



**Response to the Standing Committee
on Oversight of Government
Operations and Public Accounts
Report on the Review of the 2012-
2013 and 2013-2014 Annual Report of
the Information and Privacy
Commissioner of Nunavut**

February 2015

On September 18, 2014 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 2012-2013 and 2013-2014 Annual Reports. 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 Nunavummiut. Following that appearance, the Standing Committee tabled their Report on the Review of the Annual Report of the Information and Privacy Commissioner in October 2014. The Standing Committee report consists of nine (9) recommendations to the Government of Nunavut (GN), some specific to departments, which the Committee felt could help improve the access to information and protection of privacy function.

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:

The Standing Committee recommends that the Government of Nunavut's new *Privacy Management Manual* be tabled in the Legislative Assembly as soon as practicable.

GN Response

The Department of EIA has committed to tabling the Privacy Management Manual (PMM) in the Legislative assembly. The PMM has been through thorough internal review and has been approved at all levels. The introduction of the manual will be tabled at the next sitting of the Legislative Assembly.

Standing Committee Recommendation #2:

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

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

GN Response:

In the interest of increased transparency, accountability and effectiveness, Ministers responsible for public agencies and territorial corporations have issued directives to provide important information to the GN and Nunavummiut, including the tabling of yearly reports on procurement, contracting and leasing activities

The territorial corporations have made a concerted effort to ensure all reporting is up to date and have made progress in this area.

The Standing Committee further recommends that the Government of Nunavut, as part of its ongoing review of procurement, contracting and leasing practices, work co-operatively with the Office of the Information and Privacy Commissioner to identify ways in which to expand the range of information that is publicly disclosed in this area, and that the Government of Nunavut's 2014-2015 annual report on the administration of the *Access to Information and Protection of Privacy Act* account, in detail, for progress in this area.

GN Response:

The following response was provided by the Department of Community and Government Services.

The Department of Community and Government Services has discussed with the Information and Privacy Commissioner (IPC) her comments to Standing Committee regarding the availability of contracting and procurement information in the public domain.

The Department of Community and Government Services' Procurement, Contracting and Logistics division regularly and proactively reports detailed information regarding the Government of Nunavut's contracting activities. This is part of its mandate and commitment to transparency and accountability in all contracting activities.

In November 2014, CGS demonstrated to the IPC where contracting information could be readily found on Government of Nunavut websites, and through the Department's direct communications with vendors and bidders. Examples include:

- Where to locate information on sealift contracts, contracting, procurement and leasing activities and tender advertisements on the Government of Nunavut website (under 'Businesses' tab on www.gov.nu.ca), the Contract Reporting Database (www.public.govnu.ca) and the Nunavut Tenders website (www.nunavuttenders.ca);

- The type of information contained on these sites, including:
 - Contracting, Procurement and Leasing Activity Reports (CAR/PAR/LAR)
 - Sealift contracts, guides and other information
 - Tender advertisements, bidder registration forms, tender and RFP award information, addendums, RFP and tender documents, and five years of award history.
 - A comprehensive Contract Reporting Database complete with information on all contracts awarded above \$5,000 since 2005.
- Analysis documents available for tenders which shows information on who bid, what they bid and the bid adjustments
- Debriefing letters sent to all unsuccessful proponents

The Commissioner expressed that although there was significantly more information being made proactively available than she understood there to be, it was difficult to find without knowing exactly where to look. The Commissioner has recommended that CGS create more visible and prominent links to this information, which the CGS has undertaken to do.

In addition, CGS explained to the Commissioner that they are moving to proactively disclose more information in debriefing letters to contract bidders, including the bidders' total score and score by evaluation category, and the winning proposal's total score. The Commissioner agreed this would be a positive step forward.

CGS believes it is meeting its responsibilities and mandate to be open, transparent and accountable in its contracting activities, particularly in the release and availability of this information to the public. Nevertheless, CGS strives to continually improve in these areas and invites future discussions of this nature with the Commissioner, as it was a helpful exercise that fosters a spirit of mutual understanding, cooperation and collaboration.

Standing Committee Recommendation #3:

The Standing Committee affirms its support for ensuring that appropriate legislative frameworks concerning access to information and protection of privacy apply to the federal, territorial and municipal levels of government in Nunavut.

GN Response:

The Government of Nunavut is committed to moving forward with the implementation of access and privacy within the Nunavut municipalities. This includes continued consultations with communities, the Nunavut Association of Municipalities and partnerships with organizations that can assist in the advancement of education among all stakeholders.

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, in detail, for its progress to date in working with the Nunavut Association of Municipalities, the Municipal Training Organization 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 in Nunavut.

GN Response:

Unfortunately, work to date with the major municipalities outside of the City of Iqaluit has not been as successful. Letters were sent to Rankin Inlet and Cambridge Bay councils. This letter included compliance timelines as well as training opportunities that were being arranged in their communities. Rankin Inlet sent one employee to our training, but did not respond to our compliance letter. Cambridge Bay did not want to participate in any ATIPP activities and instead forwarded to letter to the Nunavut Association of Municipalities (NAM). No follow up was received from NAM.

In December 2014 another consultation letter was sent to NAM which cc'd all municipalities. This letter provided a brief outline of our efforts to engage municipalities to date and noted the requirement for involvement from their end. It was noted that their lack of participation would not stall the implementation of the ATIPP Act for Municipalities.

Discussions with the Municipal Training Organization (MTO) have not been successful to date. Although municipalities individually and through the NAM have been informed that ATIPP legislation will become a reality for them in the near future, the MTO has informed the ATIPP office that they will not support ATIPP initiatives until the legislation changes and core funding as well as program specific funding is increased.

In our discussions with the City of Iqaluit, it was mutually agreed that inclusion under the ATIPP Act would be the best way to ensure meaningful compliance. We are now working in that direction for all three of the major Nunavut municipalities.

Internally, our department has begun discussions on what changes would need to be made to the ATIPP Act that would allow for the inclusion of municipalities and ensure effective implementation.

The Standing Committee further 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 collaborative training initiatives involving municipal employees, Government Liaison Officers, the Municipal Training Organization and other parties.

GN Response:

The Government of Nunavut (GN) has provided opportunity for ATIPP training to the City of Iqaluit, Rankin Inlet and Cambridge Bay. The City of Iqaluit has taken advantage of the training and sent many of their senior managers. Rankin Inlet sent one employee to the training provided in Rankin Inlet and Cambridge Bay, although indicating they would attend did not show up for the training although the trainer and accommodations were made and paid for.

Government Liaison Officers (GLOs) have been provided ATIPP training on various occasions. They are given training that assists them in assisting the public in placing access to information requests or making privacy complaints with the GN.

The Municipal Training Organization has been contacted regarding partnership in ensuring municipalities receive the training needed to successfully implement ATIPP internally. There have been challenges in determining what role the MTO can play in assisting the ATIPP Office. The ATIPP Office has asked the MTO to provide us with what they require in order to work together. Specifically, how the GN can support this initiative.

The Standing Committee further recommends that the Government of Nunavut, in partnership with appropriate stakeholders, examine such options as introducing access to information and protection of privacy legislation that is specific to municipalities and/or having the territorial *Access to Information and Protection of Privacy Act* apply to municipalities in a manner that would address such operational concerns as the ability of municipalities to respond to historical access requests. The Standing Committee suggests that such concerns could be addressed through such means as explicitly providing that the legislation does not provide a right to access in respect to information that was generated by municipalities prior to an effective commencement date.

GN response:

The Government of Nunavut (GN) has considered the limitations of municipalities in implementing ATIPP legislation in a meaningful way. Considerations will be given to their lack of experience with ATIPP, records management practices and capacity issues when making any decisions about their inclusion under the ATIPP Act.

Standing Committee Recommendation #4:

The Standing Committee recommends that Local Housing Organizations be designated as public bodies under Schedule A of the *Access to Information and Protection of Privacy Regulations* no later than April 1, 2015.

GN Response:

The Government of Nunavut and the Nunavut Housing Corporation concur. The following response was provided by the Nunavut Housing Corporation (NHC), with consideration that the Department of Executive and Intergovernmental Affairs will proceed with the regulatory amendment.

The NHC is committed to maintaining an appropriate level of transparency and openness in its operations, while protecting the privacy of all tenants and clients.

In order to ensure that designating public bodies under the ATIPP Act has its intended effects, the NHC will implement the following actions.

- LHOs are the contracted local delivery agents of NHC's housing programs, and as such any information they collect, including all financial and program related information is accessible, upon request, by the NHC.
- Management Agreements between the NHC and all LHOs require adherence to the *ATIPP Act*. The NHC is currently reviewing its management agreements with LHOs and will ensure that language in the new agreements reinforces:
 - The importance and duty of knowledge of and adherence to the *ATIPP Act* with regards to protection of personal information.
 - The requirement that all ATIPP inquiries and requests for access to information be forwarded to the NHC ATIPP Coordinator
 - The requirement for LHOs to adhere to standards set out in the *Archives Act*, and the *ATIPP Act* in regards to their records management.
- The NHC is taking steps to ensure that ATIPP functions related to access to information are dealt with by an ATIPP Coordinator at the NHC's Directorate Office in Iqaluit. This centralization will eliminate issues associated with capacity to respond to ATIPP requests at the local level.
- The NHC will also work to increase awareness of the Act by offering privacy training to all LHOs with specific emphasis on personal privacy protection
 - As part of new Rent Scale software training, some training has already been provided to LHOs through NHC's ATIPP Coordinator and Rental Program Manager.
 - NHC will partner with EIA and the ATIPP Office to develop a privacy training program specific to housing and the information collected for the operation of NHC programs

The Standing Committee further recommends that copies of all management agreements between the Nunavut Housing Corporation and Local Housing Organizations be tabled in the Legislative Assembly on the first sitting day of the winter 2015 sitting of the House.

GN Response:

The Nunavut Housing Corporation commits to tabling the Master Management Agreement between the Nunavut Housing Corporation and Local Housing Organizations during the winter 2015 session, as per the recommendation of the standing committee.

Standing Committee Recommendation #5:

The Standing Committee recommends that the Government of Nunavut's formal response to this report contain a detailed timeline for the development and introduction of health-specific privacy legislation for Nunavut.

GN Response:

As noted by the Standing Committee, the Department of Health has committed, in its 2014-2017 Business Plan, to begin the legislative process to introduce health specific privacy legislation in 2015/16. The Department of Health will work with the Department of Justice to develop this complex piece of legislation. The focus will be on the quality of the work and, as such, the Department of Health is not planning to set an aggressive timeline. It is anticipated that this work will span several years.

The Standing Committee further recommends that copies of the Department of Health's privacy and security directives concerning electronic health records be tabled in the Legislative Assembly as soon as practicable.

GN Response:

The Department of Health will table and post the electronic health record privacy and security directives to the department's website once they have been translated.

The Standing Committee further recommends that the Department of Health's *Privacy Impact Assessment* concerning the *Nutaqqavut* Health Information System be tabled in the Legislative Assembly as soon as practicable.

GN Response:

The Department of Health committed to tabling the *Nutaqqavut* Health Information System (NHIS) Privacy Impact Assessment (PIA) once it has been

finalized and translated. Since that commitment was made the Department of Health consulted with the Information and Privacy Commissioner on the PIA. The NHIS is on hold and is currently under review. As a result the PIA has not been finalized. The only forms being completed and collected are reports of Congenital Anomalies.

Once the current review of the maternal child health program is completed, new forms may be developed for information to be collected. If information is to be collected in future, a new Privacy Impact Assessment will be completed based on the new model. Therefore there is no benefit to finalizing the original NHIS PIA.

The Department of Health anticipates completing its review of the maternal child health program by the middle of next fiscal year. The Department of Health commits to tabling a PIA on the revised model, should a decision be made to collect information.

Standing Committee Recommendation #6:

The Standing Committee recommends that the Government of Nunavut, in partnership with the Office of the Information and Privacy Commissioner, work co-operatively with designated Inuit organizations to develop appropriate guidelines to ensure that safeguards are in place with respect to personal information that is provided concerning matters arising under the *Adoption Act* and the *Child and Family Services Act*, and that this work include a review of the necessity and effectiveness of the current statutory provisions.

The Standing Committee further recommends that the government's response to this report provide a detailed action plan and timeline for the completion of this work, including a detailed description of specific departmental accountabilities.

The Standing Committee further recommends that the government's formal response to this report account, in detail, for the specific factors that resulted in its failure to meet its fall 2013 goal of completing consultations in this area. The Standing Committee notes that this issue is also being addressed in its *Report on the Review of the Auditor General's 2014 Follow-up Report on Child and Family Services in Nunavut*.

GN Response:

The following response was provided by the Department of Family Services.

The Family Services Department of Children and Family Services is obligated under Section 25 of the Child and Family Services Act which states:

"25. A Child Protection Worker must serve a copy of the originating notice commencing an application for a declaration that a child needs protection and for a child protection order and an affidavit in support of the application on (a) the following persons, if their identities and whereabouts are known:

- (c) if the child is an Inuk child, whichever of the following Inuit organizations the child, or the mother or father of the child, is or is eligible to be a member:
- (i) Kitikmeot Inuit Association,
 - (ii) Kivalliq Inuit Association,
 - (iii) Qikiqtani Inuit Association; and

Under Section 7 of the Adoptions Act which states:

Consultation in respect of aboriginal child

(7) Subject to subsection (8), where the Director has reason to believe that the child who is to be placed is or will be an aboriginal child, the Director shall, before making a decision in respect of the proposed placement, consult with the aboriginal organization that would be the applicable aboriginal organization for the child in the circumstances described in section 25 of the *Child and Family Services Act*.

Consent required

(8) The Director shall not consult in accordance with subsection (7) without the consent of

- (a) the child, where the child has attained the age of 12 years; and
- (b) the parent of the child.

Approval

(9) On reviewing the application and pre-placement report and completing any consultation required by subsection (7), the Director shall approve the proposed placement and shall, without delay, issue a written approval to the applicant or, in the case of a joint application, to each applicant, where the Director considers that (a) the applicant or each joint applicant, as the case may be, is suitable to be an adoptive parent; and

- (b) the proposed placement is in the best interests of the child.

The Government of Nunavut is committed to working with the Office of the Information and Privacy Commissioner and to working co-operatively with designated Inuit organizations to develop appropriate guidelines to ensure that safeguards are in place with respect to personal information that is provided concerning matters arising under the Adoption Act and the Child and Family Services Act;

The Government of Nunavut is also taking steps to conduct a review of the necessity and effectiveness of the current statutory provisions and a letter has been forwarded seeking consultation with the Information and Privacy Commissioner for Nunavut. The tentative date for the meeting is February 24th, 2015.

The objective of the meeting/consultation is to seek advice from the Commissioner as to what types of provisions we might put into an agreement to

ensure that personal information is adequately protected. The meeting will be between the relevant senior staff in the Family Services division impacted upon by the stipulations of the above mentioned Acts.

We feel that this consultation is prudent prior to beginning the consultation process with the Inuit organizations on the development of a protocol for handling Personal Information Provided to Third Parties under the Adoption Act and the Child and Family Services Act.

Once the provisions required are clarified an internal meeting will be held in March of 2015 during which a committee will be struck to develop the terms of reference for the consultations which will be drafted by April 2015. The consultation process will then commence with expected completion in the fall of 2015. A final Report will be drafted by March 31st 2016.

The Government has not been able to provide a substantive response to the Committee given that the Department was in its first six months of operation in the Fall of 2013 and at that time operations did not allow for handling of projects as significant and involved as this project. We believe that these timelines did not allow for the required consultation and efforts, and attention that is required and ask that we be allowed to ensure that the adequate time is dedicated to this matter as it may require significant changes in legally binding requirements under our Acts.

Standing Committee Recommendation #7:

The Standing Committee recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* within the next twelve months that would permit the Information and Privacy Commissioner to appeal a decision made by a head of a public body under section 36 of the *Access to Information and Protection of Privacy Act* to the Nunavut Court of Justice.

GN Response:

The Government of Nunavut (GN) has reviewed this recommendation in the past and provided a response in the Response to the Standing Committees review of the Information and Privacy Commissioners 2010-2011 annual report. At the time a jurisdictional scan of this type of legislation was conducted and found that although this ability is granted in some jurisdictions, it was not granted in all jurisdictions.

Since that time, the Government of Nunavut has completed a legislative amendment that provided the Commissioner with powers of oversight regarding the privacy provisions of the ATIPP Act. The increased powers of the IPC as well as the increase in obligations of the Government of Nunavut have strengthened

the Privacy rights of all Nunavummiut. The GN believes it is important to continue with the momentum of securing the rights of Nunavummiut under the ATIPP Act.

We have begun looking at other jurisdictions in terms of the powers of their oversight equivalent to see what the best approach would be for us to allow the Commissioner more power to initiate an appeal or participate in an appeal of a decision of a Head of a public body under the ATIPP Act.

We commit to further review of the Commissioners power as it relates to appeals to the Nunavut Court of Justice under section 36 of the ATIPP Act.

Standing Committee Recommendation #8:

The Standing Committee recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* within the next twelve months that would address the Information and Privacy Commissioner's recommendations concerning her ability to exercise discretion to extend the time for requesting a review under the Act in certain circumstances.

GN Response:

The GN has committed to making this amendment to the ATIPP Act. Currently this issue is addressed administratively as the GN accepts reviews that are not placed within the 30 day time period, that are done so in good faith.

This amendment will be included in the next round of amendments to the ATIPP Act.

The Standing Committee further recommends that the Government of Nunavut, in its response to this report, provide a detailed update on the status of the review of the *Access to Information and Protection of Privacy Regulations* that was referenced in its formal response to the 3rd Legislative Assembly's Standing Committee on Oversight of Government Operations and Public Accounts' May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*.

GN Responses:

The GN continues to review the ATIPP regulations. We have identified issues with the regulations that are set to be amended, including the fee schedule and the appropriate application of fees. The suggested amendments to the ATIPP regulations are currently being discussed among the ATIPP Coordinators Committee. Once the suggested amendments are approved at this level, we will be consulting with the Information and Privacy Commissioner.

Standing Committee Recommendation #9:

The Standing Committee recommends that the Government of Nunavut co-operate with the Office of the Information and Privacy Commissioner in undertaking at least one formal privacy audit of a department, Crown agency or territorial corporation during the 2015-2016 fiscal year, and that the results of the privacy audit be tabled in the Legislative Assembly as soon as practicable.

GN Response:

The Government of Nunavut welcomes all tools that can help to improve the privacy of our programs. The IPC can expect full compliance with any privacy audit conducted within the GN. We consider this an opportunity to improve internal processes as well as a learning experience for our employees.