

Standing Committee on
Government Operations



Report on the Review of the 2022-2023 Annual Report of the Northwest Territories Information and Privacy Commissioner

20th Northwest Territories Legislative Assembly

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2022-2023 ANNUAL REPORT OF THE NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER

INTRODUCTION

The Standing Committee on Government Operations (Committee) has reviewed the 2022-2023 Annual Report of the Northwest Territories Information and Privacy Commissioner (Commissioner).¹ The Committee thanks Ms. Andrew Fox, Information and Privacy Commissioner, for his appearance before the Committee on April 15, 2024.²

The *Access to Information and Protection of Privacy Act*³ (ATIPP) and the *Health Information Act*⁴ (HIA) require the Commissioner to prepare an annual report. The Speaker tables the report in the Legislative Assembly. Once tabled, Committee reviews the report.

The Commissioner's 2022-2023 report includes an assessment of the effectiveness of the Act, a report on the Office's activities, and recommendations for consideration by the Legislative Assembly. The Commissioner's work and recommendations are reflected in Committee's observations.

ABOUT THE INFORMATION AND PRIVACY COMMISSIONER

The Information and Privacy Commissioner is a Statutory Officer of the Legislative Assembly. The Commissioner's primary functions involve:

- Receiving and reviewing complaints about breaches of privacy.
- Receiving and reviewing complaints about the adequacy of public bodies' responses to access to information requests
- Reviewing Privacy Impact Assessments (PIAs), and
- Reviewing and commenting on proposed legislation regarding possible implications for privacy protection or access to government information.

OBSERVATIONS

ATIPP

The Commissioner made three recommendations in the annual report concerning ATIPP. Additional details about each recommendation can be found in the 2022-2023 annual report:

1. That the government consider amending ATIPP to allow a public body to extend the time once for the period required to complete third-party consultation without authorization by the Commissioner. For subsequent extensions, public bodies should continue to seek authorization from the Commissioner.
2. That public bodies should review their legal obligations to respond to access to information requests and evaluate their capacity to provide responses within the legislated time periods. They should also ensure, either collectively or individually, that the GNWT's Access and Privacy Office (APO) is appropriately resourced so that it can reliably assist public bodies to respond to access to information requests within the legal time periods and to comply with the relevant procedural requirements.
3. That the government should consider amending ATIPP to expressly state the Information and Privacy Commissioner has discretion to extend the time required to complete a review. Such an amendment should include a requirement to give notice of an extension to all parties.

Committee acknowledges and supports the Commissioner's recommendations concerning the *Access to Information and Protection of Privacy Act*. Therefore, Committee recommends that:

Recommendation 1: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a timeframe for implementing the Information and Privacy Commissioner's three recommendations related to the *Access to Information and Protection of Privacy Act*.

Timely Access to Information

During the public review on April 15, 2024, the Commissioner spoke about the Government of the Northwest Territories (GNWT) failing to meet the legislated timeframes to respond to information requests. The APO is responsible for accepting requests from individuals applying for access to information and correction of personal information. Once the APO receives a request, they work with the relevant

public body to get the required records. The Commissioner believes that both public bodies and the APO are not sufficiently resourced to respond to access to information requests within the legal time periods.

The Commissioner committed to provide Committee with:

- a. A flow chart or similar tool outlining where the bottlenecks are in the processing of information requests and
- b. Suggestions to resolve the timing issues.

Open Government

In 2019, *Bill 29: Act to Amend the Access to Information and Protection of Privacy Act*,⁵ updated Section 72 to obligate public bodies to identify categories of records that do not contain personal information and can, therefore, be made available to the public without the need for a formal access request under the Act.

Simultaneously, the GNWT committed to increasing openness, transparency, and accountability by embracing the “Open Government” movement and publicly released the Open Government Policy.⁶ During the public review, the Commissioner stated that he does not believe public bodies have done much work to increase public disclosures.

Committee found the Open Government Policy sets out actions to advance the GNWT’s commitment to the principles of Open Government in three areas:

Open Information

Open Information means that government-held information is released proactively and made available to the public through a variety of means in formats that are accessible and user-friendly. The Proactive Disclosure Directive,⁷ signed in July 2023, identifies categories of information and guidance to public bodies on how to maximize the release of information.

Committee believes that the GNWT is not proactively disclosing all information and documents outlined in the directive (for example, Committee is not aware of internal audit and evaluation reports being disclosed). Consequently, Committee is recommending that:

Recommendation 2: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide the date by when all information and documents identified in the Proactive Disclosure Directive will be released and updated.

Recommendation 3: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories review and update the Proactive Disclosure Directive to maximize the release of information.

Areas of consideration at the least should include:

1. Recipients of grants and contributions
2. Summaries of briefing notes received by ministers and deputy heads
3. Material prepared for incoming ministers and deputy heads on duties and functions
4. Public body internal process and procedure documents.

Furthermore, Committee requests a date by when this review will be completed.

Open Data

The Open Data Portal (opendata.gov.nt.ca) is designed to make government-held data available to the public in accessible and user-friendly formats. The Portal includes the release of datasets, facts, figures, or statistics.

The Open Government Policy calls for the establishment of specific directives and guidelines regarding the release of government data and information. According to the Open Government Frequently Asked Questions,⁸ the initial set of directives and guidelines were to be established throughout 2018 and 2019.

Committee notes that, as of May 15, 2024, the Portal includes 339 datasets; however, it is not clear to Committee what information resources are to be open and released, what decision processes are in place for the release of open data, nor what activities departments have undertaken to maximize the release of data.

Organization	Total
Bureau of Statistics	290
Education, Culture and Employment	4
Environment and Climate Change	12
Executive and Indigenous Affairs	7
Finance	2
Health and Social Services	2
Industry, Tourism and Investment	2
Infrastructure	9
Justice	9
Municipal and Community Affairs	2
Total	339

Recommendation 4: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide:

1. A Directive on Open Government to maximize the release of government information and data of business value to support transparency, accountability, and citizen engagement.
2. Departmental Open Government Implementation Plans that outline departmental direction, strategies, and initiatives undertaken to meet the requirements of the Open Government Policy.
3. Inventories of all data and information resources of business value held by each department with determinations of eligibility and priority, and the plan for effective release.
4. Periodic progress reports.

If these directives and guidelines do not yet exist, Committee requests a date by when these directives and guidelines will be created and implemented.

Open Dialogue

Open Dialogue means that a range of engagement activities are made available to encourage meaningful engagement of residents, communities, and organizations in government decision-making processes.

Committee acknowledges the 2022 Public Engagement Employee Guide⁹ as a strong step in ensuring a common approach and resources to support public engagement. Committee is interested in the success of Open Dialogue and recommends:

Recommendation 5: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide to Committee, and publish, all evaluation worksheets/reports from public engagement evaluation since the Public Engagement Employee Guide was released in July 2022.

HIA

The Commissioner made seven recommendations in the annual report concerning HIA. Additional details about each recommendation can be found in the 2022-2023 annual report:

1. That the Department of Health and Social Services should consider implementing a policy, or the government should consider amending the *Health Information Act*, to require health information custodians to report to the Commissioner regarding the implementation of accepted recommendations.
2. That the GNWT should review the need for privacy-protective policies and procedures to support a specialized emergency response such as the COVID-19 Coordinating Secretariat and ensure it is equipped to operate within the bounds of the *Health Information Act*.
3. That Health Information Custodians should continue to reduce or eliminate the use of fax machines to transmit personal health information.
4. That Health Information Custodians should utilize secure electronic transmission measures when transmitting personal health information.
5. That Health Information Custodians should prioritize implementation of, and compliance with, the Mandatory Training Policy and ensure that appropriate privacy training is provided for new employees, returning employees, and for all employees annually.
6. That Privacy Impact Assessments addressing any new information system or communication technology that involves the collection, use, or disclosure of personal health information should be completed and submitted so that there is a reasonable period for review by the Information and Privacy Commissioner and for any comments to be considered by the Health Information Custodian in the planning stages before implementation.
7. That the government should consider amending Section 89 of the *Health Information Act* to include similar provisions regarding Privacy Impact Assessments as mandated in section 42.1 of ATIPP.

Committee acknowledges and supports the Commissioner's recommendations concerning the *Health Information Act*. Therefore, Committee is recommending that:

Recommendation 6: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a timeframe for implementing the Information and Privacy Commissioner's seven recommendations related to the *Health Information Act*.

CONCLUSION

This concludes the Standing Committee on Government Operations *Report on the Review of the 2022-2023 Annual Report of the Northwest Territories Information and Privacy Commissioner*.

Recommendation 7

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

ENDNOTES

¹ The 2022-2023 Annual Report is available at: <https://www.ntlegislativeassembly.ca/tables-documents/office-northeast-territories-information-and-privacy-commissioner-2022-2023-annual>

² Available at: <https://www.youtube.com/watch?v=WZlkdpTWOeY> (beginning at 55:45). The Legislative Assembly uploads video recordings of public meetings and other special events to its YouTube channel.

³ The requirements for the annual report are laid out in Section 68 of the Access to Information and Protection of Privacy 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>

⁴ The requirement for annual reporting is laid out in Section 173 of the Health Information Act. Available at: <https://www.justice.gov.nt.ca/en/files/legislation/health-information/health-information.a.pdf>

⁵ Bill 29 was introduced in the Legislative Assembly in October 2018 and came into force July 2021. The Standing Committee on Government Operation's *Report on the Review of Bill 29: An Act to Amend the Access to Information and Privacy Act* is available at: https://www.ntlegislativeassembly.ca/sites/default/files/legacy/19-05-28_cr_16-183_report_on_the_review_of_bill_29_-_act_to_amend_atipp_act_final.pdf

⁶ The Open Government Policy is available at: https://www.eia.gov.nt.ca/sites/eia/files/2018-01-08_open_government_policy_-_signed.pdf

⁷ Proactive Disclosure (Open Information) Directive is available at: https://www.eia.gov.nt.ca/sites/eia/files/proactive_disclosure_directive_-_en.pdf

⁸ Open Government Frequently Asked Questions document is available at: https://www.gov.nt.ca/sites/flagship/files/documents/open_government_-_faqs.pdf

⁹ The Public Engagement Employee Guide is available at: https://www.eia.gov.nt.ca/sites/eia/files/gnwt-public_engagement_guide.pdf