



17th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of the
2010-2011 Annual Report
of the Information and Privacy
Commissioner of the
Northwest Territories

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE
2010-2011 ANNUAL REPORT OF THE
INFORMATION AND PRIVACY COMMISSIONER
OF THE NORTHWEST TERRITORIES**

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2010-2011 ANNUAL REPORT OF THE INFORMATION AND PRIVACY COMMISSIONER OF THE NORTHWEST TERRITORIES

INTRODUCTION

The Standing Committee on Government Operations has reviewed the 2010-2011 Annual Report of the Information and Privacy Commissioner of the Northwest Territories. Members would like to thank Ms. Elaine Keenan Bengts for her report and for her appearance before the Committee on February 14, 2012.

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly. Her primary role is to review and make recommendations on public bodies' decisions related to the Northwest Territories *Access to Information and Protection of Privacy Act* (the *ATIPP Act*). The *ATIPP Act* requires that public bodies demonstrate their accountability by making information accessible to the public while at the same time protecting the privacy of individuals. Seven review recommendations are summarized in this year's report. In most cases, the public bodies concerned accepted the Commissioner's recommendations.

The Commissioner's past reports have also included recommendations to departments for changes to improve the administration of the *ATIPP Act*. This year, the Commissioner noted with frustration that most such recommendations from previous years remain largely unaddressed. She therefore did not make new recommendations for legislative or administrative changes, but instead listed those previous recommendations she considers most important.

The Standing Committee is seriously concerned by the Government's lack of action on the recommendations of the Information and Privacy Commissioner and of previous Standing Committees for improving access to information and protection of privacy in the Northwest Territories. The Committee prioritized several of these recommendations in discussion with the Commissioner and is pleased to bring them forward to this Assembly.

RECOMMENDATIONS

Information and Privacy Legislation for Tax-Based Municipalities

In the public review, the Information and Privacy Commissioner identified her long-standing recommendation for municipal access to information and protection of privacy legislation as her first priority. The Standing Committee ranks this recommendation first on its list of legislative changes for Government consideration.

As the Commissioner notes, the three northern territories are the only Canadian jurisdictions which do not have information and privacy legislation for municipalities. The Commissioner is receiving increasing numbers of inquiries from people who are concerned because a municipal authority has improperly collected, used, or disclosed personal information. Municipalities, especially the tax-based communities, collect and retain significant amounts of personal information about citizens and employees. There is no recourse for citizens when this information is improperly used, nor are there any rules governing citizens' access to municipal information.

One method of regulating access to municipal government information and protection of privacy is to include local governments among the public bodies governed by the *ATIPP Act*. Freestanding access and privacy legislation for municipalities is another option for consideration. Both of these mechanisms are used in other jurisdictions: e.g., local government bodies are included in Newfoundland and Labrador's general access/privacy legislation (and defined to include specific municipalities), while Ontario has a freestanding *Municipal Freedom of Information and Protection of Privacy Act*.

Previous Standing Committees have supported the recommendation to make municipalities subject to access and privacy legislation. The Government's February 2011 response to the 16th Assembly's Standing Committee on Government Operations supported the recommendation in principle and acknowledged the importance of the issue. Nevertheless, despite the Government's 2008 and 2009 commitments to identify options and develop a work plan, no work was advanced on this initiative during the 16th Assembly.

The Department of Municipal and Community Affairs (MACA) cited implementation issues identified by community governments, including capacity, cost, and training, as factors in its delay in moving forward with this recommendation. The Committee notes, however, that the NWT Association of Communities has a Standing Policy on Access to Information and Protection of

Privacy which supports the Information and Privacy Commissioner's recommendation to the extent of urging MACA to prepare a discussion paper and commence consultation with stakeholders.

The Committee understands that small communities may not have the resources needed to implement access and privacy measures. At the public review, the Commissioner suggested that legislation be developed at least for tax-based municipalities. The Committee concurs. Members also understand that MACA has had limited resources in past years to undertake the necessary work. The Standing Committee maintains that it is time the Government made this recommendation a legislative priority and found the resources to act on it.

Recommendation One

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories implement access and privacy legislation for municipalities in consultation with stakeholders and bring forward a bill during the first two years of this Assembly.

Completion of the *Health Information Act*

Health records are among the most sensitive types of personal information held by public bodies. The Department of Health and Social Services or regional health authorities were involved in seven of the twenty new access and privacy review requests the Commissioner received in 2010-2011, mainly complaints of breach of privacy.

The Committee learned that the Commissioner is currently conducting a systemic review of the Yellowknife Primary Care Centre, or "super clinic," which is her first review of this type. The Commissioner noted that patient information in this type of clinic is accessible based on staff roles (e.g. receptionist, nurse practitioner, laboratory technician, doctor), but that she is finding the amount of information accessible to all staff is significant.

Members also heard from the Commissioner that implementation of electronic medical records is advancing and lack of legislation governing health information is a concern. In the Commissioner's view, patient control over health information is paramount. In the Commissioner's words, "information should follow the patient, but people should know where their information goes." The Committee concurs.

Work on Northwest Territories health privacy legislation has been underway for the past three years. The new *Health Information Act* will establish a framework for the collection, use, disclosure of, and access to personal health information. It is anticipated that the Information and Privacy Commissioner will be given oversight functions under this new legislation.

Recommendation Two

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories complete work on the new *Health Information Act*, taking into account consultation with the Information and Privacy Commissioner and the principle of patient control over patient information, and bring forward a bill within the first two years of this Legislative Assembly.

Review of the *Access to Information and Protection of Privacy Act* and the powers of the Information and Privacy Commissioner

As in her 2008-2009 and 2009-2010 reports, the Information and Privacy Commissioner recommended a general review of the *ATIPP Act* in this report. The 16th Legislative Assembly passed Motion 8-16(6) on May 18, 2011 in support of a review. That motion, moved by the Member for Nahendeh, read in part:

“Now therefore I move, seconded by the honourable Member for Yellowknife Centre, that this Legislative Assembly strongly recommends the Government of the Northwest Territories undertake a comprehensive review of the *Access to Information and Protection of Privacy Act*, including an examination of access and privacy legislation in other Canadian jurisdictions and all past recommendations of the Information and Privacy Commissioner, and bring forward a bill during the first two years of the 17th Assembly.”

The Government's response to Motion 8-16(6) states that the Government of the Northwest Territories' (GNWT's) Access and Privacy Office within the Department of Justice, with one dedicated position, is tasked with researching, developing, and implementing a wide range of policy tools and best practices. It was suggested that addressing issues through the use of policies and guidelines, rather than legislation, allows the GNWT to respond more flexibly to technological change.

While the Committee understands the advantages of policy in responding to a rapidly changing environment, the *ATIPP Act* came into force more than 15 years ago. In several Canadian jurisdictions, access and privacy laws contain clauses

requiring a review at a specific time (e.g. Nova Scotia) or at regular intervals (e.g. Newfoundland and Labrador, at five-year intervals). There is no similar review clause in the Northwest Territories legislation.

The Committee believes it is time for a thorough review, not only to ensure that the Act remains current and relevant, but also to address outstanding issues that have arisen in practice as the Act is implemented.

As noted in Motion 8-16(6), a complete review of the Act will provide an opportunity to reconsider all of the Information and Privacy Commissioner's previous recommendations, recently amended access to information and privacy legislation in other Canadian jurisdictions, as well as changes in information and communications technology.

A complete review of the Act will also provide an opportunity for the review of the role and powers of the Information and Privacy Commissioner. Consideration should be given, in particular, to empowering the Commissioner to make recommendations that are binding on public bodies, following her review of complaints related to their decisions on access and privacy.

Recommendation Three

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories undertake a comprehensive review of the *Access to Information and Protection of Privacy Act* and the role and powers of the Information and Privacy Commissioner, and bring forward a bill during the first two years of this Assembly.

A comprehensive review should, as well, address two other previous recommendations highlighted in the Commissioner's 2010-2011 report, namely: a review of the fee structure attached to a Request for Information under the Act for clarity of wording, consistency of application, and the cost burden for individuals compared to other Canadian jurisdictions; and the inclusion of a provision in the Act which would give the Information and Privacy Commissioner the discretion to expand the limitation period for seeking a review of an Access to Information request.

Educating children about privacy in the online world

The Committee strongly agrees with another of the Commissioner's outstanding recommendations, 5c), that "more must be done to educate our children and to provide them with the knowledge they need to protect themselves while they work in the wired world." Training on online privacy risks, including but not limited

to predators, phishing, scams and identity theft, should be added to the Northwest Territories school curriculum, starting in grade one.

Recommendation Four

The Standing Committee on Government Operations recommends the Department of Education, Culture and Employment develop curriculum for grades one to twelve regarding the protection of privacy in the online environment, in consultation with the Information and Privacy Commissioner, for implementation in the fall of 2014/15.

Progress report and implementation plan for recommendations

The 16th Assembly's Standing Committee on Government Operations supported many of the Information and Privacy Commissioner's recommendations for legislative changes and other Government actions to improve access to information and protection of privacy in the Northwest Territories, through Committee reports and motions in the House. The present Committee respectfully requests a report from the Government that lists all of the Committee recommendations presented in the House between 2008 and 2012 pursuant to the Committee's annual review of the Information and Privacy Commissioner's report; progress on the part of Government in addressing each of these recommendations; and what the Government intends to do in 2012/13 and subsequent years to implement recommendations that remain unaddressed.

Recommendation Five

The Standing Committee on Government Operations recommends the Government of the Northwest Territories provide a progress report and implementation plan for the Committee's recommendations concerning Access to Information and Protection of Privacy presented in the House between 2008 and May-June 2012, before the fall 2012 Session of the Legislative Assembly.

CONCLUSION

The Standing Committee on Government Operations respects and appreciates Ms. Elaine Keenan Bengts' work to implement and improve access to information and protection of privacy in the Northwest Territories. The Committee looks forward to real progress in this field over the course of the 17th Assembly.

Recommendation Six

The Standing Committee on Government Operations recommends the Government of the Northwest Territories provide a comprehensive response to this report within 120 days.

