



Standing Committee on Oversight of Government Operations and Public Accounts

Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut

**Third Session of the Third Legislative Assembly of Nunavut
Spring 2013 Sitting
May 2013**

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Introduction

The Information and Privacy Commissioner of Nunavut is an independent officer of the Legislative Assembly who is required under section 68 of the *Access to Information and Protection of Privacy Act* to prepare and submit an annual report to the Legislative Assembly on her office's activities.

The *Access to Information and Protection of Privacy Act* provides for the Commissioner of Nunavut to appoint, on the recommendation of the Legislative Assembly, the Information and Privacy Commissioner for a five-year term of office.

The appointment of Nunavut's first Information and Privacy Commissioner, Elaine Keenan Bengts, was recommended by way of motion in the Legislative Assembly on November 2, 1999. On November 25, 2004, her reappointment was recommended by way of motion to a second five-year term of office. The Information and Privacy Commissioner of Nunavut also serves as the Information and Privacy Commissioner of the Northwest Territories.

The Legislative Assembly of the Northwest Territories enacted the *Access to Information and Protection of Privacy Act* in 1996. As the Information and Privacy Commissioner has noted:

“The *Access to Information and Protection of Privacy Act* was created to promote, uphold and protect access to the information that government creates and receives and to protect the privacy rights of individuals.”

The *Access to Information and Protection of Privacy Act* and regulations made under the Act were inherited from the Northwest Territories on April 1, 1999. Between 1999 and 2012, a number of minor amendments to the legislation were made to address conflicts with other territorial statutes. The changes that have been made to the regulations since April 1, 1999, have been housekeeping in nature. The list of public bodies has been amended to reflect changes to the organizational structure of the government.

Bill 38, *An Act to Amend the Access to Information and Protection of Privacy Act*, received 1st Reading on June 1, 2012. Bill 38 received Assent on June 8, 2012. These amendments provided clear authority for the Information and Privacy Commissioner to undertake privacy-related reviews concerning personal information held by public bodies. The amendments also established a statutory requirement for public bodies to notify the Information and Privacy Commissioner where a material breach of privacy has occurred with respect to personal information under their control.

As of May 1, 2013, these amendments to the *Access to Information and Protection of Privacy Act* have not come into force. Testimony provided by Government of Nunavut

officials during the Standing Committee's April 18, 2013, hearings indicated that the government "aims" to bring the amendments into force during the spring of 2013. The 2013-2016 business plan of the Department of Executive and Intergovernmental Affairs indicates that:

"The Legislative Assembly passed amendments to the *Access to Information and Protection of Privacy Act* in June 2012. The first draft of the *Privacy Management Framework* has been completed. Subsequent training was provided to Government of Nunavut employees in September 2012 to ensure ability to use and implement the framework throughout all public bodies."

As the Information and Privacy Commissioner has noted, her office is mandated to:

"...conduct reviews of decisions of public bodies and to make recommendations to the Minister involved (...) the Commissioner has the obligation to promote the principles of the Act through public education. She is also mandated to provide the government with comments and suggestions with respect to legislative and other government initiatives which affect access to information or the distribution of private personal information in the possession of a government agency."

Standing Committee hearings on the annual reports of the Information and Privacy Commissioner, the Languages Commissioner and the Auditor General provide an opportunity for the issues raised in each report to be discussed in a transparent manner. Government accountability is fostered through the requirement in the *Rules of the Legislative Assembly* that the government table a comprehensive response to the Standing Committee's report and recommendations within 120 days of its presentation to the House.

Since her initial appointment in 1999, the Information and Privacy Commissioner has submitted a total of thirteen annual reports to the Legislative Assembly of Nunavut. In each annual report, she has presented a number of recommendations. Her annual reports are accessible on her office's website.

In 2005, the Government of Nunavut began the practice of tabling an annual report on the administration of the *Access to Information and Protection of Privacy Act*. The government's most recent annual report on the administration of the Act was tabled in the Legislative Assembly on November 2, 2012.

The Standing Committee on Oversight of Government Operations and Public Accounts held hearings on the 2007-2008 and 2008-2009 annual reports of the Information and Privacy Commissioner on October 1, 2009. Its hearings on the 2009-2010 annual report of the Information and Privacy Commissioner were held on October 1, 2010. Its hearings on the 2010-2011 annual report of the Information and Privacy Commissioner were held on November 24, 2011.

On November 25, 2011, senior officials from the Government of Nunavut's Department of Executive and Intergovernmental Affairs also appeared before the Standing Committee to respond to Members' questions concerning the administration of the *Access to Information and Protection of Privacy Act*.

Following its 2011 hearings, the Standing Committee presented its own report to the Legislative Assembly on March 5, 2012. The government's response to the Standing Committee's report and recommendations was tabled in the Legislative Assembly on October 23, 2012. The Standing Committee's reports and the government's responses to them are available on the Legislative Assembly's website, as are the transcripts from the Standing Committee's hearings.

The Standing Committee's hearing on the 2011-2012 annual report of the Information and Privacy Commissioner was held on the morning of April 18, 2013. Senior officials from the Government of Nunavut's Department of Executive and Intergovernmental Affairs subsequently appeared before the Standing Committee during the afternoon. This appearance constituted the second time that departmental officials have appeared before a Standing Committee of the Legislative Assembly to publicly account for the government's actions in response to recommendations of the Information and Privacy Commissioner and the Standing Committee itself.

The April 18, 2013, appearances of the Information and Privacy Commissioner and departmental officials before the Standing Committee were held in the Nanuq Room of the Legislative Assembly and were open to the public and news media to observe. Transcripts from the Standing Committee's hearings are posted on the Legislative Assembly's website.

Observations and Recommendations

Issue: Coming into Force of Amendments to the *Access to Information and Protection of Privacy Act*, the Government of Nunavut's New *Privacy Management Framework* and the Government of Nunavut's Annual Report on the Administration of the *Access to Information and Protection of Privacy Act*

Bill 38, *An Act to Amend the Access to Information and Protection of Privacy Act*, received 1st Reading on June 1, 2012. Bill 38 received Assent on June 8, 2012. These amendments provided clear authority for the Information and Privacy Commissioner to undertake privacy-related reviews concerning personal information held by public bodies.

The amendments also established a statutory requirement for public bodies to notify the Information and Privacy Commissioner where a material breach of privacy has occurred with respect to personal information under their control.

As of May 1, 2013, these amendments to the *Access to Information and Protection of Privacy Act* have not come into force. Testimony provided by Government of Nunavut officials during the Standing Committee's April 18, 2013, hearings indicated that the government "aims" to bring the amendments into force during the spring of 2013.

The 2013-2016 business plan of the Department of Executive and Intergovernmental Affairs indicates that:

"The Legislative Assembly passed amendments to the *Access to Information and Protection of Privacy Act* in June 2012. The first draft of the *Privacy Management Framework* has been completed. Subsequent training was provided to Government of Nunavut employees in September 2012 to ensure ability to use and implement the framework throughout all public bodies."

The Standing Committee applauds the Government of Nunavut for preparing and tabling an annual report on the administration of the *Access to Information and Protection of Privacy Act*. The information contained in these annual reports is of significant importance to Members of the Legislative Assembly and the general public.

However, although the government's 2010-2011 annual report on the administration of the *Access to Information and Protection of Privacy Act* contained detailed information concerning the official languages in which requests were submitted under the legislation, the government's 2011-2012 annual report did not contain this information.

Standing Committee Recommendation #1:

The Standing Committee recommends that the Government of Nunavut's response to this report clarify the timeline for the coming into force of the amendments to the *Access to Information and Protection of Privacy Act* that were passed by the Legislative Assembly in June of 2012.

The Standing Committee further recommends that the Government of Nunavut's new *Privacy Management Framework* be tabled in the Legislative Assembly at the earliest opportunity.

The Standing Committee further recommends that the Government of Nunavut's 2012-2013 annual report on the administration of the *Access to Information and Protection of Privacy Act* contained detailed information concerning the official languages in which requests were submitted under the legislation in both the 2011-2012 and 2012-2013 fiscal years.

Issue: Disclosure of Crown Agency Contracting, Procurement and Leasing Activities

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the Standing Committee reiterated its recommendation that the Government of Nunavut table annual reports in the Legislative Assembly on the contracting, procurement and leasing activities for all of its Crown corporations and agencies. This recommendation was reiterated in its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner.

The government's most recent response to the Standing Committee's recommendation stated that:

“In the interest of increased transparency, accountability and effectiveness, Ministers responsible for territorial corporations have issued directives to the territorial corporations and agencies to provide important information to the GN and Nunavummiut, including the tabling of yearly reports on procurement, contracting and leasing activities.”

Over the past year, there has been improvement in this area. Ministerial Letters of Expectation to the government's Crown agencies for the 2012-2013 fiscal year were tabled in the Legislative Assembly on June 6, 2012. As of May 1, 2013, the most recent Crown agency annual reports on contracting, procurement and leasing activities to have been tabled in the Legislative Assembly are as follows:

- Nunavut Business Credit Corporation: 2010-2011 (Tabled October 23, 2012)
- Nunavut Development Corporation: Not yet tabled
- Nunavut Housing Corporation: 2011-2012 (Tabled March 1, 2013)
- Qulliq Energy Corporation: 2009-2010 (Tabled February 24, 2011)
- Nunavut Arctic College: Not yet tabled

Standing Committee Recommendation #2:

The Standing Committee reiterates its recommendation that the Government of Nunavut table, in a timely manner, annual reports in the Legislative Assembly on the contracting, procurement and leasing activities for all of its Crown corporations and agencies, including the:

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

Issue: Disclosure of Information in Relation to Communicable Diseases

In its report on the review of the 2007-2008 and 2008-2009 annual reports of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut review its practices in the area of disclosure of information concerning the H1N1 virus.

The government's response to the Standing Committee's report stated that:

“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.”

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut table in the Legislative Assembly its disclosure and reporting protocols concerning reportable communicable diseases. The government's response to the Standing Committee's recommendation stated that:

“The Department of Health and Social Services, through the office of the Chief Medical Officer of Health, will be developing its disclosure protocols, with a particular focus on disclosure of community names and community-specific numbers of cases. Potential protocols will take into account relevant legislation such as the Communicable Diseases Act and the *Access to Information and Protection of Privacy Act* as well as Nunavut's unique needs. Once approved by the Executive Council, the GN will table the protocols in the Legislative Assembly.”

The Standing Committee reiterated its recommendation in its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner. The government's most recent response to the Standing Committee's recommendation stated that:

“The Office of the Chief Medical Officer of Health has developed a protocol for the Public Health investigation, management and reporting of communicable diseases and outbreaks in Nunavut. This protocol will be included in the *Nunavut Communicable Disease Manual* now under development. Some communicable diseases and all outbreaks are reportable to the Chief Medical Officer of Health in Nunavut as per the Public Health Act and Communicable Disease Regulations. Each report is followed up with a view to preventing further transmission of disease by implementing various public health measures as per the *Communicable Disease Manual*.

In addition, these reports of individual diseases and outbreaks are tracked as part of the communicable disease surveillance system. This information is used to produce regular reports. Some of these reports are currently in place while others are in the development stage. The reports include: Nunavut Respiratory Watch; Monthly Communicable Disease Report by Region and by Territory Overall: Annual Communicable Disease Report by Region and by Territory Overall: and Outbreak Reports.

During outbreaks or unusual situations, it may also be necessary to inform the public of a specific situation including the steps required to protect the public. Decisions on the release of information at the community level are made on a case by case basis taking a number of key factors into consideration. These factors include:

- The characteristics of the situation or the disease such as infectiousness and mode of transmission;
- Interventions or prevention measures required to interrupt disease transmission;
- Confidentiality and privacy. Note that if the number of cases is to be disclosed at the community level, no number less than 5 is reported in order to prevent identification of an individual;
- Minimizing any chance of stigmatizing the community.

A copy of the *Communicable Disease Protocol* from the Department of Health and Social Services will be tabled by the department, as per the recommendation of Standing Committee.”

However, as of May 1, 2013, this protocol has not been tabled in the Legislative Assembly.

Standing Committee Recommendation #3:

The Standing Committee reiterates its recommendation that the Government of Nunavut table in the Legislative Assembly its disclosure and reporting protocols concerning reportable communicable diseases.

Issue: Communication Practices of Community Health Centres

During the Information and Privacy Commissioner's 2010 appearance before the Standing Committee, the issue of communication practices of community health centres was raised in relation to the broadcasting on local radio of the names of residents who are being requested to attend their local health centre. In her testimony to the Standing Committee, the Information and Privacy Commissioner stated that:

“In fact, the manager of ATIPP and I are currently talking about it in terms of discussion back and forth. I have been asked to provide my written opinion to her and I am in the process of doing that. It's not an issue... if you were to ask one of my counterparts in southern Canada whether that was a good practice, they would all cringe and they would say “no” hands down ... but I don't think it's as straightforward as that in a place like Nunavut where, sometimes, that may be the only way to get people who need medical health attention into the health centres. So we are talking about it, we are working on it, and hopefully we will be coming up with some sort of policy direction together so that we can protect the privacy of the individuals involved in Nunavut while, at the same time, making sure that these people have access to the medical health care that they need when they need it.”

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut table in the Legislative Assembly its policy on communication practices to be followed by community health centres.

The government's response to the Standing Committee's recommendation on this issue stated that:

“The Department of Health and Social Services makes frequent use of community radio with regards to general public health announcements as this media reaches a wide section of the population. In regards to client-specific information, the Department of Health and Social Services, as part of its Human Resources Policy, recently implemented its Policy “Contacting Clients through Local Radio.” The policy states that “Staff shall not use the local radio as a means of communicating with individual clients. The announcement of individual client names on the radio is a breach of confidentiality.”

This issue was raised by Members on the occasion of the November 25, 2011, appearance of senior Government of Nunavut officials. Testimony by witnesses indicated that:

“The Department of Health and Social Services had said that they did create a policy on this and, ultimately, it was up to the Department of Health and Social Services to look into the Information and Privacy Commissioner's recommendations. It's something we're working on further. They have also

created a consent form, which was recommended by the Information and Privacy Commissioner, which allows them to get the consent of constituents to be able to contact them via the radio when necessary. So that's something that we will have to follow up with the Department of Health and Social Services on."

The Standing Committee reiterated its recommendation in its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner. The government's most recent response to the Standing Committee's recommendation stated that:

"Policy 05-027-00, *Contacting Clients Through Local Radio*, is part of the Department's Community Health Nursing Standards, Policies and Guidelines. This communication practices directive states that "The Department of Health and Social Services staff shall not use the local radio as a means of communicating with individual clients. The announcement of individual client names on the radio is a breach of confidentiality [...]".

The policy further states that although telephone contact is the most efficient method for reaching clients in the community, in instances where clients do not have access to telephone services, alternative methods which preserve the client's privacy will be sought; i.e., appointment cards to be delivered to the client's home.

The policy on *Contacting Clients Through Local Radio* from the Department of Health and Social Services will be tabled by the department, as per the recommendation of Standing Committee."

However, as of May 1, 2013, this policy has not been tabled in the Legislative Assembly.

Standing Committee Recommendation #4:

The Standing Committee reiterates its recommendation that the Government of Nunavut table in the Legislative Assembly its policy on communication practices to be followed by community health centres.

Issue: Application of Access to Information and Protection of Privacy Legislation to Municipalities

The issue of the application of access to information and protection of privacy legislation to municipalities has been an ongoing concern for Members of the Standing Committee.

At present, Nunavummiut have rights under federal and territorial legislation concerning access to information and protection of privacy in relation to the institutions of the Government of Canada and the Government of Nunavut. However, there is still no legislative framework concerning access to information and protection of privacy with respect to the municipal level of government in Nunavut.

During her November 24, 2011, testimony to the Standing Committee, the Information and Privacy Commissioner stated that:

“... the Northwest Territories, the Yukon, and Nunavut are the only remaining jurisdictions that don’t include municipalities under their access to information and protection of privacy legislation.”

In its response to the Standing Committee’s recommendation in its 2010 report to the Legislative Assembly concerning this issue, the government stated that:

“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 *Access to Information and Protection of Privacy Act* is required and the Government of Nunavut intends to include all stakeholders who may be affected by these changes, including the Nunavut Association of Municipalities. As including municipalities under the *Access to Information and Protection of Privacy Act* does raise many governance and administration 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. However, initial consultation will begin with municipalities to gain their suggestions on how best to eventually include their operations under *Access to Information and Protection of Privacy Act*.”

In its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that:

“The Standing Committee reconfirms its support for ensuring that all levels of government have appropriate systems of access to information and protection of privacy in place. The Standing Committee recommends that the Government of Nunavut’s next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in working with the Nunavut Association of Municipalities and the Office of the Information and Privacy Commissioner to review the issue of access to information and protection of privacy at the municipal level. The Standing Committee further recommends

that the annual report account for collaborative training initiatives involving municipal employees, Government Liaison Officers and other parties.”

The government’s response to the Standing Committee’s recommendation stated that:

“On November 23, 2011, all municipal councils were sent a letter from the Government of Nunavut (GN) seeking their input on their possible inclusion under the *ATIPP Act*. No responses were received. On April 2, 2012, a letter was sent to all Senior Administrative Officers inviting them to take part in a three (3) day session around the *ATIPP Act*. Two (2) days consisted of in depth training on the legislation and its purpose and the third day was dedicated to next steps in working toward their inclusion under the *ATIPP Act*.

Three (3) municipalities participated in the sessions, Kimmirut, Repulse Bay and the City of Iqaluit. In total, seven (7) municipal employees took part in this session. The Information and Privacy Commissioner was also present for this session.

The discussions were extremely beneficial to both the municipal employees and the GN. We were able to get a better understanding of what issues are currently facing municipalities, and what type of support they would require moving forward. Further plans were made to work together toward creating an access and privacy regime that is in line with the spirit and intent of the *ATIPP Act*. We will continue to work with the Commissioner to ensure accountability and transparency throughout all levels of government in Nunavut.”

The issue of the application of access to information and protection of privacy legislation to municipalities was discussed in detail with both the Information and Privacy Commissioner and Government of Nunavut witnesses during the Standing Committee’s April 18, 2013, hearings.

Standing Committee Recommendation #5:

The Standing Committee reaffirms its support for ensuring that appropriate legislative frameworks concerning access to information and protection of privacy apply to the federal, territorial and municipal levels of government in Nunavut.

The Standing Committee recommends that the Government of Nunavut's next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in working with the Nunavut Association of Municipalities, the Municipal Training Organization and the Office of the Information and Privacy Commissioner to review the issue of access to information and protection of privacy at the municipal level in Nunavut.

The Standing Committee further recommends that the Government of Nunavut's next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for collaborative training initiatives involving municipal employees, Government Liaison Officers, the Municipal Training Organization and other parties.

The Standing Committee further recommends that the Government of Nunavut, in partnership with appropriate parties, examines such options as introducing access to information and protection of privacy legislation that is specific to municipalities and/or having the territorial *Access to Information and Protection of Privacy Act* apply to municipalities in a manner that would address such operational concerns as the ability of municipalities to respond to historical access requests. The Standing Committee suggests that such concerns could possibly be addressed through such means as explicitly providing that the legislation does not provide a right to access in respect to information that was generated by municipalities prior to an effective commencement date.

Issue: Information and Privacy Commissioner’s Discretion to Extend the Time for Requesting a Review

The 2009-2010 Annual Report of the Information and Privacy Commissioner noted that:

“In order to correct this problem, it would be my recommendation that the Information and Privacy Commissioner be given discretion to extend the time for requesting a review in appropriate circumstances, except in the case where the issue involves a third party objection to the disclosure of information. It may also be appropriate to consider extending the time for asking for a review from 30 days to 45 or 60 days.”

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut’s next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in working with the Office of the Information and Privacy Commissioner to develop amendments to the *Access to Information and Protection of Privacy Act* to provide the Information and Privacy Commissioner with the discretion to extend the time for requesting a review in appropriate circumstances.

This recommendation was reiterated by the Standing Committee in its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner. The government’s most recent response to the Standing Committee’s recommendation stated that:

“The Information and Privacy Commissioner met with the Department of Executive in May of 2012. A discussion regarding her discretion to extend the time for requesting a review took place and both sides felt that providing the Commissioner with this discretion may prove to be beneficial for both the public and the Government of Nunavut. The Department will include this amendment in any future amendments to the *Access to Information and Protection of Privacy Act*.”

Standing Committee Recommendation #6:

The Standing Committee recommends that the Government of Nunavut introduce such amendments at the earliest opportunity.

Issue: Development of Health-Specific Privacy Legislation, Electronic Health Records and the *Nutaqqavut* Health Information System

The 2009-2010 Annual Report of the Information and Privacy Commissioner noted that:

“Nunavut needs to begin the process of creating separate legislation to deal with privacy of health records. The country is charging into the era of electronic health records and electronic medical records. Every jurisdiction in Canada, other than Nunavut, has now either passed health specific privacy legislation or is developing such legislation to address the very real privacy concerns raised by electronic records. The issues are significant and complicated. All Canadian jurisdictions are talking about an integrated electronic health record system to allow any person in Canada to be able to access their electronic medical records, no matter where they happen to be in the country. The challenges of such a system are enormous, but there seems to be the will in most of the country to make it happen, even if it is still many years away ... this is an issue that Nunavut needs to address, sooner rather than later.”

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut’s next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in developing health-specific privacy legislation.

The government’s response to the Standing Committee’s recommendation stated that:

“The Government of Nunavut understands the sensitivity surrounding personal health information and is committed to ensuring the protection of all personal health information. The Government of Nunavut will be looking at the legislation enacted in and under development by other jurisdictions, particularly the other two territories, for guidance with respect to creating separate legislation to deal with privacy of health records. In addition, the Government of Nunavut will review whether including oversight provisions in the *Access to Information and Protection of Privacy Act* would address the Commissioner’s concerns without the need for separate legislation to protect personal health information. Until such time, the *Access to Information and Protection of Privacy Act* will continue to be the legislative and regulatory authority for health information. Such legislation will continue to protect the personal health information of the people of Nunavut together with a comprehensive privacy framework and supporting policies. The Government of Nunavut will provide further update on this issue in its next annual report of the administration of the *Access to Information and Protection of Privacy Act*.”

In its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that:

“... the Government of Nunavut’s next annual report on the administration of the *Access to Information and Protection of Privacy Act* account in detail for its progress to date in addressing the issues of health-specific privacy legislation, management and security of electronic health records, and information-sharing between departments of the Government of Nunavut which hold such records, including the Department of Health and Social Services and the Department of Justice.”

In her 2011-2012 annual report, the Information and Privacy Commissioner stated that:

“There is, however, still a need to address the special circumstances surrounding personal health information.”

The government’s response to the Information and Privacy Commissioner’s 2011-2012 annual report was tabled in the Legislative Assembly on March 13, 2013. It stated that:

“As noted in previous years, the Government of Nunavut has very strict privacy directives related to the handling of personal health information in the electronic health records system. These directives, along with the *Access to Information and Protection of Privacy Act*, provide strong legislative and regulatory controls over the protection of personal health information. At this time, there are no plans to create health-specific privacy legislation for Nunavut.”

The issue of health-specific privacy legislation was discussed in detail with both the Information and Privacy Commissioner and Government of Nunavut witnesses during the Standing Committee’s April 18, 2013, hearings. Testimony from the Government of Nunavut’s lead witness indicated that:

“The complexity of our health records, as you quite correctly pointed out in your own opening comments, in many jurisdictions now, are calling for legislation separate from their ATIPPs, and that’s because of the broad and general use of electronic databanks for this kind of information. The necessity that a wide range of health professionals need to have access to your personal medical information has to be balanced against your own desire to keep that information personal and private. So, increasingly, other jurisdictions are looking at other ways to legislatively deal with medical health records and not relying totally on their ATIPP legislation. To the best of my knowledge, there is a beginning conversation being held around that topic, but this has not reached the point yet of any kind of drafts that have come to our attention. I do know that consideration is being given to it in terms of at least how are other jurisdictions handling and maintaining the balance between the need of the professional health community and the individual patient.”

The 2011-2012 Annual Report of the Information and Privacy Commissioner raised a number of concerns regarding the Department of Health's *Nutaqqavut* Health Information System. In her report, the Information and Privacy Commissioner noted that:

"I completely understand and applaud the goals of this project, and understand the need to gather the information necessary to have healthier children in Nunavut. I was, however, surprised that, despite the fact that this program has the potential to be highly invasive of personal privacy, there was no attempt to involve my office in the consultation process leading up to the implementation of the program, to address the those privacy issues."

The government's response to the Information and Privacy Commissioner's 2011-2012 annual report was tabled in the Legislative Assembly on March 13, 2013. It stated that:

"The Department [of Health] has also been working on a Privacy Impact Assessment (PIA). The PIA will soon be finalized, at which point, the department will send the PIA to the [Information and Privacy] Commissioner for review and comment."

During her April 18, 2013, appearance before the Standing Committee, the Information and Privacy Commissioner confirmed that she had recently received the Privacy Impact Assessment concerning the *Nutaqqavut* Health Information System and would be meeting with officials from the Department of Health to discuss the initiative.

Standing Committee Recommendation #7:

The Standing Committee recommends that the Government of Nunavut's next annual report on the administration of the *Access to Information and Protection of Privacy Act* account in detail for its progress to date in addressing the issues of health-specific privacy legislation and the management and security of electronic health records.

The Standing Committee further recommends that the Government of Nunavut's response to this report clarify the extent to which patients in territorial health care facilities are informed of their participation in the *Nutaqqavut* Health Information System and their privacy rights under territorial legislation.

The Standing Committee further recommends that the Department of Health's Privacy Impact Assessment concerning the *Nutaqqavut* Health Information System be tabled in the Legislative Assembly at the earliest opportunity.

Issue: Provision of Information to Members of the Legislative Assembly Pursuant to Subsection 48(v) of the *Access to Information and Protection of Privacy Act*

Subsection 48(v) of the *Access to Information and Protection of Privacy Act* provides that:

“A public body may disclose personal information to a Member of the Legislative Assembly who has been requested by the individual to whom the information relates to assist in resolving a problem.”

In 2005, the Office of the Information and Privacy Commissioner assisted in the development of a form for the use of residents wishing to provide consent for their personal information to be released to the appropriate Member of the Legislative Assembly under this provision of the legislation.

However, the extent to which the government complies with this provision continues to be unclear, especially in relation to matters concerning health and social services and the ability of departmental employees and other parties to communicate directly with MLAs.

While Members of the Standing Committee fully recognize the necessity of protecting the privacy rights of Nunavummiut, it is also important that the government respect the wishes of constituents who have provided informed consent to have their personal information disclosed to their elected Member under this provision of the legislation. Members of the Standing Committee also recognize that in circumstances where the information requested could impact the privacy rights of a third party or a minor, the government’s priority must be the protection of privacy rights.

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut, in cooperation with the Office of the Information and Privacy Commissioner, develop operational guidelines for the use of public bodies in relation to the disclosure of information pursuant to the provisions of subsection 48(v) of the *Access to Information and Protection of Privacy Act*.

The government’s response to the Standing Committee’s recommendation stated that

“Consultations will be done with other jurisdictions to analyze procedures utilized by other public bodies. Some information that could be discussed and utilized in the Legislative Assembly would not be covered by the same protections outside the Legislature. For example, the name or circumstances of an individual could be expressed and they would not have the same level of recourse to respond legally as if the same was expressed outside the Legislature. It is agreed that information security procedures and agreements should be established to set out

the parameters to protect the privacy of personal information in such instances, while still facilitating the ability of legislators to assist Nunavummiut.”

The Standing Committee reiterated its recommendation in its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner. The government’s most recent response to the Standing Committee’s recommendation stated that:

“The Department of Executive [and Intergovernmental Affairs] met with the Information and Privacy Commissioner to discuss the issue of access to personal records by MLAs who have been asked to assist an individual in resolving a problem they have with the Government of Nunavut (GN). Both parties felt that creating such operational guidelines may limit the effectiveness of existing procedures for resolving issues between the GN and Nunavummiut. As accessing records does not usually resolve the issue, we encourage MLAs to assist their constituents in going through the proper channels to resolve any issues they have. The GN is not trying to limit the ability of an individual to access their personal information, but often, they do not fully understand what their consent under section 48(v) means and what information about them may be released to the MLA with such consent. We want to ensure the privacy of Nunavummiut is fully respected and issues are resolved in a timely manner in a way that is respectful to all parties involved.”

Standing Committee Recommendation #8:

The Standing Committee recommends that the Government of Nunavut, in its response to this report, formally articulate, in detail, its interpretation of subsection 48(v) of the *Access to Information and Protection of Privacy Act*.

The Standing Committee further recommends that the Government of Nunavut, in its response to this report, formally articulate, in detail, the process by which it determines whether a resident of Nunavut has provided informed consent in a matter relating to the exercise of this provision of the *Access to Information and Protection of Privacy Act*.

Issue: Ability of the Information and Privacy Commissioner to Appeal a Decision Made by a Head of a Public Body Under Section 36 of the Access to Information and Protection of Privacy Act to the Nunavut Court of Justice

Section 37 of the *Access to Information and Protection of Privacy Act* provides that:

Appeal of decision of head

37. (1) An applicant or a third party may appeal a decision made by a head of a public body under section 36 to the Nunavut Court of Justice.

Notice of appeal

(2) An applicant or third party who wishes to appeal a decision of a head shall file a notice of appeal with the Nunavut Court of Justice and serve the notice on the head within 30 days after the day the appellant receives the written notice of the decision.

Written notice to third party

(3) A head who has refused an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to any third party to whom a report was sent under paragraph 35(b).

Written notice to applicant

(4) A head who has granted an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to the applicant.

Parties to appeal

(5) An applicant or a third party who has been given notice of an appeal under this section may appear as a party to the appeal.

Information and Privacy Commissioner not a party

(6) The Information and Privacy Commissioner is not a party to an appeal.

During her November 24, 2011, testimony to the Standing Committee, the Information and Privacy Commissioner stated that:

“ ... I would like that power, to take something to court, because when I make a recommendation, it's because that's what I believe the Act says and if it's not followed, there are some instances. I don't think I take everything to court where my opinion wasn't followed, but there are some instances where I think that it would have more impact, where we really need to know whether my interpretation is correct or the public body's interpretation is correct, and a court can do that. So yes, I would love to have that option, many of my colleagues do,

and it's used within reason and on occasion to take governments to court on recommendations. I think it would be an extra tool in my toolbox and very useful.”

In its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner, the Standing Committee recommended that the Government of Nunavut:

“... conduct an interjurisdictional review of analogous provisions in other legislation and that its findings be reported in its formal response to the report of the Standing Committee. The Standing Committee further recommends that the review consider the issue of the systemic barriers, including financial resources, that private citizens face in exercising their right under section 37 of the *Access to Information and Protection of Privacy Act* to appeal a decision by a head of a public body to the Nunavut Court of Justice. The Standing Committee further recommends that the Government of Nunavut invite the Information and Privacy Commissioner to provide a formal written submission on this issue.”

The government's response to the Standing Committee's recommendation stated that:

“We have conducted a jurisdictional scan of the other provinces and territories. Five jurisdictions have Commissioners with order-making powers while the others act in an ombudsman role where they can offer recommendations to the head of a public body. New Brunswick and Newfoundland are the only jurisdictions that provide the Commissioner with the ability to appeal a decision of the head of a public body to the courts. Manitoba has created an adjudicator position to which the Commissioner can request a review of a decision of the head and the remaining five do not allow their Commissioner to play any role in appealing a decision of the head of a public body. We do not feel that it is necessary to change our legislation to allow the Commissioner the right to appeal a decision of the head of a public body to the Nunavut Court of Justice.”

This issue was discussed in detail with both the Information and Privacy Commissioner and Government of Nunavut witnesses during the Standing Committee's April 18, 2013, hearings. In her testimony to the Standing Committee, the Information and Privacy Commissioner stated that:

“Where the Information and Privacy Commissioner has order[-making] power, it doesn't make sense. It's like appealing their own decision to a higher court and that just doesn't happen, that's just not the way things work, but where I make only recommendations it makes more sense for that to be considered.”

The Standing Committee again notes that systemic barriers, including financial resources, generally preclude private citizens from exercising their notional right under section 37 of the *Access to Information and Protection of Privacy Act* to appeal a decision by a head of a public body to the Nunavut Court of Justice.

Standing Committee Recommendation #9:

The Standing Committee recommends that the Government of Nunavut reconsider its position concerning the ability of the Information and Privacy Commissioner to appeal a decision made by a head of a public body under section 36 of the *Access to Information and Protection of Privacy Act* to the Nunavut Court of Justice. The Standing Committee confirms its support for existing provisions in the legislation which allow an applicant to appeal a decision made by a head of a public body under section 36 to the Nunavut Court of Justice.

The Standing Committee reiterates its recommendation that the Government of Nunavut invite the Information and Privacy Commissioner to provide a formal written submission on this issue.

Issue: Protection of Personal Information Provided to Third Parties Under the *Adoption Act* and the *Child and Family Services Act*

The Auditor General of Canada's 2011 *Report to the Legislative Assembly on Children, Youth and Family Programs and Services in Nunavut* noted that:

"The [territorial] *Adoption Act* requires the Department to consult with the applicable Aboriginal organization for the child (that is, the Aboriginal organization of which the child or his or her parent is, or is eligible to be, a member) when a private adoption is taking place. The Department has interpreted consultation to be contact through written correspondence. As such, the Department writes to one of the three regional Inuit associations (which represent the interests of Inuit and are affiliated with Nunavut Tunngavik Incorporated, the organization that represents the rights and interests of *Nunavut Land Claims Agreement* beneficiaries) to inform it that an adoption plan has been developed for an Inuk child to be privately adopted, usually by a non-Inuit family. This provides an opportunity for the Regional Inuit Association (RIA) to respond with an alternate plan of care for the child, should it choose to do so.

We found that the files we reviewed contained a copy of a letter to the RIA with the appropriate information. However, we were informed that the Department has never received a response from an RIA. Furthermore, when asked during the audit whether they were aware of this correspondence from the Department, two of the three RIAs had no knowledge of it. The Department has made little effort to follow up with the RIAs to determine why it has not heard back from them."

The territorial *Child and Family Services Act* also contains provisions concerning the role of Inuit organizations in relation to such areas as child protection.

The Standing Committee notes that the personal information provided by the government in such circumstances is, by its very nature, likely to be sensitive. However, it is not clear what agreements and/or understandings and/or protocols are in place between the government and designated Inuit organizations to ensure that such personal information is subject to appropriate safeguards after it has been provided to the designated Inuit organization.

Standing Committee Recommendation #10:

The Standing Committee recommends that the Government of Nunavut, in partnership with the Information and Privacy Commissioner, work co-operatively with designated Inuit organizations to develop appropriate guidelines to ensure that safeguards are in place with respect to personal information that is provided concerning matters arising under the *Adoption Act* and the *Child and Family Services Act*.