



OFFICE OF THE INFORMATION AND
PRIVACY COMMISSIONER OF NUNAVUT

ANNUAL REPORT

2023-2024

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Commissioner's message

This report covers the period from April 1, 2023, to March 31, 2024. By the time this report is tabled in the Legislative Assembly, my five-year term as Information and Privacy Commissioner will be two-thirds completed.

The ATIPP system is standing still

Last year, I wrote “capacity issues inside the GN are killing ATIPP”. That is still true. In this report, I could repeat exactly what I wrote last year.

This year, I will focus on a related issue: the ATIPP system is standing still. Change is slow. There are some forward steps, but also some backward steps.

Nunavut's information and privacy law is old. It needs to be updated to match the way the GN actually works. Information technology is advancing rapidly, and artificial intelligence has burst onto the scene in ways that seem like science fiction, but our information law still talks about photocopying.



There is still no sign of health-specific privacy legislation. Nunavut is one of only two jurisdictions in Canada without a privacy law for the health-care sector (BC is the other). The Department of Health says it plans to hold consultations beginning in 2025. They have been talking about health-specific privacy legislation for so long – well over 10 years and maybe closer to 20 – that it is easy to be sceptical.

In the “good news” section of my last annual report, I noted that the government's budget for 2023-24 included a significant increase in funding for the ATIPP Office within the Department of Executive and Intergovernmental Affairs. I added “actually staffing these new positions might take a long time.” One year later, there is still only one person in the ATIPP Office. I welcome the new director, Mark Witzaney.

Bright spots

The Department of Health continues to be the GN's leader on access and privacy. I know the standards set by the ATIPP law are achievable because Health is achieving them. Once again, I congratulate Health's management and ATIPP staff.

The Department of Community and Government Services is also performing well. The good performance at CGS, like at Health, starts with leadership from the top.

I do not usually have much interaction with the Workers' Safety and Compensation Commission, but this year I had two files with them. From beginning to end, the WSCC handled the files exceptionally well.

A group that consistently meets its ATIPP deadlines is Cabinet ministers. The law gives them 30 days to respond to one of my access decisions, and 90 days to respond to one of my privacy decisions. They always meet those deadlines (though often on the last possible day).

Over the past few years, the Department of Human Resources and the Department of Education have struggled to meet their ATIPP obligations. Both departments took steps in 2023-24 to do better. There is still some way to go, but they are trying.

Finally, I would like to thank Yuri Podmoroff for his work as Territorial ATIPP Manager. We had many fruitful conversations over the past three years. I especially appreciated the patient guidance he provided to new ATIPP coordinators. Yuri has moved on to a different, non-ATIPP position within the GN. I wish him well.

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 does three main things:

- It gives the public a right of access to records held by the Government of Nunavut, with limited exceptions.
- It allows Nunavummiut to know what information the GN holds about them, and to correct it if it is wrong.
- It 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 2023-24

New files

In the 2023-24 fiscal year, the NUIPC opened 61 new files (last year: 75).

Table 1 shows the main issue raised by the files opened in 2023-24 and the two previous years:

Table 1. Nature of Case

| Main issue | 23-24 | 22-23 | 21-22 |
|---------------------------------|--------------|--------------|--------------|
| Access to information | | | |
| Review of disclosure | 15 | 16 | 15 |
| Review of refusal to disclose | 2 | 4 | 3 |
| Review of time extension | 0 | 6 | 4 |
| Review of fees | 1 | 2 | 2 |
| Review requested by third party | 1 | 0 | 0 |
| Authorization to disregard | 0 | 1 | 0 |
| Correction of information | 0 | 0 | 1 |
| Privacy | | | |
| Privacy breach notification | 13 | 15 | 14 |
| Privacy breach complaint | 9 | 16 | 8 |
| Self-initiated investigation | 3 | 1 | 5 |
| Other | | | |
| Request for comments | 7 | 9 | 14 |
| Administrative | 10 | 5 | 7 |
| | | | |
| Total | 61 | 75 | 73 |

The number of files in 2023-24 was lower than the previous two years. It is not possible to know exactly why. Some possibilities:

- The figure for 2023-24 may be an anomaly. (When dealing with statistics from a small jurisdiction like Nunavut, anomalies are more likely to occur.)
- The GN may have had fewer access requests and privacy breaches than in previous years. (The GN does not publish reports or statistics on its ATIPP files.)
- The GN may have handled its access files better, so that applicants had less reason to request review.
- Applicants may have been discouraged by their experience with ATIPP at the public-body level.

Table 2 (next page) shows the public body involved in the 61 files that were opened in 2023-24, sorted from highest to lowest, and compares the numbers to the two previous years.

There are three observations I would like to make about Table 2.

First, the Department of Health has regained its place at the top. That is normal. Health is a big department that handles a lot of information. They are also good at reporting privacy breaches. They will almost always have the most reviews.

Second, there was a big drop in the number of review files coming from the Department of Justice (from 20 to 4). The main reason, I believe, is that 2022-23 saw a flurry of review requests from just two applicants. In 2023-24, there were zero reviews involving those two applicants. The number of Justice review files is now back to normal.

Third, there was a drop in the number of review files coming from the Department of Human Resources (from 10 to 3). HR has, over the past few years, had problems handling its access files. Perhaps HR is now being more open. Perhaps HR is now handling its files better. Because the GN does not publish any reports about access requests, it is hard to know for sure.

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Table 2. Public bodies involved in NUIPC files

| Public Body | 23-24 | 22-23 | 21-22 |
|--|--------------|--------------|--------------|
| Health | 13 | 13 | 20 |
| Education | 8 | 7 | 3 |
| Community and Government Services | 7 | 5 | 4 |
| Justice | 4 | 20 | 5 |
| Family Services | 3 | 2 | 3 |
| Finance | 3 | 4 | 0 |
| Human Resources | 3 | 10 | 10 |
| Economic Development and Transportation | 2 | 0 | 4 |
| Executive & Intergovernmental Affairs | 2 | 0 | 3 |
| Workplace Safety & Compensation Commission | 2 | 1 | 0 |
| Languages Commissioner | 1 | 0 | 1 |
| Nunavut Housing Corporation | 1 | 1 | 5 |
| Nunavut Liquor and Cannabis Commission | 1 | 1 | 0 |
| Culture & Heritage | 0 | 0 | 1 |
| Elections Nunavut | 0 | 0 | 1 |
| Environment | 0 | 0 | 2 |
| Integrity Commissioner | 0 | 0 | 2 |
| Nunavut Arctic College | 0 | 0 | 2 |
| Qulliq Energy Corporation | 0 | 1 | 0 |
| Representative for Children & Youth | 0 | 2 | 2 |
| None | 10 | 5 | 2 |
| Other | 1 | 3 | 3 |
| | | | |
| Total | 61 | 75 | 73 |

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:

- Department of Justice (2)
- Department of Health
- Department of Human Resources
- Representative for Children and Youth
- A member of the Legislative Assembly
- Department of Community and Government Services

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

Accomplishments and challenges in 2023-24

We still have zero backlog

I am pleased to report that, as of March 31, 2024, the backlog of decisions in our office is still zero. Our decisions are typically issued 1-3 weeks after all material has been submitted by the parties. That compares to delays of months, and sometimes years, in most Canadian jurisdictions.

We did not appear before a Standing Committee

In 2023-24, I was not invited to appear before the Standing Committee on Oversight of Government Operations and Public Accounts (OGOPA).

My last appearance was September 26-27, 2022. I was invited to appear on April 19-20, 2024, to address my annual report for 2022-23. That means I was addressing an annual report that was more than a year old, and not addressing an annual report (this one) that was already finished but not yet tabled.

My annual report must be submitted no later than the end of September, so it might be better for me to appear before the OGOPA each year in October or November. I would like to appear once each year, but I understand that decision is up to the OGOPA.

We have still not been consulted on the Police Act

In my last annual report, I noted that, as of the end of March 2023, there had been no consultation with my office about the new *Police Act*. A promise of consultation, on a specific topic, was 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 2024, there has still been no consultation with my office on the topic promised in the Legislative Assembly. The new *Police Act* has not yet been proclaimed in force.

We issued one Special Report

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

The Y-drive is the network storage "warehouse" where most of the GN's digital documents are kept. There is a huge amount of information, including a huge amount of personal information about Nunavummiut, on the Y-drive.

My Special Report 23-245-SR was issued on June 1, 2023. I found that the Y-drive does not meet the "reasonable security arrangements" standard in section 42 of the ATIPPA. It needs to be replaced.

There is more about my Special Report on pages 13 and 15-16 of this annual report.

Another Special Report will be issued soon

In late November 2023, I undertook an investigation into the GN's readiness for Canada Post's addressing change in Iqaluit. The focus of my investigation is four departments handling privacy-sensitive mail:

- Department of Health (health insurance cards)
- Department of Family Services (income assistance mail)
- Department of Finance (payroll-related mail)
- Department of Human Resources (employee discipline)

My Special Report should be ready in April or May 2024.

Review Reports in 2023-24

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 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) and also on the Canadian Legal Information Institute website (canlii.org).

In 2023-24 there were 15 Review Reports (last year: 26).

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

Table 3. Number of Review Reports

| Fiscal Year | Reports |
|--------------------|----------------|
| 2023-24 | 15 |
| 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 |

This year there were several files in which our office helped the applicant and the public body to reach agreement. This is known as “mediation”. When the parties reach their own agreement, a Review Report is unnecessary.

Mediation is often the best, fastest way to resolve a case. That may explain, in part, the lower number of Review Reports in 2023-24.

Most significant Review Reports

I would like to draw to the Legislative Assembly's attention the most significant Review Reports in 2023-24.

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 24-252

Workers' Safety and Compensation Commission (Re), 2024 NUIPC 1 (CanLII)

The Complainant suffered a hip injury at work. They filed a claim with the WSCC. Four years later, with the Complainant still off work, the WSCC asked the Complainant to consent to the release of five years of pre-injury medical records. The Complainant consented, but only for medical records about the hip. When the WSCC insisted that all medical records be released, the Complainant filed a privacy breach complaint. The Commissioner finds that the WSCC's collection of the Complainant's personal information did not comply with section 40 of the ATIPPA nor the WSCC's policy on personal information privacy protection. There was therefore a breach of the Complainant's privacy.

Why is this decision important? The ATIPPA says that the GN should gather personal information only if it is necessary. This decision reminds public bodies that they must show why personal information is relevant before they collect it.

Review Report 23-245

Department of Executive and Intergovernmental Affairs and twelve other public bodies (Re), 2023 NUIPC 12 (CanLII)

The Commissioner initiated a review of the GN network drive known as the Y-drive. The Commissioner asked thirteen public bodies to self-audit their Y-drive to assess the risk of privacy breaches. All thirteen carried out the self-audit and reported to the Commissioner. The Commissioner finds that the Y-drive does not meet the “reasonable security arrangements” standard in section 42 of the ATIPPA, and makes certain recommendations to reduce the risk of privacy breaches on the Y-drive.

Why is this decision important? The GN has an obligation to handle personal information carefully. GN staff should be able to see citizens’ personal information only if it is necessary for them to do their jobs. The Y-drive made it too easy for GN staff to see personal information unrelated to their jobs. The GN’s big computer systems need to be designed with privacy in mind.

Review Report 23-244

Department of Human Resources (Re), 2023 NUIPC 11 (CanLII)

The Applicant is a former Government of Nunavut employee with a complex employment record. They applied for their full human-resources file. There was some discussion with the Department of Human Resources about the scope of the request. Ten months after the application was filed, HR has neither disclosed any records nor sought a time extension. The Commissioner finds there is no legal justification for the delay, and recommends that HR either disclose the requested records or follow one of the statutory mechanisms for responding to a burdensome request.

Why is this decision important? The ATIPPA is the law of Nunavut. This decision reminds public bodies that they must follow the law. Even if a file is difficult, a department cannot just put an access request “on the shelf” until it has time to deal with it.

Review Report 23-243

Department of Justice (Re), 2023 NUIPC 10 (CanLII)

The Department of Justice applied under section 53 for authorization to disregard the Respondent’s requests for records. The Commissioner considers the nature and number of requests filed by the Respondent, as well as the nature and volume of the Respondent’s communications with Justice, and concludes that the criteria in section 53 are met. Justice may disregard any uncompleted requests from the Respondent and is not required to communicate with the Respondent about them. Justice may also disregard future requests, unless the Respondent has obtained prior approval from the Commissioner. Only one such request will be approved at a time. The authorization to disregard expires at the end of 2025.

Why is this decision important? The ATIPPA emphasizes that citizens have a right to information held by the GN, with limited exceptions. Sometimes, however, an applicant may go too far. Section 53 allows a public body to ask the Commissioner for permission to disregard a request. This decision is only the second time in 25 years that section 53 has been used.

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 was only one case in which my recommendations were not accepted in full.

Review Report 23-245

Department of Executive and Intergovernmental Affairs and twelve other public bodies (Re), 2023 NUIPC 12 (CanLII)

I have already summarized this case in the section on significant decisions. It is the one about privacy risks created by the GN network Y-drive. I found the Y-drive did not meet the security standards in section 42 of the ATIPPA. I made six recommendations.

In response to my recommendations, the minister of EIA (the premier) issued his decision letter on August 31, 2023. The minister's decision was issued on behalf of all public bodies that use the Y-drive. The minister's decision letter can be found on the NUIPC website.

The minister's decision is generally supportive of my recommendations, but there is one with which he appears to disagree. I recommended that each public body designate a specific position as being accountable for privacy protection on the public body's Y-drive. (To be clear, I was not recommending a new position; rather, I was recommending the designation of an existing senior manager.)

The premier's response was as follows:

While we recognize the importance of interim measures, assigning a specific senior position for Y-drive drive privacy across all public bodies presents challenges. Several public bodies, in collaboration with CGS IM/IT, have identified logistical and technical constraints that cannot be addressed with our existing resources.

We recognize the importance of accountability and commit to ongoing discussions on how each public body can best address this matter. The ATIPP Coordinator Committee will continue to engage with CGS IM/IT to explore realistic alternatives and share best practices that each public body has self-identified.

As I understand this response, the minister does not accept my recommendation that a specific person be designated by each public body to be accountable for privacy on the Y-drive.

Priorities for my term

I concluded my first three 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.