



Northwest Territories Legislative Assembly

Standing Committee on Accountability and Oversight

Continuation of the Public Review of the
Access to Information and Protection of
Privacy Commissioner's 1999/2000 Annual
Report

Thursday, April 5, 2001

Public Review

Standing Committee on Accountability and Oversight

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Ms. Sandy Lee
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Mr. Michael McLeod
MLA for Deh Cho

Mr. Michael Miltenberger
MLA for Thebacha

Witnesses

Mr. Lew Voytilla, Secretary to the Financial Management Board Secretariat
Mr. Rob Taggart, Manager of Corporate Services, Financial Management Board Secretariat

Mr. Gerry Sutton, Deputy Minister, Justice

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1:30 p.m.

CHAIRMAN (Mr. Dent): Good morning. We have a quorum, so I will call the meeting to order. Mr. Delorey, would you say the morning prayer, please?

MR. DELOREY: God, our Creator, thank you for bringing us together today. Give us guidance and wisdom. Help us to make the decisions for the people we represent. Look after our loved ones at home and all those traveling. Amen

CHAIRMAN (Mr. Dent): Thank you. We are resuming our committee meeting. We are on item number 13, which is a continuation of the Public Review of the Access to Information and Protection of Privacy Commissioner's 1999-2000 Annual Report. We are joined this morning by Mr. Voytilla. Good morning, Mr. Voytilla.

MR. VOYTILLA: Good morning, Mr. Chairman.

CHAIRMAN (Mr. Dent): Do you have any opening comments for us this morning?

MR. VOYTILLA: Indeed I do, Mr. Chairman, and I also have with me Mr. Taggart, who is our Manager of Corporate Services.

CHAIRMAN (Mr. Dent): Thank you. Perhaps you could lead off with your opening comments.

MR. VOYTILLA: Thank you, Mr. Chairman.

Since the Access to Information and Protection of Privacy Act came into force on December 31, 1996, the FMB Secretariat has received requests for information from 12 individuals. The department has been able to respond and close the file on requests from eight individuals without the involvement of the ATIPP Commissioner. The requests for the remaining four individuals involved the Commissioner. These files include four requests from an individual for information related to the equal pay litigation, seven requests from an individual related to certain residential and commercial lease documents prepared specifically for consideration of FMB and Aurora Fund loan recipients. In addition, we received requests from an individual respecting information related to the Job Classification Standards, and finally, a request from an individual requesting information related to a GNWT privatization initiative.

In the request related to the equal pay litigation the FMB Secretariat received a request for information on October 9, 1997 from a professional requester of information under provincial and federal privacy legislation. The information requested was directly relevant to the ongoing litigation before the Canadian

Human Rights Tribunal in the federal courts. The request consisted of four separate applications that were too broad to respond to without undertaking a complete and comprehensive review of all documents in the possession of the government. The FMBS proceeded with this review alongside the preparation for the actual litigation on the complaint. This review of over 750,000 pages of records took two years to search, compile, catalogue and complete. I would note, although it is not in my remarks, that the cost of that was over \$1 million.

On November 8, 1999 the FMBS advised the applicant that the documents had been identified as responsive to his request. Six documents were provided to the applicant at that time, and 96 documents were deemed to be exempt from disclosure under the provisions of the NWT Information and Privacy legislation.

On November 15, 1999 the applicant requested the Information and Privacy Commissioner to undertake a review of the decisions of the FMBS to claim certain exemptions over the 96 documents.

On December 3, 1999 the FMBS and the Commissioner agreed that the FMBS would provide only submissions related to the Section 13; Cabinet Confidences Exemption claimed over 90 of the documents and would provide submissions for all the exemptions claimed over the remaining six documents. These submissions were provided to the Commissioner on December 15, 1999.

On January 4, 2000 the Commissioner advised the FMBS that the Secretariat's submissions had been forwarded to the applicant for his reply. No further correspondence has been received from either the Commissioner or the applicant on this matter. I would note that around the same time the disclosure of the subject documents to the Public Service Alliance, Canada and the Human Rights Commission was addressed as a normal part of the litigation and tribunal process around the equal pay complaint.

I will move on to the next issue, which is residential and commercial leases. In this instance the FMBS Secretariat received requests for information from an individual on September 9, 1997 regarding certain commercial and residential leases. On October 9, 1997 the applicant was advised that the request for Cabinet-level records had to be denied under the Cabinet Confidences provision of the Act. The applicant was also advised that because third party interests were involved with the balance of the request, the affected businesses were being contacted as required by the Act. The affected businesses responded and indicated their desire that the information requested not be released.

On January 3, 1998 the FMBS Secretariat advised the applicant and the affected businesses that partial access to the records requested would be provided.

On February 19, 1998 the affected businesses requested that the Information and Privacy Commissioner review the decision of the FMB Secretariat. The Commissioner's review resulted in an agreement with the FMB Secretariat's position, our decision to release the information with the section severed.

Moving on to documents prepared specifically for FMB consideration. In this instance the FMB Secretariat received a request for information from and

individual on November 5, 1999 regarding documents prepared specifically for the consideration of the FMB.

On November 22, 1999 the FMB Secretariat advised the applicant that it could not release the information requested based on the Cabinet Confidences provision of the Act. The Commissioner advised the FMBS on December 6, 1999 that a request had been received from the applicant to review the decision not to release the requested information. The Commissioner's review decision was that some of the materials that FMBS felt it could not release did not fall under the exclusion in Section 13.1(a) of Cabinet Confidences and should be released to the requester.

The FMB Secretariat wrote to the Commissioner on November 24, 2000 advising that given specific provisions of the Act that did not give latitude to disclose Cabinet documents, the recommendations of the Commissioner could not be implemented, and that was based on our legal advice.

Moving on to an application relative to War Fund Loan recipients. In this instance the FMB Secretariat received a request for information from an individual on November 13, 1997 for information related to War Fund Loan recipients.

On December 10, 1997 a response was sent to the applicant indicating that the War Funds are not public bodies pursuant to the Act. The Commissioner advised the FMBS on January 28, 1998 that a request had been received to review the decision not to release the requested information. No direct recommendation on this request was received from the Commissioner since the information requested had been released to the press and tabled in the Legislative Assembly. The Commissioner did suggest that the FMBS ensure that the applicant receive the information. The FMBS confirmed that the applicant had received the information.

Moving on to an application pertinent to Job Classification Standards. In this instance the FMB Secretariat received a request for information from an individual on May 4, 1999 related to specific job classifications standards. The FMBS responded to the applicant with the requested information on June 29, 1999. A letter was received from the Information and Privacy Commissioner indicating that the applicant was dissatisfied with the information received and the timeliness of the response. Further information was provided to the applicant on September 16, 1999. The FMBS sent a letter to the Information and Privacy Commissioner on September 16, 1999 indicating the steps taken to address the applicant's request and complaints respecting the timeliness of the response and information supplied. A letter from the Commissioner to the applicant on November 9, 1999 requested confirmation that the concerns of the applicant had been met. The FMBS has not received any further correspondence and the Commissioner considers the file to be closed.

Moving on to an application relative to GNWT Privatization Initiative. In this instance the FMB Secretariat received a request for information from an individual on July 3, 1997 related to a GNWT Privatization Initiative. On July 12, 1997 the FMBS advised the applicant that a 60-day extension was sought in

order to gather the large volume of records requested and to consult with the other departments involved in the initiative. After considerable effort the requested information was gathered, however the information was never sent as the applicant had withdrawn the request. This was confirmed through correspondence from the Commissioner on January 19, 1998.

Mr. Chairman, the situations that I have just described clearly indicate that often matters are not simple and straightforward when it comes to information requests made to the Access to Information and Protection of Privacy Act. In each of these situations the FMB Secretariat has acted in accordance with the legislation. However, there have been situations where interests and/or rules have been unclear and the FMB Secretariat has proceeded cautiously and sought clarity before acting. In all instances the right to information needs to be balanced with the right to privacy and with the legitimate confidentiality requirements recognized in the Act.

I have spent some time, Mr. Chairman, on the specific cases that involved the Commissioner. As I pointed out initially, eight of the 12 individuals requesting information from us were dealt with without the involvement of the Commissioner. We certainly are prepared to go through each case. I think our information that we can provide to you shows that in the last two years of all of the requests we have received in that period of time we have responded on time with the exception of two situations where we were one day late on one and five days late on another. So, we are prepared to get into the chronology or the facts pertinent to any one of the access requests we have dealt with.

As I mentioned, many of these are complicated. Some of them, quite frankly, required an extensive amount of research and time. The one I have related here concerning equal pay, as we did point out, was three-quarters of a million documents that were documents that had to be reviewed to respond to that request. It cost us \$1 million and took us two years. We were doing that anyhow because of our equal pay litigation, but that goes to show the magnitude of the impact that some of these requests can have. In most cases we do respond within the timeframes that are available to us and within the spirit and intent of the act. But, if the committee would like to go through any of the specifics, we certainly have all of the details on how we have handled each and every request. Thank you.

CHAIRMAN (Mr. Dent): Thank you, Mr. Voytilla. Do the committee members have any questions for Mr. Voytilla? Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, the Commissioner made some very clear and pointed comments, especially in her covering letter attached to her report specifically about the attitude of FMBS. She made a comment to the effect of a corporate culture of secrecy, protectionism, and there is reference to a lack of respect and attention paid to the role and responsibilities under this particular act. I would like Mr. Voytilla to speak to that particular issue as opposed to the specific details.

I am assuming the Access to Information Commissioner did this after some consideration and thought, and did not make those comments lightly, and they are further significant. I wondered if Mr. Voytilla would care to comment on that particular situation. Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. Let me assure the committee that the FMB Secretariat has the highest respect for the Act and the intent of the Act, and highest respect for the office of the Act's Commissioner. I think it is very clear, however, that on the facts of the case we would suggest that a different interpretation of our commitment to that Act and commitment to the spirit intended of the legislation, that we would have a different interpretation on how we have behaved than the Act's Commissioner does. It is very difficult for me to speak to the rhetoric. I can speak to the facts and I think if we go through the facts, it would suggest that it would make our actions and the intent of our actions very clear.

CHAIRMAN (Mr. Dent): Thank you, Mr. Voytilla. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Mr. Chairman, could Mr. Voytilla indicate if there has been an opportunity for you to meet with the Privacy Commissioner to discuss issues in a general way or to talk about situations like this? Obviously things are at a point where things have been written and said now that are fairly pointed. Has there been any attempt to have a meeting of the minds on this particular relationship? Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Mr. Chairman, there have been meetings with the Access Commissioner and the staff of the FMB Secretariat on a number of the particular applications. On our last response relative to one of the applications we did invite the Commissioner to meet with us, me in particular, but we have not yet had a response back to that invitation.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: I have a question about some of the ATIPP coordinators. Is there any kind of oversight function performed by FMBS on this particular legislation in terms of coordinators and tracking things or is that just done by individual departments? Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Mr. Chairman, this legislation has the lead as Department of Justice. So, Justice and the Justice Minister are responsible for legislation and there is a coordinating role, which they do play. They are available for advice on the Act. That would be played by the Department of Justice.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Just in your opening comments, on page 2 of 8, top paragraph, you refer to a professional requester of information. Was that someone from out of the North who was hired by somebody to do stuff?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. I would have to be careful about speculating as to whether the individual was actually acting at the request of any other party. But, he is a individual resident in Ottawa who, our information is, makes a profession of accessing information under multiple jurisdictions under the pertinent legislation. So, when we use the term “professional”, I do not think we are being slanderous or libellous in that description.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Looking at the one for residential and commercial leases where it is included in a Cabinet document, I guess. Not looking to the specifics of this incidence where somebody has requested information, but I guess in general, when someone makes a request for information regarding the Government of the Northwest Territories, whether it is any department or an agency of this government, why would it not be considered as public that we hold leases with certain companies in the Northwest Territories. It is public money going out there. In general if you could give us a breakdown of what might cause some concern where you would not want to release that information? Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. There are specific provisions in the Act that lay out the reason for exemptions and for protection of privacy. So, those are in the Act. Rather than quoting the Act though, let me speak to what I interpret the spirit of intent to be.

The Act is there to make information available to the public that the public has an interest in and a right to access to. Saying that, it has to be balanced with the privacy provisions of the Act that protect businesses and individuals from disclosure of arrangements and business dealings they have with the government that would be damaging to them. When I say “damaging,” many of the contracts and other arrangements we have with businesses have a high degree of information about the business in them. If you make a loan application as a business, you have to disclose a lot of the inner workings of your business. If that became available to your competitors, it could be seriously damaging to your competitive situation. So, you can cause problems for a business unwittingly by releasing information that compromises their market position or their ability to compete or other issues of that nature.

In respect to individuals, individuals have a right to certain privacies, privacies about their income levels, privacies about other aspects of their relationship with the government. So there are valid reasons for there to be exemptions under the Access and Protection to Privacy Act, and those are fairly well articulated in the Act itself. It is the interpretation that sometimes raises debate.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: There was a suggestion made by the Privacy Commissioner on that whole area of people understanding the Act, especially with new employees coming on with the government, that they should consider looking at some sort of an orientation for new employees so that people could understand there is an Act. In some cases people were not even aware there was such an Act in place. What exactly are you doing in regards to the government to insure that people understand there is such an act in place and that people do have certain rights to information within this government? Maybe you can answer that one first.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. Of course I cannot speak on behalf of the entire government, because this is not our Act, this is the way we have segregate responsibilities. This is the Department of Justice's Act from the standpoint of overall government coordination. So, I can speak to what we do in the Secretariat to ensure that we adhere to the Act and that staff are aware of it. We have, in the Secretariat, a specific position dedicated as the Access to Information coordinator. We have presentations that have been given to our senior management team to inform them of the provisions of the Act and we certainly keep in our management meetings access issues at a high level of awareness and concern.

So, we keep our employees well informed on the obligations and provisions of the Act, and our responses in particular to applications made to the FMBS we treat those very seriously and all of our staff are aware of their obligations. I think from the standpoint of the department we do have those provisions in place. With respect to overall orientation, I would have to defer to the Department of Justice as to what they do with respect to orientation. I do know that they give regular seminars on the Act.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: You made reference that on some occasions you have a legal opinion in regard to what may be the Privacy Commissioner's view was versus the department's. Do you share those legal opinions with the Privacy Commissioner to see exactly if there are ways to clarify the legislation or enhance the legislation so it is clearer, it is specific to a specific point, that you are not having these opinions bouncing back and forth? I know from what you have stated, it is not simple, it is not straightforward, it is hard to understand, and I think that in the case of that there may need to be changes. So, I am wondering, do you share that type of information with the Privacy Commissioner?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. We certainly share the substance and the argument and the position with the Commissioner. Whether we share the actual document is another matter. Those document's legal opinions belong to the Attorney General, so only the Attorney General can release them. But the substance of the opinions we certainly are prepared to share.

With respect to whether any particular clause needs modification, if we felt that it did, we would pass that on to the Department of Justice, who has responsibility for the legislation, and perhaps suggest to them that there are areas that need clarification. As we work through many of these issues, some areas are of that nature, where they would benefit from some greater clarity, either through legislative amendment or through clarification on the intent of the Act, or the intent of the clause that might come through court decisions or other means.

Yes, in answer to the Member's question, there is an opportunity to both share the substance of the legal things we get as well as feedback with the Department of Justice on areas where there might be a need to clarify the legislation.

CHAIRMAN (Mr. Dent): Just on the issue of clarity, Mr. Voytilla, before I go on to Mr. Krutko's next question, could you please clarify who you mean when you refer to the Attorney General?

MR. VOYTILLA: Sorry, that was not clear – the Department of Justice.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: One of the things that seems to have come out in this review is that there are several agencies and corporations – we just touched on one, the Aurora Fund – and also in communities and municipalities, you have hamlets, we have housing authorities and other agencies who deal with a lot of information that in some cases is confidential, but there is no real approach or avenue for people to access that information or for people to have that information protected.

So, I am wondering if there is a possibility of expanding on that so that groups and agencies such as getting information from the Aurora Fund who have received grants or whatever, can be made public because they are not on this list that you mentioned. Maybe there is a time when we need to look at this list and maybe add groups or agencies that we feel would be in the public interest, so that they do apply to this legislation, that they are not exempt. Because you did touch on it when someone mentioned the Aurora request.

CHAIRMAN (Mr. Dent): Thank you. Mr. Voytilla.

MR. VOYTILLA: First, Mr. Chairman, let me speak specifically on the Aurora Fund. The Aurora Fund Loans are public. It is contained in the financial statements of the Aurora Fund that are tabled annually with the Legislative Assembly. We just tabled the last two annual reports for two funds in the last session. So that information is public and we have sought and obtained waivers from the individuals borrowing from that fund to that disclosure.

With respect to the broader question of application, scope of application of the Act, I believe you are going to have Mr. Sutton, the Acting Deputy Minister of Justice before you later today and I would defer that question to him as the legislation is a Department of Justice Act.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: I still have a question related to page 5 of Mr. Voytilla's comments under the section where he refers to the first two documents prepared specifically for FMB consideration. In the last paragraph he makes the comment that the Act does not give the latitude to disclose Cabinet documents. Could Mr. Voytilla indicate what type of documents are we talking about? Are we talking about every document that goes through the door of the Cabinet room? Are we talking about records of decision? Could you clarify that for me please? Thank you.

CHAIRMAN (Mr. Dent): Thank you. Mr. Voytilla.

MR. VOYTILLA: The ATIPP Act is actually quite specific. If I could for clarity read it – Section 13:

The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including:

- A. Advice, proposals, requests for directions, recommendation analyses or policy options prepared for presentation to the Executive Council or the Financial Management Board;
- B. Contents of agendas, minutes or records of decision of the Executive Counsel or the Financial Management Board, or deliberations or decisions of the Executive Counsel or the Financial Management Board;
- C. Consultations among members of the Executive Counsel or the Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy;
- D. Briefings to members of the Executive Counsel or the Financial Management Board in relation to matters that:
 - 1. have been before or proposed to be brought before the Executive Counsel of the Financial Management Board; or
 - 2. are the subject of consultations described in paragraph C.

So it is wide-ranging in its application.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Maybe the more simple question would be then what Cabinet documents would be available? Sounds like this is a fairly exhaustive list. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: That is a very difficult question to answer without specific reference to a specific document and set of circumstances. The Member is right, it is quite a comprehensive list. In our view the documents sought in that particular application fell into the category of Cabinet documents, document confidences that as a head of a public agency I was not permitted to disclose.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, this is a different circumstance, but my recollection of the Morin Inquiry, for example, was that there was considerable discussion about what took place in Cabinet letters, in written decisions that were made, who was present, yet I know it is not under this specific act, but what that done some sort of legal subpoena process or did the ATIPP Commissioner just ask and it was given? They could not use this to prevent any of that information from being made public?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: I do not have the technical competency to answer that question. Perhaps Mr. Sutton, when he appears, might be able to answer.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, I guess you get to the spirit and intent of the legislation. Given the exhaustive wording in that particular clause or section, just about anything of significance that the government does would have some Cabinet confidence attached to it and would make any sort of meaningful access very, very problematic, it would seem. It is more of a comment than a question, but it just seems that if you attach that kind of label to any piece of information, then you can just tell the public, "Sorry. We are not telling you." It seems like a blank check. That is just a comment. Thank you.

CHAIRMAN (Mr. Dent): It might be useful to ask Mr. Sutton the question specifically about the inquiry and how, for instance, they got minutes to Cabinet meetings, which they did. That might help clear up the issue.

Are there any other members who have questions for Mr. Voytilla?

Mr. Voytilla, you are probably aware that there have been a number of Members around the table who have expressed a significant amount of concern about the state of records management within government. In your opinion, would an improved records management system make it easier to meet the deadlines that are set out in the ATIPP Act?

MR. VOYTILLA: Mr. Chairman, there are two ways to answer your question. First, I would point out that in the last two years we have met the deadlines in the ATIPP Act with the exception of two that were one day late and five days late. Just for the record.

The issue of records management, though, is an important one, because we do have records management systems in the government and they do allow us in most cases to respond on a timely basis to these kinds of requests, particularly if it is for a specific document. Where the records systems, and I do not know if any record system would ever deal with the issue, is when we get broad requests that you might characterize as fishing expeditions where a whole range of documentation is sought over a long period of time.

Perhaps one of the best examples is the one I opened with in my opening remarks, where we had a request for any information pertinent to equal pay that was in government records over a 12-year period. No record system in any

organization is going to be up to the task of efficiently doing that kind of search and retrieval. We had to do it, because it was also part of litigation in a separate case in a separate court forum. And, it took us, as I pointed out, two years and \$1 million to go through almost a million records to find that information. That was not because of the problems with our records management system, because all of those documents had to be searched across all of the government, historically as well as currently, they had to be catalogued analysed, put into a document imaging system so that they were accessible.

In this case we had no choice but to make that investment so that we could respond to that particular request. But to expect that the government could ever get all of its records to that state of readiness, I would suggest would be prohibitively expensive. We are talking about 750,000 records that we did it for in this particular case. Well, the government probably has 7.5 billion records. To actually put those into a form where they were all immediately accessible without a lot of manual searching would just be cost prohibitive.

Saying that, could we make improvements to our records management systems? Absolutely. Should we be making them? We are, and we are looking at records management practices continuously, but also as part of the knowledge management strategy. So, I know it is a long answer to your question, but yes, improvements to our records management system are desirable. They can in some ways perhaps help us with these requests. But, I do not think we would ever get a records system that allowed us to deal with all requests on an immediate basis.

CHAIRMAN (Mr. Dent): There is a significant improvement, hopefully, coming in terms of records management and a "go forward" basis. Is that what I hear you saying?

MR. VOYTILLA: We have been making continuous improvements to our records management program for many years now and we continue to do that. We are now looking at new technology and new standards to even move that forward further through knowledge management. Yes, we are trying to make those improvements. It is a huge task.

CHAIRMAN (Mr. Dent): Okay. The other issue the Mr. Miltenberger touched on earlier was that, and I know you expressed some difficulty in speaking to the rhetoric, but the Access Commissioner has accused FMBS of being less than cooperative in their attitude towards the requests that come in for information. You have spoken very strongly yourself about the support for the intent of the Act and so on. Some of that was called into question with your answers to the fund loan applications and privacy of salary, for instance.

Our government has a policy of not allowing market disruption, so there should be no reason not to release the basic information of loan applications. If a firm does actually qualify without market disruption, there would be no competitor. So, that would be one way to make sure that the public was aware or that business people were aware whether or not, for instance, there was a business coming in

that might cause market disruption by making sure that the public information was there.

I think that we have to be cautious, but in my opinion, we have to look for ways to release the information. If people are accessing public funds, the public has a right to know about that, so far as I am concerned. I would argue very strongly that when someone makes a loan application to this government, at least the details of the purpose of the loan, the amount of the loan, and the term of the loan should be made public. I would also point out that most jurisdictions in Canada also release salary information for all of the public service, so salaries are not typically seen as something of a privacy issue for a public government.

That is more of a comment, Mr. Voytilla, just relating to your comments particularly expressing support for the purpose of the Act. I do not know if you would care to respond or not. Mr. Voytilla.

MR. VOYTILLA: Yes, Mr. Chairman. What we have to take into account in those types of situations are the provisions of the Act. The Act does require us, when we have information requested of us that affects a third party, we are obligated by the Act to seek the views and comments of that third party before we release the information. The third party then has the ability to make an application or make a submission to us to speak to their concern with release. Then, based on that third party response, we make a decision as to what is released.

In several cases we sought third party concurrence with the release of information. The third party got back to us. We then went ahead over the third party objections to release certain amounts of information. The Access Commissioner, certainly in one instance agreed with what we released.

I think there is a recognition that we have to respect the interests of third parties. We have to, under the Act, ask them for their comments on release, then we have to make a decision. I think we do try to err on the side of disclosure as opposed to the side of keeping things confidential. So, I guess I can answer in that case.

With respect to personal information like employee salaries there is a specific provision in the Protection of Privacy component that disallows us releasing certain information. I am just scanning down it, but somewhere in here there is a reference to information about earnings and income. I can not find it right now, but I do know it is in the act. We do have to be cautious. I know the act, and I am going a bit from recollection here because we have looked at this issue many times. The act allows us to disclose salary ranges for a particular position that somebody occupies, but it does not allow us to disclose specific earnings.

I have the reference now, thanks to Mr. Sutton. It is Section 23, Subsection 4, Item E:

The personal information relates to third party classification, salary range, discretionary benefits, or employment responsibilities as an officer, employee or member of a public body, or as a member of the staff of a member of the executive council.

There are limits and guidelines on what we can disclose when it comes to a wide open disclosure of individual earnings that is not supported by the ATIPP Act.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, just one final question for Mr. Voytilla. Given the nature and tone of the Commissioner's comments in regard to the Financial Management Board Secretariat, I was wondering if Mr. Voytilla could indicate before he leaves the witness table any steps that he intends to take so we are not having any of the same conversation next year. A way to proactively resolve what the Commissioner sees as some issues here. Thank you.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Mr. Chairman, my invitation to meet with Commissioner stands. As I mentioned in my opening remarks, if you get into the facts of each specific case, the actions that we have taken have been appropriate. What we have been dealing with is the fact that some of the applications made to us have been very difficult ones with many particular implications. I speak specifically to the broad request on equal pay which caused a fair amount of dialogue and exchange of correspondence with the Commissioner, and the request for information for Cabinet documents which also obviously generated a lot of correspondence.

With the exception of those two items, and I have tried to explain the issues around them, our record for response to applications under the act is a very defensible record. I do not have the same view as the Access Commissioner on our adherence to the spirit and intent of the act. There are those two issues that gave rise to the Commissioner's concerns, but I am certainly willing to and have made the invitation to sit down with the Access Commissioner to discuss these issues and broader issues, if she would like. Thank you.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Going back to what was illustrated earlier in a similar question that Mr. Miltenberger posed, at times it falls down to the matter of interpretation. From the section that Mr. Voytilla quoted, regarding Cabinet documents and things prepared for Cabinet, interpretation could be very wide. Anything that a Minister requests from his department in saying that he is going to prepare a submission could be excluded.

Anything we ask from Ministers, or anything individuals of the Northwest Territories ask from a Minister of a department could almost be classified through interpretation as not being available to individuals in Northwest Territories. It goes back to some of the discussion we had earlier with the Commissioner herself, in the area of tightening up the act and trying to strengthen it to a certain degree. I get a very different view from Mr. Voytilla versus what we had when we first sat down with the Commissioner. It might warrant another sit down with the Commissioner too.

As we have gone through this process, and knowing that any talk of amending or changing regulations would have to be through the Department of Justice. It is of interest that, for example, under the talk of Pay and Benefits for employees of

Northwest Territories government, we as Members table everything for paying benefits for Members, and we have two different standards again, and I accept that. I am elected by the people and they need to know, but at the same time I am a representative of the Government of Northwest Territories. That is trying to work on behalf of the public of Northwest Territories. It is interesting that we would have two standards in a set. When it is appropriate or when it is for government, they will withhold that information, but if demanded in other areas then it has to be given.

As stated by one of the Members yesterday, it was 1998 when this came in, maybe it is time for a review of the act. As I stated earlier when we went through this, my constituents stated when it first came out that it was very weak and in fact it needs to be tightened up. I look forward to meeting with the Department of Justice on that one. Thank you.

CHAIRMAN (Mr. Dent): Thank you. Just to clarify that act came into force at the end of 1996. It came into effect on December 31, 1996. Mr. Voytilla, do you wish to respond to Mr. Roland's comments or leave them as comments?

MR. VOYTILLA: I took them as policy comments and directional comments that would be discussed politically.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Just in regard to time lines set. Can Mr. Voytilla state if there are any outstanding requests to date in regard to the information from your department?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: At this time, my information is that we do not have any outstanding Access to Information requests. There are still some issues hanging around from some of the earlier ones, but no outstanding requests.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. One of the suggestions is to put time lines on requests that are made so, that you do not let it drag on for any long period of time. The suggestion is for 30 days from the time that you receive the request until the time that the information should be provided. Is that a realistic time frame in regard to using 30 days to turn this information around to the parties that may have requested that information?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: For specific requests for specific documents, yes, 30 days is reasonable. For requests that require much more research and compilation, probably not. It depends on the nature of the request. As I said, one situation we had a request that at the end of the day involved searching and compiling 750,000 documents, and 30 days, no, it took us two years. It really depends on what the request pertains to.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: In regards to where it took two years, for those type of requests there can be some allocation where at least you made the attempt to respond within those 30 days, stating that realistically it is not feasible, it will take you that much longer, but at least notice would have been given. You are looking at it. You are working at it. You are not trying to avoid the issue, or have the person wait for some two three years just to collect or get access to that information. In that case, would something like that be practical, knowing that you can not do it in the 30 days but you have to make the attempt to show through writing to the individual or the Privacy Commissioner that realistically it is not feasible and it will take you a longer period of time? That way at least it is on the file, and you are working on it.

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Thank you, Mr. Chairman. I agree with the Member, and we did. We sat down with Access to Information Commissioner on that particular one that took two years, and right off the bat explained to her the difficulty of responding in a timely basis for that request. We followed it up in writing, and we gave them progress reports as we worked through the work. I concur with the Member.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. Some of the other suggestions that are being thrown around is the whole area of giving the Commissioner the power to subpoena documents if she feels the department is not working cooperatively. Whether she feels they are trying to avoid the act, the Commissioner will have that power similar to a judge to subpoena documents if they feel it is relevant to a particular case.

They will also have the ability to set penalties in failure to comply with having those time lines met. Having these powers might be a little extreme, but sometimes you have to take extreme measures to get your point across. In those cases, do you feel there is a need to go that far if the act is not being complied with to date?

CHAIRMAN (Mr. Dent): Mr. Voytilla, would you care to comment?

MR. VOYTILLA: No, only to refer that question to Mr. Sutton. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Mr. Delorey.

MR. DELOREY: Thank you, Mr. Chairman. I just want to make a few comments on what we are hearing this morning, and what we have heard on this whole issue. From the Commissioner we have heard that some departments have been very cooperative in dealing with the Commissioner on Access to Information. We also heard that some are not very cooperative at all. As a matter of fact, sometimes adversarial of the process of trying to get information. It has been mentioned before that it may be a situation that we have to sit down with the Commissioner again.

From all indications, there is conflicting stories coming out of it. From Mr. Voytilla's report here this morning, we would have to think that FMBS is very cooperative and meeting the deadlines right to the "T". Just that in itself creates some questions. On very simple information issues, as a Member you write a letter to different departments, and you are lucky sometimes if you get an answer in three months, never mind 30 days. So, I have no problem thinking that there is something there when the Commissioner says it is not very timely sometimes trying to get information from different departments. We do have to look at this again.

There are moves in different jurisdictions right across Canada right now to Access to Information Commissioners and the Right to Information, and tightening up on legislation may be giving more power to Commissioners. That is probably an area that we are going to have to deal with, but just to say that we are hearing very different comments being made from one side and the other. That, in itself, creates some doubts on whether her interpretation of how dealing with FMBS has become adversarial and sometimes in situations very frustrating in getting information. More or less comments, but we do need to look at this some more.

CHAIRMAN (Mr. Dent): Thank you, Mr. Bell.

MR. BELL: Thank you. I would like to echo the comments made first by Mr. Roland. It is time that we had a review of this legislation. Certainly when a public report comes out from the Access to Information Commissioner that suggests there are problems in particular with FMBS and characterizes the FMBS as having a corporate culture of secrecy and some of these other suggestions. They are very strong suggestions. We have heard from Mr. Voytilla here today that he is not prepared or ready to engage in a debate over what he considers rhetoric. If we want to speak to the facts, he is more than prepared to do that. He has indicated in only two cases FMBS has failed to meet deadlines. One in six days. It is important that we do engage in a debate about this, but he is right. We do need to deal with facts. It is important that we get the two sides in this matter together to discuss these issues, because there is a black cloud hanging over this in the minds of the public.

Mr. Dent suggested that other jurisdictions do things like release specific salaries for high level civil servants. That clearly is the case, but our act does not allow for that. If we feel that those things should be accessible to the public, then it is up to us to do something about it and change the act. Cabinet FMB documents, clearly any documents you could ever imagine is excluded given our current legislation. We would not expect FMBS to interpret it any differently. If we want to make some changes, and we feel that there are some types of Cabinet information that should be released, it is up to us to review that and make those kinds of decisions.

Clearly, we have two far apart views of the ways things have been going, but it is disturbing. I would like to suggest that it might be time to review the legislation, if it is not meeting our needs. We can do something about that. Mr. Voytilla insists

that we are meeting deadlines, unless in certain situations that can be categorized as fishing expeditions. It is important that we sit down and discuss the specifics of these cases to determine if in fact we are meeting these deadlines. Again, I would like to say that we have to get the two sides together, because we have to clear this up. Thank you.

CHAIRMAN (Mr. Dent): Thank you. Are there any further questions for Mr. Voytilla? Mr. Krutko.

MR. KRUTKO: In Mr. Voytilla's presentation, he listed some areas where there were complaints that they dealt with. Are those all the complaints that you dealt with? Do you have specific numbers of the complaints that you have received, and the number of things that you have dealt with? Is this in your report?

CHAIRMAN (Mr. Dent): Mr. Voytilla.

MR. VOYTILLA: Since the inception of the act, as I pointed out in my opening remarks, we have had requests from 12 individuals. Some of those were multiple requests. We do point out that in one case, there was one individual who made three separate requests. Since the inception of the act, twelve individuals have made requests to us. That is all that we have received. The ones I highlighted were the situations where the requests are for the individuals involved with the Commissioner. The other eight individuals were able to resolve their requests without involvement of the Commissioner. That is a comprehensive summary of the requests that we received under the act, if that is the Member's question.

CHAIRMAN (Mr. Dent): Thank you. Mr. Voytilla, Mr. Taggart I would like to thank you for your attendance at committee this morning and for having responded to our questions. I see we have Mr. Sutton in the office, and he is next on our agenda. Are Members prepared to moving into hearing the Justice presentation next? OK. Mr. Sutton, perhaps you would join us at the witness table, please. Mr. Sutton, do you have opening comments?

MR. SUTTON: Yes, Mr. Chairman. I have some brief opening comments.

CHAIRMAN (Mr. Dent): Would you happen to have extra copies for the members?, or do you have a copy that our clerk can make copies from?

MR. SUTTON: I am sorry, Mr. Chairman. They are going to be off the top of my head.

CHAIRMAN (Mr. Dent): OK. Please proceed Mr. Sutton.

MR. SUTTON: Thank you, Mr. Chairman. The Department of Justice has responsibility for the Access to Information and Protection of Privacy Act, in the sense that the department has the responsibility for the overall coordination of the implementation of the legislation. However, the act is clear that the responsibility for administering the duties under the legislation fall under each public body, be that a department, board, or whatever. Typically, a department will appoint an Access to Information Coordinator, and the responsibilities that fall on a Minister will typically be devolved. Many of them will be devolved down to

Deputy Minister, to the level of the coordinator, or to managers as the case may be, but the responsibilities clearly fall on each department.

The Department of Justice initially prepares a policy manual and a procedures manual for coordinators and departments. On an ongoing basis, we particularly provide for the training of coordinators, and in some cases, beyond coordinators within departments. The overall responsibility for training within a department falls on the individual department and typically is done by the coordinator, however, we in the Department of Justice have facilitated training that would involve participation of all levels of employees, if they were interested in participating in the training.

Usually, we do it by contracting with a consultant in Ottawa who will come up to the Northwest Territories and provide the training, most often in Yellowknife, but more and more we are trying to identify ways to provide for that training in regions. This training happens on a regular basis, and there are opportunities for employees and managers in particular to maintain some familiarity with the act and their responsibilities in the administration of the act.

The Commissioner, in her report identified a number of recommendations, and we have viewed those recommendations and have some comments to make. Whether or not those recommendations are accepted or not is a policy issue, but we can make some comments on those recommendations based on our review of the practice in our jurisdictions and also the legislation in other jurisdictions.

In saying that, I would caution the committee to be aware that essentially there are two types of commissioners in Canada. There is an ombudsman-like function, and there is also another type of commissioner who exercises and adjudicated function. Most jurisdictions follow the ombudsman model, which is the model that our legislation provides for. What this means is that the ombudsman is not an adjudicator, is not a court. The ombudsman investigates and makes recommendations, and the responsibility for accepting those recommendations or not falls on the head of the department.

Which is quite different from the adjudicated model, which only exists in a number of jurisdictions, notably Alberta, British Columbia, and Ontario. Only in those jurisdictions, because it is a fairly expensive way of exercising this kind of responsibility. It typically involves a large staff, and most jurisdictions like the Northwest Territories have found that the cost of such a model prohibitive. That is the policy reason why we have gone with the ombudsman-like model.

The specific recommendations for change by the Commissioner were firstly a recommendation that there be a presumption that when a recommendation is made, it is presumed to be accepted, if after 30 days no action is taken by the head. Our review identifies that there is no jurisdiction that has that presumption. In fact, there are presumptions in most cases, but the presumption is that the head has denied the recommendation and not accepted the recommendation. In our case, the legislation is silent, and based on the structure of the act it probably assumes that it is not accepted. If it is not acted on within 30 days, it is in fact rejected, but the act on that point is silent.

The Commissioner's second recommendation was that the legislation be changed so that all notices under that act be sent by registered mail. We have identified that no other legislation provides for that requirement for service by registered mail. In fact, our research reveals that in Quebec they used to have that provision, and they amended their legislation to remove it. The effect of the recommendation, if it were implemented, would be to introduce an element of formality and rigidity that probably is not consistent with the way the act was intended to be administered.

The third recommendation was that the Commissioner be mandated under the act to review complaints relating to invasion of privacy. Our act does not have that provision specifically. Our review of other legislation is that most of them do provide for it.

Her fourth recommendation dealt with the powers of the Commissioner. Our review of the legislation reveals that most of the acts in other jurisdictions provide for the kinds of powers that the Commissioner is talking about in relation to subpoena of documents or witnesses. Those are the type of powers that exist in our Public Inquiries Act. There is no legislation that we have identified that we would give the power to impose penalties for failure to comply with the time limits. There is no legislation that we have identified that would allow the right to disallow fees, otherwise payable. There is no legislation that would provide to remove the right to invoke discretionary exemptions. There is no legislation that we have identified that deals with holding performance bonuses from deputy heads of departments. Although, in practice that could be a practice apart of legislation.

Another recommendation was that the government look at the creation of private sector privacy legislation. That is a policy question. The federal act will apply. The question is whether it is the desire of the Northwest Territories to remove the application of federal legislation, and have our own legislation apply.

Municipal governments, when the legislation was first introduced, the plan was to have it first apply to departments and those agencies that were identified in the schedule to the Financial Administration Act. Later, it would be extended to health boards and education boards. That has been done. The idea at the time was whether it would be applied to municipalities would be considered at a future date after the government and the different boards and agencies had built up some experience.

In dealing with the act, the Commissioner also made a recommendation regarding the Public Utilities Board. The Public Utilities Board is covered by the act. That is not an issue. I will restrict my comments to that, Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. First from a process point of view, I will temper my remarks by recognition of the fact that this is the first opportunity to review this particular legislation and report from the Commissioner in the public process. I must say that I am very disappointed that Justice has

chosen not to come forward with the written presentation that would speak to the issues that Mr. Sutton has raised.

I find it difficult to try to keep track of all the comments that he made about substantive recommendations made from the report. I see that he is referring to some notes so, it is not completely extemporaneous. It is difficult for us to go back to the transcripts now to sift through what has been said to see how it relates. It is going to put us at a disadvantage to question Mr. Sutton. I do not have anything to refer to other than my memory and the quick notes that I have taken.

Some of the recommendations made by the Commissioner are detailed ones and some are complex one. I feel somewhat at a disadvantage here. I would like to put that on the record. I hope that in the future, Justice considering their oversight responsibilities especially for this legislation would come forward with enough detailed comments similar to FMBS if there is a need to have a clear discussion on some of the issues.

I would like to talk to some of the specific issues if I could, Mr. Chairman. I have a number of items. In regard to the ATIPP coordinators, I would like Mr. Sutton to expand on the oversight capacity in regard to the role of Justice. One of the issues that came up, for example, is the lack of numbers in terms of the actual numbers of requests that are made by the public for information to government. Nobody seems to have that particular function as a role. We get the numbers from the Commissioner saying she had seven requests, but out of how many? Were there dozens, hundreds? I would like to ask Mr. Sutton whether Justice sees itself as being able to possibly pull together through their ATIPP coordinator across government the compilation on a yearly basis of numbers we can see.

So, we can have a frame of reference is my concern. If we have seven requests out of 600 that end up on the Access to Information Commissioner's desk, then it is different than ten requests. For me, it is very difficult to give weight to those numbers. I would like Mr. Sutton to speak to that particular issue first.

CHAIRMAN (Mr. Dent): Thank you. Mr. Sutton.

MR. SUTTON: Thank you, Mr. Chairman. The department, in it's capacity as responsible for the legislation would be responsible for pulling together those kinds of statistics and, in fact, we have done that. We are looking at the possibility of introducing an Annual Report that gives statistics on the number of requests, where they have gone to, how they have been dealt with, et cetera. We have been compiling those types of numbers. We have not done it for this year. Our plan is to do it for 2001. We can provide you with those numbers when we have finished the compilation.

I can give you some idea of the number of requests, if the committee wishes. Which would give you some basis to consider the number of cases that actually go to review, if that was the interest of the Member. I agree that it is the responsibility of the department to compile those statistics, and as I said, it is our

intention to begin to produce an Annual Report on that basis beginning with 2000-2001.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. It is absolutely critical in our roles here, if we are making decisions on legislation and other substantive matters, that we do need blue chip information, good information. For me, personally, Mr. Chairman I would assume that the committee would benefit from having as much information about both this act and how it is being use by the public across government. I would say, if you have that document, I would personally appreciate it and it would be a benefit to my colleagues.

CHAIRMAN (Mr. Dent): Mr. Sutton, if you can share that information with the committee, we will make sure the Members have it. Mr. Sutton.

MR. SUTTON: As a reference, the last time that we counted, we measured from April 1998 to August 1999. There were 59 requests made to the departments. The previous counting was for the period from the beginning of the act up to September of 1998. During that period, there were 88 requests to departments. Typically, the Health and Social Services is one of the departments that gets a great deal of requests because of the type of personal information they keep in their files. The Department of Justice is probably second. Education started out very slow, but the number of requests that have gone to Education has recently increased. There are other departments that receive very few requests. That will give the committee some idea of the scale of requests that are made.

I would emphasize that the application of the act actually goes beyond the number of requests. It deals, as well, with the protection of privacy. That requires departments to regulate how they collect, use, and disclose information. The types of safeguards that go with the privacy of information, et cetera. That is very difficult to measure. The kind of statistics that we are capable of collecting deal mostly with requests under the access provisions, which is the number or requests, how long it takes to deal with them, and that type of thing. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Just a final question for the time being. Can Mr. Sutton indicate two things? Once again, given the fact that he is referring to all this information, could he speak to the issue why the Justice Oversight Department on this particular important piece of legislation has chosen to come forward for the verbal presentation? Can you also indicate if you know if every department that is supposed to have an ATIPP coordinator, does have one? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: I did not produce a written submission. In my ignorance, I did not know it was necessary, it is the first time that I have done this. Most departments do have coordinators. We do have that information, and I can undertake to provide that to the committee. I would estimate that, in fact, all departments will.

When it gets to boards and agencies, I have less confidence that they will all have coordinators, but they are required to have coordinators. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you, Mr. Sutton. Can you tell me who keeps the directory ATIPP coordinators up to date?

MR. SUTTON: That is the responsibility of the Department of Justice, and we are in the process of updating the directory. We wanted to include the latest information, and the latest amendment to the regulations that was recently done. We wanted to have that information in the directory. We are in the process of preparing the updated directory.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: Just clarification on a point you made about the Public Utilities Board. I was not clear on what you stated. Did you say that it was part of the act?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: Yes, that is correct. The Public Utilities Board was added to the list of public agencies, public bodies that are covered by the act. That was done by regulation, and that is one of the changes that I referred to when I said it was pending the development of the new directory.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Your predecessor previously made a presentation, and stated that they were not part of the act. From your information and what was stated when they were not part of the act because it is not listed, because of this type of information, there has to be clarity given in regard to making that information privy to all of the groups so they are aware. Mr. Voytilla clearly stated when asked that the Public Utilities Board was not part of the act because it was not listed.

CHAIRMAN (Mr. Dent): Mr. Krutko, it was the Access Commissioner, herself, who said that. I do not believe that Mr. Voytilla said that this morning. It was yesterday that we heard that from the Access Commissioner. It was not this morning. It begs the question, why would the Access Commissioner not be aware of that? Do regulation changes not get promoted, or was it a very recent change? Mr. Sutton.

MR. SUTTON: Thank you, Mr. Chairman. It is a fairly recent change. I am not sure why the Access Commissioner would not know that. I will have to check. I would have assumed that she would have known that.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. Maybe we could check Hansard, because I do believe that Mr. Voytilla did state that because it was not listed, it is not privy to the act. I asked him a question about municipalities, public utilities boards, and other agencies. I asked a question about how we could get those

organized stations part of the act, and he mentioned because it was not listed. We could check with Hansard on that one.

The next question is dealing with the federal legislation that just came into effect in the New Year in regards to Bill C-6. It is in regards to the Personal Information Protection on Electronic Document Act. It is federal legislation, but I would like to ask, what are you, as Minister, responsible for this legislation doing to ensure that it is blended into our legislation. It does talk about the area of privacy, and it is new legislation. It does affect us directly, because it is federal legislation. As Department of Justice, to ensure that legislation is being enacted, leaders do enforce new legislation, but it is presently the law of the land. What is your department doing to look at that legislation and see how it blends into the act and legislation that we do have in place?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: The NWT legislation applies to the government. It applies to departments and agencies that are list in the schedules in the regulations. The federal government has a Privacy Act that applies to the federal government and federal agencies. The new legislation that came into affect on January 1,2001 is new federal privacy legislation, and it applies to the private sector. It is a very new development in Canada, except for Quebec where they did have similar legislation in place.

It initially applies to Federal regulated agencies, companies, et cetera. It does not apply to the companies, businesses, et cetera that normally fall into provincial or territorial jurisdiction. Except that on January 1,2004, the federal act will apply to the territories to businesses and companies that would normally be regulated by provincial or territorial legislation, unless there is territorial legislation put into place that would in effect replace the application of the federal legislation. It is a policy decision whether or not the government wants to enact it's own legislation and replace the federal legislation.

As to it's compatibility, it applies to the private sector. It is somewhat different than legislation which applied to the government, but it still includes the same kinds of principle about access to personal information and protection of the privacy of personal information. It is based on standards that are set by the Canadians Standards Association, which have, as such, some acceptance from the private sector. It is also similar to legislation which applies in Europe. It is compatible in the sense that it is based on the same types of principles that apply to personal information as it would apply to government.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Is the government considering introducing such legislation?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: I am not aware that the government has yet put it's mind to whether it should enact it's own legislation.

CHAIRMAN (Mr. Dent): Mr. Krutko, Mr. Sutton is saying that the decision is a political one, and he does not know whether or not Cabinet has even considered that. Mr. Krutko.

MR. KRUTKO: The question that I asked, which is redirected to yourself, is the whole area of legislation, that there is a set time frame of 30 days and we do set time limits in the act itself to let people know that they either comply or there is a process where you do not have a particular request drag on for several years. You try to get the requests out, or you try to get the information flowing where it does meet the Access to Information Act, getting those requests out. I will go through the list, and you can reply. He did touch on a few of them.

The other one was the area of establishing penalties with regards to people that do not comply with the time limits that are in place and with regards to what is established in the act if we go with that route.

The other area was the area of giving powers to the Commissioner to subpoena documents and call witnesses in regards to if we feel that the legislation is not being adhered to, that someone is trying to not apply to the specific legislation in regards to making the best efforts to get that information. So, just on those, I know you did touch on some of it in your presentation, but I would just like to know exactly where as a government are we going to consider those recommendations by the Commissioner and try to apply that to the act and enhance it so that those powers are in the act.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: Well, the act does have time limits throughout. There are, for example, the department is expected to reply within 30 days with a situation unless there are reasons which are identified in the act why it does not have to be done within 30 days. Typically, if there are third party interests, there is a requirement under the act to consult and there are certain timelines that are set in the act for that consultation and allowing for responses from third parties and so on. So, there are the time limits in the act throughout.

The Commissioner recommended some changes. Whether or not those recommendations are going to be accepted or not I think is a question for Cabinet and the Legislative Assembly. What I did in my presentation is identify how other jurisdictions typically have dealt with the subject matter of those recommendations.

CHAIRMAN (Mr. Dent): Mr. Krutko. One more question and then I will go around to the other Members on the list and come back to you if you have further ones. So, one final question, Mr. Krutko.

MR. KRUTKO: Just from the response from Mr. Sutton, if it is already in the act, there should be no problem enhancing it even more so that they do follow exactly what is in the act so you do not have this problem of people waiting a couple of years to file complaint after complaint trying to access information in which in some cases it has been quite a few years it has gone on. So, I think that you will enhance the timelines that are already supposedly in there so that people realize

that they do have to follow them and there is a penalty that you have to pay if you do not fulfill it.

So, when you talk about penalties, you touched on something, or you said that in regards to penalizing heads of departments or whatnot and to find a way to deal with that. Right now, we have a system in place that bonuses are given to Deputy Ministers and heads of different departments. There is a bonus system in place so why could not you use that system as there area of having that penalized if they do not comply or if they fail to do what the responsibilities are under legislation so they know that they are not above the law and they will have to pay either financially or whatnot through a system of penalizing their bonuses and whatnot at their reviews if they have some particular file against them through not applying to the Privacy Legislation? So, is that a possibility of having that in Legislation so heads of departments ensure that they are complying to the Privacy Legislation?

CHAIRMAN (Mr. Dent): The question as to whether or not you would want that as a policy issue, but the clear question is, is it possible to put that in legislation? Mr. Sutton.

MR. SUTTON: I would think that it is possible to provide for that in Legislation, yes. It is unusual, but it would be possible.

CHAIRMAN (Mr. Dent): Thank you. Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. We have heard a number of things through this review and of some concern, and Mr. Krutko touched on a bit of it with the recommendations made and your responses to them a question comes to light is that this act has now been enforced for five years. Is there any plans from the department as holder as this act in a sense to do a review?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: Well, if you mean at the officials level, there is an ongoing monitoring of the act and the different provisions in the act and it is always possible to improve on the legislation. As to a formal legislative review, I guess that would be a question for Cabinet and perhaps for this committee. I do know that is not untypical for access legislation to be subjected to a review after a certain number of years and as I recall in the federal legislation, if I remember correctly, it was actually written into the act that a review would be done after a certain period, but I am not aware of the decision to actually undertake that kind of review.

CHAIRMAN (Mr. Dent): Thank you. Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. I think it would be something that as a committee we would need to address and contact the appropriate Minister on that it undergo a review. We do not want to see as in some acts now that we are dealing with that are ancient in the sense of how government does business now in the Northwest Territories. So, we need to try to keep it current, especially something that impacts the lives of everyone and when we talk about the protection side of this, it seems to be fairly open and there is no clear way of

dealing with protection of privacy when it comes to individuals. So, I think that is an aspect.

Now, there have been some recommendations by the Commissioner and I agree with some of them in the sense of tightening them up and strengthening them. Some, I do not necessarily agree with, but I think that can be dealt with as government in a sense of what would be appropriate and not. Some of these though, can be done in a fairly quick and clean way in a sense of regulation and with that in light, and you have stated that you have done a review of other jurisdictions and specific to the recommendations made by the Commissioner, do you see a number of them as being implemented through regulation in a fairly quick manner? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: I think most of the recommendations, if they were accepted, would require amendments to the legislation. They could not be done by regulation. The act does not, that structure does not neatly apply to municipalities. It is remotely possible that we might be able to do something by regulation to make the act neatly apply to municipalities, but I suspect after an intensive review we would find that it would require amendments because the act as structured does not contemplate municipal type structures. Thank you Mr. Chairman.

CHAIRMAN (Mr. Dent): Thank you Mr. Sutton. Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. So, you are in fact stating that probably all the recommendations made to access to information by the Commissioner would in fact require legislative amendments, not just the fact of creating some new regulations?

CHAIRMAN (Mr. Dent): Mr. Sutton, how about specifically recommendation number one.

MR. SUTTON: Recommendation number one would require an amendment to the legislation. To go back a bit, while some of these recommendations do require amendments to the legislation, I think they are fairly simple amendments if they were accepted.

CHAIRMAN (Mr. Dent): Mr. Roland.

MR. ROLAND: Thank you Mr. Chairman. I think that just confirms then the need to, if we are going to start making amendments, instead of doing them piecemeal, and maybe it is appropriate and very timely in fact that we urge government to do a full review of this act in a sense of cleaning it up, strengthening some areas and clarifying for the provision of protection side of it, not just access to information. Thank you.

CHAIRMAN (Mr. Dent): Perhaps we could ask you, Mr. Sutton, has the Department of Justice found any technical problems with the application of the act that would lend support to the argument that it is time for a review?

MR. SUTTON: I am not aware of any, what might be classified as technical arguments. There are certainly problems. There are areas where it can be improved, where it could be clearer than it is, and I think the Commissioner has identified some areas where improvements could be made in the legislation.

CHAIRMAN (Mr. Dent): Ok, Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you Mr. Chairman. Just a couple of other questions I would have. Would it be possible, when you are providing us with the information that you committed to, could you also indicate from Justice's point of view, what could be done by regulations versus amendments? You said some of it could possibly be done, but it may not stand scrutiny, so I would be interested to know when you look at the recommendations, it would help with our decision making as well for follow-up to my colleague Mr. Roland's comments.

I have a question in regards as well to this issue of federal legislation. It is characterized as respected private sector privacy standards. As I look at that, it is very misleading. The initial reaction by myself as we were talking about the private sector in terms of business, but in reality, I would just like to clarify that as we are talking about protecting the rights of every man, woman and child in the Northwest Territories, including ourselves. Is that, so that I am very clear on this? Thank you.

CHAIRMAN (Mr. Dent): Thank you Mr. Miltenberger. Mr. Sutton.

MR. SUTTON: I am not sure that I fully understood the question, but what the federal legislation does, it introduces standards and remedies to ordinary people regarding how information about themselves is managed by institutions such as banks, any institution which would collect information about us, and it imposes standards on how they use that information and how they share that information and allows persons to make requests to institutions to have a look at that information about themselves.

CHAIRMAN (Mr. Dent): Thank you Mr. Sutton. Mr. Miltenberger, further?

MR. MILTENBERGER: Thank you Mr. Chairman. Could Mr. Sutton clarify then, where would that protection be in dealing with government? Is it under this current act that clearly delineates on the privacy side what is acceptable and what is not in terms of the protection of privacy that you made reference to which is harder to measure, but is a big one as well. The government is currently, as we speak, governed in terms of that issue, by the current legislation? Thank you.

CHAIRMAN (Mr. Dent): Thank you Mr. Miltenberger. Mr. Sutton.

MR. SUTTON: Yes, the government is covered by its own legislation, not the federal legislation. The standards that are imposed on the government are imposed by itself on itself.

CHAIRMAN (Mr. Dent): Thank you Mr. Sutton. Further Mr. Miltenberger.

MR. MILTENBERGER: So that private individuals, right now, if they have a concern about privacy issues within government, as opposed to the private sector, now come to the government under this particular legislation? The one

that is before us today and what is contemplated by the federal legislation is to in fact to look at that protection, but in the actual private sector?

CHAIRMAN (Mr. Dent): Thank you Mr. Miltenberger. Mr. Sutton.

MR. SUTTON: That is correct.

CHAIRMAN (Mr. Dent): Further questions Mr. Miltenberger?

MR. MILTENBERGER: Your response to this particular suggestion, that we have our own legislation was that, that is a policy issue, but the way I understood the discussion yesterday from the Commissioner was that in fact, if we just rely on the federal legislation, if there are any concerns in the private sector in this area, all complaints would have to go all the way to Ottawa and I am also very mindful of the agony and the suffering that we have gone through as a jurisdiction trying to resolve this pay equity because we did not have our own Human Rights Legislation. Is that an issue as well here that we could get involved in situations if we rely on federal legislation rather than taking the steps to create our own where we could possibly get locked into some situations where we have to rely on a federal jurisdiction 4,000 miles away in Ottawa and then some individual who has no clue about life in the Northwest Territories making decisions on situations that we should be as a government dealing with? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: It is true that the since the federal legislation applies, it would mean that complaints would go to the federal Privacy Commissioner who is based in Ottawa and the complaints would be resolved by that official, not an official in the Northwest Territories.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: Thank you Mr. Chairman, one final question on a different subject. The issue earlier on, as you are aware, of Cabinet documents came up and access to information on decisions made by government and the quote read by Mr. Voytilla was fairly comprehensive. So, the question I would ask is, could you indicate, given the comprehensive nature of that particular clause that includes everything including dinner menus and sticky notes passed between Cabinet Ministers, what would not be covered by that?

If somebody wanted to find out some information about why certain decisions were made, are there any documents that should be available to the public, or is that such an iron clad, sweeping clause that what goes on in Cabinet stays in Cabinet and could you speak to that issue as it relates to this act and also the issue came up, how did the conflict hearing with the Morin Inquiry get access to information in regards to minutes and decisions and letters and such? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: The act, like other legislation in Canada, does provide an exclusion for Cabinet documents, or documents that are prepared for Cabinet. So, it is a fairly broad exclusion and it is fair to say that there is a wide degree of

protection from disclosure of documents that are prepared for Cabinet. Whether a document is covered by a Cabinet Confidence is essentially a legal question in each case. There are lots of documents that are not specifically prepared for Cabinet and are not covered by that exclusion, but once a document becomes part of the decision making process of Cabinet, it is covered by the exclusion. It is a question, I suppose to Cabinet, whether it wants to release that document or any of the information in the document, apart from the act, but as far as the act goes, strict application of the act, it is true that anything that is prepared for Cabinet is covered by the exclusion. As I said, that is not true in the legislation across the country. There will be some differences.

There is also a time limit on documents. I think it is after 15 years or something like that, then they are no longer covered by the confidence.

On the question of other processes, the Access to Information Act does not replace other processes. It introduces a new way for members of the public to access documents. So, for example, it does not replace court processes. Accessing documents through court processes continue to be administered the way they always have and they are subject to rules of court and the processes of court and the procedures of court. Likewise for inquiries, they are a different process that was not intended to be replaced by the Access to Information legislation. So, the rules applicable to inquiries would determine what access is allowed for and what access is not allowed for.

Similarly in the Legislative Assembly, committees, and so on – the Act does not apply to committees and Members of the Legislature as to how information is shared. The rules of the House would apply. The rules in many cases will be similar, but the strict application of the Act would not prohibit access to information in an inquiry or court or whatever, if under the rules of the inquiry or court, they do have access to those documents.

CHAIRMAN (Mr. Dent): Mr. Miltenberger.

MR. MILTENBERGER: So to be clear then, the honourable and fine intent of openness and transparency hits the wall at the fortress of solitude behind the Cabinet doors basically. You do not have to comment on that. That is just an observation.

CHAIRMAN (Mr. Dent): Thank you, Mr. Miltenberger.

Mr. Sutton, just a question of going back to the Morin Inquiry. I know that Cabinet documents, in spite of our Act, saying they are not accessible. There is no explicit mention in the Inquiries Act that says that those documents would be made available at an inquiry. Under what law did they become available to the inquiry? Have we set up something in our legislation that goes beyond what is within Canadian law to protect those documents and if people were to appeal to a court over and above what had been rejected in an Access to Information situation, would they then be likely given access to Cabinet documents that our legislation says they cannot? What happened with the Morin Inquiry to make those documents become available? Mr. Sutton.

MR. SUTTON: I do not know if I can answer that question without going back and researching it and talking to the people who were involved, but there are bodies of law that determine when access to information such as Cabinet documents can be made in court or in inquiries and so on, and I cannot off the top of my head speak knowledgeably about it.

The Access Act has a specific application. It provides access to the public to documents that are held by departments and public bodies. It is an addition to rights of access to information that might have applied before in other forms. It is not to replace those, it is to give a new right of access to members of the public.

For example, the lawyers will often make access requests to information relating to a case when normally access would have been dealt with rules that normally would apply to the courts. So, they can apply under both forums if they wish, but the access to that information by a lawyer will be regulated by the rules of the act and should not take into account the fact that there are other avenues to that information available to a lawyer.

CHAIRMAN (Mr. Dent): Thank you. Mr. Krutko.

MR. KRUTKO: I am just following up on a similar question, especially when you start using the word “anything” that is this restricted, I think there is a point of confidentiality, a point of the public’s right to know. I think that especially from wherever it was, Section 13, that it seems like it is pretty restrictive when it comes to what is confidential and what is no when it comes to Cabinet documents. In light of the public inquiries and whatnot that have taken place and that we are talking about more of an open government, yet it seems there are still these walls around documentation.

I think what has to be done is there has to be some sort of a test in place to say exactly what is confidential. Is it something that is for staff or Cabinet eyes only? There has to be some information that Cabinet cannot secretly hide behind this section of the Act saying, “Everything is confidential. It does not matter if it is a note or something that happened some time ago.” Because of what we are seeing in regards to reluctance of departments being open to sharing information which should be classified as public and which should be classified as private, there should be some sort of test in place to determine exactly what is there.

I think that what is needed is that we definitely have to thoroughly do a review of the present Act that is in place, because it does have some really restrictive clauses. Especially when it comes to the problems we are running into even as members of this legislature, I noticed that it is tougher now to get information than it was in the previous Assemblies.

And I think, because of that, there has definitely been an opposite effect where we are talking that because of the public inquiry we are going to have more open government, that the ministers and people who make decisions will be more accountable. I would like to know what is your department doing to scrutinize this legislation to see exactly if it is over restrictive or under restrictive, and have you done a review to look at some sort of mechanism to evaluate exactly why is it

that we are not having more of an open government and we are back to putting up these walls. Have you done that? Is that something your department will be looking at?

CHAIRMAN (Mr. Dent): Mr. Sutton.

MR. SUTTON: No, our department has not done that. I think that is more of a political question. If asked to do certain reviews, we can always do that. The legislature passed the Act and it is a policy issue whether access will be made to Cabinet documents. I think it is more of a question for the legislature than the department, whether or not those provisions are too restrictive.

CHAIRMAN (Mr. Dent): Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. The onus is on the legislature to go back and make an amendment to a specific Act, but the direction has to come from either the Department of Justice or Cabinet and bring it back into the House to make those suggestions. Unless we as a committee come forth with recommendations, will those recommendations be adhered to by your department or the government as a whole? Because that is where it has to come from. The change has to come from within. As it sits right now from the presentations we have heard from the different departments, it seems that there is nothing wrong with a thing and so far as they are concerned everything is okay. But from the Commissioner's report, it sounds as if there are some major problems with that legislation, and I think that we have to change it.

So, I would like to know what role you play as the Deputy Ministers responsible for Justice to look at the whole area of insuring that information is privy to certain requests and that we do not have this rigid requirement where anything is classified as being confidential when it comes to the Cabinet.

CHAIRMAN (Mr. Dent): Mr. Krutko, if this committee feels that that sort of recommendation should be made, the appropriate way to do it is in our report to the Legislative Assembly, then the Minister of Justice will provide direction to the officials to follow up on that. It would not be appropriate for a bureaucrat to move on recommendations made by an officer of the Legislative Assembly without some political direction, if that is what they are supposed to do.

So, this committee could make the recommendation or the Minister of Justice can make the recommendation for the change, but their role as a Deputy of the department is to follow the direction provided by the politicians, not to tell us what we should be doing. It is up to us to determine what we think is right and then direct that they develop the legislation.

Mr. Sutton has indicated that according to the Department of Justice, they are administering the Act that was passed by the Legislative Assembly as it was passed. So, if we think it should be changed, it is up to us to make sure it gets changed.

Now, you have a specific question about the access to Cabinet documents and so on? Ms. Peterson may have some comments about how some of those documents in the past did become accessible which may be of use.

Mr. Krutko.

MR. KRUTKO: Thank you, Mr. Chairman. That is the point I am getting at. We had a public inquiry, there was some pretty rigid and strong recommendations directed at Cabinet, at Deputy Ministers in regards to how they conduct themselves and exactly how decisions are made behind closed doors and what information should be privy to the public. They are accountable to the public. And because of that inquiry, this Act should have been amended knowing that there was a connection between that inquiry and this legislation, especially when it comes to information. There was a link.

The question is, was there ever any work done to ensure that those recommendations that came out of the inquiry were considered by the Department of Justice, looking at possibly making amendments to this Act to ensure that they were abided by? Thank you.

CHAIRMAN (Mr. Dent): Mr. Sutton, were you aware of any recommendations to change the Access to Information and Protection of Privacy Act that arose from the Morin Inquiry?

MR. SUTTON: No, I am not, Mr. Chairman.

CHAIRMAN (Mr. Dent): I believe the recommendations for change were to the Legislative Assembly and Executive Council Act and that act was changed. I may be wrong, Mr. Krutko, but my recollection is that those were the recommendations that came out of the Morin Inquiry. We may have to look at that.

But Ms. Peterson may have some information to share with the committee on how some documents became available to the inquiry. Ms. Peterson, could you pick one of the chairs close to a microphone and provide us with that information.

MS. PETERSON: Thank you, Mr. Chairman. One of the things to remember is, that with respect to the Access to Information and Protection of Privacy Act, the provisions in that Act that allow access or protect privacy are relative to requests made under that Act or information maintained under that Act. With respect to proceedings like inquiries, like the Morin Inquiry or other court cases, the Access to Information and Protection of Privacy Act is not particularly relevant. What is relevant, what is important, and what triggers documents and information and evidence coming forward in those proceedings is first, whether that document is relevant to the issue that is in front of that adjudicator.

So, without sort of giving an Evidence 101 seminar, relevancy will be the first question that is asked. Is the document that is requested relevant to the question that we are trying to solve? Secondly, is it protected by any privilege? Privilege is not something that is set out, for example, in the ATIPP Act. Privilege is something that is recognised by law, such as solicitor/client privilege, and interpreted by the law such as certain privileges associated with doctor/patient information and so on.

It is a broader scope of access to information, and as Mr. Sutton indicated, when those kinds of issues are being resolved or before inquiries such as the Morin

Inquiry or court cases, the lawyers and the parties involved will have access to information based on whether that information is relevant to the proceeding in addition to whatever other steps they might want to take under the Access to Information and Protection of Privacy Act. It is a broader scope and it is not necessarily limited by those provisions like the Cabinet exclusions under that particular act. So that is why those kinds of documents could be triggered in an inquiry process, but not necessarily in a request made under this specific legislation.

CHAIRMAN (Mr. Dent): Thank you, Ms. Peterson. Do we have any more questions for Mr. Sutton? If not, Mr. Sutton, I would like to thank you for your attendance this morning and for having responded to our questions.

That wraps up our public process for reviewing the Access to Information and Protection of Privacy Commissioner's report. So we will now be moving in camera to consider what we have heard and then develop our recommendations for a report. Would Members like to start that process right now or break now and resume at 1:30 p.m.?

Okay, then this committee stands recessed until 1:30 when we will resume in camera session.

-- ADJOURNMENT

Reference Guide

Comments by Assembly Staff

Peterson, Katherine32

Comments by Members

Bell, Brendan.....16

Delorey, Paul.....1, 15

Dent, Charles
 1, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14,
 15, 16, 17, 19, 20, 21, 22, 23,
 24, 25, 26, 27, 28, 29, 30, 31,
 32, 33

Krutko, David.....
 7, 8, 14, 15, 17, 22, 23, 24, 30,
 31, 32

Miltenberger, Michael
 .4, 5, 9, 10, 13, 19, 21, 27, 28, 29

Roland, Floyd6, 13, 25, 26

Comments by Witnesses

Sutton, Gerry.....
 17, 20, 21, 22, 23, 24, 25, 26,
 27, 28, 30, 31, 32

Voytilla, Lew.....
 1, 5, 6, 7, 8, 9, 10, 11, 12, 13,
 14, 15, 17

