NUNAVUT INFORMATION AND PRIVACY COMMISSIONER

2014/2015

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF NUNAVUT

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June 30, 2015

Legislative Assembly of Nunavut
P.O. Bag 1200
Iqaluit, NU
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Attention: George Qulaut
Speaker of the Legislative Assembly

Dear Sir:

I have the honour to submit my Annual Report as the Information and Privacy Commissioner of Nunavut to the Legislative Assembly for the period April 1, 2014 to March 31st, 2015.

Yours truly,

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner
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COMMISSIONER'S MESSAGE

In a way, the Office of the Information and Privacy Commissioner of Nunavut came of age during 2014/2015. In January, 2015 the position of "Information and Privacy Commissioner" made the transition from a very part time job, to a full time position, shared with the Northwest Territories. When I first became Nunavut's Information and Privacy Commissioner 15 years ago in early 2000, the number of files which hit my desk were very manageable on a part time basis. The workload has, however, increased every year and in the last three or four years, it simply became impossible to keep up with the workload on a part time basis, resulting in backlogs and much longer time lines for completing reviews and providing recommendations. Working full time will allow me to catch up on some of the backlog of requests and investigations, as well as to begin some of the projects which I have been trying to get off the ground for years but have been unable to do as a result of time issues. I am looking forward to the challenge of creating an office that is far more proactive and involved.

One of the first things I hope to be able to do in my full time capacity is to work on creating more content for my web site so as to provide resources, guidelines, FAQs, suggestions and papers on various subjects to assist government agencies and the public. I will also be taking more time to focus on new initiatives and legislation proposed by public bodies and the Legislative Assembly so as to provide comment on projects which may have an impact on either access to information or on the privacy of individuals. Thirdly, I will begin to lay the groundwork for a full review of the *Access to Information and Protection of Privacy Act* with a view to modernizing the legislation and making it more responsive to today's business realities.

Recently, the Government of Newfoundland and Labrador commissioned a statutory review of the *Access to Information and Protection of Privacy Act* of that province. They appointed three eminent experts in government, law and privacy to conduct the review –the Hon. Clyde Wells, former Premier of the province, Jennifer Stoddart, the former Privacy Commissioner of Canada and Doug Letto, a consultant and former CBC journalist. In the first chapter of the report prepared by this Review Committee, the members outlined the purposes of access and privacy legislation:

> The purpose of this Act is to facilitate democracy through:
>
> a) ensuring that citizens have the information required to participate meaningfully in the democratic process;
>
> b) increasing transparency in government and public bodies so that elected officials, and officers and employees of public bodies remain accountable, and
>
> c) protecting the privacy of individuals with respect to personal information about themselves held and used by public bodies.

This statement has now been incorporated into a new *Access to Information and Protection of Privacy Act* enacted by the Government of Newfoundland and Labrador on the recommendation of the Review Committee and forms the framework around which the legislation is built. The wording of the new legislation makes it clear that disclosure is always the rule and that, even where discretionary exemptions to disclosure are provided for, those exemptions will not apply where it is demonstrated that the public interest outweighs the reason for the exception. The onus remains on the public body to establish that exemptions apply. While this has always been my interpretation of our own legislation,

the wording of Newfoundland and Labrador's new legislation spells this out far more clearly.

As noted by Elizabeth Denham, the Information and Privacy Commissioner of British Columbia, in her 2013/2014 Annual Report:

> Transparency is the panacea. When governments and businesses make information available, and create opportunities to meaningfully engage the public, they build confidence and trust in their activities while addressing information and privacy concerns.

The ever increasing reach of technology, together with Nunavut's unique geography and demographics and Nunavut's limitations in terms of communications technology infrastructure make these goals uniquely challenging in Nunavut. The reality is, however, that technology is the way business is done. It underpins everything we do. Technology clearly makes our lives easier and allows us to communicate in ways never contemplated when the Access to Information and Protection of Privacy Act was passed in 1997. Technology also brings challenges, however. While the recording, storage and sharing of work product have become much easier, the ability to recover information has become ever more complex and, in some ways, more difficult. Portable devices, personal devices, jump drives and mass storage devices make information management more challenging. Email is by far the most frequently used format for communications. Effectively managing these communications – when every employee has his or her own computer, when many employees have multiple devices, when some employees use their own mobile devices – makes for somewhat of a records management nightmare. A robust records management system that is adaptable enough to adjust to the rapid speed of changing technologies is vital. Technology also poses new and growing challenges to the government's obligations to protect the personal information that it collects every day about individuals. The

proliferation of new technologies such as biometrics, wearable computing devices, cloud computing, GPS technology and digital surveillance capabilities have increased the ease of collection of information. This, in turn, tends to lead to a tendency to "over collect" and "over retain" personal information, which in its turn creates increased risks of inappropriate sharing, data matching and data breaches.

Canada's Information and Privacy Commissioners recognize these challenges and see that governments are falling behind. In October of 2014, therefore, they issued a joint resolution focused on finding ways to protect and promote Canadian's access and privacy rights in the digital age, building on their 2013 resolution encouraging the modernization of Access and Privacy Laws for the 21st century. The most recent resolution urged all federal, territorial and provincial governments to take a leadership role to ensure the continued relevance of access to information in the digital society while ensuring that personal information is vigilantly protected by modernizing records management systems and frameworks and

- embedding privacy and access rights into the design of public programs and systems;
- creating a legislated duty for government employees to document matters related to material deliberations, actions and decisions;
- adopting administrative and technological safeguards to prevent loss or destruction of records, to store and retain records, to ensure ease of retrieval of records, to mitigate the risks of privacy breaches and to limit the collection and sharing of personal information unless absolutely necessary to meet program or activity objectives;

- establishing clear accountability mechanisms for managing information at all steps of the digital information life cycle (collection, use, disclosure, retention and disposal) to meet privacy and access obligations, including proper monitoring and sanctions for non-compliance;
- training all government employees involved in managing information at any stage of its life cycle so that they know their roles and responsibilities both in terms of access to information and privacy issues;
- moving toward making information more accessible to citizens in accordance with open government principles.

In the same resolution, Canada's Information and Privacy Commissioners committed to engage and follow up with their governments on these issues, to continue to study and make public the ways in which access and privacy laws impact all Canadians and to continue to make recommendations to government based on our areas of expertise. As a full time Information and Privacy Commissioner, it is my goal to live up to the expectations of this resolution and to continue to work with the Government of Nunavut to help make Nunavut a leader in access and privacy in Canada.

It is imperative to ensure the appropriate statutory and policy framework for records and information management is in place to support transparency, accountability and compliance with the FOIP Act.

Jill Clayton, Alberta IPC, Becoming a Leader in Access and Privacy, Sept. 25, 2013

THE *ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT*

What is the Purpose of the Access to Information and Protection of Privacy Act?

The Access to Information and Protection of Privacy (ATIPP) Act enshrines two principles:

1. public records must be accessible to the public; and
2. personal information must be protected by public bodies.

It outlines the rules by which the public can obtain access to public records and it establishes rules about the collection, use and disclosure of information about individuals by public bodies in Nunavut.

What Information is Subject to the Act?

Subject to a limited number of specific exceptions outlined in the Act, the *Access to Information and Protection of Privacy Act* gives the public the right to access any record which is the custody or control of a Nunavut public body. The limited exceptions function to protect individual privacy rights, to protect proprietary information belonging to third parties, to allow government employees the freedom provide frank and candid advice and recommendations in the development of government policies and to protect cabinet confidences.

> *But a law is only a law and when it comes to obeying it you can do what is minimally necessary or you can embrace the spirit of the law.*
>
> **Frank Work, former IPC for Alberta, Right to Know Week, October, 2010**

What Is The Office Of The Information And Privacy Commissioner?

The Office of the Information and Privacy Commissioner (OIPC) was established in the Northwest Territories in 1997, prior to division, with the passage of the *Access to Information and Protection of Privacy Act*. This legislation was continued in this jurisdiction when Nunavut was created in 1999 .

The Information and Privacy Commissioner (IPC) is appointed by the Commissioner of Nunavut on the recommendation of the Legislative Assembly. The role of the IPC is to provide independent oversight over the way in which the *Access to Information and Protection of Privacy Act* is interpreted and implemented by public bodies and to ensure that the rights and obligations imposed by the Act are respected and maintained. The Act applies to 24 public bodies, including ministries, crown corporations, commissions and more.

How Is An Access To Information Request Made?

To obtain a record from a public body, a request must be made in writing and delivered to the public body from whom the information is sought. If the public body which receives the request does not have the requested records, it has the obligation to ensure that it is forwarded to the appropriate agency.

Upon receipt of an Access to Information request, a public body has a duty to identify all of the records which are responsive to the request. Once the responsive documents are

identified, they are reviewed to determine if there are any records, or parts of records, which cannot or should not be disclosed under the Act before they are given to the Applicant. In most cases, public bodies must respond to access requests within thirty (30) days.

What Happens When A Response Is Not Satisfactory?

If a response is not received within the time frame provided under the Act, or if the response received is not satisfactory, the applicant can ask the Information and Privacy Commissioner to review the decision made.

When the Information and Privacy Commissioner receives a Request for Review with respect to an access to information matter, submissions are requested from both the Applicant and the public body involved. Any third parties whose information might be affected are also given the opportunity to provide input. The IPC is normally provided with access to all of the records in question. Based on the review of the records, the submissions of the parties involved and the application of the *Access to Information and Protection of Privacy Act*, the Information and Privacy Commissioner produces a report containing conclusions and recommendations. The IPC does not have any power to compel public bodies to either disclose or protect information from disclosure but she is required to make recommendations to the Minister or other head of the public body involved. The Minister must respond to the recommendations within 30 days. If the applicant is unhappy with the decision made by the Minister, the Applicant has the right to appeal to the Nunavut Court of Justice.

How Does The Act Protect Privacy?

Part II of the *Access to Information and Protection of Privacy Act* provides rules for when and how public bodies can collect personal information, what they can use personal information for, and in what circumstances that information can be disclosed to another public body or to a third party. It also provides a mechanism which allows individuals the right to see and make corrections to information about themselves in the possession of a government body.

This part of the Act also requires public bodies to maintain adequate security measures to ensure that the personal information which they collect cannot be accessed by unauthorized individuals.

How Are Privacy Rights Enforced?

When an individual has privacy concerns, those concerns can be referred to the Information and Privacy Commissioner for review. The IPC is authorized to investigate privacy complaints and to make recommendations to the public body. The process is very similar to that used for a review of an access to information matter. Submissions are invited from both the public body and the complainant, and from any other person who might have relevant information about the alleged breach. From this information, the IPC can make a determination as to whether or not the public body properly collected, used or disclosed an individual's personal information. Whether or not a breach of privacy can be proven, the IPC will prepare a report which will almost always contain comments and recommendations to improve policies and procedures so as to reduce the possibility of future breaches. The recommendations made by the IPC with respect to privacy issues are provided to the Minister or other head of the public body and, once again, the public body

must then respond to the report and either accept or reject the recommendations made or take other appropriate steps in response. There is no right to appeal the Minister's decision respecting a privacy breach complaint.

Technology doesn't involve an "inevitable" trade off with privacy. The only inevitability must be the demand that privacy be a value built into our technology.

US Supreme Court Justice Samuel Alito, United States v. Jones, No. 10–1259.

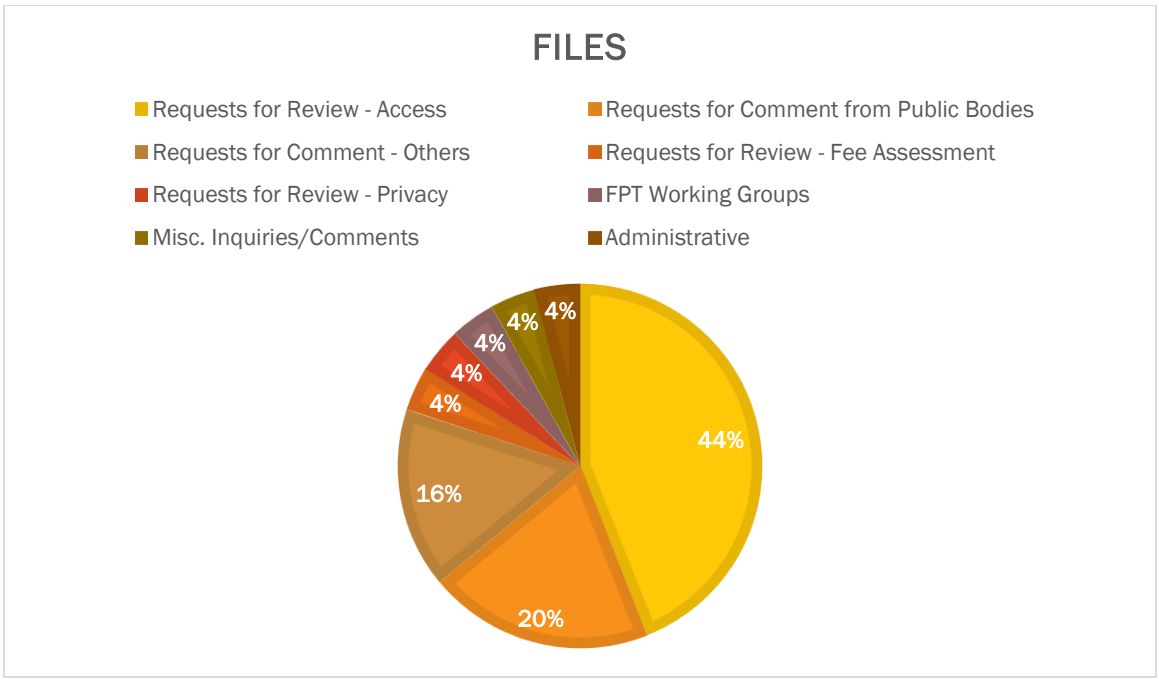
THE YEAR IN REVIEW

In the 2014/2015 fiscal year, my office opened a total of 25 files which is up slightly from the number of files in the previous year. These files included

Requests for Review - Access to Information		11
Requests for Review - Fee Assessment		1
Requests for Comment from Public Bodies	5	
Requests for Comment from outside GN		4
Requests for Review - Breach of Privacy		1
Federal/Provincial/Territorial Working Groups		1
Administrative		1
Miscellaneous Inquiries/Comments	1	

No one department stood out in terms of the number of Requests for Review of access requests. Four of the access to information review files involved the Department of Finance, largely arising out of their role in the hiring process (Human Resources), with Executive and Intergovernmental Affairs having three and the Department of Health and Community and Government each having two. Community and Government Services and Economic Development and Transportation each had one. The privacy complaint arose out of a complaint that a School District was improperly using and/or disclosing student information.

A record 18 Review Recommendation Reports were issued in 2014/2015



The ability to manage and effectively use information is a core skill that needs to be at the centre of any public sector education and training strategy.

Hon. John Reid, Information Commissioner of Canada, Annual Report 2002/2003

REVIEW RECOMMENDATIONS

REVIEW RECOMMENDATION 14-073

Category of Review:	Breach of Privacy
Department Involved:	Department of Finance
Sections of the Act Applied:	Section 40(c)(i), 41, 47, 48
Outcome:	Conclusions of fact disputed but recommendations accepted

The Complainant was the successful candidate on a job competition but the competition process included a number of unusual delays and peculiarities which prompted the Complainant to make an Access to Information Request. As a result of that request, he received documents which suggested that information about his personal health and other circumstances had been widely disseminated in an email chain discussing his suitability for the job. The documents also showed that, in an attempt to influence the hiring decision, the Deputy Minister of the hiring department had written to the Deputy Minister of the Department of Finance citing rumours about the candidate's health status and possible conflicts of interest. While the hiring department acknowledged that it had passed on information about the candidate to Human Resources which they had gleaned from "public knowledge", they took the position that they were entitled to collect, use and disclose the information as part of the hiring process and, in any event, the only administrative decision made based on the information was to hire the applicant so that no harm was done.

The IPC found that the Deputy Minister for the hiring department improperly collected, used and disclosed the candidate's personal information. She also concluded that the candidate's personal information was shared with employees who had no need for that information, thereby breaching the candidate's privacy. She commented on the impropriety of using information gleaned from "public knowledge" in the hiring process. A number of recommendations were made to improve the protection of information about job candidates in the hiring process.

REVIEW RECOMMENDATION 14-074

Category of Review:	Unauthorized Collection of Information
Department Involved:	Department of Health
Sections of the Act Applied:	Section 40, 41
Outcome:	Recommendations Accepted

The Complainant had received a letter in the mail from the Department of Health, asking him to complete the enclosed form to verify his personal information for the purposes of his health care coverage. The form included a statement which said that if the form was not completed and returned, the recipient risked having his health care coverage suspended or end dated. The form came partially completed with his personal information, including his Health Care number, full name, date of birth, ethnicity and current address. In addition to asking the Complainant to verify his own personal information, the form required him to list all persons (with their dates of birth) who were residing at his current address. At the end of the form, the Complainant was asked to certify that all of the information was correct with his signature. The Complainant was uncomfortable with the request for information about non-family members living in his household.

The IPC agreed with the Department that section 40 authorized them to collect personal information for the purpose of administering the health care program. She also found, however, that while it may be more efficient from the department's perspective to ask people to provide third party information, the Act specifically requires information to be collected directly from the individual involved where reasonably possible. She suggested a number of changes to the form to bring the collection of the information sought within the requirements of the Act.

REVIEW RECOMMENDATION 14-075

Category of Review:	Breach of Privacy
Department Involved:	A Local Housing Organization

Sections of the Act Applied: None Cited
Outcome: Recommendations Accepted

An employee of a Local Housing Organization (LHO) posted financial information about the Complainant on a social media site. The employee was privy to this information only as a result of his employment with the LHO. The breach of privacy was acknowledged by the Nunavut Housing Corporation. The employee had been on a four day drinking binge and posted the information while he was drunk. He had been disciplined for "out of control behaviour related to alcohol consumption" before management had been made aware of the privacy transgression. No further disciplinary steps were taken specifically related to the breach incident, because the information had been deleted before management saw it so there was "no concrete proof that confidential information had been shared".

Because Local Housing Organizations are not listed as "public bodies" under the ATIPP Act, the Information and Privacy Commissioner dealt instead with the Nunavut Housing Corporation. As a result of the review, the manager of the LHO did initiate a discussion with administration staff about protecting the privacy of public housing tenants and it was made clear that if any private information was shared publicly, it would result in strict disciplinary action. In addition, the Nunavut Housing Corporation introduced an "Oath of Office and Secrecy" agreement for all LHO employees similar to the one signed by GN employees.

The Information and Privacy Commissioner made several additional recommendations with respect to the development of a comprehensive privacy policy for LHOs which would include provisions with respect to discipline in the event in the event of a breach of those policies.

REVIEW RECOMMENDATION 14-076

Category of Review: Breach of Privacy
Department Involved: Department of Health
Sections of the Act Applied: None Cited
Outcome: No Recommendations Made

There was a concern raised by the Complainant that he had received a two totally unrelated pieces of correspondence from the Department of Health in the same envelope. One piece of correspondence dealt with his request under the ATIPP Act for certain information and the other was a letter from the Deputy Minister of the Department on a completely unrelated matter. He was angry that the "ATIPP Office" was being used to send the DM's letter as well, thinking that the "ATIPP Office" now had had access to the personal information contained in the DM's letter.

The Department confirmed that there is no "ATIPP Office" within the department. It is the Deputy Minister's responsibility to provide responses to Access to Information Requests and, in this case, the same people were handling both the response and the DM's letter. Both letters were, in fact, signed by the DM.

The IPC found that, while perhaps not the best practice to send two unrelated pieces of correspondence in the same envelope, nothing in the actions of the staff in the Deputy Minister's office raised any cause for concern in terms of privacy. The same individual staff would have handled both pieces of correspondence, whether they were sent together or separately. No recommendations were made.

The legislation itself deems thirty days as a reasonable response period. A "reasonable" extension then, in most cases, would be no more than that.

Review Recommendation 14-077

REVIEW RECOMMENDATION 14-077

Category of Review: Fee Assessment
Department Involved: Community and Government Services

Sections of the Act Applied: Sections 8, 11 and 50, Regulation 9, 10, 11, 13, and 14
Outcome: Recommendations Accepted

The Applicant made a Request for Information on December 5th, 2013. He was advised about the fee associated with the request some 12 days later and the Applicant paid the necessary deposit on January 14th. On January 29th, the department extended the time to respond to the request to February 29th, 2014 (a date not on the calendar) because of the volume of records involved. On March 14th, the department took a further extension to April 17th. On May 9th, the Applicant submitted his request for a review of the fees, based on the delay in responding. On May 30th, the Department indicated that the response was completed and ready to be released as soon as the Applicant paid the balance of the fee.

The Commissioner reviewed the provisions with respect to fees for ATIPP requests and made a number of comments about the lack of clarity in the regulations as drafted. She then turned to the issue of delay, pointing out that the Act provides public bodies with only 30 days to respond to a Request for Information, subject to a limited right to extend that deadline for a "reasonable" period of time in certain circumstances. She noted that there is no provision in the Act for multiple extensions - only one extension for a reasonable period of time. She noted that, except in extreme circumstances which did not apply here, a "reasonable" extension would be no more than an additional 30 days. She was not satisfied; in this case, that the public body had established that to respond in 30 or 60 days would have unreasonably interfered with the operations of the public body.

In light of the five month delay in responding, the IPC recommended that the balance of the fees be waived and that the Applicant be provided with the responsive records immediately.

REVIEW RECOMMENDATION 14-078

Category of Review:	Breach of Privacy
Department Involved:	Department of Community and Government Services
Sections of the Act Applied:	Sections 43, 48, 49.9(2)
Outcome:	Finding of Breach of Privacy Accepted Recommendation to Develop Policies Rejected

A member of the public raised concerns about a news report he had heard on CBC North in which an employee of the GN was being interviewed concerning the financial difficulties being experienced by the Hamlet of Pangnirtung. During the interview, the employee explained that part of the difficulty was that a key employee of the municipality, who he named, had been having health issues and was, therefore, away from the community.

There were two issues. The first was whether the disclosure of information "publicly available" amounted to a breach of privacy under the Act. The second was whether a breach of privacy must meet the test of a "material breach" before it is contrary to the Act. The public body relied on the fact that the municipality had posted the information on its website and the interviewee was therefore justified in repeating that information.

The IPC suggested that the breach of privacy by the municipality (which is not subject to ATIPP legislation) did not necessarily justify the second breach by the GN employee. Further, the Act provides for when personal information can be collected, used and disclosed and any collection, use or disclosure outside of those parameters constitutes a breach of privacy, whether or not the breach is "material".

The IPC recommended, once again, that municipalities be included as public bodies under the *Access to Information and Protection of Privacy Act* at least to the extent of imposing obligations with respect to the protection of privacy. In the interim, she recommended that the Department of Community and Government Services create and provide to all municipalities a draft privacy policy for use within the municipalities.

REVIEW RECOMMENDATION 14-079

Category of Review: Access to Information
Department Involved: Economic Development and Transportation
Sections of the Act Applied: Section 5, 6, 7, 25(1),
Outcome: Recommendations Accepted

The Applicant was seeking information pertaining to medevac flights to and from Kitikmeot communities containing details of times, flight durations, stopovers, identification of carrier, number of patients, type of registration of aircraft, origin and identification of air crew and identification of flight crew. The public responded to the Applicant that there were no responsive records.

The public body initially took the position that the information requested was information gathered by NAV Canada and that it was not, therefore, in the custody or control of the public body. During the course of the review, however, it was revealed that in many Nunavut Communities, Nav Canada's services are provided through a Community Aerodrome Radio Station (CARS) and that the Government of Nunavut acts as a contractor to Nav Canada for the CARS program, collecting information and sending it on to Nav Canada. They took the position, however, that the information collected was the property of Nav Canada, not the GN.

The IPC found that the GN had "custody or control" of records which were at least partially responsive to the Applicant's request in the form of the information collected through the CARS system by the GN as a contractor. Subject to the application of any exemptions applicable pursuant to the ATIPP Act, therefore, the records fell within the parameters of records available to the public through an ATIPP request.

The IPC also made some pointed comments to the public body about the attitude of the department toward ATIPP requests as indicated by the content and tone of its submissions

to her office which referred in part to the "obligations" placed on members of the public making ATIPP requests. The IPC pointed out that there are no obligations or restrictions imposed on the public. The Act, in fact, gives the public the right to make as many and as broadly based requests for records as they wish. The only obligations imposed in the Act are on public bodies.

REVIEW RECOMMENDATION 14-080

Category of Review:	Request for Information
Department Involved:	Department of Finance
Sections of the Act Applied:	Section 23(1)(d), 14(1)a)
Outcome:	Recommendations with respect to Access Issues Accepted No comment made regarding recommendations on process issues

The Applicant sought his own personal information from the department with which he was employed as well as from the Department of Finance (Human Resources). The Applicant had reason to believe that he had been branded as an "undesirable employee" and that as a result his applications for employment were being rejected out of hand. He believed that there was a series of emails which discussed his actions in the workplace. The Applicant received a number of records but was convinced that there were additional records which were not disclosed. He also asked that the IPC review those sections of the records that he did receive which contained edits or redactions.

The Applicant pointed to a number of the records which he had received which suggested additional correspondence or communications between various individuals which did not appear in the records. The public body indicated that it had asked all individuals involved to search their own records and provide responsive records and a statutory declaration that the information was complete and accurate.

The IPC commented on the fact that it was inherently a conflict of interest to ask one individual to identify and provide responsive records with respect to a matter involving that person in a work place dispute. She suggested that there had to be additional steps taken to ensure that all of the responsive records were provided in such situations. The IPC recommended that further searches be done by someone uninvolved in the workplace issues to ensure that there were no additional records. She further recommended that the GN update and add to the policies in place on internet use and mobile devices, providing significantly more detail on the obligation of employees to properly document, classify and store the work done by email and on mobile devices.

I strongly recommend that steps be taken by the appropriate GN department to update and add to the policies on internet use and mobile devices, providing significantly more detail on the obligation of employees to properly document, classify, and store the work done by email and on mobile devices.

Review Recommendation 14-080

REVIEW RECOMMENDATION 14-081

Category of Review: Fee Assessment
Department Involved: Economic Development and Transportation
Sections of the Act Applied: Section 50, Regulations 9, 10, 11, 13
Outcome: Recommendations Accepted

The Applicant received a fee estimate of more than $1000.00 to respond to his request for information, all of which was for "searching for, retrieving and preparing responsive records for disclosure". The public body estimated the time it would take to complete the request. They chose to estimate based on 5 minutes per page instead of using the "standard" of 2 minutes per page and 25 cent printing fee" because the response was provided electronically.

The IPC found that the *Access to Information and Protection of Privacy Act* clearly gives public bodies the discretion to require the payment of fees. The fees provided for in the Act, however, do not envision full cost recovery. The public body did admit that many of the records requested were "in media the Government of Nunavut does not promptly file in an organized manner". This was cause for concern for the IPC. She also noted that the regulations surrounding fees were not clear in terms of their application. She was not convinced that the 5 minute per page estimate was realistic, given that electronic records normally are much easier to work with. She recommended a reduction in the fees to approximately $700.00.

If the GN creates a record, it should be properly managed regardless of what media it is in. Good file management should be maintained for all government records. While it may take longer to search for paper records, that time shouldn't be extended by reason of the fact that the records have not been properly managed and stored.

Review Recommendation 14-081

REVIEW RECOMMENDATION 14-082

Category of Review: Access to Information
Department Involved: Department of Health
Sections of the Act Applied: Section 14(1), 15, 23, 24, 25
Outcome: Public Body Response Pending

The Applicant sought all records for a stated period of time with respect to the matter of the Air Ambulance service in the Kitikmeot region. He was not satisfied with the scope of the response received.

The IPC was satisfied based on the information provided by the public body that they had done a thorough search for records and had appropriately transferred parts of the request to other public bodies who were better positioned to respond. There was nothing in the materials provided to indicate that there were any additional undisclosed records.

The IPC did a page by page review of the responsive records and made a number of recommendations with respect to the exemptions claimed.

REVIEW RECOMMENDATION 14-083

Category of Review: Access to Information and Breach of Privacy
Department Involved: Department of Education
Sections of the Act Applied: Section 23, 26, 27, 15, 40, 43, 48
Outcome: Recommendations Accepted

The Department of Education received a complaint from a member of the public about issues at a licenced day home. The Department attended the premises to conduct an investigation and interviewed the staff as well as one of the directors of the not for profit organization which ran the day home, collecting personal information about both staff and

directors. Several informal requests were made by the day home for information as to the nature of the complaint but no information was forthcoming. After several months, the day home made a formal Request for Information under the Act. Records were eventually provided but much of the information was redacted, mostly on the basis that the disclosure would constitute an unreasonable invasion of the privacy of a third party.

In terms of the breach of privacy, the day home organization alleges that the complaint letter received by the Department contained defamatory statements about individual board members and parents which were untrue. Notwithstanding that the statements had nothing to do with health or safety issues within the day home, the Department insisted on conducting an investigation and, in so doing disseminated the information in the letter to a number of individuals both inside and outside the department and collected additional personal information from employees and directors.

The IPC reviewed the responsive records and made a number of recommendations, in particular with respect to those records which the public body claimed would constitute an unreasonable invasion of a third party's privacy. In light of the fact that the Applicant was clearly aware of the identity of the third party, disclosing her name could not constitute an unreasonable invasion of privacy in these circumstances.

The IPC also found that the public body had, in fact inappropriately collected, used and disclosed personal information about the day care staff and directors. She recommended the destruction of that information improperly collected, that a formal apology be made and that the department develop clear policies with respect to the investigation of public complaints received against privately run day homes.

REVIEW RECOMMENDATION 14-084

Category of Review: Access to Information
Department Involved: Department of Community and Government Services
Sections of the Act Applied: Section 14, 17, 24, 33
Outcome: Recommendations Accepted

The Applicant sought access to records of all evaluations and point scores awarded in the evaluation of all bids received on a particular RFP. The public body responded that none of the responsive records would be disclosed, on the basis that the disclosure would reveal:

a) consultations or deliberations involving officers or employees of a public body
b) positions, plans, etc. developed for the purpose of negotiations by the GN
c) contents of agendas, minutes etc. of a public body
d) information that could reasonably be expected to harm the economic interests of the GN by interfering with negotiations
e) information that could reasonably be expected to result in undue financial loss or gain to any person

The IPC found that some of the records which had redactions pursuant to section 14(1)(b) (consultations and deliberations) should have been disclosed because the numbers which had been redacted merely reflected a non-discretionary application of an established formula or pre-set criteria and there was no further assessment required. Further, the records which were withheld pursuant to section 14(1)(c) would not reveal positions or plans developed for the purpose of contractual negotiations, if only because the contract had long since been awarded. Some of the information which the public body sought to withhold was publicly available on the internet and should have been disclosed. She made specific recommendations with respect to the disclosure of each record.

REVIEW RECOMMENDATION 14-085

Category of Review: Access to Information
Department Involved: Department of Finance
Sections of the Act Applied: Section 22, 44, 48, 23
Outcome: No Recommendations were made

The Applicant was unhappy with the outcome of a job competition within a GN department. He sought access to the successful candidate's resume and screening criteria sheet so that he could compare the successful candidate's credentials to his own. He also requested access to his own screening criteria sheet.

The IPC upheld the department's refusal to disclose the records pertaining to the third party as the disclosure of these records would constitute an unreasonable invasion of the third party's privacy. The public body chose, of its own accord, to disclose the Applicant's own screening criteria sheet during the course of the review.

No recommendations were made.

REVIEW RECOMMENDATION 14-086

Category of Review: Extension of Time for Responding
Department Involved: Department of Health
Sections of the Act Applied: Section 11
Outcome: No Recommendations made

The Applicant sought a review of the time taken to respond to his request for information. The request was dated December 2nd, but the cheque which accompanied the request was

dated December 12th, which suggests that it was not sent until at least that date. By an email dated December 21st, receipt of the request was acknowledged by the Department. On January 8th, the public body wrote to the Applicant seeking a clarification of the request, which was provided on January 17th. On January 18th, the Applicant was verbally advised that the public body required "a little additional time" to respond to the request because they needed to consult with a third party. The extension was for 12 days beyond the original deadline and the records were disclosed within that deadline.

The IPC determined, based on the facts that, the extension was appropriately taken by the public body. No recommendations were made.

REVIEW RECOMMENDATION 14-087

Category of Review:	Access to Information
Department Involved:	Department of Executive and Intergovernmental Affairs
Sections of the Act Applied:	No Sections Cited
Outcome:	No Recommendations made

The Applicant had made an Access to Information request seeking all records in relation to a particular service provided in a particular region over a specified period of time. In the request, he named 20 employees within the GN from whom he was seeking records. A second request was made for the same information four months later, with the addition of one named individual. He confirmed with the public body that he did not want any of the records which had been disclosed in the first request - he wanted only new records. No additional records were found. The Applicant indicated he had "confidential information" that there were other records in existence, particularly in the form of hand written notes, but he would not provide the source of that information or any further details.

The IPC could find nothing to suggest that there were additional records in the custody or control of this department which were responsive to his request. No recommendations were made.

REVIEW RECOMMENDATION 15-088

Category of Review: Access to Information
Department Involved: Department of Finance
Sections of the Act Applied: Section 20(1)(a)
Outcome: Recommendations not Accepted

The Applicant, a member of the press, sought copies of an audit report prepared with respect to certain financial aspects of the Qulliq Energy Corporation. The Department of Finance refused to disclose any of the records on the basis that there was a reasonable possibility that the disclosure could prejudice a law enforcement matter.

The records in question were prepared by the Internal Audit Services, a division of the Department of Finance. Some of the responsive records were not disclosed by the Department because the department deemed that they were procedural only and they "would have been fairly meaningless without the context of the audit". The main record, the audit report itself, was not disclosed because the matter had been turned over to the R.C.M.P. for investigation of possible criminal activity.

The IPC commented that, in order to qualify for an exemption pursuant to section 20(1)(a), there must be a demonstrably "reasonable possibility" that disclosure could prejudice a law enforcement matter. It is not enough simply to say that the record is in the hands of the R.C.M.P. and is therefore part of a law enforcement matter. There must be some evidence that the disclosure will prejudice that law enforcement matter. While the IPC was

prepared to accept that the audit report fit the criteria as a law enforcement matter, there was nothing in the department's submissions to suggest that the disclosure of emails or even of the audit report might result in a prejudice to the R.C.M.P. investigation. Some of the content of the reports and other records would be subject to a mandatory exemption pursuant to section 23 (unreasonable invasion of privacy) but not all of the records would fit within this exemption. In particular, parts of the audit reports included things like "audit criteria", "background", "objectives", none of which contained personal information. The IPC recommended the disclosure of significant portions of the responsive records.

REVIEW RECOMMENDATION 15-089

Category of Review:	Access to Information
Department Involved:	Department of Finance (Human Resources)
Sections of the Act Applied:	Section 13(1)
Outcome:	Recommendations Accepted

The Applicant requested access to certain records associated with the proposed direct appointment of a specific employee to a senior position. The public body identified 52 pages of responsive records, but denied the Applicant access to any of them on the basis that they were protected by section 13(1) which allows for a discretionary exemptions for records which would reveal a confidence of the Executive Council.

The records in question were a package which had been prepared to present to the Executive Council in support of a request to make a direct appointment to a fairly senior position. The package included things like the individual's resume, performance review and criminal record check. It also included things like the position description and other records which were already publicly available. The package was never submitted to the

Executive Council because it was decided to follow the normal hiring process instead. The Applicant acknowledged that there were parts of the package to which he was not entitled but felt that a blanket denial was not appropriate. In particular he sought the name and title of the employee who reviewed and signed the request, the job description and the Job Action Request/Job Evaluation form.

The IPC found that parts of the package did constitute a "confidence of the Executive Council" even though the package was never actually presented to the Executive and therefore never considered by the Executive. However, some of the records were already in the public domain and section 13(1) could not apply to these portions of the record. Other parts of the record included personal information, the disclosure of which would be an unreasonable invasion of a third person's privacy. She recommended the disclosure of some of the responsive records

REVIEW RECOMMENDATION 15-090

Category of Review: Access to Information
Department Involved: Department of Economic Development and Transportation
Sections of the Act Applied: Section 14(1)(b) and 17(1)(c)
Outcome: Recommendations Accepted

The Applicant had made several requests for information with respect to the awarding of the medevac contract for the Kitikmeot. After reviewing the responses received, he made an additional request on a somewhat more focussed basis. The Applicant received 33 pages of responsive records. The Applicant was unhappy with the response, indicating that it was his belief that the department had failed to reveal all pertinent background information.

The IPC found that it was difficult to assess whether or not all responsive records were identified/disclosed because neither the department nor the Applicant responded fully to her requests for input/submissions. She accepted that those portions of the records edited pursuant to sections 14 and 17 were appropriate in the circumstances. She noted, however, that the public body had responded only to the first of the requests made in the Applicant's request for information and that there were three additional request which had not been addressed. She recommended that these three requests be addressed within 30 days.

> *I therefore believe a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action.*
>
> Order 96-006, Alberta Information and Privacy Commissioner

LOOKING AHEAD

The *Access to Information and Protection of Privacy Act* is approaching its 20th anniversary. While the legislation has been updated and improved in some respects over those years, the Act was created 20 years ago when the technological landscape looked very different. The ways in which we collect, use, manipulate, and store information today looks nothing like what it did 20 years ago. In order to remain relevant, the legislation must keep up with changing technologies. Most Canadian jurisdictions have undertaken or are in the process of undertaking full reviews of their respective ATIPP legislative frameworks. As noted in the first section of this Annual Report, the Government of Newfoundland and Labrador commissioned a high profile committee to review their legislation, which has resulted in a very new approach for that province which is cutting edge in almost every way, not only nationally, but internationally. While not all the recommendations in that report would translate well in the Nunavut environment, it is a good starting point. It is time for Nunavut to do a full review of the ATIPP Act with a view to updating and improving the legislation. The review should include, among other things, a consideration of:

a) a legislated duty to document;
b) broadening and clarifying which public entities are covered by the Act;
c) limiting the ability of public bodies to extend the time for responding to access requests;
d) clarifying that disclosure is the rule, even where discretionary exemptions might apply;
e) establish clear accountability mechanisms for managing information at all steps of the digital information life cycle (collection, use, disclosure, retention and disposal) including proper monitoring and sanctions for non-compliance among other things;

f) requiring the completion of privacy impact assessments for all new projects undertaken by a public body, with a review by the Information and Privacy Commissioner;

g) strengthening reporting requirements to the public with respect to the disclosure of personal information between public bodies and/or between public bodies and the private sector.

In the past, I have applauded the Government of Nunavut for its leadership in ensuring that responses to access to information requests are complete and timely. I have, in the last couple of years noticed that that leadership is waning, at least in some public bodies, to the extent that I felt compelled to comment on the very negative attitude of one public body in Review Recommendation 14-079. While the attitude demonstrated by this public body is not pervasive within the public bodies I deal with in Nunavut, it is troubling and it needs to be addressed before that attitude becomes the norm. Because of the ombudsman model which underpins the *Access to Information and Protection of Privacy Act*, the goals and objectives of the Act can only be met if Ministers and other Heads of public bodies as well as senior bureaucrats take a positive leadership role in upholding and reinforcing the focus on openness and accountability that the Act is intended to encourage. An inherent respect for the Act and its goals must exist within public bodies. The alternative is to change the approach of the legislation and give "order making" power to the Information and Privacy Commissioner. While this is not my preference, it is something that may have to be considered in any review of the legislation if public bodies cannot be counted on to voluntarily embrace the goals of the Act.

As I have advocated for a number of years, once again I would encourage the development of health specific privacy legislation which will not only accommodate the realities of how personal information is used within the health system, but will also create the privacy framework around electronic medical records as the system moves more and more in that

direction. Nunavut is now the only Canadian jurisdiction which does not have this kind of legislation.

In my last Annual Report, I commented on the issue of pro-active disclosure of information with respect to government contracts. I commented in particular about the difficulty I had in finding information about contracts awarded. As a result of that report, I spent some time discussing the issue with Mark McCulloch with the Department of Community and Government Services who walked me through their system. It appears that there is far more information on line than I first thought, if you know where to look for it. I would encourage all public bodies to continue to improve their pro-active disclosure of as much information as possible and to make finding that information intuitive and easy. Many Canadian jurisdictions are making progress in this, making records available in electronic form at a "one stop shop" so that it can be found and downloaded with the least amount of effort on the part of the public.

As always, I would like to express my thanks to those within the Government of Nunavut that I work with, especially Jessica Bell, the Manager of ATIPP. Good debates and good discussions about issues that arise give us both a better understanding of how the Act works or should work, even when we do not always agree on direction or policy.

Respectfully Submitted

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner

OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER
OF NUNAVUT