

Standing Committee on
Government Operations



Report on the Review of the 2021-2022 Annual Report of the Information and Privacy Commissioner

19th Northwest Territories Legislative Assembly

Chair: Mr. Rylund Johnson

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September 28, 2022

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its *Report on the Review of the 2021-2022 Annual Report of the Information and Privacy Commissioner* and commends it to the House.



Mr. Rylund Johnson
Chair, Standing Committee on Government Operations

STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2021-2022 ANNUAL REPORT OF THE INFORMATION AND PRIVACY COMMISSIONER

INTRODUCTION AND SUMMARY

The Standing Committee on Government Operations (Committee) has reviewed the 2021-2022 Annual Report of the Information and Privacy Commissioner (IPC).¹

The *Access to Information and Protection of Privacy Act* (ATIPP Act) and the *Health Information Act* (HIA) require the IPC to prepare an annual report. The report includes information on the number of files the IPC opens to review complaints. It can also include recommendations. The Speaker tables the report in the Legislative Assembly. Once tabled, Committee reviews the report.

As part of the review, the Information and Privacy Commissioner (IPC), Mr. Andrew Fox, appeared before Committee on June 27, 2023.² Committee appreciates his continued work to enhance the public's exercise of the right to access information and uphold the protection of residents' personal information.

This report is an opportunity to reinforce previous Committee recommendations where the government has not moved as far as Committee has requested. Last year, Committee recommended four "upstream" access and privacy measures to reduce "downstream" complaints and costs. Committee found partial uptake and mixed progress in this area. We are hopeful that new recommendations to promote one key "upstream" measure – proactive disclosure – will help streamline the access and privacy regime.

This report also presents Committee's response to eight recommendations in the IPC's annual report. Committee carefully considered each one. Committee decided to endorse seven of the IPC's eight recommendations. We are pleased to advance these recommendations and hope the government will act.

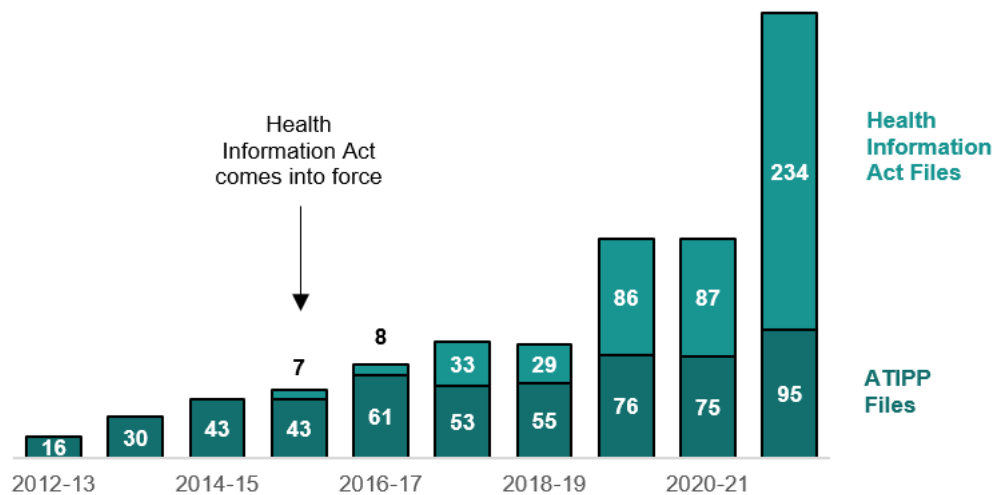
PREVIOUS COMMITTEE RECOMMENDATIONS

More upstream measures to address surging reviews and investigations

In Committee's previous report on the IPC, we brought attention to the extraordinary growth in the number of files opened, a trend that has continued again this year.³ Since 2012-13, the number of files opened has increased twenty-fold, from 16 files to over 320

files. Much of this growth comes from files opened under the *Health Information Act*, which came into force in 2015-16.⁴ The IPC says that this surging workload “raises questions regarding the efficacy of privacy protection policies and processes governing health information custodians.”⁵

Figure 1: Files opened by the IPC have grown twenty-fold in a decade



Source: Office of the Clerk calculations on data from the IPC

Committee shares the IPC’s concerns. In our earlier report, Committee made four recommendations for “upstream” measures and investments to the access and privacy regime to reduce “downstream” complaints and costs. Our recommendations addressed gaps identified by the IPC. Those recommendations, the government’s responses, and recent developments include:

- 1. Making information privacy training mandatory for all government employees.** The government declined this recommendation.⁶
- 2. Updating the Mobile Handheld Devices Policy, by April 2023.** The government agreed to this recommendation, but with a longer timeline. As of July 2023, the policy did not appear to have been updated.⁷
- 3. Reinforcing accountability for reducing faxing across the health and social services system.** The government provided an update on this issue and identified the barriers to reducing faxing. However, the government did not disclose

associated metrics, targets, or timelines, as Committee recommended.

- 4. Reinforcing accountability for proactive disclosure.** The government said it would implement proactive disclosure directives, as required by section 72(1) of the *ATIPP Act*, by early 2023. In July 2023, the government released the *Proactive Disclosure (Open Government) Directive*.⁸ The Directive identifies 14 categories of information that the government must make publicly available without request. Many of these categories were already being disclosed proactively.

Committee stands by the recommendations and encourages the government to implement further “upstream” access and privacy measures, noting that at this point, the government has only achieved partial uptake on those recommendations.

NEW RECOMMENDATIONS

Additional measures to promote proactive disclosure

Committee is pleased the government has released its *Proactive Disclosure (Open Government) Directive*. The *Directive* is a promising foundation to increase government transparency. Committee encourages the government to introduce additional categories of information for proactive disclosure, to meet residents’ expectation for increased access to government records.

To ensure accountability for this work, the government should include updates in its annual report on the administration of the *ATIPP Act*. The most recent annual report, for 2021-2022, does not mention any work on proactive disclosure or implementing section 72(1) of the *ATIPP Act*.⁹

Committee also encourages the government to increase the accessibility of already-completed access to information requests. The federal government publishes a searchable list of completed requests and allows the public to ask for a copy of the records at no cost.¹⁰ Committee believes investing in a similar dataset for the territory would increase transparency. Having this information available by default would also reduce the number of formal requests and costs.

Committee therefore recommends:

Recommendation 1: That the Government of the Northwest Territories expand the categories of records that must be proactively disclosed under the *Proactive Disclosure (Open Information) Directive*. Progress on this and other work to implement section 72(1) of the *Access to Information and Protection of Privacy Act* should be regularly reported in the government’s annual report on the *Act*.

Recommendation 2: That the Government of the Northwest Territories take steps to make available, on a website, summaries of completed access requests and allow the public to request a copy of the records at no cost.

Endorsing seven of eight IPC recommendations

The Information and Privacy Commissioner made eight recommendations in his annual report.¹¹ Committee carefully considered each one. Those recommendations, Committee's thoughts, and our decision whether to endorse each one, are as follows:

- 1. Time extensions for third-party consultation.** The IPC wants the *ATIPP Act* amended to allow public bodies to extend the deadline to complete third-party consultation one time without his authorization. The IPC says he has no reason to deny the first request for extension and that this process is just a “*rubber stamp*.”¹²

Committee endorses recommendation #1. The government should formally consider this proposal during the next statutory review of the *ATIPP Act*, which must start within 18 months of the start of the 20th Legislative Assembly.¹³

- 2. More resources for the Access and Privacy Office.** The IPC wants public bodies that depend on the Access and Privacy Office (APO) to ensure it has enough staff and resources. The IPC heard of departments and agencies blaming lack of capacity at the APO for missing statutory deadlines.¹⁴

Committee endorses recommendation #2. Committee is alarmed that in 2021-22, one third (32%) of access requests were considered late.¹⁵ This means there was no legislative authority under section 11 of the *ATIPP Act* to exceed the statutory deadline. The Department of Finance and the Department of Lands have particularly poor track records – over half of their access requests were considered late. Committee reminds the government that it is departments and agencies, and not the centralized Access and Privacy Office, that are legally required to meet deadlines set out in the *ATIPP Act*. The government should consider a chargeback model, like the approach to the Technology Service Centre (TSC), to internally manage the access and privacy regime. By treating access and privacy as a core government service, this approach could support departments and agencies in meeting their statutory deadlines.

- 3. Discretion to extend IPC timelines.** Until July 2021, the IPC had 180 calendar days to complete a review. Amendments passed in the 18th Assembly have now reduced that time to 90 business days. The IPC says it is “*unlikely*” that he can complete most reviews within 90 business days and wants the *ATIPP Act* amended so he can have discretion to extend the deadline.¹⁶

Committee rejects recommendation #3. The Legislative Assembly recently shortened the review period and Committee continues to support this change. When the IPC cannot meet a deadline, he should still provide notice to all parties that he needs more time. The government should also ensure that the IPC has the resources he needs to fulfill his mandate and meet deadlines.

- 4. Reporting on implementing recommendations.** The IPC wants health information custodians to be required to report to him about implementing recommendations – either through a government policy or an amendment to the *Health Information Act*. The IPC noted that oversight and legal obligation are lacking for information custodians to implement recommendations.¹⁷

Committee endorses recommendation #4. The government should formally consider this proposal during the next statutory review of the *Health Information Act*, which must start by October 2025, 10 years after this legislation came into force.¹⁸ In the meantime, this recommendation should be implemented through a government policy.

- 5. Reducing or eliminating faxing.** The IPC repeated a long-standing recommendation for health information custodians to reduce or eliminate the use of fax machines. He is not aware of any government plan to meet this goal and emphasized that faxing remains a significant source of privacy breaches.¹⁹

Committee endorses recommendation #5. Committee has not been satisfied with the government's previous responses to recommendations on this topic and wants to see more reporting in this area, potentially in the government's annual report on the *ATIPP Act*.

- 6. Ensuring privacy training for employees in health and social services.** Despite the Department of Health and Social Services' Mandatory [Privacy] Training Policy, the IPC has found that lack of training is a significant cause for persistent privacy issues. He wants to ensure proper implementation of the Mandatory Training Policy.²⁰

Committee endorses recommendation #6.

- 7. Earlier requests for privacy impact assessments.** The IPC wants requests for privacy impact assessments to be submitted earlier so he has enough time to review, and organizations have enough time to consider the results.²¹

Committee endorses recommendation #7.

- 8. Extending privacy impact assessments to health information.** Right now,

privacy impact assessments are only required in the *ATIPP Act*. The IPC wants an amendment to section 89 of the *Health Information Act* so that privacy impact assessments are also used for health information.²²

Committee endorses recommendation #8. The government should formally consider this proposal during the next statutory review of the *Health Information Act*, which must start by October 2025, 10 years after this legislation came into force.²³

Committee has endorsed most of the recommendations in the IPC's annual report. Committee therefore recommends:

Recommendation 3: That the Government of the Northwest Territories implement, or commit to time-bound plans to implement, recommendations #1, #2, #4, #5, #6, #7, and #8 in the Information and Privacy Commissioner's *Annual Report 2021-2022 – Tabled Document 711-19(2)*.

CONCLUSION

This concludes the Standing Committee on Government Operations' *Report on the Review of the 2021-2022 Annual Report of the Information and Privacy Commissioner*. Typically, Committee includes a recommendation in each report requesting a response from government within 120 days. The recommendation is then moved as a motion in the House and Cabinet is required to respond.²⁴ However, since the 19th Legislative Assembly will dissolve in less than 120 days, Committee has decided to leave out this recommendation and requests that the government provide a public response to this report, even of a preliminary nature, before the beginning of the 20th Assembly.

NOTES

¹ Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf.

² Available at: <https://youtu.be/3UTJZ0VdoTo?list=PLZiv8ITEMg4cxlwqCQJdi9JfF5J-BhMPg&t=3846>.
The Legislative Assembly uploads video recordings of public meetings and other special events to its Youtube channel..

³ Committee's *Report on the Review of the 2020-2021 Annual Report of the Information and Privacy Commissioner* is available at: https://www.ntassembly.ca/sites/assembly/files/cr_30-192_-_scogo_report_on_the_review_of_the_2020-2021_annual_report_of_the_information_and_privacy_commissio.pdf.

⁴ The IPC's Annual Report breaks down files opened into nine (9) more granular categories. For more information, see: https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf#page=13.

⁵ Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=6.

⁶ All of the government's responses to Committee's recommendations are available in *Government of the Northwest Territories Response to Committee Report 30-19(2): Report on the Review of the 2020-2021 Annual Report of the Information and Privacy Commissioner*. Available at: https://www.ntassembly.ca/sites/assembly/files/td_692-192.pdf.

⁷ The Mobile Handheld Devices Policy is available at: <https://www.fin.gov.nt.ca/en/information-management-and-technology-policy-manual/mobile-handheld-devices-policy>.

⁸ Available at: https://www.eia.gov.nt.ca/sites/eia/files/proactive_disclosure_directive_-_en.pdf.

⁹ The *Administration of the Northwest Territories Access to Information and Protection of Privacy Act Annual Report 2021-2022* is available at: <https://www.justice.gov.nt.ca/content/uploads/2022/11/ATIPP-Annual-Report-2021-2022.pdf>.

¹⁰ Available at: <https://open.canada.ca/en/search/ati>.

¹¹ A summary of the Information and Privacy Commissioner's eight recommendations is available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=27.

¹² More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=15.

¹³ As required by section 74 of the *ATIPP Act*. Available at: <https://www.justice.gov.nt.ca/en/files/legislation/access-to-information-and-protection-of-privacy/access-to-information-and-protection-of-privacy.a.pdf#page=71>.

¹⁴ More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=17.

¹⁵ Detailed statistics and commentary are provided in the government's *Administration of the Northwest Territories Access to Information and Protection of Privacy Act Annual Report 2021-2022*. Available at: <https://www.justice.gov.nt.ca/content/uploads/2022/11/ATIPP-Annual-Report-2021-2022.pdf#page=11>.

¹⁶ More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=18.

¹⁷ More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=19.

¹⁸ The *Health Information Act* came into force on October 1, 2015. Section 195.1 requires the Minister to review the *Health Information Act* no later than ten years after the legislation's coming into force. Available at: <https://www.justice.gov.nt.ca/en/files/legislation/health-information/health-information.a.pdf#page=110>.

¹⁹ More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=21.

²⁰ More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=22.

²¹ More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=24.

²² More detail is included in the IPC's annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_711-192.pdf#page=25.

²³ The *Health Information Act* came into force on October 1, 2015. Section 195.1 requires the Minister to review the *Health Information Act* no later than ten years after the legislation's coming into force.

Available at: <https://www.justice.gov.nt.ca/en/files/legislation/health-information/health-information.a.pdf#page=110>.

²⁴ As required by Rule 9.4(5) of the *Rules of the Northwest Territories Legislative Assembly*. Available at: https://www.ntassembly.ca/sites/assembly/files/td_527-192.pdf#page=40.