



**Response to the Standing Committee on
Oversight of Government Operations
and Public Accounts' Report on the
Review of the
2014-2015 Annual Report of the
Information and Privacy Commissioner
of Nunavut**

March 2016

On September 28, 2015 Elaine Keenan Bengts, the Information and Privacy Commissioner of Nunavut appeared before the Standing Committee on Oversight of Government Operations and Public Accounts to present her 2014-2015 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 affected Nunavummiut. Following that appearance, the Standing Committee tabled their Report on the Review of the Annual Report of the Information and Privacy Commissioner in November 2015. The Standing Committee report consists of eleven (11) recommendations to the Government of Nunavut (GN) as well as the Information and Privacy Commissioner. Some of these recommendations are specific to a department or field of service and intended to improve the access to information and protection of privacy function within that field or department.

The Annual Report on the Administration of the Access to Information and Protection of Privacy Act 2014-2015 was tabled in November 2015, after the appearance before the Standing Committee. The Department looks forward to providing additional information on the report to the Standing Committee in the 2016 appearance.

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. Unfortunately, the department was required to seek a slight extension on tabling this response.

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

Standing Committee Recommendation #1:

The standing committee recommends that the responsible Ministers of the Government of Nunavut table in the Legislative Assembly, in a timely manner, annual reports on the contracting, procurement and leasing activities for all of the government's Crown agencies and territorial corporations, which are the:

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

Government of Nunavut (GN) Response:

The following responses have been provided by the public bodies noted in the recommendation. Each public body is responsible to a different minister, therefore individual responses have been provided.

Nunavut Housing Corporation Response:

The Nunavut Housing Corporation (NHC) takes public reporting of its procurement activities very seriously. Over the past several years, the Corporation has consistently tabled its Annual Contracting and Procurement Activity Report in the Legislative Assembly. The Report is most commonly tabled in the winter sitting, but has been tabled in the fall sitting.

In February 2015, the NHC's 2013/14 Annual Contracting and Procurement Activity Report was approved to be tabled by Cabinet, and was published on the NHC's website, however, as the result of an administrative error, the Report was not tabled in the Legislative Assembly.

The NHC will be tabling the 2013/14 report as well as the 2014/15 Annual Contracting and Procurement Activity Reports in the winter 2016 sitting. Following the tabling of the 2014/15 Report, the document will also be made available for download on the Nunavut Housing Corporation's website.

The NHC is working to improve the processing of the Annual Contracting and Procurement Activity Report, and will continue to table the Report in the Legislative assembly as soon as possible.

There is no specific date by which the Annual Contracting and Procurement Activity Report must be tabled. The NHC will strive to table the report no later than winter session.

The NHC will work closely with GN departments to refine reporting practices to more clearly differentiate between approved “maximum values” of contracts, and the actual expenditures undertaken pursuant to such contracts.

The NHC can work to phase-in the listing of “maximum values” into its contracting and procurement reports. Particularly, this practice can be implemented more readily in the procurement categories of “construction” and “services”, based on the existing record keeping at the Corporation

The current Contracting and Procurement Activity Report produced by NHC clearly identifies any contract awards that were made under standing offer agreements.

Qulliq Energy Corporation Response:

Qulliq Energy Corporation (QEC) completes an annual contracting, procurement and leasing report that is reviewed by its Chief Financial Officer (CFO) and Chief Executive Officer (CEO), before being approved by the QEC Board of Directors, Finance and Audit Committee. Once approved, it is submitted in a timely manner to the Minister for tabling in the Legislative Assembly.

For the past two years, QEC has been successful in having its Report on Contracting, Procurement and Leasing Activity tabled within requested time periods, with the 2014-2015 Report expected to be tabled in the winter 2016 sitting of the Legislative Assembly.

QEC tabled the 2011-2012 and 2012-2013 reports during the October 2014 sitting of the Legislature. The 2013-2014 report was tabled in the May 2015 sitting of the Legislature.

QEC will continue to work to differentiate between approved maximum values of contracts and actual expenditures undertaken. QEC has taken steps to improve its data collection systems for the generation of these annual reports and has assigned staff in Baker Lake to review and implement improvements to its data collection and reporting systems.

QEC will continue to refine its public reporting practices to clearly account for contract awards made under standing offer agreements.

Nunavut Arctic College Response:

The College has committed to tabling its 2014-15 Contracts/Procurement/Leasing activities reports during the spring session of the Legislative Assembly.

The following response was provided by the Department of Economic Development and Transportation on behalf of Nunavut Development Corporation:

In 2015, the Department of Economic Development and Transportation provided the Standing Committee of Oversight of Government Operations and Public Accounts with the Nunavut Development Corporations 2013/2014 and 2014/2015 Procurement, Leasing and contracting Report. They were not tabled at the time, but the Department commits to tabling these reports in the near future.

Nunavut Business Credit Corporation Response:

In May of 2015, Minister Ell tabled The Nunavut Business Credit Corporation's 2012-2014 Procurement and Leasing Report. NBCC is working towards tabling the 2014/2015 and possibly, the 2015/2016 Procurement, Contracting, and Leasing Report in the spring 2016 sitting. These reports will incorporate the recommendations made in the Standing Committee's report on Nunavut Development Corporation and Nunavut Business Credit Corporation from the fall 2015 sitting. Specifically, the following recommendation, "*The standing committee further recommends that future annual reports on procurement, contracting and leasing activities which are prepared by the Nunavut Development Corporation and the Nunavut Business Credit Corporation explicitly account for actual expenditures incurred in these areas*" will be implemented.

The standing committee further recommends that the Government of Nunavut, as part of its ongoing review of procurement, contracting and leasing practices, work to refine its public reporting practices to more clearly differentiate between the approved "maximum values" of contracts and the actual expenditures undertaken pursuant to such contracts.

Response from the Department of Community and Government Services:

The CGS procurement procedures see that reports are published on an annual basis listing the results of various procurement processes (CAR-PAR reports).

The actual spend is often different timing than the contract (can cross fiscal years).

The Government does not currently have a method to report by contract and easily cross reference the actual spend.

The standing committee further recommends that the Government of Nunavut, as part of its ongoing review of procurement, contracting and leasing practices, work to refine its public reporting practices to more clearly account for contract awards made under standing offer agreements (SOA).

Response from the Department of Community and Government Services:

CGS procurement has a well-established and transparent reporting process in place which consists of:

1. Contract Value
2. Contract title, short description
3. All contracts off an SOA are listed in the CAR and PAR reports as Public RFP because the SOA RFP Process is a public competitive procurement process.
4. The current CAR and PAR reports do not separate SOA Contracts. We will investigate the changes to the report program that would be required to indicate contracts that are from an SOA.

The standing committee further recommends that the Government of Nunavut, in its response to this report, clarify what specific actions are undertaken by the Financial Management Board, the Executive Council and the Public Agencies Council in circumstances where Crown agencies and/or territorial corporations do not fulfill, in a timely manner, their tabling requirements in respect to procurement, contracting and leasing activities.

Government of Nunavut (GN) Response:

Under Section 77 of the *Financial Administration Act* public agencies are accountable through the appropriate Minister to the Legislative Assembly. Any reporting requirements are the responsibility of the public agencies themselves, and the ultimately the Minister responsible.

Territorial corporations are provided with annual Letters of Expectation that outline their obligations and reporting requirements, including those with respect to procurement, contracting and leasing activities. With the dissolution of the Public Agencies Council, the Financial Management Board, with the advice and support of the Deputy Minister Central Accountability Committee, now directly oversees reporting requirements for the territorial corporations. However, should it become necessary, under Section 78 of the *Financial Administration Act* the Minister of Finance has the power to issue directives to the public agencies respecting their financial management and financial administration. The members of the board are then responsible for ensuring that any directive is implemented promptly.

Standing Committee Recommendation #2:

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 response to this report provide a detailed update on 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 response to this report provide a detailed update on its 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 stakeholders, examine 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 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.

The standing committee notes that recently-passed amendments to the Access to Information and Protection of Privacy Regulations make Local Housing Authorities and Local Housing Associations subject to the Access to Information and Protection of Privacy Act. However, these regulations designate the Minister responsible for the Nunavut Housing Corporation as the "head of each housing authority and housing association" for the purpose of administering the legislation. The standing committee suggests that a similar approach with respect to smaller municipalities and the role of the Minister of Community and Government Services might serve to help address capacity concerns.

Government of Nunavut Response:

The Government of Nunavut is dedicated to working with municipalities to prepare them for implementation of access and privacy principles in the near future. The ultimate goal is to bring them under the ATIPP Act, with the appropriate authoritative oversight. Although previous consultations seemed to be progressing well, especially within the City of Iqaluit, the Nunavut Association of Municipalities has shown concerns with implementation, without providing details of the issues.

In the past year, consultations with municipalities have been at a standstill due to capacity issues within the ATIPP office. Fortunately, approval of a second position within the ATIPP office will allow for more of an emphasis on consultation with

municipalities as well as other important stakeholders. It will also ensure continuity in the ATIPP office.

We recognize the limitations of municipalities records management practices and agree with the Committee. However, we emphasize the importance of the creation of solid records management practices within the municipalities to ensure they have the ability to comply with ATIPP requests once the legislation is enforceable.

The GN is looking at a variety of options that will assist municipalities in fulfilling their obligations under the Act. Unfortunately, unlike the relationship between Local Housing Authorities and the Nunavut Housing Corporation, which is governed by operational agreements, municipalities are a third level of government, therefore making this a less desirable option.

The GN would like to assist municipalities in building an access and privacy function that is distinct from the territorial function, providing them with more control over their administration and program. In the interim we will look into other options, such as the one suggested by the Standing Committee that would ease the transition into an accountable access and privacy regime.

Standing Committee Recommendation #3:

The Standing Committee recommends that the Government of Nunavut formally consult with the Information and Privacy Commissioner concerning a practicable timetable for having the *Access to Information and Protection of Privacy Act* apply to District Education Authorities.

The standing committee notes that recently-passed amendments to the *Access to Information and Protection of Privacy Regulations* make Local Housing Authorities and Local Housing Associations subject to the *Access to Information and Protection of Privacy Act*. However, these regulations designate the Minister responsible for the Nunavut Housing Corporation as the “head of each housing authority and housing association” for the purpose of administering the legislation. The standing committee suggests that a similar approach with respect to District Education Authorities and the role of the Minister of Education might serve to help address capacity concerns.

Government of Nunavut Response:

The Department of Executive and Intergovernmental Affairs has been in discussion with the Department of Education for a number of years regarding the inclusion of District Education Authorities (DEA) and the Commission scolaire francophone du Nunavut (CSFN) under the ATIPP Act. We fully support their inclusion, and believe consultation with the Information and Privacy Commissioner would be constructive and could help outline the consultations that will need to take place between the GN and the DEAs and CSFN.

We will look further into the most appropriate way to include the bodies under the Act, but agree a similar approach to LHOs would work in this case.

Standing Committee Recommendation #4:

The Standing Committee recommends that the Government of Nunavut's formal response to this report contain a detailed timeline for the development and introduction of health-specific privacy legislation for Nunavut.

The Standing Committee further recommends that copies of the Department of Health's privacy and security directives concerning electronic health records be tabled in the Legislative Assembly at the earliest opportunity.

Government of Nunavut (GN) Response:

The following response provided by the Department of Health:

The Department of Health is committed to the proper collection, use and disclosure of personal health information. The GN maintains privacy directives related to the handling of Confidential Personal Health Information in the Electronic Health Records System. We are in the process of reviewing these directives to ensure they are up to date with current practices and procedures. These directives, along with the ATIPP Act provide strong legislative and regulatory controls over the protection of personal health information. They will be ready for tabling during the summer sitting.

In 2015/16, the department began the necessary work to develop health specific privacy legislation, including conducting a jurisdictional scan. In 2016/17, the department will continue work on this file by developing a work plan and a committee to lead the work. As noted in the 2016-2019 Business Plan, the department plans to introduce legislation in 2019.

Standing Committee Recommendation #5:

The standing committee recommends that the Government of Nunavut, in its response to this report, provide a detailed update on the status of its work to develop a new *Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act*.

The standing committee further recommends that the March 31, 2016, "final report" that was referred to in the Government of Nunavut's formal response to the October 28, 2014, report of the standing committee, be tabled in the Legislative Assembly during its spring 2016 sitting.

Government of Nunavut (GN) Response:

The following response provided by Department of Family Services:

The Department of Family Services is continuing its work to develop the *Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act*.

The Information and Privacy Commissioner provided the department with detailed information outlining privacy measures and next steps towards developing a protocol. Since that time, the department has met with key stakeholders, including Regional Inuit Associations, to assess current privacy safeguards and move forward in developing appropriate guidelines that protect the personal information concerning matters under the *Adoption Act* and the *Child and Family Services Act*. Changes have been made at the Regional level to increase privacy safeguards, such as ensuring personal documents are secured and educating Regional offices about the importance of privacy protocols and safeguards. The Department will continue its work with stakeholders to discuss further steps that can be taken.

The “final report” referenced is being developed and is expected to be tabled in the 2016 Spring Sitting of the Legislative Assembly. The report will summarize the consultation process, current privacy safeguards that are in place, and outline next steps in drafting a protocol.

Standing Committee Recommendation #6:

The Standing Committee recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* within the next twelve months that would permit 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.

Government of Nunavut (GN) Response:

As noted in previous responses to the Committee, the GN is committed to the continual review of practices, procedures and legislation to ensure the access and privacy rights of Nunavummiut are protected. Our next consultation with the Information and Privacy Commissioner will include the right of the Commissioner to appeal a decision to the Nunavut Court of Justice.

Standing Committee Recommendation #7:

The Standing Committee recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* within the next twelve months that would address the Information and Privacy Commissioner's recommendations concerning her ability to exercise discretion to extend the time for requesting a review under the Act in certain circumstances.

Government of Nunavut (GN) Response:

The GN is committed to the inclusion of this provision in the next revision of the ATIPP Act. Until the amendment has been completed, the GN will continue to accept reviews initiated by the Information and Privacy Commissioner that are received after the designated time period.

Standing Committee Recommendation #8:

The Standing Committee recommends that the Information and Privacy Commissioner of Nunavut submit, no later than September 1, 2016, a set of comprehensive and specific recommendations for possible amendments to the *Access to Information and Protection of Privacy Act*.

The Standing Committee further recommends that the Information and Privacy Commissioner's review of the *Access to Information and Protection of Privacy Act* include consideration of the following matters:

- The extent to which the legislation takes into account Inuit Qaujimajatuqangit and Inuit Societal Values;
- The extent to which the legislation has kept pace with the Internet and other communications technology;
- The extent to which the legislation is being used for the purpose of furthering private commercial interests; and
- The extent to which the legislation is being used for the purpose of pursuing interpersonal workplace disputes in public bodies.

The Standing Committee notes that the Information and Privacy Commissioner's review should be submitted to the Office of the Speaker of the Legislative Assembly for subsequent transmittal to the standing committee and tabling in the House.

The Standing Committee further notes that this timeline will allow it to begin consideration of the recommendations during its televised hearing on the Information and Privacy Commissioner's 2015-2016 annual report to the Legislative Assembly, with the ultimate goal of passing legislation prior to the dissolution of the 4th Legislative Assembly.

Government of Nunavut (GN) Response:

The GN is committed to providing the Commissioner with support in pursuing this work. We believe that this type of work, done by the Commissioner, will further improve access and privacy practices in Nunavut.

Standing Committee Recommendation #9:

The Standing Committee recommends that the Information and Privacy Commissioner of Nunavut meet in person with representatives from the Inuit Qaujimajatuqangit Katimajit on at least one occasion during the 2015-2016 fiscal year in order to exchange perspectives on issues related to access to information and protection of privacy.

The Standing Committee further recommends that the Information and Privacy Commissioner's 2015-2016 annual report to the legislation account, in detail, for her discussions with the Inuit Qaujimajatuqangit Katimajit.

Government of Nunavut (GN) Response:

The GN will work to ensure this meeting takes place and further work is done to ensure the consultation is meaningful and ongoing.

Standing Committee Recommendation #10:

The Standing Committee recommends that the Government of Nunavut's formal written responses to the Information and Privacy Commissioner's review recommendations be made publicly accessible through posting on the website of the Office of the Information and Privacy Commissioner.

Government of Nunavut (GN) Response:

The GN will provide the Commissioner with the appropriate copies of documentation to ensure they are suitable for publication on the website of the Information and Privacy Commissioner.

Standing Committee Recommendation #11:

The Standing Committee recommends that the Information and Privacy Commissioner undertake at least one formal privacy audit of a Government of Nunavut department, Crown agency or territorial corporation during the 2015-2016 fiscal year, and that the findings of the audit be accounted for, in detail, in the Information and Privacy Commissioner's 2015-2016 annual report to the Legislative Assembly."

Government of Nunavut (GN) Response:

As noted in the previous response to the Committee, The GN welcomes all tools that can help to improve privacy within our programs. The IPC can expect full compliance with any privacy audit conducted within the GN. We consider this an opportunity to improve internal processes as well as a learning experience for our employees.