INFORMATION AND PRIVACY COMMISSIONER OF THE NORTHWEST TERRITORIES

ANNUAL REPORT 2014/2015

OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER
NORTHWEST TERRITORIES
P.O. Box 382
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June 26, 2015

Legislative Assembly of the
Northwest Territories
P.O. Box 1320
Yellowknife, NT
X1A 2L9

Attention: Tim Mercer
Clerk of the Legislative Assembly

Dear Sir:

I have the honour to submit my annual report to the Legislative Assembly of the Northwest Territories for the period from April 1st, 2014 to March 31st, 2015.

Yours very truly

Elaine Keenan Bengts
Information and Privacy Commissioner
Northwest Territories

/kb

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COMMISSIONER'S MESSAGE

Digital technology is vital in today's world. It is the way that business is done. It underpins everything we do. Technology brings undeniable benefits, but the rapid development of technology also creates new and sometimes difficult challenges for both access to information and the protection of personal privacy. On the access/accountability side of things, while the recording, storage and sharing of work product have become much easier, the ability to recover information has become ever more complex. Portable devices, personal devices, jump drives and other mass storage devices make keeping track of information difficult. Effectively managing email communications is a monumental task. A robust records management system that is adaptable enough to adjust to the rapid speed of changing technologies is vital. On the privacy side of things, biometrics, wearable computing devices, cloud computing, GPS technology and digital surveillance have increased the ease of collection of information and lead to a tendency to over-collect and over-retain personal information, which in turn creates increased risks of inappropriate sharing, data matching and data breaches.

In recognition of these facts, in October of 2014, the Information and Privacy Commissioners and Ombudsmen of Canada issued a joint resolution focussed on protecting and promoting Canadians' access and privacy rights in the digital age. The resolution urged all provincial, territorial and federal governments to take a critical leadership role to ensure the continued relevance of access to government information in the digital society while ensuring that personal information is vigilantly protected by modernizing their records management systems and frameworks by:

- embedding privacy and access rights into the design of public programs and systems;
- creating a legislated duty for government employees to document matters related to material deliberations, actions and decisions;
- adopting administrative and technological safeguards to prevent loss or destruction of records, to store and retain records, to ensure ease of retrieval of records, to mitigate the risks of privacy breaches and to limit the collection and sharing of personal information unless absolutely necessary to meet program or activity objectives;
- establishing clear accountability mechanisms for managing information at all steps of the digital information life cycle (collection, use, disclosure, retention and disposal) to meet privacy and access obligations, including proper monitoring and sanctions for non-compliance;
- training all government employees involved in managing information at any stage of its life cycle so that they know their roles and responsibilities both in terms of access to information and privacy issues;
- moving toward making information more accessible to citizens in accordance with open government principles.

In the same resolution, Canada's Information and Privacy Commissioners committed to engage and follow up with their governments on these issues, to continue to study and make public the ways in which access and privacy laws impact all Canadians and to continue to make recommendations to government based on our areas of expertise.

As noted by Elizabeth Denham, the Information and Privacy Commissioner of British Columbia in her 2013/2014 Annual Report

> Transparency is the panacea. When governments and businesses make information available, and create opportunities to meaningfully engage the public, they build confidence and trust in their activities while addressing information and privacy concerns.

Northwest Territories public bodies face the same challenges as the rest of the country in this regard. This year saw a significant increase in the workload of the office. We also took a giant leap toward addressing these challenges with a major change in the administration of the Office of the Information and Privacy Commissioner. For the last 17 years, the work of the Information and Privacy Commissioner has been undertaken on a part time basis. As foreshadowed in my last Annual Report, effective January 1st of 2015 the office has transformed from that part time contract position into a full time job with staff assistance. With this change, I can now start to catch up on the backlog of requests and investigations, as well as to begin some of the projects which I have been trying to get off the ground for years but have been unable to do as a result of time issues.

I have identified three areas of focus for my first year as a full time Information and Privacy Commissioner. It is anticipated that the new *Health Information Act* will come into effect later this summer. This will undoubtedly generate increased public interest in health privacy issues. I plan to work with the Department of Health and Social Services to help educate the public on how their personal health information is collected, used and disclosed within the health system. A secondary focus will be to take steps to widen the co-operation between my office and all public bodies to improve access to information and the protection of personal privacy

in the Northwest Territories on a more pro-active basis. The third priority for the year will be the establishment of a website for the office. In today's on-line world, it is important to have an on-line presence and this is a project that I have been wanting to do for many years so as to enable me to share my reports and recommendations more widely, and to provide other resources that both the public and government might find helpful in dealing with access and privacy issues.

I am looking forward to continuing the important work of the Information and Privacy Commissioner of the Northwest Territories on a more committed basis.

> ANY RESPONSIBLE ORGANIZATION THAT'S DEALING WITH INFORMATION HAS TO ASSUME THAT THEIR DEVICES ARE GOING TO GET LOST, SO THEY BETTER BE ENCRYPTED. IF YOU WANT TO PUT YOUR OWN STUFF AT RISK, FINE. BUT IF YOU'RE DEALING WITH OTHER PEOPLE'S INFORMATION, YOU REALLY HAVE AN OBLIGATION - AND THE LEGISLATION SAYS YOU HAVE AN OBLIGATION - TO TAKE REASONABLE CARE OF THE INFORMATION."
>
> Frank Work, Former Information and Privacy Commissioner of Alberta, Calgary Herald, January 27, 2014

THE ACT

WHAT IS THE PURPOSE OF THE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT?

The Access to Information and Protection of Privacy (ATIPP) Act enshrines two principles:

1. public records must be accessible to the public; and
2. personal information must be protected by public bodies.

It outlines the rules by which the public can obtain access to records held by government agencies and establishes rules about the collection, use and disclosure of information about individuals by public bodies in the Northwest Territories.

WHAT IS THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER?

The Office of the Information and Privacy Commissioner (OIPC) was established in 1997 by the *Access to Information and Protection of Privacy Act.* The Information and Privacy Commissioner (IPC) is appointed by the Commissioner of the Northwest Territories on the recommendation of the Legislative Assembly. The role of the IPC is to provide independent oversight over the way in which the *Access to Information and Protection of Privacy Act* is interpreted and implemented by public bodies and to ensure that the rights and obligations imposed by the Act are respected and maintained. The Act applies to 41 public bodies, including ministries, crown corporations, commissions and more.

WHAT INFORMATION IS SUBJECT TO THE ACT?

Subject to a limited number of specific exceptions outlined in the Act, the *Access to Information and Protection of Privacy Act* gives the public the right to access any record which is in the custody or control of a Northwest Territories public body. The limited exceptions function to protect individual privacy rights, to protect proprietary information belonging to third parties, to allow government employees the freedom provide frank and candid advice and recommendations in the development of government policies and to protect cabinet confidences.

HOW IS AN ACCESS TO INFORMATION REQUEST MADE?

To obtain a record from a public body, a request must be made in writing and delivered to the public body from whom the information is sought. If the public body which receives the request does not have the requested records, it has the obligation to ensure that it is forwarded to the appropriate public body.

Upon receipt of an Access to Information request, a public body has a duty to identify all of the records which are responsive to the request. Once the responsive documents are identified, they are reviewed to determine if there are any records, or parts of records, which must or can be withheld in accordance with the exceptions outlined in the Act before they are given to the Applicant. In most cases, public bodies must respond to access requests within thirty (30) days.

WHAT HAPPENS WHEN A RESPONSE IS NOT SATISFACTORY?

If a response is not received within the time frame provided under the Act, or if the response received is not satisfactory, the applicant can ask the Information and Privacy Commissioner to review the decision made. The Request for Review must be in writing.

When the Information and Privacy Commissioner receives a Request for Review with respect to an access to information matter, submissions are requested from both the Applicant and the public body involved. Any third parties whose information might be affected are also given the opportunity to provide input. The IPC has access to all responsive records. Based on a review of the records, the submissions of the parties involved and the application of the *Access to Information and Protection of Privacy Act*, the Information and Privacy Commissioner produces a report containing conclusions and recommendations. The IPC does not have any power to compel public bodies to either disclose or protect information from disclosure but she is required to make recommendations to the head of the public body involved. The minister or other head of the public body must respond to the recommendations made by the IPC within 30 days. If the applicant is unhappy with the minister's decision, the Applicant has the right to appeal to the Supreme Court of the Northwest Territories.

THE ATIPP COORDINATOR IS AT THE CENTRE OF THE PROCESS TO GAIN ACCESS TO INFORMATION WHILE ENSURING PERSONAL INFORMATION IS KEPT CONFIDENTIAL

Report of the 2014 Statutory Review, Access to Information and Protection of Privacy Act, Newfoundland and Labrador, Page 41

HOW DOES THE ACT PROTECT PRIVACY?

Part II of the *Access to Information and Protection of Privacy Act* provides rules for when and how public bodies can collect personal information, what they can use personal information for, and in what circumstances that information can be disclosed to another public body or to a third party. It also provides a mechanism which allows individuals the right to see and make corrections to information about themselves in the possession of a government body.

This part of the Act also requires public bodies to maintain adequate security measures to ensure that the personal information which they collect cannot be accessed by unauthorized individuals.

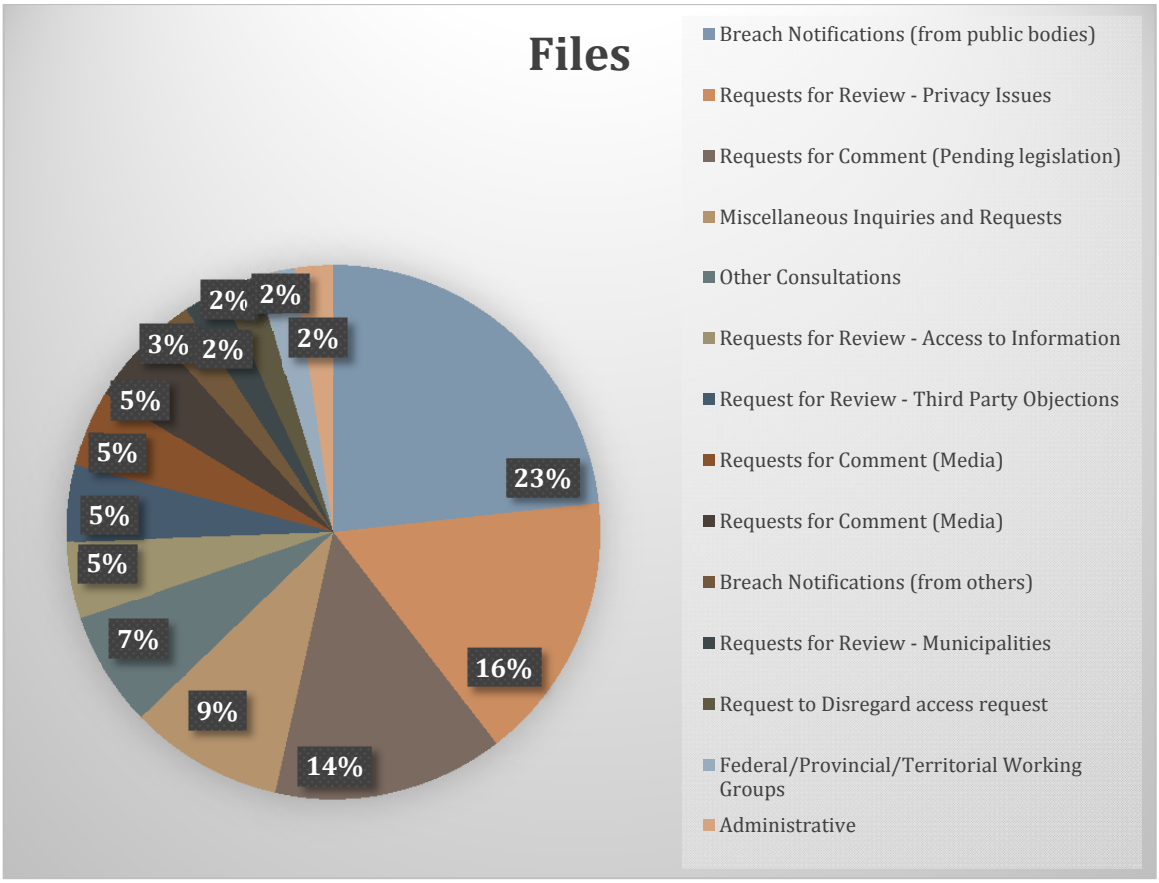
HOW ARE PRIVACY RIGHTS ENFORCED?

Privacy concerns can be referred to the Information and Privacy Commissioner for review. The IPC is authorized to investigate complaints and to make recommendations to the public body. The process is very similar to that used for a review of an access to information matter. Submissions are obtained from both the public body and the complainant, and from any other person who might have relevant information about the alleged breach to determine whether or not a breach of privacy occurred. Whether or not there has actually been an improper collection, use or disclosure of personal information, the IPC will prepare a report which will almost always contain comments and recommendations to improve policies and procedures so as to reduce the possibility of future breaches. The recommendations made by the IPC with respect to privacy issues are provided to the minister or other head of the public body and, once again, the minister must respond to the report and either accept or reject the recommendations made or take other appropriate steps in response. There is no right to appeal the minister's decision respecting a privacy breach complaint.

THE YEAR IN REVIEW

In the 2014/2015 fiscal year, my office opened a total of 43 files. In comparison, there were 30 files opened in 2013/2014 and 16 files in 2012/2013. This makes for an almost 300% increase in the number of files over the last three years. These files can be divided into a number of categories:

Requests for Review - Privacy Issues	7
Breach Notifications (from public bodies)	10
Breach Notifications (from others)	1
Requests for Review - Access to Information	2
Request for Review - Third Party Objections	2
Requests for Review - Access to Information Municipalities (out of jurisdiction)	1
Request to Disregard access request (s. 53)	1
Requests for Comment (Pending legislation)	6
Requests for Comment (Media)	2
Requests for Comment (Other)	2
Other Consultations	3
Miscellaneous Inquiries and Requests	4
Federal/Provincial/Territorial Working Groups	1
Administrative	1



Two things stand out from these numbers. The first is the number of breach notifications received by my office. The second is the number of requests received from public bodies and from legislative committees for my comments on the access/privacy implications of new legislation. Both of these are positive developments.

It should be noted that there is currently no obligation for public bodies to disclose breaches of privacy when discovered. Notwithstanding this, several public bodies have taken it upon themselves to report breaches or potential breaches to my office. Most of these have been dealt with co-operatively with informal recommendations and suggestions for changes to policies and procedures with a view to improving performance and avoiding similar future

breaches. Several of the pro-active breach notifications came from health sector private bodies which suggests that they are cognizant of the provisions in the new *Health Information Act* which will require the reporting of such breaches in the future. I consider the pro-active notifications a positive evolution if for no other reason than that public bodies are beginning to recognize when a breach has occurred and that it is important to address it.

In my last Annual Report and in my appearance before the Standing Committee on Government Operations, I addressed the fact that, historically, very few public bodies chose to consult my office when considering new legislation or programs. That message appears to have been heard loudly and clearly as in this fiscal year, I received a total of six requests from public bodies and committees of the Legislative Assembly for comments on pending legislation. While not all of my comments and recommendations were accepted, the consultations have served to at least focus some attention on access and privacy matters and raised issues that may not have been otherwise considered.

The majority of privacy breach events/issues (including breach notifications) involve one of the Northwest Territories' health organizations. The Department of Health and Social Services, Stanton Regional Health Authority, Yellowknife Health and Social Services Authority, the Beaufort Delta Health and Social Services Authority and the Fort Smith Health and Social Services Authority were all involved in one or more of the privacy issues my office dealt with during the year. The Departments of Human Resources, Justice, and Education, Culture and Employment, and the NWT Housing Corporation each dealt with one privacy issue.

Nine Review Recommendations were issued.

REVIEW RECOMMENDATIONS

REVIEW RECOMMENDATION 14-126

Category of Review:	Access to Information
Public Body Involved:	Sahtu Health and Social Services Authority
Sections of the Act Applied:	Section 11, Section 12, Section 7, Section 14(1)(a), Section 23(2)(a)
Outcome:	Recommendations Accepted in Part

The Applicant had been the subject of complaints which resulted in consequences to the Applicant's employment. A request was made for records relating to the complaint. The initial request was sent to the Department of Health rather than to the Sahtu Health and Social Services Authority (S.H.S.S.A). The Department of Health transferred the request pursuant to section 12 of the Act, but not until 30 days later. S.H.S.S.A. made at least two requests of the Applicant to extend the time for responding to the request, but no formal steps were taken to extend the time pursuant to Section 11. Eventually, the Applicant sought a request for review based on a "deemed refusal" to disclose the records requested.

Upon receipt of the Request for Review, S.H.S.S.A. was asked to provide a detailed explanation for the deemed refusal. No such explanation was received, although copies of the records identified as being responsive were provided. S.H.S.S.A. were also encouraged to provide the Applicant with any of the records which were not subject to an exemption. That was not done.

A line by line review was done of the responsive records and the Information and Privacy Commissioner (IPC) recommended the disclosure of the majority of the records identified as

responsive. Where section 14 of the Act was used as justification for failing to disclose, the IPC recommended that there be a clear and articulated exercise of the discretion provided.

S.H.S.S.A chose to accept only some of the recommendations made. No explanation was provided as to the reasons for this decision.

THE TIME LIMITS IMPOSED IN VARIOUS SECTIONS OF THE ACT ARE THERE FOR A REASON - TO PROVIDE STRUCTURE AND TO ENSURE TIMELY RESPONSES.

Review Recommendation 14-126

REVIEW RECOMMENDATION 14-127

Category of Review:	Privacy Complaint
Public Body Involved:	Department of Justice
Sections of the Act Applied:	N/A
Outcome:	Recommendations Accepted

An anonymous complaint was received from an inmate at the North Slave Correctional Centre. The complainant felt that his right to speak with his legal counsel in private was being interfered with because corrections staff refused to allow him the use of a private room for telephone discussions with his lawyer.

The IPC recommended that the Department of Justice review their policies and procedures with respect to inmates use telephone to contact their counsel so as to be sure that it clearly articulates the right to speak with counsel privately and how that right will be accommodated.

THE EXISTENCE OF POLICIES AND PROCEDURES DOES NOT GUARANTEE THAT THOSE POLICIES AND PROCEDURES ARE ALWAYS FOLLOWED OR EVEN THAT THEY ARE CONSISTENTLY FOLLOWED.

Review Recommendation 14-127

REVIEW RECOMMENDATION 14-128

Category of Review: Unauthorized Collection of Personal Information
Public Body Involved: Industry, Tourism and Investment
Sections of the Act Applied: Section 40
Outcome: No further recommendations made

A volunteer organization which was applying for funding from a program offered by the Department of Industry, Tourism and Investment was asked to provide a list of all of its voting and non-voting members. The organization felt that this was an unreasonable request and contrary to the provisions of the ATIPP Act.

In addressing the complaint, the Department acknowledged that there had been an error made and that their program did not require the collection of the names of all members of the organization, but only of the directors. Because the public body took steps to rectify the problem as a result of the ATIPP process, no further recommendations were made.

REVIEW RECOMMENDATION 14-129

Category of Review: Request to Review Fees Assessed
Public Body Involved: Department of Human Resources
Sections of the Act Applied: Section 50, Regulation 9(1) & (2), Regulation 10, Regulation 12, Regulation 13, Regulation 14
Outcome: No Recommendations Made

The Applicant was provided with a fee estimate of $625.00 for approximately 2500 pages of records responsive to his request for information. The fee estimate was provided pursuant to section 50 of the Act. The Applicant objected to the fee essentially on the basis that the provisions with respect to the collection of fees were being inconsistently applied.

The IPC reviewed the Regulations with respect to fees and determined that the public body had properly applied the fees. No recommendations were made.

REVIEW RECOMMENDATION 14-130

Category of Review: Request for Information
Public Body Involved: Public Works and Services
Sections of the Act Applied: Section 24(1), Section 33
Outcome: Recommendations Accepted

The Applicant requested records with respect to the lease arrangement between the Government of the Northwest Territories and a private third party company with respect to the court house building in Yellowknife. The department granted access information in respect of the base rent portion of the lease but denied access to records containing costs in addition to base rent, citing section 24(1) of the *Access to Information and Protection of*

Privacy Act, which prohibits the disclosure of financial or commercial information obtained in confidence from a third party or information which could reasonably be expected to prejudice the competitive position of a third party.

The third party involved made submissions indicating that the information not disclosed was O&M costs established through negotiated contracts with suppliers and internal, multi-layered cost formulas to attribute employee wages, materials and service contracts. They considered this information to be proprietary information, the disclosure of which could prejudice their future negotiating position.

During the course of the review process, the Applicant indicated that he would be satisfied to receive aggregate total numbers and did not need the breakdown of O&M or other costs over and above the base rent. He was interested only in the total cost, per year, of the GNWT's lease of the court house building.

The IPC recommended that the aggregate numbers be disclosed.

REVIEW RECOMMENDATION 14-131

Category of Review: Request for Information
Public Body Involved: Department of Human Resources
Sections of the Act Applied: Section 11(1)(b)
Outcome: No Recommendations made

This was a request to review extensions of time taken pursuant to section 11(1)(b) of the Act in three separate, but related, Requests for Information made by the same applicant. The first request for information was made on December 6th, the second on December 13th and the third on December 16th. In each case, the Department advised the Applicant by letter that the

time for responding to the request was being extended for approximately 30 days because "there may have to be extensive consultations" before the requests could be finalized. The total number of pages identified as responsive to the three requests was about 1250 pages.

The IPC pointed out that section 8 of the Act requires a response to a Request for Information within 30 days unless the time is extended pursuant to section 11 which allows an extension only in four defined and narrow circumstances, none of which were applicable to this case. The IPC found that while the proper steps were taken to effect an extension of time and that the length of the extension was reasonable given the number of records involved, the extensions were not in accordance with the requirements of section 11 in that none of the allowable reasons for the extensions were established to have existed. Notwithstanding this, because the Requests for Information had long since been completed by the time the Review Recommendations were completed, no recommendations were made.

REVIEW RECOMMENDATION 15-132

Category of Review: Request for Information
Public Body Involved: Northwest Territories Power Corporation
Sections of the Act Applied: Section 24(1)(c)(i) and (ii), Section 33
Outcome: Recommendations not followed

The Applicant sought information with respect to the possibility of connecting NWT mines to the power grid. The Northwest Territories Power Corporation (NTPC) determined that some of the records affected third parties and undertook a consultation with them. The third parties consented to the disclosure of the records as edited by NTPC. The edited records were disclosed. The edits were minimal, essentially masking the names of the mines with whom the correspondence was undertaken, but no explanation was given to the Applicant as

required by Section 9 of the Act. The Applicant argued that the public interest in disclosure outweighed any harm that might come to any of the third parties involved and that the public had the right to know how and why public dollars were being spent on infrastructure, particularly where the president of NTCP also had ownership stakes in two mines in the Northwest Territories which would benefit from access to the NWT power grid.

NTCP argued that the emails in question involved three mining projects or potential projects in the NWT owned or controlled by publicly traded companies and releasing any information with respect to the possible availability of access to the power grid could reasonably be expected to have an effect, and potentially a dramatic effect, on the share price of each of the three companies. Accordingly, the disclosure of the names of the companies involved could reasonably be expected to result in an undue financial gain or loss for these third parties and/or to prejudice their competitive position.

The IPC found that NTCP, which had the onus of establishing that the exemption applied, had not provided any concrete evidence to support their assertions that the information edited from two of the emails would cause "undue" harm (or benefit) to the third parties and that a simple assertion to that effect was insufficient. Furthermore, she was not convinced that the information contained in these two emails was not already public knowledge, at least in a general way. She was satisfied that the third record was more likely to cause undue harm or benefit because of the content and nature of the discussion.

The IPC recommended that NTCP review its processes and procedures with respect to responding to ATIPP requests. She further recommended that two of the emails be disclosed in full, but only after giving notice to the third parties involved pursuant to section 26 of the Act.

The Applicant launched an appeal of the decision to refuse disclosure to the Supreme Court of the Northwest Territories but withdrew the appeal when he discovered that the appeal process was likely to be long and expensive.

> IN ORDER TO QUALIFY FOR THE EXCEPTION, THE EVIDENCE MUST DEMONSTRATE A PROBABILITY OF HARM (OR BENEFIT) FROM DISCLOSURE AND NOT JUST A WELL-INTENTIONED BUT UNJUSTIFIABLY CAUTIOUS APPROACH TO THE AVOIDANCE OF ANY RISK WHATSOEVER BECAUSE OF THE SENSITIVITY OF THE MATTERS AT ISSUE.
>
> Review Recommendation 15-132

REVIEW RECOMMENDATION 15-133

Category of Review: Privacy Breach
Public Body Involved: Department of Health and Social Services
Sections of the Act Applied: Section 42
Outcome: Recommendations accepted

This matter arose as a result of a report by CBC North about 195 health care cards that had been mailed to the wrong addresses due to a spreadsheet sorting error. Although no formal complaint was received, and the *Access to Information and Protection of Privacy Act* does not give the Information and Privacy Commissioner any jurisdiction to investigate a privacy matter unless there is a formal complaint, in this case I undertook an informal review, with the co-operation of the Department.

It was determined that the breach occurred as a result of human error in preparing the database containing the health care card information. When preparing the electronic extract to send to the printer, one or more of the necessary data elements was improperly sorted so that the addresses did not line up correctly. As a result, 195 health care cards were mailed to the wrong people. Of those, 110 were returned by Canada post marked as "undeliverable", leaving 85 cards remaining unaccounted for. The Department contacted each of those 85 people to notify them of the breach. They also conducted a review of the process of preparing information for sending to the printer and the step of sorting the extracted health care file information before sending it to the printer has been discontinued.

The IPC suggested that, in addition to the steps taken by the department to change the process, consideration be given to the possibility of decommissioning the cards that were still missing and issuing new ones to those affected and further that the department monitor the missing card numbers over the next year in an attempt to detect any unusual activity.

REVIEW RECOMMENDATION 15-134

Category of Review: Request for Information
Public Body Involved: Department of Transportation
Sections of the Act Applied: Section 11(b)(c)
Outcome: No Recommendations Made

The facts of this case were very similar to those in Review Recommendation 14-131. The public body was, once again, dealing with three separate Requests for Information from the same Applicant. The time for responding to the requests was extended by the public body in each case. The public body indicated to the Applicant that the reason for the extensions was to allow the public body to consult other departments. The Applicant felt that the extensions

were not taken in accordance with Section 11 and asked me to review the extensions of time taken.

As in the previous case, the public body in this case had taken the appropriate steps required under section 11 to extend the time for responding and, because of the number of records involved, the length of the extension in each case (30 days) would have been reasonable. However, once again, the IPC was not satisfied that there were adequate grounds for the extensions and was not satisfied that the required consultations were sufficient reason to delay responding to the request for information. That said, by the time the review was complete, the public body had disclosed all of the responsive records and no further recommendations were made.

> IT IS NOT APPROPRIATE, WHEN THAT EXTENSION IS QUESTIONED, TO CHANGE THE REASON FOR THE EXTENSION. IT CREATES CONFUSION AND SUGGESTS, FRANKLY, THAT THE PUBLIC BODY SIMPLY MANUFACTURED A REASON TO EXTEND THE TIME FOR RESPONSE, WHETHER OR NOT THE STATEMENT IS ACTUALLY TRUE.
>
> Review Recommendation 15 - 134

LOOKING AHEAD

Every year, I highlight some of the matters which have come across my desk which can or should be addressed to improve the access to information and privacy protection offered by the *Access to Information and Protection of Privacy Act*. The following issues all came to my attention this year and I offer my comments for consideration.

1. Comprehensive Review of the Act

I understand that the Department of Justice is planning a review of the *Access to Information and Protection of Privacy Act* in the coming months. Such a review is absolutely necessary to make the changes necessary to address issues that simply weren't in contemplation 18 years ago when the Act was passed. Most Canadian jurisdictions have recently done or are in the process of reviewing their provincial acts. Newfoundland and Labrador recently commissioned an extensive review of that province's legislation, and new, modern legislation has now been passed and is coming into force in the next few months. A somewhat new approach has been adopted, which will serve to make Access to Information more timely and the process less intimidating. While I would not advocate for all of the changes which Newfoundland and Labrador has adopted, if only because of capacity issues, there are many good changes which have been made which would bear consideration in the Northwest Territories. I recommend that the Department of Justice undertake a comprehensive review of the *Access to Information and Protection of Privacy Act* with a view to modernizing it and making it easier for the public to use.

2. The "Appeal" Process

One of the features of the "ombudsman" model for the Information and Privacy Commissioner's role is that the burden of taking a decision to court falls to the Applicant who is not satisfied with a public body's decision. In the 18 years that the Act has been in force, I believe that there have only been three such appeals and that is most likely largely attributable to the fact that it is a very expensive and complicated undertaking. This year, the Applicant in the NTCP case outlined above was unhappy that NTCP decided not to accept the recommendations made by my office. The Applicant was a small business with some resources, but when it realized the cost and time commitment which an appeal would require, it chose to withdraw its appeal. In the words of the Applicant,

> We had no idea what we were getting into. The main disconnect is the usage by the legislation of the term Supreme Court of the NWT...To laypeople like myself, the Supreme Court is a room in the courthouse downtown with a judge at a desk. I presumed, in my ignorance and naiveté, that I would arrive in that room after filling out the appropriate forms to have a judge look at the paper trail and make a decision based on your legal arguments and the Power Corp's rationale for rejecting your recommendation.
>
> Of course it was nothing like that. We quickly realized we were not going to the Supreme Court for a decision, we were launching a lawsuit against the Power Corp. with all its attendant legal requirements, strategies, risks and costs. This is enough to stop anyone with limited resources dead in their tracks, which it did.

To fully commit to the openness and accountability promise of the *Access to Information and Protection of Privacy Act*, there has to be an affordable and uncomplicated way to appeal decisions made by public bodies under the Act. If the Information and Privacy Commissioner had order making power, the onus of appeal would fall to the public body, not to the applicant. I would advocate for a hybrid model, such as the one implemented by the new legislation in Newfoundland and Labrador. This is definitely one of the issues that should be addressed in any review of the Act.

3. Privacy Complaints

As currently written, the *Access to Information and Protection of Privacy Act* does not give the Information and Privacy Commissioner the jurisdiction to initiate an investigation of a privacy concern unless she receives a formal request to do so. Often, privacy issues come to my attention either by people who do not wish, for any number of reasons, to file a formal complaint or because of something I read or hear about in the news or in the course of my day to day work. In the last year, I have received a number of letters expressing serious concerns about privacy breach concerns but was unable to investigate or provide recommendations because those who brought the matter to my attention were not willing to file a formal complaint. I would recommend that the legislation be amended to allow the Information and Privacy Commissioner to undertake a privacy review of her own accord in appropriate circumstances.

4. Follow up on Recommendations made

Under the scheme of the Act, reviews and recommendations made with respect to privacy concerns most often involve making changes to processes and procedures within the public body aimed at avoiding similar breaches in the future. Once the recommendations are either accepted or rejected by the public body, there is no way to follow up to ensure that commitments made by public bodies are met. I would recommend that changes be made to the legislation to provide for some method of reporting back or follow up so as to satisfy complainants that their complaints have been fully addressed.

5. Municipalities

Once again, I recommend that steps be taken to create a legislated access and privacy regime for municipalities. Once again this year, I was asked to assist an individual who was attempting to seek access to records held by the City of Yellowknife. While I invited the City to allow me to assist in resolving the impasse, my offer to assist was not accepted. It is time that municipal governments, who spend public funds, have legislated obligations with respect to both access to information and privacy issues

Elaine Keenan Bengts

Information and Privacy Commissioner

June 26, 2015