

**GOVERNMENT OF THE NWT RESPONSE TO THE  
STANDING COMMITTEE ON GOVERNMENT OPERATIONS REPORT 1-16(4) ON  
THE REVIEW OF THE INFORMATION AND PRIVACY COMMISSIONER'S  
2006-2007 AND 2007-2008 ANNUAL REPORTS**

**GNWT Response to 2006-2007 and 2007-2008 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 his/her activities. The Commissioner may include in his/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 2006-2007 and 2007-2008 annual reports. The report summarizing their review was tabled in the Legislative Assembly on October 22, 2009. It included six recommendations and requested one update on a recommendation from the 15<sup>th</sup> Legislative Assembly's Standing Committee on Accountability and Oversight report.

The following is the Government of the NWT (GNWT) response to the recommendations contained in the "*Committee Report 1-16(4) on the Review of the Information and Privacy Commissioner's 2006-2007 and 2007-2008 Annual Report*".

**Standing Committee Recommendations**

For clarity in reporting, the GNWT has responded to the Standing Committee's first recommendation in two parts (1a and 1b).

***Recommendation 1a***

***The Standing Committee on Government Operations recommends that the GNWT establish policies on routine and active disclosure of public records, following best practises in other parts of Canada. (Committee Report 1-16(4); page 2)***

**GNWT Response**

The GNWT recognizes the public is better served and better informed when the principals of routine disclosure and active dissemination are applied appropriately. Public bodies also benefit by avoiding the high cost of processing individual access-to-information requests.

The current ATIPP Policy and Guidelines Manual details procedures that access and privacy coordinators may follow to create routine disclosure and active dissemination practices specific to their public bodies. The establishment of these practices is an important part of a public body's commitment to an open exchange of information with the public that it serves.

The GNWT will continue to encourage public bodies to be proactive in establishing practices that foster routine disclosure and active dissemination. The Department of Justice will commit to reviewing the ATIPP Policy and Guidelines Manual sections that are specific to information disclosure and dissemination to ensure the manual provides sufficient direction to public bodies in this regard. The manual is expected to be updated by spring 2010, with distribution to GNWT access and privacy coordinators through the Access and Privacy Administration Committee.

***Recommendation 1b***

***The Standing Committee on Government Operations recommends even though discretionary exemptions exist that allow public bodies to withhold information, in situations where information is withheld, a full explanation of the rationale for the decision should be provided as a matter of course. (Committee Report 1-16(4); page 2)***

GNWT Response

The ATIPP Act (Section 9-1ci) requires public bodies to provide applicants the reason for refusing them information, citing specific sections of the Act which support the refusal. This is required for both discretionary exemptions, where the head of the public body may exercise discretion regarding disclosures of information, and mandatory exemptions, where the head must refuse to disclose information.

The GNWT recognizes the importance of providing rationale to applicants. The Department of Justice will commit to reviewing the appropriate sections of the ATIPP Policy and Guidelines Manual to ensure these requirements are clear for public bodies to follow. As noted previously, the revised ATIPP Policy and Guidelines Manual is expected to be updated and distributed by spring 2010.

***Recommendation 2***

***The Standing Committee on Government Operations recommends that the GNWT enhance its policies and guidelines on the use of portable electronic devices and the access and privacy issues that arise through the use of such devices. (Committee Report 1-16(4); page 2)***

GNWT Response

The GNWT recognizes mobile handheld devices are tools that assist employees in the performance of their duties; however, users must comply with government legislation, policies and guidelines related to use of these devices.

To clarify responsibilities of employees using devices such as cell phones, smart phones or personal digital assistants, the Informatics Policy Council approved the *Mobile Handheld Devices Policy 6003.08.10*. Employees using these devices are advised information transmitted or received on these devices are considered a government record and therefore subject to the access and privacy provisions of the ATIPP Act. The policy informs employees of their responsibility for the security of the personal information held on these devices. The policy also addresses asset and records management, security considerations and terms of acceptable use.

Access and privacy considerations for portable electronic devices such as laptops and flash drives are currently covered under the *Electronic Information Security Policy 6003.00.26*. The policy provides direction on implementing information security standards, guidelines and procedures. The policy and supporting guidelines are currently under review with the GNWT Security Officers Committee.

### ***Recommendation 3***

***The Standing Committee on Government Operations recommends that the GNWT undertake a comprehensive analysis of the review of the Personal Information Protection and Electronic Documents Act [PIPEDA] to determine the need for GNWT legislation to protect the personal information of the people of the NWT held by the private sector. (Committee Report 1-16(4); page 3)***

### **GNWT Response**

The Federal Standing Committee on Access to Information, Privacy and Ethics initiated a review of the federal legislation (PIPEDA) in November 2006 and completed public hearings in February 2007. Their report, the *Statutory Review of the Personal Information Protection and Electronic Documents Act, Fourth Report*, was tabled in May 2007 in the House of Commons. The federal government tabled their response to this report, titled *Government Response to the Fourth Report of the Standing Committee on Access to Information Privacy and Ethics*, on October 2007. The response addressed the 25 recommendations put forward by the federal standing committee.

GNWT Justice committed to review the federal government's response and report back to the 16<sup>th</sup> Legislative Assembly in fall 2008. This review was not completed due to an increase in requests for advice and support to public bodies on privacy and information sharing initiatives, along with a significant increase in Justice-specific access-to-information requests related to substantiating negative impacts of the residential school experience. It is anticipated this work will be advanced in the 2010/11 fiscal year, barring further increases in access-to-information requests (which take priority due to legislated, time-sensitive reporting requirements).

#### **Recommendation 4**

***The Standing Committee on Government Operations recommends the Access to Information and Protection of Privacy Act be amended to extend the period of time in which applicants may ask that a decision on a Request for Information be reviewed by the Information and Privacy Commissioner. (Committee Report 1-16(4); page 3)***

#### GNWT Response

The *ATIPP Act* (Section 51c) provides for service of documents in a manner that allows for verification of the date of delivery. The Department of Justice will commit to review time frames related to requests for reviews that have occurred since 2006, in order to assess if current time frame provisions under the Act are adequate or require amendments. This evaluation will include an examination of timelines related to when applicants are notified of decisions, when applicants notify the Information and Privacy Commissioner of a request for appeal, and when Departments are notified of the appeal.

#### **Recommendation 5**

***The Standing Committee on Government Operations recommends that the GNWT develop policies to address electronic records and their relationship to ATIPP, and that the GNWT provide training to employees on this issue. (Committee Report 1-16(4); page 3)***

#### GNWT Response

The GNWT has three policies specific to electronic information:

1. the *Management of Electronic Information*, 6003.00.20;
2. the *Email Use Policy*, 6003.10.11; and
3. the *Electronic Information Security Policy* 6003.00.26.

The *Management of Electronic Information Policy* provides overarching direction on information management in the electronic environment, including email. It assigns responsibility for management to the department that creates or receives the information. The policy covers factors such as the classification and destruction of electronic information, and the requirement for departments to manage their electronic information in compliance with this policy as well as the *ATIPP Act*, the *Archives Act*, the *Financial Administration Act* and all other GNWT legislation.

The *Email Use Policy* provides specific guidance on the use of GNWT email, explains the impact it has on shared technology resources, and provides clarity on related privacy, security and records management matters. Users of GNWT email are notified email is considered a government record and can be accessed under the *ATIPP Act*.

In conjunction with the above two policies, guidelines were developed for employees on managing email. The *Guidelines for Managing Electronic Mail Messages* gives direction

on effective and secure management of email. The policy and the guidelines are available on the Human Resources and Public Works & Services websites. Additionally, Records Management of Public Works & Services developed a Managing Electronic Records Course for employees. The course takes an in-depth look at the management of electronic records and how GNWT legislation, policy and guidelines apply to electronic records. The course has been routinely offered to GNWT employees since December 2004.

The third policy, *Electronic Information Security Policy*, provides direction on implementation of information security standards, guidelines and procedures. It creates baseline requirements and responsibilities for the secure use of electronic information, information systems and technologies. As noted in the GNWT's response to Recommendation 2, the policy and guidelines are currently under review with the interdepartmental Security Officers Committee. The intent of the review is to update the policy and guidelines to address emerging technologies and standards. An updated policy is anticipated to be completed by summer 2010.

**Update on a Recommendation from the 15<sup>th</sup> Legislative Assembly's Standing Committee on Accountability and Oversight Report – Re: Municipalities**

***The Committee has been informed that the Department of Municipal and Community Affairs will present a discussion paper to various territorial associations, municipal governments and the general public in the next two to three years. The Committee continues to support working toward this legislative initiative in a timely fashion and will monitor progress in the coming months. (Committee Report 1-16(4); page 4)***

GNWT Response

The Department of Municipal and Community Affairs (MACA) supports the Standing Committee's recommendation to conclude the work started in consultation with the Northwest Territories Association of Communities and the Department of Justice to explore options that may include legislative solutions to address access and privacy considerations.

Further analysis and broader consultation on the identified options has not been advanced due to other priorities. Currently, MACA is dedicating available resources to improving capacity to ensure community governments are capable of sustaining adequate programs and services for residents, and implementing their expanded authorities and accountabilities.

MACA anticipates advancing this work in the next two to three business cycles when resources become available. The Department will work closely with its partners to identify viable options that represent the collective interests of the GNWT, municipal governments and residents. MACA will be working with its partners over the coming months to develop a work plan.