2015–2016
ANNUAL REPORT

OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER
OF NUNAVUT

July 22, 2016

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

P.O. Box 382
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July 22, 2016

Legislative Assembly of Nunavut
P.O. Bag 1200
Iqaluit, NU
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Attention: George Qulaut
Speaker of the Legislative Assembly

Dear Sir:

I have the honour to submit to the Legislative Assembly my Annual Report as the Information and Privacy Commissioner of Nunavut for the period April 1, 2015 to March 31st, 2016.

Yours truly,

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner
/kb

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2015-2016 ANNUAL REPORT

COMMISSIONER'S MESSAGE

It always seems to me that I've no sooner completed an Annual Report and it's time to start another one. This year is no different. Fiscal 2015-2016 was another busy one for the Office of the Information and Privacy Commissioner. In addition to receiving another record number of Requests for Review, the office has tackled some more systemic issues and projects which are always very time consuming.

In their November report on their review of my 2014-2015 Annual Report, the Standing Committee on Oversight of Government Operations and Public Accounts suggested several of these more significant projects for me to undertake. I would very much like to be able to say I have completed all of the recommended projects. The reality is, however, that despite the best of intentions, one person can only do so much in a limited amount of time. While the structure of the office has changed from a part time contract to a more dedicated and focused approach to the position of Information and Privacy Commissioner, this has not significantly increased the time available to get the work done. Prior to the transition, about 75% of the work week was already focused on my dual mandates as the Information and Privacy Commissioner of both Nunavut and the Northwest Territories. While I can now dedicate 100% of my time to these roles, the initial reason for moving to the more dedicated approach was that the number and complexity of Requests for Review on both sides of the border was such that I was falling further and further behind in completing these reviews. The extra time was necessary to allow me to catch up and keep up with the reviews. As these reviews are the main focus of my mandate, and the *Access to Information and Protection of Privacy Act* requires that I complete those reviews within a time limit, these must be my first priority and the time

left to complete larger projects is limited, at least until the staff in the office is expanded to include another employee who can assist in the work.

Time limitations notwithstanding, my office has completed one major project and has made a good start on two more.

One of the recommendations made by the Committee was that the Information and Privacy Commissioner submit, no later than September 1st, 2016, a set of comprehensive and specific recommendations for possible amendments to the *Access to Information and Protection of Privacy Act*. This recommendation was timely and welcomed. Almost every Canadian jurisdiction has just completed a review or is in the process of reviewing their public sector access and privacy legislation with a view to updating those laws and ensuring that they are relevant and appropriate to the digital age. Nunavut needs to keep pace. It is important that this review, the first comprehensive review in the nineteen years since the Act came into effect, is thorough and comprehensive and that suggested amendments reflect both the needs of Nunavummiut and the realities of the digital age. This project is well underway, but it will not be completed by September 1st as suggested by the Committee. My goal is to have it completed in the 2016-2017 fiscal year.

The right to access to information held by public bodies promotes government accountability and transparency and enables the public to more fully and effectively participate in the democratic process as it is information that allows citizens to scrutinize government decisions and actions.

"Becoming a Leader in Access and Privacy – Submissions to the 2013 Government of Alberta FOIP Act Review", Jill Clayton, IPC, Alberta

The Committee has also suggested that I meet in person with representatives from the Inuit Qaujimajatuqangit Katimajiit at least once during the 2015/2016 fiscal year. By the time I received the Committee's report, it was late in the fiscal year and I was not able to follow up. I have, however, since reached out to the group and am hoping, in the next few months, to be able to arrange such a meeting.

A third project that the Committee asked me undertake was to include on my web site the responses I have received from public bodies to the Review Recommendations made by my office.

By way of background, when I complete an investigation, I am required to provide a report and make recommendations to the head of the public body involved. These reports are published on my web site http://www.info-privacy.nu.ca . Sections 36 and 49.6 of the *Access to Information and Protection of Privacy Act* require the head of a public body to respond to recommendations made and to either follow those recommendations or make any other decision considered appropriate. This decision must be in writing and must be provided to the Applicant or Complainant, as the case may be, and to my office.

There is, however, very little accountability for public bodies after this step has been taken. Public bodies are not required to report back to my office or to the Applicant/ Complainant once the recommendations have been implemented. Until now, the public would not even know whether or not the recommendations were accepted, let alone be able to follow up with the public body on whether the recommendations had been completed. The posting of the government's responses on my website, alongside the Review Recommendations, will help to promote an increased ability for the public to follow up and demand accountability.

I am happy to be able to report that this project has been completed. All of the Review Recommendations posted on my web site, dating back to the first Nunavut review done in December, 2000, are now followed immediately by the public body's response and decision. This was a time intensive project as we had to go back seventeen years and review every review file, scan each response, review those responses and redact any personal information before uploading them to the web site. It was, however, well worth the effort and we will now, as a matter of practice, be posting all government responses as they are received.

Finally, the Committee encouraged me to undertake at least one formal privacy audit of a Government of Nunavut department, crown agency or territorial corporation in the 2015/2016 fiscal year. This has been in the work plan for the last several years but the time commitment necessary for such an audit was daunting. With the Committee's encouragement, however, I decided that the time had to be made and I chose the Qikiqtani General Hospital for the first privacy audit by this office. I have been concerned for some time about why I have not been receiving privacy complaints from the health system in Nunavut. Because of the ultra-sensitive nature of health information, the health system in most other jurisdictions, including the Northwest Territories, is the subject of large numbers of complaints. That has not been the case in Nunavut and I find this curious. The Qikiqtani General Hospital is the largest health facility in Nunavut, responsible for the health care of people from throughout the Territory. It is also where the Meditech system – the electronic medical record system that the Department of Health has chosen to manage electronic health records throughout Nunavut – was first rolled out. This was, therefore, a logical place to do my first audit.

> *That is why, Mr. Speaker, The Health Information Protection Act is so important. It ensures that even in the fast moving health system of today the tradition of respecting individual privacy will continue into the future. In fact, Mr. Speaker, we believe that this new important legislation adds significantly to the protection we have all come to expect from the health system.*
>
> *Excerpt from comments by the Hon. Ms. Junor moving second reading of Bill 29 – The Health Information Protection Act – in Saskatchewan, April 1999*

Because of the amount of work necessary to complete an audit, and because of what I consider to be the importance of this particular audit, I engaged the services of Robert Gary Dickson, the former Information and Privacy Commissioner of Saskatchewan to assist me. Mr. Dickson is well respected throughout Canada for his passion for and expertise in health and privacy. While he was the Information and Privacy Commissioner of Saskatchewan, he conducted many privacy audits in northern and rural health centers

in that province and his experience and assistance was invaluable in planning and undertaking this audit. The groundwork has all been completed and the plan is to submit the results of our audit for tabling in the Legislative Assembly in the fall of 2016.

All of this is to say that the work of the Information and Privacy Commissioner continues to increase and the transition to a more dedicated position was imperative. The public is more and more interested in the way government works and more and more demanding of transparency and accountability in government. The world in general is fueled by the collection, use, combination and manipulation of information. It is inevitable that the workload of the Information and Privacy Commissioner will continue to grow at a fairly rapid pace. I am encouraged that the Committee has taken such a keen interest in the work that I do and I look forward to continuing to work with them and with the Government to support Nunavummiut.

> *The feeling in government has always been that the people working in government are the rulers, and the people are the ruled. This law has given the people the feeling that the government is accountable to them.*
>
> *Wajahat Habibullah, Former Chief Information Commissioner for India, referring to that country's Right to Information law.*

ACCESS TO INFORMATION AND PROTECTION OF PRIVACY – A BRIEF OVERVIEW

The *Access to Information and Protection of Privacy 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 public records and establishes rules about the collection, use and disclosure of personal information collected and maintained by Nunavut public bodies. It applies to 39 departments, crown corporations, local housing organizations and other agencies in Nunavut.

Access to Information

Part I of the legislation provides the public with a process to obtain access to most records in the possession or control of public bodies. This right of access is so important to the maintenance of open and accountable government that access to information laws have been deemed to be quasi-constitutional in nature. When the public can see how government is functioning and how they are doing their work, they are better able to participate in government and to hold government and governmental agencies to account. The right of access to government records is not, however, absolute. There must be some exceptions and these limited and specific exceptions are set out in the legislation. Most of the exceptions function to protect individual privacy rights and proprietary business information of the

> *I believe that a guarantee of public access to government information is indispensable in the long run for any democratic society.... if officials make public only what they want citizens to know, then publicity becomes a sham and accountability meaningless.*
>
> *Sissela Bok, Swedish philosopher, 1982*

companies which do business with the Government of Nunavut. The exceptions also function so as to allow Ministers and their staff to have free and open discussions as they develop policies and deal with issues.

Requests for Information must be in writing and delivered to the public body from whom the information is sought. When a Request for Information is received, the public body must first identify all of the records which respond to the request, then assess each record and determine what portion of that record should be disclosed and what might be subject to either a discretionary or a mandatory exception. This is a balancing act which is sometimes difficult to achieve. The response must be provided to the Applicant within 30 days.

When an Applicant is not satisfied with the response provided by the public body, he/she can apply to the Information and Privacy Commissioner to review the response given. The full process is outlined in the chart on page 13.

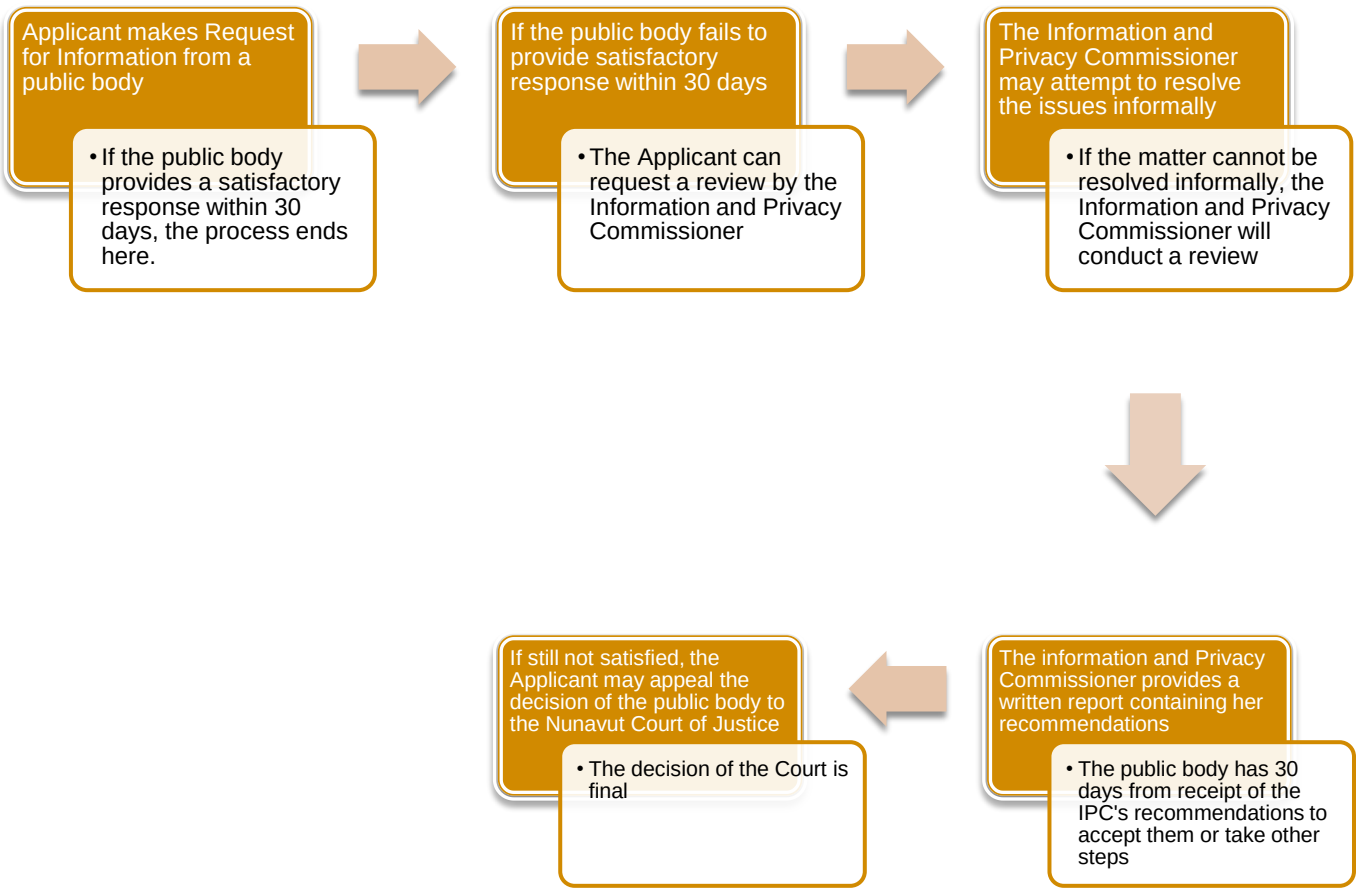
Protection of Privacy

Part II of the Act provides rules for when and how public bodies can collect personal information, what they can use such information for once it has been collected and in what circumstances that information can be disclosed to another public body or the general public. It requires that all government agencies maintain adequate security for the personal information it holds and that that personal information is only available to those who need it to do their jobs.

This part of the Act also gives individuals the right to ask for personal information held by a public body to be corrected.

In addition, if a public body knows or has reason to believe that there has been a material breach of privacy with respect to personal information under its control, the public body must report that breach of privacy to the individual whose information has been wrongfully disclosed and to the Information and Privacy Commissioner.

The Request Process



The Role of the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner (OIPC) was established under the *Access to Information and Protection of Privacy Act* of the Northwest Territories in 1997, prior to division. This legislation was continued in Nunavut on Division Day in 1999. The Information and Privacy Commissioner (IPC) is appointed by the Commissioner of Nunavut on the recommendation of the Legislative Assembly and holds that appointment for a five-year renewable term.

The role of the Information and Privacy Commissioner (IPC) is to provide independent oversight over public bodies as they apply the *Access to Information and Protection of Privacy Act*. The independence of the role is vital to the work of the IPC as it allows her to openly criticize government, when necessary, without fear of being removed from office.

When someone has asked for information from a public body and is not satisfied with the response received, they may request a review by the Information and Privacy Commissioner. The IPC is able to review all responsive records and, based on the input of both the Applicant and the public body, will prepare a report and make recommendations. The Information and Privacy Commissioner does not have any power to compel public bodies to either disclose or protect information from disclosure but she is required to provide the Minister of a department or the CEO of a public corporation with recommendations. The Minister or CEO must decide to either accept the recommendations made or to take such other steps as they deem appropriate, within 30

> *In reviewing any freedom of information legislation, the key issue is: does the legislation achieve the right balance between the confidentiality required to conduct the business of government while ensuring citizens have access to information under the control of the government so they can hold their governments to account.*
>
> *Suzanne Legault, Federal Information Commissioner in her submissions to the ATIPPA Review Committee of Newfoundland and Labrador, 2015*

days. The Applicant has the right to appeal the Minister's or CEO's decision to the Nunavut Court of Justice if there continues to be a dispute as to the proper application of the Act to the records in question.

The Information and Privacy Commissioner is also authorized to investigate privacy complaints, including complaints about the failure or refusal of a public body to make a correction to an individual's personal information. Any person may file a complaint about a privacy issue with the Information and Privacy Commissioner. The IPC will investigate and prepare a report and make recommendations for the Minister or CEO.

The Information and Privacy Commissioner is also authorized to initiate an investigation of a privacy issue of her own accord when information comes to her attention which suggests that a breach of privacy may have occurred.

As in the case of an Access to Information review, the Minister or CEO of the public agency involved must respond to the recommendations made by the Information and Privacy Commissioner in privacy breach matters. In these cases, however, the Minister or CEO has 90 days to respond, and there is no right of appeal from the decision made.

THE YEAR IN REVIEW

In the 2015/2016 fiscal year, the Office of the Information and Privacy Commissioner opened a total of 34 files which is a 40% increase from the number of files opened in previous years. These files included

Requests for Review – Access To Information	11
Requests for Comment from Public Bodies	7
Breach Notifications (from Government)	5
Requests for Review – Breach of Privacy	3
Miscellaneous Inquiries/Comments	3
Administrative	2
Third Party Request for Review (s. 53)	1
Privacy Audit	1
Breach Notifications (from others)	1

On the access to information side of matters, the Department of Finance, in its role as the human resources manager for the Government of Nunavut, was involved in four access to information reviews. This is not terribly surprising in light of the fact that employees and former employees of the GN are among the most frequent requesters – looking for information to find out more about a workplace harassment matter or why they were unsuccessful in a job application or why they were overlooked for promotion. The only other public bodies who had more than one file come to our office this year were Justice, with two separate requests for review of access to information matters from the Coroner's Office, and Economic Development and Transportation, which also had two access Requests for Review.

On the privacy side of things, the Department of Health reported two breaches under the new breach notification provisions of the Act. There were also notifications from Justice, EIA and the Nunavut Housing Corporation. Privacy breach complaints were received from individuals dealing with Education and the WSCC.

Seven Review Recommendation Reports were issued in 2014/2015.

> *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*

REVIEW RECOMMENDATIONS MADE

REVIEW RECOMMENDATION 15-091

Category of Review:	Breach of Privacy
Department Involved:	Department of Education
Sections of the Act Applied:	Section 43
Outcome:	Recommendations Accepted

A parent complained when it was suggested that the school would be using his child's kindergarten registration documents for a purpose unrelated to the child's attendance at kindergarten. A teacher from the school planned to run a summer pre-school program and advised parents at a meeting that he would be using the information in kindergarten registration forms to contact parents. In the end, because of the complaint, no information was used and the pre-school program was, in fact, cancelled.

> *Information provided to the school should not be used or disclosed to any third party except for the purpose it was collected – in this case to register the child for kindergarten.*
>
> *Review Recommendation 15-091*

The IPC found that the Complainant's concerns were well founded. Section 43 of the Act provides that information collected for one purpose (kindergarten registration) cannot be used for another, secondary purpose unless that use is authorized either by legislation or by consent of the person to whom the information relates.

She recommended, however, that the registration form simply be amended to add a line which gives parents the ability to give consent to the secondary use of the information for the purpose of organizing the preschool program. Parents who did not want their child's personal information to be used could simply decline that consent.

REVIEW RECOMMENDATION 15-092

Category of Review:	Access to Information
Department Involved:	Executive and Intergovernmental Affairs
Sections of the Act Applied:	Sections 13(1)(d), 14(1)(a), 15(a) and 23(1)
Outcome:	Recommendations Accepted

An applicant made a request of the Department of Community and Government Services for certain records in relation to a contract for medevac services. Some of the records were in the custody and control of EIA, and that portion of the request was transferred. EIA identified 244 pages of responsive records and many of those were edited pursuant to various exemptions under sections 13, 14, 15 and 23 of the Act. The Applicant felt that there should be more responsive records and objected to the exemptions claimed.

The Information and Privacy Commissioner was satisfied with the searches done for responsive records and found that the Applicant could not provide any reasons for suggesting that additional records might exist.

The IPC discussed the requirements of a claim of solicitor/client privilege and the difference between that and litigation privilege. She found that, for the most part, the exemption provided for in section 15(a) had been properly applied but recommended that parts of some records be disclosed.

She further found that the one instance in which the public body claimed an exemption under section 23 (unreasonable invasion of the privacy of a third party) was appropriate.

With respect to the exemption claimed pursuant to section 13(1)(d) which prohibits the disclosure of information that would reveal a confidence of the Executive Council, she found that while the correspondence in question was between members of the Executive Council, there was no substantive information in the communication that would reveal the nature of any discussion in cabinet and recommended that the information be disclosed.

Finally, she was satisfied that information redacted pursuant to section 14(1)(a), which allows public bodies to refuse to disclose information that would reveal advice, proposals or recommendations developed for a public body, was appropriately withheld under the Act.

REVIEW RECOMMENDATION 15-093

Category of Review:	Access to Information
Department Involved:	Department of Justice (Coroner's Office)
Sections of the Act Applied:	Section 23(1), 23(4),3(2)(b),
Outcome:	Recommendations Accepted

An individual made a request of the Coroner's Office for copies of all records in relation to inquests held into the deaths of individuals while in police custody over a 10-year time period. The public body refused to disclose any records, citing section 23(1) (breach of privacy).

The Applicant argued that these are records "normally available to the public" and should, therefore be disclosed pursuant to section 3(2)(b). He further argued that inquests are public processes and that, in consequence, the disclosure of personal information in a coroner's report cannot amount to an unreasonable invasion of privacy. He also argued that section 23(4) of the Act dictates that there is no unreasonable invasion of privacy where the information is to be used for research purposes and, as he was a researcher, the records should be disclosed.

The public body argued that because of the small sample size of responsive records, it would be a simple task to identify the deceased person who was the subject of each inquest. Further, the reports in question contained significant personal health information and each of the three cases had been widely publicized at the time. They were concerned about protecting the privacy of surviving family members. Further, they argued, coroner's

reports are not "normally available to the public" but are available to the public only at the discretion of the Coroner.

The IPC recommended the disclosure of the verdict portions of the reports, with limited redactions to remove references to names of individuals. Because the incidents were all widely publicized, and at least one of the reports had been summarized in the Coroner's Annual Report, the presumption that disclosure would constitute an unreasonable invasion of privacy had been rebutted. The IPC also recommended that a review of the *Coroner's Act* be undertaken to ensure that its provisions are consistent with the *Access to Information and Protection of Privacy Act.*

REVIEW RECOMMENDATION 15-094

Category of Review:	Breach of Privacy
Department Involved:	Department of Education
Sections of the Act Applied:	Sections 43, 47
Outcome:	Recommendations Accepted

A teacher in a Nunavut school complained that his privacy was breached when a co-worker, rather than management, told him that his contract was not being renewed. He made a complaint to his supervisor, who refused to address the issue. He then took the matter up the ladder and was advised it would be investigated. When a month passed and he still hadn't heard anything, he wrote the District Education Authority (DEA) but received no response, at which point he raised the issue with the Ethics Officer for the Nunavut public service and wrote a letter to the Minister. The Ethics Office apparently looked into the matter and concluded that there was no breach of ethical standards. Finally, out of frustration, the complainant filed a complaint with the OIPC.

Because DEAs are not formally listed as public bodies under the Act, the Department of Education responded to the complaint. They referred me to the Ethics Officer's conclusion

District Education Authorities need to have specific and clear policies with respect to privacy issues and those policies must be enforced and reinforced.

Review Recommendation 15-094

that there was no substantial evidence that a breach of privacy had occurred and considered that to be the end of the matter.

The IPC first discussed the issue of DEAs and whether they were or should be considered "public bodies" subject to the Act. She concluded that whether or not they were, teachers in Nunavut were all employed by the GN and were, therefore, subject to the Act. She also commented about the fact that the Department could not provide any written policies or procedures at the DEA with respect to expectations surrounding privacy. Finally, she indicated that while she could not conclude definitively that the Complainant's privacy was breached, she could not conclude that it was not and, in fact, in light of the Complainant's significant efforts to have the matter addressed, she was inclined to conclude that there was some merit to his complaint. She recommended that the Department require all DEAs to have written privacy policies, that the Department provide DEAs with assistance in training their employees and volunteers about their obligations to maintain privacy and confidentiality and that DEAs provide ongoing messaging and training to all volunteers and employees with respect to privacy.

REVIEW RECOMMENDATION 15-095

Category of Review:	Access to Information
Department Involved:	Department of Family Services
Sections of the Act Applied:	Section 23(1)
Outcome:	Recommendation Accepted

The Applicant in this case had made an access to information request to a department but some of the information requested was in the possession or control of other departments and those portions of the request were transferred. The Applicant indicated that when reviewing the responses received from various departments, there were

anomalies. He asked me to review all responses, including the response received from the Department of Family Services. This department identified 21 pages of records, and disclosed all of them, though there were some redactions on 10 pages, all pursuant to section 23(1) of the Act.

The Information and Privacy Commissioner found that the public body had, in the end, adequately and properly responded to the Applicant, but it had become clear during the course of the investigation that the ATIPP Coordinator for the department had not received sufficient training on how to deal with an access request. The only recommendation made by the IPC was that the ATIPP Coordinator and other senior staff ensure that they had the basic training necessary to understand the access to information process.

REVIEW RECOMMENDATION 15-096

Category of Review:	Breach Notification
Department Involved:	Department of Health
Sections of the Act Applied:	Section 49.9,
Outcome:	Recommendations Accepted

The Department of Health reported to the IPC that there had been a material breach of privacy by a health centre in a small community. One of the nurses working at the health center was seeing a patient for a prenatal visit but could not find the patient's file, even after a full search of the facility by the staff. In the course of doing the search, the staff discovered that three additional files were also missing. The breach was reported to the Director of Health Programs for the region who passed it on to the ADM Operations, who in turn reported the matter to the DM and the Director of Policy and Planning. All of the missing charts were, to the extent possible, reconstructed.

In investigating what might have happened to the files, it appeared that the nurse in charge of the prenatal program had been asked to audit four prenatal charts in late April and she recalled that one of them was one of the missing files and so it appeared probable that the files went missing during the audit process. Six months later, at the time of the Commissioner's Report, the files had yet to be found.

The IPC reviewed the practices and procedures with respect to the file system in the clinic and noted that while medical records were stored in a locked room, the staff had not been following its own procedures with respect to recording when a file was taken from the file room. Further, there was very little training with respect to records management and a large turn-over of staff which contributed to poor filing practices.

The IPC lauded the staff for the steps taken to address the breach when it was discovered and to advise the individuals involved. Arrangements had been made to provide staff with updated training and work had been done to implement better file management practices. She made recommendations that:

a) compliance audits be conducted by the Department at all health facilities in Nunavut to ensure that all policies and procedures with respect to file management were being followed;

b) steps be taken to provide ongoing training in records management for all employees in Nunavut health facilities so that staff in each facility receives training at least once a year;

c) policies and procedures surrounding file management for all medical facilities in Nunavut be reviewed and strengthened;

d) at least one person in each medical facility in Nunavut be given specific

The Department acknowledges that in many of their smaller Community Health Centres there is a constant change-over of staff which can contribute to errors and omissions when it comes to file management and privacy.

Review Recommendation 15-096

responsibility for records management within their job descriptions and that this person be held accountable to the department in the event of missing files or records;

e) steps be taken as soon as possible to transition health records in Nunavut to electronic format, with necessary privacy controls and audit functions.

As a post script, after the IPC's report was issued, most of the missing records were found. A clerk had apparently dismantled the prenatal charts (which are kept separate from the patient's main chart during the course of a pregnancy) prematurely and against standard practice. While some of the records had found their way into the proper patient charts, some were incorrectly filed, others were in a box under the clerk's desk and still others were found in a drawer in the clerk's desk.

REVIEW RECOMMENDATION 16-097

Category of Review:	Breach of Privacy
Department Involved:	Workers Safety and Compensation Commission
Sections of the Act Applied:	Section 49(l)
Outcome:	Recommendation Accepted in Part

The Complainant felt that his privacy had been breached when the WSCC handed over his personal health records, collected for the purpose of assessing his claim for compensation, to lawyers for the WSCC for the purpose of addressing human rights and other complaints filed by the Complainant against the WSCC. He was further concerned that this information had then been uploaded onto a "cloud based" document sharing platform.

The WSCC noted that the Complainant had a long history of aggressive dealings with the WSCC, having threatened legal action numerous times and filing three separate Human Rights Complaints, in 2011, 2013 and 2015. The WSCC retained a firm of lawyers to work with their General Counsel and to provide legal advice on various matters including the

legal actions taken by the Complainant. They gave the law firm the Complainant's personal information, including personal health information, to provide a factual basis for the legal advice requested. They argued that section 49(l) of the Act allows a public body to disclose personal information for use in the provision of legal services to a public body.

The IPC found that in the specific circumstances of this case, the WSCC was authorized, under section 49(l) of the Act to disclose the personal information of the Complainant, including his very sensitive personal health information, to their legal counsel. Further, she found that the Complainant implicitly consented to that disclosure when he filed his human rights complaints. In fact, he acknowledged that the WSCC's legal counsel would need access to some of his claims file in order to properly represent their client.

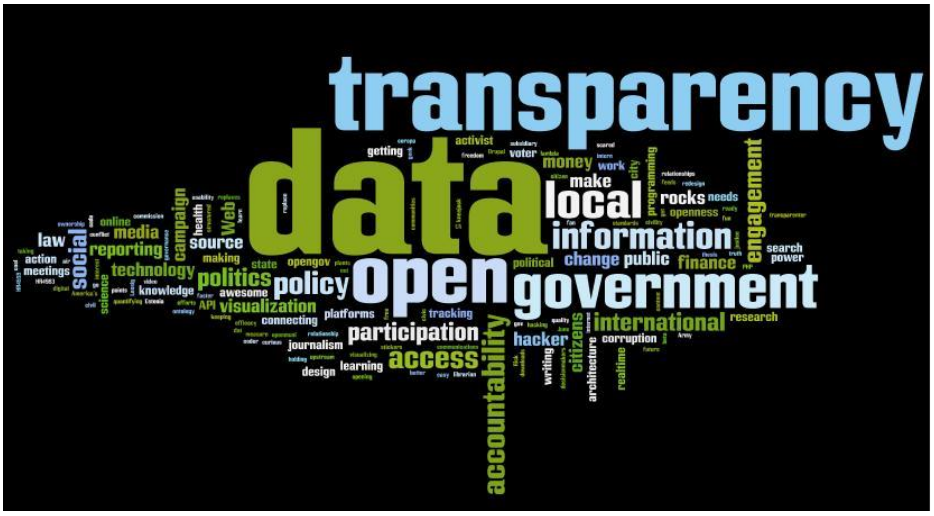
The IPC did, however, make a number of recommendations:

a) as soon as a public body receives notice that an individual has filed a claim or action of any kind against it, they should contact the individual and advise him (or his counsel) that it may be necessary for the public body to disclose the individual's information to outside counsel for the purpose of responding to the action;

b) when the public body determines that they do need to retain outside counsel, this should, whenever possible, be disclosed to the individual;

c) when necessary to disclose personal health information to outside legal counsel, only such information as is absolutely necessary for the provision of the legal services should be disclosed;

d) public bodies who disclose personal information in such circumstances retain responsibility for ensuring that the information is not further used or disclosed and to ensure that the technology employed by the law firm is secure and not subject to vulnerabilities that might result in an inadvertent further disclosure.



TRENDS AND ISSUES – MOVING FORWARD

There are always issues that arise during the course of a year which suggest directions for change so as to give Nunavummiut more robust and modern access rights and privacy protections. And there also those issues that bear repeating annually because they have not been fully addressed and are important to maintain or improve government accountability. Looking to the future, I recommend that the Government of Nunavut address the following issues.

1. Inclusion of Municipalities:

   This has been on the wish list for many, many years and it will come as no surprise to anyone that it remains on the list this year. While I understand the limitations that Nunavut municipalities face in terms of resources, expertise and infrastructure, I am starting to receive more and more request that involve municipal governments and I have seen no real progress in ensuring that municipalities are responsible for either access or privacy protection. Steps, even small ones, need to be taken to move municipalities toward basic access to information rights and privacy protections.

2. Health Information Legislation:

I will soon be tabling my special report with respect to the privacy audit which I conducted of the Qikiqtani Hospital. One of the things which became clear in doing this audit is that the provisions of the *Access to Information and Protection of Privacy Act* are not well suited for the way in which information must be collected, used and disclosed within the health system. I understand that the Department of Health has started to work on health specific privacy legislation, though I am not convinced that it is one of the department's priorities. Work on this legislation is necessary, not only to provide appropriate privacy protections for personal health information, but also to allow the necessary use and disclosure of personal health information within the health system so as to allow for the provision of good health care services and to accommodate the use of an electronic health records management system.

> *The thing about health information, unlike freedom of information, most citizens are not going to make an access to information request and most citizens are never going to make a breach of privacy complaint. But we're all patients. We're patients, our spouses, our partners, our neighbours and our children - we're all patients. Personal health information affects absolutely everybody that lives in this province. And I can't think of many other provincial laws that have that impact.*
>
> *Gary Dickson, Sask. IPC January 31, 2013 in an interview with Courtney Mintenko reflecting on his 10 years as IPC*

3. Educational Authorities:

In recent years there have been more and more complaints involving various education authorities, which are currently not public bodies under the *Access to Information and Protection of Privacy Act*. Schools and Education Authorities not only use public money to deliver programs but they also collect significant amounts of sensitive personal information. While I have, to date, been able to address these issues indirectly by making the Department of Education responsible for access and privacy within the school system, it makes much more sense to make Education Authorities directly responsible for both access

and privacy. There is clearly a current lack of awareness or concern about these issues, as was demonstrated by the facts in Review Recommendation 15-194 discussed above. This needs to change. It makes sense to include Education Authorities as public bodies under the Act.

4. Review of the *Access to Information and Protection of Privacy Act*:

I have already discussed this at some length in my opening message. It is good to see that the Committee on Oversight of Government Operations and Public Accounts has focused in on the need for a comprehensive review of the Act and I would encourage the Government to take active steps for such a review as well. As noted, I will be preparing my own recommendations in this regard by the end of fiscal 2016/2017 and am happy to assist in any way I can with completing a full government review and the drafting of necessary comprehensive amendments.

5. Proactive Disclosure:

In many cases it makes good economic sense to disclose basic information proactively. For example, a situation recently arose in which a public body received a request for copies of a Hamlet's audited financial statements which are required to be submitted to the Department of Community and Government Services in accordance with the *Hamlets Act*. These are, by law, public documents which should be routinely posted to a web site so that there is no need to make a request for information. There are many of these kinds or records produced by government. More thought should be given to what kinds of records can be made public as a matter of course and how best to do that on a government-wide basis, backed by appropriate legislation, regulation and policy. This will help to reduce the number and complexity of Access to Information requests and allow ATIPP Coordinators to focus on those requests that require a more nuanced approach.

6. Breach Notification:

Nunavut was the first jurisdiction in Canada to make it a requirement that all public bodies report material breaches of privacy to my office and to report such breaches to the individuals involved when the breach creates a real risk of significant harm to those individuals. That Nunavut was first to do this is to be applauded. This is now one of the amendments being discussed in most Canadian jurisdictions currently reviewing their Acts. I am concerned, however, that those who work within the GN are not yet fully aware of the obligations imposed on them to report breaches. While I have received a few breach reports under this section, I would have expected there to be more. This is a significant obligation and, if only because humans are imperfect, there are bound to be instances in which information is lost or falls into the wrong hands. Every employee who deals in any way with personal information should be receiving at least basic training about how to recognize a breach of privacy and what to do when a breach happens. More education of GN employees is called for in this regard.

7. Planning Ahead:

Despite the transition to a more dedicated role for the Information and Privacy Commissioner, the work of the office continues to grow exponentially. It is important to start to make plans to transition this office to a true, full time position with appropriate office space and staff, based in Nunavut by the time that my current term expires in the spring of 2020. Between now and then, I would hope to see new health specific privacy legislation in place and that municipalities and educational authorities will all be included as public bodies. This will all add considerably to the work of the Information and Privacy Commissioner's Office. I therefore urge the Legislative Assembly to include this in their budgets and operational plans for the 2019/2020 fiscal year.

Respectfully submitted:

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Nunavut Information and Privacy Commissioner.