



**Response to the Standing Committee
on Oversight of Government
Operations and Public Accounts
Report on the Review of the 2010-
2011 Annual Report of the
Information and Privacy
Commissioner of Nunavut**

On November 24, 2011 Elaine Keenan-Bengts, the Information and Privacy Commissioner (IPC) of Nunavut appeared before the Standing Committee on Oversight of Government Operations and Public Accounts to present her 2010-2011 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 in March 2012. The Standing Committee report consists of nine (9) recommendations to the Government of Nunavut (GN), some specific to departments, which the Committee felt could help improve the access to information and protection of privacy function.

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.

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

Standing Committee Recommendation #1:**Issue: Disclosure of Crown Agency Contracting, Procurement and Leasing Activities**

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.

GN Response:

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.

Standing Committee Recommendation #2:
Issue: Disclosure of Information in Relation to Communicable Diseases

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.

GN Services Response:

The following response was provided by the Department of Health and Social Services.

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.

Standing Committee Recommendation #3:**Issue: Communication Practices of Community Health Centres**

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.

GN Response:

The following response was provided by the Department of Health and Social Services.

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.

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

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.

GN Response:

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 (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.

Standing Committee Recommendation #5:

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

The Standing Committee recommends that the Government of Nunavut bring forward amendments to the Access to Information and Protection of Privacy Act to address the issue of privacy oversight during the spring 2012 sitting of the House.

GN Response:

During the October 2011 session, the Premier committed to bringing the amended legislation before Cabinet in 2012. The government has acted on this

commitment and Bill 38 was introduced in the House during the May 2012 session. On June 8, 2012, Bill 38 received Assent from the Commissioner of Nunavut.

Standing Committee Recommendation # 6**Issue: Information and Privacy Commissioner's Discretion to Extend the Time for Requesting a Review**

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 resolve this issue.

GN Response:

The Information and Privacy Commissioner (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 #7:**Issue: Development of Health-Specific Privacy Legislation and Electronic Health Records**

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, 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.

GN Response:

The following response was provided by the Department of Health and Social Services.

The Nunavut Electronic Health Record Privacy and Security Architecture Deliverable phase began in April, 2008. The NU iEHR project was required by Canada Health Infoway to provide deliverables around Privacy and Security;

these standards based deliverables would then be approved by Canada Health Infoway to ensure that they meet all the requirements for the deployment of an Electronic Health Record.

The Privacy Deliverables that were completed as part of the project include:

- NU iEHR 2.1-6 Privacy Framework
- NU iEHR 2.1-6 Conceptual Privacy Impact Assessment
- NU iEHR 2.2-6 Conceptual Privacy and Security Architecture
- NU iEHR 2.1-6 Privacy Roadmap for Government of Nunavut
- NU iEHR 2.1.6 Detailed Privacy and Security Architecture
- NU iEHR 2.1-16 Privacy Impact Assessment: NU Clinical Information System Design PIA
- NU iEHR 2.1-17 Threat Risk Analysis

These deliverables were created with a number of stakeholders over the last three years, and the bulk of the work was done with the Privacy Advisory Group which includes the Departments of CGS, EIA, and HSS, with a detailed review by the Department of Justice.

HSS employed external resources to help develop the Privacy and Security Architecture as there was no relevant or related experience in Electronic Health Records available in Nunavut.

The Project has had extensive communications with the Privacy Advisory Group and with relevant subject matter experts within the GN as required. The Project has done consultations in all three regions and information gathering across the Territory. The Privacy and Security Directives were developed as the final piece of the Infoway Privacy and Security Deliverables and had broad and detailed consultations on each directive.

These Directives are required for the Department of Health and Social Services to have a structured set of guidelines for the use of eHealth systems which currently does not exist in the GN.

HSS has been using the guiding principles of these directives during the implementation and ongoing use of the Electronic Health Record. The directives have been signed by the Department of Health and Social Service and are awaiting signature from the Department of Community and Government Services before they can be formally implemented.

Standing Committee Recommendation #8:**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**

The Standing Committee reiterates its 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, and that these guidelines be tabled in the Legislative Assembly.

GN Response:

The Department of Executive 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 #9:**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**

The Standing Committee recommends 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.

GN Response:

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 ombudsmen 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.