

Government of Nunavut Response to the Standing Committee on Oversight of Government Operations and Public Accounts

Report on the Review of the Annual Report of the Information and Privacy Commissioner of Nunavut

On October 1, 2010 Elaine Keenan-Bengts, the Information and Privacy Commissioner (IPC) of Nunavut appeared before the Standing Committee on Oversight of Government Operations and Public Accounts to present her 2009-2010 Annual Report. In addition to the review of that annual report, the Standing Committee raised many issues regarding access to information and protection of privacy which they felt directly affected the public of Nunavut. Following that appearance, the Standing Committee tabled their Report on the Review of the Annual Report of the Information and Privacy Commissioner on October 22, 2010. The Standing Committee report consists of eight (8) recommendations to the Government of Nunavut (GN), some specific to departments, which the Committee felt could help improve access to information and protection of privacy.

As per Rule 91(5) of the Rules of the Legislative Assembly, the Government of Nunavut has 120 days from the tabling of the Standing Committee Report to provide a comprehensive response.

This response individually addresses the specific recommendations made by the Standing Committee, in furtherance of improved access to information and improved privacy protection.

Standing Committee Recommendation #1:

Issue: Disclosure of Crown Agency Contracting, Procurement and Leasing Activities

The Standing Committee reiterates its recommendation that the Government of Nunavut table annual reports in the Legislative Assembly on the contracting, procurement and leasing activities for all of its Crown corporations and agencies, including the:

- Nunavut Business Credit Corporation;
- Nunavut Development Corporation;
- Nunavut Housing Corporation;
- Qulliq Energy Corporation; and
- Nunavut Arctic College.

GN Response:

- The government agrees. The Public Agencies Council will work closely with the Ministers responsible for our territorial corporations with respect to the reporting of their contracting activities to ensure the timeliness of reporting, transparency and accountability to Nunavummiut.
- Nunavut Housing Corporation tabled their 2008/09 Contracting Report in the Fall Sitting of the Legislative Assembly, and the Qulliq Energy Corporation and Nunavut Business Credit Corporation will be tabling comprehensive contracting, procurement & leasing activity reports for fiscal years 2008/09 and 2009/10 in the Winter Sitting of the Legislative Assembly, scheduled for February 2011.

Standing Committee Recommendation #2:**Issue: Disclosure of Information in Relation to Communicable Diseases**

The Standing Committee recommends that the Government of Nunavut table in the Legislative Assembly its disclosure and reporting protocols concerning reportable communicable diseases.

GN Response:

- The Department of Health and Social Services, through the office of the Chief Medical Officer of Health, will be developing its disclosure protocols, with a particular focus on disclosure of community names and community-specific numbers of cases. Potential protocols will take into account relevant legislation such as the Communicable Diseases Act and the Access to Information and Privacy Act as well as Nunavut's unique needs. Once approved by the Executive Council, the Government of Nunavut will table the protocols in the Legislative Assembly.

Standing Committee Recommendation #3:**Issue: Communication Practices of Community Health Centres**

The Standing Committee recommends that the Government of Nunavut table in the Legislative Assembly a policy on communication practices to be followed by community health centres.

GN Response:

- The Department of Health and Social Services makes frequent use of community radio with regards to general public health announcements as this media reaches a wide section of the population. In regards to client-specific information, the Department of Health and Social Services, as part of its Human Resources Policy, recently implemented its Policy “Contacting Clients through Local Radio”. The policy states that “staff shall not use the local radio as a means of communicating with individual clients. The announcement of individual client names on the radio is a breach of confidentiality.”

Standing Committee Recommendation #4:

Issue: Application of Access to Information and Protection of Privacy Legislation to Municipalities

The Standing Committee reconfirms its support for ensuring that all levels of government have appropriate systems of access to information and protection of privacy in place. The Standing Committee recommends that the Government of Nunavut’s next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in working with the Nunavut Association of Municipalities and the Office of the Information and Privacy Commissioner to review the issue of access to information and protection of privacy at the municipal level.

GN Response:

- The Government of Nunavut agrees that municipalities should, in some way, be accountable under access to information and privacy protection legislation. Further consultation regarding their inclusion under the ATIPP Act is required and the GN intends to include all stakeholders who may be affected by these changes, including the Nunavut Association of Municipalities.
- As including municipalities under the ATIPP Act does raise many governance and administrative issues, it is important that we do not rush into their inclusion before we are aware of and able to deal with the concerns of all parties. However initial consultation will begin with municipalities to gain their suggestions on how best to eventually include their operations under ATIPP.

Standing Committee Recommendation #5:**Issue: Amendments to the Access to Information and Protection of Privacy Act to Include Privacy Reviews**

The Standing Committee recommends that the Government of Nunavut's next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in working with the Office of the Information and Privacy Commissioner to develop amendments to the *Access to Information and Protection of Privacy Act* to provide clear authority for the Information and Privacy Commissioner to conduct privacy reviews and investigate alleged breaches of the legislation.

As an interim measure, the Standing Committee further recommends that the Government of Nunavut formally commit, as a matter of policy, to cooperating with the Office of the Information and Privacy Commissioner in privacy-related investigations until such time as the legislation is amended.

GN Response:

- The GN concurs with the Commissioner that change to the legislation should include a mandate for the IPC to review privacy breaches, integrating formal oversight into the Act, and providing more accountability to the public. A Legislative proposal has been drafted; IPC and legal consultations will continue throughout the process.
- The Government of Nunavut will provide further update on this issue in its next annual report on the administration of the *Access to Information and Protection of Privacy Act*.

Standing Committee Recommendation # 6**Issue: Information and Privacy Commissioner's Discretion to Extend the Time for Requesting a Review**

The Standing Committee recommends that the Government of Nunavut's next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in working with the Office of the Information and Privacy Commissioner to develop amendments to the *Access to Information and Protection of Privacy Act* to provide the Information and Privacy Commissioner with the discretion to extend the time for requesting a review in appropriate circumstances.

GN Response:

- The GN fully comprehends the problems with the timely flow of information by mail both within and outside of Nunavut. However, the GN is of the opinion that the word “deliver” in the context of Section 29 of the ATIPP Act should most properly be interpreted as being the day the request is postmarked, not the day the Commissioner receives the request.
- The “Postal Rule” in contract law has to do with the process of offer and acceptance in the contractual context and goes to determining when acceptance is made. According to this rule, a person is deemed to accept an offer at the time that s/he mails the acceptance document to the other person (i.e.: the time when the letter is put in the mailbox) even if the letter never actually makes it to the intended recipient.
- As such, the 30-day time limit applies from the time the applicant receives the decision from the public body until the request for review to the Commissioner is mailed. The GN believes this allotment of time is adequate, and consequently, the GN does not agree with the Commissioner’s stated reason for amending the Act.
- If there are further developments, the Government of Nunavut’s will provide an update on this issue in next annual report on the administration of the *Access to Information and Protection of Privacy Act*

Standing Committee Recommendation #7:

Issue: Development of Health-Specific Privacy Legislation

The Standing Committee recommends that the Government of Nunavut’s next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for its progress to date in developing health-specific privacy legislation.

GN Response:

- The GN understands the sensitivity surrounding personal health information and is committed to ensuring the protection of all personal health information. The GN will be looking at the legislation enacted in and under development by other jurisdictions, particularly the other two territories, for guidance with respect to creating separate legislation to deal with privacy of health records. In addition, the GN will review whether including oversight provisions in the Access to Information and Protection of Privacy Act would address the Commissioner’s concerns without the

need for separate legislation to protect personal health information. Until such time, the Access to Information and Protection of Privacy Act will continue to be the legislative and regulatory authority for health information. Such legislation will continue to protect the personal health information of the people of Nunavut together with a comprehensive privacy framework and supporting policies.

- The Government of Nunavut will provide further update on this issue in its next annual report on the administration of the *Access to Information and Protection of Privacy Act*.

Standing Committee Recommendation #8:**Issue: Provision of Information to Members of the Legislative Assembly Pursuant to Subsection 48(v) of the *Access to Information and Protection of Privacy Act***

The Standing Committee recommends that the Government of Nunavut, in cooperation with the Office of the Information and Privacy Commissioner, develop operational guidelines for the use of public bodies in relation to the disclosure of information pursuant to the provisions of subsection 48(v) of the *Access to Information and Protection of Privacy Act*.

GN Response:

- Consultations will be done with other jurisdictions to analyze procedures utilized by other public bodies. Some information that could be discussed and utilized in the Legislative Assembly would not be covered by the same protections outside the Legislature. For example, the name or circumstances of an individual could be expressed and they would not have the same level of recourse to respond legally as if the same was expressed outside the Legislature. It is agreed that information security procedures and agreements should be established to set out the parameters to protect the privacy of personal information in such instances, while still facilitating the ability of legislators to assist Nunavummiut.