

GOVERNMENT OF THE NORTHWEST TERRITORIES RESPONSE TO COMMITTEE REPORT 8-18(2), REPORT ON THE REVIEW OF THE 2014-2015 and 2015-2016 ANNUAL REPORTS OF THE INFORMATION AND PRIVACY COMMISSIONER OF THE NORTHWEST TERRITORIES

The NWT *Access to Information and Protection of Privacy Act* (“the Act” or “ATIPP Act”) became law in 1996. It was created to promote access to information that the government creates and receives, and to protect individual privacy rights related to that information.

The NWT Health Information Act (*HIA*) came into force in 2015. It was created to protect residents’ personal health information by setting rules for the collection, use and disclosure of that information. It also allows for the provision of best care to patients by allowing health care providers to easily share information across authorities and jurisdictions.

Under the Act, the Information and Privacy Commissioner is an independent officer appointed for a five-year term. The Act requires the Commissioner to file an annual report on her activities. The Commissioner may include in her report recommendations for amending the legislation to improve the Act’s efficiency and effectiveness.

The Standing Committee on Government Operations (the “Standing Committee”) conducted a review of the Information and Privacy Commissioner’s 2014-2015 and 2015-2016 annual reports. The report summarizing their review was tabled in the Legislative Assembly on March 2, 2017. It included seven recommendations.

The following is the Government of the Northwest Territories (GNWT) response to the recommendations contained in the Committee Report 8-18(2), *“Report on the Review of the 2014-2015 and 2015-2016 Annual Reports of the Information and Privacy Commissioner of the Northwest Territories”*.

Recommendation One

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories advise the House of specific target dates for the completion of a legislative proposal and the introduction of a bill to modernize and update the Access to Information and Protection of Privacy Act.

GNWT Response

The GNWT is committed to ensuring that the work related to the comprehensive review of the Access to Information and Protection of Privacy Act must continue to advance within the life of the 18th Legislative Assembly. The GNWT is targeting June 2017 for the completion of the Legislative Proposal and March 2018 for the introduction of a Bill in the Legislative Assembly.

Recommendation Two

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories identify all recommendations made by the Information and Privacy Commissioner by this and previous Standing Committees, for improvement to the *Access to Information and Protection of Privacy Act*.

The Standing Committee on Government Operations further recommends that the Government of the Northwest Territories identify, in the legislative proposal to amend the *Act*, how these recommendations are being addressed.

GNWT Response

The GNWT's comprehensive review of the Access to Information and Protection of Privacy Act involved extensive consultation with public bodies, the Information and Privacy Commissioner (IPC) and the public. All feedback received during the course of these consultations, including the IPC's extensive submission for legislative changes and recommendations previously brought forward by the Standing Committee on Government Operations, have been thoroughly considered.

The GNWT would like to acknowledge the commitment and insight received from the IPC throughout the comprehensive review of the Information and Protection of Privacy Act. The GNWT's Access and Privacy Office undertook a series of meetings with the IPC to discuss the results from each stage of the consultation process and to seek feedback on possible recommendations. The results of this engagement, including how the recommendations will be addressed, will form the basis for the Legislative Proposal.

Recommendation Three

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories take the necessary steps to ensure that a modernized ATIPP Act is brought into force before the end of the 18th Legislative Assembly.

GNWT Response

As previously stated, the GNWT remains committed to ensuring the work related to the comprehensive review advances within the life of the 18th Legislative Assembly. As noted in Recommendation One, the GNWT is targeting March 2018 for the introduction of a Bill in the Legislative Assembly and anticipates amendments to the Access to Information and Protection of Privacy Act will come into force by April 2019.

Recommendation Four

The Standing Committee of Government Operations recommends that the Government of the Northwest Territories prepare and table a report on the status of the work it has completed to implement the *Health Information Act*, including the implementation of a public information campaign and training for health sector employees.

GNWT Response

The GNWT supports the Standing Committee's recommendation to report on the status of the work completed to implement the Health Information Act.

The Department of Health and Social Services will prepare a report detailing the work completed from October 1, 2015, when the Health Information Act came into force, to October 2016. The report will provide statistics on the training for health sector employees and details of the public awareness campaign, among other activities completed. The Department anticipates that the report will be tabled in the Fall 2017 session.

Recommendation Five

The Standing Committee of Government Operations recommends that the Minister of Health and Social Services table the *Health Information Act Guide* in the Legislative Assembly and provide a televised public briefing to the Committee on the *Health Information Act* and its impacts on the rights of those who access health care in the Northwest Territories.

GNWT Response

The GNWT supports the Standing Committee's recommendation on this matter. The Department of Health and Social Services would be pleased to arrange a public briefing to the Committee on the Health Information Act and the rights of those accessing health care in the Northwest Territories.

The Health Information Act Guide is currently publically available on the Department of Health and Social Services website. This website can be accessed as follows: <http://www.hss.gov.nt.ca/sites/www.hss.gov.nt.ca/files/hia-guide.pdf>.

Recommendation Six

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories ensure that Health Authorities undertake the steps necessary to establish or adopt standards, policies and procedures in compliance with Section 8 of the *Health Information Act*.

The Standing Committee of Government Operations recommends that the Government of the Northwest Territories keep the Committee advised of progress on this work, with a view to having the appropriate written procedures in place within six months from the date of this report.

GNWT Response

The GNWT understands the importance of implementing standardized privacy policies in NWT Health Authorities and will continue to advance this work.

The Department of Health and Social Services, in consultation with the Department of Justice, is currently finalizing privacy policies that will be applicable across the entire health and social services system. In order to do this, the policies will be under a Ministerial directive that will require the Department of Health and Social Services and all three Health and Social Services Authorities to apply and implement the privacy and security policies.

The initial policies being finalized are the following:

- *Privacy Breach Policy - provides direction on handling privacy breaches including notification, carrying out investigations, mitigating, responding to, and reporting on potential and confirmed privacy breaches;*
- *Electronically Stored and Transferred Information Policy – provides a consistent approach, that ensures safe and secure storage and transfer of electronic information;*
- *De-Identification Policy – provides common understanding and direction when applying de-identification methods to comply with privacy safeguard requirements to ensure personal health information is protected;*
- *Privacy Impact Assessment (PIA) Policy – provides direction when to complete a PIA, as well as use of the approved PIA template;*
- *Mandatory Training Policy – provides a framework to identify training obligations within DHSS and HSSAs and sets out mandatory minimum privacy training.*

Additional policies being developed include policies regarding masking, consent conditions, consent withdrawal, contractor compliance, and portable devices. The Department anticipates the policies will be implemented in the fall of 2017.

As further policies are developed, they will also be brought under the Ministerial directive.

Recommendation Seven

The Standing Committee of Government Operations recommends that the Government of the Northwest Territories obtain a legal opinion on whether “information system” as referenced in s. 89 of the *Health Information Act* is limited to electronic health systems when the Act is considered as a whole;

And further that the Government of the Northwest Territories share that legal opinion with the Standing Committee, in confidence, once it is completed;

And furthermore, that the Government of the Northwest Territories conduct a privacy impact assessment on the health system transformation initiative, should the legal opinion find that “information system” as referenced in s. 89 of the *Health Information Act* is not limited to electronic health systems when the Act is considered as a whole.

GNWT Response

Health and Social Services system transformation implemented the new governance structure of the Northwest Territories Health and Social Services Authority on August 1, 2016 to improve delivery of health and social services across the NWT.

The Health Information Act relies on industry-recognized interpretations of the term “information systems”. Currently, the standard definition of the term is a computer system or set of components for collecting, creating, storing, processing and distributing information, typically including hardware and software, system users, and the data itself.

There have been no changes to HSS information systems as a result of system transformation. At the time of system transformation, the NWT health system already used one shared electronic medical record (EMR) system. There was not more than one EMR. There were no separate Health and Social Services Authority EMRs. At the time of system transformation, there was already only one shared interoperable Electronic Health Record system used by all Authorities. Before system transformation, there were four separate applications of MediPatient (Stanton, Inuvik, Hay River, and Fort Smith). There are still four separate MediPatient applications.

Because there has been no impact on existing information systems as a result of system transformation, the Department has no plans to carry out a privacy impact assessment specifically on system transformation, and does not believe a legal opinion will be of assistance on this issue.