ACCESS TO INFORMATION AND PROTECTION OF PRIVACY COMMISSIONER ANNUAL REPORT

1999/2000

I. COMMISSIONER'S MESSAGE

As suggested by the name of the Act, the *Access to Information and Protection of Privacy Act* of the Northwest Territories has a dual purpose. The first is to afford access to government information to the general public and the second is to ensure that personal information held by government agencies about individuals is protected from unauthorized use or distribution.

The focus in the first two years of the Act was largely on access issues. This year, however, it appears that the focus has shifted somewhat and that privacy issues are becoming more prominent. This is not entirely surprising considering that new technologies are making it ever easier to collect, sort, use and share information generally and the public is becoming more aware of personal privacy issues. Several complaints have been received this year about unauthorized or inappropriate use of personal information. On the national level, the *Personal Information Protection and Electronic Documents Act* has been passed. This legislation will provide guidelines and impose regulations with respect to the collection and use of personal information by private sector organizations. It will, in time, apply to any organization which collects personal information, either in printed or electronic form. Although neither the Territorial Government nor the private sector have yet taken much interest in this legislation, it will have significant impact in the way businesses collect and use personal information.

The protection of personal information is bound to be one of the "hot" political issues of the next decade. Many of the provinces are now looking at legislation which will address the protection of personal information in the private sector and I would encourage the Government of the Northwest Territories to study the issue and consider similar legislation as well.

Most government agencies are attempting to comply with the Act and the spirit of the Act, and for the most part are working with me to resolve problems. Last year, however, I expressed in my Annual Report a concern about the lack of respect which certain government departments

had given to their legislated obligations under the Act. These departments have not addressed my stated concerns, nor has the attitude of those government agencies improved when dealing with their legislated obligations under the Act. Financial Management Board in particular continues to be less than co-operative in meeting the objectives of the Act. It is my respectful suggestion that all managers of the Financial Management Board be provided with specific and ongoing training respecting the purpose of the Act, and that they be given direct and specific instructions from their minister to address the spirit and intent of the legislation when dealing with applications.

Public access to information is a powerful tool to help ensure accountability of government and for this reason, appears to meet with resistance among some factions. It bears reminding that the Act is law, passed by the legislative assembly and requiring compliance by the Government of the Northwest Territories and its agencies.

Section one of the Act sets out its purposes:

> **1.** The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
>
> (a) giving the public a right of access to records held by public bodies;
> (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
> (c) specifying limited exceptions to the rights of access;
> (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
> (e) providing for an independent review of decisions made under this Act.

When the approach taken to every request for information is adversarial, it gives the impression that the government agency is afraid of accountability. When the agency which is resisting openness is the one which controls all of the money, the public has a right to be concerned. Although there are certainly cases in which the release of information might affect the government's ability to do business effectively and efficiently, not all information held by FMB is of this nature. This agency would be well advised to pick its battles more judiciously and, rather

than looking for ways to avoid releasing information, look for ways to increase the amount of information given to the public while maintaining the confidentiality required to run the business of government. There is considerable room to expand the information available to the public.

Elaine Keenan Bengts

II. INTRODUCTION

A. ACCESS TO INFORMATION

Background

The *Access to Information and Protection of Privacy Act* was created to promote, uphold and protect access to the information that government creates and receives and to protect the privacy rights of individuals. It came into effect on December 31st, 1996.

The Act provides the public with a means of gaining access to information in the possession of the Government of the Northwest Territories and a number of other governmental agencies. This right of access to information is limited by a number of exceptions, aimed mainly at protecting individual privacy rights and the ability of elected representatives to research and develop policy. It also gives individuals the right to see and make corrections to information about themselves in the possession of a government body. With the division of the two territories on March 31st, 1999, the number of departments and agencies covered by the Act decreased from 38 to 23, reflecting the loss of the Health and Education Boards in the Nunavut area.

The Process

Each of the public bodies covered by the Act have appointed an ATIPP Co-ordinator to receive and process requests for information. Requests for information must be in writing but do not require any particular form although there are forms available to facilitate such requests. Requests are submitted, along with the $25.00 fee, to the appropriate public body. There is no fee for a request to access an individual's own personal information.

The role of the public body is to apply the specific requirements of the *Access to Information and Protection of Privacy Act* to each request received while at the same time, protecting private information of and about individuals which they might have in their possession and certain other specified kinds of information. Because there are a number of exceptions to the disclosure of information contained in the Act, the ATIPP Co-Ordinators are often called upon to

use their discretion in determining whether or not to release the specific information requested. The ATIPP Co-Ordinators must exercise their discretion to ensure a correct balance is struck between the applicant's general right of access to information and the possible exceptions to its disclosure under the Act.

In the case of personal information, if an individual finds information on a government record which they feel is misleading or incorrect, a request in writing may be made to correct the error. Even if the public body does not agree to change the information, a notation must be made on the file that a request has been made that it be changed.

The role of the Information and Privacy Commissioner is to provide an independent review of discretionary decisions made by the public bodies in the exercise of their discretion. The Commissioner's office provides an avenue of appeal to those who feel that the public body has not properly applied the provisions of the Act. The Commissioner is appointed by the Legislative Assembly but is otherwise independent of the government. The independence of the office is essential for it to maintain its credibility and ability to provide an impartial review of the government's compliance with the Act. Under the Act, a Commissioner is appointed for a five (5) year term. Since the division of the Northwest Territories, the ATIPP Commissioner's position has been held on an "Acting" basis, until the election of the new Legislative Assembly of the Northwest Territories.

The Information and Privacy Commissioner is mandated to conduct reviews of decisions of public bodies and to make recommendations to the Minister involved. The Commissioner has no power to compel compliance with her recommendations. The final decision in these matters is made by the Minister involved. In the event that the person seeking information does not agree with the Minister's decision, that party has the right to appeal that decision to the Supreme Court of the Northwest Territories.

The Commissioner also has the obligation to promote the principles of the Act through public education. She is also mandated to provide the government with comments and suggestions with respect to legislative and other government initiatives insofar as they effect either the ability to access information or the distribution of private personal information in the possession of a government agency.

B. PROTECTION OF PRIVACY

The *Access to Information and Protection of Privacy Act* also provides rules with respect to the collection and use of personal information by various government agencies. Part II of the Act outlines what have become generally accepted rules for protection of privacy internationally. They include:

1. No personal information is to be collected unless authorized by statute or consented to by the individual;

2. Personal information should, where possible, be collected from the individual, and not from third party sources; and where it is collected from third parties, the individual should be informed of that fact and be given the opportunity to review it;

3. Where personal information is collected, the agency collecting the information must advise the individual exactly the uses for which the information will be used and, if it is to be used for other purposes, consent of the individual must be obtained;

4. The personal information collected shall be secured and the government agency must ensure that it is available only to those who require the information to provide the service or conduct the business for which the information was collected.

5. Personal information collected by a government agency can be used only for the purpose it is collected.

6. Each individual is entitled to personal information about themselves held by any government agency and has the right to request that it be corrected if they feel it is inaccurate;

Although the Privacy Commissioner does not have any specific authority under the Act to do so, this office has been receiving privacy complaints and making inquiries and recommendations with respect to breaches of the provisions of the Act dealing with personal privacy. The only option other than a review process with recommendations made, is for the offending

government employee to be prosecuted under the Act , which is both unlikely to happen except in extreme cases, and not very instructive. It is the hope of this Privacy Commissioner that the legislature will review these sections of the Act and provide the ATIPP Commissioner with specific authorization to review privacy complaints and to make recommendations.

III. REQUESTS FOR REVIEW

Under section 28 of the *Access to Information and Protection of Privacy Act*, a person who has requested information from a public body or a third party who may be affected by the release of information by a public body, may apply to the ATIPP Commissioner for a review of the decision made by the public body arising out of a request for information. This includes decisions about the disclosure of records, corrections to personal information, time extensions and fees. The purpose of this process is to ensure an impartial avenue of consideration of requests and objections made under the Act.

A Request for Review is made by a request in writing to the Commissioner's Office. This request must be made within 30 days of a decision by a public body in respect to a request for information. There is no fee for a Review Request. A Request for Review may be made by a person who has made an application for information under the Act or by a third party who might be mentioned in or otherwise affected by the release of the information requested.

Requests for Review are reviewed by the Commissioner. In most cases, the Commissioner will first request a copy of the original Request for Information and a copy of all responsive documents from the appropriate public body. Except where the issue is an extension of time, the Commissioner will review the records in dispute. Generally, an attempt will first be made by the Commissioner's Office to mediate a solution satisfactory to all of the parties. In several cases, this has been sufficient to satisfy the parties. If, however, a mediated resolution does not appear to be possible, the matter moves into an inquiry process. All of the relevant parties, including the public body are given the opportunity to make written submissions on the issues. In most cases, each party is also given the right of reply, although this has not always proven to be necessary.

Several matters were reviewed by the Commissioner in the last year and Recommendations made. Other requests were resolved without the necessity of a complete review process.

During the 1999/2000 fiscal year, the five reviews were completed and recommendations made. The recommendations were accepted in 3 cases, rejected in 1 and is pending in the last case.

One recommendation made by the ATIPP Commissioner in 1998, was reviewed by the Supreme Court at the instance of the Applicant. In that case, the decision of Justice Vertes of the Supreme Court of the Northwest Territories varied the recommendations of the ATIPP Commissioner, on different grounds.

IV. REVIEW RECOMMENDATIONS

Review Recommendation 99-11

This Request for Review arose out of an ongoing, more wide ranging request that was commenced last year. The initial request for information was for information regarding the “pay equity” issue being dealt with by the Government of the Northwest Territories. This specific review addressed the question of whether or not certain reports which had been identified as being responsive to the request for information were exempt from disclosure because the documents were protected by solicitor/client privilege as contemplated by section 15 of the Act. Alternatively, the argument was that the information was protected as its release would interfere with the contractual negotiations of the Government.

The review of the Information and Privacy Commissioner found that there was no “solicitor/client” privilege as the document did not constitute a communication between a lawyer and his/her client. The Commissioner did, however, discuss the concept of “litigation privilege” and found that it fell under the exemption provided for in section15 of the Act and that the information was, therefore, properly withheld, at least so long as the litigation was pending.

Review Recommendation 99-12

This Request for Review arose out of the same original request for information referred to in Review Recommendation 99-11. In this review, the document identified as being responsive to the request for information was entitled "Joint Equal Pay Study, Final Report" . It was a report jointly commissioned by the Government of the Northwest Territories and the Union of Northern Workers on the pay equity issue. It is to be noted that these are the two parties involved in pending litigation before the Canadian Human Rights Tribunal, on opposite sides of the issue. Because a third party’s rights might have been affected by the release of the information, notice

was given to the Union of Northern Workers who gave their consent to the release of the information. The Government claimed that this report was subject to litigation privilege and that it was, therefore, not able to be disclosed under the Act. It was further argued that the study was protected from disclosure under section 14(1)(c) of the Act because "its disclosure could reasonably be expected to reveal positions, plans, procedures and other criteria developed for the purpose of collective bargaining negotiations."

The review recommendation pointed out that the report was jointly commissioned by and jointly paid for by the Government and the Union. Each of these parties received a copy of it. Each side knew the other would receive a copy. The contents of the report were commonly known by both sides. The document was not prepared by or for counsel. It did not, therefore, meet first criteria for being subject to the litigation privilege. Furthermore, it was clear that there was no expectation of confidentiality in this report as both sides to the litigation were privy to it. The rationale for litigation privilege no longer existed and the report was not, therefore, exempted from disclosure under section 15 of the Act.

Similarly, the ATIPP commissioner found that, because both sides of the collective bargaining equation had access to the report and knew its contents, the release of the document would not “reveal” positions, plans, procedures or other criteria developed for the purpose of collective bargaining negotiations. Consequently, the report was not protected from disclosure by section 14 (1)(c) of the Act.

The Commissioner recommended that the report be provided to the Applicant.

Review Recommendation 99-13

This Request for Review arose as a result of an application directed to the Northwest Territories Development Corporation for information with respect to debts which had been written off by the Development Corporation in the spring of 1998. The applicant was denied access to that information on the grounds that it was governed by section 13(1) of the Act and could not be released except with the approval of the Executive Council Secretariat or the Financial Management Board Secretariat. The Applicant requested a review of that decision.

Section 13(1) of the Act provides that the government "shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including.....advice, proposals, requests for directions, recommendations, analyses or policy options prepared for presentation to the Executive Council or the Financial Management Board."

The debts were written off by an Act of the Legislative Assembly. The Applicant requested "background papers regarding the write off of the ...debts owed to the Northwest Territories Development Corporation" by each of the five companies for which debts were written off. The request sought a detailed history of the corporation's collection efforts in each case and detailed reasons for non-compliance provided by the defaulting companies. The request also sought copies of the original loan applications or the proposals which resulted in the loans made to each company and the names of the officers of each company at the time the loan was made.

The ATIPP Commissioner found that there was nothing presented to her by the public body to suggest that the documents were prepared only for Cabinet or the Financial Management Board. Nor was there any suggestion that the files from which the summaries were compiled were prepared for and available only to the Cabinet. The Commissioner found that section 13 of the Act did not, therefore, apply.

The public body also claimed that the information was information obtained from a third party explicitly or implicitly, intended to be confidential. The ATIPP Commissioner, however, found that much of the information in question was already in the public domain. She recommended that a further search be done to find the source documents from which the basic information

was derived and that the public body review those documents with a view to providing the Applicant with further information in response to his request.

Review Recommendation 99-14

The records at issue in this case were a large number of records relating to the Applicant and his employment with the Government of the Northwest Territories.The request was made in the context of an arbitration with respect to the dismissal of the Applicant by the Government of the Northwest Territories. Several grounds were claimed for exemptions for a number of documents. The Information and Privacy Commissioner reviewed each document in the context of each of the claimed exemptions and made recommendations with respect to the release of parts of the documentation with certain information severed from the documents where exemptions applied. The Commissioner found that, for the majority of the documents in question, the information constituted personal information of the Applicant to which he was entitled. Each document was reviewed individually, with recommendations made as to severing third party information and other protected information.

The recommendations of the ATIPP Commissioner were accepted and the Applicant was given the information he had requested.

Review Recommendation 99-15

In this case, a father who had joint custodial rights to his child, requested information from the Department of Social Services about complaints made to the department about the care his child was receiving at the home of the child's mother. The Department refused to release the information, citing the provisions of the *Child and Family Services Act*, which contained a "notwithstanding" clause. The father was not interested in knowing who had filed the complaint, just the nature of the complaint and the nature of the concern raised.

This matter was reviewed by a Special Information and Privacy Commissioner appointed to deal with this matter as a result of a conflict on the part of the NWT Commissioner.

V. OTHER MATTERS OF INTEREST

In two additional instances, the Information and Privacy Commissioner was asked to review refusals to provide information. In once case, the Commissioner worked with the Department of Health and Social Services to help the applicant find fairly dated records about the individual's time in the care of the Department of Social Services many years ago. The Request for Information was difficult because the individual resided in what is now Nunavut at the time he was in care and there were several different possible spellings of his last name. In addition, the Applicant had changed his last name at some point. He was certain that there had to be more documentation than he had actually received, as there was no mention in that documentation to several of his case workers. The Department worked with the Commissioner to co-ordinate efforts to locate further materials and significantly more documents were eventually found and provided to the Applicant. In another instance, the matter was worked out very quickly after the Information and Privacy Commissioner became involved as it became clear that the problem was one of mis-communication and misunderstanding rather than a refusal to provide information.

The Information and Privacy Commissioner has been asked to provide comments on privacy issues arising under several different pieces of legislation, including the *Motor Vehicles Act* and proposed new health information legislation, as well as proposed amendments to various pieces of legislation dealing with family issues. All of these projects are under way and reports and recommendations will be forthcoming.

The Information and Privacy Commissioner also spoke to several different groups and organizations about privacy issues over the year, including the Yellowknife Rotary Club and one Yellowknife school. Contact has been made with the two Yellowknife High Schools to offer the services of the Information and Privacy Commissioner to give presentations to high school students on privacy issues and it is hoped that a program can be developed for more widespread use in the school system.

VI. COMPLAINT TO THE FEDERAL PRIVACY COMMISSIONER

This winter, we received a final report from the Federal Privacy Commissioner with respect to a complaint made by this office on behalf of a resident of the Northwest Territories who did not want to make the complaint herself. The result of the investigation and complaint is contained in the Annual Report of the Federal Privacy Commissioner as follows:

> The Information and Privacy Commissioner for the Northwest Territories complained that Human Resources Development Canada (HRDC) was making improper disclosures of SINs by printing them on cheques for employment insurance benefits. Her contention was that recipients therefore cannot cash their cheques without revealing personal information to a financial institution or other cheque-cashing establishment.
>
> HRDC still prints the SIN on several kinds of cheques it issues. Of these, employment insurance cheques are the case for which the department offers perhaps its best arguement. In this instance, as often in the past, HRDC explained its position as follows:
>
> - Given that the SIN was designed for employment insurance purposes in the first place, its use on employment insurance cheques is entirely appropriate and legitimate. Furthermore, the SIN is the official file number for the employment insurance program, and as such is an important element in establishing the identity of cheque recipients. Since many persons may have the same name, an employment insurance payment is actually issued not to a name, but rather to a SIN.
>
> - In cases where a cheque was lost or stolen, tracing it would be expensive and laborious without the SIN
>
> - As far as confidentiality is concerned, financial institutions already have responsibility for recording the confidential SIN for certain other transactions. Establishments other than financial institutions may not have similar SIN responsibilities, but on the other hand, people who have their cheques cashed at such alternative establishments do so by their own choice.
>
> - Another good option available to recipients is having their cheques deposited directly to their bank accounts. Direct deposit obviates the need for any others to cast eyes upon the confidential SIN.
>
> The Office sees some merit in the HRDC argument, particularly as it relates to the options generally available to cheque recipients. Financial institutions do indeed already have routine access to SIN, notably for transactions such as reporting income to Revenue Canada. Presumably, they also have safeguards

in place for the protection of this personal information. Likewise, it is true that direct deposit may bring a greater measure of privacy.

However, when the Northwest Territories comes into the picture, the HRDC position weakens. In the many sparsely populated areas of Canada's North, financial institutions may be few and far between. Direct deposit or no direct deposit, its hard enough just to get to the bank. Many northerners have to rely on whatever alternative cheque cashing facilities may be available – the local general store, for example.

Such establishments may have attractions of their own, of course, but they are not known for the kind of anonymity that one often seeks in a financial institution. Afer all, it is one thing to have your SIN scanned by an unknown and indifferent bank teller, but quite another to be obliged to disclose personal information to a friend, relative, neighbor or local acquaintance.

The Office is please to announce that, as a result of discussion arising directly from this northern complaint, HRDC has softened its line. It has agreed to examine its use of social insurance numbers on the cheques it issues — not just for employment insurance, but for *all* of its programs. More concretely, the department has already proposed to change its procedures so as to print not the whole SIN but rather only the last six digits on each cheque it issues.

Would six digits be enough for HRDC? Yes. The Department has conceded that six digits are all it really needs for most purposes of identification.

But would merely eliminating three digits of the SIN be enough to address the privacy issue? In good part, it would. For one thing, the six remaining digits would not be identified as part of a SIN, nor would they be recognizable as such. For another, no one, not even HRDC, could guess or recreate the complete SIN from the last six digits.

In short, both the federal commissioner and the territorial commissioner regard this proposal as a reasonable compromise. While acknowledging that the change may not be accomplished overnight, the Privacy Commissioner has assured his northern counterpart that he will monitor the progress of HRDC's undertaking.

IV. STATISTICS

In the third full year of the Act, seven new Requests for Review were received. This is one more than received last year.

Two complaints remained outstanding from 1997/98. Both of those files have been closed as the complainants abandoned their requests. The three outstanding from 1998/99 have all been completed by the issuance of recommendations.

VII. LOOKING AHEAD

Two matters, originating at the federal level, demand the attention of this Government in the near future.

The first of these is the advent of the *Personal Information and Electronic Documents Act*, passed by the federal government this spring. This legislation was spurred by directives made by the European Economic Community with respect to the restriction of trade with jurisdictions which did not have safeguards in place with respect to the protection of personal privacy.

The *Personal Information Protection and Electronic Documents Act* gives Canadians new legal rights when their personal information is collected, used or disclosed in the course of a commercial transaction. Beginning in one year, the Act will apply to federally regulated companies such as banks, communications companies and transportation companies as well as crown corporations. It will also apply to some interprovincial and international data transactions, particularly the buying, selling and leasing of customer lists and other personal data. In approximately five years, unless the Territorial Government has by that time passed its own legislation to deal with privacy protection in the private sector, it will apply to all organizations regulated by Territorial law. The law will apply to all personal information about an identifiable individual, regardless of the form in which that information exists with a few, very narrow exemptions. The Act will require all businesses and organizations which collect such personal information to comply with the CSA Code, which has nine points.

1. Accountability - organizations will be responsible for personal information in their possession and will have to designate one or more individuals to oversee individual privacy rights and compliance with the Act.

2. Identifying Purposes - the purpose for which information is being collected must be determined before it is collected and that purpose must be disclosed to the individual from whom it is being collected. Before such information can be used for any other purpose, consent of the individual will be required.

3. Consent - Consent will be required for the collection, use or disclosure of any personal information and the purposes must be clearly stated and there must be a reasonable

effort made by the organization to ensure that those purposes are understood. The nature and form of the consent will have to match the sensitivity of the information and the individual's reasonable expectations.

4. Limiting collection - The amount and type of information collected must be limited to what is necessary for the identified purposes.

5. Limiting Use, Disclosure and Retention - Personal information can only be used for the purposes it was originally collected, except with the consent of the individual involved. Personal information is to be retained only as long as necessary to fulfill the purpose identified.

6. Accuracy - There will be an onus on organizations to ensure that personal information is as complete, accurate and up to date as necessary for the required purpose, particularly where the information will be used to make decisions about an individual.

7. Safeguards - All personal information must be protected against loss, theft, unauthorized use or disclosure, copying or modification.

8. Openness - Organizations will be required to provide the public with general information about their data protection policies and practices.

9. Individual Access - Individuals must have access to personal information about themselves held by an organization and be given the opportunity to correct errors. Organizations will also be required to advise individuals how their information has been used.

This is far reaching and important legislation made more necessary by the advent of new communications technologies and the ever increasing ability in a computerized world to share, link and use information in ways not even contemplated even fifteen years ago. It is an important first step and I would urge the Government of the Northwest Territories to consider its own legislation to parallel the federal law.

The second federal initiative that will undoubtedly affect not only the Government of the Northwest Territories, but also every individual living in Canada, is the proposal for the “Canada Health Infoway”. Over the last few years, the Government of the Northwest Territories has participated in discussions between the federal, provincial and territorial governments with a view to developing what is, in essence, a national database for health information. There is much to be said for such a database in terms of reaching new heights of administrative efficiency, the sharing of knowledge and the effectiveness of the Health Care System. The biggest drawback to such a project is the unprecedented threat to the protection of the most personal and intimate of personal information. Those heading the discussions have recognized the concerns and have therefore met with all of the Information and Privacy Commissioners on two occasions to discuss the issues and are working quite closely with the Information and Privacy Commissioners from some of the larger jurisdictions, some who have already dealt with the privacy implications of large health database systems (some successfully, others not so successfully). It is encouraging to note the importance that appears to be being put on the protection of personal privacy. The Information and Privacy Commissioner will continue to monitor this project and would be pleased to provide her comments to the Government of the Northwest Territories at the appropriate time.

VIII. RECOMMENDATIONS FOR LEGISLATIVE IMPROVEMENTS

In the course of working with a new piece of legislation, such as the *Access to Information and Protection of Privacy Act*, certain deficiencies and problems come to light. Some of these are starting to show and there are areas in which the effectiveness and efficiency of the Act would be greatly improved.

1. The acceptance of recommendations made. As pointed out in my last annual report, one problem which has arisen time and again is that recommendations, once made by this office, are languishing on the desks of the heads of the public bodies which are supposed to be dealing with them. The Act provides that the head of the public body is to deal with the recommendation made within thirty days of it being made. That deadline is rarely met and, in one case, it was nearly a year from the date that the recommendation was made before the Applicant received a decision. This delay was the subject of a feature news report on the local CBC news show "North Beat" earlier this year. I would strongly recommend that an amendment be made to the legislation which would create a presumption that the recommendation made was accepted thirty days after it is made, unless, prior to that, the head of the public body has issued a different decision. This puts the onus on the head of the public body to meet the legislated deadline.

2. The "service" of documents. Many of the provisions in the Act provide for a thirty day notice period. Unfortunately, thirty days will not always give a party sufficient time to react. For instance, in one recent incident in my office, a document was sent by mail and date stamped the 2nd day of the month from Iqaluit. It was received in my office in Yellowknife on the 28th of the month. To ensure fairness, I would recommend that the legislation be changed to provide that all notices required under the act be sent by registered mail, be delivered personally to the person, or is "served" in some other fashion which allows verification of the date of delivery, and that the thirty day reply periods begin only after "service" has been so effected. I believe that this is essential to fair process under the Act and

would respectfully suggest that, whether or not the legislation is changed, that all government agencies covered by the Act would take steps to ensure that documents are actually received by the addressee before they begin to calculate the 30 days.

3. Privacy Complaints. More and more of the complaints and inquiries received in this office are about privacy issues rather than access to information. Although the Act provides that it is an offence for anyone to make use of personal information in a manner not consistent with the Act, it also provides protection from prosecution for government employees who release information "in good faith". There is no complaint mechanism which allows the Information and Privacy Commissioner to review a complaint of invasion of privacy or to make recommendations as a result. This Information and Privacy Commissioner has chosen to accept complaints of this nature and make recommendations, but there is no legislated authority for me to do so under the Act, nor would any public body be required to co-operate in such an investigation if they chose not to. As noted earlier, the protection of personal privacy is becoming a larger and larger issue and there really should be a mechanism to attempt to deal with such complaints other than prosecution, particularly where there has to be bad will involved in order to justify a prosecution.

4. Information and Privacy Commissioner's Powers. As noted in last year's annual report, in some instances this office has met with considerable resistance in receiving responses to inquiries from this office. Although this year did not see the same monumental struggles as last year, they will, inevitably, happen again. The Act should be amended:
   a. to provide the ATIPP Commissioner with the power to subpeona documents and witnesses;
   b. to impose penalties for failure to comply with the time limits outlined in the Act or imposed by the Commissioner including the right disallow fees

otherwise payable by an applicant, and the removing the right to invoke discretionary exemptions in the event of late responses;

c. to withhold performance bonuses from heads and deputy heads of departments which consistently fail to meet deadlines.

5. Municipal Governments. In most jurisdictions, municipalities are included in the Act or have legislation which provides municipalities with rules with respect to both access to information and protection of privacy. Having had the opportunity to observe some of the problems that both the City of Yellowknife and the Town of Hay River have had with respect to these issues in recent years, it seems that the citizens of the Northwest Territories would be well served by bringing municipal governments under the Act.

6. Public Utilities Board. For some reason which is completely unclear, the Public Utilities Board is not listed as a public body which is subject to the Act. A recent request for review sought information about a tender process (not the tenders themselves, but the process) and was denied that information because the Board did was not subject to the Act.