



15th Legislative Assembly of the Northwest Territories

Standing Committee on Accountability and Oversight

Report on the Review
of the Information and
Privacy Commissioner's
Annual Report 2003-2004

Chair: Mr. Kevin Menicoche

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SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Accountability and Oversight is pleased to provide its Report on the Review of the Information and Privacy Commissioner's Annual Report 2003-2004 and commends it to the House.

A handwritten signature in cursive script, appearing to read "K Menicoche".

Kevin Menicoche, MLA
Chairperson

REPORT ON THE REVIEW OF THE INFORMATION AND PRIVACY COMMISSIONER'S ANNUAL REPORT 2003-2004

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REPORT ON THE REVIEW OF THE INFORMATION AND PRIVACY COMMISSIONER'S ANNUAL REPORT 2003-2004

BACKGROUND

The NWT's *Access to Information and Protection of Privacy Act* (ATIPP) came into force on December 31, 1996. The purpose of the *Act* is to make public bodies more accountable and to protect personal privacy by giving the public a right of access, with limited exceptions, to records held by the GNWT and related public bodies, and by preventing the unauthorized collection, use or disclosure of personal information by the GNWT and related public bodies. The *Act* also gives individuals the right to see and make corrections to information about themselves.

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly and is required under section 68 of the *Act* to prepare and submit an annual report. Ms. Elaine Keenan-Bengts was reappointed as the NWT's Information and Privacy Commissioner in the May-June 2005 Session, for another five-year term.

Several amendments to the *Act* came into force April 1, 2004, including new powers for the Commissioner to investigate and make recommendations on privacy complaints. Many of these amendments were made in response to recommendations the Commissioner made in previous annual reports. Additional amendments to the *Act* have passed Third Reading and are ready for Assent by the Commissioner of the NWT.

GENERAL COMMENTS

The Standing Committee on Accountability and Oversight held a public meeting with Ms. Keenan-Bengts on June 29, 2005 to review her 2003-2004 Annual Report.

The Committee was pleased to note that in her opening comments, the Commissioner commented on the positive trend towards openness and transparency among government departments since the *Act* came into force over eight years ago. The Commissioner emphasized the importance of cultivating a culture of openness within GNWT agencies and noted that most departments are moving slowly but surely towards this. She stressed the crucial role that

bureaucrats play in portraying openness, accountability and garnering the trust of the public vis-à-vis government.

RECOMMENDATIONS

Access and Privacy Directory

The Commissioner recommends that the GNWT prepare an updated Access and Privacy Directory to be revised annually, as required under section 70 of the *Act*. This is the second year that the Commissioner has noted the need for an updated directory of contacts. This year the Commissioner recommends that the Directory should be made available at no (or minimal) cost to the public; it should be available for public review at government offices throughout the Territory; and, it should be easily available online, possibly from a link on the Legislative Assembly's web page. It is the Committee's understanding that the Government is in the process of addressing this recommendation.

Easily accessible front-line staff, available to assist the public with access to information requests, do much to ensure the transparency of government. An accessible and up-to-date directory, including contact information for department ATIPP coordinators, will facilitate public accessibility. Given the inevitability of staff turnover and recent and pending changes to the *Act*, the Committee is of the opinion that the Directory should be regularly reviewed and updated.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the Access to Information and Protection of Privacy Directory be reviewed annually and updated as required under Section 70 of the Act.

Annual Review of ATIPP Regulations

The Commissioner recommends the GNWT undertake an annual review of Schedule A of the regulations that name public bodies that are subject to the *Act*, so as to ensure that the regulations remain up-to-date. In her report, she specifically notes that the new Human Rights Commission has recently been created but is not yet listed in Schedule A of the regulations. The Committee supports this recommendation. The Committee also suggests that each time a new government agency is created that the implications of the *Act* on this new agency be taken into consideration.

Recommendation

The Standing Committee on Accountability and Oversight recommends that Schedule A of the *Access to Information and Protection of Privacy Act* be reviewed annually so as to ensure that the *Act* be kept as up to date as possible, thereby ensuring that it will accurately reflect any changes to the GNWT structure, including changes to boards and agencies.

ATIPP Training for Boards and Agencies

The Commissioner noted a notable lack of awareness amongst GNWT boards and agencies of the requirements and implications of the *ATIPP Act*. The Commissioner recommends that when appointing members to boards, the GNWT should ensure that at least senior members of boards and agencies receive ATIPP training, and that retraining be provided at least once every two years. The Committee supports this recommendation.

The Committee notes that substantial work has recently been undertaken to review GNWT Boards and Agencies. The Committee suggests that if ATIPP training for boards and agencies has not already been taken into account in this review, that it may be appropriate to do so in the development and refinement of the GNWT Boards and Agencies Governance Framework.

Recommendation

The Standing Committee on Accountability and Oversight recommends that when appointing members to boards, the GNWT should ensure that board members receive ATIPP training and that retraining be provided at least once every two years.

**Amendment of the *Act* to Clarify
the Status of Board Members**

Further to the previous recommendation, the Commissioner also notes in her report that there is some confusion amongst board members as to the status of their records with respect to the *ATIPP Act*. She recommends in her report that the *Act* be amended to clarify that board members are considered public employees for the purpose of the *Act*, and that all records generated by them in the course of their duties are subject to the *Act*.

The Commissioner also recommends that board members be given instruction as to the collection, use and disclosure of information and the records that come into their possession in their roles as board members. She recommends that a

protocol be developed with respect to how boards and individual board members are required to deal with records created, obtained or received in the course of their work on such boards. The Committee supports this recommendation.

Given that the proper management of a record throughout its lifecycle is necessary to adequately respond to an Access to Information request, and to ensure personal information is properly managed, it is absolutely crucial to have procedures in place for records management at the board level. Again, the Committee notes that it may be appropriate to consider records management procedures and protocols within the context of the Boards and Agencies Governance Framework.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the GNWT develop draft procedures and protocols to guide board members in maintaining the records they create doing board business.

Access to Information and Privacy Legislation for Municipal Governments

For the fifth year in a row, the Commissioner's report addressed the lack of Access and Privacy Legislation for municipal governments and recommends that municipal governments be brought under territorial access to information and privacy legislation, either by including them under the *Act* as public bodies, or by passing new legislation specific to them.

The Committee considers access to information and protection of privacy standards to be an essential part of open and transparent government. Members acknowledge the challenges of developing and implementing such legislation for municipal governments, but do not consider them to be insurmountable. The Committee points out that it can also be a substantial burden for municipal staff to respond to information requests from the public without the benefit of legislation to guide decision-making.

The GNWT has identified several challenges to address before municipal governments would be in a position to comply with new information and privacy legislation. First, there are concerns with how the *Act* would impact day-to-day operations and general administration of the municipalities. Second, there are concerns relating to the cost of administering the *Act* and whether the additional money to cover the cost of implementation would be added to municipalities' base funding. Finally, there is need for additional training for ATIPP and records management. In addition, the GNWT has committed to clarify how the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), which

came into full force on January 1, 2004, will impact municipalities and report to the Committee in the fall of 2005. The Committee looks forward to reviewing this report. Committee Members also recognize that addressing these challenges will require support and continued effort from municipalities and from the GNWT.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the GNWT continue to work with the NWT Association of Communities to assess the resources required for municipal governments to be able to comply with access to information and protection of privacy legislation, and to develop an implementation plan.

Private Contractors

The Commissioner recommends that access to information and privacy clauses should be included in outsourcing contracts, so as to require compliance with ATIPP. The Committee recognizes that the recommendation to include privacy clauses in outsourcing contracts is being addressed by the GNWT.

The Committee also notes that Bill 3, *An Act to Amend the Access to Information and Protection of Privacy Act*, proposes several changes that would broaden the definition of 'employee' to cover contractors, which will also address this important concern

Given the Information and Privacy Commissioner's expertise on the *Act*, and that an essential part of her role is making recommendations to the Assembly for amendments to it, Committee Members feel strongly that her consultation and involvement in proposed changes to the *Act* is crucial.

Made-in-the-NWT Privacy Legislation for the Private Sector

As in previous reports, the Commissioner recommends the NWT enact its own "made-in-the-north" privacy legislation to regulate how the private sector collects, uses or discloses personal information.

NWT businesses are already regulated by PIPEDA, which came into full force on January 1, 2004. However, the Commissioner has raised concerns that PIPEDA will not provide an adequate regulatory framework for the NWT. Unless the Northwest Territories passes its own legislation, privacy protection in the private sector will be dictated by Ottawa, and may not be appropriate to the realities of the NWT.

Businesses need guidelines and the rule of law to regulate the use of personal information, and the public needs legislation for protection. The issue is becoming more and more urgent with rising incidence of identity theft. Alberta, Quebec and BC have all enacted their own provincial legislation and three more provinces are considering doing the same. The Committee supports the Commissioner's recommendation and is of the opinion it is time for the GNWT to begin to address this issue.

The PIPEDA is new and its effectiveness in the NWT has not yet been tested. Committee Members are of the opinion that the GNWT should begin to prepare its own review on whether the NWT needs its own private sector privacy legislation, and integrate the general findings of the House of Commons review once complete, in 2006.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the GNWT begin to formally review the effectiveness of PIPEDA in the NWT, and prepare an initial report on the need for "made-in-the-north" private sector privacy legislation.

Health Sector Legislation

The Commissioner recommends the NWT enact its own "made in the north" private sector privacy legislation for the health care sector. The Commissioner strongly recommends that even if the GNWT does not tackle general private sector legislation, at a minimum, health sector legislation should be considered.

The contracting out of health care to private contractors occurs with more and more frequency across the country. The NWT is no exception. Very sensitive personal health records are created and managed by private contractors, which can lead to situations where there is cause for concern. For example, the British Columbia Provincial Government was outsourcing health records management to a Canadian subsidiary of an American Company. This meant that the personal health information of B.C. residents could be subject to the *American Patriot Act*, which gives the U.S. Government access to the records.

The Committee is aware that proposed amendments to the *Act* will clarify that contractors are to be considered employees with respect to the *Act*, and therefore the records they create or manage are subject to the *Act*. Nevertheless, the Committee supports the Commissioner's recommendation. The Committee is of the opinion that the GNWT should follow the lead of other jurisdictions, such as Alberta, Ontario, Saskatchewan and Manitoba, and begin to develop legislation that deals with privacy issues within the health sector.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the GNWT come forward with a legislative proposal for legislation that addresses the need for private sector privacy legislation for the health sector.

Devolution and Self-Government Negotiations

For the second year, the Commissioner recommends that access to information and protection of privacy issues be kept at the top of the agenda in devolution and aboriginal self-government negotiations to ensure accountability and protection of personal information by new governments. The Committee supports this recommendation. It is important that emerging governments are aware of these issues. The Committee was pleased to note that the GNWT is in agreement and has committed to look at ways to address this issue further.

Recommendation

The Standing Committee on Accountability and Oversight recommends that that the GNWT come forward with a plan, including timelines, to ensure access and privacy issues will be considered in devolution and self-government negotiations.

CONCLUSION

The Standing Committee on Accountability and Oversight would like to thank the Commissioner, Ms. Elaine Keenan-Bengts, for presenting her report at the Committee's public hearing.

Recommendation

The Standing Committee on Accountability and Oversight recommends the Executive Council table a comprehensive response to this report within 120 days in accordance with Rule 93(5) of the Rules of the Legislative Assembly.