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Report of the Ad Hoc Working Group
on
Access to Information and Protection of Privacy

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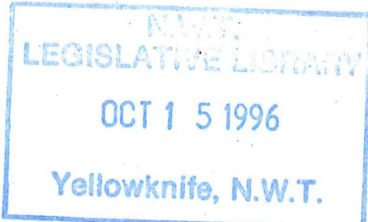


Table of Contents

	<u>Page</u>
Summary of Recommendations	1
Purpose of the Report	2
Background	2
Review Methodology	3
The Current Act	3
Options Considered	4
The Recommended Option	5
Implementation Schedule	8
Other Issues	10

SUMMARY OF RECOMMENDATIONS

Recommendation 1

The Working Group recommends that, in view of the current environment of fiscal restraint, the Access to Information and Protection of Privacy Act be implemented with costs limited to those costs necessary to meet the requirements of the Act.

Recommendation 2

The Working Group on Access to Information and Protection of Privacy recommends that the Act be amended to allow for the appointment of a contract Information and Privacy Commissioner with a term to end by March 31, 1999.

Recommendation 3

The Working Group on Access to Information and Protection of Privacy recommends that the Legislative Assembly adopt the Saskatchewan model for hiring an Information and Privacy Commissioner.

Recommendation 4

The Working Group on Access to Information and Protection of Privacy recommends that the Act be amended to remove the requirement that the Directory contain a general description of the categories of records in the custody or under the control of each public body.

Recommendation 5

The Working Group recommends that the amendments be made in a timely manner to allow the amended Act to come into force by December 31, 1996

Recommendation 6

The Working Group on Access to Information and Protection of Privacy recommends that the Minister of Public Works and Services should be responsible for overall implementation of the Act within the Government.

Purpose of the Report

Since the beginning of the 13th Assembly, there have been concerns raised about the implementation of the Access to Information and Protection of Privacy Act. Specifically, questions of timing (what is the most efficient way to organize the office given our current fiscal situation?), cost (can the Government afford the elaborate regime provided for in the Act in the current fiscal climate?) and responsibility (which Minister is responsible for ensuring implementation?) have been discussed.

An Ad Hoc Working Group of Cabinet Ministers and Ordinary Members was established to review the Act and determine the most appropriate method of dealing with Access to Information and Protection of Privacy. The group was to report back to Cabinet and the Standing Committee on Government Operations no later than September 1996.

Background

The Access to Information and Protection of Privacy Act was passed by the 12th Legislative Assembly in 1994. The Act is not currently in force. Under the legislation, it must come into force no later than December 31, 1996.

The Act provides the public with a right to access information held by government, subject to specific and limited exceptions (e.g. Cabinet confidences, information which is privileged, prejudicial to intergovernmental relations, harmful to the economic interests of the GNWT, or prejudicial to law enforcement), and establishes a regime for access to information and protection of privacy. The Act also allows individuals to correct personal information held by the government. In providing access, the Act protects the rights of third parties who may be affected by the release of information.

The Act provides for the appointment of an Information and Privacy Commissioner to hold office for a term of five years.

Review Methodology

In order to make an informed decision, the Working Group reviewed the following:

- the current Act ;
- the current Access legislation and practices across Canada;
- interjurisdictional information on Access Commissioner offices; and
- options for dealing with Access to Information (based on the extensive previous work and consultations done on Access).

The Current Act

The current Act provides steps for accessing information which protect the privacy rights of third parties.

The process for Access to Information under the Act is as follows:

- A person would make a written request for information to the government department or agency (public body) they believe has the information
- The public body will make every reasonable effort to respond to the application openly, accurately, completely and without delay. The public body has 30 days to provide the requested information (unless the time limit is extended or the information request is transferred to another public body).
- Depending on what is being requested, there are three scenarios:
 - a public body must provide information;
 - a public body must refuse a request; or
 - a public body has discretion to disclose or not disclose the information being requested.

If the public body provides the information, a processing fee could be charged. If the public body does not disclose the information, the applicant can apply to the Information and Privacy Commissioner within 30 days appealing the decision.

- The Information and Privacy Commissioner will review the public body's decision, prepare a written report with recommendations and the reasons for the recommendations and send the report to the public body and the applicant.

- Within 30 days of receiving the report, the public body must decide whether or not to follow the Information and Privacy Commissioner's recommendations and must give written notice of this decision to the Information and Privacy Commissioner and the applicant.
- If the public body does not follow the Information and Privacy Commissioner's recommendations, the applicant may appeal to the Supreme Court of the Northwest Territories.

If a third party is involved, they are notified about the request and given a chance to request that the information not be released.

Using the process similar to the one outlined above, individuals are given the right to access information about themselves and to request a correction of inaccurate personal information.

Options Considered

The Working Group considered six different options for providing Access to Information and Protection of Privacy:

1. Maintain Status quo;
2. Delay coming into force of the Act;
3. Repeal the Act;
4. Amend the Act to provide a simpler and more affordable statutory regime for Access to Information and Protection of Privacy;
5. Issue policy guidelines to provide Access to Information and Protection of Privacy; and
6. Combine the office of the Information and Privacy Commissioner with the office of the Languages Commissioner and, if legislated, the office of the Ombudsman

The Working Group felt the original rationale for the Act still existed and there was a need for an Access to Information and Protection of Privacy regime to be put in place by December 31. For this reason, the Working Group rejected the options of delaying or repealing the Act. The option of providing guidelines rather than legislation was also rejected. Members felt guidelines would not accomplish the intent of the Act. Guidelines would also not give the same level of certainty that access and protection of privacy were being provided consistently.

This left only two options specific to the Act: implement the Act as it stands or amend the Act.

The final option which dealt with combining the offices of the Information and Privacy Commissioner with other similar types of legislative officers (i.e. Languages Commissioner, Conflict of Interest Commissioner) was addressed as a separate issue from the implementation of the Act.

The Recommended Option

In reviewing the two final options, members considered the potential use of the Act. It is possible that there will be an inflated number of Access requests in the first year followed by a drop to a more consistent number of requests in succeeding years. However, based on the experiences of other jurisdictions, it is likely that there will be an average of between 70 and 90 requests each year with less than half of these being appealed to the Information and Privacy Commissioner. Members agreed that there needed to be a process in place to address requests but it would not have to be as complex as a process in one of the larger provinces where thousands of requests are received annually.

Overall, the Working Group agreed with the intent of the legislation. They felt it must proceed on schedule with implementation by December 31, 1996.

The primary concerns the Working Group has with the Act directly related to the impact of Division on this legislation and any regime established under this Act. Members believe it is crucial that the Act be flexible enough to allow each new territory to implement Access to Information in a way which is consistent with their goals and objectives. The Working Group did not want specific sections of the current legislation tying the hands of future governments.

It is important, when presenting the proposed amendments, that it is clear the rights to access and protection of privacy have been protected. What we are proposing is to reduce the potential difficulties for both territories on April 1, 1999 if the legislation were enacted as originally written. The amendments should provide the Access to Information and Protection of Privacy as originally intended in the most practical way with a focus on ensuring people can get the information they need.

Recommendation 1

The Working Group recommends that, in view of the current environment of fiscal restraint, the Access to Information and Protection of Privacy Act be implemented with costs limited to those costs necessary to meet the requirements of the Act.

As a result of their concern about Division, the Working Group is recommending two amendments to the Access to Information Act. The revisions preserve the integrity and intent of the Act while providing the flexibility for the two new Governments to determine their own direction in 1999.

Proposed Amendment 1 - Revise the section dealing with appointment of an Information and Privacy Commissioner.

The current Act allows only for the appointment of the Commissioner for a 5 year term. Members believe that this does not take into account Division and the need for flexibility to allow the new legislatures to make decisions about their access and privacy regimes.

The proposed amendment to the Act would allow for the first Commissioner to be appointed to a term not extending past March 31, 1999.

Members were particularly interested in the model used in Saskatchewan for hiring an Information and Privacy Commissioner. Rather than hiring a full time Commissioner, Saskatchewan uses a contract Commissioner. At the present time, this person is a lawyer who provides the service out of his law office. Compensation is based on an assumption that this is a position which would take one-third of the Commissioner's time. For this year, the total budgeted cost for the Saskatchewan Commissioner is \$81,000. After reviewing this arrangement in detail, the Working Group strongly supported this contracting arrangement with an established lawyer as the most favourable arrangement for the first Information and Privacy Commissioner for the NWT.

With the Act not coming into force until December 31, 1996, the time lines for requests and appeals allow for a slight delay in appointing a Commissioner. It may be possible for the appointment to take effect as late as April 1, 1997.

Recommendation 2

The Working Group on Access to Information and Protection of Privacy recommends that the Act be amended to allow for the appointment of a contract Information and Privacy Commissioner with a term to end by March 31, 1999.

Recommendation 3

The Working Group on Access to Information and Protection of Privacy recommends that the Legislative Assembly adopt the Saskatchewan model for hiring an Information and Privacy Commissioner.

Proposed Amendment 2 - Eliminate the need for a detailed file directory

There are two parts to the directory currently suggested in the Act: a list of all public bodies with the names and addresses of the contact positions, and a description of the categories of records or files each public body is responsible for.

Developing and maintaining a directory of files is a very costly and time-consuming process. Members had a concern about creating an elaborate records management system which would become obsolete in less than three years. What will be important within departments will not be an extensive file tracking system but knowledge of where the various files are.

What will be important to the public will be making the request to the right public body or knowing that it will be quickly passed along to the correct public body. Sections 5, 11 and 12 of the Act ensure that if a request is submitted to the wrong public body, they have an obligation to ensure it gets to the right place as quickly as possible. The requirements for a list of departmental contacts will remain in the Act.

Recommendation 4

The Working Group on Access to Information and Protection of Privacy recommends that the Act be amended to remove the requirement that the Directory contain a general description of the categories of records in the custody or under the control of each public body.

Recommendation 5

The Working Group recommends that the amendments be made in a timely manner to allow the amended Act to come into force by December 31, 1996

In reviewing the legislation, members did look at other issues including

- should appeals stop at the Commissioner rather than the Supreme Court; and
- should the initial point of contact be individual departments rather than a central location.

However, there was agreement that the basic framework proposed under the Act was acceptable. The only changes that were crucial were those which would allow a smoother transition when Division occurs.

The key for the members of the Working Group was to ensure that the Access to Information and Protection of Privacy Act could be implemented on schedule and in a way which was as economical and efficient as possible without changing the intent of the Act. They would like to see the Act, with the two amendments suggested, in place with a simple, straight-forward regime, leaving out the extra frills which add cost but do not significantly improve the public's ability to access information. Rather than creating a complex structure in anticipation of demand, members believe it is better to implement the Act and then determine over time what modifications might be required based on demand.

Implementation Schedule

This timeline for implementation of the Access to Information and Protection of Privacy Act is very tight. Some departments and agencies may not be fully prepared to deal with requests for information efficiently and effectively when the Act comes into force December 31, 1996. As well, there may be some carry-over of tasks not completed by Dec. 31, 1996.

Proposed Implementation Schedule

Date	Task	Responsibility
1996 July 24	<ul style="list-style-type: none"> Joint Working Group review draft Report 	Joint Working Group
August 22	<ul style="list-style-type: none"> Joint Working Final Report Drafting of Bill 	Joint Working Group Justice
Sept.	<ul style="list-style-type: none"> Report and recommendations of Joint Working Group to Standing Committee on Government Operations and to Cabinet Cabinet decision required re draft Bill and Ministerial responsibility for Access to Information and Protection of Privacy Minister responsible for Info. and Privacy begins preparation for implementation Minister responsible for Info. and Privacy informs senior management re Act's coming into force and implementation plans Departments and agencies designate position, address, telephone, fax for Directory Communications strategy prepared 	Joint Working Group Cabinet Min. Info. and Privacy Min. Info. and Privacy All Departments Min. Info. and Privacy
Oct. - Dec.	<ul style="list-style-type: none"> Bill introduced in House Bill review process Preparation for implementation including: <ul style="list-style-type: none"> Directory prepared, translated and printed Forms, brochures, posters and other public information prepared, translated and printed Fees schedule developed Regulations drafted Training program developed Guidelines Manual developed prior to staff training System designed for processing records, statistics, referrals Procedures developed for processing requests Terms of Reference for Commissioner developed Training (Workshops) for departmental staff Directory published and distributed Passage of Bill 	Min. Info. and Privacy Legislative Assembly Min. Info. and Privacy Min. Info. and Privacy Min. Info. and Privacy Justice Min. Info. and Privacy Min. Info. and Privacy Min. Info. and Privacy All Department Legislative Assembly Min. Info. and Privacy Min. Info. and Privacy Legislative Assembly
Dec. 31	<ul style="list-style-type: none"> Access to Information and Protection of Privacy Act, as amended, comes into force 	
1997 January February March	<ul style="list-style-type: none"> Training of staff and implementation completed Brochures and forms distributed Contract for Commissioner drafted 	Min. Info. and Privacy Min. Info. and Privacy Justice
April 1	<ul style="list-style-type: none"> Information and Privacy Commissioner appointed (by contract expiring Mar. 31, 1999) 	Legislative Assembly

Other Issues

Combining Information and Privacy Commissioner's Office with other Commissioners' offices

Members considered the option of combining the offices of the Information and Privacy Commissioner with the office of the Languages Commissioner, the Conflict of Interest Commissioner, and, if legislated, the office of the Ombudsman. There was strong support for looking at this option prior to the appointment of the next Languages Commissioner. However, this again was seen as a Division issue. Rather than tying the hands of the new governments, the members instead supported an appointment of the Information and Privacy Commissioner in a way which would allow the two new territories to make a decision on amalgamating offices in 1999.

Minister responsible for implementing Act

There has been no clear identification of which Minister would be responsible for ensuring the implementation of the Act within government. A review of other jurisdictions shows no consistent placement of this responsibility

Ministry Responsible	Jurisdiction
Minister responsible for Executive Council, Government Leader	New Brunswick, Yukon
Minister of Justice	Nova Scotia, Newfoundland, Saskatchewan
Chair, Management Board of Cabinet	Ontario
Minister of Finance and Corporate Relations	British Columbia
Minister of Culture, Heritage and Citizenship	Manitoba
Minister of Public Works, Supplies and Services	Alberta

There is a need for a single Minister to take responsibility. This would include maintaining the revised directory, preparing forms and other necessary paperwork. Much of the work is tied to records management, forms, and printing and publication. Therefore, the most appropriate department within the current GNWT structure to assume responsibility for the overall implementation of the Act would be the Department of Public Works and Services.

Recommendation 6

The Working Group on Access to Information and Protection of Privacy recommends that the Minister of Public Works and Services should be responsible for overall implementation of the Act within the Government.

Historical Files After Division

As part of the government's work on Division, some consideration must be given to the placement and ownership of government files after March 31, 1999.

