, however, assist in providing responses to various requests for advice including for privacy impact assessments, clarification of the Act, and on best practices by the custodian. We also received 18 privacy breach notices, which is six times the amount from the year before.

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 identifies the impacts their programs and activities may have on individuals' privacy. PIAs help reduce the risk of unauthorized collection, use, disclosure, retention, or disposal of personal information by identifying and mitigating privacy risks throughout the data life cycle.

We have identified ways of streamlining the PIA review process for a quicker response to public bodies and custodians with a PIA checklist that will be launched in the spring of 2024 and made available on our website.

Security threat risk assessment (STRA)

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

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. We received five breach notices under ATIPPA and 18 breach notices under HIPMA.

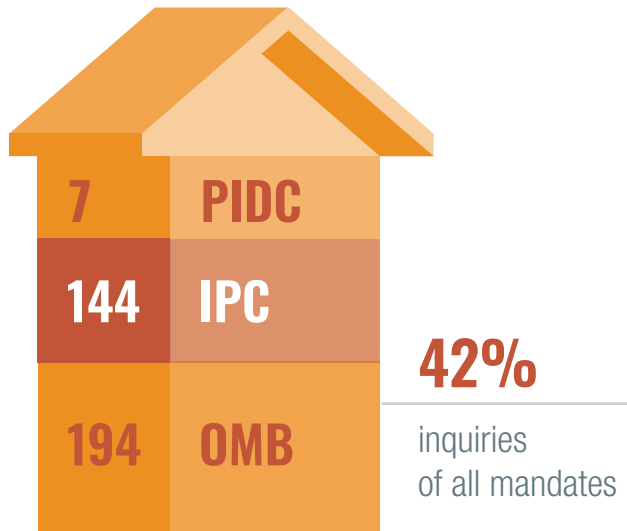
Concluding remarks

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

Jason Pedlar,
Information and Privacy Commissioner

Stats at a glance 2023

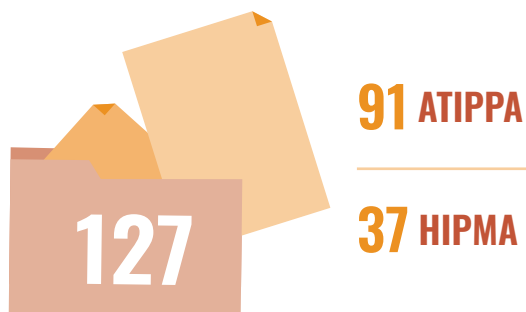
Information and Privacy Commissioner



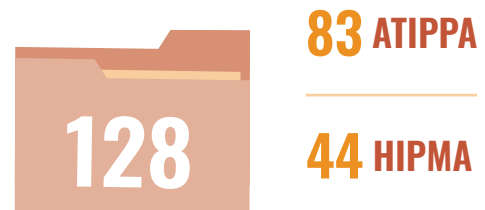
Inquiries



Files opened



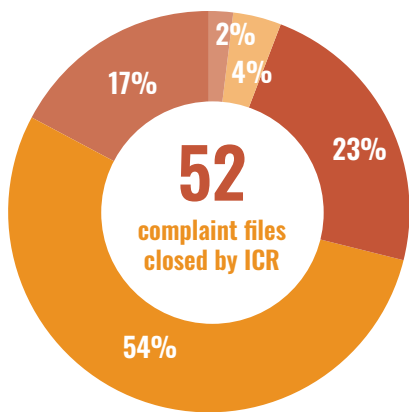
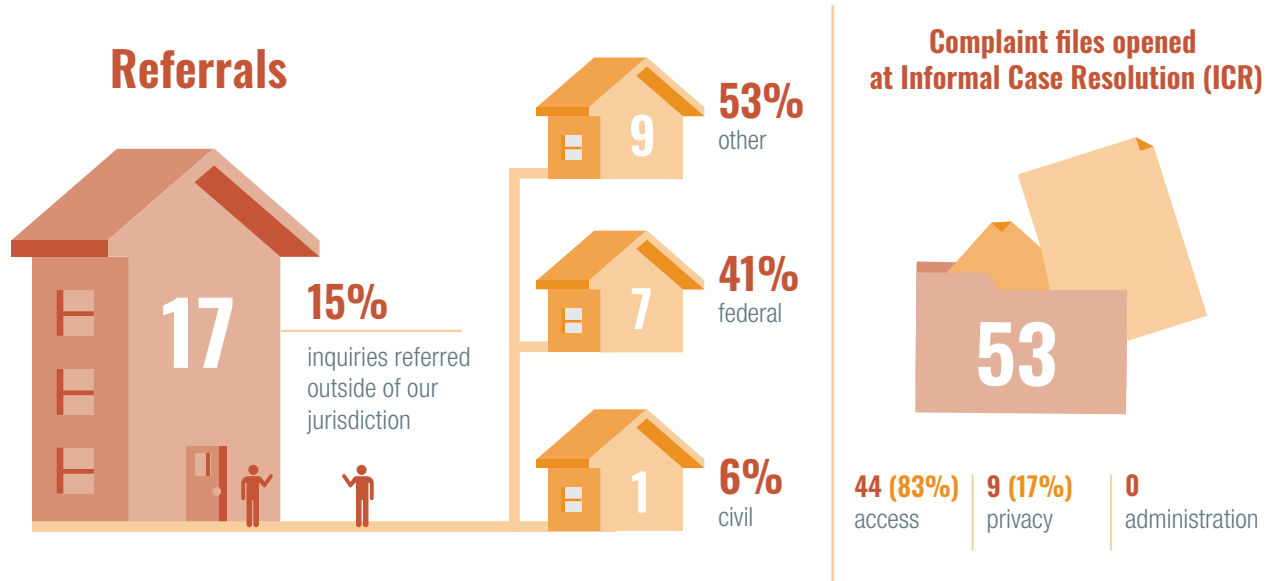
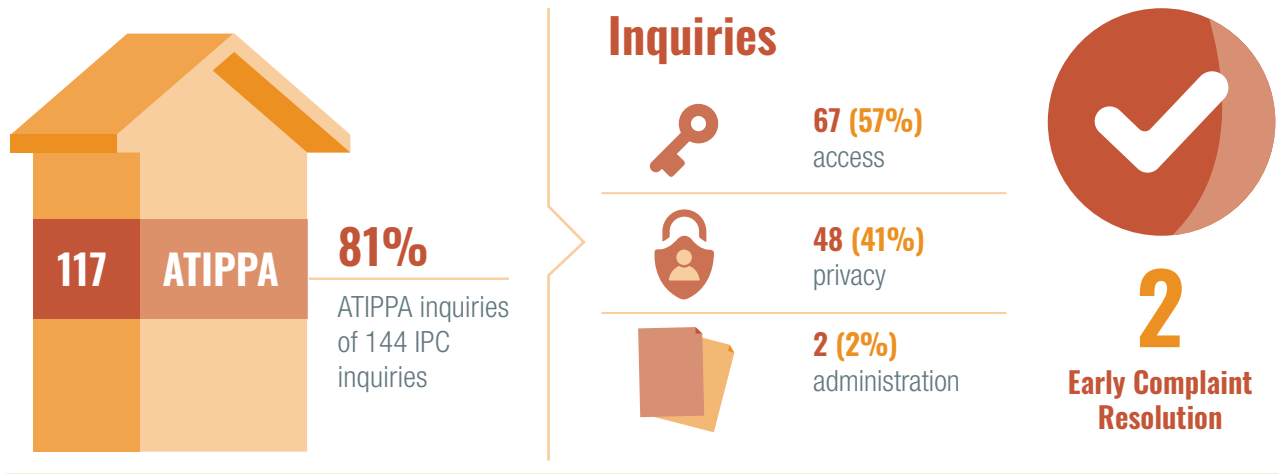
Files closed



Stats at a glance 2023 *Access to Information and Protection of Privacy Act (ATIPPA)*

Information and Privacy Commissioner

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



! 77% of all complaints were either substantiated or partially substantiated.

Determination

- 12 (23%) substantiated**
We agreed with the complainant that there was unfairness or non-compliance that needed to be addressed.
- 28 (54%) partially substantiated**
We agreed with the complainant on some matters, but not everything.
- 9 (17%) unsubstantiated**
We did not find evidence of unfairness or non-compliance.
- 1 (2%) escalated to Formal Investigation**
- 2 (4%) N/A**
We were unable to make a determination about the complaint. This might include complaints that were withdrawn during the investigation process, or upon closer examination of an issue, we declined to investigate further.

Stats at a glance 2023 *Access to Information and Protection of Privacy Act (ATIPPA)*

Information and Privacy Commissioner

Formal Investigations opened



1 (100%)
access

0 privacy

0 administration



ICR statutory deadline

2022



2023



ICR average handle time

Formal Investigations closed



1 (8%)
substantiated

0 unsubstantiated

12 (92%)
partially substantiated

0 N/A



We cleared a backlog of files under the old Act.

Compliance files opened



2 (7%)
own motion compliance audit

5 (17%)
privacy breaches

6 (21%)
deemed refusal

1 (3%)
non-mandatory notice

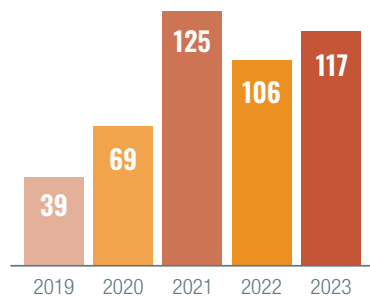
3 (10%)
notice to not reveal existence of record

11 (39%)
comment
PIA requests: **6**

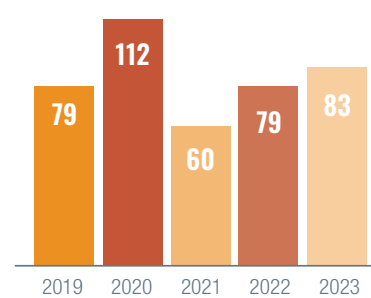
- **1** mandatory
- **5** voluntary

1 (3%)
decision (time extension request)

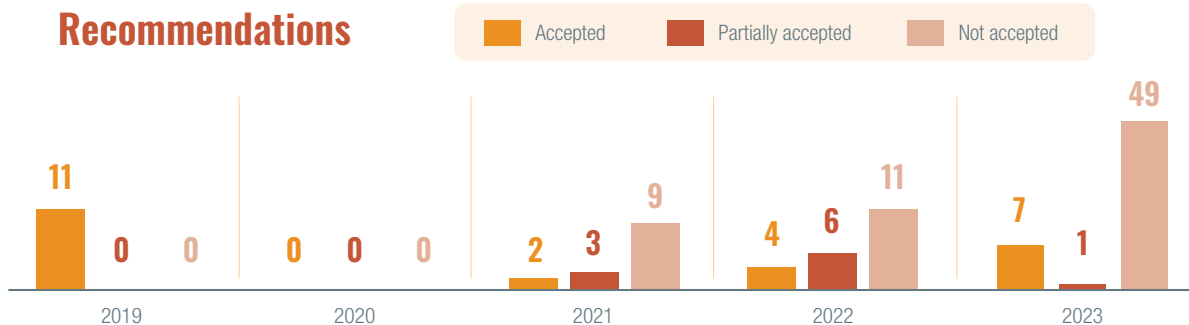
Inquiries



Files opened



Recommendations



Your ATIPPA stories

Informal Case Resolution



Depositphotos

Incomplete release of information

Public body: Public Service Commission
Complaint type: Inadequate search

Complaint:

Our office received a complaint from an individual who alleged that the Respectful Workplace Office (RWO), a branch of the Public Body, did not provide a complete response to their access request. The applicant received 1,300 pages of responsive records (all of them redacted) but was concerned that additional responsive records weren't provided.

Investigation:

Our investigation uncovered that the RWO had not provided any of the responsive records to their Designated Access Officer (DAO) for processing, and that they could not confirm how many pages of responsive records they held. A DAO is responsible for processing records in response to access requests and is familiar with the legislated duties under the Act. Rather than assessing each record to determine whether there was authority under the ATIPPA to withhold it, the RWO had informed the DAO that any records they held would be withheld from the applicant under section 71 of the ATIPPA. This section requires a public body to withhold information about a personnel assessment.

While many of the records held by the RWO related to personnel assessments, many did not. We found that section 71 likely did not apply to many of the records. Also, we found the initial page count provided to the applicant was inaccurate – an additional 500 pages of responsive records were found. These additional records also hadn't been provided to the DAO for processing and were unilaterally withheld under section 71 of the ATIPPA. Further, we learned that other program areas had provided their records to the DAO for processing and that some of this information was released to the applicant in response to the same access request.

Decision: noncompliant

The Public Body had not made reasonable efforts to respond openly, accurately, and completely as required.

Recommendations: accepted

We recommended that the Public Body complete the work effort necessary to respond to the applicant in an open, accurate, and complete manner by clearly identifying responsive records, providing them to their DAO, and preparing an accurate response letter. We also recommended that the RWO develop a written process for responding to access requests to ensure that they fulfill their obligations under the ATIPPA in future. The Public Body accepted both recommendations, which resolved the complaint.

"Out of scope" is not a provision of ATIPPA

Public body: Department of Economic Development
Complaint type: refused access

Complaint:

Our office received a complaint about an access request for briefing notes that was refused by the Public Body based on several ATIPPA provisions.

Investigation:

We found that the Public Body did not adequately explain their rationale for refusing access, and that the cited provisions did not apply to some of the information at issue (e.g. they could not demonstrate that the release of certain information would result in financial harm). In other cases, the Public Body had withheld information they deemed to be cabinet records under section 67, but our investigation found that some of the severed information was not part of a cabinet record.

Some of the information within the records package had been severed because the Public Body thought it wasn't relevant to the access request, and therefore, they deemed it "out of scope."

Decision: noncompliant

A public body is not obligated to provide an applicant with irrelevant information. However, the ATIPPA does not contain a provision authorizing a public body to redact information within the records package that may not be relevant (i.e. out of scope) – information can be redacted only in accordance with an exemption to the right of access established in the Act. A determination about relevancy must be made earlier in the access request process, when information is provided to the Designated Access Officer for review. As it pertains to this complaint, it was our view that the information deemed "out of scope" was in fact relevant to the request.

Recommendations: accepted

The Public Body maintained their position with respect to information that was "out of scope." However, they accepted our recommendations to release information to the applicant in an amended response (including the information they felt was out of scope), which resolved the matter.

Personal information posted on social media

Public body: Department of Environment
Complaint type: privacy/disclosure

Complaint:

An individual filed a complaint with our office because their name, place of residence, and details about their recent conviction under an Act was posted on social media by the Public Body. The complainant requested the Public Body remove or amend the post, but it declined.

Investigation:

We learned that the Public Body thought it could disclose the complainant's information because it is publicly available in the court registry. Upon review, we found that information held in a court registry is not "publicly available information" nor is it a "public registry" as defined under the ATIPPA. As such, the Public Body's rationale for disclosing personal information was not compliant with the ATIPPA.

Decision: noncompliant

The Public Body claimed that its mandate gave it authority to collect and use the personal information relating to the complainant's conviction and fine. We acknowledged the Public Body likely had authority to collect and use the information, however, we remained unclear on its authority to disclose the personal information to social media.

Recommendations: accepted

The Public Body agreed to remove all personal information from the social media post, as well as in similar earlier posts. If it resumes posting personal information about convictions online, it must undertake a review of this practice to ensure it is compliant with the ATIPPA including its authority to collect, use, and disclose personal information for this purpose, providing appropriate notice to individuals, and adherence to the limitation principles. The Public Body must also develop a policy with respect to posting information online that includes what information it is authorized to post and develop written procedures to reflect the policy.

ATIPPA Formal Investigation reports

The Information and Privacy Commissioner issued six Formal Investigation reports.

Investigation report

ATP-ADJ-2023-05-183

Public body: Department of Highways and Public Works

An access to information request on the tender scoring analysis of the two bidders for the Dawson Sawmill contract.

The IPC made 33 recommendations in the report issued on November 6, 2023. The Department rejected all of them.

Request for review (former ATIPP Act)

Public body: Department of Finance

ATP19-75R Inquiry Report

The IPC made 6 recommendations in the report issued on December 18, 2023. The Department accepted 2 recommendations and rejected 4.

ATP19-74R Inquiry Report

The IPC made 7 recommendations in the report issued on December 18, 2023. The Department rejected them all.

ATP19-69R et al. Inquiry Report

The IPC made 2 recommendations in the report issued on December 18, 2023. The Department rejected them all.

ATP19-67R et al. Inquiry Report

The IPC made 7 recommendations in the report issued on December 18, 2023. The Department accepted 4 recommendations, partially accepted 1, and rejected 2.

ATP20-24R and ATP20-25R Inquiry Report

Public body: Department of Environment

Collar relocation data for grizzly and black bears.

The IPC made 2 recommendations in the report issued on February 13, 2023. The Department accepted 1 recommendation and rejected the other.

Compliance Audit

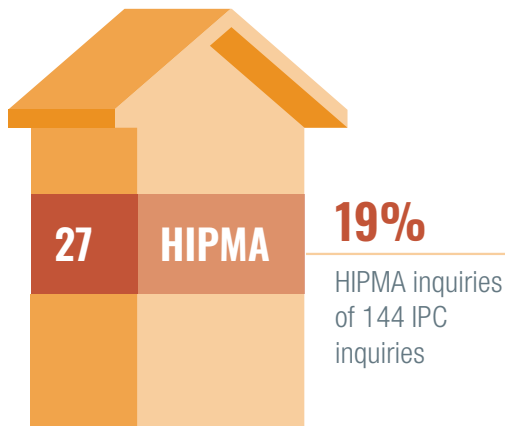
Public body: Department of Education

This is regarding the collection, use, and disclosure of student images and video on internet platforms. The IPC made 6 recommendations. The Department accepted 4 recommendations and rejected 2.

Stats at a glance 2023 *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



Inquiries

8 (30%)
access

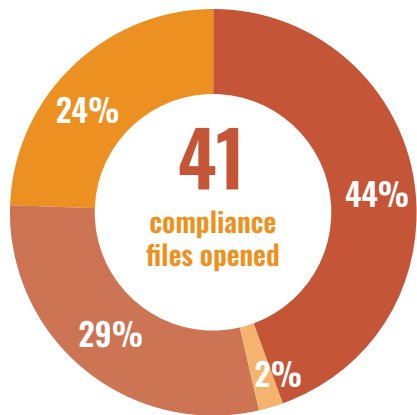
17 (63%)
privacy

2 (7%)
administration



1

Early Complaint Resolution



Compliance files opened

18 (44%)
privacy breaches

12 (29%)
advice

1 (2%)
research

10 (24%)
comment
PIA requests: **10**
mandatory: **10**
voluntary: **0**



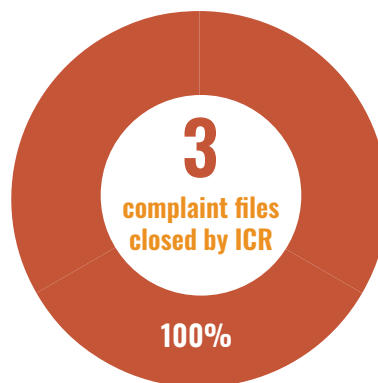
We had a six fold increase in privacy breach reports, and a four fold increase in requests for advice from custodians this year!

Complaint files opened at Informal Case Resolution



2 (67%)
privacy

1 (33%)
administration



Determination

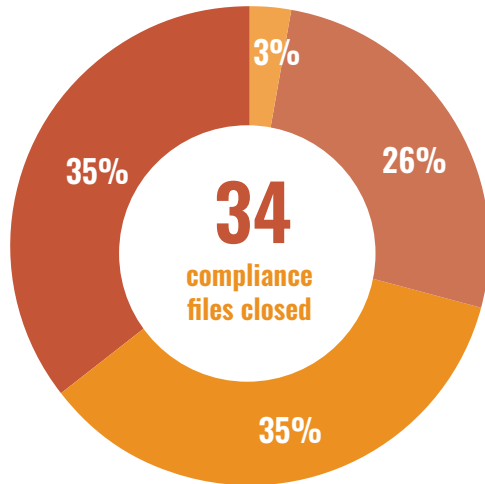
3 **100% substantiated**

0 **partially substantiated**

0 **unsubstantiated**

Stats at a glance 2023 *Health Information Privacy and Management Act (HIPMA)*

Information and Privacy
Commissioner



Compliance files closed

formally "Request files closed"

- 12 (35%)** privacy breaches
- 12 (35%)** advice
- 9 (26%)** comment PIA requests
- 1 (3%)** research



ICR statutory deadline

2022



2023



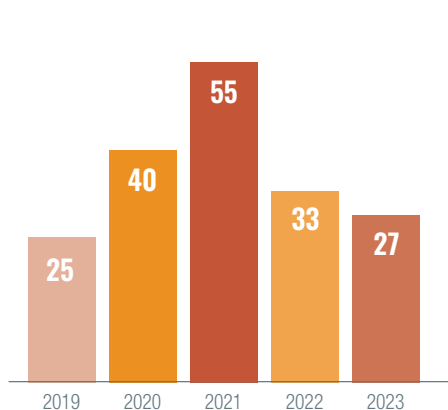
Our average handle time

0

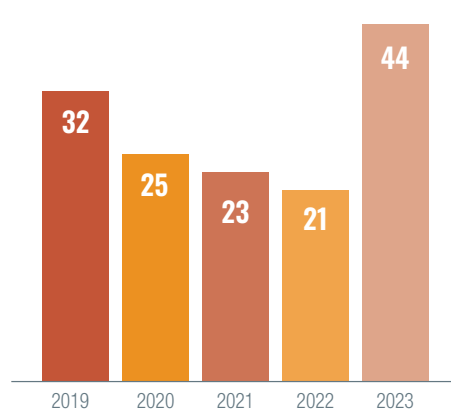
formal Considerations

A HIPMA formal investigation is called a **Consideration**.

Inquiries



Files opened



There was a **110%** increase in files opened!

Your HIPMA stories

Informal Case Resolution



Depositphotos

Securely collecting health information

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

Complaint:

An individual filed a complaint with our office alleging that the Whitehorse Health Centre, operated by the Custodian, does not have a secure alternative to email or fax for individuals to submit their access requests for immunization records. The complainant was concerned with the security risks associated with this.

Investigation:

The Whitehorse Health Centre uses a secure file transfer system to send sensitive information (e.g. immunization records), however, they do not provide a secure means of collecting personal health information from clients. Email is not a secure way to send or collect health information because it can be intercepted.

Decision: noncompliant

It was our view that the Custodian had an obligation to provide a secure means of collecting information from individuals.

Recommendations: accepted

The Custodian accepted our recommendation to provide a secure means for individuals to submit access requests for their immunization records. Government of Yukon uses a secure file transfer system that allows for a link to be sent to an individual; information can be submitted securely to the link, and so the use of email is not necessary. The Custodian adopted this as their secure means for individuals to submit requests, which satisfied the recommendation.



Sharing health information without consent, twice

Custodian: medical clinic (Whitehorse)

Complaint type: privacy/disclosure

Complaint:

We received a complaint from an individual alleging that the Custodian disclosed their personal health information (PHI) to their ex-partner.

Investigation:

Our investigation uncovered that the complainant's privacy was breached not once, but twice. The first breach occurred when the Custodian included the complainant's PHI in their child's referral package that was sent to a specialist. The complainant's ex-partner then received their child's PHI from the Custodian in response to an access request, which included the complainant's PHI - the second breach.

Decision: noncompliant

The disclosure of the complainant's PHI to the specialist was unauthorized because the Custodian relied on consent for the disclosure but had not documented that the complainant had consented. Additionally, the

HIPAA requires that the minimum amount of PHI be disclosed to achieve the intended purpose. It was our view that the Custodian did not need to include the complainant's PHI in the child's referral, and it should have been removed.

When a custodian becomes aware of a security breach, they are required to assess the risk of significant harm, and if a risk exists, report the breach to our office, provide written notice to the affected individual, and assess what mitigation efforts can be taken. None of these steps were taken.

Recommendations: accepted

Our recommendations included developing various policies and procedures for managing personal health information including responding to breaches, providing specific training for their staff, and fulfilling their breach reporting obligations with respect to the two breaches. These requisite breach reports provided further guidance to the Custodian.

HIPAA formal Consideration report

There were no formal Considerations opened in 2023 because 100% of our complaint files were resolved by our Informal Case Resolution team.

2023 Statistics *Access to Information and Protection of Privacy Act (ATIPPA)*

Information and Privacy Commissioner



117
Inquiries

2 Comments from public	27 Information about office	39 Pending complaint
3 General process questions	4 No jurisdiction/wrong office/incorrect referral	1 Other
41 Information about mandate		

Early Complaint Resolution	
Files closed	2

Compliance	
Files opened	29
deemed refusal	6
privacy breaches	5
compliance audit	2
notices received	4
advice	
comment	11
Privacy Impact Assessments	6
External request for response on related topic	1
Implications for proposed policy, program or activity, specialized service or data-linking activity	1
Implications of an existing or proposed enactment	1
Security threat risk assessment-STRA [regs s.9(s)]	2
decision	1
access time extension	1
Files closed (includes files from previous years)	26

Complaints	Informal Case Resolution	Formal Investigation
Files opened	53	1
access	44	1
privacy	9	
Files closed (includes files from previous years)	52	13

Total (complaint/compliance)	
Files opened	83
Files closed (includes files from previous years)	91
Files to be carried forward	14

Formal Investigations by recommendations			
Public body	Public body		
	Accepted	Partially accepted	Rejected
Highways and Public Works			33
Education	4	2	
Finance	2		4
Finance			7
Finance			2
Finance	4	1	2
Environment	1		1
Total	11	3	49

Privacy Impact Assessment review activities

Public body	PIA submissions	Voluntary	Mandatory	Status
Environment	Posse wildlife mortality data	X		review complete
Yukon Energy Corporation	Customer billing system	X		review complete
Yukon Energy Corporation	Customer billing system (2nd submission)	X		review not yet complete
Environment	Posse e-licensing		X	review not yet complete
Yukon Energy Corporation	Peak Smart Home program	X		review complete
Executive Council Office	Yukon Water Board	X		review not yet complete

Public body	Number of files									Total
	Complaints		Compliance						Comment/ advice	
	Informal Case	Formal Investigation	Deemed refusal notices	Non- mandatory notice	Notice to not reveal existence of record	Privacy breaches	Audit	Decision		
Community Services	1					1				2
Economic Development	3									3
Education	8			1		1	1			11
Energy, Mines and Resources	2									2
Environment	1							1	2	4
Executive Council Office									1	1
Finance	1					1				2
Health and Social Services	6		1			1				8
Highways and Public Works	6	1	4				1			12
Justice	1				3				1	5
Public Service Commission	16		1			1			1	19
Yukon Workers' Safety and Compensation Board	2								2	4
Yukon Energy Corporation									3	3
Yukon Hospital Corporation	2									2
Yukon Housing Corporation	1									1
Yukon University	2									2
Yukon University Board of Governors	1									1
External request									1	1
										83

2023 Statistics *Health Information Privacy and Management Act (HIPMA)*

Information and Privacy Commissioner



- 1 General process questions
- 5 Information about office
- 4 Pending complaint
- 13 Information about mandate
- 2 No jurisdiction/wrong office/incorrect referral
- 2 Other

Inquiries

Early Complaint Resolution	
Files closed	1

Complaints	Informal Case Resolution	Formal Investigation
Files opened	3	0
Privacy	2	0
Administration	1	0
Files closed (includes files from previous years)	3	0

Compliance	
Files opened (total)	41
Privacy breaches	18
Research	1
Requests	22
Advice	12
Comment	10
Privacy Impact Assessments	
New Operation of an Information System Intended to Process Personal Health Information	6
Significant Change to Existing Information System	4
Files closed (includes files from previous years)	34

Total (complaint/compliance)	
Files opened	44
Files closed (includes files-from previous years)	37
Files to be carried forward	14

Privacy Impact Assessment review activities

Custodian	PIA submissions	Mandatory	Status
Health and Social Services	Yukon Dental Program	yes	review complete
Health and Social Services	Pacific Blue Cross - companion to Yukon Dental	yes	review complete
Health and Social Services	CANimmunize ClinicFlow	yes	review complete
Health and Social Services	Yukon vital statistics regulations	yes	review complete
Health and Social Services	Vitalware - companion to vital statistics regulations	yes	review not yet complete
Health and Social Services	Customized backend system	yes	review not yet complete
Health and Social Services	iMazing	yes	review not yet complete
Health and Social Services	Languageline	yes	review not yet complete
Health and Social Services	Cambian Online Scheduler	yes	review not yet complete
Health and Social Services	ColonCheck program	yes	review not yet complete

Custodian	Total files opened		Number of files				Total
	Complaint	Compliance	Comments	Advice	Research	Privacy	
Health and Social Services	2	10		1	12	25	
Medical clinics	1			8		6	15
Pharmacy				3			3
Yukon Registered Nurses Association				1			1



Yukon
Public Interest
Disclosure
Commissioner



2023 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 2023 Annual Report of the Yukon Public Interest Disclosure Commissioner. I am also happy to share this with the Yukon public.

Kind regards,

A handwritten signature in black ink, appearing to read "Jason Pedlar". The signature is stylized and fluid.

Jason Pedlar,
Yukon Ombudsman

Working to protect public interest when whistleblowers report wrongdoing

The *Public Interest Disclosure of Wrongdoing Act* (PIDWA) 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 have options about who they can disclose to, including a supervisor, a designated officer in their public entity, or the PIDC. Along with the Public Interest Disclosure 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 the Public Interest Disclosure Commissioner, Jason Pedlar

Due to the serious nature of making a disclosure of wrongdoing or a complaint of reprisal, our first step is to meet with the individual to better understand the concern. We then provide advice on whether the matter might be captured under the PIDWA, whether we have jurisdiction to investigate the matter, and clarify the process.

This past year, we received three requests for advice from employees who were considering whether to make a disclosure to our office. Of those requests, we began two disclosure investigations, one as part of our ICR process and one as a formal investigation.

We also closed one the PIDWA formal investigation where we found the wrongdoing was unsubstantiated, however we made recommendations to the Public Entity on process improvements. PIDWA files are often time consuming and resource intensive. However, at 818 days, it took us too long to complete our investigation and issue our report. We will work towards reducing our investigation times and will outline our progress in future reports.

The number of disclosures received by our office and the number of disclosures reported to us by public entities each year is lower than I would expect. The reason for this may be related to the lack of disclosure procedures within public entities and a limited awareness by staff of the Act and their obligations to report wrongdoings. We address both of these in recommendations we made as part of the statutory review of the Act that is currently underway, as discussed in the next section.

Improving the *Public Interest Disclosure Act* (PIDWA), commonly called the Whistleblower Act

PIDWA's purposes are to:

- facilitate the disclosure and investigation of significant and serious matters in or relating to public entities that an employee believes may be unlawful, dangerous to the public, or injurious to the public interest,
- protect employees who make those disclosures, and
- promote public confidence in the administration of public entities.

A statutory review, as required under the Act, commenced in 2020 and consultation continued in 2023, led by the Public Service Commission. I, as the Public Interest Disclosure Commissioner, was invited to provide feedback.

In addition to answering Government of Yukon's public questionnaire, my team and I submitted a comprehensive review of the Act with five key recommendations:

- Update the powers of the PIDC to be independent from the Ombudsman and include additional new powers.
- Make it mandatory for public entities to establish disclosure procedures.
- Increase the responsibilities of public entity chief executives for them to raise awareness of PIDWA and provide training on it.
- Expand the Act to allow volunteers of public entities to make disclosures, not just employees.
- Expand the jurisdiction of PIDWA to include organizations, such as municipalities and government-funded not for profit organizations.

I believe these changes would significantly strengthen the Act and better protect Yukoners. Our comments were submitted in April 2023 as part of Phase 2 of the review and are available on our website. We look forward to seeing the outcome of this important process.

Awareness education and training is needed

Since coming into effect on June 15, 2015, PIDWA remains relatively unknown and isn't well understood by the public nor the employees under its jurisdiction. Public entities are obligated under the Act to provide training to their staff, though from our experience more can be done to ensure staff know what a wrongdoing is, and if they encounter one, how they can disclose the matter and the protections from reprisal offered by PIDWA.

Our website is a PIDWA resource where employees and public entities can find more information, including our Frequently Asked Questions page.

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 that the Chief Executive of a public entity report this information to the Minister responsible, or if a corporation, to the chair of the governing board (section 42).

A copy of this report must also be provided to the PIDC so we can include these numbers in our annual report. We often do not receive this report which leaves us spending valuable time reminding and following up with public entities who have not complied with the Act. In 2023, six public entities were more than six months late, and Yukon University failed to report at the writing of this report.

I take this opportunity to remind each public entity of their statutory obligation to report wrongdoings received and investigated, no later than the last business day of January each year.

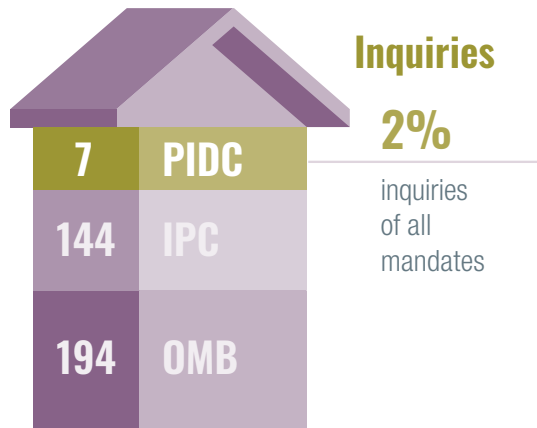
Concluding remarks

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

Jason Pedlar,
Public Interest Disclosure Commissioner

Stats at a glance 2023

Public Interest Disclosure Commissioner (PIDC)



Formal Investigations



Files closed



2 (50%)
request for advice

1 (25%)
request for comment

1 (25%)
complaint files in Formal Investigation (including previous years)

Files opened



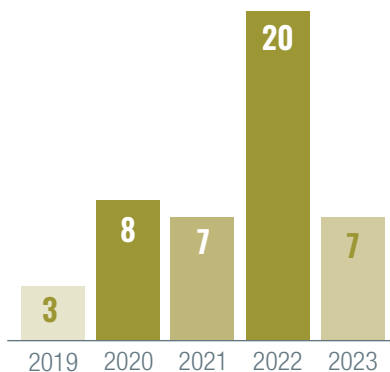
Compliance
1 (17%)
request for comment (Act review)

3 (50%)
request for advice (consideration of a disclosure)

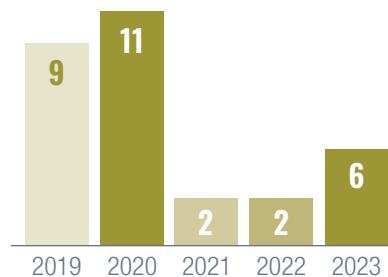
Complaints
1 (17%)
complaint files opened in Informal Case Resolution

1 (17%)
Formal Investigation

Inquiries



Files opened (complaint/request)



Disclosure reporting

Disclosures reported within a public entity must be reported to PIDC on an annual basis. Zero disclosures were reported, however, six were late and Yukon University failed to report.

2023 Statistics Public Interest Disclosure Commissioner (PIDC)



Inquiries

- 4** Information about mandate
- 1** Information about office
- 1** No jurisdiction/wrong office/incorrect referral
- 1** Pending complaint

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

Compliance	
Files opened	4
Comment - review of act	1
Advice - consideration of disclosure	3
Files closed (includes files from previous years)	3
Files to be carried forward	1

Total (complaint/compliance)	
Files opened	6
Files closed (includes files from previous years)	4
Files to be carried forward	3

Total files opened

Public entity	Complaints		Requests		Total
	Disclosures	Reprisal	Comments	Advice	
Health and Social Services	1			1	2
Environment	1			1	2
Public Service Commission			1	1	2
Total					6

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