



Office of the Ombudsman

2 0 0 0 A N N U A L R E P O R T

For the period January 1, 2000 to December 31, 2000



YUKON LEGISLATIVE ASSEMBLY
Office of the Ombudsman

Ombudsman and Information & Privacy Commissioner

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Ombudsman

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YUKON LEGISLATIVE ASSEMBLY
Office of the Ombudsman

September 2001

The Honourable Dennis Schneider
Speaker of the Legislative Assembly
P.O. Box 2703
Whitehorse, Yukon
Y1A 2C6

Mr. Speaker:

I have the pleasure of presenting to you and through you to the Legislative Assembly the Annual Report of the Yukon Ombudsman and Information & Privacy Commissioner.

This report is submitted pursuant to Section 31(1), *Ombudsman Act* and Section 47(1), *Access to Information and Protection of Privacy Act*. The report covers the activities of the Office of the Ombudsman and the Information & Privacy Commissioner for the period January 1, 2000 to December 31, 2000.

Yours truly,

Hank Moorlag
Ombudsman and
Information & Privacy Commissioner





Mission Statement

To provide an independent, impartial means by which public complaints concerning the Government of Yukon can be heard and investigated under the Ombudsman Act.

To provide an effective avenue for receiving and processing public complaints and requests for the review of decisions by public bodies related to the Access to Information and Protection of Privacy Act.

To promote fairness, openness and accountability in public administration.

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Remarks of the Ombudsman and Information & Privacy Commissioner

In 2000 the Office of the Ombudsman and Information & Privacy Commissioner

marked its fourth year of operation. During this period the Yukon Legislative Assembly was required to decide whether the *Ombudsman Act* should continue in force. Under section 35, the *Act* can only remain in effect for a five-year period unless the Commissioner in Executive Council orders a continuation for a period not to exceed five years. During the fall sitting of the Legislative Assembly the *Ombudsman Act* was ordered to be continued in force for a further five-year period.

The year brought some significant challenges to both functions of the office. The impact of an increase in work under the *Access to Information and Protection of Privacy Act* (ATIPPA Act) continued, as in the previous year, to create a backlog of Ombudsman case files. Although the problem is now being addressed with the addition of another staff member, regrettably there is evidence that public confidence in the office has eroded. This is indicated by a marked decrease in the number of complaints brought to the Ombudsman. The inability to handle complaints in a timely way is unquestionably a factor. Bringing the standard of service back to an acceptable level is a current priority of the office.

Under the ATIPPA Act, many requests for review brought forward under section 48 and complaints made under section 42 have challenged the operation of the *Act* in ways that now require a careful examination of all its aspects to determine whether it is achieving its intended purpose.

As an example, the uncertainty of the ATIPPA Act's definition of a "public body" emerged as a significant issue. This is reported on page 13. As Information and Privacy Commissioner, I conducted an investigation under section 42 of the ATIPPA Act into how the uncertainty of this definition is affecting the administration of the *Act*. Following investigation a report was made

to the Minister responsible for the *Act*, the Minister of Education, with a recommendation for legislative change.

Workload demands related to the ATIPPA Act more than doubled over the previous year. Despite these demands, the office was able to meet its legislated time frames for the completion of reviews. I acknowledge with gratitude the efforts of the staff of the office, the many officials of public bodies, applicants and third parties who, despite some significant frustration, demonstrated a commitment to the process and in so doing helped bring these matters to a close in a timely way.

During the year, cases also surfaced which required the office to develop and implement policy to handle situations where competing interests between the two functions of Ombudsman and Information & Privacy Commissioner exist. This occurs when an individual wishes to trigger a review or a complaint under the ATIPPA Act and simultaneously brings a complaint to the Ombudsman. The policy requires a careful analysis that balances the interests of the complainant against the practical realities of the Ombudsman and Information & Privacy Commissioner being the same person. In consultation with the complainant, a decision under the policy is made about which of the two functions best address the issues.

Both the *Ombudsman Act* and the *Access to Information and Protection of Privacy Act* have as their underlying purpose the promotion of openness and accountability in public administration. The powers and authorities in these statutes compel government ministries and agencies to open themselves up to scrutiny by way of independent review and investigation. The introduction of this legislation in other jurisdictions around the world typically results in one of two responses by government. There is either an acceptance of the spirit and intent of the legislation followed by proactive measures to adopt them, or a defensive posture with continued intransigence on the part of the bureaucracy broken only on occasion by applying the full weight and authority of the legislation.

I am pleased to report that, from my point of view, the Government of Yukon has made steady progress over the past four years toward positive changes that adopt



the principles of openness and accountability. Some of these initiatives have been reflected in the way government has responded to issues brought to this office. On the other hand, there is plenty of room for improvement. One government official made the following

comment: "We are reaching a level of maturity; now it is time for the development of expertise." In this context, it is gratifying to see the introduction of the Service Leadership Program which challenges public servants to think about new ways to deliver services.



Ombudsman

Year in Review

In 2000, a total of 86 complaints were received over which the Ombudsman had the jurisdiction to investigate. This compares with 121 complaints in 1999 and 144 in 1998. The downward trend in the number of complaints coming to the Ombudsman is to some extent the result of significant improvements in public administration. Changes in the way government responds to public complaints through appropriate early intervention has reduced the need for complaints to be handled by the Ombudsman.

Another reason for the drop in the number of complaints, however, appears to be that public confidence in the ability of the Ombudsman to complete investigations within a reasonable time frame has been eroded. The year was marked by increased frustration on the part of complainants with the lack of progress on their files. Unquestionably this has led to decisions by the public to not bring their complaints forward.

The last two annual reports commented on the impact work done under the *ATIPP Act* had on the ability of the office to complete other outstanding matters. The substantial increase in ATIPP work has taxed the resources of the office in ways that have contributed to a large backlog of Ombudsman files. The problem was identified in the budget estimates presented for review by the Members' Services Board. However, because of the territorial election in 2000 and the subsequent change in government, the review of the budget did not occur until June, 2000. The review resulted in approval to hire an additional investigator to the end of the 2000/01 fiscal year. This increase was confirmed as a permanent resource requirement with the next budget review.

The office hired Susan Dennehy who had previously been performing investigative work under contract. Credit and recognition must be given to Catherine

Buckler, Assistant to the Ombudsman and Alice Purser, Administrative Assistant, for their dedicated commitment and hard work in addressing the office's workload demands during the year. The new office team is attacking the workload with renewed vigour, and considerable progress is being made to bring the files to within an acceptable standard of service.

Thirty-two investigations were brought forward to 2000. During the year, 12 new investigations were opened, and a total of 17 were completed. There were still 27 complaints under formal investigation at year end. This is a reduction from the number of investigations carried forward from the previous year.

In the annual reports from 1996 to 1998 it was the practice to provide summaries of case files with the personal information of those involved removed. A problem unique to a small jurisdiction like the Yukon was discovered: individuals could still be readily identified through other details of the case. Even though specific case summaries were interesting to read, they failed to articulate in a clear way the underlying issue that was being addressed.

In last year's annual report the format was modified, to reflect the case work of the office through issues that were brought forward and settled. This seemed to better identify and discuss broader aspects of government administration and still maintain the confidentiality required by section 10 of the *Ombudsman Act* in carrying out investigations. The practice is continued in this report.

Government's Response to Previous Annual Reports

The 1998 Annual Report identified a number of issues consisting of common elements in complaints handled



by the Ombudsman. These included a need to improve communication and to introduce a means of early appropriate intervention when disputes arose. Government responded by introducing an action plan with four initiatives designed to improve the quality of services provided by government. This was reported in last year's annual report.

During the year 2000 the initiatives previously introduced were rolled into three noteworthy developments. The first was a continuing staff development plan headed by a Deputy Ministers Committee on Human Resources. As part of a framework committed to strengthening public sector management, the Committee facilitated consultation with some 180 Government of Yukon managers and senior supervisors. The goal was to begin a dialogue regarding professional and leadership development needs. The Committee produced its report on these consultations in December 2000. Although much of the focus of this work related to staff development and succession planning, the attention to sound leadership and best-practices in the delivery of services touched directly on issues identified by the Ombudsman.

The second development of significance was the introduction of the Service Leadership Program. The program was developed following "Red Tape Reduction" consultations with both the business community and the public, as well as the need for improvement identified by the Ombudsman in the 1998 Annual Report. The purpose of the Service Leadership Program was to provide a quality service course for public servants with facilitated group discussions aimed at finding concrete ways to improve public service. The goal was to come up with new ideas which would redesign how the Government of Yukon served its clients.

The third important development was an individual initiative by an Executive Council Office staff member who, as part of post-graduate studies, researched and developed a custom-built conflict management system for government departments. These efforts were supported by the Deputy Ministers Committee and the system has been introduced as a pilot program within the department of Government Services.

The Ombudsman commends the government's efforts in this direction and especially applauds the kind of individual commitment and work to improve the quality of service delivery exemplified by the development of the conflict management system.

Ombudsman Issues

How much information is enough?

Although government is working to improve service to clients there are still difficulties in the way that an authority communicates its programs to the public.

During 2000, this lack of information, coupled with some inconsistencies in the information provided to clients, led to two complaints being investigated by the office. Where final decisions are Ministerial, the public must also be made aware of the criteria considered.

- The first level of communication, such as an application form or brochure, may not be detailed enough for those individuals having unique circumstances or specific needs.
- A second level of communication such as correspondence and detailed explanations of legislation governing the program is often required.
- The public must be able to obtain the specific information that will help them understand an authority's decision or action about themselves.

What should an authority do when someone complains?

It is human nature to react by defending one's actions when someone complains. But is it the best way to deal with a complaint? When a complaint about government is brought forward an attempt should be made to look at it in a positive light. As such, the Office of the Ombudsman promotes early intervention as a way to handle complaints.

Early intervention not only benefits the complainant but it also benefits the authority in several ways, including the following:

- creating another chance to provide service and satisfaction to dissatisfied clients;
- identifying areas for improvement;
- providing opportunities to strengthen public support for the agency; and
- assisting and planning an allocation of resources.



Authorities should keep in mind that the client with a complaint wants:

- a friendly contact person
- quick action
- to be heard
- an apology
- to be understood

The Ombudsman finds that complaints which are not swiftly resolved generate significant additional workload for an authority, often snowballing into something bigger than it ever needed to be. This can impact on staff morale.

Tips to assist authorities in handling complaints

- have a user friendly system for accepting customer feedback/complaints;
- ensure there are clear delegations and performance expectations of staff dealing with complaints, such as turn around time, progress reports, and quality of responses or remedies;
- develop clear internal and external referral procedures if a complaint is not resolved at the front line... make sure the customer knows what to expect;
- capture feedback/complaint data;
- use the data to identify problem areas and analyze trends; and
- act to improve identified areas.

Will taking a complaint to the Ombudsman meet the complainant's expectations?

When a complaint is given to the Ombudsman it is analyzed to ensure that the Ombudsman has the authority under the legislation to investigate the complaint. The Ombudsman must also discuss a complainant's expectations regarding any possible recommendations that could be made by the Ombudsman at the end of an investigation, if the complaint is found to be substantiated.

It is important to realize that under section 14 of the *Ombudsman Act*, the Ombudsman can refuse to investigate a complaint on several discretionary grounds. For

instance if a complainant is expecting an outcome that the Ombudsman couldn't provide even if the complaint were substantiated, then the Ombudsman may refuse to investigate. The refusal is made on the basis that the investigation would not benefit the complainant in a way that he or she would find satisfactory. Here are some examples:

- If a complainant is seeking a monetary settlement, it may be preferable for the complainant to seek legal redress.
- A complainant may expect that the Ombudsman, after hearing a matter, will substitute his own decision for one already made by an authority. This will not occur, since the Ombudsman is not an appeal body.

Another case where the Ombudsman may refuse to investigate is if a complaint is made with the sole intent of embarrassing government or is made for some oblique purpose. This would be refused on the basis that the complaint is frivolous, vexatious, or not made in good faith.

Complainants sometimes expect an investigation to uncover information that they could use for another purpose like a court action. This is an unrealistic expectation. The specific information obtained during investigation is not shared with either the complainant or the authority being complained about. However the authority is made aware of the nature of the complaint. If the complaint is substantiated the Ombudsman will give recommendations, with the necessary justification for them, to the authority and will notify the complainant. The only information the complainant can reasonably expect to obtain is whether the complaint is substantiated or not.

When is delay unreasonable?

In 2000 there were twelve complaints related to the issue of unreasonable delay. In most cases, the complainant was waiting for a decision from an authority. With half of these complaints, once the authority was notified that the Ombudsman had received a complaint, the necessary action was taken and there was no further delay. Once the delay no longer exists the investigation ceases as the originating complaint is only about the delay, not about the adequacy of the action.



An investigation of a complaint of unreasonable delay has a very high priority, as the lack of a decision or action can often prejudice the person waiting by not allowing them to take any further action.

Delay is unreasonable whenever service to the public is postponed improperly, inconsistently, unnecessarily or for some irrelevant reason.

In only one instance in 2000 did the Ombudsman carry out a full investigation on a complaint of unreasonable delay. In that instance the Ombudsman made a distinction between delay and unreasonable delay.

The primary purpose of the investigation was to determine if there was delay. If this was substantiated, the secondary purpose would be to examine the reasons for the delay to determine whether it was an unreasonable delay.

In this particular investigation, although there was delay, it was not found to be unreasonable delay.

Delay could be unreasonable if:

- no reasons are given for the delay;
- the authority has not communicated appropriately with the complainant about the delay;
- any inconsistent treatment resulting in delay is not explained;
- the factors contributing to the delay are unfair, irrational or illogical; or
- discretion used in making a decision has not been properly exercised.

Does public accountability include saying you're sorry?

Often a complainant would like an apology to be one of the outcomes of an Ombudsman investigation. Apologies are an important part of our social fabric, because a sincere expression of regret has a lot of power to mend and to allow all involved in a situation to move on.

An apology, however, is more than saying you're sorry. It has several important components. First there needs to be an acknowledgement of wrongdoing, an explanation of why the wrongdoing took place, an expression that harm was not intended and an expression of regret. An acknowledgement of harm to the victim and an offer of reparation are essential.

When an Ombudsman complaint is substantiated, in addition to other recommendations, the Ombudsman may require that the authority write a letter to the complainant. The recommendation requires the authority to acknowledge the validity of the complaint, to explain what went wrong and why, and to advise the complainant what steps have been taken or are proposed to correct things.

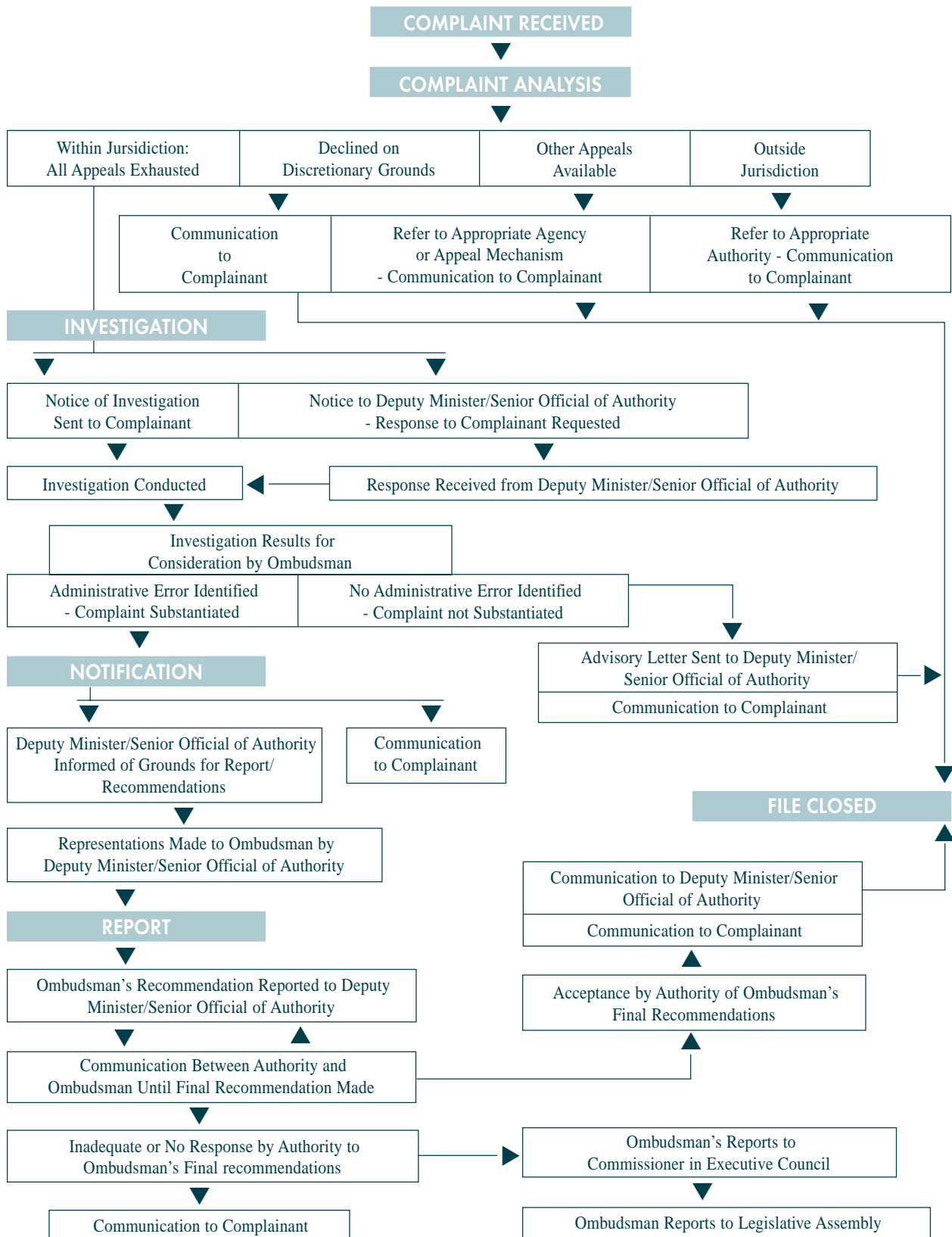
Although the Ombudsman stops short of requiring an authority to make an apology, the recommendation, when given effect, is an acknowledgement of error and is a demonstration of public accountability. Such communication makes it possible for the parties to mend their relationship and for the authority to foster and maintain public confidence.

*"Sometimes fairness means having to say you're sorry."
Dulcie McCallum,
former B.C. Ombudsman*





Ombudsman's Flow Chart of Complaints





Statistical Summaries

Jurisdictional Ombudsman Complaints Received in 2000 (by Authority)

Authority	Under Investigation	Otherwise Resolved	Total Complaints
Community & Transportation Services	2	8	10
Economic Development	–	1	1
Education	2	2	4
Government Services	–	4	4
Health & Social Services	1	22	23
Justice	–	4	4
Public Service Commission	3	4	7
Renewable Resources	1	2	3
Whitehorse Correctional Centre	2	10	12
Yukon College	1	1	2
Yukon Housing Corporation	–	2	2
Yukon Human Rights Commission	1	–	1
Yukon Legal Services Society	–	2	1
Yukon Medical Council	1	–	1
Yukon Utilities Board	–	1	1
Yukon Workers' Compensation Health & Safety Board	3	7	10
Total Complaints 2000	17	69	86
Total Complaints 1999	25	96	121

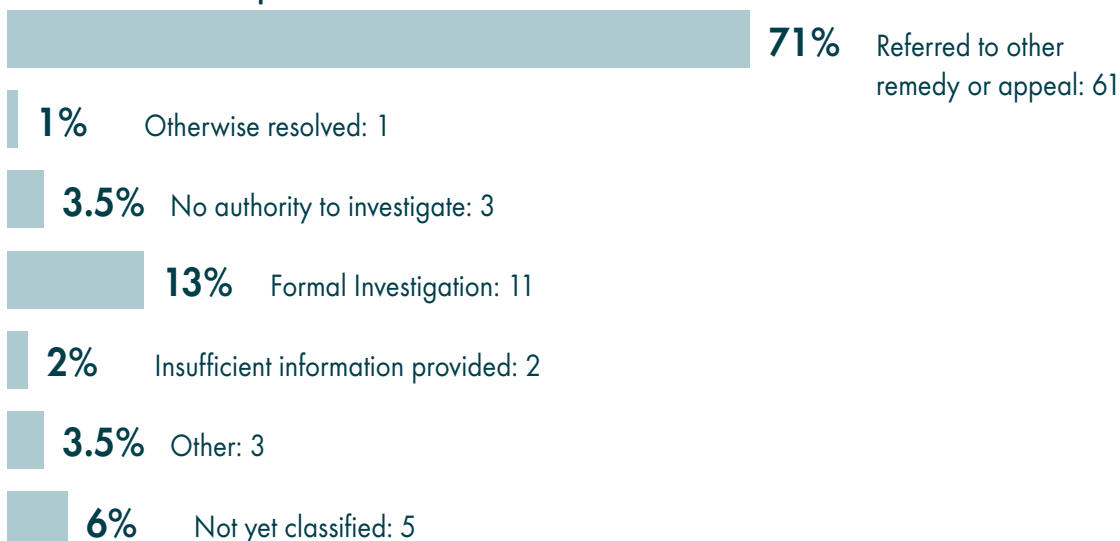


Resolution of Jurisdictional Ombudsman Complaints Received in 2000

Total Complaints Received in 2000	86
Total Ombudsman complaints opened as investigation	12
Ombudsman complaints under analysis	6
Total Ombudsman complaints otherwise resolved	70

Note: these numbers may include complaints not yet classified as of December 31, 2000.

Resolution of Complaints Received in 2000



Investigations Processed in 2000

Brought forward from 1999	32
Opened in 2000	12
Total	44
Completed in 2000	17
Carried over to 2001	27





Web Site Links

- **Alberta Freedom of Information and Protection of Privacy Publications**
Several on-line publications on privacy. Of particular interest is the "Contractors' Guide to the *Freedom of Information and Protection of Privacy Act*" - a pamphlet that explains to contractors to the Government of Alberta how the *Freedom of Information and Protection of Privacy Act* affects them.
http://www.gov.ab.ca/foip/other_resources/index.cfm
- **British Columbia Information and Privacy Commissioner**
Includes legislation, orders, information on decisions, investigations as well as other reports, information about the office, policies, news releases, publications and useful links.
<http://www.oipcbc.org/>
- **Government of Yukon**
Home page of our local government. Links to Yukon facts, travel, government, government leaders, and news.
<http://www.gov.yk.ca/>
- **International Ombudsman Institute**
Worldwide organization of Ombudsman offices.
<http://www.law.ualberta.ca/centres/ioi/index.htm>
- **Ontario Information and Privacy Commissioner**
Includes Access and Privacy Acts, annual reports, a selection of investigations, policy papers, orders that have been issued by the office and links to other relevant sites.
<http://www.ipc.on.ca>
- **Open Government Canada**
A freedom of information coalition seeking a national voice for freedom of information users.
<http://opengovernmentcanada.org>
- **Privacy Commissioner of Canada**
Home Page of the Federal Privacy Commissioner. Links to Privacy Acts, reports, presentations and numerous sites dealing with e-commerce privacy.
<http://www.privcom.gc.ca>
- **Yukon Office of the Ombudsman**
Information about the Yukon Ombudsman and Information & Privacy Commissioner.
<http://www.ombudsman.yk.ca>

