

17th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of the
2013-2014 Annual Report of the
Information and Privacy Commissioner
of the Northwest Territories

Chair: Mr. Michael M. Nadli

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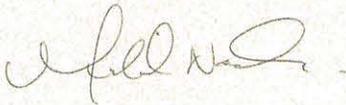
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February 12, 2015

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its Report on the Review of the 2013-2014 Annual Report of the Information and Privacy Commissioner of the Northwest Territories and commends it to the House.



Michael M. Nadli
Chairperson

STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2013-2014 ANNUAL REPORT OF THE INFORMATION AND PRIVACY COMMISSIONER OF THE NORTHWEST TERRITORIES

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

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INTRODUCTION

The *Access to Information and Protection of Privacy (ATIPP) Act* came into force on December 31, 1996. The law was created to promote government accountability by balancing access to government information with the protection of individual privacy rights related to that information.

Under the *Act*, the Information and Privacy Commissioner (IPC or Commissioner), Ms. Elaine Keenan Bengts, is appointed for a five-year term as an independent officer of the Legislative Assembly. The *Act* requires the Commissioner to file an annual report on her activities and authorizes her to include recommendations for amending the legislation to improve the *Act's* efficiency and effectiveness.

The Standing Committee on Government Operations (SCOGO or the Committee) conducted a review of the 2013-2014 Annual Report of the Information and Privacy Commissioner of the Northwest Territories, which was tabled in the Legislative Assembly on November 4, 2014 [TD 173-17(5)]. This report summarizes that review.

Members would like to thank Ms. Keenan Bengts for her report and for her appearance before the Committee at the public review, held on January 16, 2015. The Committee also wants to take this opportunity to thank Ms. Keenan Bengts for her continued commitment and dedication to all matters relating to access to information and the protection of privacy by public agencies in the Northwest Territories.

COMMISSIONER'S 2013-2014 ACTIVITIES

The Information and Privacy Commissioner often chooses to highlight topical aspects of her work in her annual "Commissioner's Message." This year, the IPC pointed out that the 2013-2014 Annual Report marks the 17th year since the *ATIPP Act* came into force in the Northwest Territories. The Committee takes

note of the observations made by the IPC in her “Commissioner’s Message,” in which she discusses how much has changed in the intervening years. She notes that the public is becoming more aware of matters relating to access to information and protection of privacy and, as a consequence, are increasingly demanding that governments protect individual privacy and account for their actions through access to information.

In 2013-2014, the Commissioner opened 30 new files, up from 16 in 2011-2012 and 27 in 2010-2011. Of the 30 new files: 12 were requests for review relating to access to information matters; nine dealt with breach of privacy issues; and four were privacy complaints relating to the private sector. The IPC noted that she “was pleased to see two breach notifications during the fiscal year in which a public body discovered a potential breach of privacy and reported it to [her] office proactively.” Each of the remaining three new files was reported as the only item in its category, i.e. Request for review—fee assessment; Request for comment; and, Administrative, respectively.

The IPC dealt with seven public bodies over the year, as compared with 14 over the previous year. Departments with the most frequent files were: Human Resources (seven); Transportation (six); and Justice (four).

In her report, the IPC devotes significant attention to summarizing the cases for which she issued “Review Recommendations” over the course of the fiscal year (pages 18-34, inclusively). The Committee encourages any members of the public, who have an interest in this aspect of governance, to take some time to review the IPC’s annual report. The report provides the reader with interesting insight into the work of the Office of the Information and Privacy Commissioner and the challenges faced by the Government of the Northwest Territories in discharging its responsibilities under the *Act*.

Of the nine cases resulting in rulings from the IPC, eight included recommendations. Of these, the recommendations of the IPC were fully accepted in six cases and partially accepted in the remaining two cases. In the other case, the complaint was found to have no grounds, therefore no recommendations were made.

RECOMMENDATIONS BY THE IPC FOR LEGISLATIVE CHANGE

As already noted, the Information and Privacy Commissioner is authorized to make recommendations for legislative change. This year, the Commissioner highlighted three legislative issues:

Implementation of New Health Information Privacy Legislation

With the passage of the *Health Information Act* in 2014, the IPC notes that much work will need to be done by the GNWT to implement the legislation. This includes educating health care workers and ensuring that the appropriate policies and procedures are in place, in advance of implementation, so that health care workers know and understand their responsibilities for collecting, using and disposing of information under the *Act*. A great deal of work also needs to be done to ensure that members of the public understand their rights and know how their personal health information will be managed under the *Act*.

Access and Privacy Impact Assessments for New Initiatives (Access and Privacy by Design)

The IPC discussed with the Committee her increasing frustration that she is not consulted or asked for input in the initial planning stages, when legislation, policies and programs are being designed. It has been her observation that government overlooks consideration of the impact that new initiatives may have on the right to access information and the privacy of the individual. The IPC cites many recent examples of GNWT legislative, policy and program initiatives which might have benefitted from her input, if she had been invited to provide it during the design phase. The IPC also correctly notes that public bodies may choose to disregard her suggestions and suggests that they cannot benefit from advice that is not provided.

ATIPP Legislation for Municipalities

The IPC has repeatedly recommended that the GNWT complete the work necessary to establish legislation governing the collection, use and disposal of information by municipalities. This recommendation is reiterated again in the IPC's 2013-2014 Annual Report, along with a notation indicating that the IPC looks forward to providing input on a discussion paper being prepared on this matter by Municipal and Community Affairs.

The GNWT tabled the discussion paper in question, along with its response to the Committee's Report on the Review of the 2012-2013 Annual Report of the IPC.

SCOGO provided a copy to the Information and Privacy Commissioner, and her comments were subsequently forwarded by the Committee to the Minister of Municipal and Community Affairs.

COMMITTEE RECOMMENDATIONS TO THE GNWT

Having considered the information put forward by the IPC in her 2013-2014 Annual Report and the discussion held during the public meeting of January 16, 2015, the Standing Committee on Government Operations provides the following recommendations to the GNWT:

ATIPP Legislation for Municipalities

The Committee took note of the explanation provided in the GNWT's Response to the Committee's Report on the Review of the 2012-2013 Annual Report of the IPC [TD 118-17(5)] for the delays associated with this project.

The Committee wishes to stress to the Government the importance of finalizing this legislation so that the rights of NWT residents, respecting access to and protection of information collected by municipalities, are articulated and enshrined in law.

The Committee reminds the GNWT that the IPC's recommendations for legislation in this area stretch back before the 17th Legislative Assembly and that previous standing committees have also supported the Commissioner's recommendation to make municipalities subject to access and privacy legislation.

In their Report on the Review of the 2011-12 Report of the IPC, the Committee recommended that an ATIPP bill for municipalities be brought forward in the first two years of the 17th Assembly. The Committee noted its concerns about the slow pace of the initiative at that time.

The Committee continues to be very concerned about this. The Committee notes that in the GNWT's most recent Response, the deadline for a final report by October 2014 [noted in TD 14-17(4)] has given way to a commitment to complete the "What We Heard" Report by March 2015 [TD 118-17(5)], with no further commitment regarding when the final report may now be expected.

Recommendation 1

The Standing Committee on Government Operations again recommends that the Government of the Northwest Territories make every effort to complete the work necessary to bring municipalities under access to information and protection of privacy legislation.

The Standing Committee on Government Operations additionally recommends that the GNWT renew its commitment to complete the final report during the life of the 17th Assembly; and,

that the Government table the final report no later than the August 2015 sitting identifying, for the consideration of the 18th Assembly, the next steps and resources necessary to complete this work in a timely manner; and,

that, as the Committee has recommended in previous years, a proposal be included for phasing this work such that tax-based municipalities may be brought under ATIPP legislation without any further delay than is absolutely necessary, and which leaves open the possibility that smaller communities may be phased in at a later date.

Review of the *ATIPP Act*

It has been 17 years since the coming into force date of the *ATIPP Act*. The Committee notes that many NWT statutes contain a provision triggering an automatic review at set intervals (e.g. every five or ten years). When one considers that the Internet was in its infancy when the *ATIPP Act* came into force, it is easy to appreciate how information technology has evolved since then. The Committee is of the opinion that, by any measure, a review of the *ATIPP Act* is long overdue. The Committee encourages the GNWT, when reviewing the *ATIPP Act*, to include a triggering provision for a mandatory statutory review, to ensure that the *ATIPP Act* is kept current in future years.

In her 2012-2013 Annual Report, the IPC made a series of recommendations for modernizing and updating the legislation to, amongst other things, address the use of current day technologies, to provide strict and enforceable timelines for response to access requests and to encourage public bodies to properly document information-related decisions. In addition to these earlier recommendations, the IPC has also pointed to the value of including “access and

privacy by design" considerations in updated ATIPP legislation. This latter point is addressed further in Committee Recommendation 3, below.

The Committee references the Progress Report on the Comprehensive Review of the Access to Information and Protection of Privacy Act, provided as an attachment to TD 114-17(4), and recognizes that the GNWT is now looking beyond 2015 for the completion of this important work. The Committee urges the GNWT to make this work a priority as it moves forward.

Recommendation 2

The Standing Committee on Government Operations again recommends that the Government of the Northwest Territories provide an updated progress report to this Assembly on work done towards a comprehensive review of the *ATIPP Act*; and,

that the Government of the Northwest Territories undertake a review of all previous recommendations made regarding updating the *ATIPP Act* and include, in the progress report, a status report on how the Committee's recommendations are being addressed.

Access and Privacy Impact Assessments for New Initiatives (Access and Privacy by Design)

The Committee discussed with the IPC the benefits of building access and privacy considerations into the development of programs, policies and legislation at the ground floor. This helps to ensure that the tools required to access information more easily and to better protect the privacy of individuals are incorporated into the design of any initiative, rather than having to be 'retrofitted' after the fact.

The IPC pointed out that achieving the goal of easier information access and appropriate privacy protections may be as simple as enabling a search function, but there is more to be done than that. The IPC spoke of the concept of open government, where the objective is to put as much information as possible online, to reduce the need for people to want to make access inquiries. The Committee was encouraged to hear that the IPC had her first meeting with the GNWT's Office of the Chief Information Officer, to discuss areas of mutual interest.

The Committee is supportive of the IPC's views on access and privacy by design and therefore encourages the GNWT to work with the IPC to integrate this

approach into day-to-day business practices. The Committee places special emphasis on the development of legislative proposals by departments and strongly encourages the GNWT to consider ways in which access and privacy by design considerations will be incorporated into legislative proposals. The Committee would welcome the opportunity, when reviewing legislative proposals, to assess the access by design considerations included by departments.

Recommendation 3

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories work with the IPC to incorporate access by design considerations into the design phase of program, policy and legislation development, giving particular thought to how these considerations may be built into the legislative proposal process.

Inclusion of IPC in Implementation of *Health Information Act*

The Committee is in agreement with the Commissioner's assertion that the GNWT can only benefit from involving the Office of the IPC in the work that it is doing to implement the *Health Information Act* and encourages the GNWT to avail itself of the expertise that the Office can provide.

Recommendation 4

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories work closely with the Information and Privacy Commissioner on the implementation of the *Health Information Act*.

Delays and Breaches under ATIPP

As noted by the IPC in her 2013-2014 Annual Report, the *ATIPP Act* requires public bodies to respond to access requests within 30 days. Certain exceptions are provided for in very specific instances. As the IPC points out, it is concerning that 7 out of 12 access matters dealt with in review recommendations pertained to the failure of a public body to reply to an access request in a timely manner. The Committee shares this concern.

The IPC pointed out to the Committee that, in many instances, the reasons cited by departments in requesting extensions under the *Act* and in explaining the causes for delays are not adequate because they do not fall within the reasons for delays provided for by the *Act*.

The Committee shares the IPC's concern and discussed ways in which this issue may be improved. The IPC offered the following suggestions to departments to improve their response times: institute a GNWT policy to prioritize the response from departments to access requests; use redaction software, which automates the process of censoring materials to be released in response to a request; and train more people to respond to access requests, to minimize the impact of staff absences on response times.

With respect to privacy breaches, the *ATIPP Act* requires a public agency to respond within ninety days to any recommendations made by the IPC as the result of investigating a complaint. The IPC did note that almost all privacy breaches are the result of human error and that these are rarely, if ever, caused maliciously or with intent. She also observed that, during the course of her time in office, she is not aware of a public body taking disciplinary action against an employee responsible for a breach of privacy. The IPC noted that the Department of Justice offers *ATIPP* training for any GNWT employees who want it and that it is important for staff to understand their obligations in signing employee confidentiality agreements.

The Committee wishes to stress to the GNWT the importance of meeting its statutory obligations under the *Act* and to ensuring that enough staff are adequately trained to meet those obligations without undue delay.

Recommendation 5

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories work closely with departments to help them improve their response times under the *Act* and that the GNWT make clear what sanctions will be imposed for departments that fail to meet their Statutory Commitments.

CONCLUSION

Ms. Elaine Keenan Bengts has served as the Information and Privacy Commissioner for the Northwest Territories since 1997. During her time in office,

Ms. Keenan Bengts has demonstrated a passion for information and privacy rights and a long-standing commitment to the work of her Office that the Standing Committee on Government Operations respects and admires.

The Committee is pleased to hear that Ms. Keenan Bengts will be continuing her important work on a full-time basis as the Information and Privacy Commissioner for the Northwest Territories and Nunavut.

As the 17th Assembly draws to a close, the Committee remains committed to giving the Commissioner's recommendations due consideration, forwarding them as appropriate to this House, and following up with the Government on their implementation.

Recommendation 6

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