

Standing Committee on
Government Operations



Report on the Review of the 2020-2021 Annual Report of the Information and Privacy Commissioner

19th Northwest Territories Legislative Assembly

Chair: Mr. Rylund Johnson

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May 30, 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 2020-2021 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 2020-2021 ANNUAL REPORT OF THE INFORMATION AND PRIVACY COMMISSIONER

INTRODUCTION

The Standing Committee on Government Operations (Committee) has reviewed the 2020-2021 Annual Report of the Information and Privacy Commissioner (IPC)¹.

The *Access to Information and Protection of Privacy Act* (ATIPPA) 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 February 10, 2022². Committee appreciated his detailed testimony on the state of access to information and privacy protection in the territory. Committee hopes the IPC's annual reports will include more statistics on the files he reviews and investigates. Enhanced reporting will help establish trends on why complaints and breaches arise, which public bodies they come from, and whether they're dealt with in a timely manner.

This report presents four (4) recommendations to address the surging number of reviews within the Government's access and privacy regime. The Committee is pleased to submit these recommendations to the Government of the Northwest Territories (GNWT) and looks forward to their implementation.

SURGING REVIEWS AND INVESTIGATIONS

The IPC can open a file to review and investigate:

- GNWT decisions on access to information requests.
- Privacy complaints of improper collection, use, or disclosure of personal or health information.

¹ Available at: https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf.

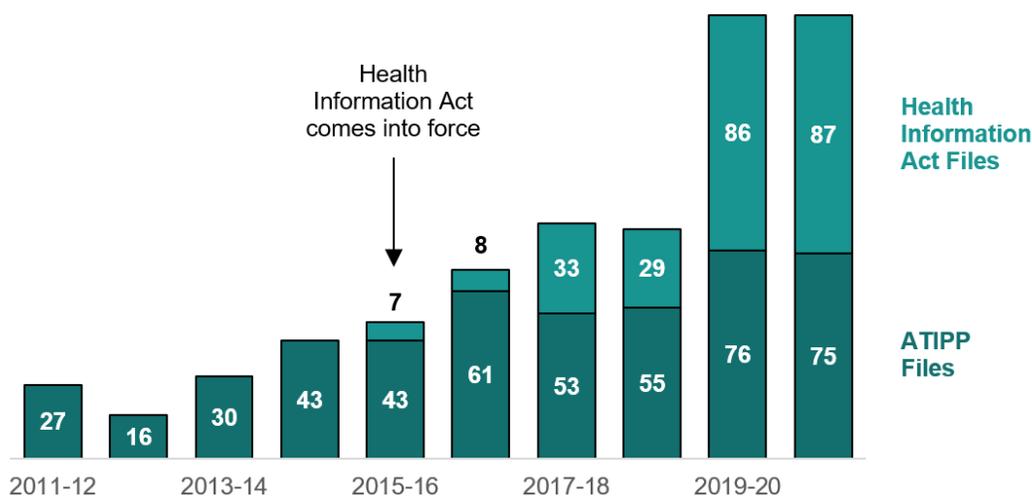
² Available at: <https://www.youtube.com/watch?v=POqzOmM88Tk>. The Legislative Assembly uploads video recordings of public meetings and other special events to its Youtube channel.

- Privacy breach complaints.
- Any matter relating to the application of ATIPPA or HIA, whether or not an individual requested a review.

The IPC can also open a file to comment on the access and privacy implications of proposed legislation, policies, or programs.³

Over the past 10 years, the number of files opened by the IPC has grown substantially. The number of files opened increased sixfold from 2011-12 (27 files) to 2020-21 (162 files). Much of this growth comes from files opened under the *Health Information Act*, which came into force in 2015-16⁴.

Figure 1: Files opened by the IPC have grown sixfold in a decade



The growing number of files is not inherently bad.

Recent IPC annual reports identify potential reasons driving the trend. The *Health Information Act's* coming into force increased the scope of privacy rights and responsibilities. The public's exercise of the right to access government information may be increasing⁵. Similarly, the public may be more aware and protective of their personal

³ For more information, see "What We Can Do" at the Office of the Information and Privacy Commissioner's website. Available at: <https://oipc-nt.ca/about/what-we-can-do/>.

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 As suggested in the 2020-21 Information and Privacy Commissioner Annual Report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf#page=6.

privacy⁶. Public bodies may also have become more aware of privacy issues⁷ and better at reporting privacy breaches.

However, the high number of files is fiscally costly. In the past 10 years, the IPC has had to spend more to keep up with the surging workload. Spending has increased by an order of magnitude, from \$90,000 in 2011-12⁸ to \$547,000 in 2020-21⁹.

Public bodies also incur costs to comply with ATIPPA and HIA. It's unclear how much the GNWT spends to comply, or how that has changed over time. The Government's activity reports on administering ATIPPA, which the GNWT has not published since 2016, do not report on costs¹⁰.

REDUCE COMPLAINTS – AND COSTS – WITH “UPSTREAM” MEASURES

In his appearance before Committee, the IPC explained that “upstream” investments in the access and privacy regime can reduce “downstream” costs associated with access complaints and privacy breaches. As he put it more succinctly, public bodies must choose between a small expense now or a larger expense later.

“Upstream” measures address the reasons individuals request reviews of access decisions and public bodies breach personal information. Some examples include:

- Making more government records available by default.
- Training employees on the proper collection, use, and disclosure of personal information.
- Procuring technology for better records management.
- Implementing administrative safeguards to protect personal information.

In fact, the IPC highlighted the early success of one such “upstream” measure. Since March 2021, the Government has centralized some access to information functions at the new Access and Privacy Office (APO). The IPC credited the APO's “trained” staff and centralized approach with promising early results. He has observed a slight

⁶ As suggested in the 2019-20 Information and Privacy Commissioner Annual Report. Available at: <https://oipc-nt.ca/wp-content/uploads/2021/03/Annual-Report-2019-2020.pdf#page=12>.

⁷ As suggested in the 2020-21 Information and Privacy Commissioner Annual Report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf#page=6.

⁸ Department of Finance (2014). 2013-14 Main Estimates. Available at: <https://www.fin.gov.nt.ca/sites/fin/files/2013-14mainestimates.pdf#page=44>.

⁹ Department of Finance (2022). 2022-23 Main Estimates. Available at: https://www.fin.gov.nt.ca/sites/fin/files/resources/2022-2023_main_estimates_supporting_schedules.pdf#page=42.

¹⁰ Government of the Northwest Territories (2016). GNWT Activity Report on the ATIPP Act. Available at: <https://www.justice.gov.nt.ca/en/files/atipp/reports/ATIPP%20Activity%20report%202010-%202016.pdf>.

decrease in the number of review requests and, as of February 2022, zero “deemed refusals” on APO files¹¹.

More “upstream” measures are needed. Committee is making four (4) recommendations to that effect. The recommendations address persistent gaps in the access and privacy regime, raised by the IPC, that lead to complaints and privacy breaches. They also reinforce accountability for past Committee recommendations that the Government has not implemented adequately.

RECOMMENDATIONS

Train employees on privacy protection

The IPC’s annual report identifies staff who are under-resourced, untrained in, or unaware of privacy policies as a frequent cause of privacy breaches. When he investigates breaches, the IPC frequently recommends comprehensive and regular training. He also recommends the broader publication of relevant policies.

However, there is no government-wide policy to ensure all employees receive proper training on the collection, use, and disclosure of personal information¹².

The issue is so important that it was the focus of the IPC’s one (1) recommendation in his appearance before Committee. He said:

I would urge all public bodies and health information custodians to ensure that new employees are given the appropriate training early on, both in protection of privacy and access to information, and that all employees should be given regular refreshers of that¹³.

Committee wholeheartedly endorses the IPC’s recommendation. While there are costs involved with training, the costs of not training are greater: reviews of access decisions, privacy breaches, breach investigations, and ultimately reduced public faith in government.

Therefore, the Standing Committee on Government Operations recommends:

¹¹ A “deemed refusal” occurs when a public body fails to respond to a request within a time limit. At that point, it is “deemed” that the public body has refused access to a requested record. For more information, see Section 8(2) 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#page=18>.

¹² According to the IPC in his appearance before Committee.

¹³ Available at: <https://youtu.be/POqzOmM88Tk?t=2220>.

Recommendation 1: That the Government of the Northwest Territories, in consultation with the Information and Privacy Commissioner and by April 1, 2023, establish a government-wide policy that ensures all employees receive appropriate training on the collection, use, and disclosure of personal information. The policy should ensure that new employees receive training early on and all employees receive regular refreshers.

The Committee further recommends that the Government emphasize Indigenous recruitment and retention to fill access and privacy positions.

Update policies on mobile handheld devices

The IPC's annual report drew attention to the role of mobile handheld devices in several privacy breaches.

Review Report 20-242 investigated one such breach. An education official recorded a video, using a personal mobile device, of a teacher and students. The official uploaded the video to a government server that others could access, ostensibly for training purposes. The official did not seek or obtain consent from anyone in the video¹⁴.

The IPC identified a “key factor” in this breach: “the absence of any policy direction for the use of such personal devices in the workplace.”¹⁵

Existing policy direction on mobile handheld devices is limited and outdated. The Mobile Handheld Device Policy contains only one provision that touches on personal privacy: To prohibit taking pictures of people without permission¹⁶. The Employee Code of Conduct says even less. Its provisions on the “use of government equipment and property” are silent on protecting personal privacy¹⁷. The Code was last updated in March 2008.

The IPC's annual report recommends “clear policy guidance” for employees on the proper use of mobile handheld devices. Committee agrees. This work is urgent given the ubiquity of these devices and the high risk for breaches of sensitive personal information.

Therefore, the Standing Committee on Government Operations recommends:

¹⁴ For more information, see the IPC's 2020-21 Annual Report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf#page=32.

¹⁵ Ibid.

¹⁶ See the Department of Finance's Mobile Handheld Device Policy. Available at: <https://www.fin.gov.nt.ca/en/information-management-and-technology-policy-manual/mobile-handheld-devices-policy>.

¹⁷ Specifically sections 76 and 77 of the Code of Conduct. Available at: <https://my.hr.gov.nt.ca/sites/myhr/files/codeofconduct.pdf#page=25>.

Recommendation 2: That the Department of Finance, in consultation with the Information and Privacy Commissioner and by April 1, 2023, update policies governing the use of mobile handheld devices by the public service, including:

1. The Mobile Handheld Devices Policy, to expand the policy provisions for “proper use” to address all the ways a user can collect, use, or disclose personal information with a device;
2. The Employee Code of Conduct, to introduce provisions to protect personal privacy regarding the “use of government equipment and property”; and
3. New policy guidance, to address the use of personal devices and email to conduct government business.

The Department of Finance should supplement these policies with easily accessible guidance documents on how devices should and should not be used.

Eliminate faxing

In October 2020, Committee recommended that the GNWT “develop and implement a plan for ending the use of fax machines in the health and social services sector.¹⁸” The GNWT supported this recommendation and indicated that it was preparing a plan to reduce faxing¹⁹.

However, despite this commitment to reduce faxing, privacy breaches persist. As stated in the IPC’s annual report: “Mistakes related to the use of fax machines continue to generate reports [...] resulting in the unlawful disclosure of personal health information.²⁰” He added that a “concerning number” of the 66 privacy breach notifications related to HIA in 2020-21 implicated fax machines.

The IPC felt the need to reiterate his Office’s long-standing advice: “Health information custodians should stop using fax machines to transmit personal health information.”

The IPC and Committee have already been unambiguous on the need to eliminate faxing. Committee therefore seeks to reinforce accountability surrounding the GNWT’s plan to reduce faxing and recommends:

¹⁸ See Recommendation #4 in Committee’s Report on the Review of the 2018-2019 Annual Report of the Information and Privacy Commissioner. Available at: https://www.ntassembly.ca/sites/assembly/files/cr_5-192_report_on_the_review_of_the_2018-2019_annual_report_of_the_information_and_privacy_commissioner_of_the_northwest_territories.pdf.

¹⁹ Government of the Northwest Territories Response to Committee Report 5-19(2). Available at: https://www.ntassembly.ca/sites/assembly/files/td_321-192.pdf.

²⁰ See “Review Reports – Health Information Act” in the IPC’s annual report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_481-192.pdf#page=32.

Recommendation 3: That the Government of the Northwest Territories provide an update on its plan to reduce the use of faxing across the Health and Social Services system, including:

1. Metrics on reductions in the use of faxing achieved so far;
2. The targets and associated timelines for future reductions; and, if faxing cannot or will not be eliminated,
3. An explanation on why the use of fax cannot or will not be eliminated, and what measures the Department is taking to mitigate the risk of data breaches arising from mis-addressed documents.

Proactive disclosure

In October 2020, the Committee recommended a GNWT update on work to standardize ‘Access by Design’ principles when designing government records and communications²¹. ‘Access by Design’ advances that government-held records should be available to the public by default, with limited and specific exceptions²².

There are many benefits to the proactive disclosure and active dissemination of government-held records. Residents would not need to make as many special requests for information. Public bodies could have fewer access to information requests to answer. This would save time and costs. Ultimately, residents would be more empowered to hold the government accountable, and the government would be more accessible and transparent.

In February 2021, the GNWT indicated that it “supports” the Access by Design principle. The GNWT also reported that it was planning to ask all public bodies to conduct a “comprehensive review of their records.”²³ The review would establish categories of records that can be routinely disclosed and proactively made available to the public.

This review appears to be an effort to comply with Section 72(1) of the recently amended ATIPP Act²⁴. The changes to the ATIPP Act came into effect in July 2021. The status of this review is unclear.

²¹ See Recommendation #3 in Committee’s Report on the Review of the 2018-2019 Annual Report of the Information and Privacy Commissioner. Available at: https://www.ntassembly.ca/sites/assembly/files/cr_5-192_report_on_the_review_of_the_2018-2019_annual_report_of_the_information_and_privacy_commissioner_of_the_northwest_territories.pdf.

²² Information and Privacy Commissioner of Ontario (2010). Access by Design: The 7 Fundamental Principles. Available at: https://www.ipc.on.ca/wp-content/uploads/2010/05/accessbydesign_7fundamentalprinciples.pdf.

²³ Government of the Northwest Territories Response to Committee Report 5-19(2). Available at: https://www.ntassembly.ca/sites/assembly/files/td_321-192.pdf.

²⁴ 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=69>.

The Standing Committee on Government Operations believes expanded proactive disclosure of government-held records is long overdue, and therefore recommends:

Recommendation 4: That the Government of the Northwest Territories provide an update on complying with Section 72(1) of the *Access to Information and Protection of Privacy Act*, which requires the head of a public body to establish and publish categories of records to be made available to the public without a request for access.

The update should include a summary of the progress achieved so far and the timelines for full compliance at each public body.

CONCLUSION

This concludes the Standing Committee on Government Operations' *Report on the Review of the 2020-2021 Annual Report of the Information and Privacy Commissioner*. The Committee looks forward to the Government's response to these recommendations.

Recommendation 5: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a response to this report within 120 days.