



# **16<sup>th</sup> Legislative Assembly of the Northwest Territories**

## **Standing Committee on Government Operations**

Report on the Review of the  
Information and Privacy  
Commissioner's 2006-2007  
and 2007-2008 Annual Reports

Chair: Mr. Kevin Menicoche

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October 22, 2009

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its Report on the Review of the Information and Privacy Commissioner's 2006-2007 and 2007-2008 Annual Reports and commends it to the House.

Kevin Menicoche, MLA  
Chairperson

**STANDING COMMITTEE ON  
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE  
INFORMATION AND PRIVACY COMMISSIONER'S  
2006-2007 AND 2007-2008 ANNUAL REPORTS**

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## **STANDING COMMITTEE ON GOVERNMENT OPERATIONS**

### **REVIEW OF THE INFORMATION AND PRIVACY COMMISSIONER'S 2006-2007 AND 2007-2008 ANNUAL REPORTS**

#### **INTRODUCTION**

The Standing Committee on Government Operations reviewed the 2006-2007 and 2007-2008 Annual Reports of the Information and Privacy Commissioner at a meeting on September 23, 2009. The Committee would like to thank Ms. Elaine Keenan Bengts for her reports and for her appearance before the Committee.

The purpose of the NWT's *Access to Information and Protection of Privacy Act* (ATIPP) is to make public bodies accountable and protect personal privacy. 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*. In her comments on the Annual Reports at the review, Ms. Keenan Bengts expressed the opinion that, for the most part, the system created by ATIPP is working well.

The Committee has seen progress. On its review of the complaints made to the Information and Privacy Commissioner in 2007-2008, the Committee observed fewer incidents where ATIPP or its intent was not followed by departments and agencies than in previous years. The Committee is pleased to observe many departments are providing active disclosure of records on a regular basis. The Department of Justice is developing training in the form of web-based tutorials on access and privacy for all public body representatives, including board officials. In addition, in June of 2009, the *Motor Vehicles Act* was amended to address the Committee's concerns with unreasonable restrictions on disclosure of personal contact information.

Progress is being noted on other fronts. In an effort to raise awareness about the public's right to access information, the Information and Privacy Commissioner plans to promote the "Right to Know" week that is held the last week in September each year in Canada and throughout the world. The Committee is pleased to support this initiative which will highlight the importance of the concept of open government.

The Standing Committee on Government Operations is pleased to bring forward the following recommendations with regard to access to information and protection of privacy issues identified in the Commissioner's 2006-2007 and 2007-2008 Annual Reports.

## 2006-2007 ANNUAL REPORT

In the 2006-2007 Annual Report, the Information and Privacy Commissioner continues to advise that the interests of the ATIPP regime will be best addressed if a leadership role is taken by Government Ministers and Deputy Ministers. Ms. Keenan Bengts recommends developing and maintaining a corporate culture of openness. She supports providing routine and active disclosure of public records. If records are withheld, a full explanation is warranted.

### Recommendation 1

**The Standing Committee on Government Operations recommends that the GNWT establish policies on routine and active disclosure of public records, following best practices in other parts of Canada.**

**Furthermore, even though discretionary exemptions exist that allow public bodies to withhold information, in situations where information is withheld a full explanation of the rationale for that decision should be provided as a matter of course.**

In her report, the Information and Privacy Commissioner advised that she had been unable to find any Government of the Northwest Territories (GNWT) policies specifically relating to the secure storage and subsequent deletion of confidential information on portable electronic devices (i.e. cell phones and Blackberrys) or the proper management of communication records that are created from the use of such devices.

### Recommendation 2

**The Standing Committee on Government Operations recommends that the GNWT enhance its policies and guidelines on the use of portable electronic devices and the access and privacy issues that arise through the use of such devices.**

The Information and Privacy Commissioner continues to hold the view that the Government of the Northwest Territories should not rely on the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) to govern private sector obligations to protect the personal information of NWT residents. The GNWT previously committed to reviewing this issue again once the statutorily mandated five-year review of PIPEDA was completed in July of 2007.

### **Recommendation 3**

**The Standing Committee on Government Operations recommends that the GNWT undertake a comprehensive analysis of the review of the *Personal Information Protection and Electronic Documents Act* to determine the need for GNWT legislation to protect the personal information of the people of the Northwest Territories held by the private sector.**

## **2007-2008 ANNUAL REPORT**

The Information and Privacy Commissioner reiterated recommendations made in previous annual reports calling on Cabinet and Deputy Ministers to lead in creating a more open corporate culture. The Commissioner also recommended a legislative change: the present wording of ATIPP is such that it allows an applicant only thirty days after receiving a response to a Request for Information to ask the Commissioner to review that decision. In many cases, the public bodies will allow applicants extra time, especially in cases where paper records and conventional mail are used, but they do not always consent and they are within their rights to refuse. The Commissioner thinks thirty days is a short time frame and she feels that refusing to respond to applicants who ask her to review decisions is contrary to the spirit and intent of the legislation.

### **Recommendation 4**

**The Standing Committee on Government Operations recommends the *Access to Information and Protection of Privacy Act* be amended to extend the period of time in which applicants may ask that a decision on a Request for Information be reviewed by the Information and Privacy Commissioner.**

The Information and Privacy Commissioner wants to ensure that all GNWT staff know the intent of ATIPP as it relates to electronic media. It is estimated that 90% of all records being created today are electronic and the advantages of electronic storage are numerous.

### **Recommendation 5**

**The Standing Committee on Government Operations recommends that the GNWT develop policies to address electronic records and their relationship to ATIPP, and that the GNWT provide training to employees on this issue.**

For a number of years, the Information and Privacy Commissioner has recommended that the NWT enact legislation that would make municipalities subject to access and privacy legislation, just as they are in eight provinces. In the 15<sup>th</sup> Assembly, the Standing Committee on Accountability and Oversight supported the Commissioner's recommendation and "encouraged the GNWT to conclude the work started between the Departments of Municipal and Community Affairs and Justice in consultation with the Northwest Territories Association of Communities to allow for consideration of a Bill by the 16th Assembly." In response, in 2007, the Departments of Justice and Municipal and Community Affairs developed a range of options, and preliminary discussion has taken place with the NWT Association of Communities and local government administrators. All parties agreed to pursue broader consultation. The Committee has been informed that the Department of Municipal and Community Affairs will present a discussion paper to various territorial associations, municipal governments, and the general public in the next two to three years. The Committee continues to support working toward this legislative initiative in a timely fashion and will monitor progress over the coming months.

## **CONCLUSION**

The Committee commends the continuing efforts of the Information and Privacy Commissioner and looks forward to monitoring her continued activities.

### **Recommendation 4**

**The Standing Committee on Government Operations recommends the Government provide a comprehensive response to this report within 120 days.**