

**GOVERNMENT OF THE NWT RESPONSE TO THE
STANDING COMMITTEE ON GOVERNMENT OPERATIONS REPORT 5-(16)(6)
ON THE REVIEW OF THE 2009-2010 ANNUAL REPORT OF THE INFORMATION
AND PRIVACY COMMISSIONER OF THE NORTHWEST TERRITORIES**

GNWT Response to 2009-2010 Recommendations

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 2009-2010 annual report. The report summarizing their review was tabled in the Legislative Assembly on May 17, 2011. It included two recommendations.

The following is the Government of the NWT (GNWT) response to the recommendations contained in the *“Committee Report 5-16(6) on the Review of the 2009-2010 Annual Report of the Information and Privacy Commissioner of the Northwest Territories”*.

Standing Committee Recommendations

Recommendation One

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories review the fee schedule to the Access to Information and Protection of Privacy Act to ensure that it is clearly worded and does not place an undue cost on persons requesting access to information. (Committee Report 5-16(6); page 2)

GNWT Response

Section 5(3) of the ATIPP Act and Schedule 2 of the regulations establish the maximum fees that may be charged for processing a “general” access request, and the fees that may be charged for a “personal” access request where the applicant is accessing his or her own personal information.

In the case of a request for an applicant’s own personal information, an applicant only pays copying fees, and only when those fees exceed \$25, in accordance with the rate

established in the fee schedule. Additionally, the Act provides limited situations where fees can be reduced or waived entirely if an applicant cannot afford to pay or there are other reasons justifying excusing the fee, or if the record relates to a matter of public interest.

For applicants requesting access to general information, the ATIPP regulations set out the maximum fees that may be charged for processing a request. This fee structure allows public bodies to charge modest fees to help offset the cost of providing applicants with access to records.

The GNWT appreciates the need for clarity and consistency in applying fees and will bring this issue forward by the GNWT Access and Privacy Office to the Access and Privacy Administration Committee for review. The GNWT further commits to undertake a jurisdictional comparison of access to information fees to assess if the current fee structure is in keeping with other governments.

Recommendation Two

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories institute requirements for proactive disclosure of employee bonuses and the salaries of senior employees, or bring forward legislation to this effect if legislation is necessary. (Committee Report 5-16(6); page 3)

GNWT Response

The ATIPP Act is structured to provide a balance between the public's right to access information held by government, and an individual's right to expect privacy protections regarding their information held by government.

The Act establishes a mandatory exception to disclosure of personal information if the disclosure may result in an unreasonable invasion of an individual's privacy (Section 23(2)). However, the Act further clarifies it is not an unreasonable invasion of an individual's personal privacy to disclose information relating to an employee's job classification, salary range, discretionary benefits or employment responsibilities (Section 23 (4e)).

There is a distinction between disclosures of "salary range" information for an employment position, and the "actual salaries" of senior employees. A salary range means a variety of fixed regular payments that are associated with an employment position, whereas an employee's individual salary is considered their personal information.

The current mechanism for responding to requests for disclosures of employee bonuses and salaries is to process the requests under the ATIPP Act. Requests for disclosure are addressed on a case-by-case basis according to the information involved and the

scope of the request. Disclosing the name and actual salary of employees under the current legislation is considered, in most instances, an unreasonable invasion of the individual's privacy.

Proactive disclosures of employee salary and bonuses would require amendments to the current legislative framework. At this time, the GNWT does not support changes to the existing mechanism to access this type of information; however, the Department of Human Resources will review the merits of a legislated approach and the impacts it may have on the GNWT public service. Timelines for this work will be dependent on the availability of resources and the legislative priorities of the new government.

