



Ministère de l'Exécutif et des Affaires Intergouvernementales

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

June 2019

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Nunavut Marjallatlop Naki, Iqalukkiq
Economic Development and Finance
Nunavut Legislative Library

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Introduction

Thank you for allowing us to appear before you on April 11, 2019 to discuss the Information and Privacy Commissioner's 2016-2017 and 2017-2018 Annual reports. During our meeting government officials had committed to providing you more information on a number of topics, and while some of the matters will be addressed in responses to your specific recommendations, we'd like to take this opportunity to provide additional information.

Regarding Text Dedicated ATIPP Coordinators:

During the meeting there was some confusion on which departments had dedicated Access to Information and Protection of Privacy (ATIPP) coordinator positions. These departments are:

- Department of Justice: ATIPP and Privacy Policy Analyst
- Department of Human Resources: ATIPP Coordinator
- Department of Executive and Intergovernmental Affairs: ATIPP Advisor
- Department of Education: ATIPP/ Records Management Coordinator
- Department of Health: ATIPP Coordinator
- Department of Environment: Records Manager/ ATIPP Coordinator

Regarding Text Messages:

There were also several questions regarding use of text message and other forms of instant messaging by Government of Nunavut employees in the exercise of their duties.

There is a Government of Nunavut policy that governs the use of mobile phones. The policy states that all wireless communications records, which include text messages and other instant messages, shall be subject to requirements under the *Archives Act* and *Access to Information and Protection of Privacy Act*. The regulations under the Archives Act classifies instant messages as temporary information and therefore transitory. What this means is that routine text messages done as government business are not required to be saved or kept under a records management schedule, unless, the message contains significant information in which case it must be kept and saved appropriately so that it can be retained and accessed according to records management policies.

This means that every decision and opinion related to the Government of Nunavut must be documented and accessible based on records management retention schedules and under the access provisions of the *ATIPP Act*. Operationally there is a requirement for employees to save copies of their important text or instant messaging communications on a Government of Nunavut computer.

Government of Nunavut employees are allowed to use devices owned by the Government of Nunavut for personal communication so long as it does not result in excessive costs. Personal communications may be deleted according to Government of Nunavut policy.

Regarding the Cannabis Act and the Sale of Legal Cannabis in Nunavut

1. Ms. Towtongie asked for information on whether a Privacy Impact Assessment had been done on the information sharing provisions of the *Cannabis Act*, and if so, if the results would be made public.

Response:

A Privacy Impact Assessment has not yet been done as the Department of Finance hasn't moved forward with establishing an information sharing agreement with our Agents. If they do, they will complete a Privacy Impact Assessment in consultation with the Information and Privacy Commissioner.

2. Mr. Quassa wanted to know how many Government of Nunavut employees have access to the cannabis purchase records of Nunavummiut. He also wanted to know what safeguards were in place to prevent the misuse of this information.

Only two employees have access to sales records but only at a very high level, and with no personal data. They receive information on total number of grams sold, number of orders, cost, and the total Nunavut Liquor and Cannabis Commission mark-up. We do not currently receive any data about who is purchasing cannabis, which communities cannabis is sent to, or any payment information (eg. credit card numbers).

3. Mr. Mikkunwak wanted to know in regards to the Cannabis Act, will Nunavut follow federal regulations around privacy, or will/does it follow its own?

Response:

The deciding factor when determining jurisdiction related to information in the custody of a public body is who physically control and has access to the information.

Any information in the custody or control of a Nunavut public body, as defined in Nunavut's *ATIPP Act*, must be treated according to Nunavut's *ATIPP Act* and regulations. While there are federal regulations related to Cannabis, the custody of the information is the deciding factor on requirements related to privacy and disclosure of information collected by a public body. If information is in the custody of the federal

government, then the federal *Privacy Act* and *Access to Information Act* would apply to the records.

For any personal information in the custody of cannabis producers or sellers, they must meet obligations in the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, a piece of federal legislation that governs with the privacy requirements of businesses.

Regarding the Reports to be Tabled

4. Mr. Main wanted information from Community and Government Services regarding when the Legislative Assembly could expect to see the tabling of the Procurement Activity Report, the Contracting Activity Report and the Leasing Activity Reports (PAR-CAR-LAR).

Response:

The 2017-2018 Procurement Activity Report, the 2017-2018 Contracting Activity Report and the 2017-2018 Leasing Activity Report were all tabled on June 3, 2019.

Responses to Recommendations of the Standing Committee

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.

Response:

The department recently made significant changes to the legislation in 2017. While we can commit to including this recommendation as a consideration during our next legislative amendment project, this will likely not be in the near future.

We are concerned about a six month legislated timeline as there are many factors outside of our control. We have many legislated timelines we're currently working under and we currently prioritize service to Nunavummiut before tabling of an administrative report. Workload has increased substantially in recent years and we see it only increasing.

Additionally, the tabling of the report is dependent on the publishing of the Information and Privacy Commissioner's report, as we take the opportunity to respond to their

report's content in our annual report. We also have to coordinate information from every department while writing this report which can be difficult due to departmental capacity and priorities which may take priority over reporting requirements.

The standing committee further recommends that the Government of Nunavut 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*.

Response:

The report has been completed and we had hoped to table in the spring 2019 sitting of the legislative assembly. Unfortunately there was some confusion related to process by the new Manager of the Territorial ATIPP Office and the translated reports were not brought over to the legislative assembly in time for tabling. We will have these completed reports tabled as soon as possible in the Fall 2019 sitting of the Legislative Assembly. In the meantime, a copy of the translated report has been provided as an appendix, "Appendix A", so you have access to the document before this time.

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*.

Response:

Work is currently underway, and draft versions of the updated policies have been completed. We're hoping to have all reviews and approvals completed to launch these policies in the fall or winter of 2019.

The Standing Committee further recommends that the Government of Nunavut's response to this report include detailed descriptions of findings of each privacy impact assessment and preliminary assessments 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.

Response:

A detailed table with this information has been included as an appendix, "Appendix B" to this report.

Please note that this is a list of completed Privacy Impact Assessments or Preliminary Privacy Impact Assessments. There are other assessments ongoing or in draft stages which are not captured by this list.

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.

Response:

There is no current standardized process for entering into an information sharing agreement, and information related to these agreements is not collected in a central location. Additionally there is no requirement for departments to report on this information; however, I've asked departments to try their best to search through their files to find this data. It's possible that some agreements are missing from the list due to staff turn-over, or other factors.

The information and privacy commissioner was not consulted on any of the information sharing agreements that we entered into. While we are not opposed to consulting her office and she has committed to providing any review requested of her related to her mandate, as she admitted in her appearance, she is extremely busy and review by her office may take significant time. Entering into these agreements is a time sensitive process, because they are necessary to maintain operations of programs and services that require the sharing of information.

The list of agreements can be found in the attached appendix, "Appendix C".

Standing Committee Recommendation #2

The standing committee recommends that the Government of Nunavut 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.

Response:

Please find attached Health's response to the recommendations in the attached appendix "Appendix D".

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.

Response:

Health continues to be committed to working on developing health-specific privacy legislation. Health met with Inuit Qaujimajatangit Katimajit, an advisory committee of elders from across the territory. Advice was provided on how the legislation could be made accessible. The committee provided key insights on privacy that will help Health develop materials for the public during the process and beyond. At this time the public consultation dates have not been set.

This process has faced some delays due to changes in government, namely an election, but work is still being done to ensure we create legislation that is effective, efficient and ensures the protection of personal health information. It is important to do this without impeding on the ability of our health professionals to use information to provide us with the high quality in health care services that Nunavummiut deserve. As noted when we met with the Commissioner, we want to ensure we do not create a piecemeal Act that does not meet our needs once implemented. In the meantime, we have updated and solidified our privacy directives which support the *ATIPP Act* in the administration of our health care services. These directives have been sent to the Commissioner for review.

In the meantime, Health has been leading a committee with representation from across the Department and the Department of Justice. In the absence of legislation, the Committee has been working to develop a culture of privacy within the Department of Health through the following activities:

- regular circulation of privacy directives for staff;
- consistent training and presentations for all staff;
- standard orientation presentations for new front-line health care providers; and
- information dissemination through the Pulse and the Connection (Health's internal newsletters).

Department of Health officials will continue to meet with the Commissioner to address any follow-up comments not reflected in our official response.

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 protections at community health centres outside of Iqaluit.

Response:

Health is currently reviewing and updating Privacy and Security policies in relation to sending and transmitting clients' personal health information within and outside of the GN and capturing personal health information on media devices in order to protect the privacy of its clients.

On this front, Health is also working to procure an auditing tool for the interoperable electronic health records (iEHR) system. This software would be placed on the MEDITECH servers to monitor unauthorised patient file access, helping to ensure that patient information remains private and confidential.

Health has also created online eHealth privacy awareness training for all new and existing staff who access MEDITECH to ensure such personnel understand the legislative and policy requirements applicable to the handling of personal information.

MEDITECH functionalities are also being reviewed to ensure that it is capturing the consent provided by clients relating to the collection, use, and disclosure of their personal health information. Health is also working to ensure that all front line staff know how to obtain such consent and document any exceptions in MEDITECH. Processes will be reviewed to determine how exceptions are brought to the attention of health care providers and handled accordingly.

Health also has a directive on transmitting personal health information, which provides guidance on password protecting attachments, encrypting emails and encrypted secure file transfer. Email messages are not currently automatically encrypted on the GN email system because GN email users are contained within the GN firewall. The Department of Health and the Department of Community and Government Services are working together to explore additional options for encryption.

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.

Response:

There is no firm timeline to bring municipalities under the legislation as public bodies. The plan is for Community and Government Services to work with municipalities to build the capacity necessary to be brought under the act on a timeline that works for them. We understand that municipalities can struggle with capacity and resources and we don't want to force additional work onto them that they are not prepared to take on.

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(e) of the *Access to Information and Protection of Privacy Act* in respect to the designation of District Education Authorities as public bodies.

Response:

The regulations to bring the District Education Authorities under the legislation are currently being drafted and practical options are being explored to support any requests that may be made. Once approved, the *District Education Authorities* will be under the *ATIPP Act*.

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.

Response:

In small jurisdictions like Nunavut sunshine lists are sensitive topics. The government needs to balance transparency with personal privacy considerations. In the meantime, information on any employee's job classification, salary range, and/or employment responsibilities can be accessed through an ATIPP request.

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.

Response:

Legal counsel provides advice to departments when requested. Because responses to Information and Privacy Commissioner Recommendations are quite sensitive, legal counsel is often consulted by departments before response are provided to the applicant and Information and Privacy Commissioner.

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.

Response:

As discussed above under recommendation 1, the department only recently made extensive changes to the legislation in 2017. While we can commit to including this recommendation as a consideration during our next legislative amendment project, this will likely not be in the near future. This is currently done practically. A review of previous Information and Privacy Commissioner Reviews found that of the 27 times the Government of Nunavut either declined to follow some or all recommendations, only in 3 instances were no reasons given. This was over the span of 18 years.

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.

Response:

The Department of Human Resources has committed to sending this letter.

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*.

Response:

A full response to this report has been included as an appendix to this report, "Appendix E".

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.

Response:

The Government of Nunavut does not have a formal position on this to provide at this time, however we share some of the concerns quoted in the standing committee's report. We agree with the assessment of the Information and Privacy Commissioner provided during the hearing, where she identified that privacy is best maintained when disclosure of personal information is done on a case by case basis depending on the facts, including the risk to public safety.

It is important to realize that in a small territory like Nunavut, releasing information on the sex offender registry does not just breach the privacy of individuals on that registry, that release of personal information related to sexual offenses also potentially reveals the identity of the offender's victims. According to a 2017 Stats Canada report titled "Self-reported sexual assaults in Canada, 2014", the offender in 41% of police-reported sexual assaults were friends, acquaintances or neighbours of the victims, whereas 22% of victims of sexual assault were the family of the offender, 5% were a current or former spouse or common-law partner, and only 19% were strangers. What this means for a smaller jurisdiction such as Nunavut is that releasing the identity of a registered sexual offender increases the likelihood of identifying their victim.

Releasing the identity of victims could negatively impact their lives in lasting and irreparable ways.

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.

Response:

Ahead of opening the Iqaluit store, and as part of some discussions since, some individuals from the community have suggested the NULC implement a system to ban customers if they have been known to cause harm when drinking. The Government of Nunavut explored the idea, and decided against it for a number of reasons. Three stand out.

First, and most important, there is already a process in the *Liquor Act* where a justice can file an "*order of interdiction*" that prohibits the sale of alcohol to an individual for up to three years. It is more appropriate (and fairer to everyone) for the Court to impose such limits than to ask NULC's retail staff to make these decisions. The NULC is prepared to fully respect any interdiction orders made under the *Act*.

Second, we do not think banning customers helps reduce overall harm. Banning individuals from the store reduces their legal access to lower-alcohol products like beer and wine, and so encourages them to buy directly from bootleggers, which sell mostly hard alcohol. This goes against the intent of the store itself. Practically speaking, banning customers from the NULC store does not, for many, actually stop their ability to purchase, possess or consume alcohol.

Third, NULC staff are already empowered (and required) to refuse service to individuals who appear intoxicated. We take this responsibility seriously, and are pleased to have heard many compliments about our polite but firm approach when turning individuals away. Further, we may also refuse service to individuals who become agitated or otherwise harass store staff or other customers. It is appropriate for our staff to make these decisions as they respond to actual circumstances in the store. A customer ban, on the other hand, relates to concerns and assumptions about how an individual *may* act, so more appropriately falls to the Courts.

Appendix B: Preliminary Privacy Impact Assessments (Pre-PIAs) and Privacy Impact Assessments Conducted from 2016-Present

Year	Title	Department or Public Body	Issue	Findings	Full Privacy Impact Assessment Required?	Review and comments from the Information and Privacy Commissioner
2017	Building Code Act and Regulations (Pre-PIA)	Community and Government Services	Privacy considerations around information that CGS is required to collect under this Act.	The amount and type of information being collected is relatively low risk in terms of sensitivity.	No.	No consultation undertaken.
2018	Career Development Client Management System (Pre-PIA)	Family Services	Privacy considerations around replacing existing stand-alone systems with a single IT system.	No additional information will be collected, but will merely change how information is stored. Upgrading this system is not currently a priority for the department and may be revisited in a few years.	No.	No consultation undertaken.
2018	Education and Support Services (Pre-PIA)	Education	Privacy considerations around contracting specialized support for students.	Consent forms will be signed by parents/guardians; schools will make sure they receive informed consent. Personal information will be password protected.	No. No significant issues as long as the proper documents are distributed.	No consultation undertaken.

2018	Nunavut Hearing Screening Project (Pre-PIA)	Health	Privacy considerations around one-time hearing assessments on school children.	There are no foreseen risks beyond the collection and storage of the hearing assessments.	Yes. Due to the sensitive nature of the health records.	No consultation undertaken.
2018	Housing Management System (Pre-PIA)	Nunavut Housing Corporation	Privacy considerations around extending the existing system to include people in public and staff housing, people in home ownership programs, and NHC and LHO staff.	There are no foreseen privacy issues, and a unified computer system will improve the security of the data.	No.	No consultation undertaken.
2018	iManage Document and Knowledge Management Software Implementation (Pre-PIA)	Justice	Privacy considerations around implementation of a new document management system for Legal Division.	The proposed system has been thoroughly researched and is an industry leader that is commonly used in law firms.	No. There are no anticipated risks.	No consultation undertaken.
2018	Family involvement, Postvention and Mental Health and Addiction Monitoring System, as part of the new Mental Health Act (MHA) (Pre-PIA)	Health	Privacy considerations around a new family and involvement procedure in mental health, addiction and post-suicide attempt situations; as well as a monitoring and reporting system for suicide issues.	A similar monitoring system has been credited with reducing suicide among White Mountain Apache Tribe. Potential privacy risks must be weighed against potential positive changes and the harms of making no change.	Yes. Due to identifiable sensitive personal information, and new disclosure procedures not currently used in Canada.	The Commissioner's review and comments were limited due to time constraints, but she advocated for notifying family and friends on a case-by-case basis based on doctor's recommendation, rather than in all scenarios.
2018	Public Trustee Sage Software	Justice	Privacy considerations around a new computer system for public trustees.	This would migrate data and give a necessary update to old software.	No. However, concerns should be addressed	No consultation undertaken.

	(Pre-PIA)				through appropriate agreements.	
2018	School Social Media Policy (Pre-PIA)	Education	Privacy considerations around use of social media in a school setting.	Use of social media usually requires the user to submit personal information that is then held and potentially commercialized by third parties.	No. The personal information is minimally invasive and the program is completely voluntary.	No consultation undertaken.
2018	Video Surveillance Systems Policy (Pre-PIA)	Community and Government Services	Privacy considerations around implementing a video surveillance policy.	The adoption of a new video surveillance policy will impact how personal information is collected, used, shared/disclosed, stored, transmitted, protected and/or disposed of.	Yes. Since this program will capture and store personal information in new ways.	No consultation undertaken.
2018	CFS Case Management System Full Privacy Impact Assessment	Family Services	Privacy considerations around implementing new case management software.	Technical Assessment of the software found no significant technology based concerns.	N/A	The Commissioner was consulted on the Privacy Impact Assessment and provided substantial comments. After discussing this file, it was determined that a second Privacy Impact Assessment should be completed.

Appendix C - Information Sharing Agreements

Agreement Title	Department	Statute	Description
Concerning the Disclosure of Driver's License Information	Economic Development and Transportation	<i>Statistics Act</i>	Collecting personal information on people living in Nunavut as part of Stats Canada's mandate.
Concerning the Disclosure of Information Products from the Department of Community Government, Housing and Transportation, Government of Nunavut	Economic Development and Transportation	<i>Statistics Act</i>	Providing vehicle registration files for the basis of carrying out the Canadian Vehicle Survey
Agreement with Elections Canada	Economic Development and Transportation	<i>Traffic Safety Act</i>	Sharing of driver's license information for the purposes of updating the Register of Electors.
Agreement Concerning the Sharing of Information between Statistics Canada and the Nunavummit Kiglisiniartiiit (Nunavut Bureau of Statistics)	Executive and Intergovernmental Affairs	<i>Statistics Act</i>	Sharing of personal information of Nunavummiut collected by both public bodies for the purposes of statistical analysis of data.
Agreement for the Exchange of Information with the Government of British Columbia	Finance	<i>Income Tax Act</i> <i>Insurance Act</i> <i>Petroleum Products Tax Act</i> <i>Property Assessment and Taxation Act</i> <i>Tobacco Tax Act</i>	This agreement allows for the sharing of information with the province for the purposes of administering the various tax acts in their respective jurisdictions.
Exchange of Information Agreement with the Government of Manitoba	Finance	<i>Petroleum Products Tax Act</i> <i>Tobacco Tax Act</i> <i>Payroll Tax Act</i>	This agreement allows for the sharing of information with the province for the purposes of administering the various tax acts in their respective jurisdictions.

Exchange of Information Agreement with the Government of New Brunswick	Finance	<i>Income tax Act</i> <i>Insurance Act</i> <i>Petroleum Products Tax Act</i> <i>Property Assessments and Taxation Act</i> <i>Tobacco Tax Act</i>	This agreement allows for the sharing of information with the province for the purposes of administering the various tax acts in their respective jurisdictions.
Exchange of Information Agreement with the Government of Nova Scotia	Finance	<i>Payroll Tax Act</i> <i>Petroleum Products Tax Act</i> <i>Tobacco Tax Act</i> <i>The Property Assessment and Taxation Act</i>	This agreement allows for the sharing of information with the province for the purposes of administering the various tax acts in their respective jurisdictions.
Exchange of Information Agreement with the Government of Saskatchewan	Finance	<i>Payroll Tax Act</i> <i>Petroleum Products Tax Act</i> <i>Tobacco Tax Act</i> <i>Property Assessment and Taxation Act</i> <i>Insurance Act</i>	This agreement allows for the sharing of information with the province for the purposes of administering the various tax acts in their respective jurisdictions.
Canadian Cancer Registry	Health	<i>Statistics Act</i> <i>Diseases Registries Act</i>	Agreements with Statistics Canada for sharing of information related to Cancer prevalence in Nunavut.
Canadian Congenital Anomalies Surveillance System	Health	<i>Diseases Registries Act</i>	Agreement with the Public Health Agency of Canada.
Statistics Canada Data Sharing Agreement	Health	<i>Statistics Act</i>	Agreement to cover information sharing from Statistics Canada to Nunavut, including provisions related to privacy, security, use of information, and dealing with breaches. Also includes appendices on data security and the role of the data custodian.
Canadian Chronic Disease	Health	<i>Statistics Act</i>	Service Contract with Public Works

Surveillance System			(Canada) and Services Canada on behalf of the Public Health Agency of Canada.
Public Health Agency of Canada Invasive Bacterial Diseases Surveillance Program Memorandum of Understanding	Health	<i>Statistics Act</i>	Memorandum of Understanding with the Public Health Agency of Canada to share information to allow for the surveillance of Inflammatory Bowel Disease in Nunavut.
Public Health Agency of Canada Hepatitis B Vaccination Study	Health	<i>Statistics Act</i>	Agreement to allow for the study of Hepatitis B Vaccination in Nunavut.
Protocol between the Representative for Children and Youth and the Department of Education	Education	<i>Representative for Children and Youth Act</i>	Protocol for the sharing of information between the Representative for Children and Youth and the Department of Education for the administration of the <i>Representative for Children and Youth Act</i> .
Protocol between the Representative for Children and Youth and the Department of Family Services	Family Services	<i>Representative for Children and Youth Act</i>	Protocol for the sharing of information between the Representative for Children and Youth and the Department of Family Services for the administration of the <i>Representative for Children and Youth Act</i> .
Agreement with Nunavut Housing Corporation for the sharing of information related to Income Assistance and Nunavut Housing Corporation Programs.	Family Services and Nunavut Housing Corporation	<i>Income Assistance Act</i>	Agreement with FPTs and Public agencies for administering, enforcing or evaluating programs



Appendix D - Official Health Response to Standing Committee on Public Accounts, Independent Officers and Other Entities (PAIOOE) Report on the Review of the Information and Privacy Commissioner's 2016 Report on the Privacy Audit of the Qikiqtani General Hospital

The Standing Committee (SC) on Public Accounts, Independent Officers and Other Entities (PAIOOE) put forward three recommendations in 2017, based on their review of the privacy audit completed by the Information and Privacy Commissioner of the Qikiqtani General Hospital. While we acknowledge that the Department of Health did not previously provide a prepared response, we have continued to remain committed to making policies public as they are finalized. An example of this is the Interoperable electronic health record Privacy and Security Directives, which were tabled in June 2017.

The responses below provide a detailed description of the GN's 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.

Recommendation #1: Legislation and Policy

SC recommended that the Government of Nunavut (GN) develop a suite of policies that establish mandatory requirements and responsibilities for the protection of personal health information that is collected, used, or disclosed by the hospital, community health centres, and all other health service providers in the territory.

Response:

The GN continues to work on improving policy around electronic records. The Department of Health updated and solidified privacy directives which support the *ATIPP Act* in the administration of our health care services. Health officials continue to work with the Commissioner to address comments from the IPC report.

ATIPP policies currently in the process of being implemented include:

- Disclosure of Personal Information – legal fact sheet completed
- Privacy Breach and Incident Policy – in place
- Clean Desk Policy – in progress
- Release of Information – in progress
- Internal mail protocol – in progress

SC also recommended that the GN ensure that a definition of personal health information is addressed.

Response:

The GN defines Personal Information (PI) as: recorded information about an identifiable individual that relates to:

- The individual's name, home or business address or home or business telephone number.
- The individual's race, colour, national or ethnic origin or religious or political beliefs or associations.
- The individual's age, sex, sexual orientation, gender identity, marital status or family status.
- An identifying number, symbol or other particular assigned to the individual.
- The individual's fingerprints, blood type or inheritable characteristics.
- Information about the individual's health and health care history, including information about a physical or mental disability.
- Information about the individual's educational, financial, criminal or employment history
- Anyone else's opinions about the individual.
- The individual's personal opinions, except where they are about someone else
- The provision of health care to the individual, or
- Payment for health care provided to the individual.

Personal health information also includes:

- The personal identification number and any other identifying number, symbol or particular assigned to an individual, such as a client identifier number.
- Any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care.

SC recommended putting in place privacy protection measures and guiding principles limiting the number of persons who can access personal health information; limiting the manner and scope that personal health information may be collected; and taking specific measures to monitor the implementation of legislation and policies concerning privacy protection.

Response:

The Department of Health (Health) has been working on a comprehensive set of standards and policies. For example, themes around privacy and the protection of confidential personal health information for the Home, Community, and Continuing Care program include:

- Access
- Collection
- Disclosure of, and corrections to the clinical record under the *Mental Health Act*
- Disclosure to police
- Protection of privacy during use and disclosure
- Retention and destruction
- Security and storage

The *ATIPP Act* requires Home and Community Care to protect the Personal Information of all clients and employees. This includes all identifiable information about clients, including their name, age, gender identity, sexual orientation, blood type, inheritable

characteristics, and information about the client's health and health care history. The policy defines how to ensure all privacy breaches involving personal information are reported, recorded and investigated.

The Community Health Network (CHN) manual provides guidance on privacy, ATIPP, and disclosure of information in general. Some policies to highlight include:

- Client Safety Events – Reporting and Management
- Client Safety Disclosure Policy
- Confidentiality Guidelines
- Guidelines for Transmission of Health Information by Facsimile
- Guidelines for the Release of Information
- RCMP Investigations
- Health Records Management
- Law Enforcement Disclosure Form
- Telephone Communications
- Child Welfare
- Reporting Child Welfare Concerns
- Reporting a Death to the Coroner

SC also recommended that persons who are provided access to personal health information be trained; that oaths of confidentiality or standards of conduct be acknowledged and agreed to by persons who have access to personal health information; and that a list be available outlining the circumstances under which personal health information may be accessed.

Response:

Health is reviewing its current policies and procedures around its access privileges. For example, Health has amended its access to MEDITECH procedures to ensure each manager/supervisor, whose authorized access to MEDITECH is responsible for notifying eHealth if there are changes to access requirements, including revoking user accounts during circumstances such as resignation, dismissal or change in position or for any other reason.

Currently when an employee leaves employment of the GN, an employee clearance form is submitted to the Department of Community and Government Services (CGS). Once submitted, GN-Health access is terminated and the employee can no longer access MEDITECH. Once web-based Ambulatory is introduced, Health will also include a Health IT clearance form that will trigger the same actions when an employee no longer is employed by the GN-Health.

In addition, reports are run on a scheduled basis listing any inactive MEDITECH user accounts which are to be reviewed and/or terminated. This allows Health staff to review access rights and prompts managers to ensure access is appropriate. If there is an abuse of privileges, access is revoked.

Lastly, SC recommended that procedures and processes be established to retain or destroy personal health information; that limits be placed on the use, disclosure and

retention of personal health information; and that a list of security safeguards be in place at each facility.

Response:

Health continues to review practices, and is making improvements as per this recommendation. Improvement examples include the installation of an access door at the health records department, the continuous recruitment of staff with expertise in the area of health information management, and access processes, like the Inactive User Report Procedure.

Health has also developed a directive on transmitting personal health information, which provides guidance on password protecting attachments, encrypting emails and encrypted secure file transfer. Email messages are not currently automatically encrypted on the GN email system, as GN email users are contained within the GN firewall. In the interim, Health is working with CGS to explore additional options for encryption.

Recommendation #2: Training

SC recommended that the GN develop a comprehensive and compulsory privacy-specific training program for all hospital and community health staff that includes, but is not limited to, information and procedures related to the patient's right to access, and information and procedures related to identifying and reporting privacy breaches and incidents.

Response:

Health continues to provide privacy-specific training for all hospital and community health staff. Staff training opportunities around records management and ATIPP training are available and provided by the GN, as well as through presentations offered to Community Health staff during meetings and conferences.

The CHN orientation curriculum includes a section on confidentiality, ATIPP and disclosure of information. Nurses also have access to resources like ATIPP charts and fact sheets. With respect to training at QGH, chart confidentiality, privacy, access and disclosure are frequently addressed in nurse orientation sessions and physician education sessions. When possible, experts are brought in to deliver presentations to nurses and physicians in training, introducing them to existing policies and procedures, while addressing questions related to accessing records, protection of privacy, and information-sharing.

SC recommended that the program also provide a specific list of individuals that staff may contact with concerns related to privacy protection in the hospital.

Response:

Health regularly circulates privacy directives and privacy reminders and tips for staff. Staff are expected to relay the relevant information to their patients and clients. Additionally, posters highlighting Client and Staff Rights and Responsibilities are posted in public at QGH.

Reminders about privacy direct staff to speak to the ATIPP Coordinator and/or Legal Counsel.

SC also recommended that the program implement privacy best practices in the workplace, including: storing, transferring and destroying paper and electronic files; use of email, fax, mobile and other electronic devices; having conversations in open spaces; and, sharing information with third parties.

Response:

The GN continues to implement and promote privacy best practices in the workplace. For example, Iqaluit Health Services has celebrated Patient Safety Week for two years in a row. This is a week-long event that is open to the public, and information on patient safety best practices is shared with the public and health staff in all IHS locations throughout the week. Information is also provided on the complaints process and no blame culture.

Privacy training has also been specifically developed for users of eHealth systems, such as the MEDITECH system. The training is currently undergoing its final review.

Lastly, SC recommended that the program provide detailed training on all relevant policies, directives and procedures that may be in place at the facility at that time.

Response:

Health delivers consistent training and presentations for all staff. Standard orientation presentations are delivered to new frontline health care providers, and information has been disseminated through the two health internal newsletters called *The Pulse* and *The Connection*, distributed throughout the territory to health care providers.

Recommendation #3: Oversight

SC recommended that the government clearly assign the role and responsibilities of a privacy officer to a specific individual or a small number of individuals within the hospital until such a time as a privacy officer position can be filled.

Response:

Health has a dedicated ATIPP Coordinator, and two positions have been filled at QGH to carry out responsibilities similar to that of a privacy officer. The responsibility for privacy is divided between the Clinical Advisor and the Quality Assurance and Risk Management Coordinator. Health is also working to revise a request for additional resources to support a health information team.



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Building *Nunavut* Together
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Bâtir le *Nunavut* ensemble

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Department of Executive and Intergovernmental Affairs

Kavamaliqiyikkut

Ministère de l'Exécutif et des Affaires Intergouvernementales

Government of Nunavut Response to the Comprehensive Review of the Access to Information and Protection of Privacy Act

June 2019

Introduction and General Comments

The Government of Nunavut sincerely appreciates the hard work and intensive analysis that went into the June 2017 comprehensive review report of the Information and Privacy Commissioner. The Information and Privacy Commissioner has been in her role since the creation of Nunavut and the Government of Nunavut values her experience and opinions regarding Access to Information and Protection of Privacy. To this end we have provided our comments in good faith on the recommendations she has made in her report, seriously considering the proposals she has put forward.

It's important to clarify that while we cannot commit to implementing any one proposal, as major legislative reform of this kind requires substantial consultation, whole of government collaboration and intensive stakeholder participation, we can commit to taking items under consideration the next time we undertake legislative changes.

We see this document as the beginning of an important and ongoing conversation with the Information and Privacy Commissioner's office and acknowledge that much more work will be required down the line to fully consider these proposals for inclusion in legislation.

Before we go into more detail on the specific recommendations, we would like to make several general comments:

1. Reference to Legislation in Force in Newfoundland in the Information and Privacy Commissioner's review.

The Newfoundland and Labrador Access to Information and Protection of Privacy (ATIPP) Act is a model that offers unprecedented access rights for applicants in the access to information process, but we have serious concerns about how this model would affect the capacity of government departments and the well-being of ATIPP coordinators.

Since the Newfoundland and Labrador Act passed in 2015, annual requests for information have nearly tripled, from 757 in 2014-2015 to 2311 in 2017-2018. While this increase can be seen as a positive, as individuals further engage with the operations of government, this increase also means there was a sudden and profound demand on resources needed to respond to requests.

Bill 48, which amended the *ATIPP Act*, only recently passed in 2017, just under two short years ago. Legislative amendments take extensive time and effort to pass and we worry that a project of this size is premature given the current state of the legislation. We can commit to including this comprehensive review into our next project to amend the legislation, however given that it was only recently amended, the next attempt to amend the legislation likely won't be for several years. Our priorities at this time are implementing Bill 48 through a review of our policies, manuals and regulations.

Some of the amendments in Bill 48 address recommendations that the Information and Privacy Commissioner made in her comprehensive review. Where this is the case we've made note of it under the specific recommendation.

3. Capacity of the Information and Privacy Commissioner's Office

The Information and Privacy Commissioner has raised frequent concerns regarding the capacity of her office to keep up with its current workload as the Office of the Information and Privacy Commissioner for both the Governments of Nunavut and the Northwest Territories. Most recently in April of 2019 during her appearance before the Standing Committee on Oversight of Government Operations and Public Accounts she stated that her office was in fact roughly one year behind in processing reviews.

Many of the recommendations she makes in her comprehensive review of the *ATIPP Act* could substantially add to the workload of the office or create short deadlines that, if not met by her office, would render these provisions meaningless. In order for the *ATIPP Act* to be followed, it needs to be reasonable and feasible to implement it and we worry that many recommendations provided are too aspirational and dependent on an optimal system that is not in place.

Specific Comments on Recommendations

For ease of reference we've used the same headers as the Information and Privacy Commissioner used in her comprehensive review. Government of Nunavut responses specific to each recommendation can be founded following these recommendations below.

1. The Purposes of the Act:

1. *I recommend that the purpose of the ATIPPA [Access to Information and Protection of Privacy Act] set out in the existing version of section 1 to be recast to read:*

- v. *Make recommendations to government and to public bodies as to actions they might take to better achieve the objectives of the Act, and*
- vi. *Educate the public on all aspects of the Act.*

Response

The above purpose section is of a general nature and we have no concerns with most of the content. The majority of the above provision is best practice currently set out through legal precedent or policy. The only concern the Government of Nunavut has with the above provision is having one of the purposes of the Information and Privacy Commissioner as an advocate for access to information and protection of privacy. Advocacy work and operating in a quasi-judicial or ombudsman role should be done exclusively. We worry that the impartiality of the work of the Information and Privacy Commissioner would be affected by requiring her to also be an advocate for access to information and protection of privacy. This essentially sets her up as a representative for the applicant, rather than as an impartial moderator between the applicant and the public bodies. The Government of Nunavut sees this as a conflict of interest.

2. Proactive Disclosure

- 2. *I recommend that amendments be made to the Access to Information and Protection of Privacy Act which would require public bodies to pro-actively disclose certain, specific types of information, such as factual material, statistical surveys, public opinion polls, environmental impact statements, procurement information and other records often of interest to the public.*

Response:

We already do, as a matter of policy and procedure, release much of the information that the Information and Privacy Commissioner references here. So long as the provisions of the legislation allow for a fair and manageable release schedule that doesn't affect the operations of a public body, we have no concerns.

- 3. *I recommend amendments to address the disclosure of incomes of public servants earning incomes over a stated amount, as well as the pro-active disclosure of information such as employee travel costs. This would bring Nunavut in line with most other Canadian Jurisdiction.*

Response:

If we were to adopt this recommendation we would likely look to include a subsection that would allow the public body discretion in extenuating circumstances, perhaps similar to section 7(2)(b) mentioned above.

- 6. I recommend amendments to require public bodies to conduct "access assessments" and to incorporate "access by design" into new initiatives on a go-forward basis to help to ensure that the future of access to information in Nunavut remains robust and up to date.*

Response:

We can commit to exploring this concept more fully through consultation with the Information and Privacy Commissioner. This is not something that's a common practice in Canadian Jurisdictions and so there are no examples of how it could work in small jurisdiction such as Nunavut. We would need to be cautious so that access assessments did not create artificial barriers to new initiatives by creating unreasonable paperwork burdens on departments.

3. Administration of the Act

- 7. I recommend the inclusion of a provision which would limit the disclosure of the name of an Applicant in the ATIPP process similar to the provision in the Newfoundland legislation.*

Response:

We made amendments of this nature to the legislation in 2017 as part of Bill 48. As such, it is not necessary to comment further.

4. Definitions

- 8. I recommend the following changes to section 2:*
- a) Subsection (a) of the definition of "personal information" should include "personal email address", "personal IP address" and "other personal electronic contact information" and reference to business contact information should be removed.*

Response:

There were no recommendations made under this section. As such we have no response.

6. Paramountcy (Section 4)

9. *I recommend that there be an amendment to the Act which would require any proposed paramountcy provision in new or amending legislation be submitted to the IPC for review and comment.*

Response:

We appreciate the Commissioner's desire to uphold the strength of the ATIPP Act; however please see the above general concern related to the capacity of the Information and Privacy Commissioner's office. We would be concerned that without the appropriate capacity, this requirement could unreasonably slow down the legislative process.

7. Fees

10. *I recommend that the Application Fee be eliminated.*

Response:

We aren't opposed to reviewing the fee with the goal being a reduction to a more comparable cost to other jurisdictions, however we are opposed to removing the fee altogether. The fee is a check and balance to those who would abuse the system and, contrary to the Information and Privacy Commissioner's opinion, we do see it as valuable for this very purpose. The Information and Privacy Commissioner has quoted a report from Newfoundland and Labrador regarding the merit (or lack thereof) of retaining an application fee, but as discussed above under the general recommendations, we have concerns related to the effect that the amendments made in response to this report have had on ATIPP coordinators in this jurisdiction.

11. *I recommend that an Applicant be allowed up to 15 hours of search time before a fee is assessed on a general access to information request. There should continue to be no limit for requests for personal information.*

Response:

Before we address this recommendation we should address the comment made by the Information and Privacy Commissioner on page 9 of the comprehensive review, immediately before this recommendation. She states "As a result of reviews done, however, it is now generally accepted that a fee cannot be applied to the time spent reviewing and redacting a record for disclosure." With all due respect to the Information and Privacy Commissioner, in 2015 when the Department of Executive and Intergovernmental Affairs last amended these regulations, it was agreed upon at this time that it was prudent to allow for the assessing of fees for review and redaction for the purposes of applying mandatory exemptions under the *Act*. This has come into effect as Section 11 (6) of the *ATIPP Regulations*. Since these amendments were made, no review of the Information and Privacy Commissioner has touched on the appropriateness of assessing fees for review and redaction to apply mandatory exemptions.

To speak directly to the recommendation, we believe the current system is sufficiently clear and fair in this respect. The amendments to the regulations made in 2015 are an adequate compromise to address this recommendation.

13. Where paper records are concerned, I recommend that the regulations be amended to clarify that the Applicant should only be charged for one set of records regardless of whether or not the public body has to make additional copies of their own records.

Response:

We have no concerns related to this recommendation and it is currently how, operationally, we assess fees.

14. I recommend that the cost for photocopies be adjusted downward to reflect the decreased cost of photocopies, perhaps to 5 cents per page.

Response:

When we next amend our regulations, we're willing to review with the purchasing authority who manages the purchasing of supplies for printers and photocopiers the actual cost of photocopying, per page. We will factor this cost into our analysis. It is important to note that costs in Nunavut to do anything are higher than in other

necessary, a cost can be associated with that. In the even that disclosure is entirely electronic (ie. by email) there should be no cost to the applicant for such a disclosure.

Response:

Changes were made to the regulations in 2015 that mostly address this recommendation. During our next amendment to the regulations we can look at clarifying that applicants cannot be charged for disclosure via e-mail. Functionally, we do not charge fees for the act of disclosing by email.

18.I recommend that there continue to be provision for a waiver of fees in circumstances of financial hardship and/or when for another reason it is fair to excuse payment, but that these provisions be expanded to include "where it would be in the public interest" to disclose the information.

Response:

We are supportive of this recommendation and have no concerns.

19.I recommend that the Act be amended so as to provide that when the Information and Privacy Commissioner reviews a matter concerning fees, her determination on that issue be final (i.e. – giving order making power over issues in relation to fees).

Response:

We have serious reservations related to this recommendation. This would give the Commissioner decision making power on an issue where there could be serious implications related to operations, as we have previously outlined. The Information and Privacy Commissioner has in the past been unsympathetic to concerns related to monetary resources and capacity in public bodies to meet the standards in her recommendations and we worry that giving her this power would have unintended consequences to other initiatives and priorities.

We understand that she has been given this authority in the Northwest Territories and we can commit to reviewing this issue at a later date once we have a better idea of how these legislative changes have affected them.

Response:

We are supportive of this recommendation and have no concerns.

9. Time for Responding to a Request

24. I recommend that s. 8 be amended so as to provide that a request for information is to be responded to within 20 working days.

Response:

We made amendments of this nature to the legislation in 2017 as part of Bill 48. As such, it is not necessary to comment further.

25. I recommend that s. 8 be reworded to make it clear that the 20 working days for responding is a maximum and that all ATIPP requests should be responded to "as soon as practically possible" with an outside time limit of 20 working days.

Response:

We have no objection to the principle of this recommendation; however we worry that such an amendment would be of limited legal affect due to the term "as soon as practically possible" being of an unclear definition. The common understanding of timelines as they exist now is that they are a maximum and that efforts should be taken to respond earlier, when possible. It is clear from the data that many requests are being dealt with promptly and effectively. We estimate that in 2018-19, 54% of requests were completed before the deadline, and in 2016-17 46% were completed early. This means that many, if not all, simple requests are dealt with quickly and that ATIPP coordinators are not delaying these responses.

26. I recommend that sections 8, 9 (in particular 9(b)) and 10 be amended to make it clear that a "response" includes disclosure of the responsive records unless the Applicant has indicated that he/she wishes to view the records in the offices of the public body, in which case a time and a date for that should be provided with a specific time limit (within 7 working days).

Response:

We are not opposed to this provision in principle, however we feel that the provision would be of limited legal effect and there would be limited opportunity for enforcement. It's unclear what, if any, sanction would be available should the public body fail to meet this five day notification timeline.

*29. I recommend that in the event that the public body is not able to respond within the initial 40 working days, they must apply to the IPC for a further extension and that application must be made no less than five business days **prior to** the end of the extended period.*

Response:

We understand that the Information and Privacy Commissioner has been given this authority in the Northwest Territories and we can commit to reviewing this issue at a later date once we have a better idea of how these legislative changes have affected them. We note however that in the Northwest Territories' new legislation there is no five business days requirement.

30. I recommend that any request to the IPC for a second extension include a detailed explanation as to the issues which are preventing the disclosure of the time frames outlined.

Response:

We are supportive of this recommendation and have no concerns. If we were to give the Information and Privacy Commissioner the powers being contemplated, it would be common sense to follow this recommendation.

31. I recommend that public bodies be required to continue to actively work on responses during any review by the IPC.

Response:

We can keep this recommendation in consideration, should we consider requiring extensions for longer than 20 additional working days be approved by the Information

12. Exemptions to Disclosure

35. I recommend the same approach as has been taken in Newfoundland and Labrador for Nunavut, including the definitions of “cabinet record”. Furthermore with the exception of (e) above, (which should remain at the current 15 years), I recommend that Nunavut adopt these provisions of the Newfoundland Act.

[Regarding section 13, Nunavut should clarify more precisely what information falls under section 13, including defining what a ‘cabinet record’ is and under what circumstances that information can be disclosed.]

Response:

We made amendments of this nature to the legislation in 2017 as part of Bill 48. Those provisions not included in the 2017 amendment can be considered as part of the next legislative amendment.

36. I recommend that s. 14 be amended to provide that, where a public body relies on this (or any other discretionary exemption), the public body must provide the Applicant with a clear and detailed explanation outlining the reasons for the decision to deny access to the record, or partial record, in question, outlining both the section relied on and the criteria used to exercise the discretion against disclosure.

Response:

The Government of Nunavut isn’t opposed to this recommendation in principle but has serious concerns related to how this would be implemented in practice. Public bodies are already required to show that they’ve exercised their discretion when applying a discretionary exemption. We provide a detailed rationale for every instance where information has been severed, however this is rarely, if ever, seen by the Information and Privacy Commissioner as sufficient. Even when paragraphs are written on specific exemptions, the Information and Privacy Commissioner has found that we have not provided sufficient detail.

The government of Nunavut met with the Information and Privacy Commissioner on this very issue—i.e. what the expectations of her office are in justifying the decisions of a public body—and no clarity was provided.

40. I recommend that s. 17 be amended to provide that, where a public body relies on this exemption, it must provide the applicant with a clear and detailed explanation outlining the reasons for the decision to deny access to the record, or partial record, in question, outlining both the section relied on for the exemption and the criteria used to exercise the discretion against disclosure.

Response:

As with our responses to recommendations 36 and 39, the Government of Nunavut isn't opposed to this recommendation in principle but has serious concerns related to how this would be implemented in practice. Like with recommendation 36 above, we would be willing to consider amendments of this kind only if there were clear directions and expectations provided by the Information and Privacy Commissioner on what constitutes a 'clear and detailed explanation'.

41. I recommend that s. 18 be amended to provide that, where a public body relies on this exemption, it must provide the Applicant with a clear and detailed explanation outlining the reasons for the decision to deny access to the record, or partial record, in question, outlining both the section relied on for the exemption and the criteria used to exercise the discretion against disclosure.

Response:

As with our responses to recommendations 36 and others, the Government of Nunavut isn't opposed to this recommendation in principle but has serious concerns related to how this would be implemented in practice. Like with recommendation 36 above, we would be willing to consider amendments of this kind only if there were clear directions and expectations provided by the Information and Privacy Commissioner on what constitutes a 'clear and detailed explanation'.

42. I recommend that s. 19 be amended to provide that, where a public body relies on this exemption, it must provide the Applicant with a clear and detailed explanation outlining the reasons for the decision to deny access to the record, or partial record, in question, outlining both the section relied on for the exemption and the criteria used to exercise the discretion against disclosure.

While this exemption has not been used on a regular basis, it is still important to have access to it in order to protect informants of law enforcement officers from civil liability. We are not in support of this recommendation.

45. I recommend that s. 21 be amended to provide that, where a public body relies on this exemption, it must provide the Applicant with a clear and detailed explanation outlining the reasons for the decision to deny access to the record, or partial record in question, outlining both the section relied on for the exemption and the criteria used to exercise the discretion against disclosure.

Response:

As with our responses to recommendations 36 and others, the Government of Nunavut isn't opposed to this recommendation in principle but has serious concerns related to how this would be implemented in practice. Like with recommendation 36 above, we would be willing to consider amendments of this kind only if there were clear directions and expectations provided by the Information and Privacy Commissioner on what constitutes a 'clear and detailed explanation'.

46. I recommend that s. 22 be amended to provide that, where a public body relies on this exemption, it must provide the applicant with a clear and detailed explanation outlining the reasons for the decision to deny access to the record or partial record, in question, outlining both the section relied on for the exemption and the criteria used to exercise the discretion against disclosure.

Response:

As with our responses to recommendations 36 and others, the Government of Nunavut isn't opposed to this recommendation in principle but has serious concerns related to how this would be implemented in practice. Like with recommendation 36 above, we would be willing to consider amendments of this kind only if there were clear directions and expectations provided by the Information and Privacy Commissioner on what constitutes a 'clear and detailed explanation'.

Response:

We are supportive of this recommendation and have no concerns.

50. In light of the rapidly expanding use of biometric technologies, I recommend that section 23(2) be amended to include, presumptively, that the disclosure of biometric information about an individual would constitute an unreasonable invasion of privacy.

Response:

We are supportive of this recommendation and have no concerns.

51. I recommend that section 23(4) be amended to include:

- a) Where the personal information identifies the individual as an employee of a public body; and*
- b) Where the personal information relates to the individual's business contact information.*

Response:

We are supportive of this recommendation and have no concerns.

52. I recommend that section 23(4)(h) be amended to include words which would clarify that the gross amount of a negotiated payout made to an employee or former employee upon termination of his/her employment with a public body are included in the term "discretionary benefit".

Response:

We have no concerns with this recommendation in principle, but would want to consult the Nunavut Employees Union before committing to this amendment.

53. I recommend that the legislation be amended to provide for the pro-active disclosure of remuneration paid to the highest paid GN employees and officials.

[...]

I therefore recommend a provision be added to the Act which makes it clear that section 24(1)(c) does not apply to “pricing and related information in existing contracts.”

Response:

We can keep this in consideration during our next amendments to the Access to Information and Protection of Privacy Act.

58. *I recommend that clarification be brought to section 24(1)(f) and (g). Section 24(1)(f) prohibits the disclosure of “a statement of financial assistance provided to a third party by a prescribed corporation or board”. Subsection 24(1)(g) prohibits the disclosure of information supplied by a third party to support an application for financial assistance mentioned in paragraph (f). I note that there has never been a “prescribed corporation or board” to which section 24(1)(f) or (g) would apply so that these provisions really have no meaning. If the intention was that prescribed corporation or boards really is a reference to public lending corporations, this needs to be set out in regulations.*

Response:

We can commit to looking to this issue during our next amendments to the Access to Information and Protection of Privacy Act. We have no concerns with amending or removing these provisions in principle.

59. *Quite apart from defining what a “prescribed corporation or board” is, I recommend the repeal of section 24(1). A business receiving loans from a public lender should know that some details of such loans would be subject to public scrutiny. One of the basic pieces of information that should be available, proactively, to the public, is what companies have received public funding and how much. These businesses would still have protection afforded by subsection 24(1) generally if they can establish that disclosure of the information would result in a harm to the business as outlined in the previous subsections.*

not uncommon on some complex requests to have some amount of information on every page severed, and when we're discussing dozens or hundreds of pages, this is work that cannot be reasonably completed with existing resources.

A growing expectation from the Information and Privacy Commissioner is that the public body provide legal precedent or previous Information and Privacy Commissioner review recommendations (either from Nunavut or another jurisdiction) as evidence to support our position. We are concerned that this could become an expectation for every use of any exemption, should we make amendments of this nature. Given the experience, educational and knowledge requirements of ATIPP coordinators, this would not be possible without extensive review by legal counsel which could seriously impact our legal services capacity and ability to respond to requests on time.

We could commit to adding the public interest test recommended by the Information and Privacy Commissioner only if she committed to providing detailed expectations and simple tests to guide discretion in these matters.

62. I recommend that the legislation be amended to emulate the Ontario legislation which requires, specifically, that public bodies must weigh public interest when exercising discretion.

Response:

Please see above our concerns under recommendation 61. While we have no concerns with this recommendation in principle, unless the Information and Privacy Commissioner was willing to provide detailed, plain language and simple tests to guide discretion in these matters, we would not be in a position to accept this recommendation.

13. Third Party Consultations

63. I recommend that the third party consultation process be revamped to reflect a similar process as exists under the Newfoundland and Labrador legislation (see Appendix II).

[These changes would remove the initial consultation with the third party; instead, when the body plans to disclose information that might effect the interests of a third party, both the Applicant and third party are given notice of the decision and their ability to appeal it to the Information and Privacy Commissioner.]

Respondents who are facing serious allegations should have the evidence necessary to defend themselves and their actions, and the Government of Nunavut follows every requirement related to evidence and process in these proceedings.

66. I recommend that for any person other than an applicant or respondent seeking access to these records [records relating to a workplace complaint], the regular rules with respect to access would apply, including the third party consultation process.

Response:

We have no concerns with this recommendation, and we agree that the details and outcomes of workplace investigations are the personal information of the parties involved as per section 23 of the *ATIPP Act*. Releasing this information to an uninvolved third party would be unreasonable as per sections 23(d), (g) and possibly (j) depending on the situation.

67. I recommend that records outlining the outcome of workplace dispute investigations should be available for their precedential value to anyone who seeks the information. To accomplish this in a privacy protective way, these reports/ records will have to be drafted in such a way as to avoid the use of names and detailed specifics. There might also be a time period in which these kinds of records are not available to the public, again as a measure to help protect against a breach of privacy.

Response:

We appreciate the Commissioner's concern for making workplace dispute investigations faster, simpler and less painful for all parties involved. However, recommendations regarding the role of employee relations and how investigations are undertaken are outside the mandate of the Information and Privacy Commissioner. Her recommendations have been provided to the Department of Human Resources which they will take under advisement.

Response:

We are supportive of this recommendation and have no concerns.

72. I strongly recommend that section 34 of the Act be amended to include the words "including solicitor/client privilege" after the words "any privilege available at law."

Response:

As a matter of practice we already provide the Information and Privacy Commissioner with records subject to solicitor/client privilege for the purposes of reviews by her office. We see no harm in supporting this recommendation.

16. Protection of Privacy

73. I recommend that section 40(c)(ii) be repealed.

Response:

Legislation is a blunt instrument and a lengthy process. There will be times where information must be collected but there are not several years to pass legislation to authorize the collection of this information, for example for a new pilot program to address social wellness. We're open to reviewing this section to require more analysis of the public interest and other factors before collection of personal information can occur, but we cannot commit at this time to repealing the section without an appropriate replacement.

74. I recommend that section 41(1) of the Act be amended by dividing it into two parts as follows: [...]

Response:

We can take this recommendation into consideration during our next legislative reform.

79. I recommend that the legislation include a requirement that any purchase of new technology undergo a formal PIA to ensure that it will comply with the privacy and security requirements imposed by the ATIPPA.

Response:

The Government of Nunavut does not accept this recommendation. Most technology operates on similar operating systems on secure servers operating inside of Nunavut. The purchasing and tender process is already very thorough and robust and confidentiality clauses are in every major tender and purchasing agreement. This requirement would create unnecessary labour for purchasing divisions that they are not currently capable of completing with current resources.

80. I recommend all PIAs be provided to the Information and Privacy Commissioner for review and commend and that public bodies be required to consider any issues raised by the IPC.

Response:

We can take this recommendation into consideration during our next legislative reform.

81. I recommend that section 48(q) be amended to read as follows:

(q) where the head of a public body determines that compelling circumstances exist that affect a person's health or safety and where notice of disclosure is given in the form appropriate in the circumstances to the individual the information is about;

Response:

We are supportive of this recommendation and have no concerns.

82. I recommend that section 48(r) be amended to read as follows:

(r) so that the next of kin, spouse of adult independent partner, relative or close friend of an injured, ill or deceased individual may be contacted.

19. The Powers of the Information and Privacy Commissioner

85. I Recommend that Nunavut adopt the Manitoba model which allows an appeal to a specialized adjudicator for a final and binding decision.

Response:

The Information and Privacy Commissioner in the section prior to this recommendation outlined several different models. We will take her comments into account when we next consider legislative reforms. Given her upcoming departure from the role in March of 2019, it may be appropriate to consult the next Information and Privacy Commissioner on what could be a fairly substantial change to their mandate.

86. I further recommend that the IPC be given order making power with respect to administrative matters, such as the calculation of fees, requests for waivers of fees, extensions of time and the authority to disregard a Request for Information.

Response:

We have concerns with the practicality and feasibility of this recommendation. While this matter has been discussed elsewhere in this response, it bears repeating that the fee structure as it currently exists is one of the few tools the Government of Nunavut has to ensure that requests for information are manageable and do not unreasonably affect the operations of the public body. The Information and Privacy Commissioner when reviewing fees assessed, has generally been entirely unsympathetic to concerns related to capacity of the public body and the negative effect that large requests for information can have on increasingly busy ATIPP coordinators.

87. I recommend giving the IPC the jurisdiction to refer a matter to an early resolution process and to provide additional time to undertake such efforts. I do not; however recommend making mediation a mandatory step in the process.

Response:

We support this recommendation in principle and recognize that to implement this discussions will need to be undertaken with the Legislative Assembly's Management and Services board. When we're next considering reform of the legislation, we can commit to consulting the Management and Services Board on this recommendation.

90. I recommend that, in addition to the power given to the Information and Privacy Commissioner in section 53, the IPC be given the additional authority to limit the number of concurrent access to information requests from one person or group of persons working together making multiple requests, along the following lines:

(2) if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other, the Information and Privacy Commissioner may, at the request of the head of a public body, authorize the public body to limit the number of access to information requests which the public body is required to deal with at any one time from the same applicant or group of applicants working together or apparently working together.

Response:

We are supportive and appreciative of this recommendation and have no concerns.

91. I recommend the addition of offences that would address the improper destruction of records and unauthorized access to or viewing of personal information and that fines be attached to such offences of up to \$5000.00.

Response:

We are supportive of this recommendation and have no concerns.

92. I strongly recommend that a new Part be added to the Act which provides clear "duty to document" and that there be a consequent amendment to the offences section to provide that it is an offence to fail to properly document the work of government employees and agents.

Response:

We do not currently have the capacity to support this recommendation. Should this change, we can look at addressing this recommendation at a later date.

21. Other Comments or Considerations

96.I recommend that an amendment to the Act be made that would require public bodies to report their progress on implementing recommendations made by the Information and Privacy Commissioner on a periodic basis until the public body has completed implementation of the recommendations.

Response:

We do not currently have the capacity to support this recommendation. Should this change, we can look at addressing this recommendation at a later date.

97.I recommend that municipalities and school authorities be made subject to the Act.

Response:

We made amendments of this nature to the legislation in 2017 as part of Bill 48. As such, it is not necessary to comment further.

98.I recommend that the Act be amended so as to give the IPC the power to subpoena any records relevant to a review, whether that record is in the possession of a public body or a third party.

Response:

We are supportive of this recommendation and have no concerns.