Office of the Information
And Privacy Commissioner of the
Northwest Territories

ANNUAL REPORT
2018/2019

OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER
NORTHWEST TERRITORIES

P.O. Box 382
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August 10, 2019

The Hon. Jackson Lafferty
Speaker of the Legislative Assembly
P.O. Box 1320
Yellowknife, NT
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Dear Mr. Speaker

I have the honour to submit my annual report to the Legislative Assembly of the Northwest Territories for the period from April 1st, 2018 to March 31st, 2019.

Yours very truly

Elaine Keenan Bengts
Information and Privacy Commissioner
Northwest Territories

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TABLE OF CONTENTS

COMMISSIONER'S MESSAGE

As the fiscal year began, my office anticipated a busy year ahead and that anticipation was well rewarded. Alongside our work resolving privacy complaints and reviews of access to information matters, we provided advice to the legislature and government departments on policy and compliance issues and advice to government on new legislation, amendments and new programs.

Both access to information and protection of privacy issues continue to grow more complex and challenging with each passing year. Public bodies are faced with an ever-increasing demand for access to information. The transition to digital records is all but complete in most areas of government, and as demonstrated by the steadily rising rate of inquiries to my office, I see in increasing public interest in government activity. The public is far more demanding in terms of the kinds of information they expect to receive about government and its activities than it was only a few years ago. Democratic institutions around the world are being challenged to be more and more transparent. Public confidence in government is tied closely to the ability of government to provide that transparency. Residents of the Northwest Territories, too, have demonstrated an increasingly keen interest in what their government is doing to meet its various mandates.

Over the last two years, the privacy landscape has taken what the Information and Privacy Commissioner of British Columbia, Michael McEvoy, has described as "a tectonic shift" following sensational revelations about how Facebook and Cambridge Analytica gathered and used personal information to influence various campaigns. This, combined with hundreds of highly publicized privacy breaches impacting millions of individuals and thousands of less highly publicized breaches occurring almost daily have resulted in a much more privacy aware public. Surveys show that Canadians are more aware of privacy issues than ever before and more careful about their own privacy.

In most instances, the sharing of personal information with government agencies is not a choice. If we want health care or education, or if we need a driver's licence or social supports, we have no option but to provide public bodies with our personal information. If government does not live up to its obligations to keep that information private and secure, the inevitable result will be a loss of trust in all aspects of government. It is no longer good

enough for any government to pay lip service to privacy impacts – all public bodies must operate with a privacy mandate front and centre.

These obligations will come into sharper focus with the coming into force of Bill 29, *An Act to Amend the Access to Information and Protection of Privacy Act* which passed first and second reading in 2018. This Bill was the culmination of work begun in 2012 and represents the first comprehensive review of the Act since its coming into effect on December 31, 1996. It contains many exciting new initiatives, including provisions necessary for bringing NWT municipalities under the Act. As I write this report, the Bill has now had third reading and received royal assent, setting the stage for bringing the new provisions into effect, hopefully in the next few months. During the committee review stage, the Bill was revised significantly and the resulting amendments will bring many forward-thinking changes to the way in which our office operates and access and how privacy matters are handled in the Northwest Territories. Those changes include:

a) replacing the "recommendation only" powers of the Information and Privacy Commissioner with the power to make binding and court enforceable orders;
b) providing the groundwork to include municipalities under the Act;
c) requiring public bodies to pro-actively disclose risks of significant harm to the environment or to the health or safety of the public when that disclosure is clearly in the public interest;
d) requiring public bodies to notify the Information and Privacy Commissioner when there has been a material breach of the privacy of one or more individuals, and to notify those individuals where the breach creates a real risk of significant harm to the individual;
e) requiring all public bodies to complete a Privacy Impact Assessment (PIA) during the development of a proposed enactment, system, project, program or service that involves the collect, use or disclosure of personal information and to submit the PIA to the Information and Privacy Commissioner for review and comment;
f) reducing the time that the Information and Privacy Commissioner has to complete a review from 180 calendar days (about six months) to 90 business days (about four and a half months);
g) requiring public bodies to request extensions of time in excess of 20 days from the Information and Privacy Commissioner when they are unable to respond to a request for information on time.

h) giving the Information and Privacy Commissioner the additional mandate of providing public education about access and privacy matters.

These are significant and substantive changes that will change the landscape dramatically and my office is looking forward to implementation. The transition from "recommendations" to "orders" is particularly significant and will require public bodies to put far more thought into their submissions to the Information and Privacy Commissioner during the review process, and to do a much better job of articulating their rationale for exercising their discretion to deny access where that discretion is given. The change to order making power will also challenge my office to be clear, concise and particular in relation to the orders made and the review process will need to become more formal with definitive and enforced time limits for submissions.

The Northwest Territories will be the fifth Canadian jurisdiction in which the Information and Privacy Commissioner makes binding orders, joining British Columbia, Alberta, Ontario and Prince Edward Island. The Federal Access to Information Commissioner is also transitioning from recommendations to order power. This is a positive change which I believe makes a lot of sense in today's digital world.

2018/2019 was another busy one for the office with breaches in the health sector consuming a good portion of our time, including two very high-profile breaches. The first of these involved a stolen laptop containing personal health information of nearly every resident of the Northwest Territories. The second was the discovery of dated records containing sensitive personal information and, in some cases, personal health information, allegedly found in the dump in Fort Simpson. In addition to these two very well publicized breaches, the number of both breach complaints and mandatory breach notifications under the *Health Information Act* continued to grow as is reflected in the number of Review Reports issued under that Act.

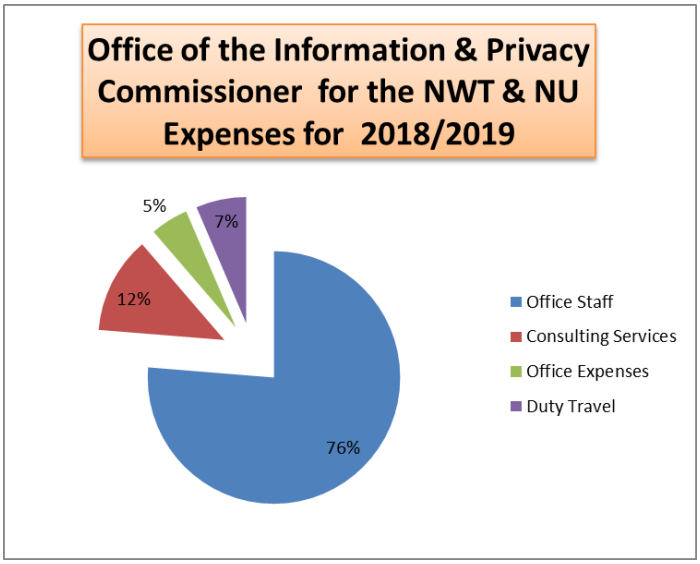
I was very happy to welcome Dylan Gray to the office as the Assistant Commissioner/ Investigator on March 1st of this year. Dylan was previously with the Department of Health and Social Services as a Senior Privacy Specialist and his knowledge of the health sector in particular will be put to very good use. This doubles the size of our investigative team to two and we are working hard to clear the growing backlog.

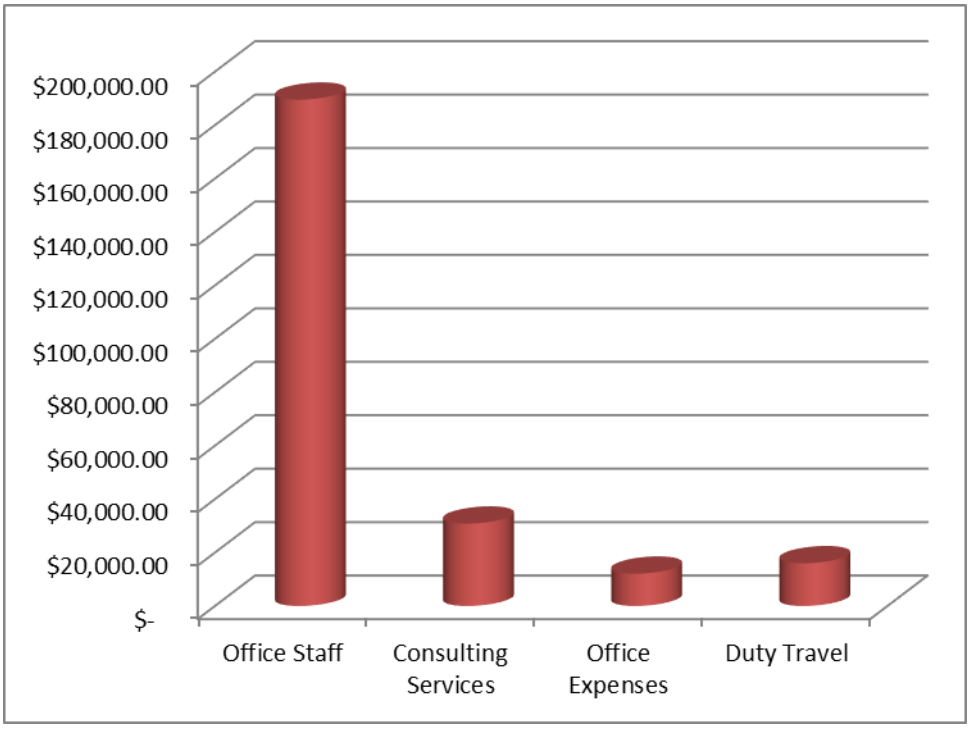
I must also acknowledge the critically important work of our Office Manager, Lee Phypers, who is always organized and forever cheerful. Her dedication and knowledge about the work we do is essential to the smooth running of the office.

Participating on the Commissioner's Panel at the 2019 U of A Access and Privacy Conference

FINANCIALS

The total (combined funds) spent to run the Office of the Information and Privacy Commissioner for the Northwest Territories and Nunavut for fiscal 2018/2019 was $248,442.20. A detailed breakdown is outlined in the charts shown.





ABOUT THE OFFICE

The Information and Privacy Commissioner is an Officer of the Legislative Assembly. The Commissioner reports directly to the Legislative Assembly of the Northwest Territories and is independent of the government.

Through the Office of the Information and Privacy Commissioner (OIPC), the Commissioner performs the legislative and regulatory responsibilities set out in the *Access to Information and Protection of Privacy Act (ATIPPA)* and the *Health Information Act (HIA)*.

Access to Information and Protection of Privacy Act

The *Access to Information and Protection of Privacy Act* applies to 32 territorial departments, crown corporations and other public agencies. The ATIPP Act enshrines three key principles:

- the right of the public to have access to any record in the custody or control of a public body, subject to limited and specific exceptions;
- the right of individuals to have access to their own personal information held by public bodies and to request corrections to their own personal information; and
- the obligation of public bodies to protect the privacy of individuals by setting out the circumstances in which a public body may collect, use or disclose personal information

It outlines the process for the public to obtain access to records and establishes when and how public bodies can collect, use or disclose personal information about individuals.

The Health Information Act

The *Health Information Act* (HIA) came into effect on October 1st, 2015. Its purpose is to govern the collection, use and disclosure of personal health information while recognizing the need to use and disclose such information as necessary to provide effective and efficient health care. The legislation applies to all records containing the personal health information of identifiable individuals. It regulates health information custodians in both the private and

the public sectors including the Department of Health and Social Services, the Northwest Territories Health and Social Services Authority, the Hay River Health and Social Services Authority, the Tlicho Community Services Agency, and private physicians and pharmacies operating in the Northwest Territories. HIA also applies to "agents," who perform a service for custodians, such as employees, contractors, students and volunteers. Custodians are responsible for the information collected, used and disclosed by their agents.

The HIA sets out the rules that health service providers must follow when collecting, using and disclosing personal health information. Over-arching all of these provisions is the clear direction that a medical care worker's access to any personal health information is to be limited to that information which the care provider "needs to know" to do their job.

The Act protects patients' privacy by regulating how health information may be collected, used and disclosed, and by establishing the duty for custodians to take reasonable steps to protect the confidentiality and security of health information. The Act also gives individuals the right to access their own health information, and to request corrections to that information. It also gives the patient the right to put conditions on who has access to his or her personal health records and to direct, for example, that one or more practitioners, nurses, clerical staff or other employees in any particular office be prohibited from accessing that patient's file.

The *Health Information Act* also imposes a positive duty on health information custodians to give notice to an individual as well as to the Information and Privacy Commissioner if personal health information about the individual is improperly used or disclosed contrary to the Act, or is stolen, lost, altered or improperly destroyed. The Information and Privacy Commissioner may choose to do an investigation and prepare a report with appropriate recommendations in such circumstances.

The Role of the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner provides independent oversight over the decisions made by public bodies and health information custodians in responding to access to information requests and investigates allegations of privacy breaches under both the *Access to Information and Protection of Privacy Act* and the *Health Information Act*.

When a request for information made to a public body or a health information custodian has been made but has not been answered to the satisfaction of the applicant, a Request for Review to the Office of the Information and Privacy Commissioner will trigger an independent review of the response. Similarly, if an individual has a privacy concern that has not been adequately addressed by a public body or a health information custodian, as the case may be, a request can be made to the Office of the Information and Privacy Commissioner to review the complaint.

The Information and Privacy Commissioner investigates the complaint by obtaining input from all parties concerned, and issues a report outlining her findings after assessing the information received, and interpreting and applying the various sections of the legislation which apply. In the report, the Information and Privacy Commissioner will make recommendations to the public body or health information custodian, as the case may be. Neither public bodies nor health information custodians are currently required to accept the recommendations made, but the Information and Privacy Commissioner's reports are public records and the IPC is required to include in her Annual Report an indication of any recommendations made which are not accepted. With the coming into effect of Bill 29, as discussed above, the role of the Information and Privacy Commissioner will change such that she will have the power under the *Access to Information and Protection of Privacy Act* to make binding orders, enforceable in the Supreme Court of the Northwest Territories. This order making power will not apply to matters under the *Health Information Act*.

In addition to dealing with complaints, the Information and Privacy Commissioner also reviews and comments on draft legislation and privacy impact assessments when requested to do so.

Our access and privacy laws help ensure governments and organizations are held accountable for their actions. A transparent democracy gives us the information we need to participate actively, to criticize or support our government's decisions knowledgeably and to know we can trust our government to protect our personal information.

Excerpt from 2018/2019 Annual Report of the Nova Scotia Information and Privacy

THE YEAR IN REVIEW

The Office of the Information and Privacy Commissioner opened a total of 84 files in fiscal 2018-2019.

Access to Information and Protection of Privacy Act

Fifty-five files were opened under the *Access to Information and Protection of Privacy Act* between April 1st, 2018 and March 31st,2019. These can be broken down into a number of categories:

Requests for Review – Access to information	19
Requests for Review – Deemed refusal	8
Breach Notification from a public body	7
Requests for Review – Breach of privacy	6
Consultations/requests for comment	5
Miscellaneous	3
Requests for Review – Fees	2
Administrative	2
Breach Notification from a third party	1
Requests for Review – Extension of time	1
Request for Review – Third party consultation	1

These numbers indicate that once again by far the largest number of files opened related to requests for the Information and Privacy Commissioner to review responses received to access to information requests. There was a significant increase in the number of review requests pertaining to a failure by public bodies to respond to a request for information within 30 days, as required by the Act (deemed refusal). Most of these were resolved

without the need for a formal review, but it does indicate that there may be capacity issue developing in some public bodies.

I was pleased, this year, to be able to work with the City of Yellowknife in assessing the privacy impacts of their entry into Infrastructure Canada's Smart Cities Challenge. The City was a finalist in the five million dollar category and in their final submissions were required to assess any privacy impact that their project might need to address. I exchanged a number of letters with the City and met with the team putting together their submission to help identify and address these issues. Unfortunately, the City was not the successful municipality in its category.

In addition to the matters resulting in the opening of a file, we have, of course, also dealt with many calls on a daily basis from people seeking basic information about the Act, which we deal with immediately and without the need to open a file.

FPT Information and Privacy Commissioner Conference
Regina, Saskatchewan - September 12-13, 2018

Health Information Act

We continued to receive a large number of requests under the *Health Information Act* this year, with a total of 29 files opened. Of these files

- eighteen were breach notifications received from the Department of Health and Social Services, the Hay River Health and Social Services Authority and the Northwest Territories Health and Social Services Authority pursuant to section 87 of the Act;
- three were breach of privacy complaints received from the public;
- two were requests to review a refusal to make corrections to information in a patient's chart;
- three were for the review of Privacy Impact Assessments submitted pursuant to section 89 of the Act;
- one was in relation to a request for access to a patient's own personal health information;
- one was a request for comment received from a health information custodian;
- one was an administrative file.

Most of the breach notification files were what would be considered minor breaches, most notably misdirected faxes and emails and the mishandling of communications with clients, usually involving only one person's personal health information. Others involved more serious breaches, including the theft of a laptop containing personal health information about almost every resident of the Northwest Territories and the report of the discovery of what appeared to be counselling and other personal health information in the Fort Simpson dump.

Breach notifications from health information custodians have also revealed a rather alarming number of prescription errors in which a prescription is issued in the wrong name. There was also one complaint from an individual who alleged that the health information custodian failed to comply with a directive provided to the custodian restricting access to the individual's health records.

The continued use of fax technology to communicate and to transfer health records continues to be worrisome. While human error will always be a factor which contributes to privacy breaches, the use of secure digital communication technology can significantly reduce the possibility of a breach as a result of such errors. Electronic transfers, of course,

can also be misdirected, but if the personal health information is transferred using secure digital technology the chances of a breach are greatly reduced. I continue to encourage health information custodians in the Northwest Territories to prohibit the use of fax machines when dealing with documents containing personal health information, except where absolutely necessary. There seems, however, to be a reluctance within the sector to make the change to more secure methods of communication.

Data breaches and compromises are expensive, result in an enormous amount of collateral everyday life damage and are more common than inter-relationship bickering. ….. [T}here is always room for improvement. While it is folly to believe that any company can be made 100% hack or leak proof, they can become harder-to-hit targets. Security can be baked into all processes--from onboarding to new product launches to the storing of key data. They are more avoidable than one might be led to believe, but it requires a sea change in attitude and more importantly a complete change in the way everything digital is done with security always foremost in any given process.

If You Have to Ask How Much a Data Breach Costs, You Can't Afford One, Adam Levin, Inc., August 19, 2019

REVIEW REPORTS

Access to Information and Protection of Privacy Act

Eighteen Review Reports were issued under the *Access to Information and Protection of Privacy Act* in 2018/2019.

Review Report 18-178

Category of Review:	Privacy Complaint
Public Body Involved:	Department of Municipal and Community Affairs
Sections of the Act Applied:	Section 1, Section 40, Section 42, Section 43, Section 48
Outcome:	- Recommendation to ensure that information gathered for the purpose of "duty to accommodate" are used solely for that purpose rejected. - Recommendation to ensure "duty to accommodate" and "disciplinary" issues are dealt with as separate processes rejected. - Other recommendations accepted or accepted in principle

The Complainant was an employee of the public body who had some health issues. The public body requested and received a medical prognosis from the Complainant's physician for the purpose of their duty to accommodate so that they could assess what, if any, accommodations were appropriate to assist the Complainant. The prognosis provided contained overly detailed information about the Complainant's health history, treatment, and medication, among other things. The Complainant continued to have difficulties at work and was eventually required to attend a meeting to "discuss the medical prognosis received". The discussion at the meeting, however, was disciplinary in nature and not related to the duty to accommodate process. A second meeting some months later in which information in the prognosis report was again used in a disciplinary proceeding. Discipline was imposed on the Complainant as a result, in part, of information contained in the prognosis.

The Information and Privacy Commissioner (IPC) found that the information gathered to address the public body's duty to accommodate was improperly used in the discipline proceedings. Personal information collected by public bodies can only use personal

information for the purpose it was collected (or a consistent purpose) unless the individual consents to another use. The IPC found that the use of the information in the discipline process was not a consistent purpose. She further found that it was inappropriate for the public body to include information from the prognosis form in the letter of discipline given to the Complainant and shared with a number of officials. The public body had already conceded this point and had issued a new letter and asked everyone who had received the original letter to destroy it.

The IPC recommended that:

a) records collected for the purpose of the GNWT's duty to accommodate are maintained separately from other personnel records and are sealed unless required to assess accommodations needed or the employee consents to the records being opened;
b) access to such records be strictly limited to Duty to Accommodate Officers and the employee's immediate supervisor and that appropriate security measures are in place to ensure no unauthorized access;
c) policies and procedures be amended as necessary to ensure that it is clear that records, and in particular medical records, collected for the purpose of evaluating a public body's duty to accommodate are to be used solely for that purpose;
d) policies and procedures be amended as necessary to ensure that duty to accommodate issues and disciplinary issues are dealt with as separate processes
e) steps be taken to ensure that the physicians are clear that a prognosis provided for the purpose of the GNWT's duty to accommodate should include only the information strictly necessary to allow the public body to assess any accommodations required for the employee.

Review Report 18-179

Category of Review: Access to Information
Public Body Involved: Department of Health and Social Services
Sections of the Act Applied: Section 1, Section 14(1)(a), Section 18(b), Section 23(1), Section 24 and Section 33
Outcome: Recommendations accepted

The Applicant sought records relating to annual audits of regional authorities within the Child and Family Services division over a four-year period. There were significant delays in the provision of the response, and when it was provided, it was heavily redacted. The

Information and Privacy Commissioner assessed each item redacted and the exemption provision applied. She found:

a) that the public body properly redacted personal information, the disclosure of which would have amounted to an unreasonable invasion of privacy;
b) that the public body had not established that most of the information redacted pursuant to section 14(1)(a) (advice or recommendations to public bodies) met the criteria for such an exemption. She further found that the public body's exercise of discretion for those items that did meet the criteria did not include all of the relevant considerations. She recommended that most of the information redacted pursuant to this subsection be disclosed;
c) that the public body did not establish that any of the redacted material, if disclosed could be reasonably expected to prejudice the use or results of a future audit. She recommended that most of the information redacted pursuant to section 18(b) be disclosed.

Review Report 18-180

Category of Review: Access to Information – Deemed Refusal
Public Body Involved: Department of Justice
Sections of the Act Applied: Section 6, Section 7, Section 8, Section 11, Section 26, Section 27
Outcome: Recommendation accepted

The Applicant requested copies of records in relation to a dispute between himself and a third-party contractor also engaged by the Department. There were many delays in responding, largely because of errors by the Department when responding to the request. The records were eventually provided and no review of the actual response was, therefore, necessary. The IPC did, however, comment on the process and the errors made by the Department which contributed to the delayed response and recommended that the Department take steps to ensure that they adhere to the time frames set out in the Act.

Review Report 18-181

Category of Review: Correction to Personal Information
Public Body Involved: Aurora College
Sections of the Act Applied: Section 45(1), Section 45(2)
Outcome: No Recommendations Made

The Applicant objected to comments made in a disciplinary letter put on his file which made reference to a specific medical condition and made statements about his willingness to co-

operate that were, in his opinion, not true. He was concerned that this "false information" then became a part of his personnel records and could be seen by any number of people in Human Resources and other departments. Also, in order to make a claim for Employment Insurance benefits, he was required to provide a copy of the letter to federal officials and he was concerned about how the information in the letter would affect his qualification for benefits and about the further disclosure of his personal information, true or not. The Applicant sought a correction to the personal information contained in the letter but the public body refused to make the corrections.

During the course of the review, the IPC suggested that the public body issue a second letter to the Applicant removing any reference to his personal health information and the public body agreed to do so. The Applicant accepted that letter as a partial solution, but maintained his request that a permanent correction be made on his personnel file.

The IPC found that while Section 45 of the Act gives an individual the right to request a correction to his or her personal information but public bodies have the discretion to refuse to make such corrections and are justified in refusing to make such corrections when:

a) there is a dispute about whether there is an error or omission of fact concerning an applicant's personal information;
b) there is a third party's recorded statement of fact regarding the applicant's personal information, even if the recorded information is wrong;
c) there is a third party's opinion about the applicant.

The IPC found that the information that the Applicant sought to have corrected was an opinion about the Applicant and the public body was therefore justified in refusing to make the requested correction.

Review Report 18-182

Category of Review:	Access to Information
Public Body Involved:	Department of Infrastructure
Sections of the Act Applied:	Section 22, Section 23(1), Section 23(2)(d), Section 23(2)(h)(I), Section 23(2)(i), and Section 24(1)(c)(ii)
Outcome:	Recommendations largely accepted with the exception of the recommendation to disclose a third party's NWT Certificate of Registration number.

The Applicant sought information in relation to permits issued to a particular contractor for work done on properties owned by the Applicant over a particular period of time. He

received 9 pages of redacted records. The IPC reviewed each of the items redacted and found:

a) that Section 22 (evaluative or opinion material about the Applicant collected to determine the Applicant's suitability or eligibility for employment) did not apply and recommended that information redacted pursuant to this section be disclosed;
b) that some of the information withheld pursuant to section 23 (unreasonable invasion of privacy), was properly withheld, not all of it met the criteria for the redaction. She recommended the disclosure of some of this information;
c) that the public body did not provide appropriate evidence to establish that information withheld pursuant to section 24 (financial or commercial information that would prejudice the competitive position of a third party) would cause harm to a third-party business. She recommended the disclosure of this information.

Review Report 18-183

Category of Review: Access to Information
Public Body Involved: Department of Infrastructure
Sections of the Act Applied: Section 23(2)(d), Section 23(2)(h)(i), and Section 24(1)(b)(i)
Outcome: Recommendations accepted

The Applicant requested copies of complaints filed against him by certain companies or individuals over a stated period of time. The public body identified eight (8) pages of responsive records which were provided to the Applicant, though with some redactions. The department relied on section 23 (disclosure would amount to an unreasonable invasion of a third party's privacy) for most of the material that was redacted. There was also some information redacted pursuant to section 24 (disclosure would harm a third party's business interests). The IPC found that the Department appropriately redacted most of the information withheld but recommended the disclosure of some additional information.

Review Report 18-184

Category of Review: Privacy Complaint
Public Body Involved: Department of Justice
Sections of the Act Applied: Section 42, Section 47.1, Section 43, Section 48
Outcome: Recommendations accepted

The Department of Justice failed to decommission the Complainant's government email address or to remove or adjust his permissions to access the PeopleSoft system at the end of his employment. As a result, the Complainant continued to have unauthorized access to personal information about his former staff through PeopleSoft long after his employment

responsibilities ended. The Complainant was further concerned that his government email address remained active and monitored by another employee for at least six months after his departure, resulting in a breach of his privacy.

The IPC found that the failure to properly decommission the Complainant's government email address amounted to a potential breach of the privacy of third parties sending email to the address, as well as of the Complainant's privacy. She further found that the Complainant's continuing access to the personal information of other employees in the PeopleSoft system constituted a clear breach of their privacy.

The IPC recommended a thorough review of policies and procedures around the management of email accounts. She further recommended that a technical solution be found which allows a former employee to continue to have access to his/her PeopleSoft account while preventing access to anyone else's information.

Review Report 18-185

Category of Review: Access to Information
Public Body Involved: Department of Education, Culture and Employment
Sections of the Act Applied: Section 23(1)
Outcome: Recommendations accepted

The Applicant requested a copy of a report prepared under the Harassment Free and Respectful Workplace Policy as a result of a complaint he had made. He was provided with partial access to the report, with identifying information of most third parties redacted on the basis that disclosure would constitute an unreasonable invasion of the privacy of those third parties. The IPC reviewed each item redacted from the report and made recommendations that some additional information be disclosed but agreed, for the most part, with the public body's decision to withhold other identifying information.

Review Report 18-186

Category of Review: Access to Information
Public Body Involved: Department of Municipal and Community Affairs
Sections of the Act Applied: Section 1, Section 14(1)(a), Section 23, Section 24
Outcome: Recommendations accepted in part and rejected in part

The Applicant made a request for "the whole of the 2017 Town of Norman Wells Municipal Report...and all notes and findings". The public body provided the Applicant with a number of records but many were partially redacted pursuant to section 14(1)(a), Section 23 and Section 24.

Most of the information withheld in this case was withheld pursuant to section 14(1)(a) which allows public bodies to withhold information where the disclosure could reasonably be expected to reveal advice, recommendations, analyses or policy options developed for a public body. The IPC held that findings of fact contained in an investigation report do not constitute "advice, recommendations or analyses" which would give rise to an exemption under section 14(1)(a). She recommended the disclosure of additional parts of the report.

Review Report 18-187

Category of Review: Breach of Privacy
Public Body Involved: Northwest Territories Housing Corporation
Sections of the Act Applied: Section 40, Section 41(d), Section 42, Section 43, Section 48
Outcome: Recommendations accepted

The Complainant had received a housing subsidy under a public housing program because of financial need. When applying for the housing subsidy, he provided the name of his previous landlord for the purpose of allowing the public body to do a background check as to his reliability and suitability as a tenant. Eventually the Complainant was able to overcome his financial difficulties and moved out of public housing. At some point the public body received information which suggested that the Complainant may have misrepresented his financial circumstances when he originally applied for the housing benefit and, months after the Complainant was no longer a tenant, sought to collect the full subsidy that the Complainant had received while a tenant. The Complainant discovered that after he had moved out of the unit, the public body had contacted his former landlord and, posing as a would-be new landlord, asked for and received information about the Complainant's financial circumstances. The Complainant considered this to be an inappropriate collection of his personal information and filed a complaint with the OIPC.

The public body argued that they were required, under the *Financial Management Act* to investigate possible fraud stemming from the receipt of a public, needs-assessed financial benefit. While it was admitted that the public body had collected information from the former landlord, they denied that they held themselves out as doing a background check on a potential tenant. They also relied on the application form signed by the Complainant at the time of his application for the subsidy which included a consent to "conduct credit inquiries, income verifications, medical or family confirmations and reference checks". The consent form did not include consent for the collection of information to investigate allegations of program fraud.

The IPC found that the consent to collection of personal information signed at the time application for public housing was, on its face, limited to "information required for the purpose of determining and verifying eligibility for social housing programs" and the

circumstances suggested that the consent was limited to the application process. She found that the consent to collect personal information of the tenant ended, at the latest, when the tenancy ended and there was no longer a valid contractual relationship between the public body and the tenant. The consent, therefore, did not authorize the collection of personal information after the end of the tenancy.

The IPC, however, also found that section 40(c) of the Act allows public bodies to collect information where the information relates directly to and is necessary for an existing program of the public body and that it was an important part of any subsidy program that there be a way to prevent abuse of the program. She found that the collection of information from the former landlord was authorized by this section. She further found that the use/disclosure of that information was authorized pursuant to section 48(d) of the Act which allows a public body to use or disclose personal information for the purpose of collecting a debt owed by an individual to the GNWT or one of its agents.

The IPC recommended that:

a) the public body clearly set out the criteria for public housing in the application form;
b) the public body amend the consent in the application form to make it clear that if the applicant is accepted as a tenant, the consent for the collection of personal information survives the application process so long as the applicant is a tenant of the organization;
c) include in the consent a statement that one of the purposes for the collection of personal information is to allow the public body to ensure the integrity of the subsidy program
d) ensure that in policy and practice, the collection of personal information is always done in good faith.

Review Report 18-188

Category of Review:	Request for Correction to Personal Information
Public Body Involved:	Department of Education, Culture and Employment
Sections of the Act Applied:	Section 44, Section 45(1), Section 45(2)
Outcome:	No Recommendations Made

The Applicant made two requests to the Department of Education, Culture and Employment to correct information in relation to his applications for Student Financial Assistance (SFA). The Applicant had made several applications for SFA within one month. One of those applications was lost or misplaced by the Department. When the Applicant asked the department to make a note of this on his file, it agreed to put a note on his file to indicate

that he had requested this issue to be addressed. The Applicant sought to have the notation changed to indicate explicitly that the department had "lost" his application.

The second request for correction was in relation to the amalgamation of the Applicant's several applications into one form. The Applicant argued that this was an improper alteration which affected his eligibility for funding. A note was made to the Applicant's file acknowledging the concerns raised but this did not satisfy the Applicant who wanted the correction to reflect malfeasance on the part of the Department in attempting to "pass off" his three applications for funding as one.

The IPC found that the corrections requested by the Applicant were not corrections to his personal information. They were, instead, requests to correct the classification of an administrative error or action of the public body, which is not covered in the ATIPP Act. No recommendations were made.

Review Report 18-189

Category of Review: Privacy Complaint
Public Body Involved: Department of Education, Culture and Employment
Sections of the Act Applied: Section 42, Section 44
Outcome: Recommendations accepted

The Department of Education, Culture and Employment mishandled several applications for funding submitted by the Complainant. The Complainant alleged that, as a result, his privacy was breached. The Department admitted error in handling the records. Two of the applications had improperly been treated as "transitory records" and not correctly saved to the Applicant's file. After prompting from the Applicant, they recovered the emails in which these applications had been received and placed them on the Applicant's file. A third application had been submitted on paper, however, could not be located. The staff noted that it had been received because it was reflected in the electronic notes for the client in its electronic system. The department concluded that the paper application had been incorrectly but securely destroyed as a "transitory" record.

The IPC found that the fact that the department could not account for the third application, which contained enough personal information to allow for identity theft if it landed in the wrong hands, amounted to a breach of privacy and recommended that the public body offer to pay for credit monitoring services for the Applicant for two years. She further found that there had been no breach in the mishandling of the other records. She did, however, recommend that the Department review and amend their policies and procedures with

respect to their information management practices and, in particular, to the classification of records as "transitory".

Review Report 18-190

Category of Review: Access to Information
Public Body Involved: Department of Justice
Sections of the Act Applied: Section 23, Section 24
Outcome: Recommendations largely accepted

The Applicant sought copies of correspondence and notes of two Department employees in which the Applicant was mentioned or discussed. He was not satisfied that the response received was complete and felt that some of the records had been doctored. He also questioned the application of sections 23 (unreasonable invasion of privacy) and 24 (harm to business interests).

The IPC held that there was no evidence to suggest that the response was either incomplete or doctored. She reviewed each of the redacted items and recommended the disclosure of additional information, particularly information withheld pursuant to section 23 where the information was more in the nature of business communications between the public body and a third party contractor, noting that there are many circumstances in which the disclosure of personal information will not amount to an unreasonable invasion of privacy.

Review Report 18-191

Category of Review: Access to Information - Extension of Time
Public Body Involved: Northwest Territories Health and Social Services Authority
Sections of the Act Applied: Section 7, Section 11
Outcome: Recommendations accepted

The Applicant requested general information about the awarding of a tender for certain services in a community. The request was made on May 24, 2018. On May 28th, the Northwest Territories Health and Social Services Authority acknowledged the request and advised that because the request "may" result in a high volume of documents, it was extending the date for responding to the request pursuant to section 11 of the Act, and that the response would be provided no later than August 22nd. The Applicant objected to the extension of time and asked the IPC to review it.

The public body explained that the person in the organization who would normally have handled the documents in questions was away on leave which meant that access to the records was made far more difficult and would take much more time. While the IPC acknowledged that the absence of a key employee would clearly add to the time needed to

gather and review the responsive records, she was not satisfied that the public body had met the requirement of establishing that meeting the 30-day time limit for a response would "unreasonably interfere with the operations of the public body". She made recommendations that the public body review and amend policies so as to address the issues raised in this review.

Review Report 18-192

Category of Review: Privacy Complaint
Public Body Involved: Workers' Safety and Compensation Commission
Sections of the Act Applied: Section 40, Section 43, Section 48
Outcome: Recommendations accepted with significant reservations

The Complainant was involved in a workplace incident that resulted in his injury and made a claim for compensation. Before the WSCC would accept his claim, they required him to undergo an independent evaluation by a specialist. To accommodate this evaluation, the WSCC obtained the Complainant's consent for the collection of 5 years of medical records but in fact collected more than 10 years of such records.

The WSCC argued that the consent that the Complainant signed at the time of his initial clam was sufficient consent for the collection of as much information as the WSCC felt was required to assess the claim and they were not bound by the time frame in the second, more specific consent.

The IPC found that there is a very high onus on the WSCC to fully and completely explain what information they will collect, how it will be used and to whom it will be disclosed, particularly because the WCA requires employees to report employment related injuries or diseases to the WSCC (Section 17). To make a report, the worker must complete and sign the Workers' Report of Injury which further requires the employee to sign a very general "consent" to the collection, use and disclosure of personal information. Further, by virtue of section 19 of the WCA, anyone who files a report of injury is deemed to have made a claim for compensation, whether or not that was the wish or intention of the worker. The IPC found that, in these circumstances, the consent included in the Report of Injury can never be relied on as true, knowledgeable consent because it is a requirement, not a choice. Consent requires choice and understanding to be valid. Consents have real legal consequences and should, therefore, be treated with the attention to detail and formality that such a waiver of personal rights deserves.

The IPC held that obtaining consent in the claim process must be far more transparent and claimants must be given the tools to understand how much of their right to control the

collection, use and disclosure of their personal information is being forfeited when making a claim for compensation. She made a number of recommendations to achieve this goal.

Review Report 18-193

Category of Review: Fees
Public Body Involved: Department of Finance
Sections of the Act Applied: None Referred To
Outcome: No Recommendations Made

The Applicant sought a review of the fees assessed with respect to an Access to Information Request he had made for "all discipline records" held with respect to his employment with the GNWT. After collecting the responsive records, the Department assessed a fee of $216.25 for 865 pages at $0.25 per page. The Applicant objected to the fee on the basis that, to his knowledge, he had never been disciplined and that the Human Resources Manual requires that an employee be made aware of any disciplinary documents placed on his/her file. Finally, he pointed to the same manual which states that an employee is entitled to access to their own personnel records at no cost.

The department explained that most of the records identified as being responsive consisted primarily of emails between Department of Finance staff about how to respond to a disciplinary action involving the Applicant. While all formal documents relating to employee discipline are placed on the employee's personnel file, copies of working documents, emails soliciting advice or discussing a situation are not.

The IPC was satisfied that the public body's interpretation of the request was a fair one and that the number of records was appropriately estimated and the fee assessed, therefore, appropriate as well. She suggested that if the Applicant wished to revise or clarify the request so as to focus only on formal disciplinary records in his personnel file, he should advise the public body so that they could adjust its fee estimate.

Review Report 18-194

Category of Review: Fees
Public Body Involved: Department of Finance
Sections of the Act Applied: Section 50, Regulation 12, Regulation 13
Outcome: Recommendations accepted

The Applicant made a request for all information in relation to the employer's "duty to accommodate" in connection with his return to work. The Department identified 212 pages

of responsive records and assessed a fee of $53.00 ($.25 per page). The Applicant objected to the fee assessed, based on two factors. The first is that he had been advised the previous year in relation to another ATIPP request that there were only 69 pages of "duty to accommodate" records. Secondly, he argued that there should be no fee because duty to accommodate records are required to be maintained on an employee's personnel file and policy allows employees access to their personnel file without a fee.

The public body indicated that while a previous ATIPP request had identified approximately 69 pages of records with respect to the duty to accommodate the Applicant, the department continued to receive a high volume of emails from the Applicant with a variety of questions and concerns and the number of responsive records had therefore increased. They noted as well that while all formal documents relating to an employee's "duty to accommodate" needs are place on the employee's personnel file, working documents and emails soliciting advice or discussing a situation are not included and that "most" of the responsive records fell in this category.

The IPC found that the number of responsive records was properly assessed by the Department. She recommended, however, that the fee be reduced by $.25 for each of the responsive pages that originated from the Applicant's personnel file.

Review Report 19-195

Category of Review: Privacy Complaint
Public Body Involved: Northwest Territories Health and Social Services Authority
Sections of the Act Applied: Section 40, Section 43, Section 48
Outcome: Recommendations accepted

The Complainant was an employee of the Northwest Territories Health and Social Services Authority. He was required to take time off work to deal with some health issues. During his absence, his employer made several requests for medical prognoses in order to meet their duty to accommodate. In at least one instance, the request included statements about events in the workplace and some that had been observed outside of work. The Complainant felt that the information collected outside the workplace was improperly collected and certainly improperly disclosed. Not only was this information disclosed to his physician but because it was included in the request for prognoses, it was also seen by a number of his co-workers who had access to his personnel records.

The Health Authority argued that it had a "duty to inquire" to determine if the Complainant required any accommodation and that this justified the request for the prognoses. The IPC

recognized the "duty to inquire" but indicated that the collection of information about the employee outside of the workplace was inappropriate. She pointed out that it is a slippery slope when gossip and innuendo can be "collected" and then used by a public body to make decisions that will affect an individual in his employment setting.

To the extent that the Complainant's information was properly collected, the IPC found that it was improperly disclosed in the request for prognosis. She recommended that the public body review its policies and processes around its "duty to inquire" and its "duty to accommodate" so as to limit the amount of information collected and used for these purposes and that information from third party sources be collected/used/disclosed only where absolutely necessary.

Health Information Act

The Office of the Information and Privacy Commissioner issued seven Review Reports under the *Health Information Act.*

Review Report 18-HIA04

Category of Review: Breach Notification
Custodian Involved: Northwest Territories Health and Social Services Authority
Sections of the Act Applied: Section 87
Outcome: No Recommendations Made

The Northwest Territories Health and Social Services Authority (NTHSSA) notified the OIPC that an employee of the Yellowknife Region had improperly disclosed the personal health information of a client when assisting the client to make arrangements for a specialist's appointment in southern Canada. The employee understood the client to be a GNWT employee or dependent and sent the client's name, the date, and the place and time of the appointment to the GNWT Human Resources Benefit Officer to request authorization for the travel through the GNWT's third party employee insurance plan. The client, however, was not a GNWT employee and the disclosure, therefore, resulted in a breach of the client's

privacy. By the time that the Review Report was issued, NTHSSA had made changes to procedures to avoid a similar breach in the future. During the course of the review, other vulnerabilities were discovered and changes made to prevent the possibility of future breaches. No recommendations were made.

Review Report 18-HIA05

Category of Review:	Privacy Complaint
Custodian Involved:	Northwest Territories Health and Social Services Authority
Sections of the Act Applied:	Section 8, Section 10, Section 11, Section 14, Section 87, Section 88
Outcome:	Recommendations accepted

The Complainant had, at one point, seen Dr. "A", a family physician at one of Yellowknife's primary care clinics. He was not happy with the service provided by this physician and began seeing Dr. "B", also a family physician at the same clinic. Dr. "B" referred the Complainant to Dr. "C", a specialist at the Stanton Territorial Health Medical Clinic. Thirteen months later, Dr "C" examined the Complainant and wrote a consultation report and sent it to Dr. A rather than to the referring physician, Dr. B. The Complainant was extremely upset that the information had been sent to the wrong doctor.

In addressing the complaint, NTHSSA advised that when a specialist completes an examination, standard practice is to return the specialist report to the patient's family doctor, as recorded in MediPatient, NTHSSA's electronic health record system. This practice allows specialist reports to be returned to the patient's assigned family doctor if a locum physician or a physician who is no longer at the clinic requests the report, ensuring the report is reviewed in a timely manner. In this case, Dr. "A" was listed as the Complainant's family physician, notwithstanding that the Complainant had made a considered and intentional decision to see another physician and hadn't seen Dr. "A" for almost two years. It was the Custodian's position that there had been no error or breach of privacy.

NTHSSA referred the IPC to a number of informational brochures but could not provide any confirmation that the Complainant had been provided with copies of these brochures or that anyone had explained the "team based" approach used by the clinics. It is clear that no-one had advised him that Dr. "A" had been assigned to be his family physician. The IPC made three recommendations with respect to changes required to ensure that clients understand how their information will be used and disclosed within the authority. She further recommended that NTHSSA implement a practice of having front end staff confirm the identity of the patient's primary care physician each time a patient makes and appointment.

Review Report 18-HIA06

Category of Review: Request for Correction
Custodian Involved: Hay River Health and Social Services Authority
Sections of the Act Applied: Section 119, Section 120(1), Section 125, Section 126, Section 127
Outcome: Recommendation rejected

The Applicant sought a correction to personal health information in his chart with the HRHSSA. He suffers from chronic pain but felt that his doctors were not listening to him when he told them of his pain. He therefore asked for a copy of his records and discovered that he had been labelled as a "drug seeker" and "known narcotic abuser", labels which he strongly disagreed with. He asked HRHSSA to correct the information on his file by removing certain information, including several references to medical information about his partner, references to other family members, references to his alleged "drug seeking" and "doctor shopping" and a physical description of him that he considered unprofessional. While adjustments were made to the records to remove references to third parties, HRHSSA refused to make most of the requested corrections.

The public body explained that the term used to describe the Complainant's physical attributes was a medical classification based on a number of measurable factors and that it was not a comment on the Complainant's appearance. During the course of the review process, however, they agreed to remove the reference to this term and instead substituted other medical terminology.

With respect to the references to the Complainant's alleged drug seeking behaviour, the IPC reviewed the sections of the HIA which allow individuals to ask for a correction to their medical records. She pointed out that a Custodian is entitled to refuse to make the correction where the individual seeking it has not demonstrated that the record contains an error, if there is a dispute of fact between the individual and the Custodian, or if the information is a medical opinion, reasonably held by the Custodian or its agents. The IPC found that the refusal to make the corrections was an appropriate response under the Act. As a result, no recommendations were made about these requested corrections.

The IPC did comment, however, on the inclusion of information on the Complainant's file which appears to have been received from a third party. This entry was different than other references in the Applicant's records in that it came from a third party who was neither an employee or agent of the custodian. It was, therefore, not a "professional opinion or opinion that a custodian has made in good faith". The IPC felt that is was more akin to

gossip than medical opinion and recommended that this reference be removed from the Complainant's record.

Review Report 19-HIA07

Category of Review: Privacy Complaint
Custodian Involved: Hay River Health and Social Services Authority
Sections of the Act Applied: Section 38, Section 28(2)
Outcome: "HRHSSA is committed to accepting your recommendations"

This complaint arose when the Hay River Health and Social Services Authority (HRHSSA) disclosed 10 years' of the Complainant's health information records to the Workers' Safety and Compensation Commission (WSCC) when he had signed a consent for only 5 years' of records. When HRHSSA eventually responded to the inquiries of the IPC to obtain an explanation, they conceded that the additional records had been sent out in error. No additional explanation and no indication of any steps taken to prevent a similar error in the future were provided.

The IPC found that the disclosure of the extra five years' of medical information was in breach of sections 38 of the Act (disclosure without required explicit consent), 28(2) (prohibiting the disclosure of more personal health information than reasonably necessary to meet the purpose of the disclosure). She also found that the Custodian's "Release of Patient Information Policy" was badly outdated (it had not been revised since the coming into force of the Health Information Act). Furthermore, they had not followed that policy because they had not documented the disclosure as required.

The IPC recommended that HRHSSA take immediate steps to establish policies to implement the requirements of the HIA with regard to disclosure of personal health information, as well as other policies as required to comply with the HIA. She recommended that at the same time the HRHSSA review and update all relevant forms to ensure consistency of naming and correct cross-referencing in policies.

Any kind of consent, including implied consent, must be knowledgeable.

REVIEW REPORT 18-HIA05

Review Report 19-HIA08

Category of Review: Privacy Complaint
Custodian Involved: Northwest Territories Health and Social Services Authority
Sections of the Act Applied: Section 20(1), Section 38,
Outcome: Agreement only to "engage with the appropriate departments across the GNWT to obtain necessary advice, collaboration and advance this important work"

The Complainant, an employee of the GNWT, experienced a psychotic break and ended up being admitted to the hospital. In the process of attempting to return to work, his employer requested several medical prognoses over a period of several months. Two of the prognoses provided by NTHSSA contained detailed and specific information about diagnosis, medications, suggested medical follow-up and community supports being provided to the Complainant. While the Complainant had consented to the disclosure of his information for the purposes of the employer's duty to accommodate, he did not intend that the Custodian would disclose his specific diagnosis or details with respect to his medication or any other specific medical information. He asked the OIPC to review whether or not too much information was provided to the employer by the physicians who completed the prognoses forms.

The IPC examined the requirements for a valid consent to the use or disclosure of personal information as contained in section 20 of the Health Information Act and found that, although the consent provided by the Complainant covered some of the required elements, it did not include all of the elements needed for a valid consent. There was nothing in the consent form itself in which the "purposes" of the disclosure were made clear or that indicated that the Complainant understood the purposes, and there was no statement contained in the consent that the Complainant could withhold or withdraw consent, all of which is required for a valid consent pursuant to section 20. All of the information disclosed, therefore, was improperly disclosed.

Even if the consent had been valid, the IPC found that too much information was disclosed - information which was not required by the Complainant's employer to assess accommodations required to assist him to return to work. The complaint, therefore, was well founded.

She recommended that:

a) NTHSSA establish formal policies and guidelines with respect to the kind of information that should and should not be included in a prognosis requested by an employer in relation to a return to work or accommodation process
b) NTHSSA work with the appropriate authorities in the GNWT to amend the consent in the Request for Medical Prognosis form to ensure that it meets the requirements of section 20(3) of the Act or, in the alternative, that NTHSSA create its own form of consent for this purpose and require clients to sign that consent before completing requests from employers for prognoses;
c) all medical personnel who might be required to complete medical prognosis forms, including nursing staff, physicians and specialists, be provided with specific training in relation to the proper way to respond to such requests.

Review Report 19-HIA09

Category of Review:	Commissioner Initiated Review
Custodian Involved:	Hay River Health and Social Services Authority
Sections of the Act Applied:	Section 8, Section 10, Section 11, Section 85, Section 137(1), Section 154
Outcome:	"HRHSSA agrees with all of your recommendations but unfortunately cannot commit to full implementation"

The HRHSSA contacted the OIPC by phone on October 26th to advise that there had been an improper disclosure of the personal health information of several clients and that an investigation was being conducted and a full report would be provided when the investigation was complete. Unreasonable delays by the Authority in providing additional information, coupled with the need to confirm the nature of the breach and determine level of compliance under the Health Information Act, led the OIPC to initiate a formal review pursuant to section 137(2) of the Act.

The privacy breach was originally discovered by HRHSSA as part of a performance review that also identified gaps in procedure. To clearly identify suspected breach occurrences, the HRHSSA undertook an audit of related business activities dating back approximately six months, specifically to April 1, 2017. The audit revealed that the privacy of eight (8) clients was breached between October 10 and October 30, 2017.

The IPC found that the combination of the lack of clear and prescribed process, the deviation from expected process, errors in directing files to the wrong specialists, the over-sharing of information, the lack of oversight by management, and the redundant manual

processing of PHI resulted in inappropriate use and/or disclosure of the personal health information of eight clients with associated risks to privacy and security of the information.

The IPC recommended that:

a) current policies and procedures for processing of personal health information be reviewed to ensure they are documented as formal, prescribed processes, and are made easily available to staff for reference and clearly reflect the expected information and handling requirements;
b) operational oversight be instituted to ensure privacy principles are adhered to when handling PHI, and that discrepancies are addressed in a timely manner;
c) the Authority conduct a general privacy audit of its operations, to identify incidents of non-compliance with legislation, to determine risks to PHI, identify solutions and implement plans to eliminate, mitigate or actively manage known privacy and security issues;
d) all new and existing staff receive annual privacy training as is required by Ministerial policy directive.

Review Report 19-HIA10

Category of Review: Access to Information
Custodian Involved: Northwest Territories Health and Social Services Authority
Sections of the Act Applied: Section 6(2), Section 94, Section 97, Section 99, Section 100,
Outcome: Recommendations accepted

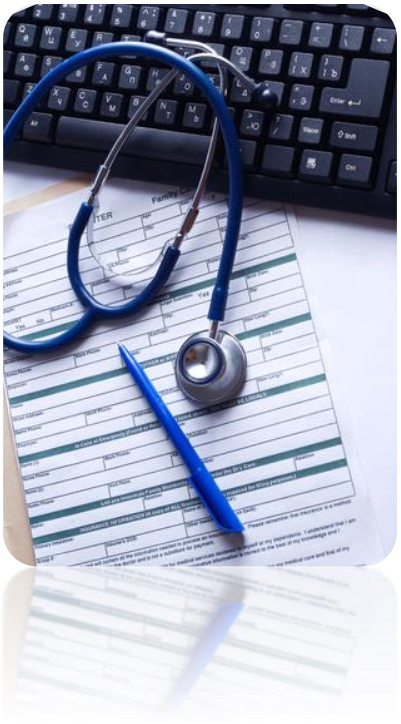
The Applicant made a request to the Northwest Territories Health and Social Services Authority for access to a copy of an "encounter record" on the WOLF EMR. The Custodian provided the Applicant with a 42-page print-out. The Applicant, however, who was familiar with the EMR system, was not satisfied with the response provided and gave detailed instructions to NTHSSA on how to access the screen that was of interest to him. The HIA refused to provide a screen shot of the requested page. They argued that sections 99 and 100 protected the "technical configuration and data architecture" of the information systems. They argued that the care provider's "work desk" is an internal view of business information, including limited personal health information, and as such is a proprietary view intended for use by authorized health care providers in managing their individual practices. Furthermore, they noted that screen shots are not an approved means of disclosing personal health information from the EMR or any electronic health information system.

NTHSSA argued that the specific screen shot requested by the Applicant was not a "record" as defined in the Act but that it was, rather a "computer program, an electronic health information system or another mechanism that creates a record". They asserted, as well, that the Records Coordinator who routinely prepares responses to requests for access to

personal health information does not have the privileges within the EMR necessary to access the screen of interest to the Applicant.

The IPC found that the information displayed by the EMR on the computer screen is not the computer program itself or another mechanism that creates a record, but the output of an executed computer program. Furthermore, she found that the requested screen shot could reasonably be reproduced by NTHSS using its normal equipment and expertise and that creating a copy of the screen shot would not unreasonably interfere with its operations.

She recommended that the custodian respond to the Applicant's access request under the HIA and/or ATIPP, as the case may be. She further recommended that NTHSS establish a process to forward non-standard access requests to its HIA/ATIPP Coordinator for due consideration.



TRENDS AND ISSUES MOVING FORWARD

These are exciting times for the Office of the Information and Privacy Commissioner. The amendments to the *Access to Information and Protection of Privacy Act* will create one of the most progressive pieces of access and privacy legislation in Canada and our office is excited for the new provisions to come into effect. We are already in the process of adjusting our procedures to meet the new requirements and will undoubtedly have to continue to make adjustments once the provisions come into effect and we learn more about how they will affect us. The amendments do, however, change the access and privacy landscape dramatically. Not only our office, but all public bodies as well, will need to make significant changes in their approach to the legislation. There will need to be a concerted and focussed effort to give municipalities the resources, knowledge and tools they need to comply with the legislation once they are added to the list of public bodies subject to the Act. Pubic bodies will need to be more aware of and attuned to access and privacy issues.

Municipalities

Among the most significant of the amendments to the Act are those provisions which set the groundwork for municipalities to be included as public bodies under the Act. I am well aware that our local governments are concerned about the affect this will have on them, both financially and operationally. I certainly understand their concerns. That said, the Northwest Territories is one of the last jurisdictions in Canada to address the need for access and privacy legislation at the local government level. Municipalities large and small throughout the country have long been required to comply with such legislation and transparency and protection of personal privacy at the local level is as important as it is at the Territorial level.

Bringing municipalities under the Act will require careful planning, a reasonable implementation period, appropriate training and, above all, adequate resources to ensure that municipalities will be in a position to effectively meet their obligations under the Act. If not already done, I would strongly suggest that an implementation plan be put into place and that there be a significant investment made, not only in training but also in ensuring that local governments have the information management tools they need to adequately comply with the law.

Public Bodies

Another significant change contained in the amendments to the *Access to Information and Protection of Privacy Act* is the power given to the Information and Privacy Commissioner to make orders. No longer will the IPC only make recommendations which are easily ignored by public bodies. The new provisions give the Information and Privacy Commissioner the power to make binding orders on public bodies which can be filed in the Supreme Court of the Northwest Territories and enforced the same way as any Court Order. The consequences, therefore, of not providing clear, detailed and complete submissions to the OIPC during the review process may well result a binding order based on inadequate information. While public bodies have been getting away with providing only cursory submissions when the IPC could only make recommendations, this will simply not be enough when the IPC is making binding orders. Public bodies will, therefore, need to step up when making submissions to the IPC during the review process, including providing legal argument to justify their position, and outlining all of the considerations which go into the exercise of discretion where applicable. Failure to do so will have significant implications.

I therefore recommend that steps be taken ahead of implementation to ensure that senior staff and ATIPP Co-ordinators in every public body are provided with training in relation to how to make submissions to the OIPC. There will undoubtedly be a learning curve for everyone involved, including the OIPC, but much can be done to make the transition as smooth as possible.

The Office of the Information and Privacy Commissioner

The new provisions in the *Access to Information and Protection of Privacy Act* will also have a significant impact on the work of our office. As noted in the Commissioner's Message, the amendments will create considerable additional work and put additional pressure on the office to ensure that all deadlines are met. One of the implications of giving the Information and Privacy Commissioner the power to make orders is that the validity of those orders can be questioned if the orders are not made within the time frames provided for in the legislation. The office currently has a backlog of almost a full year. We are working as hard as we can right now to clear that backlog so that we can start under the new provisions with a clean slate.

The amendments also add new responsibilities for the Information and Privacy Commissioner, including

- reviewing and commenting on notices under section 5.1 when public bodies are pro-actively required to give the public notice of significant harm to the environment or to the health or safety of the public;
- reviewing and commenting on mandatory breach notifications from public bodies;
- reviewing and commenting on Privacy Impact Assessments completed by public bodies with respect to proposed enactments, systems, projects, programs or services involving the collection, use or disclosure of personal information;
- approving extensions of time for public bodies to respond to a Request for Information of more than 20 business days;
- a mandate to provide public education about access and privacy matters.

In order to ensure that this expanded mandate can be met, I have requested an additional four staff, including a Case Review Officer, two Investigators and a Communications Specialist. This staff will ensure that the added responsibilities, combined with the shortened time frames will not derail the purposes and intent of the new provisions or of the legislation as a whole.

Review of Policies

With the coming into force of the new provisions to the ATIPP Act, is an opportune time for a comprehensive review of GNWT policies and procedures with respect to digital records. As was demonstrated by the case of the stolen laptop, there are many policies that are simply missing or are not being followed when it comes to electronic files. In that case, the very act of downloading huge datasets containing personal information and personal health information of thousands of residents onto a portable device, whether or not it was encrypted or password protected, should have been flagged as a serious departure from existing policy/procedure requiring extra security measures. It was not so flagged because the existing policies are unclear and not well enforced. This is not just a Department of Health and Social Services issue. This is a government wide issue.

As noted in my Annual Report last year, there still does not appear to be any GNWT policy that addresses employee use of personal devices, or the use of personal (and potentially insecure) email accounts, or the use of text messaging for conducting GNWT business. These are issues that are coming up time and again in my reviews, particularly as they relate to

privacy issues. They are, however, also extremely critical issues in terms of the need to document and preserve government records. I strongly recommend that this review take place as soon as possible.

The Continued Use of Fax Technology in the Health Sector

Another issue that continues to repeat, particularly in connection with mandatory breach notifications under the *Health Information Act,* is the use of fax technology to transfer records containing personal information and personal health information of clients and patients. While the number of breach incidents as a result of misdirected faxes is down somewhat, this type of breach continues to occur with disturbing regularity. Personal health information is some of the most sensitive of personal information and it should be handled accordingly. Communication by means of encrypted email or other secure electronic transfer systems should be the default for all employees in the health sector. There is simply no excuse for the continuing breaches caused by fax transmissions being sent to the wrong place. Health care professionals need to do a better job to protect the personal health information of their patients.