



Procedures for Managing Complaints under the *Access to Information and Protection of Privacy Act (2018)*

I. Authority

The *ATIPP Act* authorizes the Information and Privacy Commissioner (the “IPC”) to investigate complaints submitted by any person who has grounds under the *ATIPP Act* to make a complaint. Complaints under the *ATIPP Act* include:

- Access Complaints
- Privacy Complaints
- Personal Information Correction Complaints

Complaints must be **submitted to our office within 30 business days** after an incident (for example, an access request response, or when somebody becomes aware of a privacy concern).

The IPC has broad investigative powers to investigate complaints, and deciding whether a public body has complied with the law. The IPC has the authority when conducting an investigation to decide how the law is to be interpreted and applied, by making findings of fact and law.

Upon completing an investigation, the IPC may make certain recommendations to remedy non-compliance. After an investigation is complete, the person who made the complaint can, in certain circumstances, appeal a decision associated with a complaint to the Yukon Supreme Court.

Access Complaints

An individual who has submitted an access request to the ATIPP Office can make a complaint about the response that they received. **Complaints about an access request response** can include:

- Some of the information in the response has been withheld.
- Access has been refused to all information requested.
- The public body performed an inadequate search for records.
- The response is late.

A **third party who is notified** that their personal or business information will be released by a public body to an applicant who made an access request can complain. These complaints must be submitted **at least five business days before the response date** for the access request.

The IPC can also accept **complaints about decisions made by the Access and Privacy Officer** (the ATIPP Office) after an access request has been submitted, including:

- A decision to refuse to process an access request.
- No response has been provided by the ATIPP Office within 10 business days after the access request was submitted.
- A decision to extend the due date of an access request.
- A decision to deny a fee waiver.
- A decision to declare an access request abandoned.
- A dispute about the fee estimated for an access request.

Privacy Complaints

The IPC can investigate complaints that relate to the privacy rights. These include the following:

- Personal information has been **collected** by a public body contrary to the *ATIPP Act*.
- Personal information has been **used** by a public body contrary to the *ATIPP Act*.
- Personal information has been **disclosed** by a public body contrary to the *ATIPP Act*.
- A **privacy breach** has occurred involving a complainant's personal information.

Personal Information Correction Complaints

Under the *ATIPP Act*, an individual has a right to request a correction of any personal information held by a public body, including where the information is not accurate or if information is missing. The IPC can investigate complaints about this process, including:

- If an individual does not receive a response correction.
- If the request for correction of an individual's personal information has been denied.

II. Procedures

Informal Case Resolution

All complaints received by the IPC will initially be managed through our **Informal Case Resolution** ("ICR") process unless a decision is made to proceed directly to a formal investigation. ICR generally allows for a faster resolution, and **will take no longer than 60 days**. Our procedure for managing complaints through ICR is as follows:

1. Opening

An Investigator from the ICR Team speaks with a public body contact, and provides all parties with information about the complaint in an opening letter.

2. Investigation

The Investigator and the public body contact discuss the complaint to reach a resolution.

3. Resolution

If a resolution is reached, the Investigator provides details on this in a closing letter, and provides a copy to all parties. The ICR Investigator may make informal recommendations as part of the resolution for the file.

4. Follow-Up

The Investigator follows up as necessary with the public body to ensure that any informal recommendations that were made have been implemented.

5. Publication

A case summary may be published for complaints resolved through ICR if it is determined that there is educational value. Public bodies and complainants are not named in case summaries. Statistics about ICRs will be published in the Annual Report of the IPC, and examples may be cited.

If resolution does not occur within 60 days, the Investigator will send a letter informing the parties of the outcome. If a file is not resolved through ICR, the IPC may conduct a formal investigation.

Formal Investigation

A complaint may proceed to a **formal investigation** in the following circumstances:

- **Resolution unsuccessful:** The complaint could not be resolved through ICR.
- **Serious or complex:** A complaint does not lend itself to ICR due to the seriousness of the complaint or complexity, such as a systemic complaint involving multiple complainants.
- **Educational purposes:** There is a need to raise awareness through publication of an investigation report about the requirements of the *ATIPP Act*.
- **Precedent required:** The IPC decides upon receiving the complaint that it will proceed directly to investigation because there is a need to clarify the interpretation of a provision of the *ATIPP Act* at issue.

A formal investigation may take between **90 – 150 days to complete**. Our procedure for managing a formal investigation is as follows:

1. Opening

The registrar prepares a notice of investigation for the parties, and sends it along with instructions for submissions. The registrar works with the parties to finalize and circulate the submissions and any replies.

2. Investigation

Once the submissions and replies are received, the registrar provides all evidence relevant to the investigation to the IPC. The IPC analyses the evidence and relevant law and makes findings of fact and law arising in the course of the investigation.

3. Report

The IPC prepares a report containing findings, any recommendations to remedy a finding of non-compliance with the *ATIPP Act*, and reasons for the findings and recommendations. In the report, the IPC also advises the public body of its requirement to give written notice of its decision about whether it will follow the recommendations and inform the parties of their right to appeal.

4. Parties are informed.

The registrar distributes the report to the parties involved in the investigation.

5. Follow-up

If recommendations are included in the report, the IPC receives the public body's decision about whether it will follow the recommendations within the time period required. If the public body does not respond in time, the IPC will notify the parties that the public body is deemed to have refused to follow the recommendations.

6. Publication

The IPC publishes the investigation report on the IPC's website and identifies whether the public body accepted the recommendations. Statistics will be published.

This document was prepared to assist the public and public bodies subject to the *Access to Information and Protection of Privacy Act 2018 (ATIPP Act)* understand how the Office of the Information and Privacy Commissioner will manage complaints. The document is for administrative purposes only and is not intended as, nor is it a substitute for legal advice. For the exact wording and interpretation of the ATIPP Act, please read the Act in its entirety. This document is not binding on the Information and Privacy Commissioner.