

Chapter 13

AN ACT TO AMEND THE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT (Assented to June 8, 2012)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. **This Act amends the *Access to Information and Protection of Privacy Act*.**
2. **Subsection 11(1) is amended as follows:**
 - (a) **paragraph (c) is amended by striking out “ or”;**
 - (b) **paragraph (d) is amended by striking out “.” and substituting “; or”;**
and
 - (c) **by adding the following after paragraph 11(1)(d):**
 - (e) a requested record exists in the control of the public body only in a language other than the Official Language of Nunavut requested by the applicant and additional time is required for translation.

3. **Section 11 is amended by adding the following after subsection (2):**

Document to be provided

(3) Where the time for responding to a request is extended under paragraph (1)(e), the head of the public body shall provide access to a record or a copy of a record in the original language of the record within the time limit specified under subsection 8(1).

4. **The following is added after section 12:**

Abandoned request

- 12.1.** (1) A public body may, by notice to the applicant, declare a request abandoned where
- (a) the public body has given notice to an applicant seeking further information from the applicant that is necessary to process the request or requesting the applicant to pay an applicable fee; and
 - (b) the applicant has failed to respond to the public body within 90 days after being contacted.

Content of notice

(2) A notice declaring a request abandoned must state that the applicant may ask for review of that decision by the Information and Privacy Commissioner.

5. **The following is added after section 49:**

DIVISION D – REVIEW AND RECOMMENDATIONS

Right to request review

49.1. (1) An individual may request the Information and Privacy Commissioner to review whether a public body has collected, used or disclosed the individual's personal information in contravention of this Act.

Information and Privacy Commissioner may initiate review

(2) Where the Information and Privacy Commissioner has reason to believe that a public body has or may have collected, used or disclosed personal information in contravention of this Act, the Information and Privacy Commissioner may review the practices of the public body with respect to the collection, use and disclosure of personal information.

Notification of review

(3) On receiving a request for a review or upon initiating a review, the Information and Privacy Commissioner shall give a copy of the request or reasons for review to the head of the public body concerned.

Review by Information and Privacy Commissioner

49.2. (1) The Information and Privacy Commissioner may conduct a review under section 49.1 if he or she is of the opinion that a review is warranted in the circumstances.

Refusal to conduct review

(2) The Information and Privacy Commissioner shall refuse to conduct a review and may discontinue a review if, in his or her opinion, the request for a review

- (a) is frivolous or vexatious;
- (b) is not made in good faith; or
- (c) concerns a trivial matter.

Time limit for review

(3) Subject to subsection (2), a review must be completed within 180 days after the receipt by the Information and Privacy Commissioner of the request for the review.

Review to be private

49.3. (1) A review must be conducted in private.

Opportunity to make representations

(2) The individual who requests the review and the head of a public body concerned must be given an opportunity to make representations to the Information and Privacy Commissioner during the review.

No right to be present during review

(3) No one is entitled as of right to be present during a review or to have access to, or to comment on, representations made to the Information and Privacy Commissioner by any other person.

Powers of Information and Privacy Commissioner

49.4. Despite any other Act or any privilege available at law, the Information and Privacy Commissioner may, after receiving a request for a review under this Division, require the production of and examine any record to which this Act applies that is in the custody or under the control of the public body concerned.

Information and Privacy Commissioner to report

49.5. On completing a review, the Information and Privacy Commissioner shall

- (a) prepare a written report setting out the recommendations of the Information and Privacy Commissioner with respect to the collection, use or disclosure of the individual's personal information and the reasons for the recommendations; and
- (b) provide a copy of the report to the individual who asked for the review and the head of the public body concerned.

Decision of head

49.6. Within 90 days after receiving the report of the Information and Privacy Commissioner under section 49.5, the head of the public body concerned shall

- (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and
- (b) give written notice of the decision to the Information and Privacy Commissioner and the individual who requested the review under subsection 49.1(1).

DIVISION E – DATA BREACH NOTIFICATION

Definition

49.7. In this Division,

“harm” includes bodily harm, humiliation, damage to reputation, damage to a relationship, loss of an employment, business or professional opportunity, a negative effect on the credit record, damage to or loss of property, financial loss and identity theft.

Breach of Privacy

49.8. For the purposes of this Division, a breach of privacy occurs with respect to personal information if,

- (a) the information is accessed and the access is not authorized under this Act;
- (b) the information is disclosed and the disclosure is not authorized under this Act; or
- (c) the information is lost and the loss may result in the information being accessed or disclosed without authority under this Act.

Public body to report to Information and Privacy Commissioner

49.9. (1) A public body that knows or has reason to believe that a breach of privacy has occurred with respect to personal information under its control shall report the breach of privacy to the Information and Privacy Commissioner in accordance with this section if the breach is material.

Material breach of privacy – factors

(2) The factors that are relevant in determining whether a breach of privacy with respect to personal information under the control of a public body is material include,

- (a) the sensitivity of the personal information;
- (b) the number of individuals whose personal information is involved;
- (c) the likelihood of harm to the individuals whose personal information is involved; and
- (d) an assessment by the public body whether the cause of the breach is a systemic problem.

Time of report

(3) The report required by subsection (1) must be made as soon as reasonably possible after the public body knows or has reason to believe that the breach of privacy occurred and determines that the breach is material.

Content of report

(4) The report required by subsection (1) must describe the steps taken by the public body to comply with sections 49.10 and 49.11 and must contain such other information as may be prescribed.

Public body to notify individual

49.10. (1) A public body that knows or has reason to believe that a breach of privacy has occurred with respect to an individual's personal information under the public body's control shall notify the individual of the breach of privacy in accordance with this section if it is reasonable in the circumstances to believe that the breach of privacy creates a real risk of significant harm to the individual.

Real risk of significant harm – factors

(2) The factors that are relevant to determining whether a breach of privacy with respect to an individual's personal information creates a real risk of significant harm to the individual include,

- (a) the sensitivity of the personal information; and
- (b) the probability that the personal information has been, is being or will be misused.

Time of notice

(3) The notice required by subsection (1) must be given as soon as reasonably possible after the public body knows or has reason to believe that the breach of privacy occurred and determines that the breach of privacy creates a real risk of significant harm to the individual.

Content of notice

- (4) The notice required by subsection (1) must contain,
- (a) sufficient information to allow the individual to,
 - (i) understand the significance to him or her of the breach of privacy, and
 - (ii) take steps, if any are possible, to reduce the risk of, or mitigate, any harm to him or her that could result from the breach of privacy;
 - (b) information describing what steps the public body has taken to reduce the risk of, or mitigate, any harm to the individual that could result from the breach of privacy; and
 - (c) such other information as may be prescribed.

Public body to notify others

49.11. A public body that notifies an individual of a breach of privacy under section 49.10 shall, at the same time, also notify a government institution, a part of a government institution or another public body of the breach of privacy if,

- (a) the government institution, part of a government institution or other public body may be able to reduce the risk of, or mitigate, any harm to the individual that could result from the breach of privacy; or
- (b) a prescribed condition is satisfied.

Recommendation from Information and Privacy Commissioner to public body

49.12. If the Information and Privacy Commissioner receives a report under section 49.9 about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the Information and Privacy Commission may recommend the public body to,

- (a) take steps specified by the Information and Privacy Commission relating to notifying those individuals about the breach of privacy, if the Information and Privacy Commissioner is of the opinion that the steps taken by the public body to comply with section 49.10 were not sufficient;
- (b) take steps specified by the Information and Privacy Commissioner to limit the consequences of the breach of privacy; and
- (c) take steps specified by the Information and Privacy Commissioner to prevent the occurrence of further breaches of privacy with respect to personal information under the public body's control, including, without limitation, implementing or increasing security safeguards within the public body.

Decision of head

49.13. Within 30 days after receiving a recommendation under section 49.12, the head of the public body concerned shall

- (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and

- (b) give written notice of the decision to the Information and Privacy Commissioner and any individual notified under section 49.10.

Disclosure by Information and Privacy Commissioner

49.14. If the Information and Privacy Commissioner receives a report under section 49.9 about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the Information and Privacy Commissioner may, despite section 56,

- (a) disclose the breach of privacy to the individuals in the manner that the Information and Privacy Commissioner considers appropriate, if the Information and Privacy Commissioner has given the public body a recommendation under clause 49.12(a) and the public body has not taken the steps specified in the recommendation within the times specified in the recommendation; and
- (b) disclose the breach of privacy to the public in the manner that the Information and Privacy Commissioner considers appropriate, if the Information and Privacy Commissioner is of the opinion that the disclosure is in the public interest.

6. Paragraph 73(k) is amended by adding “or report” after “notice”.

7. This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.