



**Response to the Standing Committee on
Public Accounts, Independent Officers
and Other Entities' Report on the Review
of the
2015-2016 Annual Report of the
Information and Privacy Commissioner
of Nunavut**

March 2017

On September 13, 2016 Elaine Keenan Bengts, the Information and Privacy Commissioner of Nunavut appeared before the Standing Committee on Public Accounts, Independent Officers and Other Entities to present her 2015-2016 Annual Report. Officials from the Department of Executive and Intergovernmental Affairs appeared before the committee. 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 October 2016. The Standing Committee report consists of twelve (12) 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.

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 an 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 Government of Nunavut begin the practice of including in its annual report on the administration of the *Access to Information and Protection of Privacy Act* a detailed account of the extent to which public bodies have implemented the recommendations that were made by the Information and Privacy Commissioner during the fiscal year covered by the annual report.

Government of Nunavut (GN) Response:

The Government of Nunavut tables an annual report that provides details of the administration of the ATIPP Act from the previous fiscal year. The ATIPP Office will work with the public bodies on tracking and reporting the implementation of the IPC recommendations to determine the best way to report this information in future reports.

Standing Committee Recommendation #2:

The Standing Committee reaffirms its support for ensuring that the Government of Nunavut protects the privacy of individuals to the greatest extent possible.

The Standing Committee strongly urges the Government of Nunavut's departments, Crown agencies and territorial corporations to demonstrate a clear commitment to openness, co-operation and transparency with respect to the work of all independent officers of the Legislative Assembly whose statutory mandates are to ensure government compliance with the provisions of such statutes as the *Access to Information and Protection of Privacy Act*, the *Official Languages Act*, the *Inuit Language Protection Act* and the *Representative for Children and Youth Act*.

The Standing Committee looks forward to reviewing the Information and Privacy Commissioner's final report on her office's privacy audit of the Qikiqtani General Hospital.

Government of Nunavut (GN) Response:

The GN reaffirms its commitment to ensuring openness and transparency in its cooperation with all independent officers of the Legislative Assembly.

Standing Committee Recommendation #3:

The Standing Committee recommends that the Government of Nunavut's response to this report include a detailed account of how its employee orientation and training programs provide information on the requirements to report material breaches of privacy under the *Access to Information and Protection of Privacy Act*.

Government of Nunavut (GN) Response:

All ATIPP Training offered through the Territorial ATIPP Office includes slides and information on the mandatory reporting of privacy breaches. This information includes what constitutes a privacy breach, the employee responsibility to mitigate and report privacy breaches, and to whom a breach of privacy can be reported. Employees are also informed of the resource material available to them for additional support and information.

Standing Committee Recommendation #4:

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 reiterates its recommendation 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 specific details on the dates, attendance and outcomes of meetings that it has held to date with municipalities and the Nunavut Association of Municipalities.

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, including:

- The number of training initiatives involving municipal employees; and
- The attendance of each training initiative.

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 further recommends that the Government of Nunavut's response to this report provide a list of the specific options that the government is currently considering with respect to how it plans to apply the *Access to Information and Protection of Privacy Act* to municipalities.

Date	Municipality/ Organization	Consultation Type	Outcomes
November 3, 2011	City of Iqaluit	Meeting with Senior City Staff on ATIPP, challenges it presents for the City and next steps	Agreed to work together in understanding issues facing the City and to determine the best approach moving forward.
November 22, 2011	City of Iqaluit	Meeting between GN and City Staff regarding requirements under ATIPP	Information session for City staff.
November 23,	All	Letter of engagement	

2011			
December 13, 2011	City of Iqaluit		Lawyers for the City of Iqaluit presented to council, including requirements under ATIPP. Their lawyer advised at the time they should “develop a privacy protocol addressing how Council, individual Councillors and the Mayor are to deal with personal information as defined in the Privacy Act that is handled by Council;” (Council meeting #22 December 13, 2011)
April 2, 2012	All Municipalities/ Nunavut Association of Municipalities (NAM)	Letter invitation to take part in three day ATIPP training sessions in Iqaluit.	Kimmirut, Repulse Bay and the City of Iqaluit sent staff to the training session (reported in the 2012-2013 annual report)
May 7-9, 2012	Kimmirut, Repulse Bay, City of Iqaluit *the Information and Privacy Commissioner also attended	Three day training session- All municipalities invited, only three sent participants	Three day training session. Three communities sent participants. Third day of training was focused on municipal administration and a round table on how implementation could be achieved. From this session the information and privacy commissioner changed her recommendation on inclusion from full inclusion to a gradual inclusion. This was reflected in her annual report.
September 23-27, 2013	City of Iqaluit	Training Invitation	Two City of Iqaluit staff attended the one day Basic ATIPP training session
January 17, 2014	City of Iqaluit	Letter	Letter was included in the City Council package for the following meeting. It was not discussed and no follow up was provided
February 12, 2014	City of Iqaluit	Letter- Compliance letter	The City was given a notice of compliance requirements. If no steps were taken to comply with the compliance schedule, notice was provided that within a year they would be subject to the Act.

February 18, 2014	City of Iqaluit	ATIPP Training session	Three employees from the City of Iqaluit attended the training.
March 11, 2014	City of Iqaluit	Presentation to City Council on compliance letter.	City Council agreed to work with the GN on implementation.
April 11, 2014	MTO	EMAIL	Request for assistance in advertising training to take place in Rankin Inlet and Cambridge Bay. Informed that the MTO could not assist in advertising or training until it was a legislative requirement.
April , 16, 2014	Rankin Inlet, Cambridge Bay	Letters- compliance schedules	Compliance Schedules, similar to the one sent to the City of Iqaluit in February 2014 we sent to the two larger municipalities. No formal response was received.
May 6, 2014	Rankin Inlet	Full day training session geared to municipal staff	One staff member attended the training.
May 12, 2014	Cambridge Bay	Full day training session geared to municipal staff	Although staff were registered, no staff attended the session and the GN was informed that the council had forwarded all matters related to the implementation of ATIPP to the Nunavut Association of Municipalities.
May 2014	City of Iqaluit	Request to review and provide comment on a draft Routine Access Policy	The ATIPP Office reviewed and provided comment on a draft Routine Access Policy for the City. Comment was provided but the policy did not go into effect.
May 13, 2014	Cambridge Bay	Cambridge Bay Council passed motion to respond to the GN saying they would refer all ATIPP matters to NAM.	
September 3, 2014	City of Iqaluit-GN/City ATIPP Working Group	Meeting of joint working group.	Many issues related to the implementation of ATIPP within the City were discussed. It was determined that without the formal oversight of the Information and Privacy Commissioner, it would likely be ineffective to have the informal policies. It was agreed that the best approach

			would be inclusion under the ATIPP Act.
December 3, 2014	NAM	Letter- Request to work together of implementation of ATIPP principals	No Response was received
February 25, 2015	City of Iqaluit/ Information and Privacy Commissioner	Meeting between senior City of Iqaluit staff and Information and privacy Commissioner	The meeting was productive and information regarding current practices and the type of support the IPC can provide were discussed.
March 2016	City of Iqaluit	Re-engagement letter sent to new SAO/Council.	No Response received.
February 17, 2017	NAM- Executive Director	E-mail requesting a meeting to discuss the position of NAM on the implementation of the ATIPP Act within Municipalities.	No response received

Due to the information management systems currently in place within most municipalities, responding to requests for information regarding historical information may be difficult. It will be the responsibility of municipalities to do their due diligence in responding to such requests where reasonably possible. However, consideration will have to be made regarding limitations placed on municipalities for this reason. Looking to the future, the appropriate information management systems will need to be considered for municipalities to ensure appropriate compliance.

The Government of Nunavut (GN) has been actively working with municipalities on their eventual inclusion under the ATIPP Act since 2011. The GN is currently going through the process of amending the ATIPP Act to allow for the inclusion of municipalities under the legislation. To ensure effective and meaningful implementation of the legislation at the municipal level, the GN will continue to work with municipalities on access and privacy related issues.

Standing Committee Recommendation #5:

The Standing Committee reiterates its recommendation 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 further recommends that the Government of Nunavut formally consult with District Education Authorities as it works to determine a method by which the *Access to Information and Protection of Privacy Act* may apply to District Education Authorities.

The Standing Committee further recommends that the Government of Nunavut's response to this report provide a detailed timetable by which it plans to complete consultations with each District Education Authority on this matter.

Government of Nunavut (GN) Response:

The GN has been working internally to determine the most appropriate approach for including District Education Authorities (DEAs) under the ATIPP Act. Due to their structure and how they operate, there are more complexities around their inclusion than the Local Housing Organizations, as an example. The Department of Education has looked at the approach taken by the Nunavut Housing Corporation when LHOs were included under the Act, and will be taking similar steps that will be applicable to DEAs. Examples include:

- Designated departmental coordinators responsible for the administrative functions under the Act, as they relate to DEAs. This will decrease the need to have additional staff or training for each DEA, while providing DEA members and staff with the necessary basic ATIPP training.
- Review the records management and information security practices of DEAs to determine their current needs to ensure compliance under the Act.

As the Department of Education had been working through the Education Act consultations, it was deemed to be appropriate to wait for additional consultations on the ATIPP Act to ensure both issues were understandable to the audience involved. Consultations will commence in the form of written letters, as well as information sessions during the regularly scheduled meetings and training of DEA members. Once the department has a better understanding of the technical requirements for DEAs the department can move forward with a specific plan for implementation.

Standing Committee Recommendation #6:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on specific work that has been completed to date in relation to the development of health-specific privacy legislation in Nunavut.

The standing committee further recommends that the Government of Nunavut's response to this report include a copy of the workplan by which it plans to develop health-specific privacy legislation in Nunavut.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed account of activities of the committee that has been formed to lead the government's work to develop health-specific privacy legislation in Nunavut, including the following information:

- Committee membership;
 - Frequency of committee meetings;
 - Any specific outcomes and planned actions resulting from committee meetings; and,
 - Any specific recommendations that have been made by the committee.
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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 department maintains privacy and security directives related to the handling of Confidential Personal Health Information in the Interoperable Electronic Health Records System (iEHR). The Department of Health is updating the iEHR Privacy and Security 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.

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 continued work on this file by developing a work plan and a committee to lead the work. The legislative proposal is currently in development, with the plan to proceed under the next government.

Standing Committee Recommendation #7:

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*.

Government of Nunavut (GN) Response:

The following response provided by the Department of Family Services:

In response to the Standing Committee's October 28, 2014 report, the Government of Nunavut committed to drafting a final report by March 2016, describing the consultation process with Regional Inuit Associations (RIA), current privacy safeguards, and next steps in drafting the Protocol. The report was tabled in June 2016. Noted in the report, the RIAs have committed to ensuring adequate safeguards are in place to protect

documents related to child protection and adoption proceedings. The Department looks forward to working collaboratively with RIAs in determining their roles and level of involvement in such proceedings, which is respectful of Article 32 of the Nunavut Agreement.

To this end, the Department envisions a Protocol that will not only outline privacy safeguards, but also encourage the active involvement of RIAs in child welfare and adoption matters. The Department of Family Services recognizes the direction and advice provided by the Information and Privacy Commissioner, who played a large role in driving the initial consultation with RIAs. The Department will continue to work collaboratively with the Commissioner in finalizing the Protocol.

The Department is committed to continuing its work in finalizing the Protocol which will be tabled during the 2017 Spring sitting.

Standing Committee Recommendation #8:

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.

The standing committee further recommends that the Government of Nunavut, as part of its ongoing review of procurement, contracting and leasing practices, work to develop a method that will allow it to clearly differentiate between the approved "maximum values" of contracts and the actual expenditures undertaken pursuant to such contracts.

Government of Nunavut (GN) Response:

The following response provided by the Nunavut Business Credit Corporation:

Nunavut Business Credit Corporation has improved upon the timeliness of tabling annual reports on contracting, procurement, and leasing activities. The corporation acknowledges that further improvements on timeliness can be achieved. As noted by

the Standing Committee, the 2016/2017 Letters of Expectations note this specific reporting requirement.

Nunavut Business Credit Corporation's 2014/2015 and 2015/2016 Contracting, Procurement, and Leasing Activity Reports were tabled on October 21, 2016. Amounts are reported in actual expenditures .

The following response provided by the Nunavut Development Corporation:

Nunavut Development Corporation has improved upon the timeliness of tabling annual reports on contracting, procurement, and leasing activities. The corporation acknowledges that further improvements on timeliness can be achieved. As noted by the Standing Committee, the 2016/2017 Letters of Expectations note this specific reporting requirement.

Nunavut Development Corporation's 2013/2014 and 2014/2015 Contracting, Procurement, and Leasing Activity Reports were tabled on October 21, 2016. Nunavut Development Corporation included its 2015-16 Contracting, Procurement and Leasing Reports in its Annual Report which was tabled in the Legislative Assembly on Oct 25th 2016. Amounts are reported in actual expenditures.

The following response provided by the 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 tabled its Annual Contracting and Procurement Activity Report in the Legislative Assembly. The Report is most commonly tabled in the winter sitting.

As in previous years, the NHC will be tabling its 2015/16 Annual Contracting and Procurement Activity Report in winter 2017. Following the tabling of the Report, the document will also be made available for download on the Nunavut Housing Corporation's website.

While there is no legislated 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 every year.

While not yet incorporated into the NHC's Annual Contracting and Procurement Activity Report, the Corporation will phase-in the listing of "maximum values" into its future contracting and procurement reports. Particularly, in the procurement categories of

“construction” and “services”, as these can be more readily incorporated based on the existing record keeping at the Corporation.

The following response provided by the Qulliq Energy Corporation:

Qulliq Energy Corporation (QEC) completes an annual contracting, procurement and leasing activity 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 number of years, QEC has been successful in having its Report on Contracting, Procurement and Leasing Activity tabled within requested time periods, with the 2015-2016 Report expected to be tabled in 2017 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. The 2014-2015 report was tabled in the November 2016 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.

The following response provided by the Nunavut Arctic College:

The College has committed to tabling its 2015-16 Contracts/Procurement/Leasing activities reports during the spring session of the Legislative Assembly.

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.

Standing Committee Recommendation #9:

The Standing Committee reiterates its recommendation that the Government of Nunavut in its response to this report include a detailed timeline by which it plans to introduce amendments to the *Access to Information and Protection of Privacy Act* 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:

The Government of Nunavut has reviewed this recommendation. At this time, amendments to the Act will not provide the IPC with this power. The GN is open to having discussions with the IPC regarding provisions of appeal to the Nunavut Court of Justice and further looks forward to her comprehensive report on the review of the ATIPP Act.

Standing Committee Recommendation #10:

The Standing Committee reiterates its recommendation that the Government of Nunavut in its response to this report include a detailed timeline by which it plans to introduce amendments to the *Access to Information and Protection of Privacy Act* 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 has to committed to submitting amendments to the legislation during the Spring 2017 Session. This amendment will be included.

Standing Committee Recommendation #11:

The Standing Committee reaffirms its support for ensuring that a review of the *Access to Information and Protection of Privacy Act* includes consultation with the

Information and Privacy Commissioner and looks forward to reviewing the Information and Privacy Commissioner's comprehensive and specific recommendations for possible amendments to the *Access to Information and Protection of Privacy Act*.

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.

Government of Nunavut (GN) Response:

The Government of Nunavut is in the process of amending the Access to Information and Protection of Privacy Act. Many of the suggested revisions come from previous consultations with the Commissioner and other major stakeholders. We look forward to seeing the results of the Commissioner's comprehensive review of the Act, but felt that the current revisions were necessary and should not be delayed.

Standing Committee Recommendation #12:

The Standing Committee reiterates its recommendation that the Information and Privacy Commissioner of Nunavut meet in person with representatives from the Inuit Qaujimajatuqangit Katimajit in order to exchange perspectives on issues related to access to information and protection of privacy at the earliest practicable opportunity.

The Standing Committee further recommends that the Information and Privacy Commissioner include in her respective annual report to the Legislative Assembly, a detailed account of her discussions with the Inuit Qaujimajatuqangit Katimajit.

Government of Nunavut (GN) Response:

There are no comments from the GN on this recommendation.