



Standing Committee on Oversight of Government Operations and Public Accounts

Report on the Review of the 2009-2010 Annual Report of the Information and Privacy Commissioner of Nunavut

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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 were inherited from the NWT on April 1, 1999. While the Act has been amended on a number of occasions since the creation of the new territory, there have been no fundamental changes to it. The minor changes that have been made to the Act consist of amendments to address conflicts with other territorial Acts. The changes that have been made to the regulations have been housekeeping in nature.

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 such annual reports as those presented by 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 eleven annual reports to the Legislative Assembly of Nunavut. In each annual report, she has presented a number of recommendations.

Since 2005, the Government has tabled 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 June 11, 2009.

The Standing Committee on Government Operations and Accountability held hearings on the 2007-2008 and 2008-2009 annual reports of the Information and Privacy Commissioner on October 1, 2009. The Information and Privacy Commissioner of Nunavut's most recent appearance before the Standing Committee took place on October 1, 2010.

Following its 2009 hearings, the Standing Committee presented its own report to the Legislative Assembly on December 2, 2009. This report contained ten formal recommendations. The government's response to the Standing Committee's report and recommendations was tabled in the Legislative Assembly on March 22, 2010. Both the Standing Committee's report and the government's response to it are available to the public on the Legislative Assembly's website.

This year's appearance of the Information and Privacy Commissioner before the Standing Committee was again held in the Chamber of the Legislative Assembly and was open to the public and media to observe. Transcripts from the appearance have been posted on the Legislative Assembly's website.

Recommendations

The Information and Privacy Commissioner's annual reports to the Legislative Assembly have provided a number of formal recommendations. The Standing Committee's October 1, 2010, hearing on the 2009-2010 annual report of the Information and Privacy Commissioner provided an opportunity to review the progress made by the government over the past year in addressing the recommendations made by the Information and Privacy Commissioner and the Standing Committee.

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

Last year, the Standing Committee recommended 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.

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

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

However, the NHC has been the only Crown agency for which an annual contracting, procurement and leasing report has been tabled in the Legislative Assembly.

Standing Committee Recommendation #1:

The Standing Committee reiterates 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, 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

Last year, 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 recommendation 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.”

However, this protocol has not been tabled in the Legislative Assembly.

Standing Committee Recommendation #2:

The Standing Committee recommends 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 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.”

Standing Committee Recommendation #3:

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

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

Last year, the Standing Committee recommended that the Government of Nunavut, in cooperation with the Nunavut Association of Municipalities (NAM) and the Office of the Information and Privacy Commissioner, review the issue of access to information and protection of privacy at the municipal level.

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

"The GN 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 GN intends to include all stakeholders who may be affected by these changes, including the NAM."

The Standing Committee appreciated the initiative taken by the Information and Privacy Commissioner to invite the federal Assistant Information Commissioner of Canada to accompany her on the occasion of her trip to Iqaluit in October 2010, which included a meeting with the Iqaluit City Council to discuss access to information and protection of privacy at the municipal level.

The Standing Committee strongly encourages the Information and Privacy Commissioner to share, in writing, the results of this meeting with the Government of Nunavut and the Nunavut Association of Municipalities.

Standing Committee Recommendation #4:

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.

Issue: Amendments to the *Access to Information and Protection of Privacy Act* to Include Privacy Reviews

Last year, the Standing Committee recommended that the Government of Nunavut, in cooperation with the Office of the Information and Privacy Commissioner, develop amendments to the *Access to Information and Protection of Privacy Act* to provide clear authority for the Information and Privacy Commissioner to conduct privacy reviews and investigate alleged breaches of the legislation.

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

"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 *Access to Information and Protection of Privacy Act*."

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

"The Information and Privacy Commissioner has no formal legislated authority to receive a complaint about a breach of privacy, or to do an investigation or make recommendations. Notwithstanding the lack of a formal mandate in this regard, this office routinely accepts complaints and undertakes investigations and provides reports and recommendations when a member of the public complains that their personal information has been improperly collected, used or disclosed by a public body. There is no requirement that a public body respond to such recommendations or even that they co-operate with the Information and Privacy Commissioner in her investigation of such complaints."

Standing Committee Recommendation #5:

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 Office of the Information and Privacy Commissioner to develop amendments to the *Access to Information and Protection of Privacy Act* to provide clear authority for the Information and Privacy Commissioner to conduct privacy reviews and investigate alleged breaches of the legislation.

As an interim measure, the Standing Committee further recommends that the Government of Nunavut formally commit, as a matter of policy, to cooperating with the Office of the Information and Privacy Commissioner in privacy-related investigations until such time as the legislation is amended.

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

Last year, the Standing Committee recommended that the Government of Nunavut, in cooperation with the Office of the Information and Privacy Commissioner, 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.

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

“The GN agrees that the 30-day time limit, specified in the *Access to Information and Protection of Privacy Act*, to request a review by the Information and Privacy Commissioner, can be limiting to some individuals. We agree that it could be beneficial to amend the Act to provide the Information and Privacy Commissioner 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 *Access to Information and Protection of Privacy Act*.”

The 2009-2010 Annual Report of the Information and Privacy Commissioner notes 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.”

Standing Committee Recommendation #6:

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 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.

Issue: Development of Health-Specific Privacy Legislation

Last year, the Standing Committee recommended that the Government of Nunavut move forward towards introducing health-specific privacy legislation.

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

“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 moves toward an interoperable Electronic Health (iEHR) Record 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 ATIPP Act and internal departmental policies will continue to be the legislative and regulatory authority for health information.”

The 2009-2010 Annual Report of the Information and Privacy Commissioner notes 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.”

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 for its progress to date in developing health-specific privacy legislation.

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 precise extent to which the government is obliged to comply with this provision is 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.

Standing Committee Recommendation #8:

The Standing Committee recommends 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*.

**Tabling Dates of Information and Privacy Commissioner's Annual Reports,
GN Responses and GN Annual Reports**

	Information and Privacy Commissioner's Annual Reports	GN responses to Standing Committee Reviews of the Information and Privacy Commissioner's Annual Reports	GN responses to the Information and Privacy Commissioner's Annual Reports	GN Annual Reports on the Administration of the ATIPP Act
1999-2000	October 27, 2000	December 4, 2001	-	-
2000-2001	November 14, 2001	March 4, 2003	-	-
2001-2002	November 27, 2002	December 2, 2003	-	-
2002-2003	December 4, 2003	(June 2004)*	-	-
2003-2004	November 25, 2004	-	-	(May 31, 2004)*
2004-2005	November 15, 2005	-	March 1, 2006	November 18, 2005
2005-2006	November 30, 2006	-	March 13, 2007	November 22, 2006
2006-2007	October 26, 2007	-	February 19, 2008	June 1, 2007
2007-2008	September 15, 2008	-	January 26, 2009	May 26, 2008
2008-2009	June 8, 2009	March 22, 2010	Not yet tabled	June 11, 2009
2009-2010	Backdoor tabled with the Office of the Clerk on July 27, 2010, and tabled in the House on October 22, 2010	-	-	Not yet tabled

* Not tabled, but available