



OFFICE OF THE INFORMATION AND  
PRIVACY COMMISSIONER OF NUNAVUT

# ANNUAL REPORT

2022-2023

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## Commissioner's message

This report covers the period from April 1, 2022, to March 31, 2023. By the time this report is tabled, I will be halfway through my five-year term as Information and Privacy Commissioner.

### Capacity issues are killing ATIPP

Every public body that is part of the GN has obligations under the ATIPP law. One of those obligations is to release information within a certain time. The first deadline is 25 business days. In limited circumstances, another 25 business days is allowed. Only rarely should a public body need further extensions.

In the past year, at least four public bodies responded to ATIPP requests more slowly than the law requires. They all said they have capacity issues. They all said they are doing the best they can with the resources they have.

I am sure that is true, but the law sets deadlines. The law does not say “do your best”. It says “you must respond within 25 business days”. But capacity is being used as an all-purpose excuse for not following the law. Capacity issues inside the GN are killing ATIPP.



If public bodies do not have the resources they need to obey the law, they need more resources.

If they cannot get more resources, then maybe the ATIPP law should be changed to relax the deadlines. That would not be a good outcome, but at least it would be more honest.

The current situation, in which the law makes promises that (some) public bodies cannot keep, is the worst option.

### The bright spots

The Department of Health continues to be the GN's leader on ATIPP. I know that the standards set by the ATIPPA are achievable because Health – a big, complex department – is achieving them. That does not mean we always agree, but it does mean they are always trying. I congratulate Health's management and ATIPP staff.

The biggest ATIPP project over the past year has been each public body's self-audit of their Y-drive. Every public body took the audit seriously and, as a result, the personal information of Nunavummiut is a little safer now than it was a year ago. There is more work to do, but it was a good start.

I also want to acknowledge the work of two divisions of the Department of Community and Government Services. The Information Management/Information Technology division (IM/IT) runs the GN's computer networks. They have always been helpful to me. The Records Management division promotes good records-management practices across the GN. Good records management is the foundation of access to information and protection of privacy.

The Territorial ATIPP Manager, Yuri Podmoroff, is committed to the work. He supports good ATIPP, in big ways and small, every day, across the GN. I want to acknowledge his efforts.

Finally, I note that the government's budget for 2023-24 includes a significant increase in funding for the ATIPP Office within the Department of Executive and Intergovernmental Affairs. That is good news. It is a move towards centralized ATIPP processing and – dare I dream it – greater capacity. But even with funding, actually staffing these new positions might take a long time. Let's see where we are at this time next year.

Graham Steele  
Information and Privacy Commissioner

## What we do

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly of Nunavut, appointed under section 61 of the *Access to Information and Protection of Privacy Act*.

Everything we do is derived from the ATIPPA.

The ATIPPA gives the public a right of access to records held by the Government of Nunavut, with limited exceptions. The ATIPPA also allows Nunavummiut to know what information the GN holds about them, and to correct it if it is wrong. The ATIPPA also protects the privacy of Nunavummiut by preventing the unauthorized collection, use or disclosure of personal information.

The primary role of the Commissioner is to ensure the GN is following the ATIPPA correctly. Usually that is done at the request of a citizen who is dissatisfied with the GN's response to a request for information, or who believes their privacy has been breached. If there is a complaint, the Commissioner looks at the law and the evidence, and then makes recommendations to the GN about how to improve their handling of information.

The Commissioner also does research and offers comments on access and privacy matters involving the GN.

## Number and type of files in 2022-23

### New files

In the 2022-23 fiscal year, the NUIPC opened 75 new files (last year: 73).

Table 1 shows the main issue raised by the files opened in 2022-23:

*Table 1. Nature of Case*

<b>Main issue</b>	<b>22-23</b>	<b>21-22</b>	<b>20-21</b>
Review of disclosure	16	15	12
Review of refusal to disclose	4	3	7
Review of time extension	6	4	3
Review of fees	2	2	1
Review of request for correction of personal information	0	1	0
Privacy breach notification	15	14	13
Privacy breach complaint	16	8	11
Self-initiated investigation	1	5	5
Authorization to disregard	1	0	0
Request for comments	9	14	10
Administrative	5	7	2
<b>Total</b>	<b>75</b>	<b>73</b>	<b>64</b>

Two observations flow from these statistics. First, the files are roughly evenly split between access and privacy. Second, the past two years are similar in terms of the number and type of files.

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Table 2 shows the public body involved in the 75 files that were opened in 2022-23:

*Table 2. Public bodies involved in NUIPC files*

<b>Public Body</b>	<b>22-23</b>	<b>21-22</b>	<b>20-21</b>
Justice	20	5	4
Health	13	20	24
Human Resources	10	10	4
Education	7	3	10
Community & Govt Services	5	4	6
Finance	4	0	2
Family Services	2	3	2
Representative for Children & Youth	2	2	2
Nunavut Housing Corporation	1	5	1
Nunavut Liquor and Cannabis Commission	1	0	0
Qulliq Energy Corporation	1	0	0
Workplace Safety & Compensation Commission	1	0	1
Culture & Heritage	0	1	0
Economic Development & Transportation	0	4	0
Elections Nunavut	0	1	2
Environment	0	2	0
Executive & Intergovernmental Affairs	0	3	1
Integrity Commissioner	0	2	0
Nunavut Arctic College	0	2	1
Languages Commissioner	0	1	1
None	5	2	3
Other	3	3	0
<b>Total</b>	<b>75</b>	<b>73</b>	<b>64</b>

In 2022-23, more files came from Justice than any other public body. That is unusual. Usually Health has, by far, the most files with this office.

In my view, it is an anomaly that Justice had the most files in 2022-23. The large number can be explained by the fact that there was a flurry of activity from just two applicants. That flurry is not likely to be repeated.

### Requests for comment

The NUIPC provides comments to public bodies and others seeking advice on the interpretation of the ATIPPA. The NUIPC also provides comments to bodies of the Legislative Assembly on legislative proposals or policy issues.

During the year, comments on policy proposals and/or advice on specific situations were provided to the following public bodies or other entities:

- Representative for Children and Youth (2)
- A member of the Legislative Assembly
- Electoral Boundaries Commission
- Department of Health
- Department of Finance
- Department of Justice
- An Inuit organization

Some of these consultations are confidential (e.g. an individual case, or a policy proposal, or a legislative draft) so I will not provide details of what the consultations were about.



## Accomplishments and challenges in 2022-23

### We still have zero backlog

I am pleased to report that, as of March 31, 2023, the backlog of decisions in our office is still zero. Our decisions are typically issued 1-3 weeks after all relevant material has been submitted by the parties. That compares to delays of months, and sometimes years, in most other Canadian jurisdictions.

### We appeared before a Standing Committee

On September 26-27, 2022, I appeared before the Standing Committee on Oversight of Government Operations and Public Accounts (OGOPA). The hearing was televised and received a good public response. A full transcript is available on the Legislative Assembly's website.

I received OGOPA's recommendations by letter from the Speaker dated November 8, 2022. My written response was tabled in the Legislative Assembly on March 6, 2023.

### Municipal ATIPP is off the agenda

In my last annual report, I wrote that access to information for municipalities appeared to be back on the agenda.

One year later, municipal ATIPP is off the agenda and shows no signs of being revived.

At the OGOPA hearing in September 2022, the deputy minister of Executive and Intergovernmental Affairs indicated that municipal ATIPP is not being pursued by this government. The City of Iqaluit, which adopted a motion on November 9, 2021, to explore the possibility of coming under the ATIPPA, has taken no further steps towards coming under the ATIPPA.

### **We have still not been consulted on the Police Act**

In my last annual report, I noted that, as of the end of March 2022, there was no consultation with my office about the new *Police Act*. A promise of consultation, on a specific topic, had been made in the Legislative Assembly on June 7, 2021 (Hansard, page 44).

I wish to draw to the attention of the Legislative Assembly that, as of the end of March 2023, there has still been no consultation with my office on the topic promised in the Legislative Assembly. There was some consultation on a different topic.

### **We reviewed a GN-wide network drive**

In my last annual report, I wrote about my investigation into the GN's network drive known as the V-drive.

Over the past year, I have been investigating another GN network drive, known as the Y-drive. As of the end of March 2023, I am still working on my report. I plan to table my report in the Legislative Assembly sometime in the new fiscal year.

The Y-drive audit represented a substantial time commitment both by my office and by each public body that uses the Y-drive. I thank them for their efforts.

### **Qulliq Energy responded to a ransomware attack**

In January 2023, Qulliq Energy Corporation was hit by a cyberattack. The attack potentially put the supply of power at risk, but also raised the possibility of unauthorized access to the personal information of QEC's customers and employees.

The ATIPP Act imposes certain obligations on public bodies when there is a breach (or potential breach) of personal information. In my opinion, QEC met its obligations. They notified me immediately, consulted the appropriate experts, asked the right questions, and communicated with the public appropriately. At the time this report is being written, it is still not known with certainty if personal information was stolen. Based on the information provided to me by QEC, it appears unlikely.

When the GN-wide cyberattack occurred in November 2019, the GN never formally notified the then-Commissioner. When an Education contractor was hit by a cyberattack in February 2021, putting student information at risk, I read about it in the newspaper. As I wrote in my 2020-21 annual report (page 10) “When such large and significant attacks on the personal information of Nunavummiut do not trigger a notification to the NUIPC, there is something wrong with the legislation, or with public bodies’ understanding of it.”

In contrast, QEC’s response to the January 2023 attack was a model of ATIPP compliance.

### Prosecutions appear impossible

Section 59 of the ATIPPA creates an offence, punishable on summary conviction, for anyone who knowingly breaches privacy or who wilfully interferes with the work of this office.

There has never been a prosecution under this section.

In this fiscal year, there was one file for which prosecution should at least have been considered. It was a privacy breach case.

Unfortunately, both the RCMP and the Public Prosecution Service of Canada are doubtful that investigating (in the case of the RCMP) or prosecuting (in the case of the PPSC) is within their mandate.

Investigation and prosecution of territorial offences is normally done by the GN Department of Justice. The problem is that an ATIPPA offence will almost always involve someone employed by or contracted to the GN. The GN Department of Justice will usually be in a conflict of interest.

In short, it appears that there is nobody to investigate or prosecute an ATIPPA offence. Even if there were, the maximum fine (\$5,000) is hardly worth the effort. Section 59, as currently written, is an empty threat. This is not a desirable situation. I bring it to the attention of the Legislative Assembly because a legislative response may be required.

## Review Reports in 2022-23

The most visible products of our office are the final decisions, commonly referred to as Review Reports.

Like a judge's decision in court, our Review Reports explain the legal principles and apply them to the facts of a given case. They lay down the analytical framework that we will follow in future decisions, and that we expect GN public bodies to follow. The full text of the Review Reports is available on the NUIPC website ([atipp-nu.ca](http://atipp-nu.ca)) and also on the Canadian Legal Information Institute website ([canlii.org](http://canlii.org)).

In 2022-23 there were 26 Review Reports. That compares with 21 in 2021-22 and 27 in 2020-21.

Table 3 shows the number of Review Reports per year in the last ten years.

<b>Fiscal Year</b>	<b>Reports</b>
2022-23	26
2021-22	21
2020-21	27
2019-20	19
2018-19	6
2017-18	27
2016-17	18
2015-16	7
2014-15	10
2013-14	5

## Most significant Review Reports

I would like to draw the Legislative Assembly's attention to the most significant Review Reports. They are significant either because of the legal issue they raise, or because of what the case shows about ATIPPA administration inside the GN.

### Review Report 23-239

Department of Health (Re), 2023 NUIPC 6 (CanLII)

Over a period of eighteen months, and without any clinical purpose, a doctor viewed the Complainant's electronic medical records. The doctor's contract was terminated. The Complainant filed a privacy breach complaint and asked that the doctor be named and prosecuted. The Commissioner finds there was a breach of privacy, and that Health did not make reasonable security arrangements against the risk of data intrusion. The Commissioner makes certain recommendations to reduce the risk of data intrusion and to increase the likelihood that similar kinds of data intrusion will be detected. The Commissioner declines to name the doctor. The Commissioner recommends that Health, in consultation with Justice, consider prosecution.

Why is this decision important? There is always a risk of unauthorized access to electronic medical records. The Department of Health did not make appropriate security arrangements against this risk. Nunavummiut trust that their sensitive personal information will be kept safe, and that it will be used only for the intended purpose.

### Review Report 22-227

Department of Family Services (Re), 2022 NUIPC 18 (CanLII)

The Applicant requested disclosure of an audit report that had been commissioned by the Department of Family Services in the wake of

allegations of financial misconduct at a non-government service provider. Family Services consulted with the RCMP, and refused disclosure on the grounds that the audit report was compiled as part of an investigation and that disclosure could prejudice the investigation. The Commissioner finds the audit report may be withheld. There is a reasonable possibility that the RCMP investigation could be prejudiced by disclosure.

Why is this decision important? An access to information request must not interfere with a police investigation. At the same time, the GN must be accountable for its actions, and a police investigation cannot be a permanent shield to accountability. In this case, the investigation had been going on for six years.

#### Review Report 22-220

Department of Education (Re), 2022 NUIPC 11 (CanLII)

The Applicant requested certain records from the Department of Education. Education never formally acknowledged the request, and after more than six months, had done no work on it. The Commissioner finds there was a deemed refusal for which there was no lawful reason. The Commissioner recommends Education respond to the Applicant's request within a specified time.

Why is this decision important? The Department of Education has been struggling to meet its obligations under the ATIPPA. This case is another example.

### Recommendations that were not accepted

Section 68(1) of the ATIPPA requires that I provide to the Legislative Assembly information about any Review Reports for which the head of a public body has not accepted the Commissioner's recommendations.

The ATIPPA says that the head of a public body (usually the minister) must respond to a Review Report. The head is not required to accept the Commissioner's recommendations. The head may make any decision the head thinks is proper. All ministerial responses are posted to the NUIPC website.

In the past year, there were four times when my recommendations were not accepted in full. In two of these four cases, the Department of Human Resources was simply vague – I cannot tell if HR accepted my recommendations or not. That style of response is unhelpful to applicants, this office, and the Legislative Assembly.

### Review Report 23-235

Nunavut Liquor and Cannabis Commission (Re), 2023 NUIPC 2 (CanLII)

The Applicant submitted a request for records to the Nunavut Liquor and Cannabis Commission and paid the required fee. The request covered a large number of records covering a five-year period. The NULC gave itself a series of time extensions. The first disclosure was delivered 267 days after fee payment, with no firm date for disclosure of the remainder. The Commissioner finds the totality of the time extensions is unreasonable and recommends faster disclosure.

Minister's response: Recommendations taken under consideration, but not necessarily accepted.



### Review Report 22-232

Department of Community and Government Services (Re), 2022 NUIPC 23 (CanLII)

The Applicant filed a fifteen-part request for records relating to certain government contracts. The contracts had been awarded by the Department of Community and Government Services to a specific company. CGS disclosed some records, with redactions for personal information (section 23) and confidential commercial information (section 24). CGS said it had no responsive records for seven of the fifteen parts, and declined to create new records. For two parts, CGS said it was still engaged in third-party consultation. The Applicant sought review. The Commissioner finds that CGS was correct to give third-party notice to the company. The Commissioner also finds CGS correctly applied section 23, with one minor exception, but did not correctly apply section 24. There is insufficient evidence that disclosing some of the redacted information could reasonably be expected to prejudice the Company's competitive position. The Commissioner finds that CGS conducted a diligent search for responsive records, and that CGS does not, in these circumstances, have a duty to create new records.

Minister's response: Some recommendations accepted, some not accepted.

### Review Report 22-222

Department of Human Resources (Re), 2022 NUIPC 13 (CanLII)

The Applicant requested records related to their employment with the Government of Nunavut. The Department of Human Resources gave itself a time extension, citing section 11(1)(b) of the Act and a backlog of ATIPP files. When the new deadline passed without any further response, the Applicant applied for review. The Commissioner finds the time extensions were not reasonable. The Commissioner recommends HR respond to the Applicant within a specified period, and take steps to eliminate its backlog.

Minister's response: First recommendation accepted. The letter says that the second recommendation is accepted, but it uses language suggesting that HR is not necessarily committed to eliminating the backlog before the end of the year. That is contrary to the recommendation.

### Review Report 22-221

Department of Human Resources (Re), 2022 NUIPC 12 (CanLII)

The Applicant applied to Health for certain records related to their employment. Part of the request was transferred to Human Resources. HR gave itself several time extensions, citing a backlog of ATIPP files. As this review neared completion, HR informed the Applicant that no responsive records had been found. The Commissioner finds the time extensions were not reasonable. The Commissioner also finds that HR did not conduct a diligent search. The Commissioner recommends HR undertake a further search for records and respond to the Applicant within a specified period.

Minister's response: First recommendation accepted. The minister's response is 3.5 pages and there is not a clear answer to the second recommendation, which concerns eliminating the department's backlog of ATIPP files before the end of 2022. That recommendation is not directly accepted or rejected.

## Priorities for my term

I concluded my first and second annual reports by stating my six priorities. I repeat them here.

My term as Information and Privacy Commissioner runs from January 11, 2021, to January 10, 2026. I have six things I would like to accomplish in that period:

- Run a high-functioning office that makes good decisions quickly, and which operates as an information and privacy resource both for GN employees and for citizens.
- Amend the ATIPPA to give the Commissioner the power to order the disclosure of documents. This could and should be done right away. About half of Canadian jurisdictions already have this power. The Northwest Territories did it in 2021. This is a simple amendment that will have an immediate, significant, positive effect on the operation of the ATIPPA in Nunavut.
- Review the ATIPPA. Nunavut is still working with a first-generation ATIPP law. The foundation of our ATIPPA goes back to pre-division days. It is no longer adequate to deal with modern government and modern technology.
- Enact health-specific information legislation. This is a long-standing recommendation of the former Commissioner. The ATIPPA is inadequate to deal with information and privacy in the health system. Almost every other Canadian jurisdiction has health-specific legislation. There is no reason that Nunavut should be so far behind.
- Gradually increase the capacity of the office so that it can handle the increase in work that will come with health-specific information legislation, and also with the extension of the ATIPPA to Nunavut's municipalities.

- Groom a successor who is Inuk or a long-term Northerner. I believe this position should eventually be filled by someone who is fluent in Inuktut and is able to move the work of this office forward according to the spirit of Inuit Qaujimajatuqangit.

My success as Information and Privacy Commissioner will be measured by whether, at the end of my term, those six priorities have been accomplished. None of these priorities is entirely in my control. Making progress on all of them will require the active commitment and cooperation of the Executive Council and members of the Legislative Assembly.