



Standing Committee on Oversight of Government Operations and Public Accounts

Report on the Review of the 2016-2017 and 2017-2018 Annual Reports of the Information and Privacy Commissioner of Nunavut

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Introduction

The Standing Committee on Oversight of Government Operations and Public Accounts held a hearing on the 2016-2017 and 2017-2018 annual reports of the Information and Privacy Commissioner of Nunavut on April 11, 2019.

The standing committee's hearing was held in the Chamber of the Legislative Assembly and was televised live across the territory. The hearing was open to the public and news media to observe from the Visitors' Gallery. The transcript from the standing committee's hearing may be downloaded from the Legislative Assembly's website.

Witnesses appearing before the standing committee were the Information and Privacy Commissioner of Nunavut and senior officials of the Government of Nunavut's Department of Executive and Intergovernmental Affairs and Department of Health. The standing committee notes its appreciation to the witnesses.



Observations and Recommendations

Issue: **Annual Report on the Administration of the *Access to Information and Protection and Privacy Act*, Expired Government of Nunavut Policies, Privacy Impact Assessments and Information-Sharing Agreements**

The Government of Nunavut's *2015-2016 Annual Report on the Administration of the Access to Information and Protection of Privacy Act* was tabled in the Legislative Assembly on March 7, 2017. The 2016-2017 and 2017-2018 annual reports have not yet been tabled. The annual report is not presently required by statute to be tabled.

The Government of Nunavut's Department of Executive and Intergovernmental Affairs administers the *Access to Information and Protection of Privacy Policy*, which expired on August 3, 2017, and the *Privacy Breach and Incident Policy*, which expired on May 1, 2018.

In 2017, the Legislative Assembly passed a number of amendments to the *Access to Information and Protection and Privacy Act*, including the addition of new provisions concerning privacy impact assessments.

The statute defines a "privacy impact assessment" to mean "an assessment that is conducted by a public body as defined in section 2, but not including a municipality, to determine if a current or proposed program or service meets or will meet the requirements of Part 2 of this Act."

Section 42.1 of the statute provides that:

Privacy impact assessment

42.1. (1) A minister shall, during the development of a program or service by a public body or the redesign of an existing program or service by a public body, submit to the Minister responsible for this Act

- (a) a privacy impact assessment for the Minister's review and comment; or
- (b) the results of a preliminary assessment showing that a privacy impact assessment of the program or service is not required.

Preliminary assessment

(2) A minister shall conduct a preliminary assessment and, where required, a privacy impact assessment in accordance with the directions of the Minister responsible for this Act.

Municipality not included

(3) A municipality is not a public body for the purposes of subsection (1).

A significant number of territorial statutes allow for the government to enter into information-sharing agreements with other entities. For example, the recently-passed *Cannabis Act* provides that:

Information-sharing agreements

63. (1) The Minister may enter into agreements for the collection, use, disclosure and exchange of information, including personal information, with the following:

- (a) the Government of Canada or any of its departments, Ministers or agencies;
- (b) the government of a province or territory or any of its departments, Ministers or agencies;
- (c) a public agency as defined in the *Financial Administration Act*;
- (d) a law enforcement agency;
- (e) an Agent;
- (f) a licensee;
- (g) a prescribed body.

However, the extent to which the government is undertaking privacy impact assessments in the development of information-sharing agreements and other initiatives is unclear, as is illustrated by the following exchange that took place during the standing committee's televised hearing:

Ms. Towtongie: Thank you, Mr. Chairman. This new *Cannabis Act* was introduced in June 2018 by the Legislative Assembly, and section 63 of the statute allows the government to enter into information-sharing agreements with other entities for the collection, use, disclosure, and exchange of information, including personal information. Did the Government of Nunavut consult you as the privacy commissioner before they were introduced in the Legislative Assembly? Thank you, Mr. Chairman.

Chairman: Thank you. Commissioner.

Ms. Keenan Bengts: Thank you, Mr. Chairman. No, the answer is no. Thank you.

Chairman: Thank you. Ms. Towtongie.

Ms. Towtongie: Thank you, Mr. Chairman. I'm a little bit surprised. The next question I have is to the government. The Department of Executive and Intergovernmental Affairs is responsible for the Access to Information and Protection of Privacy Policy. This policy contains provisions regarding privacy impact assessments. Was a privacy impact assessment conducted on the provision of the *Cannabis Act* that concerns the sharing of personal information and, if an assessment was conducted, will the results be made public? Thank you, Mr. Chairman.

Chairman: Thank you. Department of Executive and Intergovernmental Affairs, Ms. Okpik.

Ms. Okpik: Good afternoon. I will have to get back to the Member after I check with the departments to see if they did an assessment or not. I know that the Department of Justice and the Department of Finance were the departments that were working on that. I will have to check with them and get back to you. Thank you, Mr. Chairman.

Chairman: Thank you. Mr. Quassa.

Mr. Quassa: Thank you, Mr. Chairman. Along the same lines, for the Department of Executive and Intergovernmental Affairs, how many Government of Nunavut employees currently have access to the cannabis purchase records of Nunavummiut? Perhaps I'll speak English for clarity, although she obviously understands what I'm saying as she is an Inuk. How many employees of the Government of Nunavut currently have access to the cannabis purchase records of Nunavummiut and what safeguards are in place to prevent the misuse of this information? That's a question to Deputy Minister Okpik. Thank you, Mr. Chairman.

Chairman: Thank you. Ms. Okpik.

Ms. Okpik: Thank you, Mr. Chairman. I will also have to look into that as well because it is held by the Department of Finance. From what I know, the people of Nunavut order cannabis online. I don't know who collects that information on who orders, but I will look into that and get back to you. If they're keeping the statistics, they would keep track of how much money is being spent on it, but as to who is doing the ordering, I will have to get back to you on that matter. Thank you, Mr. Chairman.

Chairman: Thank you. Mr. Mikkungwak.

Mr. Mikkungwak: Thank you very much, Mr. Chairman. I would like to direct my question to the commissioner. Using my own language, when the *Cannabis Act* was worked on, was your office contacted by the government and were there any recommendations that came out of your office? Thank you, Mr. Chairman.

Chairman: Thank you. Commissioner.

Ms. Keenan Bengts: Thank you, Mr. Chairman. I was not consulted during the drafting of the cannabis legislation itself. I have since received a letter from the Department of Finance advising me that they intend to do a privacy impact assessment and that they were working on that document, but that's all it was. They invited me to participate, essentially advising me that they were doing this and asking if I would like to comment on it when it was done. I haven't heard anything further from them.

Standing Committee Recommendation #1:

The standing committee recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* to provide for a statutory requirement for the Minister responsible for the Act to table, within six months after the end of each fiscal year, an annual report in the Legislative Assembly on the administration of the legislation.

The standing committee further recommends that the Government of Nunavut's response to this report clarify, in detail, the reasons for the delay in tabling the 2016-2017 and 2017-2018 annual reports on the administration of the *Access to Information and Protection of Privacy Act*.

The standing committee further recommends that the Government of Nunavut's response to this report include a detailed description of the current status of the revision and/or renewal of its *Access to Information and Protection of Privacy Policy* and the *Privacy Breach and Incident Policy*.

The standing committee further recommends that the Government of Nunavut's response to this report include detailed descriptions of the findings of each privacy impact assessment and preliminary assessment undertaken to date under section 42.1 of the *Access to Information and Protection of Privacy Act*, and that these descriptions detail the extent to which the Information and Privacy Commissioner was consulted in their preparation.

The standing committee further recommends that the Government of Nunavut's response to this report include detailed descriptions of each information-sharing agreement entered into by the Government of Nunavut under the authority of a territorial statute since January 1, 2014, and that these descriptions detail the extent to which the Information and Privacy Commissioner was consulted in their preparation.

Issue: Privacy Audit of the Qikiqtani General Hospital, Health-Specific Privacy Legislation and Community Health Centre Privacy Initiatives

The Information and Privacy Commissioner's *Report on the Privacy Audit of the Qikiqtani General Hospital* was tabled in the Legislative Assembly on November 8, 2016. The 4th Legislative Assembly's Standing Committee on Public Accounts, Independent Officers and Other Entities held a televised hearing on the report from May 10-11, 2017. The standing committee presented its *Report on the Review of the Information and Privacy Commissioner's Report on the Privacy Audit of the Qikiqtani General Hospital* at the Legislative Assembly's sitting of June 6, 2017. However, the Government of Nunavut did not table a response to the report of the standing committee.

Significant attention was paid to health-related privacy issues during the standing committee's televised hearing of April 11, 2019. Although the government has demonstrated clear progress in addressing such issues at the Qikiqtani General Hospital, the extent to which similar progress has been achieved at the community level is not as clear. The standing committee also notes a lack of clarity as to what specific progress has been made to date in developing health-specific privacy legislation for the territory, being mindful that Nunavut is the only Canadian jurisdiction without such legislation in place.

Standing Committee Recommendation #2:

The standing committee recommends that the Government of Nunavut's response to this report include a detailed description of its position and actions taken to date in relation to the formal recommendations contained in the June 6, 2017, report of the standing committee on the review of the Information and Privacy Commissioner's report on the privacy audit of the Qikiqtani General Hospital.

The standing committee further recommends that the Government of Nunavut's response to this report include a detailed description of the current status of the development of health-specific privacy legislation.

The standing committee further recommends that the Government of Nunavut's response to this report include a detailed description of the Department of Health's planned initiatives for the 2019-2020 fiscal year in relation to privacy protection at community health centres outside of Iqaluit.

Issue: Public Sector Salary Disclosure and Application of the *Access to Information and Protection of Privacy Act* to Municipalities and District Education Authorities

In 2017, the Legislative Assembly passed a number of amendments to the *Access to Information and Protection and Privacy Act*, including the addition of new provisions to allow, through regulation, for the designation of municipalities as public bodies and the disclosure of remuneration of prescribed classes of public employees. However, new regulations to give effect to these changes have not yet been passed.

In April of 2015, the *Access to Information and Protection and Privacy Regulations* were amended to designate housing authorities and housing associations as public bodies. However, District Education Authorities (DEAs) are not yet covered by the legislation.

Standing Committee Recommendation #3:

The standing committee recommends that the Government of Nunavut's response to this report include a detailed description of the current status of the development of regulations under section 73(a) of the *Access to Information and Protection of Privacy Act* in respect to the designation of municipalities as public bodies.

The standing committee further recommends that the Government of Nunavut's response to this report include a detailed description of the current status of the development of regulations under section 73(a) of the *Access to Information and Protection of Privacy Act* in respect to the designation of District Education Authorities as public bodies.

The standing committee recommends that the Government of Nunavut's response to this report include a detailed description of the current status of the development of regulations under sections 73(1.1) and (1.2) of the *Access to Information and Protection of Privacy Act* in respect to the disclosure of remuneration of prescribed classes of public employees.

Issue: Process for Responding to Recommendations of the Information and Privacy Commissioner and Role of the Ethics Officer

Sections 35 and 36 of the *Access to Information and Protection of Privacy Act* provide that:

Information and Privacy Commissioner to report

35. On completing a review, the Information and Privacy Commissioner shall
- (a) prepare a written report setting out the recommendations of the Information and Privacy Commissioner with respect to the matter and the reasons for the recommendations; and
 - (b) send a copy of the report to the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for a review under section 30.

Decision of head

36. Within 30 days after receiving the report of the Information and Privacy Commissioner, the head of the public body concerned shall
- (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and
 - (b) give written notice of the decision to the Information and Privacy Commissioner, the person who asked for the review and any other person given a copy of the request for a review under section 30.

Copies of the Information and Privacy Commissioner's formal *Review Reports* are publicly accessible on her office's website, as are the government's responses to them:

<https://atipp-nu.ca/documents/atipp-reviews/>

Although the issues raised in these reviews are often complex and focus on matters of statutory interpretation, the extent to which the government's responses to the Information and Privacy Commissioner's recommendations have been developed with the benefit of input from legal counsel is often unclear.

In some cases, the government's formal responses to the Information and Privacy Commissioner's recommendations provide a clear and detailed rationale for why they are or are not being accepted. In other cases, they do not. It is the standing committee's position that it is incumbent on the government to formally provide clear and detailed reasons, in writing, for its decisions.

The 2016-2017 annual report of the Information and Privacy Commissioner noted that:

“... employees and former employees of the Government of Nunavut are among the most frequent requesters [under the *Access to Information and Protection of Privacy Act*] ... looking for information to find out more about a workplace harassment matter or why they were unsuccessful in a job application or why they were overlooked for promotion.”

The Information and Privacy Commissioner’s 2017 comprehensive review of the *Access to Information and Protection of Privacy Act* noted that:

“... a large number of access requests for personal information about the applicant arise out of some kind of workplace dispute. Individuals who have made complaints against a co-worker or who are the subject of a workplace complaint often request access to all of the information related to the complaint.”

In 2013, a new *Public Service Act* was passed by the Legislative Assembly. The legislation provides for the appointment of an Ethics Officer, who has the mandate to investigate allegations of wrongdoing in the public service.

Standing Committee Recommendation #4:

The standing committee recommends that the Government of Nunavut’s response to this report clarify, in detail, the extent to which the decisions of heads of public bodies made under section 36 of the *Access to Information and Protection of Privacy Act* in response to formal recommendations submitted by the Information and Privacy Commissioner are subject to review by legal counsel.

The standing committee further recommends that the Government of Nunavut introduce an amendment to section 36 of the *Access to Information and Protection of Privacy Act* that would provide for a requirement on the part of the head of a public body to provide written reasons for decisions made in respect to recommendations submitted by the Information and Privacy Commissioner.

The standing committee further recommends that the Minister responsible for the *Public Service Act* formally request the Office of the Ethics Officer to initiate contact with the Office of the Information and Privacy Commissioner to discuss areas of potential collaboration between the two entities.

Issue: Information and Privacy Commissioner’s Comprehensive Review of the *Access to Information and Protection of Privacy Act*, Public Access to Sex Offender Registries and Information-Sharing in Support of Court-Ordered Restrictions on Alcohol

In 2017, the Information and Privacy Commissioner undertook a comprehensive review of the *Access to Information and Protection of Privacy Act*, which is publicly accessible on her office’s website:

<https://atipp-nu.ca/wp-content/uploads/2018/08/ATIPP-ComprehensiveReview.pdf>

During the standing committee’s televised hearing of April 11, 2019, a number of questions were raised concerning the extent to which the public should have access to government registries containing personal information about registered sex offenders who have been released from incarceration and who are living in Nunavut communities.

In 2015, the Parliament of Canada passed Bill C-26, which enacted the *High Risk Child Sex Offender Database Act*, the official purpose of which is to provide for “... the establishment of a publicly accessible database containing information with respect to persons who are found guilty of sexual offences against children and who pose a high risk of committing crimes of a sexual nature.” This federal legislation has not yet been brought into force.

The standing committee recognizes that this is a complex issue and that there are diverse perspectives concerning the efficacy of such measures. During Parliament’s consideration of the bill, the federal Minister of Public Safety of the day stated that:

“I would like to talk about a third thing, which Canadians feel very passionate about, and that is the right of victims, children and families to know whether there is a high-risk sex offender living in their neighbourhood. That is perfectly legitimate. We can inform them in a safe way in co-operation with local authorities, and that is what we are proposing to do. Canadians have the right to know the character of the individuals who are near their children. If a dangerous pedophile is within arm's reach of their child, they have the right to take proper actions and precautions. That is why the bill would enact the high risk child sex offender database act, which would allow our government to create a national public database.”

By contrast, the federal Privacy Commissioner’s testimony before a Parliamentary committee considering the bill stated that:

“The *High Risk Child Sex Offender Database Act* will establish a publicly accessible database that contains information about persons who have been convicted of sexual offences against children and who pose a high risk of committing crimes of a sexual nature. Although this information will be limited to information that a police service or other public authority has made public,

making it available on a national database will greatly expand the number of people who have access to the information. Based on the research we have read, we at the OPC are concerned that the publicly accessible High Risk Offender Database proposal may not be a proportionate nor an effective response to the very problem it is trying to address. This is in part because law enforcement agencies already have access to information about registered sex offenders, through the National Sex Offender Registry and other databases such as CPIC. So, how will the publicly available database increase the likelihood of arrest or reduce the risk of recidivism? We have not seen any evidence of such outcomes. There is, however, research that supports the view that laws that reduce the privacy of sex offenders makes rehabilitation and reintegration more difficult. Ultimately, this could increase the rate of recidivism. A publicly accessible database also creates a risk of vigilantism, as recognized on provincial dangerous offender websites such as the one in place in Alberta, and increases the risk that fears of being attacked or harassed will drive offenders underground.”

The standing committee also recognizes that although the territorial government has limited jurisdiction in this sphere, it does have the ability to take a formal position on the advisability of bringing the federal legislation into force.

On November 8, 2016, the Government of Nunavut’s strategy document titled *Taking Steps to Reduce Alcohol-Related Harm in Nunavut* was tabled in the Legislative Assembly. One of the elements of the strategy provides that:

“Sometimes the courts, justices of the peace, RCMP or other mechanism of Nunavut’s justice system limit, restrict or prohibit an individual from accessing alcohol. These restrictions are often put in place after the individual, under the influence of alcohol, has caused themselves or others significant harm. It is the individual’s responsibility to abide by any restrictions the court imposes. However, to better reinforce these restrictions and limit future alcohol-related harm to the individual or others, the Government could potentially support such court-ordered restrictions by *not* issuing an alcohol import permit to the individual. For this to work, the permitting system would need to be aware of the alcohol-related restrictions in place. The government will explore how to support court-ordered restrictions on alcohol by considering whether the permitting system could help reduce alcohol-related harm by supporting court-ordered restrictions on alcohol; and exploring ways to increase communication between the courts and the permit system with respect to alcohol-related limitations, restrictions, and prohibitions for individuals in the territory, while respecting these individual’s rights.”

Standing Committee Recommendation #5:

The standing committee recommends that the Government of Nunavut's response to this report describe, in detail, its position respecting each of the specific recommendations contained in the Information and Privacy Commissioner's *Comprehensive Review of the Access to Information and Protection of Privacy Act*.

The standing committee further recommends that the Government of Nunavut's response to this report describe, in detail, its position respecting the advisability of bringing into force the *High Risk Child Sex Offender Database Act*, which was passed by the Parliament of Canada in 2015.

The standing committee further recommends that the Government of Nunavut's response to this report describe, in detail, what specific actions have been taken to date in relation to the "Supporting Court-Ordered Restrictions on Alcohol" section of its *Taking Steps to Reduce Alcohol-Related Harm in Nunavut* strategy, including a detailed description of what information is currently shared with the Nunavut Liquor and Cannabis Commission in respect to court-ordered restrictions on alcohol.