



15th Legislative Assembly of the Northwest Territories

Standing Committee on Accountability and Oversight

Report on the Review
of the Information and
Privacy Commissioner's
2005-2006 Annual Report

Chair: Mr. Jackson Lafferty

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Committee Researcher

August 22, 2007

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Accountability and Oversight is pleased to provide its Report on the Review of the Information and Privacy Commissioner's Annual Report 2005-2006 and commends it to the House.

Jackson Lafferty, MLA
Chairperson

**STANDING COMMITTEE ON
ACCOUNTABILITY AND OVERSIGHT**

**REPORT ON THE REVIEW OF THE
INFORMATION AND PRIVACY COMMISSIONER'S
2005-2006 ANNUAL REPORT**

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STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

REPORT ON THE REVIEW OF THE INFORMATION AND PRIVACY COMMISSIONER'S 2005-2006 ANNUAL REPORT

INTRODUCTION

The Standing Committee on Accountability and Oversight met on May 16, 2007 to review the 2005-2006 Annual Report of the Information and Privacy Commissioner. The Committee would like to thank the Commissioner, Ms. Elaine Keenan-Bengts, for her report and for her appearance before the Committee.

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

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly. Her primary role is to review and make recommendations on public bodies' decisions under the *Act*. Reviews can be requested by people who have been refused access to information, third parties who have an interest in information someone else is requesting, and people who have concerns about how their personal information has been handled. The Commissioner's mandate also includes: Research into matters affecting the carrying out of the purposes of the *Act*; receiving representations about the operation of the *Act*; and offering comment on the implications for privacy protection of proposed legislative schemes or government programs.

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As Ms. Keenan-Bengts stated to Committee, "the principals underlining the legislation form the basis of modern democracy".

However, she advised us that she is faced with what she referred to as an “underlying reluctance to openness ... a tendency to interpret the act narrowly so as to limit the access allowed”.

The underlying theme throughout the Commissioner's report and presentation to the Committee was the need to foster a corporate culture that is committed to open and transparent government, and strives to follow the spirit as well as the letter of the *Act*. She stressed again the need for leadership to initiate a change of culture from top to bottom. Ministers and Deputy Ministers, in particular, would need to demonstrate commitment to the *Act* and support, through their leadership, a shift to greater openness.

The Committee had an engaging discussion with the Commissioner about the powers given to ATIPP Commissioners in different Canadian jurisdictions. The Commissioner strongly believes in the ombudsman system that is in place in the NWT. She feels that the flexibility of this system allows her to work with departments and agencies in order to find creative and innovative resolutions. The Commissioner sees this as a strength, particularly in our small jurisdiction, where this legislative framework is still fairly new.

Ms. Keenan-Bengts emphasized that these strengths, however, can only unfold and develop fully if there is commitment to the process throughout the organization starting from the top. As she stated, “the purposes of the *Act* will only be met if there is a buy-in and commitment on the part of the Government as a whole and support from the highest levels of management to the concept of openness.”

The Committee shares the Commissioner's concerns and strongly supports her plea to strengthen the corporate culture.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the Premier, Ministers and Deputy Ministers take a leadership role in changing the corporate culture as far as the interpretation and application of the *ATIPP Act* is concerned to create a culture of openness from top to bottom.

Furthermore, the Standing Committee on Accountability and Oversight recommends that a new section reporting on ATIPP activities be included in the yearly business plans for each department. This new reporting framework should include information on requests, complaints and how they were resolved, related training and any other initiatives or activities that take place to promote the ATIPP legislation.

Such a reporting requirement will send clear messages to the public service about the importance of open and transparent government, and the need to grant access to information unless there is a clear and compelling reason not to do so.

The 2005-2006 Annual Report includes several other specific recommendations to enhance access to information and protection of personal privacy in the NWT, and to improve the administration of the *Act*.

Boards and Agencies

A longstanding concern for the Commissioner has been the need for members and staff of boards and agencies to be aware of their obligations under the *Act* and to implement appropriate records retention policies, particularly for documents in the hands of individual board members.

In previous reports, our Committee has recommended that mandatory records management training for board members of boards and agencies be implemented.

The last Government response was tabled in the House on October 17, 2006. The GNWT committed to a more proactive approach to ATIPP and to report back on the discussions between officials from the Departments of Justice, Public Works and Services and Human Resources who are reviewing the matter. This report is still outstanding.

The Commissioner acknowledged that some training is now being offered to members of boards and agencies, but the courses offered are still a long way from being complete. Ms. Keenan-Bengts repeated her concerns that board members do not necessarily have any knowledge about their obligations under the ATIPP legislation. She contends that they are not advised at the beginning of their tenure about what their responsibilities are under the legislation and that no standards or policies exist that would govern these agencies as far as ATIPP legislation is concerned.

The Committee was troubled to hear that the Commissioner was not aware of the standards, policies and guidelines developed by the Departments of Public Works and Services and Justice.

Recommendation

The Standing Committee on Accountability and Oversight recommends that ATIPP activities related to boards and agencies be included in the proposed Business Plan reporting framework and that the GNWT deliver on its outstanding commitment to report back to the Accountability and Oversight Committee on its commitment to a more proactive approach to ATIPP matters.

Private Sector Privacy Legislation

Another of the Commissioner's ongoing recommendations from past reports is that the NWT enact its own "made-in-the-north" privacy legislation to regulate how the private sector collects, uses and discloses personal information.

Although the NWT's private sector is regulated by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), the Commissioner points out that a small and distant office in Ottawa is unlikely to have the time and capacity to address complaints and issues of a local nature. Alberta and BC, for example, have enacted provincial legislation to address the gaps left by PIPEDA and found that they received large numbers of complaints. The resolution of these complaints has made corporate citizens more aware of their responsibilities and the public aware of their rights.

The GNWT had previously indicated its intent to review the effectiveness of PIPEDA in 2006 in order to determine whether territorial legislation is necessary. The Committee looks forward to seeing the results of this review now that the Federal Government has concluded its statutory review of the *Act*.

Contractors

As in past reports, the Commissioner commented on the importance of ensuring contractors who handle Government information are aware of and comply with the requirements of ATIPP legislation. Her concerns appear to be partially addressed by the terms and conditions incorporated into GNWT contracts, and by the October 2005 amendments to the *Act*. These changes made contractors directly responsible for protecting personal information.

Nevertheless, the Commissioner wishes to create awareness and alertness to this issue, particularly if the Government should choose in the future to contract out services that involve extensive personal information.

First Nations Governance

As in previous reports, the Commissioner recommends the GNWT take the initiative to raise information and privacy issues in devolution discussions, and with aboriginal governments in order to encourage them to include some form of regulation within their governance structures. She states that although there are likely to be cultural differences on many information and privacy issues, all peoples have the right to an open government, which requires access to records and the right to expect a certain level of privacy.

The GNWT indicated in its response to the Commissioner's 2004-2005 recommendations that the *ATIPP Act* and Regulations will not apply to self-governments, but that the GNWT is willing to be consulted on the drafting of such legislation by self-governments.

During the public meeting, the Commissioner indicated that she hoped that the GNWT would have shown some more specific ideas and a more positive approach encouraging First Nations to consider this issue.

Municipal Governments

In her previous seven reports, the Commissioner has brought forward the lack of and need for information and privacy legislation for municipal governments.

The Commissioner encourages the Government again to either include municipalities under *ATIPP* or create specific information and privacy legislation for municipalities.

The Committee supports the Commissioner's recommendation and further encourages the GNWT to conclude the work started between Municipal and Community Affairs (MACA) and Justice in consultation with the Northwest Territories Association of Communities to allow for consideration of a Bill by the 16th Assembly.

CONCLUSION

The Commissioner quoted the following statement by Justice LaForrest of the Supreme Court of Canada to the Committee:

“The overarching purpose of access to information legislation is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to

participate meaningfully in the democratic process and secondly, that politicians and bureaucrats remain accountable to the citizenry.

Rights to state held information are designed to improve the workings of government; to make it more effective, responsive and accountable.”

Despite her occasional frustration, the Commissioner advised us that she continues to strongly believe in the ombudsman approach to the oversight of ATIPP implementation and compliance. She is convinced that working with people to come up with solutions generates better results and buy-in than would order powers. However, the need for a corporate culture supporting that approach is crucial.

Ms. Keenan-Bengtts also reported some encouraging evidence. Since her recommendation regarding the introduction of an electronic health record system, she has been consulted by the Department of Health and Social Services, leading to her increased confidence that the privacy issues related to this new technology will be addressed. The Commissioner was also pleased about the enthusiastic and positive reaction from the Department of Transportation to her recommendation regarding a legislative gap in the *Motor Vehicles Act*.

These are positive developments and the Committee wishes to encourage the Government to show leadership and to strive for full compliance with both the spirit and letter of the *Access to Information and Protection of Privacy Act*.

Recommendation

The Standing Committee on Accountability and Oversight recommends the GNWT table a comprehensive response to this report no later than during the second session of the 16th Legislative Assembly.