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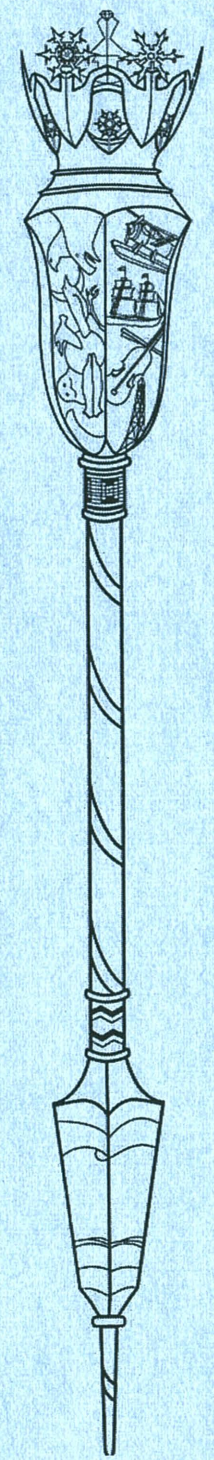

Northwest Territories Legislative Assembly

Standing Committee on Accountability and Oversight

Report on the Review of the Access to Information and Protection of Privacy Commissioner's Report 1999-2000

Chair: Mr. Charles Dent, MLA

MEMBERS OF THE STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

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Committee Researcher

Northwest Territories Legislative Assembly
Standing Committee on Accountability and Oversight

JUN 6 2001

THE HONOURABLE ANTHONY (TONY) WHITFORD, MLA
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Accountability and Oversight has the honor of presenting its Report on the Review of the Access to Information and Protection of Privacy Commissioner's Report 1999-2000, and commends it to the House.

Charles Dent, MLA
Chair

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Standing Committee on Accountability and Oversight
Review of the
Access to Information and Protection of Privacy Commissioner's Report
1999-2000

Background

The Legislative Assembly of the Northwest Territories enacted its first *Access to Information and Protection of Privacy Act* (ATIPP) on December 31, 1996. As is noted in the Access to Information and Protection of Privacy Commissioner's Annual Report for 1999/2000:

> ***"The Access to Information and Protection of Privacy Act was created to promote, uphold and protect access to the information that government creates and receives and to protect the privacy rights of individuals."***[1]

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly, but is required under section 68 of the *Access to Information and Protection of Privacy Act* to prepare and submit an Annual Report on the Commissioner's activities to the Legislative Assembly. Ms. Elaine Keenan Bengts was re-appointed as the Northwest Territories' Information and Privacy Commissioner on July 1st, 2000 and will serve a 5-year term.

The A*ccess to Information and Protection of Privacy Act* provides the public with a means of gaining access to information in the possession of the Government of the Northwest Territories and governmental agencies. However, under the legislation, there are exceptions that function to protect individual privacy rights, and enhance the ability of elected representatives to research and develop policy and run the business of the government. The Act also gives individuals the right to see and make corrections to information about themselves in the possession of a government body.

Committee Review of the Report

The Standing Committee on Accountability and Oversight met to review the Information and Privacy Commissioner's report for the 1999-2000 year on April 4th and 5th, 2001 and again on May 9th, 2001. The list of witnesses included Ms. Elaine Keenan Bengts, the Information and Privacy Commissioner; Mr. Lew Voytilla, Secretary to the Financial Management Board; Mr. Robert Taggart, Manager of Corporate Services for the Financial Management Board Secretariat; and Mr. Gerry Sutton, Acting Deputy Minister, Department of Justice.

During the review, it became apparent to the Members that there was a difference between the Information and Privacy Commissioner and the Financial Management Board when it came to the interpretation of the Act. In her report, the Information and Privacy Commissioner stated "This public body (FMBS) in particular continues to be less than co-operative in meeting the objectives of the Act." [2] Through discussions with Financial Management Board Secretariat officials, it was determined that FMBS believed it had acted in accordance with the legislation. The Committee has noted the gap between these two bodies and encourages them to work more cooperatively in the future.

The *Access to Information and Protection of Privacy Act* is a new piece of legislation for the Northwest Territories. At the time of this report, the legislation had been in effect for four years. In the course of working with the legislation, the Commissioner found deficiencies and problems. The Commissioner made six recommendations that, in her opinion, would increase the effectiveness and efficiency of the Act. During the review, both the Commissioner and the Acting Deputy Minister of Justice addressed the recommendations. In addition, an interjurisdictional survey was performed to determine the practice in other Canadian jurisdictions. After the interjurisdictional survey was completed, the Committee met again on Wednesday, May 9th, 2001 in Fort Smith to complete the review.

Committee's Response to Recommendations of the Information and Privacy Commissioner

Commissioner's Recommendation #1

The acceptance of recommendations made: An amendment be made to the legislation which would create a presumption that the recommendation made by the ATIPP Commissioner is deemed to be accepted thirty days after the recommendation is made unless, prior to that, the head of the public body issues a different decision.

The Committee heard from the Information and Privacy Commissioner that heads of government bodies consistently failed to respond to the Commissioner's recommendations within the legislated timeframe. As the Commissioner does not have the power to force a response and there are no consequences within the NWT legislation to promote a timely response, the process can become stalled for unnecessary periods of time. By implementing an action for failing to respond to the

Commissioner's recommendations within the legislated timeframe, the process would proceed in a more timely manner.

The Committee noted that there are no jurisdictions in Canada that treat the failure of a head of public body to respond to the Commissioner's recommendations as an acceptance of the recommendations. The Committee did find, however, that some jurisdictions have legislated the failure of the head of a public body to respond to the Commissioner's recommendations within the legislated time period to be a refusal. This concurs with what was presented by the Acting Deputy Minister of Justice. The Committee is not in support of the Commissioner's recommendation, however it would support an amendment to the legislation to reflect what is used in other jurisdictions.

The Standing Committee recommends the Access to Information and Protection of Privacy Act be amended to clarify that if the head of a public body fails to respond to the Commissioner's recommendations within the legislated time period, the head of the public body is deemed to have refused to follow the recommendation of the Information and Privacy Commissioner.

Commissioner's Recommendation #2

Service of documents: The Act be amended to provide that all notices required under the Act be delivered personally to the recipient, or be served in some other fashion which allows for verification of the date of delivery, and that the thirty-day reply period begin only after service has been so effected.

The Commissioner informed the Committee that there were problems with the amount of time taken for the delivery of notices. It may take 14 to 20 days for a mailed notice to get to a remote community. If a reply is made in the same fashion, there is a good chance that the thirty-day time frame will be missed.

The Committee draws upon section 51 of the *NWT Access to Information and Protection of Privacy Act*, which states:

> Where this Act requires notices to be given to a person, it is to be given
>
> (a) by sending it to that person by prepaid mail to the last known of that person;
> (b) by personal service; or
> (c) by substitutional service where so authorized by the Information and Privacy Commissioner

The Committee is not convinced that changes to our legislation are necessary. Section 51(c) of the NWT *Access to Information and Protection of Privacy Act* provides for service of documents in a manner that allows for verification of the date of delivery. The interjurisdictional survey found that there was only one jurisdiction, Yukon, which says a notice that is required to be given to a third party "may" be given by certified mail. All other jurisdictions indicated that the time taken for the delivery of mail was not an issue for them. When it comes to the means for delivery of notices, the Committee is of the opinion that our present legislation is adequate. Consequently, there was no need for the Committee to pursue this recommendation.

Commissioner's Recommendation #3

Privacy complaints: The Act be amended to provide clear statutory authority for the Information and Privacy Commissioner to review complaints related to violations of personal privacy and to make recommendations.

In her opening comments to the Committee, the Commissioner stated that the *Access to Information and Protection of Privacy Act* sets out a number rules about the government's collection and use of personal information, however the provisions of the Act are weak in terms of what happens if one of the rules are breached. Additionally, the Act does not specifically provide the authority for the Office of Information and Privacy Commissioner to review a complaint of invasion of privacy or improper use of personal information. The Commissioner would like the power to investigate and make recommendations in the event of a breach of privacy provisions of the Act. The Committee concurs that the Information and Privacy Commissioner should have this authority.

The Standing Committee recommends that the Access to Information and Protection of Privacy Act be amended to give the Commissioner the authority to investigate and make recommendations in the event of a breach of privacy provisions in the Act.

Commissioner's Recommendation #4

ATIPP Commissioner's powers: The Act be amended to:

i. Provide the ATIPP Commissioner with the power to subpoena documents and witnesses;

ii. Impose penalties for failure to comply with the time limits outlined in the Act;

iii.

iv. Provide for the withholding of performance bonuses from heads and deputy heads of public bodies that consistently fail to meet deadlines; and

v. Bring municipal governments under the Act.

Subpoena Powers

During the course of the Committee's review, Members were informed that there are basically two types of Access to Information and Protection of Privacy Commissioners in Canada. One is an ombudsman-like commissioner and the second exercises an adjudicator role. Presently the NWT legislation has the Commissioner acting in an ombudsman-like role. The Committee would like our Commissioner to remain in this capacity. It was also noted that in the majority of Canadian jurisdictions the Commissioner has subpoena power. The Committee is in favour of granting the power of subpoena to the Commissioner to deal with Access to Information issues but is not in favour of granting the power of subpoena to deal with privacy complaints. This follows the model that is used by the province of Ontario.

The Standing Committee recommends that the Access to Information and Protection of Privacy Act be amended to grant the Information and Privacy Commissioner subpoena powers when dealing with Access to Information issues.

Penalties For Lateness

The Committee does not in agree with the imposition of penalties for failure to comply with time limits outlined in the Act per se. However, they did note that the legislation does have a penalty under section 59(2) of the Act for willful obstruction of the Information and Privacy Commissioner or any other person in the exercise of the powers or performance of their duties under the Act. The Committee feels that it is

time to review the penalties for willfully disobeying the Act with a mind to making the consequences greater.

> ***The Standing Committee recommends that the Access to Information and Protection of Privacy Act be reviewed respecting the penalties for willful obstruction, violation or disregard of the legislation.***

Withholding Performance Bonuses for Failing to Meet Deadlines

The third part of this recommendation asks that there be a provision for withholding performance bonuses from heads and deputy heads of public bodies that consistently fail to meet deadlines. The Committee noted that this power is not granted in any other Canadian jurisdiction and does not support this action.

Municipalities to be Included Under the Act

The Commissioner also suggests that municipal governments should be brought under the *Access to Information and Protection of Privacy Act*.

The Committee undertook its own research and determined that there are two means by which municipalities could be made subject to this type of legislation. One way is to include municipalities under the existing *Access to Information and Protection of Privacy Act* and the second is through separate legislation specifically addressing communities. The Committee is of the opinion that more research and consultation on this matter is required.

> ***The Standing Committee recommends that the Department of Justice and the Department of Municipal and Community Affairs along with the Northwest Territories Association of Municipalities, Bands and other forms of community governments, explore whether or not there should be Access to Information and Protection of Privacy legislation for municipalities;***
>
> ***And further, whether municipalities should be included in the current legislation or whether separate legislation should be developed.***

Commissioner's Recommendation #5

Public Utilities Board: The Public Utilities Board be subject to the *Access to Information and Protection of Privacy Act.*

During the review process, the Department of Justice notified the Committee that the regulations for the Act had been changed to include the Public Utilities Board. This means that the Public Utilities Board is now subject to the *Access to Information and Protection of Privacy Act.* Consequently, there is no need to pursue this issue further.

Commissioner's Recommendation #6

Legislation with respect to Private Sector Privacy Standards: The Government of the Northwest Territories consider introducing legislation to respond to the recent passage of Bill C-6 (*Personal Information Protection and Electronic Documents Act*) by the Parliament of Canada.

The *Personal Information Protection and Electronic Documents Act (PIPEDA)* is federal legislation which gives Canadians new legal rights when their personal information is collected, used or disclosed in the course of a commercial transaction. Information supplied to the Committee by the Department of Justice indicates the Act will be implemented in three stages:

- As of January 1, 2001, the *Personal Information Protection and Electronic Documents Act* applied to businesses that collect personal information and are federally regulated.

- On January 1, 2002, organizations that collect personal health information, examples of which include drug stores, dental clinics and other health service providers, become subject to the *PIPEDA*.

- As of January 1, 2004, other private sector businesses that collect, use or disclose personal information in the course of a commercial activity will become subject to the legislation. The federal government may exempt organizations and/or activities in provinces that have their own privacy laws that are similar to the federal law.

In her opening comments to the Committee, the ATIPP Commissioner stated

> "The *Personal Information Protection and Electronic Documents Act* came into effect on January 1st of this year. This Act governs the protection of personal, private information in the private sector, as opposed to the public sector. In other parts of the country, there is a phase-in period to allow provincial governments to introduce their own legislation dealing with privacy issues in the private sector.
>
> However, because of the constitutional nature of the Northwest Territories, the Act is fully effective in this jurisdiction since January 1st. The effect of this is that complaints of invasion of privacy or improper use of personal information by the private sector will now be dealt with by the Federal Privacy Commissioner's office."[3]

This information was different from that which was presented in the Commissioner's report and different from the information provided by the Department of Justice. The Committee sent a letter to the Minister of Justice requesting clarification.

The Department responded that they understood that the application of *Personal Information Protection and Electronic Documents Act* in the Northwest Territories would be the same for both the provinces and the territories. The Department only recently became aware that there was a different interpretation resulting in the Act being applied differently in the territories as compared to the provinces.

In the Minister's response, it was also brought to the attention of the Committee that the federal Privacy Commissioner's Office had released a brochure titled "*The Personal Information Protection and Electronic Document Act: A Guide for Canadians*". This brochure states that the *PIPEDA* "covers all businesses and organizations engaged in commercial activity in the Yukon, the Northwest Territories and Nunavut" as of January 1, 2001. This is cause for concern. The federal *Interpretation Act* interprets the word "province" to include all three territories and it is not known why, in this situation, the territories would be treated differently from the provinces. Industry Canada, the federal department responsible for the administration of *PIPEDA,* has been contacted by the Department of Justice and is reviewing the situation. The Department of Justice has requested that Industry Canada make its position known to the GNWT. Further, the Department of Justice has undertaken its own review of the PIPEDA in order to examine the Act's application in the NWT.

The Standing Committee requests the Minister of Justice to keep the Standing Committee informed of any new developments in this issue. The Committee would also like to be supplied the positions arrived at by the NWT Department of Justice and Industry Canada. Until the issue is resolved, the Committee will not act upon this recommendation.

Cabinet Documents

During the review, a number of other issues relating to the ATIPP legislation were raised, researched and discussed by the Committee. One of these issues was public access to Cabinet documents. The Standing Committee is of the opinion that, in pursuit of a more open and accountable government, it is desirable to open up the public's access to Cabinet documents. Legislation from the different jurisdictions was reviewed and the Committee agreed that Alberta's legislation was what would be the preferred option for the Northwest Territories.

> 21(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.
>
> (2) Subsection (1) does not apply to
> (a) information in a record that has been in existence for 15 years or more,
> (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or
> (c) information in a record the purpose of which is to present background facts to the Executive Council or any of its committees or to the Treasury Board or any of its committees for consideration in making a decision if
> (i) the decision has been made public,
> (ii) the decision has been implemented, or
> (iii) 5 years or more have passed since the decision was made or considered.

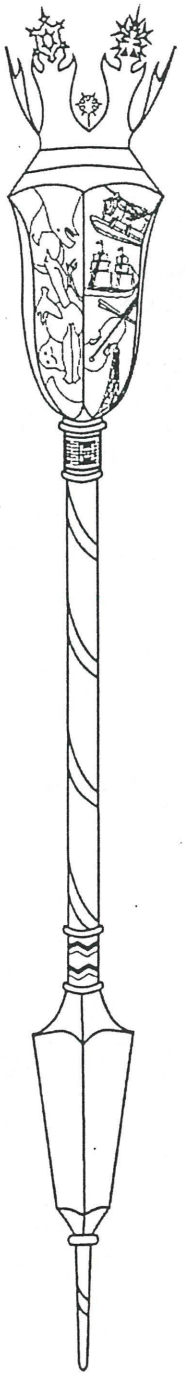
The Standing Committee recommends that Access to Information and Protection of Privacy Act be amended to make our legislation read the same as section 21 of Alberta's Freedom of Information and Protection of Privacy Act.

Conclusion

The Standing Committee was pleased to have the opportunity to meet with the Information and Privacy Commissioner, the Secretary to the Financial Management Board, the Manager of Corporate Services for the Financial Management Board Secretariat, and the Acting Deputy Minister of Justice to discuss this report. The Standing Committee on Accountability and Oversight requests that the Executive Council table a comprehensive response to this report within 120 days in accordance with Rule 93(5) of the Rules of the Legislative Assembly.

End Notes:

[1] Elaine Keenan Bengts, Access to Information and Protection of Privacy Commissioner Annual Report 1999/2000, page 6.
[2] Elaine Keenan Bengts, Access to Information and Protection of Privacy Commissioner Annual Report 1999/2000, page 3.
[3] Elaine Keenan Bengts, Standing Committee on Accountability and Oversight Transcripts, Wednesday, April 4, 2001, page 7



Northwest Territories Legislative Assembly

Standing Committee on Accountability and Oversight

Public Review of the Access to Information and Protection of Privacy Commissioner's 1999/2000 Annual Report

Wednesday, April 4, 2001

Public Review

Standing Committee on Accountability and Oversight

Chairman

Mr. Charles Dent, MLA for Frame Lake

Deputy Chair

Mr. Floyd Roland, MLA for Inuvik Boot Lake

Members

Mr. Brendan Bell
MLA for Yellowknife South

Mr. Bill Braden
MLA for Great Slave

Mr. Paul Delorey
MLA for Hay River North

Mr. David Krutko
MLA for Mackenzie Delta

Mr. Leon Lafferty
MLA for North Slave

Mr. Steven Nitah
MLA for Tu Nedhe

Ms. Sandy Lee
MLA for Range Lake

Mr. Michael McLeod
MLA for Deh Cho

Mr. Michael Miltenberger
MLA for Thebacha

Witnesses

Ms. Elaine Keenan-Bengts, Access to Information and Protection of Privacy Commissioner

Legislative Assembly Staff

Mr. Dave Inch, Clerk of Committees

Ms. Shirley Johnson, Director of Research

Ms. Laurell Graf, Researcher

Ms. Katherine Peterson, Law Clerk

Ms. Jacqueline McLean, AOC Committee Coordinator

STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

Public Review of the Access to Information and Protection of Privacy Commissioner's 1999/2000 Annual Report

Wednesday, April 4, 2001

1:30 p.m.

CHAIRMAN (Mr. Dent): I would like to call the meeting to order. We are on item 11 of our agenda, which is a public review of the Access to Information and Protection of Privacy Commissioner's 1999-2000 Annual Report. I would like to welcome Ms. Elaine Keenan-Bengts to our committee. Ms. Keenan-Bengts is the Access to Information and Protection of Privacy Commissioner. Before we get into your opening comments Ms. Keenan-Bengts, members of the committee had a great interest in what happened over the weekend. To let the members know, Ms. Keenan-Bengts tells me that the winner took the cash instead of the Hummer. He has to report it as income, I think. Ms. Keenan-Bengts, Do you have any opening comments?

MS. KEENAN-BENGTS: I do, thank you. I would, first of all, like to thank you all for the opportunity to meet with you today and discuss the ATIPP Act and my third annual report. As you all know, this act has two separate and distinct purposes. The first purpose is to ensure an open and accountable government and to allow everyone access to what is going on in government, subject, of course, to certain exceptions to allow for the effective running of the business of government.

The second purpose is to protect, as far as possible, the private information of individuals which is held by government and government agencies. In some respects, these two different purposes are in conflict with one another, and there is a balancing act to be done, and discretion which must be exercised in order to accomplish both objectives.

Most of the work required by the act is done by the government itself. It is only when someone questions the exercise of discretion outlined in the act that I become involved at all. A large part of my job is to give independent opinions as to whether or not that discretion is being properly exercised, give suggestions, and directions. The other part of my job is to help government ensure that personal information held by the government remains confidential. I personally hold the view that this may be the more important of the two roles that I play.

Information and communications technology today make it easier and easier to share information. Because of this, it is ever more important to make sure that personal and private information remains that way. Because government runs the

business of the people, it has access to extremely personal information of individual people, from health records to financial information. It is essential that such information be used only for the purposes that it is intended, and is not shared or publicized or otherwise released except with the consent of the individual involved. The right to privacy is one of the most fundamental rights we have. Protecting that privacy in this day and age is sometimes more difficult than it appears.

Let us talk first about the Access to Information side of things. This is the side of things that the public seems to focus on when they hear about Information and Privacy Commissioner. It is the part of the act that is fundamental to the open and accountable government. Government is a business, and the public are it's shareholders. Every shareholder is entitled to know how the business is being run, and to object if they do not agree with the way things are being done. Unless the public is able to access the information however, it is difficult if not impossible for them to comment intelligently on the way the government is doing it's business.

Furthermore, open government and the right of the general public also encourages those who run the business of government to follow good business ethics and practice. Be that as it may, the analogy between government and business is not perfect. There must remain in the government an ability to keep some information confidential in order to get business done. Those exceptions are provided for in the act. Some exceptions are mandatory, which means if that information is of a particular kind, it simply can not be released.

For example, Cabinet conferences are protected in order to allow free and open debate among Cabinet on policy issues. This does not necessarily mean that every piece of paper in a Minister's office is protected, but it does mean that if it meets the criteria set out under the act as a Cabinet conference, the information will be protected from exposure.

Other exceptions under the act are discretionary, which means that the government agency must make a decision as to whether or not to release the information in question. In this category is information which, if disclosed, could reasonably be expected to reveal advice, proposals, recommendations or policy options developed for the public body, information relating to negotiations being undertaken by the government body involved, the content of draft legislation, and the contents of agendas or minutes of meetings of a board or agency. Also included in this category is information which would otherwise be protected by solicitor/client privilege, law enforcement information, and where the release of the information is likely to impair relations between the Government of the Northwest Territories and another Canadian government, including First Nations negotiators. There are actually quite a number of discretionary exemptions.

As I mentioned before, in most cases, my office will not be involved in a request to the government for information unless the person who is asking for the information is not satisfied with the way the request for information has been handled by the public

body, or if information about a third party is involved and that third party objects to the release of the information. When this happens, I receive a request to review the public body's decision not to release the information. It is my role to review the matter and make recommendations.

My recommendations are not binding, but constitute an independent review and interpretation of the act. If the recommendations which I make are not accepted by the public body, or if the individual who requested the review is not otherwise happy with the decision made by the head of the public body who ultimately makes the decision as to whether or not to release the information, the applicant has the right to apply to the Supreme Court of the Northwest Territories for a legal and binding interpretation of the act.

With one notable exception, government agencies that I have dealt with in my review of access requests have been cooperative and have worked with me to complete the reviews requested. Recommendations that I have made over the last three years, for the most part, have been accepted by the public bodies involved.

The one notable exception has been the Financial Management Board Secretariat, which has taken a confrontational and obstructionist view and approach to the act. There appears to be a corporate culture of secrecy and protectionism. My requests for information, documents, submissions, are routinely not complied with within the time limits I have requested them, and I normally provided either two weeks or a month depending on the complexity of the information that I am requesting. My recommendations, when made, are routinely rejected out of hand.

In one particularly difficult case, a request for information made in 1998 has yet to be fully addressed by this public body. The applicant, in frustration, simply gave up after two and a half years. The only government body which has rejected my recommendations outright has been the Financial Management Board Secretariat, and this they have done more than once.

As noted in my Annual Report, when the approach taken to every request for information or review is adversarial, it gives the impression that the public body is trying to hide something. This becomes even more pronounced when the government agency involved is the government agency which controls the money. The spirit and intention of the act is to encourage openness and accountability. I would hope that this, of all government agencies, would be open to public scrutiny in it's workings. The alternative is the kind of political controversy which has plagued HRDC and the Prime Minister's office in recent months.

Moving on to the privacy side of things, the other role that I have is to ensure that personal information is protected; names, addresses, telephone numbers, financial information, medical information, anything that would tend to identify an individual person or his or her personal circumstances. The government holds personal information about each and everyone of us. If we apply for a driver's license, we

give personal information. If we ask for medical treatment, we give personal information. If we want to get married, we give personal information. If we need social assistance or the help of a social worker, we give personal information to the government. The list goes on and on.

The privacy provisions of the act set out rules about how the government can collect such information and what it can be used for. The basic rules are simple; any information collected should be used only for the purposes it was collected and should not be used for any other reason or purpose, or disclosed to any other person without the expressed consent of the person about whom the information relates.

It sounds simple, but sometimes it is not so easy to follow. In this day and age, it is often tempting to use information collected for one purpose, let us say to register a motor vehicle, for entirely different purpose, let us say to collect a debt owing to the government. For example, if I register my vehicle the government knows that I have recently been the lucky winner of let us say a brand new Hummer, that is a viable and valuable asset which they could seize to collect a debt which I owe to the government for a fine for littering. The problem is, when I registered my Hummer, I had no intentions that information would be used to help the government collect a debt against me. My information was improperly used. I am not saying that this happens. I am giving this as an example of how information in one hand could be used, and has been used in the past, for other purposes.

Another example is the use of personal health information. On a very basic level, when you or I go into a local health centre for medical treatment our files are pulled. Sometimes those files come into full public view and can be seen by anyone who walks in the office. This year I had one complaint where the individual involved was appalled to see that his medical condition, which was an infectious disease, was noted in large black letters on the front of his file. The file was in open view of anyone who might walk by the desk that it was on. In this case, I worked with the medical clinic involved to correct the problem. Medical information in this clinic will no longer appear on the front of the file cover and more care will be taken to make sure the files are not in public view.

On a far higher level, the protection of personal health information is an issue which is taking up much time and energy across the country at the moment. You may be surprised to know that your personal health information, sometimes with your name and other personal identifiers attached, is being used for medical research purposes, and you may not know it. I certainly did not know about it until about a year ago when I started discussing this issue with my colleagues in southern Canada. Several of the provinces are now passing legislation to deal with the protection of personal health information and this may be something the government should be monitoring and considering in future legislation here.

I will be hosting the Information and Privacy commissioners from across the country in Yellowknife, in June of this year. This will be one of our main topics for discussion. It is a huge issue and there are conflicting interests, all of which are noble and good causes. How governments balance these interests is a difficult and continuing problem, and one that is going to have to be dealt with.

The government must also be aware of privacy issues when the government starts to contract out such government responsibility such as, for example, the vehicle registration system. It is incumbent on the government when contracting out these sort of things to ensure that the contract includes provisions which prevent that contractor from using the information obtained for any reason other than for the purpose that it was obtained, and ensuring the private body, which is now doing that work of government, knows that they are subject to the act.

One of the concerns that I raised in my annual report is although the Access to Information and Protection of Privacy Act sets out a number of rules about the government's collection and use of personal information, it's provisions are weak in terms of what happens if one of these rules are breached. Particularly if the invasion of privacy was accidental. Although the act specifically provides for the Information and Privacy Commissioner to review, for example, a denial of access to information, it does not specifically provide that this office can review a complaint of invasion of privacy or improper use of personal information.

That would not and has not, quite frankly, stopped me from receiving complaints, and doing what I can to investigate them and correct them, nor does it stop me from making recommendations about how the matter should have or could have been handled differently. However, if a particular government department, against whom a privacy complaint is made, refuses to cooperate in an investigation that I may undertake, there is absolutely nothing in the act to compel compliance with my requests, nor is there any requirement that the head of the public body involved even consider any recommendations I might make as a result of any investigation I do. In fact, the only real penalty that can be imposed for breach of personal privacy provisions of the act can be applied only after a prosecution in court, and only if the information was improperly used in bad faith.

An employee, who in good faith, makes a mistake, a simple mistake, in releasing personal information is not subject to any sanction or penalty. As I recommended in my annual report, I would like to see this change so the ATIPP Commissioner can investigate and make recommendations in the event of a breach of privacy provisions of the act, and to require government to deal with my recommendations in the same way as they are required to do under the access provisions of the act.

Finally, to give an individual recourse of the courts if they are unhappy with the way government deals with the recommendations made. To my mind, this is the most important and urgent change required to this legislation. My annual report also

contains a number of other recommendations, and perhaps I could just touch on a few of them here.

One of the problems that has been met again and again, is that when recommendations are made by my office they are not being dealt with by the head of the public body involved. Under the act, the head of the public body, be it the Minister or whoever else is designated as the head under the act, is required to deal with my recommendations within 30 days. That deadline has rarely been met, and in one particularly bad case, it was almost a year between the time that a recommendation was made and the head of the public body actually acted on it.

By amending this provision to provide that if no decision has been made within 30 days of the recommendation, that the recommendations are deemed to have been accepted, it will compel those required to deal with these matters to do so in a timely fashion, or be met with the consequences. Another provision that is important, and it is really a housekeeping issue, is there are many 30-day notice periods under the act. Unfortunately, if one mails a letter in Yellowknife to a more remote community it can take 14-20 days for a letter to get there. If the 30 days starts to run from the day I mailed the letter, whoever is on the other end of it is not going to have much time to reply. If it takes more than two weeks to get there and two weeks to get back, the 30 day period is going to be missed. The time should only begin to run from the time the intended recipient actually receives the document, and the legislation should provide for some type of service of documents, either by registered mail or by personal service by a process server. It is essential to the fair process of this act that all parties have adequate time to deal with and respond to matters which arise under it.

The third issue, and I will not dwell on it at all, municipalities in most jurisdictions are included under Access to Information and Protection of Privacy Legislation, and it is my respectful opinion that it is time to add these organizations and these government institutions to our legislation. The other items are really housekeeping items.

There has been no review of the specific public bodies which are covered by the act since it's inception in 1998. One issue arose this year with respect to the Public Utilities Board, which does not appear to fall under the act. My questions is, "why?" There may be good reason, or maybe it was just an oversight. I do not know. There may be other public bodies that were inadvertently left out. I would simply recommend a review of the list of public bodies be done, and public bodies that are not presently there, there should be consideration of adding them.

Along the same lines, the government is required under the act to produce and update as necessary an Access and Privacy Directory, which should be made available to the public. This directory must, by law, include a list of all the public bodies subject to the act, and the title and address of the agent coordinator for each such public body. It would be useful as well to include in that directory a copy of the

act and any regulations made under the act and an address and contact number for my office. There is an Access and Privacy Directory, but it has not been updated since 1997 and it is not readily available to the public.

Finally under housekeeping, in order for the ATIPP Act to be effective there must be individuals within the government who have more than a mere passing knowledge of the act. There recently were sessions held for individuals responsible for handling request for information, and this is a start. Every time a new employee begins work for the Government of the Northwest Territories, there should be an orientation session which includes the basics of the Information and Privacy Act.

As a final comment, I would simply like to touch on the recently proclaimed Bill C-6 at the federal level. The Personal Information Protection and Electronic Documents Act came into effect on January 1st of this year. This act governs the protection of personal, private information in the private sector, as opposed to the public sector. In other parts of the country, there is a phase-in period to allow provincial governments to introduce their own legislation dealing with privacy issues in the private sector.

However, because of the constitutional nature of the Northwest Territories, the act is fully effective in this jurisdiction since January 1st. The effect of this is that complaints of invasion of privacy or improper use of personal information by the private sector will now be dealt with by the Federal Privacy Commissioner's office. As a private citizen of the Northwest Territories, quite frankly I resent that. Problems arising in the Northwest Territories of a local nature should be dealt with in the Northwest Territories. I would strongly urge this government to consider legislation to deal with the protection of personal privacy information in the private sector, and to bring these issues back home. Thank you for your attention, and I would be pleased to answer any questions you may have.

CHAIRMAN (Mr. Dent): Thank you, Ms. Keenan-Bengts. Would it be possible for our clerk to get a copy of your comments to make copies for all the Members?

MS. KEENAN-BENGTS: I will get a copy to him.

CHAIRMAN (Mr. Dent): Do Members have any questions? Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. This is a question to give me a sense of scale. When we look at your report on the statistics, you talk about seven requests that you have received. Are you notified of the total numbers of requests that are made to public bodies? Do you have any idea of out of a hundred or a thousand requests for public information?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: No, I have no knowledge if an Access to Information request is dealt with, and if the applicant is happy with it. I never know that it has been made. So, I have no idea how many requests for information are being dealt with at the government level, that I never see.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. In your opinion, after three years, with that kind of information, I do not know how you would obtain it unless you were CC'ed on things. I am trying to get a sense of what the demand is. Is the volume there? Seven is a relatively small number it would seem, but I am not sure out of how many. Do you think it would be beneficial to have some more information that would allow us to get a better perspective of how well this piece of legislation is used in your office?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I would like to have that information. It would be very useful. It would give me a better sense of whether or not the government is actually complying with it. It could be that I have received seven out of 20 requests for information for review. It could be that I received seven out of 700. I have no idea. If it is seven out of 700, we are doing pretty good. If it is seven out of 20, we are not doing good.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Do you have any ideas or thoughts of how we could possibly obtain that kind of information without making another onerous step in the process? Is there someway that you could be copied on requests just as a matter of course so we can track this? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: There is a media coordinator in each government department and public body. It might be appropriate to ask that person to keep statistics of applications actually received and dealt with, and then I could certainly collate them in my office.

CHAIRMAN (Mr. Dent): Thank you. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. To some degree coming off of Mr. Miltenberger's questioning, regardless of the number of complaints or the ratio that end up on the commissioner's desk, given the type of problems that Ms. Keenan-Bengts does deal with, I wanted to ask from her point of view, is the act really working? Is it structured in such a way that the spirit and intent is able to be fulfilled? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: For the most part, it is. I would like to see it have a few more teeth to deal with those governmental departments who are a little more reluctant to deal with me, but most government departments are dealing with it in a way that the legislation was intended and are following my recommendations for the most part. I get a number of phone calls from government agencies before it actually becomes a reviewing issue. They are not too sure. They will give me a call and say, "Listen Elaine. I have got this situation. This is what I am thinking. Does that sound right to you?", and without giving an opinion, because obviously at that point I cannot, what I can do is say, "Yes, I think you are going in the right direction here. You might want to try this or that." The number of requests for review that I get may not be quite the actual work I do, because I do get requests from individuals within the government from time to time simply asking my advice on how to deal with things.

CHAIRMAN (Mr. Dent): Mr. Braden.

MR. BRADEN: You have indicated that you felt the most urgency of the need of deficiency in the act right now as it relate to your ability to handle privacy complaints. Can you give us some sense of how much in terms of extra work, extra staffing, extra costs that this may require? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: None, because I am already doing it. My concern is that there is no jurisdiction within the act allowing me to do it. I have received in the last year far more complaints about breaches of privacy than I have on reviews on access issues. The privacy end of things is becoming more pronounced. People are more and more concerned about their privacy. I have been receiving the complaints. I have been dealing with the complaints. I have been making recommendations. The problem is the act does not really provide for that. The act only provides for a review of access to information issues.

As I say, that has not stopped me. Without having it in the act, when a particular government agency decides that they are not going to cooperate with me, there is nothing I can do. If an individual who has gone through the process and I have made recommendations and the government agency does not deal with the recommendations, then they have no further recourse. There is nothing in the act that allows them to take a privacy complaint issue to the Supreme Court. Only access information issues can be taken to the Supreme Court, and that is what I want. I do not see that as requiring any extra resources. It is something that I am already doing, but without legislative authority to do it.

CHAIRMAN (Mr. Dent): Mr. Braden.

MR. BRADEN: Thank you. To the issue of non-compliance and specifically to the FMBS shop, what is your sense of the awareness or the appreciation across government and in particular FMBS of the significance of the law here and their choice not to comply? People are not really up to speed on what they should be doing and how they should respond to this.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: In most government departments, the ATIPP coordinators are up to speed. As I say, the only department or government agency that I had an real resistance from is FMBS. All other government departments have people in place who appreciate the purpose, the spirit, and the intention of the act. For that matter, those who deal with these issues at FMBS also appreciate the intention and the spirit of the act. It is not that they do not appreciate it. It is simply that they do not like it, and they resist it.

MR. BRADEN: Mr. Chairman, I have other questions, but I would be happy to give up the floor and go around.

CHAIRMAN (Mr. Dent): Thank you. Mr. Bell.

MR. BELL: Thank you. I have several questions, but I would like to first start the matter of access and some of the comments that Ms. Bengts has made in her report obviously that are disturbing for our citizens and they reflect the feeling that is out there. She spoke of FMBS and what she says as a corporate culture of secrecy and protectionism. Her requests are routinely rejected out of hand, and certain applicants have just thrown their hands up in frustration and decided it was not worth it after being stonewalled. This is the perception that public has also, and what we are not seeing is probably many requests that do not get off the ground because people feel there is absolutely no sense in bothering when we have a shop like FMBS just refusing to comply with the legislation. It does speak to openness and accountability, and apparently our reluctance or our fear of it.

I do not hear the Commissioner saying that somehow the nature of the information that FMBS has is more sensitive, and it is more critical that they be more cautious than other departments. I hear her saying that there is a corporate culture of secrecy. I want to ask her to speak to giving the legislation more teeth, if that seems to be the only way around this, or if she can speak more to the spirit of the act and the fact that other departments are complying and recognizing the spirit of the act whereas FMBS is not. Maybe she can talk about some of her recommendations for remedying this.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I do not agree with you that FMBS has more sensitive information. FMBS does deal with more, because they are the people actually

running the nitty-gritty business of the government. Perhaps, they do have more of a reason to be careful about what they release to the general public. That having been said, and I can give an example, I recently made a recommendation that parts of the information that had been requested be released. The parts of the information that I recommended be released were information that was background. It had nothing to do with advice. It had nothing to do with recommendations. It was background information that government departments had provided to FMBS for a certain purpose. Each government department had provided information to FMBS, and it included background information, advice, and recommendations. It was my recommendation that the background part of things be released. It does not fall under the act as advice or recommendations if it is only background or historical information. That recommendation was rejected, and none of the information that I suggested be released was released.

How to give the act more oomph? Well, you could go the distance and give the Information and Privacy Commissioner order power so there is no choice as to whether or not my recommendations are followed. My recommendations would, in fact, be orders. Some jurisdictions have gone that way; Alberta, British Columbia, Ontario specifically. Other jurisdictions have the Information and Privacy Commissioner, like me, playing an ombudsman role, making recommendations that the government does not have to follow if they do not feel it is appropriate. I do not think that we have to go the order route.

I do not think we have to go the route that gives me the power to say, "You must do this." Or "You must do that." It is working in all of the other government departments. What needs to be done is to change the corporate culture at FMBS, and that takes some direction from the political bosses.

CHAIRMAN (Mr. Dent): Mr. Bell.

MR. BELL: So, just to clarify, on one end of things we have the possibility of onlooker type role like we have here now. That is the role that we see that you are playing. Some other jurisdictions give the Commissioner order power. Obviously, there is some middle ground. There are some steps in between, but when it is only one department that seems to be non-compliant continually and does not seem to be buying into the spirit of the act, then you feel this is more the issue of the corporate culture with the players in FMBS and not so much needing to change the legislation. Am I right?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: You have summed it up in a nutshell.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

MR. MILTENBERGER: I want to touch on this issue, and some of the other recommendations. I notice on page 32, you made a very interesting quote from John Reid, the Information Commissioner of Canada in his 1998-1999 Annual Report. Part of it states that:

> "parliamentarians and Canadians instinctively know that government distrust to openness and the tools which force openness upon them, Parliamentarians and Canadians instinctively know that they, not government, carry the burden of keeping the right of access strong and up to date."

We have had this legislation for almost five years. You have raised some issues that bear looking at, and I am concerned although about having one of the most important, powerful, and influential units of governments being seen as the biggest offender in terms of not being open and transparent. A unit that was initially supposed to be small and have nowhere near the power and authority that it has accumulated over the years. I would like to raise that particular issue.

In terms of some of the broader ones, you have raised issues that have come up in some of the committees; the issue of electronic information of health records, and the security. As we push government to be open and we devolve stuff, we want to help the education and bodies to work together to share information, the issue of that kind of very personal information and privacy becomes critical.

You have raised the issue of the federal government has passed legislation and we have at least a five-year window. If we do not do something of our own, then we will have the federal legislation to do the job for us. I would like to have your opinion on that because we have gone through that with the human rights legislation with pay equity, where we tried to rely on fair practices in the federal human rights legislation and we got ourselves bogged down in some terribly long, proactive, and expensive litigation that is still underway. As we look at this, what kind of emphasis would you place on that particular component of your recommendation? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Actually, since I wrote this report, I have discovered, much to my chagrin, that we do not have a five-year window of opportunity because, as I say, the constitutional nature of the Northwest Territories. Bill C-6 is the law in the Northwest Territories today, and has been since January 1st, 2001. That gives it a little more urgency, because as I have said, if my personal information is now being improperly used by a member of the private sector, I can make a complaint but it has to go the Federal Privacy Commissioner.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: I just wanted to touch on timelines and time frames where you are saying in some cases it has been since 1997-1998 that complaints had been filed and we are still waiting for results. There should be through legislation a maximum amount of time where they have to respond within that time frame. That way, they know regardless if they respond in a general nature, "This is information that has been made public and that is all we have.", and if you want other information you will have to go through another route. We do have the alternative of the court system, but that is taking the long way around. There should be timelines put in place through legislation, and through the Privacy Act which puts the onus on the department to make an attempt to reply within a shorter time frame than what they are seen to be doing to date. What reasonable timelines are you looking at? Do you have any ideas of how we can build that into the Privacy Act?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Under the act, once I receive a request for review, the act gives me six months to complete the review and make my recommendations. In this one case where the gentleman made his request, I cannot remember if it was late 1997 or early 1998, FMBS told me that they could not provide the information required because they did not know what they had. It was all in boxes some places, and it had not been properly indexed or filed. They had to create a computer program in order to deal with this particular issue. I hope that was an unusual circumstance.

I do not know what kind of filing systems individual government departments have. I do not know if there is a filing system that all government departments use. As far as timelines are concerned, six months should do it. What I need is something in the act that gives me the ability within that six months to set time deadlines. If I say, "I want your reply to this complaint within four weeks.", there is nothing in the act that compels the government agency to provide it to me within four weeks. That is not met. I can help if they give it to me in four weeks, but if the do not all I can do is ask again and again and again. Six months should do it.

CHAIRMAN (Mr. Dent): Thank you. I hate to tell you this, but there are basements and warehouses full of boxes and boxes of records, and nobody has any idea where any file is in them. The records management is something that Members of the Legislative Assembly have pursued the government on, because there is no comprehensive records management policy. Each department is left on it's own. I know of several departments that have rooms full of boxes of files that they have no idea what is inside them. Those boxes were put there quite sometime ago, and there is no history. Nobody know what is in them. It has been for the last ten years, a money issue, "We can not afford to put in systems, and bring our records up to date." There is much information that is difficult to get. Mr. Krutko.

MR. KRUTKO: The problem that you mentioned is the same problem that we have as Members of the Legislature. We try to get information out of a department,

where we ask questions or ask for information time and time again, and we get the same run around, "We are looking for it." Or "We cannot get to it." When they do reply, many times they will reply in such a nature that the information they gave me was totally irrelevant to the question that was asked. That type of information has to be insured that it is totally in the framework of the question was asked. So, you do get the appropriate information, and you do not get the push off that you get from departments.

People will not give you the information that you want from them. They will give you what they think you should get, and that is it. There has to be something there. On the timeline, that is something that we should able to look at and put into place. The other question that I have is in regard to, we talk about FMBS and the problems that you are having. Is the problem with request being of a financial nature or is it a personal request in regard to information? Are they reluctant to give you financial information in the problems that you are having with them now?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: No, in the one case, as I said, the reluctance, it was information which FMBS had requested from each government department. Each government department had provided it. Part of the information was privileged and protected by the act. Parts of it were not. FMBS for one reason or another did not want to give away the information that was not protected. It was not financial information in this particular case. It was background information. This is what has been done in the past. These are the steps that we have taken to date. Part of the information was, "this is what we propose to do in the future." That part is protected, and I recommended that part stay confidential. What was not protected was, "this is what we have done in the past." There is no reason not to release that information. In fact, the act does not protect it. The information that has caused problems, has not been financial information, per se. On your other comment about MLAs making requests for information, just to point out MLAs can use this act, too.

CHAIRMAN (Mr. Dent): Mr. McLeod.

MR. MCLEOD: My question is regarding how far this act applies, how broad it applies. I heard you state that it currently does not apply to the municipalities or municipal government. I am curious, if it does apply to the agencies that view themselves outside of the government; housing boards, community futures, and those types of agencies. Coming from a small community, many times you hear circulating around the community, "So and so owes this much rent." I was just wondering as it stands now does the Privacy Act apply to covering those types of agencies?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Most of them, yes. The public bodies that are covered are all listed in the regulations. My concern was that there are some that appear not to be covered. For example, as we discovered this year, the Public Utilities Board is one of those government agencies that is not listed under the act. Housing corporations, yes they are covered. Health boards, yes they are covered. Municipalities are not. They are a few other government agencies, for example, I do not believe that the Fair Practices Office falls under this act. I can not think of many others. The Labour Standards Board does. The Liquor Control Board does. WCB does. Most government agencies do fall under the act. Municipalities do not at this point.

CHAIRMAN (Mr. Dent): Thank you. Mr. McLeod.

MR. MCLEOD: Well, then my question to you would be, do you play a role in circulating this type of information out to these agencies or do you leave it up to the departments to do that themselves? Who provides this information? Who circulates it to the communities, agencies, and boards?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: That is a dual. There is nothing in the act that says, "You must do this." Or "You must do that" It is probably a dual responsibility. Under the act, the government is required to maintain the Access to Information Directory, which I referred to. That was originally done when the act first came into affect, but it has not been updated. Many of the names of the individuals who are the ATIPP coordinators, those people have come and gone and somebody else is in their place. It has to be updated.

As far as getting the word out about my role and my office's role, that is my responsibility and quite frankly that is one area that I have not done a good job in. I am working on it. I am trying to get a web page up, and some brochures and stuff like that. I have not done a good job of that to date, and that is someplace that I hope to concentrate in the next few months.

CHAIRMAN (Mr. Dent): Mr. McLeod.

MR. MCLEOD: Just one more question. Are there any formal processes that fall under this? In some of the committees, we see hearings for housing, for example, where there is a room packed full of people. They are airing all their income, and even talking about their character. Everything seems to be public. Does this act cover this? Is there anything that would? To me, sitting in one of these things, I was embarrassed to hear some of the stuff that was being discussed. Yet, it seemed to be a legal formal process, and it was acceptable.

CHAIRMAN (Mr. Dent): Mr. McLeod, just for clarity, was this a meeting of an LHO? Ms. Keenan-Bengts will need to know the nature of the organization.

MR. MCLEOD: It was a housing hearing so, the LHO through the Housing Corporation.

CHAIRMAN (Mr. Dent): The Housing Corporation. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Where a piece of legislation provides for public hearings, then public hearings mean public hearings and whatever is said in those hearings is public. That having been said, not all government agencies hold public hearings. For instance, this office does not. I have not yet. There may be a case where it is appropriate, but right now all of my "investigations hearings" are done in writing. They give me information. I make my decision in writing. It is all written. A public hearing as provided for in legislation is fair game.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Going back a little ways, when this act first came into being, I recall constituents of mine making comments to the fact this act really had nothing to it. It was made of legalese, and you can not do this, and you can not do that, but, in fact, there was no requirement for government to fulfill anything. What we are hearing here and seeing in reports seems to confirm that that is the case.

A government department can just turn a blind eye to it, make no response. If there is no response, then the person who initiated can go to the next step, to the Supreme Court if there is no reaction or movement on the government side. That is a serious concern when we talk about this. This was touted to be a tool that would be used by the people in the North, and the way of keeping information flowing and letting people know better why this is not made in government. That has not been the case now. Some departments have voluntarily, by the sounds of it, because there is nothing in the Act that would put the department or anybody on the line for not following through.

I guess maybe by holding the public hearings as we are here, or a public review of the Act and making a report to the House, we can put some pressure on government to start moving on the requests here, because I think it is going to be highlighted in our report, at least I would suggest that the fact that we have a fairly major concern with one department that has a lot of authority and power in it, as stated earlier by my colleague, Mr. Miltenberger. I

n the report we see that in this year alone, 1999-2000, seven new requests were made for review, and the majority of those had to do with FMBS. It was also stated that there were 60 general inquiries and in listening to a response of yours earlier to a question, you said there were some inquiries from the department as to how they would do things. Would that be included in the 60 general inquiries? Thank you.

CHAIRMAN (Mr. Dent): Thank you. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I do not keep specific records about every time I get a phone call, but I do go back through my diary and count the number of times I have talked to somebody about something dealing with the Act, and that would include those government agencies who have called me and said, "What should I do in this case?"

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. I guess for us and again part of the reporting process, as stated earlier by one of the Members, it would be nice to know from the coordinators in the departments, finding out what was the total volume that came through their areas and what was handled and what had to go through yours. Seven is not a large number when you look at it. Sixty general inquiries to you, if that is similar to every department, then we are talking bigger numbers.

A question in the area where you have made reviews or have been asked to look into something and you have made calls to the departments and they refuse. At some point it goes to the final stage of the decision level and goes to the Minister, correct?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Yes, in the case of FMBS I finally made a recommendation, which was rejected out of hand, that certain information be provided by a certain date. That was one of my first skirmishes with FMBS a couple of years ago. The recommendation was rejected out of hand for no reason and of course, the head of the public body is not required by the Act to give reasons.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. I think it would be again part of the reporting process in this forum so Members would be aware of what Ministers or what recommendations were made that required Ministers to either deny access to the information. I do not think we need to get to the detail of who and what, but mainly the fact that there were recommendations that went to the highest level and were turned down.

Again, in a public process and as Members we have an opportunity to address this in the House, for example, if need be if there is no cooperation. I do agree with the number of recommendations you have made that there needs to be some movement in amending the Act to include putting a little bit of bite into this Act that would at least have departments reacting to the recommendations or calls and inquiries, whereas right now one person went two and a half years then finally said, "Forget it. Life better go on." That is disappointing in that sense and I will have to go back to my constituent and inform them that their interpretation was correct back when they first had a chance to look at it. Thank you.

CHAIRMAN (Mr. Dent): Perhaps just to follow up on what Mr. Roland has been saying, and I think it is worth saying publicly, what we are doing now represents a new stage in the whole process of your reporting, Ms. Keenan-Bengts. The previous two reports did not go to committee and then get discussed there. What happens after we deal with the issue here, and we are going to hear from government witnesses as well, is that our committee will do a report, which will then go to the Legislative Assembly and will be discussed on the floor of the Assembly. So, this may be one step that has been missing in the past in terms of your role as an ombudsman person in terms of the public pressure, because now that pressure can be brought to bear where in the past it was dependant on the media or the public to express that. But this issue is now going to get on the floor of the House for sure. It is part of the evolutionary process that we are going through in terms of the Act itself. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I want to get a bit of background here. What does the Act provide for in the way of penalties of any kind, I guess that would include going up to appeal at the Supreme Court level for non-compliance or any other violation. Is there any penalty? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I do not think so. I do not think there is anything in the Act, which provides consequences for failing to comply with the timelines or requests of the Access to Information Commissioner.

CHAIRMAN (Mr. Dent): Mr. Braden.

MR. BRADEN: Thank you. The recommendation from you to look at providing the powers to subpoena documents is a fairly strong instrument. I am wondering, after three years now and a certain amount of discovery of how this is performing, do you really feel this is something you need now in order to fulfill your job, or are there other options or other things we could be doing to improve the level of compliance and cooperation? Do you want that power now? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: The problem is not necessarily in getting the documents from the government agency.

To give you a little background, the way I conduct a review, someone comes to me and says, "I made this request for information and I did not get everything that I wanted." At that point I will write to the government agency involved and say, "I have had this request for review. I would like you to provide me with your explanation as to why these documents were not provided, and I want you to provide me with copies of all of the documents that are relevant to this request." With one exception,

I have never been denied that. In every case the government agencies, including FMBS have provided me with copies of the documents in question.

So, to say do I need subpoena power at this point in time, I would say that I have not needed it yet. That having been said, a subpoena has a kind of an oomph that a request from the Information and Privacy Commissioner does not have. The fact that to date I have not had to pull teeth to get copies of the documents in issue, does not mean that I am not going to have that problem in the future.

There was an issue, and again it was with FMBS, where initially they did not want to provide me with the documents. In fact, they would not provide me with the documents unless I gave them something in writing, which frankly, I did not think I should have to do because it is provided for in the Act, that I would not release these documents to anybody else. That is my job, and I should not have to be reporting to FMBS as to what I am going to do or not do with these documents.

That having been said, we resolved the issue. We talked about it. They gave me the documents and I did not have to sign this form of theirs, saying that I would not show them to anybody. I think that might go back to your earlier question about whether or not government agencies really understand the Act. With that example in mind, maybe they do not.

CHAIRMAN (Mr. Dent): Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Further to that issue, I will call it "training," I think I have gotten the sense from you that you feel the level of awareness and preparedness is okay at the government level. I am wondering, in terms of any recommendations that we might make back to the Assembly, is this something we should underscore, that while the departments are doing okay now and are really on top of the game, are the departments current with keeping and ATIPP coordinator on staff? Are they well trained? Are they also doing what I think is part of their job, which is telling other people in their organization what is going on? Would we be better served if there were more frequent training going on? Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: At the grass roots level the ATIPP coordinators are well trained. They seem to know the Act. If they are not too sure, they do not have any problems with calling me and asking me questions. Where the problems lie, and where the issues have arisen are in the communities where the ATIPP coordinators are not residents.

Somebody comes and provides a local government agency. I cannot remember, I think it was in Norman Wells there was an issue where someone brought in a request for information to a local government office and it was clear that the

individual who received it had no idea that the Access to Information and Protection of Privacy Act even existed. So, of course there was a request for review at which time that issue was resolved. It did not have to go any further. I did not have to make a recommendation, because at the point the ATIPP coordinator took over and said, "No, you have to give him the information, he has requested it, it is a straightforward thing. You cannot just send him on his way."

So, at the grassroots level, I think that more training is necessary. I do not know if they go through some sort of orientation, but every new government employee should be told about the provisions of the Access to Information and Protection of Privacy Act.

There was another issue in Yellowknife where I was surprised that it happened. There was a breach of privacy and it was an employee who simply was not thinking when they release certain information. It was not intentional, it was not something that happens often, it was just that the person was not thinking. To my mind, that means that it is not drilled into them enough. If they simply do it without even thinking, it is because they have not been told often enough that you cannot do this.

CHAIRMAN (Mr. Dent): Mr. Braden.

MR. BRADEN: Further, Mr. Chairman, was recommendation about including municipalities in this legislation, and I wanted to ask the Commissioner if she has had any discussions with any municipal people, perhaps the Federation of Municipalities here. What is the view of the communities in the NWT to this kind of amendment? Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I have had no discussions with them. My recommendation that they be included comes more from my own personal observation, not only of the city of Yellowknife, but I have also seen issues arise in Hay River. The fact that I was at my brother's home in Calgary not too long ago and he was showing me his brand new computer, and how nifty it was, and he decided he was going to log on to the City of Yellowknife's web page. He did that and he pulled up all of my personal tax information for all to see. Not only where I lived, but how much I paid in taxes and everything else that there was about me. That was appalling and should not be on the web.

CHAIRMAN (Mr. Dent): You can go ahead and see the tax roll any time you want, but it is not on the web. You have to go in and ask for it. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Just to clarify, I know there was an issue with the city specifically about that a few months ago. Was your experience much more recent?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Yes, it was a few months ago. Several months ago, actually, and I did take it up with the city at that time.

CHAIRMAN (Mr. Dent): Mr. Braden, if you have more questions, I will come back to you. Mr. Bell.

MR. BELL: Thank you. I had one question about privacy issues and your earlier comments. If bureaucrats release information that is of a confidential nature, so long as it seems to be done in good faith, there really are no repercussions and nothing to address this. I find it disturbing because it is very difficult to determine what exactly "good faith" means. Certainly there has to be some standard here and there has to be some application of a duty of care or what a reasonable person might do in this case, and Mr. McLeod's questions about information that is released, it makes you wonder.

Because someone is ignorant of this law should not be reason enough to say, "Oh, well, it does not apply then. They made a mistake. It was in good faith." So, could you give me your thoughts on this standard of "good faith" and what that means to us so far as are bureaucrats potentially releasing information? I can imagine a million scary scenarios and I am wondering what your thoughts are on that. Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: In everyday government business information is sought and given out all of the time and, as I said earlier, it is often a case of the individual government employee just not thinking about the privacy issue when they are dealing with their day-to-day government work. That is an issue that is a training issue. It is nothing more and nothing less.

Keep in mind that once personal, private information is released, there is no taking it back. Once someone gets that information, you cannot say, "Give it back to me and forget you ever got it." It just does not work that way. On privacy complaints, usually the most I can do is require that an apology be granted and ask the government agency involved to take steps to avoid this sort of thing happening again.

I suppose the more privacy complaints I get, the more aware government agencies will become about the privacy issues. I can say to them, "You have got to be aware of these things and you have to take steps to prevent this information from getting out." That is the only thing that anybody can really do with a privacy complaint once the information has already been released. You cannot take it back.

CHAIRMAN (Mr. Dent): Mr. Bell.

MR. BELL: I guess, then, what you are saying is that the government has a duty to train anyone with sensitive, private information in the government, and make sure they are aware of the nature of the information. And if they are not doing that and the information gets out, then the liability should be on the government and back on the department who were negligent in their duty.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I think ultimate responsibility is with each individual department to make sure that their employees know the privacy law. I do not think individuals – unless they are acting in "bad faith" and handing out information where clearly it should not be handed out and doing it on purpose – I do not think individual government employees should be held accountable in terms of penalties or whatever when it was just a mistake. But, there are ways to prevent mistakes from being made. Does that make sense?

CHAIRMAN (Mr. Dent): Mr. Bell.

MR. BELL: Yes, it does. Thank you. I can imagine a lot of scenarios. Someone could release personal health information about people not realising that it is to a group who claims to be working on an awareness campaign. There are all kinds of scenarios that are out there, but clearly it has to be the departmental responsibility to train these people and make them aware that this kind of information cannot be released and if it is not being done and a mistake happens, I think it is back on the department who are negligent in their training and who have to bear the brunt. As you said, you cannot take this kind of thing back, and if we are going to be going around and try to punish every individual who makes a mistake, we are going to be busy. Thank you.

CHAIRMAN (Mr. Dent): Thank you. Mr. Delorey.

MR. DELOREY: Thank you, Mr. Chairman. I know that you have singled out the FMBS as being one of the biggest offenders of not releasing or having a hard time getting information from them. Do you have any success stories with the FMBS? Have they cooperated at any time when requests have been made from your office for compliance to information gathering?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Specifically FMBS?

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: Yes, specifically FMBS, because you did specifically say that FMBS was one of the worst offenders at times, that they refused to give out information. Have they cooperated at any time?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Occasionally. I think they genuinely feel that their position is the right position. I get the feeling whenever I am dealing with FMBS that I am no more than an annoyance. "Go away, we do not want to deal with you." Yes, they will give me things when I ask for them, however reluctantly they do that. My concern is that it often takes far longer than it should and far more effort than it should on both sides. They spend more time trying to avoid me and avoid my requests. The time and effort that is put in to avoiding me would be far better spent looking at the documents and seeing if they cannot release some of it.

Yes, they do comply eventually, but it is a lot of work.

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: Thank you, Mr. Chairman. In Nunavut are they getting caught up with some of the recommendations? For example, I know that they adopted a recommendation for municipalities to come under the Act on a graduated scale over a three-year period or whatever. Do you feel they are ahead of our Territory so far as in compliance with the Act?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: They have very recently taken some steps in response to my recommendation from last year's annual report. As I understand what they have told me, and I made slightly different recommendations in Nunavut, but most of my recommendations have been accepted and they are being dealt with in Nunavut, with the exception being the inclusion of municipalities, which as you say, they are delaying because they feel that the municipalities are having a hard time just dealing with Nunavut at the moment. They do not want to put yet another thing on their plate.

Are they going faster? Slightly, maybe, because they dealt with it before this committee has dealt with it, but they are not speeding along.

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: From your experience, how do you see municipalities? Would they be objecting to being a part of the Act? Are there any indications that you have that they might be reluctant to become part of the Act?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I have gotten no indication whatsoever. I suspect that they would see it as being more work and therefore might be somewhat reluctant. But again, the question is, are you dealing with the bureaucracy of the municipalities or are you dealing with the politicians in municipalities. If you are dealing the

politicians, I think you might find that they are very supportive. If you are dealing with the bureaucracy, the administration, they might not be so supportive, because they will see it as an interference with their ability to do their work. I do not think they would be any different than any other government faced with this kind of legislation. Some of the bureaucracy is going to be reluctant.

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: You mentioned as of January 1st that 2001 we come under the Federal Act. How does that effect our act right now? Does it add things to our act, work in conjunction with our act, does it take away from it?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Bill C-6 deals with the protection of privacy, personal privacy in the private sector. Our act deals with the protection of privacy only in the public sector. Our act does nothing to control or to protect the individual privacy in the private sector.

For instance, if you go to Shoppers' Drug Mart here and get a prescription filled, and it is clear that that prescription is for a specific disease, there is nothing, there is no legislation whatsoever that prevents them from releasing that information. They have their own ethics, of course, to follow, but legally is there anything that stops them from spreading that information around, that says, "Hey, did you know Ms. Keenan-Bengts there, did you know that she has this disease?" There is no legislation which prevents that.

The federal bill deals with the private sector, the protection of privacy in the private sector. This Access to Information Act deals only with the public sector.

CHAIRMAN (Mr. Dent): Thank you. Mr. Delorey.

MR. DELOREY: I would think that your office comes under Justice, does it not?

CHAIRMAN (Mr. Dent): No, Mr. Delorey, the Commissioner is an officer of the Legislative Assembly. She reports only to the Members of the Legislative Assembly and not only to government members, but to all Members.

MR. DELOREY: When you mentioned time frames in delivering and getting answers from different departments, you do not have access to any delivering agency for delivering of documents or getting documents delivered to your office. You use the mail strictly, mostly?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I use all forms of communication. I use email in non-sensitive situations. I use fax. I use couriers. When we are talking about out of the city, if I am dealing with somebody outside of Yellowknife, most often I will use mail, but if the situation demands it, I will use some faster means of delivering things. The issue is not how long it takes to get there. The issue is really how long the person has to react after they get it and the Act, as it is now written, at least arguably, the 30 days starts to run from the day that I send it out my door, whether it is delivered today or two weeks from now. My point is that really that 30 days should start to run only from the time that the recipient actually has it in hand.

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: You mentioned that the flow of information and the access to information out there in the public, whether it is through computers, email, or whatever. How do we stop that? How would our Act stop that now?

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts

MS. KEENAN-BENGTS: How do we stop that? That is the $64,000 question. When we are talking about government information – how do we stop it? We stop it by ensuring that our computer programs and our databases are secure, that only those who need to see them have access to them, that all government employees who have access to this kind of information are aware of the privacy provisions of the act and are trained in what they can and cannot release and to whom they can and cannot release it.

We can control it by when it comes to my attention and when I make a recommendation, the government agency involved taking a strong stand on it. Those are really the only ways. It is the technological age and it is going to be impossible to keep everything that is personal and private personal and private, but we can take steps to make it harder than it otherwise might be to exchange the information; even between government agencies.

CHAIRMAN (Mr. Dent): Thank you. Are there any further questions for Ms. Elaine Keenan-Bengts? Mr. Braden.

MR. BRADEN: One more Mr. Chairman. In looking ahead to the implementation of self-government in the Northwest Territories, we are now in the midst of in effect creating a new level of government - constitutionally enabled government among the aboriginal people in the First Nations. To what extent will those new levels of government be required to comply with, if not our own legislation, with federal legislation in this kind of thing.

I am asking that in the context of a special committee that has been set up to look at this kind of thing and how self-government will evolve in conjunction with public government. I am wondering if you could give us your views on self-government and

how those new organizations are going to have to look at this protection and privacy business. Thank you.

CHAIRMAN (Mr. Dent): Ms. Keenan-Bengts?

MS. KEENAN-BENGTS: You ask all the easy questions. I do not know. If the ATIPP Act were amended to include this other level of government, they would have the same obligations and responsibilities as the government of the Northwest Territories has. They may well wish to deal with those issues themselves within their own context. There are constitutional issues involved. I assume that, and I have seriously done no research on this issue at all, but I assume that they would still be covered by the federal Access to Information Act and the federal Privacy Act and as first nations, even as a separate government, they would fall under those provisions. I would have to do a lot more research on that issue before I could give you a really intelligent answer to that.

CHAIRMAN (Mr. Dent): Thank you. Ms. Bengts, I would like to thank you very much for your attendance at our committee. We will tomorrow, in public session, be reviewing your report with Mr. Voytilla and also with officials from Justice. So, your session here with us today was the first step in our process. As I mentioned earlier, we will, at the end of the process, determine what sort of report we wish to make at the Legislative Assembly, and then that will be moved forward likely for discussion in the June session. So, there will be some follow-up. Again, Thank you very much for attending. Just one final thing. Can we be assured that the conference you spoke about in June - all of the sessions will be public will they?

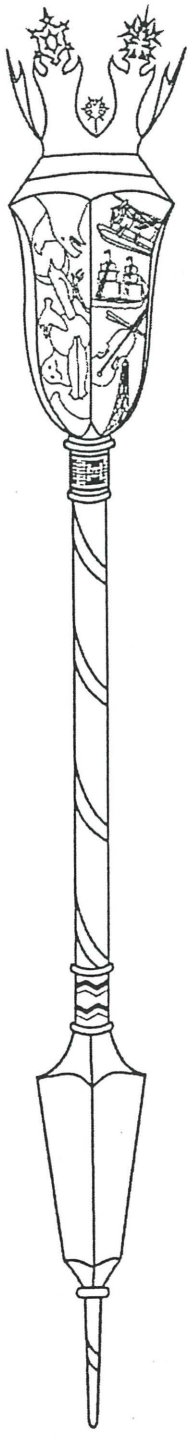
MS. KEENAN-BENGTS: Not all of them, but some of them will be. That was a joke.

-- Laughter

CHAIRMAN (Mr. Dent): Thank you Ms. Keenan-Bengts.

-- ADJOURNMENT

Reference Guide



Northwest Territories Legislative Assembly

Standing Committee on Accountability and Oversight

Continuation of the Public Review of the Access to Information and Protection of Privacy Commissioner's 1999/2000 Annual Report

Thursday, April 5, 2001

Public Review

Standing Committee on Accountability and Oversight

Chairman

Mr. Charles Dent, MLA for Frame Lake

Deputy Chair

Mr. Floyd Roland, MLA for Inuvik Boot Lake

Members

Mr. Brendan Bell
MLA for Yellowknife South

Mr. Bill Braden
MLA for Great Slave

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MLA for Mackenzie Delta

Mr. Leon Lafferty
MLA for North Slave

Mr. Steven Nitah
MLA for Tu Nedhe

Ms. Sandy Lee
MLA for Range Lake

Mr. Michael McLeod
MLA for Deh Cho

Mr. Michael Miltenberger
MLA for Thebacha

Witnesses

Mr. Lew Voytilla, Secretary to the Financial Management Board Secretariat

Mr. Rob Taggart, Manager of Corporate Services, Financial Management Board Secretariat

Mr. Gerry Sutton, Deputy Minister, Justice

Legislative Assembly Staff

Mr. Dave Inch, Clerk of Committees

Ms. Shirley Johnson, Director of Research

Ms. Laurell Graf, Researcher

Mr. Doug Pon, Researcher

Mr. Robert Collinson, Researcher

Ms. Katherine Peterson, Law Clerk

Ms. Jacqueline McLean, AOC Committee Coordinator

STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

Continuation of the Public Review of the Access to Information and Protection of Privacy Commissioner's 1999/2000 Annual Report

Thursday, April 5, 2001

1:30 p.m.

CHAIRMAN (Mr. Dent): Good morning. We have a quorum, so I will call the meeting to order. Mr. Delorey, would you say the morning prayer, please?

MR. DELOREY: God, our Creator, thank you for bringing us together today. Give us guidance and wisdom. Help us to make the decisions for the people we represent. Look after our loved ones at home and all those traveling. Amen

CHAIRMAN (Mr. Dent): Thank you. We are resuming our committee meeting. We are on item number 13, which is a continuation of the Public Review of the Access to Information and Protection of Privacy Commissioner's 1999-2000 Annual Report. We are joined this morning by Mr. Voytilla. Good morning, Mr. Voytilla.

MR. VOYTILLA: Good morning, Mr. Chairman.

CHAIRMAN (Mr. Dent): Do you have any opening comments for us this morning?

MR. VOYTILLA: Indeed I do, Mr. Chairman, and I also have with me Mr. Taggart, who is our Manager of Corporate Services.

CHAIRMAN (Mr. Dent): Thank you. Perhaps you could lead off with your opening comments.

MR. VOYTILLA: Thank you, Mr. Chairman.

Since the Access to Information and Protection of Privacy Act came into force on December 31, 1996, the FMB Secretariat has received requests for information from 12 individuals. The department has been able to respond and close the file on requests from eight individuals without the involvement of the ATIPP Commissioner. The requests for the remaining four individuals involved the Commissioner. These files include four requests from an individual for information related to the equal pay litigation, seven requests from an individual related to certain residential and commercial lease documents prepared specifically for consideration of FMB and Aurora Fund loan recipients. In addition, we received requests from an individual respecting information related to the Job Classification Standards, and finally, a request from an individual requesting information related to a GNWT privatization initiative.

In the request related to the equal pay litigation the FMB Secretariat received a request for information on October 9, 1997 from a professional requester of information under provincial and federal privacy legislation. The information requested was directly relevant to the ongoing litigation before the Canadian

Human Rights Tribunal in the federal courts. The request consisted of four separate applications that were too broad to respond to without undertaking a complete and comprehensive review of all documents in the possession of the government. The FMBS proceeded with this review alongside the preparation for the actual litigation on the complaint. This review of over 750,000 pages of records took two years to search, compile, catalogue and complete. I would note, although it is not in my remarks, that the cost of that was over $1 million.

On November 8, 1999 the FMBS advised the applicant that the documents had been identified as responsive to his request. Six documents were provided to the applicant at that time, and 96 documents were deemed to be exempt from disclosure under the provisions of the NWT Information and Privacy legislation.

On November 15, 1999 the applicant requested the Information and Privacy Commissioner to undertake a review of the decisions of the FMBS to claim certain exemptions over the 96 documents.

On December 3, 1999 the FMBS and the Commissioner agreed that the FMBS would provide only submissions related to the Section 13; Cabinet Confidences Exemption claimed over 90 of the documents and would provide submissions for all the exemptions claimed over the remaining six documents. These submissions were provided to the Commissioner on December 15, 1999.

On January 4, 2000 the Commissioner advised the FMBS that the Secretariat's submissions had been forwarded to the applicant for his reply. No further correspondence has been received from either the Commissioner or the applicant on this matter. I would note that around the same time the disclosure of the subject documents to the Public Service Alliance, Canada and the Human Rights Commission was addressed as a normal part of the litigation and tribunal process around the equal pay complaint.

I will move on to the next issue, which is residential and commercial leases. In this instance the FMBS Secretariat received requests for information from an individual on September 9, 1997 regarding certain commercial and residential leases. On October 9, 1997 the applicant was advised that the request for Cabinet-level records had to be denied under the Cabinet Confidences provision of the Act. The applicant was also advised that because third party interests were involved with the balance of the request, the affected businesses were being contacted as required by the Act. The affected businesses responded and indicated their desire that the information requested not be released.

On January 3, 1998 the FMBS Secretariat advised the applicant and the affected businesses that partial access to the records requested would be provided.

On February 19, 1998 the affected businesses requested that the Information and Privacy Commissioner review the decision of the FMB Secretariat. The Commissioner's review resulted in an agreement with the FMB Secretariat's position, our decision to release the information with the section severed.

Moving on to documents prepared specifically for FMB consideration. In this instance the FMB Secretariat received a request for information from and

individual on November 5, 1999 regarding documents prepared specifically for the consideration of the FMB.

On November 22, 1999 the FMB Secretariat advised the applicant that it could not release the information requested based on the Cabinet Confidences provision of the Act. The Commissioner advised the FMBS on December 6, 1999 that a request had been received from the applicant to review the decision not to release the requested information. The Commissioner's review decision was that some of the materials that FMBS felt it could not release did not fall under the exclusion in Section 13.1(a) of Cabinet Confidences and should be released to the requester.

The FMB Secretariat wrote to the Commissioner on November 24, 2000 advising that given specific provisions of the Act that did not give latitude to disclose Cabinet documents, the recommendations of the Commissioner could not be implemented, and that was based on our legal advice.

Moving on to an application relative to War Fund Loan recipients. In this instance the FMB Secretariat received a request for information from an individual on November 13, 1997 for information related to War Fund Loan recipients.

On December 10, 1997 a response was sent to the applicant indicating that the War Funds are not public bodies pursuant to the Act. The Commissioner advised the FMBS on January 28, 1998 that a request had been received to review the decision not to release the requested information. No direct recommendation on this request was received from the Commissioner since the information requested had been released to the press and tabled in the Legislative Assembly. The Commissioner did suggest that the FMBS ensure that the applicant receive the information. The FMBS confirmed that the applicant had received the information.

Moving on to an application pertinent to Job Classification Standards. In this instance the FMB Secretariat received a request for information from an individual on May 4, 1999 related to specific job classifications standards. The FMBS responded to the applicant with the requested information on June 29, 1999. A letter was received from the Information and Privacy Commissioner indicating that the applicant was dissatisfied with the information received and the timeliness of the response. Further information was provided to the applicant on September 16, 1999. The FMBS sent a letter to the Information and Privacy Commissioner on September 16, 1999 indicating the steps taken to address the applicant's request and complaints respecting the timeliness of the response and information supplied. A letter from the Commissioner to the applicant on November 9, 1999 requested confirmation that the concerns of the applicant had been met. The FMBS has not received any further correspondence and the Commissioner considers the file to be closed.

Moving on to an application relative to GNWT Privatization Initiative. In this instance the FMB Secretariat received a request for information from an individual on July 3, 1997 related to a GNWT Privatization Initiative. On July 12, 1997 the FMBS advised the applicant that a 60-day extension was sought in

order to gather the large volume of records requested and to consult with the other departments involved in the initiative. After considerable effort the requested information was gathered, however the information was never sent as the applicant had withdrawn the request. This was confirmed through correspondence from the Commissioner on January 19, 1998.

Mr. Chairman, the situations that I have just described clearly indicate that often matters are not simple and straightforward when it comes to information requests made to the Access to Information and Protection of Privacy Act. In each of these situations the FMB Secretariat has acted in accordance with the legislation. However, there have been situations where interests and/or rules have been unclear and the FMB Secretariat has proceeded cautiously and sought clarity before acting. In all instances the right to information needs to be balanced with the right to privacy and with the legitimate confidentiality requirements recognized in the Act.

I have spent some time, Mr. Chairman, on the specific cases that involved the Commissioner. As I pointed out initially, eight of the 12 individuals requesting information from us were dealt with without the involvement of the Commissioner. We certainly are prepared to go through each case. I think our information that we can provide to you shows that in the last two years of all of the requests we have received in that period of time we have responded on time with the exception of two situations where we were one day late on one and five days late on another. So, we are prepared to get into the chronology or the facts pertinent to any one of the access requests we have dealt with.

As I mentioned, many of these are complicated. Some of them, quite frankly, required an extensive amount of research and time. The one I have related here concerning equal pay, as we did point out, was three-quarters of a million documents that were documents that had to be reviewed to respond to that request. It cost us $1 million and took us two years. We were doing that anyhow because of our equal pay litigation, but that goes to show the magnitude of the impact that some of these requests can have. In most cases we do respond within the timeframes that are available to us and within the spirit and intent of the act. But, if the committee would like to go through any of the specifics, we certainly have all of the details on how we have handled each and every request. Thank you.

CHAIRMAN (Mr. Dent): Thank you, Mr. Voytilla. Do the committee members have any questions for Mr. Voytilla? Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, the Commissioner made some very clear and pointed comments, especially in her covering letter attached to her report specifically about the attitude of FMBS. She made a comment to the effect of a corporate culture of secrecy, protectionism, and there is reference to a lack of respect and attention paid to the role and responsibilities under this particular act. I would like Mr. Voytilla to speak to that particular issue as opposed to the specific details.

I am assuming the Access to Information Commissioner did this after some consideration and thought, and did not make those comments lightly, and they are further significant. I wondered if Mr. Voytilla would care to comment on that particular situation. Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. Let me assure the committee that the FMB Secretariat has the highest respect for the Act and the intent of the Act, and highest respect for the office of the Act's Commissioner. I think it is very clear, however, that on the facts of the case we would suggest that a different interpretation of our commitment to that Act and commitment to the spirit intended of the legislation, that we would have a different interpretation on how we have behaved than the Act's Commissioner does. It is very difficult for me to speak to the rhetoric. I can speak to the facts and I think if we go through the facts, it would suggest that it would make our actions and the intent of our actions very clear.

CHAIRMAN (Mr. Dent): Thank you, Mr. Voytilla. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Mr. Chairman, could Mr. Voytilla indicate if there has been an opportunity for you to meet with the Privacy Commissioner to discuss issues in a general way or to talk about situations like this? Obviously things are at a point where things have been written and said now that are fairly pointed. Has there been any attempt to have a meeting of the minds on this particular relationship? Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Mr. Chairman, there have been meetings with the Access Commissioner and the staff of the FMB Secretariat on a number of the particular applications. On our last response relative to one of the applications we did invite the Commissioner to meet with us, me in particular, but we have not yet had a response back to that invitation.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: I have a question about some of the ATIPP coordinators. Is there any kind of oversight function performed by FMBS on this particular legislation in terms of coordinators and tracking things or is that just done by individual departments? Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Mr. Chairman, this legislation has the lead as Department of Justice. So, Justice and the Justice Minister are responsible for legislation and there is a coordinating role, which they do play. They are available for advice on the Act. That would be played by the Department of Justice.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Just in your opening comments, on page 2 of 8, top paragraph, you refer to a professional requester of information. Was that someone from out of the North who was hired by somebody to do stuff?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. I would have to be careful about speculating as to whether the individual was actually acting at the request of any other party. But, he is a individual resident in Ottawa who, our information is, makes a profession of accessing information under multiple jurisdictions under the pertinent legislation. So, when we use the term "professional", I do not think we are being slanderous or libellous in that description.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Looking at the one for residential and commercial leases where it is included in a Cabinet document, I guess. Not looking to the specifics of this incidence where somebody has requested information, but I guess in general, when someone makes a request for information regarding the Government of the Northwest Territories, whether it is any department or an agency of this government, why would it not be considered as public that we hold leases with certain companies in the Northwest Territories. It is public money going out there. In general if you could give us a breakdown of what might cause some concern where you would not want to release that information? Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. There are specific provisions in the Act that lay out the reason for exemptions and for protection of privacy. So, those are in the Act. Rather than quoting the Act though, let me speak to what I interpret the spirit of intent to be.

The Act is there to make information available to the public that the public has an interest in and a right to access to. Saying that, it has to be balanced with the privacy provisions of the Act that protect businesses and individuals from disclosure of arrangements and business dealings they have with the government that would be damaging to them. When I say "damaging," many of the contracts and other arrangements we have with businesses have a high degree of information about the business in them. If you make a loan application as a business, you have to disclose a lot of the inner workings of your business. If that became available to your competitors, it could be seriously damaging to your competitive situation. So, you can cause problems for a business unwittingly by releasing information that compromises their market position or their ability to compete or other issues of that nature.

In respect to individuals, individuals have a right to certain privacies, privacies about their income levels, privacies about other aspects of their relationship with the government. So there are valid reasons for there to be exemptions under the Access and Protection to Privacy Act, and those are fairly well articulated in the Act itself. It is the interpretation that sometimes raises debate.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: There was a suggestion made by the Privacy Commissioner on that whole area of people understanding the Act, especially with new employees coming on with the government, that they should consider looking at some sort of an orientation for new employees so that people could understand there is an Act. In some cases people were not even aware there was such an Act in place. What exactly are you doing in regards to the government to insure that people understand there is such an act in place and that people do have certain rights to information within this government? Maybe you can answer that one first.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. Of course I cannot speak on behalf of the entire government, because this is not our Act, this is the way we have segregate responsibilities. This is the Department of Justice's Act from the standpoint of overall government coordination. So, I can speak to what we do in the Secretariat to ensure that we adhere to the Act and that staff are aware of it. We have, in the Secretariat, a specific position dedicated as the Access to Information coordinator. We have presentations that have been given to our senior management team to inform them of the provisions of the Act and we certainly keep in our management meetings access issues at a high level of awareness and concern.

So, we keep our employees well informed on the obligations and provisions of the Act, and our responses in particular to applications made to the FMBS we treat those very seriously and all of our staff are aware of their obligations. I think from the standpoint of the department we do have those provisions in place. With respect to overall orientation, I would have to defer to the Department of Justice as to what they do with respect to orientation. I do know that they give regular seminars on the Act.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: You made reference that on some occasions you have a legal opinion in regard to what may be the Privacy Commissioner's view was versus the department's. Do you share those legal opinions with the Privacy Commissioner to see exactly if there are ways to clarify the legislation or enhance the legislation so it is clearer, it is specific to a specific point, that you are not having these opinions bouncing back and forth? I know from what you have stated, it is not simple, it is not straightforward, it is hard to understand, and I think that in the case of that there may need to be changes. So, I am wondering, do you share that type of information with the Privacy Commissioner?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. We certainly share the substance and the argument and the position with the Commissioner. Whether we share the actual document is another matter. Those document's legal opinions belong to the Attorney General, so only the Attorney General can release them. But the substance of the opinions we certainly are prepared to share.

With respect to whether any particular clause needs modification, if we felt that it did, we would pass that on to the Department of Justice, who has responsibility for the legislation, and perhaps suggest to them that there are areas that need clarification. As we work through many of these issues, some areas are of that nature, where they would benefit from some greater clarity, either through legislative amendment or through clarification on the intent of the Act, or the intent of the clause that might come through court decisions or other means.

Yes, in answer to the Member's question, there is an opportunity to both share the substance of the legal things we get as well as feedback with the Department of Justice on areas where there might be a need to clarify the legislation.

CHAIRMAN (Mr. Dent): Just on the issue of clarity, Mr. Voytilla, before I go on to Mr. Krutko's next question, could you please clarify who you mean when you refer to the Attorney General?

MR. VOYTILLA: Sorry, that was not clear – the Department of Justice.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: One of the things that seems to have come out in this review is that there are several agencies and corporations – we just touched on one, the Aurora Fund – and also in communities and municipalities, you have hamlets, we have housing authorities and other agencies who deal with a lot of information that in some cases is confidential, but there is no real approach or avenue for people to access that information or for people to have that information protected.

So, I am wondering if there is a possibility of expanding on that so that groups and agencies such as getting information from the Aurora Fund who have received grants or whatever, can be made public because they are not on this list that you mentioned. Maybe there is a time when we need to look at this list and maybe add groups or agencies that we feel would be in the public interest, so that they do apply to this legislation, that they are not exempt. Because you did touch on it when someone mentioned the Aurora request.

CHAIRMAN (Mr. Dent): Thank you. Mr. Voytilla.

MR. VOYTILLA: First, Mr. Chairman, let me speak specifically on the Aurora Fund. The Aurora Fund Loans are public. It is contained in the financial statements of the Aurora Fund that are tabled annually with the Legislative Assembly. We just tabled the last two annual reports for two funds in the last session. So that information is public and we have sought and obtained waivers from the individuals borrowing from that fund to that disclosure.

With respect to the broader question of application, scope of application of the Act, I believe you are going to have Mr. Sutton, the Acting Deputy Minister of Justice before you later today and I would defer that question to him as the legislation is a Department of Justice Act.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: I still have a question related to page 5 of Mr. Voytilla's comments under the section where he refers to the first two documents prepared specifically for FMB consideration. In the last paragraph he makes the comment that the Act does not give the latitude to disclose Cabinet documents. Could Mr. Voytilla indicate what type of documents are we talking about? Are we talking about every document that goes through the door of the Cabinet room? Are we talking about records of decision? Could you clarify that for me please? Thank you.

CHAIRMAN (Mr. Dent): Thank you. Mr. Voytilla.

MR. VOYTILLA: The ATIPP Act is actually quite specific. If I could for clarity read it – Section 13:

The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including:

A. Advice, proposals, requests for directions, recommendation analyses or policy options prepared for presentation to the Executive Council or the Financial Management Board;

B. Contents of agendas, minutes or records of decision of the Executive Counsel or the Financial Management Board, or deliberations or decisions of the Executive Counsel or the Financial Management Board;

C. Consultations among members of the Executive Counsel or the Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy;

D. Briefings to members of the Executive Counsel or the Financial Management Board in relation to matters that:

1. have been before or proposed to be brought before the Executive Counsel of the Financial Management Board; or

2. are the subject of consultations described in paragraph C.

So it is wide-ranging in its application.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Maybe the more simple question would be then what Cabinet documents would be available? Sounds like this is a fairly exhaustive list. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: That is a very difficult question to answer without specific reference to a specific document and set of circumstances. The Member is right, it is quite a comprehensive list. In our view the documents sought in that particular application fell into the category of Cabinet documents, document confidences that as a head of a public agency I was not permitted to disclose.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, this is a different circumstance, but my recollection of the Morin Inquiry, for example, was that there was considerable discussion about what took place in Cabinet letters, in written decisions that were made, who was present, yet I know it is not under this specific act, but what that done some sort of legal subpoena process or did the ATIPP Commissioner just ask and it was given? They could not use this to prevent any of that information from being made public?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: I do not have the technical competency to answer that question. Perhaps Mr. Sutton, when he appears, might be able to answer.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, I guess you get to the spirit and intent of the legislation. Given the exhaustive wording in that particular clause or section, just about anything of significance that the government does would have some Cabinet confidence attached to it and would make any sort of meaningful access very, very problematic, it would seem. It is more of a comment than a question, but it just seems that if you attach that kind of label to any piece of information, then you can just tell the public, "Sorry. We are not telling you." It seems like a blank check. That is just a comment. Thank you.

CHAIRMAN (Mr. Dent): It might be useful to ask Mr. Sutton the question specifically about the inquiry and how, for instance, they got minutes to Cabinet meetings, which they did. That might help clear up the issue.

Are there any other members who have questions for Mr. Voytilla?

Mr. Voytilla, you are probably aware that there have been a number of Members around the table who have expressed a significant amount of concern about the state of records management within government. In your opinion, would an improved records management system make it easier to meet the deadlines that are set out in the ATIPP Act?

MR. VOYTILLA: Mr. Chairman, there are two ways to answer your question. First, I would point out that in the last two years we have met the deadlines in the ATIPP Act with the exception of two that were one day late and five days late. Just for the record.

The issue of records management, though, is an important one, because we do have records management systems in the government and they do allow us in most cases to respond on a timely basis to these kinds of requests, particularly if it is for a specific document. Where the records systems, and I do not know if any record system would ever deal with the issue, is when we get broad requests that you might characterize as fishing expeditions where a whole range of documentation is sought over a long period of time.

Perhaps one of the best examples is the one I opened with in my opening remarks, where we had a request for any information pertinent to equal pay that was in government records over a 12-year period. No record system in any

organization is going to be up to the task of efficiently doing that kind of search and retrieval. We had to do it, because it was also part of litigation in a separate case in a separate court forum. And, it took us, as I pointed out, two years and $1 million to go through almost a million records to find that information. That was not because of the problems with our records management system, because all of those documents had to be searched across all of the government, historically as well as currently, they had to be catalogued analysed, put into a document imaging system so that they were accessible.

In this case we had no choice but to make that investment so that we could respond to that particular request. But to expect that the government could ever get all of its records to that state of readiness, I would suggest would be prohibitively expensive. We are talking about 750,000 records that we did it for in this particular case. Well, the government probably has 7.5 billion records. To actually put those into a form where they were all immediately accessible without a lot of manual searching would just be cost prohibitive.

Saying that, could we make improvements to our records management systems? Absolutely. Should we be making them? We are, and we are looking at records management practices continuously, but also as part of the knowledge management strategy. So, I know it is a long answer to your question, but yes, improvements to our records management system are desirable. They can in some ways perhaps help us with these requests. But, I do not think we would ever get a records system that allowed us to deal with all requests on an immediate basis.

CHAIRMAN (Mr. Dent): There is a significant improvement, hopefully, coming in terms of records management and a "go forward" basis. Is that what I hear you saying?

MR. VOYTILLA: We have been making continuous improvements to our records management program for many years now and we continue to do that. We are now looking at new technology and new standards to even move that forward further through knowledge management. Yes, we are trying to make those improvements. It is a huge task.

CHAIRMAN (Mr. Dent): Okay. The other issue the Mr. Miltenberger touched on earlier was that, and I know you expressed some difficulty in speaking to the rhetoric, but the Access Commissioner has accused FMBS of being less than cooperative in their attitude towards the requests that come in for information. You have spoken very strongly yourself about the support for the intent of the Act and so on. Some of that was called into question with your answers to the fund loan applications and privacy of salary, for instance.

Our government has a policy of not allowing market disruption, so there should be no reason not to release the basic information of loan applications. If a firm does actually qualify without market disruption, there would be no competitor. So, that would be one way to make sure that the public was aware or that business people were aware whether or not, for instance, there was a business coming in

that might cause market disruption by making sure that the public information was there.

I think that we have to be cautious, but in my opinion, we have to look for ways to release the information. If people are accessing public funds, the public has a right to know about that, so far as I am concerned. I would argue very strongly that when someone makes a loan application to this government, at least the details of the purpose of the loan, the amount of the loan, and the term of the loan should be made public. I would also point out that most jurisdictions in Canada also release salary information for all of the public service, so salaries are not typically seen as something of a privacy issue for a public government.

That is more of a comment, Mr. Voytilla, just relating to your comments particularly expressing support for the purpose of the Act. I do not know if you would care to respond or not. Mr. Voytilla.

MR. VOYTILLA: Yes, Mr. Chairman. What we have to take into account in those types of situations are the provisions of the Act. The Act does require us, when we have information requested of us that affects a third party, we are obligated by the Act to seek the views and comments of that third party before we release the information. The third party then has the ability to make an application or make a submission to us to speak to their concern with release. Then, based on that third party response, we make a decision as to what is released.

In several cases we sought third party concurrence with the release of information. The third party got back to us. We then went ahead over the third party objections to release certain amounts of information. The Access Commissioner, certainly in one instance agreed with what we released.

I think there is a recognition that we have to respect the interests of third parties. We have to, under the Act, ask them for their comments on release, then we have to make a decision. I think we do try to err on the side of disclosure as opposed to the side of keeping things confidential. So, I guess I can answer in that case.

With respect to personal information like employee salaries there is a specific provision in the Protection of Privacy component that disallows us releasing certain information. I am just scanning down it, but somewhere in here there is a reference to information about earnings and income. I can not find it right now, but I do know it is in the act. We do have to be cautious. I know the act, and I am going a bit from recollection here because we have looked at this issue many times. The act allows us to disclose salary ranges for a particular position that somebody occupies, but it does not allow us to disclose specific earnings.

I have the reference now, thanks to Mr. Sutton. It is Section 23, Subsection 4, Item E:

The personal information relates to third party classification, salary range, discretionary benefits, or employment responsibilities as an officer, employee or member of a public body, or as a member of the staff of a member of the executive council.

There are limits and guidelines on what we can disclose when it comes to a wide open disclosure of individual earnings that is not supported by the ATIPP Act.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, just one final question for Mr. Voytilla. Given the nature and tone of the Commissioner's comments in regard to the Financial Management Board Secretariat, I was wondering if Mr. Voytilla could indicate before he leaves the witness table any steps that he intends to take so we are not having any of the same conversation next year. A way to proactively resolve what the Commissioner sees as some issues here. Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Mr. Chairman, my invitation to meet with Commissioner stands. As I mentioned in my opening remarks, if you get into the facts of each specific case, the actions that we have taken have been appropriate. What we have been dealing with is the fact that some of the applications made to us have been very difficult ones with many particular implications. I speak specifically to the broad request on equal pay which caused a fair amount of dialogue and exchange of correspondence with the Commissioner, and the request for information for Cabinet documents which also obviously generated a lot of correspondence.

With the exception of those two items, and I have tried to explain the issues around them, our record for response to applications under the act is a very defensible record. I do not have the same view as the Access Commissioner on our adherence to the spirit and intent of the act. There are those two issues that gave rise to the Commissioner's concerns, but I am certainly willing to and have made the invitation to sit down with the Access Commissioner to discuss these issues and broader issues, if she would like. Thank you.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Going back to what was illustrated earlier in a similar question that Mr. Miltenberger posed, at times it falls down to the matter of interpretation. From the section that Mr. Voytilla quoted, regarding Cabinet documents and things prepared for Cabinet, interpretation could be very wide. Anything that a Minister requests from his department in saying that he is going to prepare a submission could be excluded.

Anything we ask from Ministers, or anything individuals of the Northwest Territories ask from a Minister of a department could almost be classified through interpretation as not being available to individuals in Northwest Territories. It goes back to some of the discussion we had earlier with the Commissioner herself, in the area of tightening up the act and trying to strengthen it to a certain degree. I get a very different view from Mr. Voytilla versus what we had when we first sat down with the Commissioner. It might warrant another sit down with the Commissioner too.

As we have gone through this process, and knowing that any talk of amending or changing regulations would have to be through the Department of Justice. It is of interest that, for example, under the talk of Pay and Benefits for employees of

Northwest Territories government, we as Members table everything for paying benefits for Members, and we have two different standards again, and I accept that. I am elected by the people and they need to know, but at the same time I am a representative of the Government of Northwest Territories. That is trying to work on behalf of the public of Northwest Territories. It is interesting that we would have two standards in a set. When it is appropriate or when it is for government, they will withhold that information, but if demanded in other areas then it has to be given.

As stated by one of the Members yesterday, it was 1998 when this came in, maybe it is time for a review of the act. As I stated earlier when we went through this, my constituents stated when it first came out that it was very weak and in fact it needs to be tightened up. I look forward to meeting with the Department of Justice on that one. Thank you.

CHAIRMAN (Mr. Dent): Thank you. Just to clarify that act came into force at the end of 1996. It came into effect on December 31, 1996. Mr. Voytilla, do you wish to respond to Mr. Roland's comments or leave them as comments?

MR. VOYTILLA: I took them as policy comments and directional comments that would be discussed politically.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Just in regard to time lines set. Can Mr. Voytilla state if there are any outstanding requests to date in regard to the information from your department?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: At this time, my information is that we do not have any outstanding Access to Information requests. There are still some issues hanging around from some of the earlier ones, but no outstanding requests.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. One of the suggestions is to put time lines on requests that are made so, that you do not let it drag on for any long period of time. The suggestion is for 30 days from the time that you receive the request until the time that the information should be provided. Is that a realistic time frame in regard to using 30 days to turn this information around to the parties that may have requested that information?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: For specific requests for specific documents, yes, 30 days is reasonable. For requests that require much more research and compilation, probably not. It depends on the nature of the request. As I said, one situation we had a request that at the end of the day involved searching and compiling 750,000 documents, and 30 days, no, it took us two years. It really depends on what the request pertains to.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: In regards to where it took two years, for those type of requests there can be some allocation where at least you made the attempt to respond within those 30 days, stating that realistically it is not feasible, it will take you that much longer, but at least notice would have been given. You are looking at it. You are working at it. You are not trying to avoid the issue, or have the person wait for some two three years just to collect or get access to that information. In that case, would something like that be practical, knowing that you can not do it in the 30 days but you have to make the attempt to show through writing to the individual or the Privacy Commissioner that realistically it is not feasible and it will take you a longer period of time? That way at least it is on the file, and you are working on it.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. I agree with the Member, and we did. We sat down with Access to Information Commissioner on that particular one that took two years, and right off the bat explained to her the difficulty of responding in a timely basis for that request. We followed it up in writing, and we gave them progress reports as we worked through the work. I concur with the Member.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. Some of the other suggestions that are being thrown around is the whole area of giving the Commissioner the power to subpoena documents if she feels the department is not working cooperatively. Whether she feels they are trying to avoid the act, the Commissioner will have that power similar to a judge to subpoena documents if they feel it is relevant to a particular case.

They will also have the ability to set penalties in failure to comply with having those time lines met. Having these powers might be a little extreme, but sometimes you have to take extreme measures to get your point across. In those cases, do you feel there is a need to go that far if the act is not being complied with to date?

CHAIRMAN (Mr. Dent): Mr. Voytilla, would you care to comment?

MR. VOYTILLA: No, only to refer that question to Mr. Sutton. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: Thank you, Mr. Chairman. I just want to make a few comments on what we are hearing this morning, and what we have heard on this whole issue. From the Commissioner we have heard that some departments have been very cooperative in dealing with the Commissioner on Access to Information. We also heard that some are not very cooperative at all. As a matter of fact, sometimes adversarial of the process of trying to get information. It has been mentioned before that it may be a situation that we have to sit down with the Commissioner again.

From all indications, there is conflicting stories coming out of it. From Mr. Voytilla's report here this morning, we would have to think that FMBS is very cooperative and meeting the deadlines right to the "T". Just that in itself creates some questions. On very simple information issues, as a Member you write a letter to different departments, and you are lucky sometimes if you get an answer in three months, never mind 30 days. So, I have no problem thinking that there is something there when the Commissioner says it is not very timely sometimes trying to get information from different departments. We do have to look at this again.

There are moves in different jurisdictions right across Canada right now to Access to Information Commissioners and the Right to Information, and tightening up on legislation may be giving more power to Commissioners. That is probably an area that we are going to have to deal with, but just to say that we are hearing very different comments being made from one side and the other. That, in itself, creates some doubts on whether her interpretation of how dealing with FMBS has become adversarial and sometimes in situations very frustrating in getting information. More or less comments, but we do need to look at this some more.

CHAIRMAN (Mr. Dent): Thank you, Mr. Bell.

MR. BELL: Thank you. I would like to echo the comments made first by Mr. Roland. It is time that we had a review of this legislation. Certainly when a public report comes out from the Access to Information Commissioner that suggests there are problems in particular with FMBS and characterizes the FMBS as having a corporate culture of secrecy and some of these other suggestions. They are very strong suggestions. We have heard from Mr. Voytilla here today that he is not prepared or ready to engage in a debate over what he considers rhetoric. If we want to speak to the facts, he is more than prepared to do that. He has indicated in only two cases FMBS has failed to meet deadlines. One in six days. It is important that we do engage in a debate about this, but he is right. We do need to deal with facts. It is important that we get the two sides in this matter together to discuss these issues, because there is a black cloud hanging over this in the minds of the public.

Mr. Dent suggested that other jurisdictions do things like release specific salaries for high level civil servants. That clearly is the case, but our act does not allow for that. If we feel that those things should be accessible to the public, then it is up to us to do something about it and change the act. Cabinet FMB documents, clearly any documents you could ever imagine is excluded given our current legislation. We would not expect FMBS to interpret it any differently. If we want to make some changes, and we feel that their are some types of Cabinet information that should be released, it is up to us to review that and make those kinds of decisions.

Clearly, we have two far apart views of the ways things have been going, but it is disturbing. I would like to suggest that it might be time to review the legislation, if it is not meeting our needs. We can do something about that. Mr. Voytilla insists

that we are meeting deadlines, unless in certain situations that can be categorized as fishing expeditions. It is important that we sit down and discuss the specifics of these cases to determine if in fact we are meeting these deadlines. Again, I would like to say that we have to get the two sides together, because we have to clear this up. Thank you.

CHAIRMAN (Mr. Dent): Thank you. Are there any further questions for Mr. Voytilla? Mr. Krutko.

MR. KRUTKO: In Mr. Voytilla's presentation, he listed some areas where there were complaints that they dealt with. Are those all the complaints that you dealt with? Do you have specific numbers of the complaints that you have received, and the number of things that you have dealt with? Is this in your report?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Since the inception of the act, as I pointed out in my opening remarks, we have had requests from 12 individuals. Some of those were multiple requests. We do point out that in one case, there was one individual who made three separate requests. Since the inception of the act, twelve individuals have made requests to us. That is all that we have received. The ones I highlighted were the situations where the requests are for the individuals involved with the Commissioner. The other eight individuals were able to resolve their requests without involvement of the Commissioner. That is a comprehensive summary of the requests that we received under the act, if that is the Member's question.

CHAIRMAN (Mr. Dent): Thank you. Mr. Voytilla, Mr. Taggart I would like to thank you for your attendance at committee this morning and for having responded to our questions. I see we have Mr. Sutton in the office, and he is next on our agenda. Are Members prepared to moving into hearing the Justice presentation next? OK. Mr. Sutton, perhaps you would join us at the witness table, please. Mr. Sutton, do you have opening comments?

MR. SUTTON: Yes, Mr. Chairman. I have some brief opening comments.

CHAIRMAN (Mr. Dent): Would you happen to have extra copies for the members?, or do you have a copy that our clerk can make copies from?

MR. SUTTON: I am sorry, Mr. Chairman. They are going to be off the top of my head.

CHAIRMAN (Mr. Dent): OK. Please proceed Mr. Sutton.

MR. SUTTON: Thank you, Mr. Chairman. The Department of Justice has responsibility for the Access to Information and Protection of Privacy Act, in the sense that the department has the responsibility for the overall coordination of the implementation of the legislation. However, the act is clear that the responsibility for administering the duties under the legislation fall under each public body, be that a department, board, or whatever. Typically, a department will appoint an Access to Information Coordinator, and the responsibilities that fall on a Minister will typically be devolved. Many of them will be devolved down to

Deputy Minister, to the level of the coordinator, or to managers as the case may be, but the responsibilities clearly fall on each department.

The Department of Justice initially prepares a policy manual and a procedures manual for coordinators and departments. On an ongoing basis, we particularly provide for the training of coordinators, and in some cases, beyond coordinators within departments. The overall responsibility for training within a department falls on the individual department and typically is done by the coordinator, however, we in the Department of Justice have facilitated training that would involve participation of all levels of employees, if they were interested in participating in the training.

Usually, we do it by contracting with a consultant in Ottawa who will come up to the Northwest Territories and provide the training, most often in Yellowknife, but more and more we are trying to identify ways to provide for that training in regions. This training happens on a regular basis, and there are opportunities for employees and managers in particular to maintain some familiarity with the act and their responsibilities in the administration of the act.

The Commissioner, in her report identified a number of recommendations, and we have viewed those recommendations and have some comments to make. Whether or not those recommendations are accepted or not is a policy issue, but we can make some comments on those recommendations based on our review of the practice in our jurisdictions and also the legislation in other jurisdictions.

In saying that, I would caution the committee to be aware that essentially there are two types of commissioners in Canada. There is an ombudsman-like function, and there is also another type of commissioner who exercises and adjudicated function. Most jurisdictions follow the ombudsman model, which is the model that our legislation provides for. What this means is that the ombudsman is not an adjudicator, is not a court. The ombudsman investigates and makes recommendations, and the responsibility for accepting those recommendations or not falls on the head of the department.

Which is quite different from the adjudicated model, which only exists in a number of jurisdictions, notably Alberta, British Columbia, and Ontario. Only in those jurisdictions, because it is a fairly expensive way of exercising this kind of responsibility. It typically involves a large staff, and most jurisdictions like the Northwest Territories have found that the cost of such a model prohibitive. That is the policy reason why we have gone with the ombudsman-like model.

The specific recommendations for change by the Commissioner were firstly a recommendation that there be a presumption that when a recommendation is made, it is presumed to be accepted, if after 30 days no action is taken by the head. Our review identifies that there is no jurisdiction that has that presumption. In fact, there are presumptions in most cases, but the presumption is that the head has denied the recommendation and not accepted the recommendation. In our case, the legislation is silent, and based on the structure of the act it probably assumes that it is not accepted. If it is not acted on within 30 days, it is in fact rejected, but the act on that point is silent.

The Commissioner's second recommendation was that the legislation be changed so that all notices under that act be sent by registered mail. We have identified that no other legislation provides for that requirement for service by registered mail. In fact, our research reveals that in Quebec they used to have that provision, and they amended their legislation to remove it. The effect of the recommendation, if it were implemented, would be to introduce an element of formality and rigidity that probably is not consistent with the way the act was intended to be administered.

The third recommendation was that the Commissioner be mandated under the act to review complaints relating to invasion of privacy. Our act does not have that provision specifically. Our review of other legislation is that most of them do provide for it.

Her fourth recommendation dealt with the powers of the Commissioner. Our review of the legislation reveals that most of the acts in other jurisdictions provide for the kinds of powers that the Commissioner is talking about in relation to subpoena of documents or witnesses. Those are the type of powers that exist in our Public Inquires Act. There is no legislation that we have identified that we would give the power to impose penalties for failure to comply with the time limits. There is no legislation that we have identified that would allow the right to disallow fees, otherwise payable. There is no legislation that would provide to remove the right to invoke discretionary exemptions. There is no legislation that we have identified that deals with holding performance bonuses from deputy heads of departments. Although, in practice that could be a practice apart of legislation.

Another recommendation was that the government look at the creation of private sector privacy legislation. That is a policy question. The federal act will apply. The question is whether it is the desire of the Northwest Territories to remove the application of federal legislation, and have our own legislation apply.

Municipal governments, when the legislation was first introduced, the plan was to have it first apply to departments and those agencies that were identified in the schedule to the Financial Administration Act. Later, it would be extended to health boards and education boards. That has been done. The idea at the time was whether it would be applied to municipalities would be considered at a future date after the government and the different boards and agencies had built up some experience.

In dealing with the act, the Commissioner also made a recommendation regarding the Public Utilities Board. The Public Utilities Board is covered by the act. That is not an issue. I will restrict my comments to that, Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. First from a process point of view, I will temper my remarks by recognition of the fact that this is the first opportunity to review this particular legislation and report from the Commissioner in the public process. I must say that I am very disappointed that Justice has

chosen not to come forward with the written presentation that would speak to the issues that Mr. Sutton has raised.

I find it difficult to try to keep track of all the comments that he made about substantive recommendations made from the report. I see that he is referring to some notes so, it is not completely extemporaneous. It is difficult for us to go back to the transcripts now to sift through what has been said to see how it relates. It is going to put us at a disadvantage to question Mr. Sutton. I do not have anything to refer to other than my memory and the quick notes that I have taken.

Some of the recommendations made by the Commissioner are detailed ones and some are complex one. I feel somewhat at a disadvantage here. I would like to put that on the record. I hope that in the future, Justice considering their oversight responsibilities especially for this legislation would come forward with enough detailed comments similar to FMBS if there is a need to have a clear discussion on some of the issues.

I would like to talk to some of the specific issues if I could, Mr. Chairman. I have a number of items. In regard to the ATIPP coordinators, I would like Mr. Sutton to expand on the oversight capacity in regard to the role of Justice. One of the issues that came up, for example, is the lack of numbers in terms of the actual numbers of requests that are made by the public for information to government. Nobody seems to have that particular function as a role. We get the numbers from the Commissioner saying she had seven requests, but out of how many? Were there dozens, hundreds? I would like to ask Mr. Sutton whether Justice sees itself as being able to possibly pull together through their ATIPP coordinator across government the compilation on a yearly basis of numbers we can see.

So, we can have a frame of reference is my concern. If we have seven requests out of 600 that end up on the Access to Information Commissioner's desk, then it is different than ten requests. For me, it is very difficult to give weight to those numbers. I would like Mr. Sutton to speak to that particular issue first.

CHAIRMAN (Mr. Dent): Thank you. Mr. Sutton.

MR. SUTTON: Thank you, Mr. Chairman. The department, in it's capacity as responsible for the legislation would be responsible for pulling together those kinds of statistics and, in fact, we have done that. We are looking at the possibility of introducing an Annual Report that gives statistics on the number of requests, where they have gone to, how they have been dealt with, et cetera. We have been compiling those types of numbers. We have not done it for this year. Our plan is to do it for 2001. We can provide you with those numbers when we have finished the compilation.

I can give you some idea of the number of requests, if the committee wishes. Which would give you some basis to consider the number of cases that actually go to review, if that was the interest of the Member. I agree that it is the responsibility of the department to compile those statistics, and as I said, it is our

intention to begin to produce an Annual Report on that basis beginning with 2000-2001.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. It is absolutely critical in our roles here, if we are making decisions on legislation and other substantive matters, that we do need blue chip information, good information. For me, personally, Mr. Chairman I would assume that the committee would benefit from having as much information about both this act and how it is being use by the public across government. I would say, if you have that document, I would personally appreciate it and it would be a benefit to my colleagues.

CHAIRMAN (Mr. Dent): Mr. Sutton, if you can share that information with the committee, we will make sure the Members have it. Mr. Sutton.

MR. SUTTON: As a reference, the last time that we counted, we measured from April 1998 to August 1999. There were 59 requests made to the departments. The previous counting was for the period from the beginning of the act up to September of 1998. During that period, there were 88 requests to departments. Typically, the Health and Social Services is one of the departments that gets a great deal of requests because of the type of personal information they keep in their files. The Department of Justice is probably second. Education started out very slow, but the number of requests that have gone to Education has recently increased. There are other departments that receive very few requests. That will give the committee some idea of the scale of requests that are made.

I would emphasize that the application of the act actually goes beyond the number of requests. It deals, as well, with the protection of privacy. That requires departments to regulate how they collect, use, and disclose information. The types of safeguards that go with the privacy of information, et cetera. That is very difficult to measure. The kind of statistics that we are capable of collecting deal mostly with requests under the access provisions, which is the number or requests, how long it takes to deal with them, and that type of thing. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Just a final question for the time being. Can Mr. Sutton indicate two things? Once again, given the fact that he is referring to all this information, could he speak to the issue why the Justice Oversight Department on this particular important piece of legislation has chosen to come forward for the verbal presentation? Can you also indicate if you know if every department that is supposed to have an ATIPP coordinator, does have one? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: I did not produce a written submission. In my ignorance, I did not know it was necessary, it is the first time that I have done this. Most departments do have coordinators. We do have that information, and I can undertake to provide that to the committee. I would estimate that, in fact, all departments will.

When it gets to boards and agencies, I have less confidence that they will all have coordinators, but they are required to have coordinators. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you, Mr. Sutton. Can you tell me who keeps the directory ATIP P coordinators up to date?

MR. SUTTON: That is the responsibility of the Department of Justice, and we are in the process of updating the directory. We wanted to include the latest information, and the latest amendment to the regulations that was recently done. We wanted to have that information in the directory. We are in the process of preparing the updated directory.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: Just clarification on a point you made about the Public Utilities Board. I was not to clear on what you stated. Did you say that it was part of the act?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: Yes, that is correct. The Public Utilities Board was added to the list of public agencies, public bodies that are covered by the act. That was done by regulation, and that is one of the changes that I referred to when I said it was pending the development of the new directory.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Your predecessor previously made a presentation, and stated that they were not part of the act. From your information and what was stated when they were not part of the act because it is not listed, because of this type of information, there has to be clarity given in regard to making that information privy to all of the groups so they are aware. Mr. Voytilla clearly stated when asked that the Public Utilities Board was not part of the act because it was not listed.

CHAIRMAN (Mr. Dent): Mr. Krutko, it was the Access Commissioner, herself, who said that. I do not believe that Mr. Voytilla said that this morning. It was yesterday that we heard that from the Access Commissioner. It was not this morning. It begs the question, why would the Access Commissioner not be aware of that? Do regulation changes not get promoted, or was it a very recent change? Mr. Sutton.

MR. SUTTON: Thank you, Mr. Chairman. It is a fairly recent change. I am not sure why the Access Commissioner would not know that. I will have to check. I would have assumed that she would have known that.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. Maybe we could check Hansard, because I do believe that Mr. Voytilla did state that because it was not listed, it is not privy to the act. I asked him a question about municipalities, public utilities boards, and other agencies. I asked a question about how we could get those

organized stations part of the act, and he mentioned because it was not listed. We could check with Hansard on that one.

The next question is dealing with the federal legislation that just came into effect in the New Year in regards to Bill C-6. It is in regards to the Personal Information Protection on Electronic Document Act. It is federal legislation, but I would like to ask, what are you, as Minister, responsible for this legislation doing to ensure that it is blended into our legislation. It does talk about the area of privacy, and it is new legislation. It does affect us directly, because it is federal legislation. As Department of Justice, to ensure that legislation is being enacted, leaders do enforce new legislation, but it is presently the law of the land. What is your department doing to look at that legislation and see how it blends into the act and legislation that we do have in place?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: The NWT legislation applies to the government. It applies to departments and agencies that are list in the schedules in the regulations. The federal government has a Privacy Act that applies to the federal government and federal agencies. The new legislation that came into affect on January 1,2001 is new federal privacy legislation, and it applies to the private sector. It is a very new development in Canada, except for Quebec where they did have similar legislation in place.

It initially applies to Federal regulated agencies, companies, et cetera. It does not apply to the companies, businesses, et cetera that normally fall into provincial or territorial jurisdiction. Except that on January 1,2004, the federal act will apply to the territories to businesses and companies that would normally be regulated by provincial or territorial legislation, unless there is territorial legislation put into place that would in effect replace the application of the federal legislation. It is a policy decision whether or not the government wants to enact it's own legislation and replace the federal legislation.

As to it's compatibility, it applies to the private sector. It is somewhat different than legislation which applied to the government, but it still includes the same kinds of principle about access to personal information and protection of the privacy of personal information. It is based on standards that are set by the Canadians Standards Association, which have, as such, some acceptance from the private sector. It is also similar to legislation which applies in Europe. It is compatible in the sense that it is based on the same types of principles that apply to personal information as it would apply to government.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Is the government considering introducing such legislation?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: I am not aware that the government has yet put it's mind to whether it should enact it's own legislation.

CHAIRMAN (Mr. Dent): Mr. Krutko, Mr. Sutton is saying that the decision is a political one, and he does not know whether or not Cabinet has even considered that. Mr. Krutko.

MR. KRUTKO: The question that I asked, which is redirected to yourself, is the whole are of legislation, that there is a set time frame of 30 days and we do set time limits in the act itself to let people know that they either comply or there is a process where you do not have a particular request drag on for several years. You try to get the requests out, or you try to get the information flowing where it does meet the Access to Information Act, getting those requests out. I will go through the list, and you can reply. He did touch on a few of them.

The other one was the area of establishing penalties with regards to people that do not comply with the time limits that are in place and with regards to what is established in the act if we go with that route.

The other area was the area of giving powers to the Commissioner to subpoena documents and call witnesses in regards to if we feel that the legislation is not being adhered to, that someone is trying to not apply to the specific legislation in regards to making the best efforts to get that information. So, just on those, I know you did touch on some of it in your presentation, but I would just like to know exactly where as a government are we going to consider those recommendations by the Commissioner and try to apply that to the act and enhance it so that those powers are in the act.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: Well, the act does have time limits throughout. There are, for example, the department is expected to reply within 30 days with a situation unless there are reasons which are identified in the act why it does not have to be done within 30 days. Typically, if there area third party interests, there is a requirement under the act to consult and there are certain timelines that are set in the act for that consultation and allowing for responses from third parties and so on. So, there are the time limits in the act throughout.

The Commissioner recommended some changes. Whether or not those recommendations are going to be accepted or not I think is a question for Cabinet and the Legislative Assembly. What I did in my presentation is identify how other jurisdictions typically have dealt with the subject matter of those recommendations.

CHAIRMAN (Mr. Dent): Mr. Krutko. One more question and then I will go around to the other Members on the list and come back to you if you have further ones. So, one final question, Mr. Krutko.

MR. KRUTKO: Just from the response from Mr. Sutton, if it is already in the act, there should be no problem enhancing it even more so that they do follow exactly what is in the act so you do not have this problem of people waiting a couple of years to file complaint after complaint trying to access information in which in some cases it has been quite a few years it has gone on. So, I think that you will enhance the timelines that are already supposedly in there so that people realize

that they do have to follow them and there is a penalty that you have to pay if you do not fulfill it.

So, when you talk about penalties, you touched on something, or you said that in regards to penalizing heads of departments or whatnot and to find a way to deal with that. Right now, we have a system in place that bonuses are given to Deputy Ministers and heads of different departments. There is a bonus system in place so why could not you use that system as there area of having that penalized if they do not comply or if they fail to do what the responsibilities are under legislation so they know that they are not above the law and they will have to pay either financially or whatnot through a system of penalizing their bonuses and whatnot at their reviews if they have some particular file against them through not applying to the Privacy Legislation? So, is that a possibility of having that in Legislation so heads of departments ensure that they are complying to the Privacy Legislation?

CHAIRMAN (Mr. Dent): The question as to whether or not you would want that as a policy issue, but the clear question is, is it possible to put that in legislation? Mr. Sutton.

MR. SUTTON: I would think that it is possible to provide for that in Legislation, yes. It is unusual, but it would be possible.

CHAIRMAN (Mr. Dent): Thank you. Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. We have heard a number of things through this review and of some concern, and Mr. Krutko touched on a bit of it with the recommendations made and your responses to them a question comes to light is that this act has now been enforced for five years. Is there any plans from the department as holder as this act in a sense to do a review?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: Well, if you mean at the officials level, there is an ongoing monitoring of the act and the different provisions in the act and it is always possible to improve on the legislation. As to a formal legislative review, I guess that would be a question for Cabinet and perhaps for this committee. I do know that is not untypical for access legislation to be subjected to a review after a certain number of years and as I recall in the federal legislation, if I remember correctly, it was actually written into the act that a review would be done after a certain period, but I am not aware of the decision to actually undertake that kind of review.

CHAIRMAN (Mr. Dent): Thank you. Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. I think it would be something that as a committee we would need to address and contact the appropriate Minister on that it undergo a review. We do not want to see as in some acts now that we are dealing with that are ancient in the sense of how government does business now in the Northwest Territories. So, we need to try to keep it current, especially something that impacts the lives of everyone and when we talk about the protection side of this, it seams to be fairly open and there is no clear way of

dealing with protection of privacy when it comes to individuals. So, I think that is an aspect.

Now, there have been some recommendations by the Commissioner and I agree with some of them in the sense of tightening them up and strengthening them. Some, I do not necessarily agree with, but I think that can be dealt with as government in a sense of what would be appropriate and not. Some of these though, can be done in a fairly quick and clean way in a sense of regulation and with that in light, and you have stated that you have done a review of other jurisdictions and specific to the recommendations made by the Commissioner, do you see a number of them as being implemented through regulation in a fairly quick manner? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: I think most of the recommendations, if they were accepted, would require amendments to the legislation. They could not be done by regulation. The act does not, that structure does not neatly apply to municipalities. It is remotely possible that we might be able to do something by regulation to make the act neatly apply to municipalities, but I suspect after an intensive review we would find that it would require amendments because the act as structured does not contemplate municipal type structures. Thank you Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you Mr. Sutton. Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. So, you are in fact stating that probably all the recommendations made to access to information by the Commissioner would in fact require legislative amendments, not just the fact of creating some new regulations?

CHAIRMAN (Mr. Dent): Mr. Sutton, how about specifically recommendation number one.

MR. SUTTON: Recommendation number one would require an amendment to the legislation. To go back a bit, while some of these recommendations do require amendments to the legislation, I think they are fairly simple amendments if they were accepted.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. I think that just confirms then the need to, if we are going to start making amendments, instead of doing them piecemeal, and maybe it is appropriate and very timely in fact that we urge government to do a full review of this act in a sense of cleaning it up, strengthening some areas and clarifying for the provision of protection side of it, not just access to information. Thank you.

CHAIRMAN (Mr. Dent): Perhaps we could ask you, Mr. Sutton, has the Department of Justice found any technical problems with the application of the act that would lend support to the argument that it is time for a review?

MR. SUTTON: I am not aware of any, what might be classified as technical arguments. There are certainly problems. There are areas where it can be improved, where it could be clearer than it is, and I think the Commissioner has identified some areas where improvements could be made in the legislation.

CHAIRMAN (Mr. Dent): Ok, Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you Mr. Chairman. Just a couple of other questions I would have. Would it be possible, when you are providing us with the information that you committed to, could you also indicate from Justice's point of view, what could be done by regulations versus amendments? You said some of it could possibly be done, but it may not stand scrutiny, so I would be interested to know when you look at the recommendations, it would help with our decision making as well for follow-up to my colleague Mr. Roland's comments.

I have a question in regards as well to this issue of federal legislation. It is characterized as respected private sector privacy standards. As I look at that, it is very misleading. The initial reaction by myself as we were talking about the private sector in terms of business, but in reality, I would just like to clarify that as we are talking about protecting the rights of every man, woman and child in the Northwest Territories, including ourselves. Is that, so that I am very clear on this? Thank you.

CHAIRMAN (Mr. Dent): Thank you Mr. Miltenberger. Mr. Sutton.

MR. SUTTON: I am not sure that I fully understood the question, but what the federal legislation does, it introduces standards and remedies to ordinary people regarding how information about themselves is managed by institutions such as banks, any institution which would collect information about us, and it imposes standards on how they use that information and how they share that information and allows persons to make requests to institutions to have a look at that information about themselves.

CHAIRMAN (Mr. Dent): Thank you Mr. Sutton. Mr. Miltenberger, further?

MR. MILTENBERGER: Thank you Mr. Chairman. Could Mr. Sutton clarify then, where would that protection be in dealing with government? Is it under this current act that clearly delineates on the privacy side what is acceptable and what is not in terms of the protection of privacy that you made reference to which is harder to measure, but is a big one as well. The government is currently, as we speak, governed in terms of that issue, buy the current legislation? Thank you.

CHAIRMAN (Mr. Dent): Thank you Mr. Miltenberger. Mr Sutton.

MR. SUTTON: Yes, the government is covered by its own legislation, not the federal legislation. The standards that are imposed on the government are imposed by itself on itself.

CHAIRMAN (Mr. Dent): Thank you Mr. Sutton. Further Mr. Miltenberger.

MR. MILTENBERGER: So that private individuals, right now, if they have a concern about privacy issues within government, as opposed to the private sector, now come to the government under this particular legislation? The one

that is before us today and what is contemplated by the federal legislation is to in fact to look at that protection, but in the actual private sector?

CHAIRMAN (Mr. Dent): Thank you Mr. Miltenberger. Mr. Sutton.

MR. SUTTON: That is correct.

CHAIRMAN (Mr. Dent): Further questions Mr. Miltenberger?

MR. MILTENBERGER: Your response to this particular suggestion, that we have our own legislation was that, that is a policy issue, but the way I understood the discussion yesterday from the Commissioner was that in fact, if we just rely on the federal legislation, if there are any concerns in the private sector in this area, all complaints would have to go all the way to Ottawa and I am also very mindful of the agony and the suffering that we have gone through as a jurisdiction trying to resolve this pay equity because we did not have our own Human Rights Legislation. Is that an issue as well here that we could get involved in situations if we rely on federal legislation rather than taking the steps to create our own where we could possibly get locked into some situations where we have to rely on a federal jurisdiction 4,000 miles away in Ottawa and then some individual who has no clue about life in the Northwest Territories making decisions on situations that we should be as a government dealing with? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: It is true that the since the federal legislation applies, it would mean that complaints would go to the federal Privacy Commissioner who is based in Ottawa and the complaints would be resolved by that official, not an official in the Northwest Territories.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Thank you Mr. Chairman, one final question on a different subject. The issue earlier on, as you are aware, of Cabinet documents came up and access to information on decisions made by government and the quote read by Mr. Voytilla was fairly comprehensive. So, the question I would ask is, could you indicate, given the comprehensive nature of that particular clause that includes everything including dinner menus and sticky notes passed between Cabinet Ministers, what would not be covered by that?

If somebody wanted to find out some information about why certain decisions were made, are there any documents that should be available to the public, or is that such an iron clad, sweeping clause that what goes on in Cabinet stays in Cabinet and could you speak to that issue as it relates to this act and also the issue came up, how did the conflict hearing with the Morin Inquiry get access to information in regards to minutes and decisions and letters and such? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: The act, like other legislation in Canada, does provide an exclusion for Cabinet documents, or documents that are prepared for Cabinet. So, it is a fairly broad exclusion and it is fair to say that there is a wide degree of

protection from disclosure of documents that are prepared for Cabinet. Whether a document is covered by a Cabinet Confidence is essentially a legal question in each case. There are lots of documents that are not specifically prepared for Cabinet and are not covered by that exclusion, but once a document becomes part of the decision making process of Cabinet, it is covered by the exclusion. It is a question, I suppose to Cabinet, whether it wants to release that document or any of the information in the document, apart from the act, but as far as the act goes, strict application of the act, it is true that anything that is prepared for Cabinet is covered by the exclusion. As I said, that is not true in the legislation across the country. There will be some differences.

There is also a time limit on documents. I think it is after 15 years or something like that, then they are no longer covered by the confidence.

On the question of other processes, the Access to Information Act does not replace other processes. It introduces a new way for members of the public to access documents. So, for example, it does not replace court processes. Accessing documents through court processes continue to be administered the way they always have and they are subject to rules of court and the processes of court and the procedures of court. Likewise for inquiries, they are a different process that was not intended to be replaced by the Access to Information legislation. So, the rules applicable to inquiries would determine what access is allowed for and what access is not allowed for.

Similarly in the Legislative Assembly, committees, and so on – the Act does not apply to committees and Members of the Legislature as to how information is shared. The rules of the House would apply. The rules in many cases will be similar, but the strict application of the Act would not prohibit access to information in an inquiry or court or whatever, if under the rules of the inquiry or court, they do have access to those documents.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: So to be clear then, the honourable and fine intent of openness and transparency hits the wall at the fortress of solitude behind the Cabinet doors basically. You do not have to comment on that. That is just an observation.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

Mr. Sutton, just a question of going back to the Morin Inquiry. I know that Cabinet documents, in spite of our Act, saying they are not accessible. There is no explicit mention in the Inquiries Act that says that those documents would be made available at an inquiry. Under what law did they become available to the inquiry? Have we set up something in our legislation that goes beyond what is within Canadian law to protect those documents and if people were to appeal to a court over and above what had been rejected in an Access to Information situation, would they then be likely given access to Cabinet documents that our legislation says they cannot? What happened with the Morin Inquiry to make those documents become available? Mr. Sutton.

MR. SUTTON: I do not know if I can answer that question without going back and researching it and talking to the people who were involved, but there are bodies of law that determine when access to information such as Cabinet documents can be made in court or in inquiries and so on, and I cannot off the top of my head speak knowledgably about it.

The Access Act has a specific application. It provides access to the public to documents that are held by departments and public bodies. It is an addition to rights of access to information that might have applied before in other forms. It is not to replace those, it is to give a new right of access to members of the public.

For example, the lawyers will often make access requests to information relating to a case when normally access would have been dealt with rules that normally would apply to the courts. So, they can apply under both forums if they wish, but the access to that information by a lawyer will be regulated by the rules of the act and should not take into account the fact that there are other avenues to that information available to a lawyer.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: I am just following up on a similar question, especially when you start using the word "anything" that is this restricted, I think there is a point of confidentiality, a point of the public's right to know. I think that especially from wherever it was, Section 13, that it seems like it is pretty restrictive when it comes to what is confidential and what is no when it comes to Cabinet documents. In light of the public inquiries and whatnot that have taken place and that we are talking about more of an open government, yet it seems there are still these walls around documentation.

I think what has to be done is there has to be some sort of a test in place to say exactly what is confidential. Is it something that is for staff or Cabinet eyes only? There has to be some information that Cabinet cannot secretly hide behind this section of the Act saying, "Everything is confidential. It does not matter if it is a note or something that happened some time ago." Because of what we are seeing in regards to reluctance of departments being open to sharing information which should be classified as public and which should be classified as private, there should be some sort of test in place to determine exactly what is there.

I think that what is needed is that we definitely have to thoroughly do a review of the present Act that is in place, because it does have some really restrictive clauses. Especially when it comes to the problems we are running into even as members of this legislature, I noticed that it is tougher now to get information than it was in the previous Assemblies.

And I think, because of that, there has definitely been an opposite effect where we are talking that because of the public inquiry we are going to have more open government, that the ministers and people who make decisions will be more accountable. I would like to know what is your department doing to scrutinize this legislation to see exactly if it is over restrictive or under restrictive, and have you done a review to look at some sort of mechanism to evaluate exactly why is it

that we are not having more of an open government and we are back to putting up these walls. Have you done that? Is that something your department will be looking at?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: No, our department has not done that. I think that is more of a political question. If asked to do certain reviews, we can always do that. The legislature passed the Act and it is a policy issue whether access will be made to Cabinet documents. I think it is more of a question for the legislature than the department, whether or not those provisions are too restrictive.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. The onus is on the legislature to go back and make an amendment to a specific Act, but the direction has to come from either the Department of Justice or Cabinet and bring it back into the House to make those suggestions. Unless we as a committee come forth with recommendations, will those recommendations be adhered to by your department or the government as a whole? Because that is where it has to come from. The change has to come from within. As it sits right now from the presentations we have heard from the different departments, it seems that there is nothing wrong with a thing and so far as they are concerned everything is okay. But from the Commissioner's report, it sounds as if there are some major problems with that legislation, and I think that we have to change it.

So, I would like to know what role you play as the Deputy Ministers responsible for Justice to look at the whole area of insuring that information is privy to certain requests and that we do not have this rigid requirement where anything is classified as being confidential when it comes to the Cabinet.

CHAIRMAN (Mr. Dent): Mr. Krutko, if this committee feels that that sort of recommendation should be made, the appropriate way to do it is in our report to the Legislative Assembly, then the Minister of Justice will provide direction to the officials to follow up on that. It would not be appropriate for a bureaucrat to move on recommendations made by an officer of the Legislative Assembly without some political direction, if that is what they are supposed to do.

So, this committee could make the recommendation or the Minister of Justice can make the recommendation for the change, but their role as a Deputy of the department is to follow the direction provided by the politicians, not to tell us what we should be doing. It is up to us to determine what we think is right and then direct that they develop the legislation.

Mr. Sutton has indicated that according to the Department of Justice, they are administering the Act that was passed by the Legislative Assembly as it was passed. So, if we think it should be changed, it is up to us to make sure it gets changed.

Now, you have a specific question about the access to Cabinet documents and so on? Ms. Peterson may have some comments about how some of those documents in the past did become accessible which may be of use.

Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. That is the point I am getting at. We had a public inquiry, there was some pretty rigid and strong recommendations directed at Cabinet, at Deputy Ministers in regards to how they conduct themselves and exactly how decisions are made behind closed doors and what information should be privy to the public. They are accountable to the public. And because of that inquiry, this Act should have been amended knowing that there was a connection between that inquiry and this legislation, especially when it comes to information. There was a link.

The question is, was there ever any work done to ensure that those recommendations that came out of the inquiry were considered by the Department of Justice, looking at possibly making amendments to this Act to ensure that they were abided by? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton, were you aware of any recommendations to change the Access to Information and Protection of Privacy Act that arose from the Morin Inquiry?

MR. SUTTON: No, I am not, Mr. Chairman.

CHAIRMAN (Mr. Dent): I believe the recommendations for change were to the Legislative Assembly and Executive Council Act and that act was changed. I may be wrong, Mr. Krutko, but my recollection is that those were the recommendations that came out of the Morin Inquiry. We may have to look at that.

But Ms. Peterson may have some information to share with the committee on how some documents became available to the inquiry. Ms. Peterson, could you pick one of the chairs close to a microphone and provide us with that information.

MS. PETERSON: Thank you, Mr. Chairman. One of the things to remember is, that with respect to the Access to Information and Protection of Privacy Act, the provisions in that Act that allow access or protect privacy are relative to requests made under that Act or information maintained under that Act. With respect to proceedings like inquiries, like the Morin Inquiry or other court cases, the Access to Information and Protection of Privacy Act is not particularly relevant. What is relevant, what is important, and what triggers documents and information and evidence coming forward in those proceedings is first, whether that document is relevant to the issue that is in front of that adjudicator.

So, without sort of giving an Evidence 101 seminar, relevancy will be the first question that is asked. Is the document that is requested relevant to the question that we are trying to solve? Secondly, is it protected by any privilege? Privilege is not something that is set out, for example, in the ATIPP Act. Privilege is something that is recognised by law, such as solicitor/client privilege, and interpreted by the law such as certain privileges associated with doctor/patient information and so on.

It is a broader scope of access to information, and as Mr. Sutton indicated, when those kinds of issues are being resolved or before inquiries such as the Morin

Inquiry or court cases, the lawyers and the parties involved will have access to information based on whether that information is relevant to the proceeding in addition to whatever other steps they might want to take under the Access to Information and Protection of Privacy Act. It is a broader scope and it is not necessarily limited by those provisions like the Cabinet exclusions under that particular act. So that is why those kinds of documents could be triggered in an inquiry process, but not necessarily in a request made under this specific legislation.

CHAIRMAN (Mr. Dent): Thank you, Ms. Peterson. Do we have any more questions for Mr. Sutton? If not, Mr. Sutton, I would like to thank you for your attendance this morning and for having responded to our questions.

That wraps up our public process for reviewing the Access to Information and Protection of Privacy Commissioner's report. So we will now be moving in camera to consider what we have heard and then develop our recommendations for a report. Would Members like to start that process right now or break now and resume at 1:30 p.m.?

Okay, then this committee stands recessed until 1:30 when we will resume in camera session.

-- ADJOURNMENT

Reference Guide