

## **Results report – *Missing Persons Act***

### **What was this engagement about?**

The Yukon Government was looking to develop legislation as a mechanism to assist the RCMP with missing persons investigations and sought the views of targeted stakeholders and the general public to assist in drafting this type of legislation.

When a loved one is missing, time is of the essence. The RCMP are currently limited in their ability to investigate reports of missing persons when there is no evidence of criminal activity.

Missing persons legislation allows the RCMP to move more quickly and efficiently on missing persons investigations by providing a mechanism for obtaining a court order to access specific information (e.g., telephone, banking, travel and health records), while balancing considerations for an individual's privacy.

Balancing privacy rights with the authorization for access to personal information was an important consideration with this legislation.

The stakeholder engagement process for the *Missing Persons Act* for Yukon was undertaken using multiple streams. The government conducted a public consultation that lasted from July 4 to September 11, 2017. The Department of Justice sent letters in early to mid-July targeting Yukon First Nations, the judiciary, the Information and Privacy Commissioner, the Yukon RCMP, the Human Rights Commission, women's organizations and legal bar. Included with the letter was a discussion document, inviting them to provide input on the discussion document's questions by mail, phone or email, or to meet with the department either face to face or by teleconference to discuss issues of stakeholder importance. Follow up letters were sent out in early August to all of the original recipients, and an additional third follow up took place in September with those three Yukon First Nations that already have existing information and privacy laws to ensure any potential conflicts were identified.

The discussion document was also leveraged as an online public survey hosted by Statistics Yukon and the Department of Justice. The survey was available to complete online or over the phone with Department of Justice officials from July 4<sup>th</sup> to September 11<sup>th</sup> and asked for feedback from respondents on five questions.

### **Results at a glance**

Overall, the majority of input during the consultation phase was supportive of the development of missing persons legislation. Those concerns that were raised related primarily to the need to ensure there were proper protections in place in the legislation to protect an individual's privacy rights.

The Department of Justice prepared a discussion document that was widely circulated and asked the following questions during the consultation period. A total of 55 responses were received via the online survey. The following is an account of the survey results, along with some of the more descriptive feedback we received, either in support of or against the policy direction that has formed the bulk of the drafting instructions.

**Q1. Do you think that missing persons legislation would provide the RCMP with an effective mechanism for conducting missing persons investigations in Yukon?**

Most respondents thought that the legislation would be helpful for the RCMP, with most comments expressing agreement that the ability to access information quickly is important in missing persons investigations. Some respondents were unconvinced that the tools provided by this legislation would be useful, while others said that potential privacy violations outweighed the potential benefits.

41 Yes (75%)

5 No (9%)

9 Not sure (16%)

- *I believe time is of the essence in these investigations, we should provide the most legislative support possible to our RCMP so they can thoroughly and quickly proceed in their work.*
- *The more info they have, the better, especially in time sensitive situations.*
- *This is a slippery slope to allow for invasion of privacy, even if safeguards are technically included in the law.*

**Q2. What records should the RCMP be able to access when trying to trace a missing person? Check all that should apply:**

The majority of respondents supported each of the suggested records, though in some cases that majority of support was not as significant (for example financial information and school attendance information). Other records, such as contact or identification information, were supported by the majority of respondents who thought that seeking records was appropriate.

47 contact or identification information (85.5%)

42 cell phone records, including call and Internet browsing history (76%)

40 global positioning system tracking records (GPS) (73%)

40 inbound and outbound text messaging (73%)

41 video records (including closed-circuit surveillance video) (75%)

42 information about the missing person's travel or accommodation (76%)

38 employment information (69%)

32 financial information (58%)

37 personal health information (67%)

34 school attendance information (62%)

7 None (13%)

**Q3. Besides the ten examples listed above, are there any other kinds of information or records that the RCMP should be able to access under this legislation?**

Most respondents were unsure whether anything else should be included in the list, and there were few suggestions for other types of records to be included in the legislation including social media accounts and recent internet/email activity information.

8 Yes (15%)

16 No (29%)

31 Not sure (56%)

**Q3.1 What else do you think should be included in this list?**

- *It wasn't clear whether "Financial information" included credit and debit card usage by the missing person, so I didn't check it. But this information could help locate a missing person so should be accessible.*
- *Similar records of known associates or "last seen with" only for the purposes of verifying welfare.*
- *social media example fb*

**Q4. Do you think that this legislation should include a category of missing persons who are considered “persons at risk” whose safety or welfare is of special concern given their personal history or the circumstances of their absence?**

Most respondents supported a “persons at risk” category. Many respondents suggested that the list of “at risk” categories should be expanded beyond the list provided in the survey. Several respondents were worried that the list acts as a sort of profiling for the types of people listed, or that the categories could be used to assist police in profiling potential missing persons. Others also worried that this category allowed for an unacceptable invasion of privacy, granting police powers to investigate someone for activities that do not justify police intervention. A few respondents raised concerns that the legislation could be abused by police officers to gain a search order in cases where they had been denied a search warrant.

41 Yes (74.5%)

7 No (12.7%)

7 Not sure (12.7%)

**Q4.1 Criteria for defining a “person at risk” could include factors:**

- **related to the person’s lifestyle, such as experiencing or being at risk of homelessness; using substances or self-medicating; or engaging in sex work or survival sex work;**
- **which increase the need to find them quickly, such as the requirement for certain medication;**
- **which suggest an increase in the possibility of foul play, such as being seen hitchhiking; and**
- **which suggest an increased danger in terms of their remaining missing, such as not being prepared for the weather conditions or the remoteness or terrain of the area where they went missing.**

**Please share your thoughts on these criteria. Do you think any of these factors should be excluded? Are there other factors that should be included?**

- *Age - elders are at higher risk due to health, mental awareness, old bodies more susceptible to injury*
- *If anything, I think these factors may need to be expanded...persons in care, age, mental well-ness, etc.*

- *Someone who is a minor. Someone who is suspected of having dementia, Someone who has a history of mental health issues*
- *All of these factor should be included but I would also add health concerns, particularly those that are mental health related.*
- *This is a very broad set of parameters for potential fishing expeditions on the whereabouts or welfare of people who still have the right to be left alone from State interference. "Persons at risk" - what a delightful catch all for snooping into potential crimes that would otherwise require the RCMP to obtain a warrant from a judicial official.*
- *I suggest that Yukon should carefully review these factors to ensure that they are not inappropriately gender biased or discriminatory, granting the police greater power than is necessary over a particular group. I would hope that any assessment of "persons at risk" would be undertaken on the basis of evidence, rather than impressions of those who are at risk.*

**Q5. Is there any other matter that has not been covered in this paper that should be included in the proposed missing persons legislation?**

Most respondents were unsure about whether other concerns should be incorporated into the legislation. Those respondents who provided suggestions were primarily concerned about safeguards for privacy and accountability.

6 Yes (11%)  
 14 No (25%)  
 35 Not sure (64%)

**5.1 What else should be included?**

- *RCMP should not be allowed to use the information obtained under this Act for any purposes other than finding the person. Once the person is found, the RCMP should not disclose any information without the explicit agreement of the person in question unless it is requested by a legal parent/guardian.*
- *Performance measures to assess if the legislation is in fact making a difference - helping to find missing persons.*
- *Responsibility for transparency to the public should be included when the legislation is drawn up. There is a tendency for law enforcement to not want to share the information they gather on missing persons nor share what processes they are implementing in trying to find said persons. The public pay for all police and RCMP services with their taxes and any information obtained then rightly belongs to the public. A lot more needs to be done in this area - we need broad, open communication with the general public.*

**First Nation Responses**

In addition to the online survey, one completed survey was also submitted from a Yukon First Nation that outlined their agreement that this type of legislation would provide RCMP with a more effective mechanism to investigate missing persons. It was noted that they supported

RCMP working with the First Nation government and relevant departments for access to the individual's files such as case management files. As with the online survey, there was support for the criteria for person at risk to include the very young or old, individuals with a physical illness, disability or mental health issue and those who are part of an identifiable group that is at increased risk of harm. Finally the First Nation took the position that the legislation must include limitations on the retention of personal information by the RCMP, the disclosure of personal records and direction for destruction of records within certain time frames. They also indicated that the information should only be used for the purposes of locating a missing person and not for any other purpose.

Feedback during the initial consultations in 2016 also indicated some support from those First Nations that responded (KDFN, THFN), as well as support from Aboriginal Women's organizations. Their support to proceed with the development of missing persons legislation contributed to the decision to renew the legislative and consultation process in 2017.

### **Other Feedback**

Yukon RCMP have long been supportive of the creation of this type of legislation as an additional tool to assist them in locating individuals who are reported missing as quickly and efficiently as possible. The RCMP response to the survey indicated that a clear understanding on whether or not this type of legislation would be effective mechanism for conducting missing persons investigations would not be known until the legislation was in effect. The RCMP advocated for the use of the term "higher risk or "particular risk" rather than person at risk as they felt that all missing persons were at risk but for some that risk may be more elevated. They suggested that any criteria to define a person at risk should include age, medical or physical condition and perhaps a broad statement that would provide flexibility on determining who was at risk to reflect the fact that someone being at risk could be very case specific.

The CBA Yukon Branch indicated the proposed legislation raised potential concerns in three key areas: protections under the *Charter of Rights and Freedoms*, protections against discrimination under the *Yukon Human Rights Act* and the *Canadian Human Rights Act* and privacy concerns under both *ATIPP* and *HIPMA*. The CBA Yukon Branch advocated for a cautious and conservative approach when drafting the legislation and urged for need to balance the increased police powers with a strong protection of civil liberties and human rights.

The Yukon Information and Privacy Commissioner (IPC) agreed that timely access to information that would assist in locating a missing person to prevent them from harm was essential in some cases. She also agreed that the right to privacy is equally important. Generally, the IPC was supportive of the development of a procedure for RCMP requests for personal information (PI) or personal health information (PIH) and indicated that there should be a form that clearly identified the applicable law, as well as a threshold that must be met by RCMP in support of the request. The IPC also agreed that any use or disclosure beyond the purpose of collection should be strictly prohibited and that the legislation should identify a retention period for any information and ensure for appropriate destruction of the information.

The IPC did express concerns with respect to the creation of another piece of legislation that would impose an additional set of rules for public bodies', custodians' and organizations and their authority to collect, use and disclose PI and PIH. This includes the *Access to Information and Privacy Protection Act (ATIPPA)* and the *Health Information Privacy Management Act (HIPMA)*. The concern centered around putting these bodies in a position of having to determine which law applies and is paramount which could increase the risk of a privacy breach. To address this, the IPC suggested that any new legislation should seek to only fill gaps not covered in the existing privacy laws and to ensure that prior to launching the legislation, the government should develop and distribute educational materials to public bodies and custodians on what the RCMP have the authority to access when attempting to locate a missing person and ensure that the regular training on all relevant legislation is provided.

It is the IPC's belief that the existing privacy legislation allows for the disclosure of information with a court order, and also without consent, to the RCMP where harm may come to that individual or for the purposes of locating a missing person. It is the IPC's belief the only current gap in the existing Yukon privacy legislation that prevents RCMP from obtaining information, is that this disclosure is discretionary. As such, the gap to be filled would only be to require in new legislation that the public body or custodian disclose the information after the RCMP have met the threshold for disclosure under *ATIPPA* and *HIPMA*.

The Chief Information Officer submitted feedback on the discussion document, providing comments in three areas:

- Emergency demands for records:
  - o The CIO indicated that in order to ensure proper oversight of the RCMP to make demands for records they recommended that in addition to having public report on such demands, that an independent body, such as the IPC or YG's Audit branch, be notified when such disclosure is made, and also to ensure that body has to power to audit or review those requests
- Notice to individuals:
  - o The CIO recommended that the legislation include a requirement to notify individuals whose records were collected within a reasonable time and that the notification should include what was collected and the authority under which it was collected.
- Use of Records:
  - o It was recommended that the legislation not include use of "consistent purpose"