

**GNWT RESPONSE TO COMMITTEE REPORT 9-17(5)  
REPORT ON THE REVIEW OF THE 2012-2013 ANNUAL REPORT OF THE INFORMATION  
AND PRIVACY COMMISSIONER OF THE NORTHWEST TERRITORIES**

The NWT *Access to Information and Protection of Privacy Act* ("the Act" or "ATIPP Act") became law in 1996. It was created to promote access to information that the government creates and receives, and to protect individual privacy rights related to that information.

Under the Act, the Information and Privacy Commissioner is an independent officer appointed for a five-year term. The Act requires the Commissioner to file an annual report on her activities. The Commissioner may include in her report recommendations for amending the legislation to improve the Act's efficiency and effectiveness.

The Standing Committee on Government Operations (the "Standing Committee") conducted a review of the Information and Privacy Commissioner's 2012-2013 annual report. The report summarizing their review was tabled in the Legislative Assembly on June 5, 2014. It included two recommendations.

The following is the Government of the Northwest Territories (GNWT) response to the recommendations contained in the Committee Report 9-17(5) "*The Report on the Review of the 2012-2013 Annual Report of the Information and Privacy Commissioner of the Northwest Territories*".

**Recommendation One**

*The Standing Committee on Government Operations recommends that the Government of the Northwest Territories make every effort to complete the work necessary to bring municipalities under access to information and protection of privacy legislation; and that the government table its review report and discussion paper in the 2014 fall sitting, identifying next steps and resources necessary to complete this legislative initiative within the life of the 17<sup>th</sup> Assembly. (Committee Report 9-17(5); page 7)*

**GNWT Response**

The GNWT acknowledges the importance of this issue identified by the Information and Privacy Commissioner and the Standing Committee on Government Operations and continues to be committed to bringing forward a report within the life of the 17<sup>th</sup> Assembly.

In order to advance discussions with municipalities on this, the Department of Municipal and Community Affairs (MACA) completed a discussion paper, which was distributed to municipal stakeholders on September 23, 2014. (Appendix A) The Municipal Access and Privacy working group, consisting of representatives from MACA, the Department of Justice, the Northwest Territories Association of Communities and the Local Government Administrators of the Northwest Territories were consulted on the initial draft of the discussion paper. MACA will continue to engage the working group as this initiative advances.

The discussion paper provides a brief overview of the existing *Access to Information and Protection of Privacy Act* and its administration, and asks community governments to provide information about how implementation of access and privacy legislation may affect their day-to-day operations.

The GNWT acknowledges the delay in the delivery of the What We Heard report and anticipates the report will be tabled in the March 2015 session.

### **Recommendation Two**

*The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide an updated detailed progress report to this Assembly on work done towards a comprehensive review of the Access to Information and Protection of Privacy Act, and that updates to the Act be introduced during the life of the 17<sup>th</sup> Assembly. (Committee Report 9-17(5); page 8)*

### **GNWT Response**

The GNWT agrees with Standing Committee that the work relating to the comprehensive review of the *Access to Information and Protection of Privacy Act* must continue to advance. The Department of Justice, GNWT Access and Privacy Office ("Access and Privacy Office") has completed an updated progress report on the review, (Appendix B).

As the updated progress report indicates the Department of Justice anticipates providing a report on the comprehensive review of the Act, including recommendations for legislative amendments to Standing Committee during the life of the 17<sup>th</sup> Assembly.

This work continues to be the priority of the Access and Privacy Office; however the pace of work was significantly impacted by the volume of access to information requests related to the Independent Assessment Process (IAP). The Access and Privacy Office experienced a high volume of requests in 2013-2014. The deadline for applications under the IAP was September 19, 2012 however; the hearings (and related access requests) are expected to continue until Spring 2016. Current statistics for 2014-2015 indicate a decrease in the volume of requests. A reduction in the volume of access requests will allow the Department of Justice to refocus staff resources on the comprehensive review of the ATIPP Act.

### **Requested Updates**

#### **Implementation of New Health Information Privacy Legislation**

*The Standing Committee on Government Operations Committee notes that it is incumbent upon the Department of Health and Social Services and the Health and Social Services Authorities to ensure forms are clear regarding consent, and encourages the Department to work with the Authorities to ensure staff are educated on their responsibilities under the Health Information Act (HIA) and the public understands how the HIA will affect their medical information. Committee Report 9-17(5); page 6)*

The Government of the Northwest Territories agrees that we need to make every effort to ensure that our residents have ample opportunity to understand the provisions of the HIA, and how it may affect them in their interaction with the health system.

A public awareness campaign is part of the Department of Health and Social Services implementation plan for the HIA. Part of this public awareness campaign will address the patient's rights regarding consent and their ability to provide instructions on how their information may be shared. As part of the implementation of the HIA, the Department will also

be revisiting forms and notices currently used in the health system to ensure they comply with the HIA, including the requirement to provide information describing how the patient's information may be collected, used, or disclosed.

To address staff education on the HIA, the Department of Health and Social Services is developing a plain language HIA Manual that will include template forms, letters and notices. Online training and information tools will also be developed to target staff familiar with providing healthcare using electronic devices. Online training workshops and in-person training will be rolled out across the NWT and will be delivered to both Authority staff and private physicians and pharmacists.

The Department of Health and Social Services recognizes the importance of ensuring that the public, staff, and other stakeholders understand what this significant piece of legislation means for patient and practitioner rights and obligations.

### **Proactive Disclosure or "Access by Design"**

*The IPC recommended that any review of the ATIPP Act should include a consideration of the benefits of including the requirement for public agencies to plan for privacy implications at the outset when developing legislation, programs, policies or services. This can be done by requiring privacy impact assessments and instituting "privacy by design" This approach is a proactive way to ensure access to more government information, notes the IPS, suggesting that the GNWT should be exploring way to do this through new and less expensive online technologies to prove a more streamlined and less formalized route to access more govern records. As the IPDS noted previously "there is no good reason not to be providing more access to more government information proactively"*

*The Committee feel that there is considerable merit in this approach noting that in this information age it can only be of benefit to the government to plan for access and privacy considerations at the outset, rather than having to reply on remedial solutions in those instances when government activities are found to be inadequate under the ATIPP Act. Committee Report 9-17(5); page 7)*

### GNWT Response

The GNWT has supported the privacy by design principle since 2010. The Access and Privacy Office developed a three step Privacy Impact Assessment (PIA) process of determining and responding to privacy risks associated with projects involving personal Information. The GNWT PIA tool is made up of the Preliminary Privacy Screening Tool, the Preliminary Risk Assessment Module and the Privacy Analysis Module.

The GNWT PIA tools are a requirement under the GNWT Systems Implementation Methodology. This methodology, developed through the Department of Finance, Chief Information Officer, requires GNWT departments to incorporate PIA's at the earliest stage of systems development.

The GNWT further supports the Access by Design principle noted by Standing Committee and recognizes the public is better served and better informed when the principals of routine disclosure and active dissemination are applied appropriately. To this end, the Access and Privacy Office updated the ATIPP Policy and Guidelines Manual sections specific to information disclosure and dissemination to ensure the manual provides sufficient direction to public bodies

in this regard. The updated section was distributed to GNWT access and privacy coordinators through the Access and Privacy Administration Committee in 2012 as well as the Communications Coordinating Committee in 2013.

Routine disclosure and active dissemination principles will continue to be considered during the review of the ATIPP Act.

### **Start a Discussion about ATIPP for Aboriginal Governments**

*The Committee notes, that where the GNWT enters into agreements with other governments, the GNWT should be advising these governments as to its obligation under the ATIPP Act, so that there is a clear understanding of what information the GNWT may be required to disclose. This also point to the value of "access by design" so that the GNWT anticipate, in advance, the possibility of such request and can factor this into planning future intergovernmental agreements or similar arrangements entered into with parties not subject to ATIPP. Committee Report 9-17(5); page 7)*

### **GNWT Response**

The GNWT recognizes that aboriginal governments, as well as businesses, and/or contractors may not be aware that information they create or submit to a public body is subject to the access and privacy provisions of the ATIPP Act. The Access and Privacy Office will bring forward this matter to the Access and Privacy Administration Committee to discuss the best method to address this issue.

**ACCESS TO INFORMATION AND  
PROTECTION OF PRIVACY ACT  
(ATIPP Act)**

**POSSIBLE APPLICATION OF ATIPP ACT TO  
COMMUNITY GOVERNMENTS**

**DISCUSSION PAPER**

## EXECUTIVE SUMMARY

The Department of Municipal and Community Affairs (MACA) in consultation with a working group made up of representatives from MACA, the Department of Justice, the Northwest Territories Association of Communities (NWTAC) and the Local Government Administrators of the Northwest Territories (LGANT) has prepared this discussion paper to obtain feedback from community governments on the potential application of the *Access to Information and Protection of Privacy Act* (ATIPP Act) to community governments.

Originally enacted in 1996, the ATIPP Act gives individuals a legal right to request information held by NWT public bodies and institutions. The ATIPP Act also provides for the correction and protection of personal information that is collected, used and disclosed by public bodies and institutions.

Currently, the public bodies subject to the provisions of the ATIPP Act include government departments, agencies, boards, commissions and corporations but do not include community governments (with the exception of the Tlicho Community Governments).

A background section explains the principles and provisions within the ATIPP Act, defines key terms such as a “public record” and “personal information” and outlines how the ATIPP Act is administered by a public body. This section also examines the type of public and personal information that community governments often hold.

Three main topics are presented and discussed:

- Applying the ATIPP Act to Community Governments;
- Implementation Issues; and,
- Financial Resources.

Seven (7) specific questions have been asked within the paper to help the community governments frame their comments. The Working Group will use the information it receives to inform and organize a more formal consultation process with community governments regarding the potential application of the ATIPP Act to community governments.

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	i
<b>1 INTRODUCTION .....</b>	<b>1</b>
<b>2 BACKGROUND .....</b>	<b>2</b>
<b>2.1 Access to Information and Protection of Privacy – Basic Principles .....</b>	<b>2</b>
<b>2.2 The ATIPP Act and Regulations.....</b>	<b>2</b>
<b>2.3 Administration of the ATIPP Act and Regulations.....</b>	<b>3</b>
<b>2.4 Community Governments - Responsibilities and Record-Keeping .....</b>	<b>6</b>
<b>3 ATIPP FOR COMMUNITY GOVERNMENTS – ISSUES AND INFORMATION .....</b>	<b>9</b>
<b>3.1 Applying the ATIPP Act to Community Governments .....</b>	<b>9</b>
<b>3.2 Implementation Issues.....</b>	<b>9</b>
<b>4 CONCLUSION / NEXT STEPS .....</b>	<b>11</b>
<b>APPENDIX A: REFERENCES .....</b>	<b>12</b>

## 1 INTRODUCTION

Over the last thirty years, the public's right to know and the protection of personal information are principles that have been put in practice through implementation of Freedom of Information legislation at the federal and provincial / territorial level.

In the Northwest Territories, the *Access to Information and Protection of Privacy Act* ("the Act" or "ATIPP Act") came into effect in 1996. Similar to federal legislation, the *ATIPP Act* gives individuals a legal right to request information held by NWT public bodies and institutions. The *ATIPP Act* also provides for the correction and protection of personal information that is collected, used and disclosed by public bodies and institutions.

Currently, the public bodies subject to the provisions of the *ATIPP Act* include government departments, agencies, boards, commissions and corporations. Under the *ATIPP Regulations*, community governments (with the exception of the Tlicho Community Governments) are not designated as public bodies. As a result, the *ATIPP Act* does not apply to most community governments in the NWT.

For many years, the NWT Information and Privacy Commissioner (appointed under the *ATIPP Act*) and the Legislative Assembly's Standing Committee on Government Operations have been recommending that the GNWT take steps to bring municipalities under the *ATIPP Act*.

In response to these recommendations, Department of Municipal and Community Affairs (MACA) has established a working group made up of representatives from MACA, the Department of Justice, NWTAC and LGANT to examine the issue of municipal access to information and protection of privacy legislation. This working group was consulted on the initial draft of the discussion paper. MACA will continue to engage the working group as this initiative advances.

This discussion paper is designed to obtain feedback on what such a change might mean for community governments, including implementation issues and financial implications.

Section 2, explains the principles and provisions within the *ATIPP Act*, defines key terms such as a "public record" and "personal information" and outlines how the *ATIPP Act* is administered by a public body. A brief examination of the type of public and personal information that community governments often hold is also provided.

In section 3, the potential implications of applying *ATIPP* to community governments are presented and discussed. Within this section, the Working Group has posed seven (7) specific questions to help community governments frame their comments.

Once the feedback provided in response to the Discussion Paper has been reviewed, it will be used to develop a report and recommendations for future action with regards to municipal access to information and protection of privacy.



## 2 BACKGROUND

This section provides background information on the principles of access to information and protection of privacy, summarizes the key provisions in the ATIPP Act and Regulations and explains how this legislation is administered and supported.

### 2.1 Access to Information and Protection of Privacy – Basic Principles

Providing an individual (or the “public”) with access to government information while also ensuring that personal information held by government bodies is protected involves a careful balancing act between competing interests.

There are several basic principles that help guide how a government or public body is supposed to manage and disclose the information it holds. These include:

- An individual (the public) has a right of access to records held by a government or public body;
- Some types of information may be exempt from the right of access. Examples include information considered privileged, or prejudicial to intergovernmental relations, or information the disclosure of which would be an unreasonable invasion of privacy. ;
- A government or public body must protect an individual’s personal information and follow rules and guidelines in collecting, using and disclosing this information to others;
- An individual has the right to see the personal information that is held about them by a government or public body and has the right to request corrections to that information; and,
- A statutory officer of the legislative assembly is appointed to oversee how the legislation is applied. These powers typically include conducting reviews of decisions (to release or not release information) made by a government or public body and conducting investigations into complaints regarding privacy matters.

It should also be noted that many government or public bodies in Canada have policies under which they routinely release information to the public without requiring formal access to information requests. This is commonly done in instances where the information requested is not subject to an exemption from disclosure, is “reasonable” in terms of the amount of information requested and does not contain personal information about other individuals.

### 2.2 The ATIPP Act and Regulations

As noted earlier, the ATIPP Act and Regulations govern access to information and the protection of personal information held by government or public bodies in the NWT.

Some of the key definitions in the ATIPP Act are as follows:

“Applicant” – means a person who applies for access to a record;

“Personal Information” – means information about an identifiable individual, including,

- The individual’s name, home or business address or home or business telephone number
- The individual’s race, colour, national or ethnic origin or religious or political beliefs or associations

- The individual's age, sex, sexual orientation, marital status or family status
- An identifying number, symbol or other particular assigned to the individual
- The individual's fingerprints, blood type or inheritable characteristics
- Information about the individual's health and health care history, including information about a physical or mental disability
- Information about the individual's educational, financial, criminal or employment history
- Anyone else's opinion about the individual
- The individual's personal opinions, except where they are about someone else.

"Public Body" – means a department, branch or office of the Government of the Northwest Territories or an agency, board, commission, corporation, office or other body designated in the ATIPP Regulations;

"Record" – means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner. This does not include a computer program or other mechanism that produces records; and,

"Third Party" – means a person other than an applicant or a public body.

The *ATIPP Act* is organized in four parts:

**Part 1 Access to Information** describes how an access to information request is made and what the duties of a public body are when such a request is received.

**Part 2 Protection of Privacy** describes the duties of, and limitations on how, a public body uses personal information.

**Part 3 General** contains a number of provisions which have general applicability including the payment of fees, manner of giving notice, exercising of rights (by other persons), immunity from liability, confidentiality duties and immunity from prosecution.

**Part 4 Administration** contains provisions dealing with the appointment, duties and general powers of the Commissioner and other administrative matters such as the maintenance of a directory of all public bodies included under the Act and the making of regulations.

The **ATIPP Regulations** contain supplemental information on various details such as definitions, delivery of requests for access to information, disclosure of health care and personal information and the estimation and payment of fees.

## 2.3 Administration of the ATIPP Act and Regulations

The Minister of Justice is responsible for the administration of the *ATIPP Act* and *ATIPP Regulations*.

The effective administration of the *ATIPP Act* and *ATIPP Regulations* within GNWT departments and NWT public bodies depends on three "pillars" of expertise and capacity detailed in the following sub-sections.

### 2.3.1 GNWT Access and Privacy Office

Housed within the Department of Justice, the GNWT Access and Privacy Office supports the administration of the legislation across all public bodies and provides a leadership role on ATIPP matters.

Key responsibilities include:

- Developing GNWT policies, guidelines and best practices to assist public bodies in administering the legislation;
- Developing, coordinating and delivering training courses on access and privacy within government and its public bodies;
- Maintaining the ATIPP Policy and Guidelines Manual for access and privacy coordinators;
- Providing guidance and support to access and privacy coordinators and senior management of all public bodies on the interpretation of the ATIPP Act and Regulations;
- Collecting statistical information for annual GNWT reporting;
- Maintaining the Access and Privacy Directory which is a public resource to aid the public on how to make an Access to Information Request and who to contact to make enquiries about information held by public bodies;
- Coordinating the government response to the Legislative Assembly's review of the Information and Privacy Commissioner's Annual Reports; and,
- Coordinating and implementing amendments to the ATIPP Act and Regulations.

With regards to training, the Access and Privacy Office offers the following courses:

General Access and Privacy Training – this is meant for employees of all public bodies subject to the Act. Lessons include the public's rights and the exceptions to those rights and the rules around the collection, use, disclosure and disposal of personal information.

Specific Access and Privacy Coordinator/Contact Training – this is specific training for those employees directly responsible for administering the ATIPP Act within a public body.

Advanced / Custom Access and Privacy Training – designed for a specific target audience or program area, these are customized seminars and advanced courses to address various specializations with departments and public bodies. These are developed upon request.

The Access and Privacy Office also provides support to the public by maintaining the Access and Privacy Directory and ensuring on-line access to the forms and instructions that an individual needs to make a request for:

- Access to Information;
- Correction of Personal Information; or,
- A review by the Information and Privacy Commissioner.

### 2.3.2 Public Body

The second pillar of the ATIPP system involves the public bodies which, under the Act, are responsible for how ATIPP functions within their organization.

The primary purpose of the *ATIPP Act* is to make public bodies more accountable to the public. Achieving this objective requires a public body, and its employees, to be more proactive and open

in their approach to disclosing information. In practice, this means providing easy or direct access to most government records without making an individual go through the formal process provided for in the Act. Where access to information requests are made, a public body is expected to make use of exceptions only as needed to ensure the public has the greatest possible access to government records.

The other goal of the *ATIPP Act* is to ensure there are rules for when and how public bodies can collect personal information, what they can use the information for once it is collected and the circumstances under which it can be disclosed to another public body or the general public.

The employees of a public body are required to balance the twin goals of ensuring access to most government records while protecting personal information from misuse or inappropriate disclosure.

The access and privacy training provided by the GNWT's Access and Privacy Office is intended to help employees of a public body become familiar with how this is done. Each public body has an Access and Privacy Coordinator/Contact person. Their role is to deal with formal access to information requests and aid in privacy matters. .

In addition, the GNWT's Access and Privacy Office also publishes an Access and Privacy Directory that:

- Lists the public bodies subject to the *ATIPP Act* and the contact information for all the Access and Privacy Coordinators/Contacts;
- Explains how to make a Request for Information;
- Explains how to Request a Correction of Personal Information;
- Explains how to Request a Review (by the Information and Privacy Commissioner); and,
- Explains how an estimate of the fees is determined (where an applicant is required to pay a fee for services).

The main duties required of a department or public body under the *ATIPP Act* are :

- To process formal access to information requests from receipt to disclosure of records, in keeping with the legislated time frames and requirements .
- Identify the exceptions to the right of access that may require denying records to individuals asking for the information
- Protect the personal information held by the public body from unauthorized access, collection, use, disclosure, and destruction.

o Information and Privacy Commissioner

The Information and Privacy Commissioner is the third pillar in the *ATIPP* system. The primary role of the Information and Privacy Commissioner is to provide an independent review of the decisions made by a public body under the *ATIPP Act*. The Commissioner may review the decision of a public body to not grant access to information or correct personal information. The Commissioner may also review how a public body has collected, used or disclosed an individual's personal information.

An individual may request a review by the Commissioner for any of the following reasons:

- The public body denied access to some or all of the information requested;
- The public body was unable to locate the information (or record) that the individual believes it has in its custody or control;

- The public body is taking too long to respond to the individual's request;
- The individual feels that the requested fee is too high;
- A request for correction of personal information has not been accepted;
- If they are a third party and a public body is going to give access to information that affects their interest without their agreement; and,
- The individual feels the public body's collection, use or disclosure of their personal information was inappropriate.

The Commissioner is also responsible for preparing and submitting an Annual Report to the Legislative Assembly that provides an assessment of the effectiveness of the *ATIPP Act* and a summary of the activities of the Commissioner during the previous year.

## **2.4 Community Governments - Responsibilities and Record-Keeping**

Given that the *ATIPP Act* focuses on access to information and protection of personal information, the types of information (or records) held by community government are an important consideration in determining what impact a potential application of the *ATIPP Act* to community governments may have.

Table 1 below summarizes the main responsibilities of a typical community government and the types of information or record-keeping involved:

**Table 1: Community Government Responsibilities and Record-Keeping**

<b>RESPONSIBILITIES</b>	<b>INFORMATION MANAGEMENT/RECORD-KEEPING</b>
<p>Administration</p> <ul style="list-style-type: none"> <li>○ Council &amp; Committees</li> <li>○ Legal services</li> <li>○ Bylaws &amp; Resolutions</li> <li>○ Human Resources</li> <li>○ Planning</li> <li>○ Elections</li> <li>○ Miscellaneous</li> </ul>	<ul style="list-style-type: none"> <li>○ Council meeting Minutes / Resolutions</li> <li>○ Legal opinions</li> <li>○ List of Bylaws &amp; Resolutions in effect</li> <li>○ HR Plan, personnel files, training, benefits, evaluation</li> <li>○ Strategic Plan or ICSP, Capital Plan</li> <li>○ Voters List</li> <li>○ Policies and Procedures</li> </ul>
<p>Corporate Services</p> <ul style="list-style-type: none"> <li>○ Financial services</li> <li>○ Taxation</li> <li>○ IT systems and support</li> <li>○ Procurement</li> <li>○ Customer service</li> </ul>	<ul style="list-style-type: none"> <li>○ Capital and Operating Budgets, Variance Reporting</li> <li>○ Borrowing, A/P, A/R, Financial Statements</li> <li>○ Property assessments, mill rates, tax arrears</li> <li>○ Tenders, RFPs, Contracts</li> <li>○ Accounts, Billing, Fee Collection</li> </ul>
<p>Economic Development</p>	<ul style="list-style-type: none"> <li>○ Economic Development Plan</li> <li>○ Business development &amp; employment opportunities</li> </ul>
<p>Community Services</p> <ul style="list-style-type: none"> <li>○ Culture &amp; Recreation</li> <li>○ Library</li> <li>○ Landfill</li> </ul>	<ul style="list-style-type: none"> <li>○ Events and programs</li> <li>○ Library services, Internet access</li> <li>○ Garbage, hazardous materials, burning, recycling</li> </ul>
<p>Planning &amp; Development</p> <ul style="list-style-type: none"> <li>○ Planning</li> <li>○ Permits</li> <li>○ Inspections</li> </ul>	<ul style="list-style-type: none"> <li>○ Land Use Plan, Zoning</li> <li>○ Land Inventory, Land Applications</li> <li>○ Development Plans, Building Permits, Inspections</li> </ul>
<p>Public Safety</p> <ul style="list-style-type: none"> <li>○ Firefighting &amp; ambulance</li> <li>○ Enforcement</li> <li>○ Emergency preparedness</li> </ul>	<ul style="list-style-type: none"> <li>○ Fire and ambulance capacity and services</li> <li>○ By-law enforcement</li> <li>○ Emergency Plan</li> </ul>
<p>Public Works</p> <ul style="list-style-type: none"> <li>○ Planning &amp; engineering</li> <li>○ Municipal works</li> <li>○ Road maintenance</li> <li>○ Water &amp; sewer services</li> </ul>	<ul style="list-style-type: none"> <li>○ Design, estimation, Project Briefs, project mgmt.</li> <li>○ Asset records, infrastructure maintenance and repair</li> <li>○ Water and sewer accounts</li> </ul>

Some of the information listed above is already available to the public including Council Minutes and Resolutions, Capital and Operating Budgets, Audited Financial Statements, Strategies and Plans, Policies and Procedures etc.

Information that isn't often shared with the public but that may be of interest to some people (through an ATIPP Request) might include details about Council activities, procurement practices and decisions, details about capital projects and project management, land-related applications and zoning decisions, development plans, applications and permits, inspection records etc.

With respect to the protection of personal information, most community governments are required to collect and manage the following types of personal information:

**Personnel records:** including job descriptions, salaries or wages, job evaluations, medical leave, training requirements, employee grievances or complaints, disciplinary matters etc.

**Voter's list:** including the name, address, sex and date of birth for eligible voters.

**Taxation records:** including name and address for property owners, assessment values, taxes assessed, accounts in arrears etc. (for defined municipal taxation areas)

**Customer accounts:** including the name, address and telephone numbers for community residents and the status of various accounts (water/sewer service, bylaw tickets, fees owing etc.)

**Planning / development:** may include land-related applications, development plans, building permit applications, inspection reports etc.

### **3 ATIPP FOR COMMUNITY GOVERNMENTS – ISSUES AND INFORMATION**

The different issues involved in potentially bringing community governments under the *ATIPP Act* range from matters of principle to implementation issues. For presentation purposes, these issues have been organized into several main discussion points.

Community governments are encouraged to provide their input on the questions raised here as well as any other issues related to the *ATIPP Act* that they have identified.

#### **3.1 Applying the *ATIPP Act* to Community Governments**

As mentioned earlier, the public's right to know and the protection of personal information are principles that have been put in practice through implementation of Freedom of Information legislation at the federal and provincial / territorial level over the last thirty (30) years.

In the eighteen years since the *ATIPP Act* first came into effect in the NWT, there have been repeated calls (by the NWT Information and Privacy Commissioner and the Legislative Assembly's Standing Committee on Government Operations) that the GNWT should take steps to bring municipalities under the *ATIPP Act*.

In essence, this recommendation stems from a matter of principle. Since community governments hold information that affects community residents (re: assets, programs and services, policies, financial information etc.) and collects and uses personal information (about its residents and other parties), there is a strong argument that community governments should be held to the same standard as other public bodies in regard to the disclosure of public information and the protection of personal information.

A quick look at other jurisdictions suggests that this argument is valid. While differences exist in how access to information and protection of privacy legislation has been written elsewhere, the Working Group understands that the NWT, Nunavut, the Yukon and Prince Edward Island are the only jurisdictions in Canada in which municipalities are not yet subject to some form of *ATIPP* legislation.

#### **3.2 Implementation Issues**

The Working Group's main purpose in preparing this Discussion Paper is to identify and better understand the key implementation issues that community governments may be faced with if they are brought under the provisions of the *ATIPP Act*.

In 2001/02, the Department of Justice conducted consultations with community governments about bringing them under the *ATIPP Act*. Concerns identified at that time included:

- How the provisions in the *ATIPP Act* would affect day to day operations and the general administration of community governments;
- Costs of administering the legislation and whether additional funding would be added to community governments' base funding; and,
- Training required in both access to information / protection of privacy and in records management.

Preliminary analysis conducted by MACA in 2007 also indicated that community governments would be faced with significant challenges relating to cost, capacity and administration.



However, the Working Group is also aware that the Information and Privacy Commissioner is receiving increasing numbers of inquiries from people who are concerned because a community government or authority has improperly collected, used or disclosed personal information. Please consider the following questions and provide feedback to the Working Group in writing to the addresses listed in Section 4.

### **Records Management**

Access to information legislation requires public bodies to respond to formal access to information requests within legislated time frames. Therefore, locating information that is requested in a timely manner is necessary.

- Q1: Does your community government have an individual within the municipal government responsible for the administration/organization of paper and electronic records?
- Q2: Does your community government have a written inventory/listing of paper records held by the program areas within your organization?
- Q3: Does your community government have an inventory/ listing of its electronic information held on your shared network drive?

### **How does your community government currently handle access requests or concerns about protection of personal information?**

Access & privacy legislation requires formal responses to requests by individuals for access to information and sets conditions for the protection of personal information held by an organization.

- Q4: Has your community government received requests for access to information in the past?
- Q5: If yes, were you typically able to provide the information requested?
- Q6: Does your community government have guidelines or policies to help decide how to respond to requests? If so, please provide a copy
- Q5: Has your community government received complaints about the improper collection, use or disclosure of their personal information in the past?
- Q6: If yes, were you able to address the privacy concerns to the resident's satisfaction? If not, please explain why.

If community governments have other concerns related the ATIPP Act that have not been covered in this paper, MACA is very interested in receiving this feedback as well.

Any additional comments should be submitted in writing to the address shown in Section 4.

#### 4 CONCLUSION / NEXT STEPS

This Discussion Paper is the first step in the Working Group's review of whether the *ATIPP Act* should be applied to community governments.

Each community government is encouraged to provide its comments and answers, in writing, to the address below, by October 15, 2014:

Corporate Affairs Division  
Municipal and Community Affairs  
600 Northwest Tower, 5201-50<sup>th</sup> Avenue  
Yellowknife, NT X1A 3S9  
Telephone: (867) 873-7613  
Fax: (867) 873-0152  
Email: <need to establish email address>

In closing, the Working Group would like to express its appreciation to the community governments for taking the time to respond to the issues and questions presented in this paper.

The Working Group will compile and review the information received and use this input to organize a more formal consultation process regarding the potential application of the *ATIPP Act* to community governments.

## APPENDIX A: REFERENCES

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### Publications

Department of Justice (GNWT), *“Access and Privacy Directory”* (September 2013)

Department of Justice (GNWT), *“ATIPP Policies and Guidelines Manual”* (December 1996)

Department of Executive and Intergovernmental Affairs (Government of Nunavut), *“Access to Information and Protection of Privacy: Annual Report”* (May 2008)

Government of the Northwest Territories, *“Access to Information and Protection of Privacy Act”*

Government of the Northwest Territories, *“Access to Information and Protection of Privacy Regulations”*

Government of Nunavut, Department of Community Government and Services, *“Records Management Policy”* (2005)

Information and Privacy Commissioner of Ontario, *“Ontario’s Municipal Freedom and Information and Protection of Privacy Act: A Mini Guide”* (2011)

Local Government Administrators of the NWT, *“Local Government Administrators Handbook”* (2012)

NWT Access and Privacy Commissioner, *“Annual Report”*, (2008/2009 to 2012/2013)

### Web Sites

British Columbia Office of the Information and Privacy Commissioner – [www.oipc.bc.ca](http://www.oipc.bc.ca)

Department of Justice (GNWT) – [www.justice.gov.nt.ca/ATIPP](http://www.justice.gov.nt.ca/ATIPP)

Office of the Privacy Commissioner of Canada – [www.priv.gc.ca](http://www.priv.gc.ca)

Information and Privacy Commissioner of Ontario – [www.ipc.on.ca](http://www.ipc.on.ca)

Manitoba Information and Privacy Policy Secretariat – [www.gov.mb/chc/fippa](http://www.gov.mb/chc/fippa)

Saskatchewan Ministry of Justice – [www.justice.gov.sk.ca](http://www.justice.gov.sk.ca)

Yukon Highways and Public Works – [www.atipp.gov.yk.ca](http://www.atipp.gov.yk.ca)



**APPENDIX B – UPDATED PROGRESS REPORT - Review of the Access To Information And Protection Of Privacy Act**

Initiative		Activity/Description	Deliverable	2013	2014	2015
Jurisdictional Review	Review national and international jurisdictional practises relating to access and privacy legislation.		<ul style="list-style-type: none"> <li>Examine leading international and Canadian practices for potential adoption.</li> </ul>	Completed		
	Scope of the Act	Review current scope of public bodies subject to the ATIPP Act and assess if the current application of the Act is appropriate.	<ul style="list-style-type: none"> <li>Report if the current application of the Act requires revisions.</li> </ul>	Completed		
	Administration of the Act	<p>Review the roles and responsibilities of public bodies for administering the ATIPP Act and dealing with requests for information and other processes under the legislation.</p> <p>The review includes addressing Recommendation 1A from SCOGO (Committee Report 1-16(4); page 2) relating to routine and active disclosure of information.</p>	<ul style="list-style-type: none"> <li>Advance protocols and practises which support proactive disclosure and active dissemination of information by public bodies which will lessen the need for the public to make access requests.</li> </ul>	Completed		
	Obtaining Access to Records	Review current processes for obtaining access to records, response time limits and the duty to assist applicants within the context of open government to enable increased access to government data while ensuring sensitive and confidential information is protected.	<ul style="list-style-type: none"> <li>Address technological changes and advancements that may affect how applicants are requesting information in today's electronic environment.</li> </ul>		In progress	
	Fees	Review the current fee structure and the provisions for fee waivers and consider if they are still appropriate.	<ul style="list-style-type: none"> <li>Prepare full jurisdictional review of fees and fee waivers for comparison.</li> </ul>	Completed		
	Exceptions to the Right of Access	<p>Review both the mandatory and discretionary sections (13 to 25) of the ATIPP Act which detail the limited exceptions to the right of access to information held by a public body and assess if the exceptions to access are clear and relevant.</p> <p>The review includes addressing Recommendation 1B, from SCOGO (Committee Report 1-16(4); page 2) relating to the application of discretionary sections.</p>	<ul style="list-style-type: none"> <li>Address concerns from SCOGO, public bodies and the Information and Privacy Commissioner regarding the application of exceptions under the Act.</li> </ul>		In progress	

Initiative	Activity/Description	Deliverable	2013	2014	2015	
	Protection of Privacy	<p>Review whether the privacy provisions relating to the collection, use and disclosure of personal information contained in the ATIPP Act are adequate for the protection of privacy</p> <p>The review will further include addressing a number of recommendations raised by the SCOGO relating to the protection of personal information.</p>	<ul style="list-style-type: none"> <li>In consultation with the Department of Finance, (Office of the Chief Information Office), continue to advance the development and implementation of greater privacy protocols and policies while balancing the need for public bodies to share information in order to effectively provide programs and services.</li> </ul>		In progress	
	Protection of Privacy (NEW)	The review will also assess if the current framework addresses the need for the sharing of personal information across public bodies for the delivery of programs and services.	<ul style="list-style-type: none"> <li>Address concerns from public bodies on issues related to sharing of personal information for the purpose of case management.</li> </ul>		Completed	
	Independent Review and Appeal	<p>Review the powers of the Information and Privacy Commissioner and the timelines and processes for conducting reviews and complaints under the ATIPP Act.</p> <p>The review includes addressing Recommendation 1B, from SCOGO (Committee Report 1-16(4); page 2) relating to the application of discretionary sections and Recommendation 4 from SCOGO (Committee Report 1-16(4); page 3) regarding extending the timelines for applicants to request a review of a decision on an access to information request by the Information and Privacy Commissioner.</p>	<ul style="list-style-type: none"> <li>Address concerns raised by the SCOGO, public bodies and the Information and Privacy Commissioner on issues related to the review and appeal sections of the Act.</li> </ul>		In progress	
Consultations with public bodies subject to the ATIPP Act	Regularly update public bodies subject to the Act, through the Access and Privacy Administration Committee, on the status of the review and consult on specific identified areas of interest. Additional updates and consultations with other GWNT committees such as the Technology Advisory Committee, Communications Coordinating Committee and Records Information Management Committee would also be conducted.	<ul style="list-style-type: none"> <li>Regularly scheduled updates and bulletins to Committees as noted.</li> </ul>		In progress		
SCOGO Recommendations	Regularly update progress report on the GNWT response to Standing Committee on Government Operations and ensure recommendations identified specific to the legislation are noted.	<ul style="list-style-type: none"> <li>Ensure recommendations identified in Progress reports are addressed in the comprehensive</li> </ul>		In progress		



Initiative	Activity/Description	Deliverable	2013	2014	2015
		review. Progress reports would identify			
Consult with the Information and Privacy Commissioner	Consult with the Information and Privacy Commissioner in relation to the draft comprehensive report on the review of the ATIPP Act.	<ul style="list-style-type: none"> <li>Feedback received from the Information and Privacy Commissioner is incorporated in the final report as appropriate.</li> </ul>			Year 3
Report on the Comprehensive Review of the ATIPP Act	Prepare Report on the Comprehensive Review of the ATIPP Act including recommendations on relating to the comprehensive review	<ul style="list-style-type: none"> <li>Provide Comprehensive Review of the ATIPP Act Report to the Standing Committee on Government Operations</li> </ul>			Year 3
Next Steps	Prepare update on Progress Report on the Comprehensive Review Report outlining next steps.	<ul style="list-style-type: none"> <li>Provide the SCOGO with the update on the progress report.</li> </ul>			Year 3

