

# **Government of Nunavut Response to the Standing Committee on Oversight of Government Operations and Public Accounts**

## **Report on the Review of the Annual Report of the Information and Privacy Commissioner of Nunavut**

On October 1, 2009 Elaine Keenan-Bengtts, the Information and Privacy Commissioner (IPC) of Nunavut appeared before the Standing Committee on Oversight of Government Operations and Public Accounts to present her 2008-2009 Annual Report. In addition to the review of that annual report, the Standing Committee raised many issues regarding access to information and protection of privacy which they felt directly affected the public of Nunavut. Following that appearance, the Standing Committee tabled their Report on the Review of the Annual Report of the Information and Privacy Commissioner on December 2, 2009. The Standing Committee report consists of ten (10) recommendations to the Government of Nunavut (GN), some specific to departments, which the Committee felt could help improve access to information and protection of privacy.

As per Rule 91(5) of the Rules of the Legislative Assembly, the Government of Nunavut has 120 days from the tabling of the Standing Committee Report to provide a comprehensive response.

The recommendations provided by the Standing Committee were welcomed by the departments as many fit appropriately within the work currently being undertaken by the GN including:

- a review of the *Access to Information and Privacy Act*,
- a review of the *Public Service Act*,
- curriculum development;
- policy development surrounding privacy of health information; and
- policy development surrounding formalized reporting.

This response individually addresses the specific recommendations made by the Standing Committee, in furtherance of improved access to information and improved privacy protection.

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**Standing Committee Recommendation #1:  
Issue: Government Contracting Practices**

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The Standing Committee recommends that the Government of Nunavut table annual contracting, procurement and leasing reports for all of its Crown corporations and agencies, including:

- Nunavut Business Credit Corporation;
- Nunavut Development Corporation;
- Nunavut Housing Corporation;
- Qulliq Energy Corporation; and
- Nunavut Arctic College.

**GN Response:**

- *The government agrees. The Public Agencies Council will work closely with the Ministers responsible for our territorial corporations with respect to the reporting of their contracting activities to ensure the timeliness of reporting, transparency and accountability to Nunavummiut.*

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**Standing Committee Recommendation #2:  
Issue: Establishment of a Formal Information Disclosure Policy  
Concerning the H1N1 Virus**

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The Standing Committee recommends that the Government of Nunavut reviews its practices in the area of disclosure of information concerning the H1N1 virus. The Standing Committee further recommends that the government's next annual report on the administration of the Act include an update on its activities in this area.

**GN Response:**

- *The Department of Health and Social Services, through the office of the Chief Medical Officer of Health, is currently reviewing its disclosure and reporting protocols concerning reportable communicable diseases, with a particular focus on disclosure of community names and community-specific numbers of cases. As part of this review, the Department will be developing a protocol for real time reporting of communicable disease outbreaks.*

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**Standing Committee Recommendation #3:**  
**Issue: Review of Legislation in Relation to Adoption**

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The Standing Committee recommends that the Government of Nunavut's upcoming development of a new *Child and Family Services Act* takes into consideration the issue of adoption.

**GN Response:**

- *Although consideration will be given to the issue of adoption when developing the new Child and Family Services Act, the adoption of children is dealt with under separate legislation in Nunavut. Aboriginal custom adoptions fall under the Aboriginal Custom Adoption Recognition Act while other types of adoption in Nunavut fall under the Adoption Act.*

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**Standing Committee Recommendation #4:**  
**Issue: Application of Access to Information and Protection of Privacy Legislation to Municipalities**

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The Standing Committee recommends that the Government of Nunavut, in cooperation with the Nunavut Association of Municipalities and the Office of the Information and Privacy Commissioner, review the issue of access to information and protection of privacy at the municipal level. This review should give consideration to the appropriate mechanisms to achieve progress in this area, including those that were discussed during the Standing Committee's hearings. The Standing Committee further recommends that the government's next annual report on the administration of the Act include an update on its activities in this area.

**GN Response:**

- *The Government of Nunavut agrees that municipalities should, in some way, be accountable under access to information and privacy protection legislation. Further consultation regarding their inclusion under the ATIPP Act is required and the GN intends to include all stakeholders who may be affected by these changes, including the Nunavut Association of Municipalities.*
- *As including municipalities under the ATIPP Act does raise many governance and administrative issues, it is important that we do not rush into their inclusion before we are aware of and able to deal with the concerns of all parties.*

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**Standing Committee Recommendation #5:  
Issue: Review of the Role of the Information and Privacy  
Commissioner of Nunavut**

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The Standing Committee recognizes that any fundamental changes to the role of the Information and Privacy Commissioner, including the creation of new statutory positions such as an ombudsman or a position to provide assistance and protection to whistleblowers, would require not only significant amendments to the *Access to Information and Protection of Privacy Act*, but would also require the introduction of new legislation. The Standing Committee recommends that this issue be considered in the context of the Legislative Assembly's upcoming recruitment exercise to select the next Information and Privacy Commissioner of Nunavut. The Standing Committee further recommends that the government's next annual report on the administration of the Act include an update on its progress towards establishing whistleblower protection.

**GN Response:**

- *In Nunavut, there is no specific legislation governing whistleblower protection. However, in reviewing the Public Service Act, the Department of Human Resources will consider the possibility of the inclusion of such provisions.*
- *In reviewing the ATIPP Act, a scan of all Canadian jurisdictions was done to identify any common links between ombudsman offices for whistleblower protection and ATIPP offices. The majority of jurisdictions have separate offices for these functions.*

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**Standing Committee Recommendation # 6  
Issue: Amendments to the *Access to Information and Protection  
of Privacy Act* to Include Privacy Reviews**

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The Standing Committee supports the Information and Privacy Commissioner's position and recommends that the Government of Nunavut consider it to be a priority amendment as part of its next legislative review of the *ATIPP Act*. The Standing Committee further recommends that the GN consult with the Office of the Information and Privacy Commissioner in the development of these amendments.

**GN Response:**

- *The GN agrees that our legislation is lacking in that it does not currently include a provision mandating privacy reviews by the Information and Privacy Commissioner. This problem has been identified and will be raised during the next review of the ATIPP Act.*

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**Standing Committee Recommendation #7:**  
**Issue: Electronic Records Management, E-mail and Mobile Devices**

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The Standing Committee recognizes that the pace of technological change is such that governments must make ongoing efforts to ensure that their policies, practices and procedures remain current. The Standing Committee recommends that the government review its policies, practices and procedures in this area on an annual basis.

**GN Response:**

- *The GN agrees that reviewing policies to ensure that they remain current should occur frequently as technology is rapidly changing. The GN has a comprehensive records management policy for both paper and electronic records, which is constantly evolving as new mediums for communication are developing and being used.*
- *An annual review could be beneficial but should not replace policy changes on an “as needed” basis.*

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**Standing Committee Recommendation #8:**  
**Issue: Information and Privacy Commissioner’s Discretion to Extend the Time for Requesting a Review**

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The Committee supports the Information and Privacy Commissioner’s position and recommends that the Government of Nunavut consider it to be a priority amendment as part of its next legislative review of the *ATIPP Act*. The Standing Committee further recommends that the GN consult with the Office of the Information and Privacy Commissioner in the development of these amendments.

**GN Response:**

- *The GN agrees that the 30 day time limit, specified in the ATIPP Act, to request a review by the Information and Privacy Commissioner (IPC) can be limiting to some individuals. We agree that it could be beneficial to amend the Act to provide the IPC with the discretion to extend the time for requesting a review in appropriate circumstances, except where the issue involves a third party objection to the disclosure of information. The GN is committed to reviewing this issue during the next review of the ATIPP Act.*

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**Standing Committee Recommendation #9:  
Issue: Development of Health Sector Privacy Legislation**

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The Standing Committee recognizes the importance of achieving progress in this area and recommends that the Government of Nunavut continue its efforts to move forward to introducing legislation. The Standing Committee further recommends that the government's next annual report on the administration of the Act include an update on its activities in this area.

**GN Response:**

- *The GN understands the sensitivity surrounding personal health information and is committed to ensuring the protection of all personal health information. The GN acknowledges the importance of privacy legislation, particularly as the Department of Health and Social Services (HSS) moves toward an interoperable Electronic Health Record (iEHR) system. The iEHR system will initially be governed by a comprehensive privacy framework and supporting privacy policies. Once the iEHR system is operational, the GN will be in a better position to develop functional and effective health-specific privacy legislation that would apply to both paper and electronic records. The GN will be looking at the legislation enacted in and under development by other jurisdictions, particularly the other two territories, for guidance. Until such time, a combination of the Access to Information and Protection of Privacy Act and internal departmental policies will continue to be the legislative and regulatory authority for health information.*

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**Standing Committee Recommendation #10:  
Issue: Protection of Children from On-Line Risks and  
Development of Curriculum Materials**

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The Standing Committee recognizes that children are using the internet and related technologies at increasingly young ages. The Standing Committee recommends that the Department of Education continue its efforts to include relevant curriculum in elementary schools. The Standing Committee further recommends that the government's annual report on the administration of the Act include an update on its activities in this area.

**GN Response:**

- *The GN agrees with the Committee's recommendations and acknowledges that it is a very important topic to include in school curriculum to ensure the safety of all Nunavut students accessing electronic media.*

- *The current junior high school curriculum includes coverage of risk factors involved in aspects of media communications. In addition, students are required to sign an agreement that they will only use internet and other electronic systems for positive learning purposes. Teachers also cover this topic as part of the Safety in Health curriculum.*
- *To strengthen the approach to this potentially serious issue, as the Department of Education develops a new Information Technology curriculum for Nunavut schools, this topic will be included at all grade levels.*