

**GOVERNMENT OF THE NWT RESPONSE TO COMMITTEE REPORT 7-15(3)
REPORT ON THE REVIEW OF THE INFORMATION AND PRIVACY
COMMISSIONER'S ANNUAL REPORT 2002-2003**



GNWT Response to 2002-2003 Recommendations

The Standing Committee on Accountability and Oversight (AOC) conducted a review of the Information and Privacy Commissioner's annual report. Their report of the review was tabled in the Legislative Assembly on October 14, 2004. It included five recommendations.

The following is the Government of the NWT (GNWT) response to the recommendations contained in the "Committee Report 7-15(3) on the Review of the Access to Information and Protection of Privacy Annual Report 2002-2003":

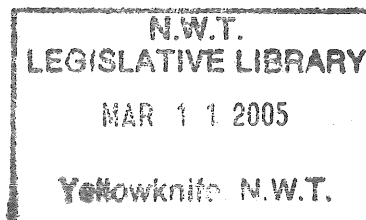
Recommendations

- 1. The GNWT work with municipal governments to assess the resources required to implement and administer ATIPP legislation, and to develop a reasonable implementation plan. The GNWT should continue to assist municipal governments who ask for help in designing their own guidelines for managing records and information. The AOC further recommends the government work with the NWT Association of Communities (NWTAC) to assess resources required for municipalities to comply with Access to Information and Protection of Privacy legislation and develop a reasonable implementation plan.**

Response

The Government agrees that without some form of access to information legislation municipal governments are not held to the same standard as those public bodies listed under the *Access to Information and Protection of Privacy Act*, (ATIPP). The Department of Justice has identified a number of issues in relation to bringing Municipalities under the ATIPP Act. The problems identified are as follows:

1. Application of the *Personal Information Protection and Electronic Documents Act*, (PIPEDA)
The privacy provisions of the PIPEDA only partially apply to NWT municipalities. Both Justice and the Federal Office of the Privacy Commissioner agree that the privacy protections of PIPEDA apply to municipal employees but further clarification is required in relation to the question of how PIPEDA applies to the "commercial" activities of municipalities.



2. Consultation with Municipalities

The Department of Justice met with representatives from NWTAC and MACA on the issue of including Municipalities under the Territorial ATIPP legislation. The three main issues identified by municipal representatives in previous consultations continue to be a major factor affecting implementation of ATIPP with municipal governments. The factors identified were:

a. Administration of the act

Concerned about how the Act would affect day-to-day operations of municipal employees, as well as the general administration of the municipality.

b. Costs

Concerns relating to the costs of administering the Act and whether additional money would be added to their base funding to cover the cost of implementation.

c. Training

Additional training required in both ATIPP and records management.

Representatives of Justice will work with municipal governments, the NWTAC, and MACA to assess what resources and training municipal governments would be required to implement and administer access and privacy legislation. The Department of Justice will work to clarify the application of PIPEDA. A report of this work will be provided to the AOC in the fall of 2005.

2. The AOC agrees with the previous government's decision that it would be premature to develop our own legislation at this time. Therefore the committee recommends that the government monitor the effectiveness of PIPEDA in the NWT and prepare its own report with recommendation on whether the NWT needs its own legislation following the 2006 review of PIPEDA by the House of Commons.

Response

The *Personal Information Protection and Electronic Documents Act* came into effect for all private sector organizations in Canada, on January 1, 2004. This act provides guidelines and procedures for the collection, use and disclosure of personal information, as well as remedies for correcting personal information or ensuring compliance with the legislation. It will also require organizations to create policies and procedures for the retention and destruction of personal information.

The Government will advise the AOC of new developments. The Department of Justice will conduct a review of the federal legislation after it has been in full effect for two years to determine its effect and whether territorial legislation would be more appropriate.

- 3. The AOC agrees with the Information and Privacy Commission's recommendation that it is important that emerging governments are aware of access to information and protection of privacy issues.**

Response

The Government agrees with the AOC that it is important that emerging governments are made aware access and privacy issues in devolution and aboriginal self-government negotiations. The Department of Justice will look at ways to address this issue further.

- 4. The AOC recommends the Government investigate whether its contracts currently include clauses requiring compliance with ATIPP and if not that the government add such clauses to any outsourcing contracts where a business would be creating records that would otherwise be government records or handling personal information on behalf of the government.**

Response

In 1999, the GNWT added an Access and Privacy clause to all Pro Forma contracts. This clause identifies that all information, including information submitted to the GNWT are in the custody and control of the GNWT and are therefore subject to the protection and disclosure provisions of the ATIPP Act.

Additionally, in October 2004, the Department of Justice put forth a legislative amendment to the ATIPP Act to amend the current definition of employee. The proposed amendment would define employee as follows:

"employee", in relation to a public body would include a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body"

This amendment recognizes that contractors, appointees, volunteers or students may be required to perform duties regularly performed by employees. This broader definition identifies that contractors, appointees, volunteers and students working for public bodies would now fall under the authority of the ATIPP Act.

The bill is tentatively schedule for introduction at the February/March 2005 sitting of the 15th Legislative Assembly.

5. The AOC recommends the government continue to support and encourage ongoing training for ATIPP Coordinators

Response

The Department of Justice updated the Access and Privacy Directory in August 2004, and has made it available on the Department of Justice Website.

Additionally, in June 2004, the Department of Justice initiated a review of all ATIPP training. Justice is currently updating all training and resource materials and is developing a training strategy that will continue to support and encourage ongoing training for employees of all Public Bodies in an efficient and cost effective manner.