



2013 Annual Report

***Nova Scotia Freedom of Information
and Protection of Privacy Review Officer***





November 21, 2014

Honourable Kevin Murphy
Speaker of the Legislative Assembly
1st Floor, Province House
P.O. Box 1617
Halifax, Nova Scotia B3J 2Y3

Dear Mr. Speaker,

Pursuant with s. 33(7) of the *Freedom of Information and Protection of Privacy Act*, s. 4(3) of the *Privacy Review Officer Act*, and s. 93(b) of the *Personal Health Information Act*, I submit these annual reports for the calendar year of operations, namely from January 1, 2013 to December 31, 2013.

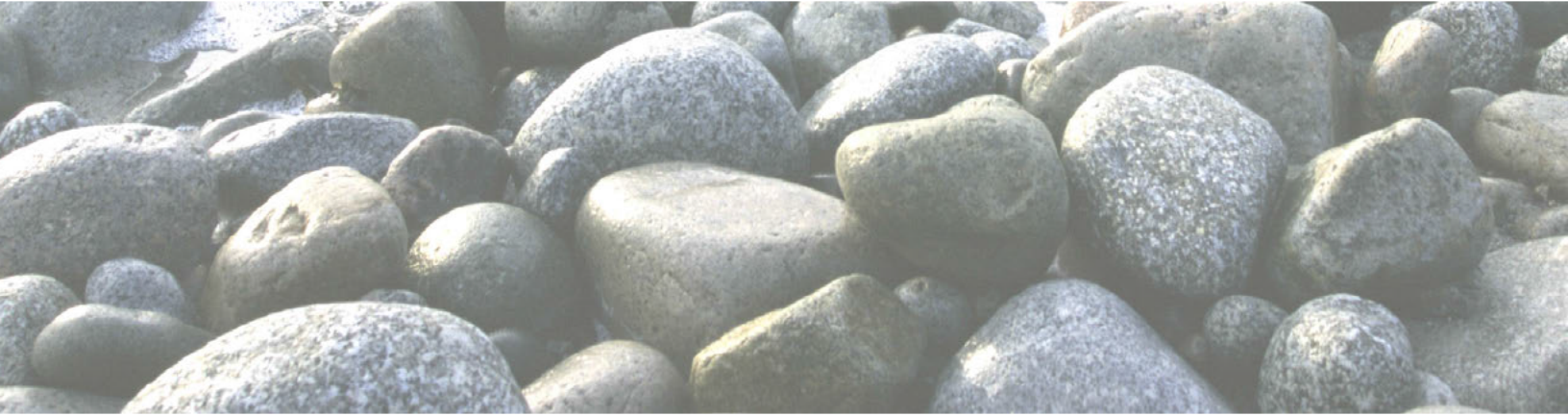
Respectfully submitted,

A handwritten signature in black ink, appearing to be "C. Tully", written in a cursive style.

Catherine Tully
Freedom of Information and Protection of Privacy Review Officer

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Review Officer's Message

In 2013 Canadians expressed concerns about the erosion of privacy rights in both the public and private sector. There were numerous reports of privacy breaches in Canada and around the world and an ongoing debate regarding the appropriateness of government surveillance in the form of warrantless access to such things as wireless services, children's gaming websites and online dating sites. In addition, there was a growing expectation of accountability and transparency in light of changes in technology and changes in government practices such as the use of public-private partnerships, outsourcing and the shared services model to deliver public services.

Citizens care about how their tax dollars are spent, who benefits and what happens to their personal information in the process.

In 2013 Dulcie McCallum was the Review Officer for Nova Scotia and so this report is a reflection of her work and the work of the staff of this office. The summary report on page 16 reveals that 2013 was a busy year. In total the office opened 10% more files in 2013 over 2012. The table on page 7 breaks down all types of files we received over the past three years under the *Freedom of Information and Protection of Privacy Act*, the *Privacy Review Officer Act* and *Part XX of the Municipal Government Act*. One pattern of concern is that the number of requests for review received relating to the refusal to disclose or the severing of responsive documents has jumped 40% from 2011 to 2013. The number of deemed refusal complaints has also been slowly climbing.

There is a growing expectation of transparency and accountability.

There were several significant developments in Nova Scotia in 2013 that will impact access and privacy rights in the future. The *Personal Health Information Act (PHIA)* was proclaimed on June 1, 2013. *PHIA* provides significant access and privacy rights to citizens in respect of their

Under the PRO Act, the Review Officer is empowered to monitor how privacy provisions are administered, initiate an investigation of privacy compliance, undertake research matters, inform/educate the public and, on request of a public body, provide advice and comments on privacy.

personal health information. I have included the Review Officer's annual report under *PHIA* in this report on page 13. Perhaps the most significant trend revealed by the reported numbers is how seldom this office was contacted by the public and by health custodians under *PHIA*.

This is a troubling pattern particularly in light of the obligations on health authorities to report privacy breaches in certain circumstances and to inform the Review Officer of disclosure to researchers without the consent of patients. The very few complaints received from the public may indicate either a lack of knowledge of the rights created under *PHIA* or a lack of knowledge of the role of my office. In either case, my office will address these issues through public education in the near future.

Canadians are concerned about the erosion of their privacy rights.

The table on page 16 summarizes the current status of the overall caseload at this office. It shows that as of December 31, 2013 we had a backlog of 210 cases dating back to 2009. As of the writing of this report that number has risen to 223 cases. This is a very significant issue for this office both in terms of the timeliness of recommendations and the relevance of such recommendations made five years after a request for review was filed. As discussed below, the case backlog will be the priority for my office in the coming year.

At least two class action lawsuits were certified in the Nova Scotia Supreme Court in relation to allegations of privacy breaches committed by health authorities in 2013. Both allege that employees had inappropriately accessed private health records. In determining whether or not damages will be awarded the court will no doubt look to the adequacy of the security arrangements and the steps the health authorities took to both prevent and detect the unauthorized viewing of medical records. Equally important are the steps public bodies take to manage a breach once it occurs.

2013 saw an important trend toward open government in Nova Scotia. The Halifax Regional Municipality launched a highly successful open data pilot project in 2013. Their efforts have resulted in the development of a number of apps allowing citizens to more easily access city data.

Further, a number of provincial government initiatives resulted in the proactive disclosure of information, most notably the decision to publish information relating to serious reportable events and patient safety indicators. This is a very welcome trend in transparency in Nova Scotia.

Citizens care about how their tax dollars are spent, who benefits and what happens to their personal information in the process.



A final important development in 2013 was the release of a report from the Centre for Law and Democracy on Nova Scotia's *Freedom of Information and Protection of Privacy Act*. The report highlighted some of the weakness of Nova Scotia's laws and made recommendations for improvement. The fact is that many of the access and privacy laws across Canada are in need of updates to better protect and preserve the access and privacy rights of citizens. In 2013 information and privacy commissioners from across Canada met and issued a joint resolution recommending improvements to access and privacy legislation. On page 12 of this report I have summarized the key recommendations of my Information and Privacy Commissioner colleagues. Transparency and accountability are at the heart of access and privacy legislation. A key element of such legislation is independent oversight in which both public bodies and citizens can have confidence. Over the course of the coming months I will meet with stakeholders, and review complaints to develop an informed opinion about how well our legislation is working for Nova Scotians.

Looking forward, my priorities in the remaining few months of 2014 and into 2015 will be to address the backlog of cases in the Review Office, to develop tools to assist public bodies and health custodians in developing privacy management frameworks and managing privacy breaches and to provide guidance to public bodies on the implementation of open government and open data initiatives. I look forward to the challenges ahead.

Yours sincerely,

Catherine Tully
Freedom of Information and Protection of Privacy Review Officer



Annual Report:

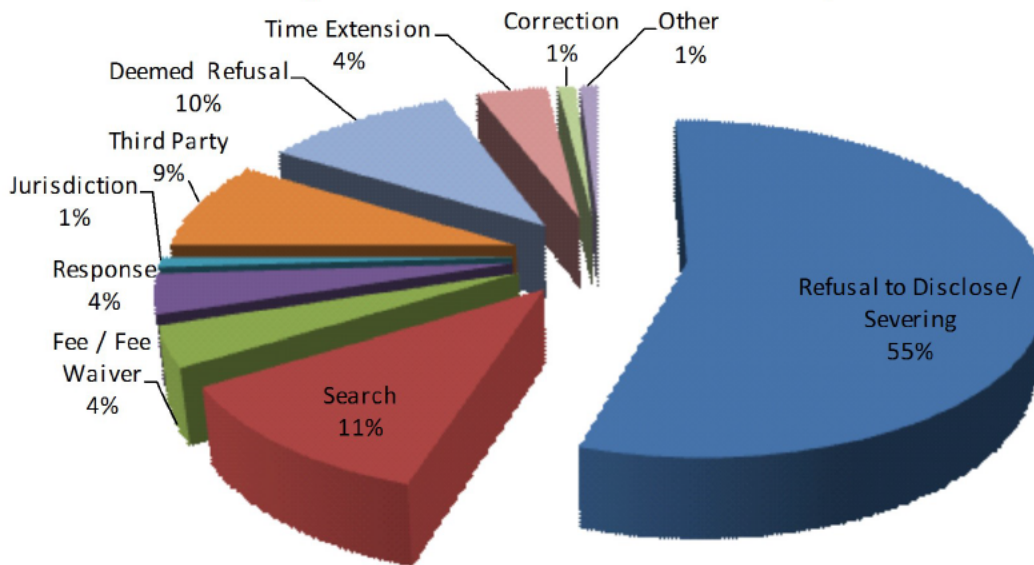
Freedom of Information and Protection of Privacy Act, Municipal Government Act and Privacy Review Officer Act

Statistics

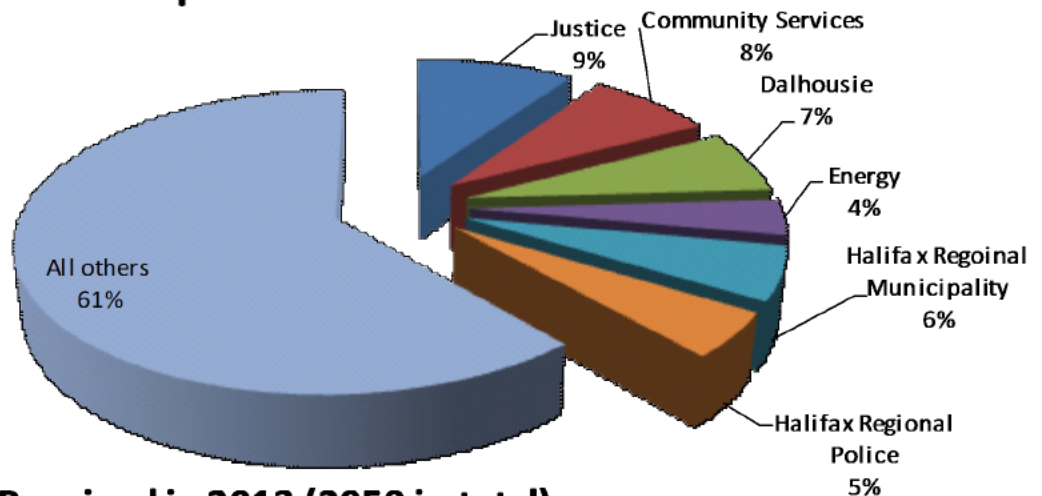
The *Freedom of Information and Protection of Privacy Act* (FOIPOP) governs access and privacy requirements by provincial departments, local public bodies, universities, school boards and health authorities (for non-personal health information). *Part XX* of the *Municipal Government Act* (MGA) is a mirror piece of legislation to FOIPOP but applies to municipalities, villages, towns and municipal police departments. The *Privacy Review Officer Act* (PRO) provides individuals with privacy oversight of the bodies covered by the FOIPOP Act.

Summary of all FOIPOP Act, MGA, and PRO Act Files Opened			
	2013	2012	2011
Access and Correction Requests for Review			
Freedom of Information and Protection of Privacy Act	85	78	73
Municipal Government Act	19	34	34
Privacy Complaints*			
Privacy Complaints received	2	10	7
Review Officer own-motion	2	0	0
Files Initiated by Public Bodies			
Privacy Impact Assessments	0	0	0
Privacy Consultations	11	12	2
Time Extension Requests	56	48	22
Outreach and Education			
Inquiries	1982	1866	1852
Speaking Engagements	8	11	5
Staff Training and Conferences	7	9	10
Tools made available	27	10	0
Committees	3	6	3
Total	2,202	2,084	2,008
* The PRO Act applies only to those public bodies to which the FOIPOP Act applies, not the MGA.			

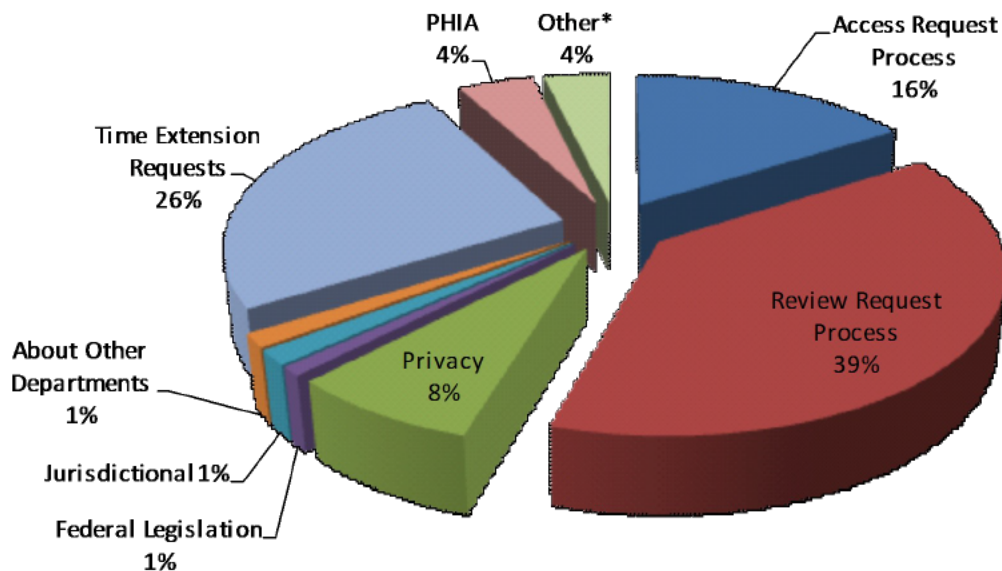
Issues under Review in 2013: Review Requests received under *FOIPOP*, *MGA* and *PRO*



Top 6 Public Bodies: Review Reports Received in 2013



Inquiries Received in 2013 (2059 in total)

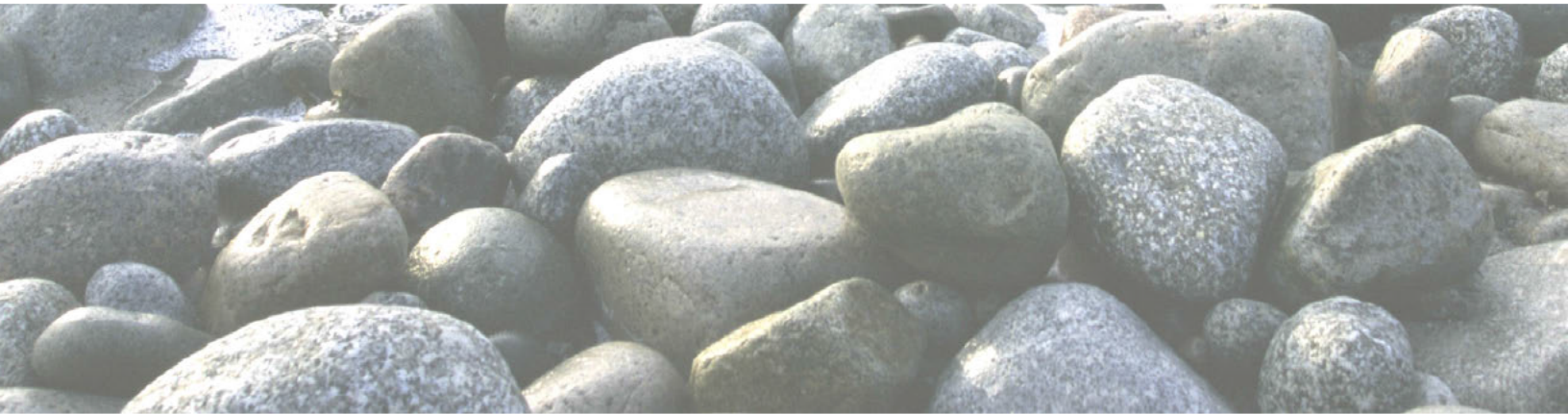


*Other includes: media requests; conference, presentation, meeting, or committee invitations; business administration and wrong numbers.

Outcomes for <i>FOIPOP</i> , <i>MGA</i> and <i>PRO</i> Files Closed									
Outcome	FOIPOP Reviews Closed			MGA Reviews Closed			PRO Complaints Closed		
	2013	2012	2011	2013	2012	2011	2013	2012	2011
Review Report	8	5	11	1	3	1	1	0	1
Mediation	0	0	0	0	0	0	0	0	0
Informal Resolution	35	26	38	11	10	16	1	3	0
Withdrawn	6	2	10	2	0	1	0	1	0
Abandoned	7	4	3	0	0	1	0	0	0
Screened*	5	8	5	0	0	0	0	4	2
Total	61	45	67	14	13	19	2	8	3
* Files can be screened for a number of reasons including: the review was filed without the applicant first filing an access request, the date for issuing a decision is not yet due, or the matter falls under federal legislation.									

Conclusions of the Review Officer where Reports were Issued			
Year	Agree with Public Body	Agree in-part with Public Body	Disagree with Public Body
2013	3 (33%)	0 (0%)	6 (67%)
2012	2 (25%)	0 (0%)	6 (75%)
2011	0 (0%)	1 (16.7%)	5 (83.3%)

Public Bodies' Responses to the Review Officer's Recommendations			
Year	Accepted	Partial Acceptance	Rejected
2013	4 (44%)	5 (56%)	0 (0%)
2012	1 (12.5%)	3 (37.5%)	4 (50%)
2011	3 (50%)	3 (50%)	0 (0%)



FOIPOP and MGA—Informal Resolution Summaries

Making a Statement

The applicant reported a concern regarding a legal matter involving another individual. The report was shared with law enforcement. The law enforcement agency wanted to question the applicant about the statement. The applicant refused to participate in the investigation without a copy of what she had previously said. A copy of the statement was requested by the applicant and provided in part by the public body. The personal information of the other individual was severed. The applicant filed a review believing the information that she provided about the other individual was her own information. Additional information was provided to the applicant during the course of the review and the matter was considered resolved.

Lesson: Applicants often struggle with the concept that an applicant's views and opinions about another person are that other person's personal information, not the applicant's. The public body must then determine whether the disclosure is an "unreasonable invasion of personal privacy."

Premature Disclosure

The applicant requested records related to a review and audit conducted by an oversight body. Partial access was provided to the applicant by the public body, but information was severed using three exemptions. During the review the applicant indicated that it was in the public interest to disclose all of the non-personal information that had been severed from the record. He provided a representation on his position which was shared with the public body. Given the exemptions were applied so as not to disclose decisions prematurely, the public body did release all non-personal information to the applicant as the threat was no longer present.

Lesson: Concerns or threats, present when the decision is made, may lessen over time or completely disappear. As a result, disclosure can occur later.

Out of Control

One applicant filed two time extension complaint reviews. He was looking for technical data that went into a presentation. The public body took a 60 day extension, so that it could consult with a third party. The consultation was necessary because the public body did not have physical possession of the information that the applicant wanted but was trying to figure if it had control of it. Ultimately the public body determined that it did not have custody or control of any of the records the applicant was requesting which the applicant accepted.

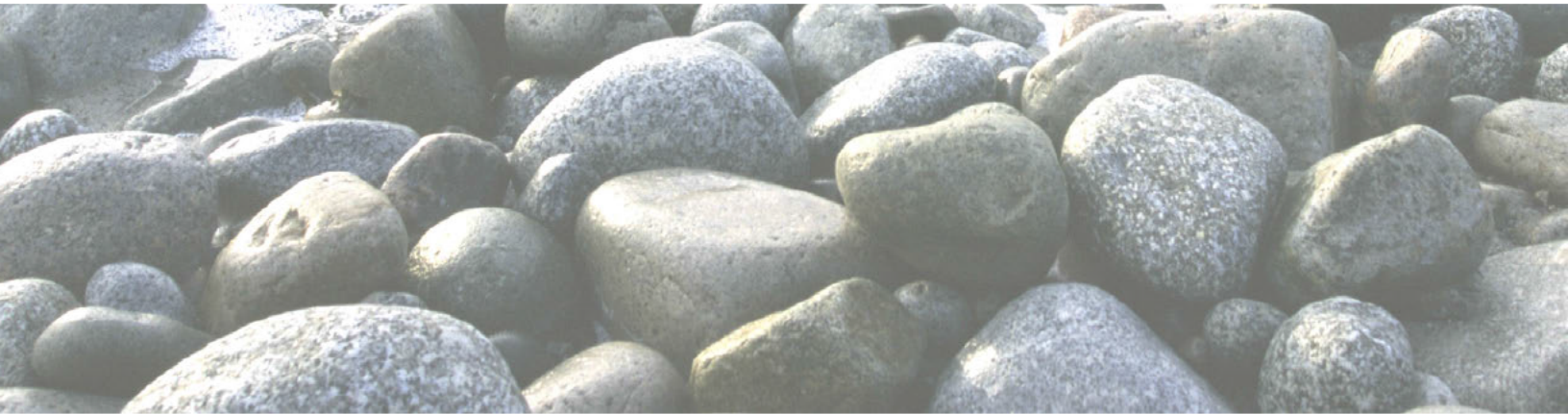
Lesson: Public bodies should make it clear when they contract services that they retain control of resulting records. If this had been known up front, the public body should have been in a position to respond within the original 30 day timeline.

A Lengthy Labour

The applicant sought various workplace records about a complaint that had been filed, including copies of technical reports and internal communications. She was seeking the records to participate meaningfully in a human rights inquiry. The public body took a 90 day extension because of the large number of records that were being located—over 4,200 pages. The public body agreed to release packages of information to the applicant as they were processed instead of waiting until all were ready for disclosure. Once the applicant received the complete decision she had new issues, some of which were not related to the access request. The applicant was provided with a variety of options to address her concerns.

Lesson: Communicating with applicants up front, explaining the process and managing expectations, can prevent reviews or at least lessen the amount of work that goes into them.





Modernizing Access and Privacy Laws for the 21st Century

In October 2013 Canada's Information and Privacy Commissioners released a joint resolution calling on our respective governments to recommit to the fundamental democratic values underpinning access and privacy legislation. Some of the key recommendations made by the Commissioners were:

In terms of access to information:

- Providing strong monitoring and enforcement powers such as the ability to issue binding orders for disclosure and penalties for non-compliance;
- Broadening and clarifying which public entities are covered by access laws;
- Creating a legislated duty requiring all public entities to document matters related to deliberations, actions and decisions;
- For exemptions where the expectation of harm is in issue, limiting which records are exempt from the general right of access by requiring public entities to prove there is a real and significant harm in their disclosure.

In terms of privacy:

- Providing strong monitoring and enforcement powers and penalties for non-compliance;
- Establishing legislative requirements for notifying affected individuals when their personal information has been lost, stolen, destroyed or improperly accessed, used or disclosed (mandatory breach notification);
- Legislating a "necessity test" requiring public and private entities to demonstrate the need for the personal information they collect;
- Legislating a requirement that public and private entities implement privacy management programs to ensure the protection of personal information.

*Robust protection of privacy
and access to information
are defining values for
Canadians and underpin our
democratic rights and
freedoms.*

A complete copy of the resolution of the Canadian Information and Privacy Commissioners can be found at:

https://www.priv.gc.ca/media/nr-c/2013/res_131009_f.asp

Annual Report:

Personal Health Information Act

Statistics

The *Personal Health Information Act* (PHIA) came into force on June 01, 2013. PHIA governs the collection, use, disclosure, retention, disposal and destruction of personal health information. PHIA applies to all health information held by custodians in Nova Scotia.

Summary of all PHIA Files Opened	
Access and Correction Requests for Review	
Access	2
Correction	0
Privacy Complaints	
Privacy Complaints received	0
Review Officer own-motion	1
Files Initiated by Custodians	
Privacy Impact Assessments	0
Privacy Consultations	4
Time Extension Requests	0
Disclosure without consent to researcher	0
Breaches with no potential for harm or embarrassment	10
Prescribed entity's information practices	0
Outreach and Education	
Inquiries	77
Speaking Engagements	0
Staff Training and Conferences	0
Tools made available	0
Committees	0
Total	94

Outcomes for PHIA Files Closed
No PHIA Review or Complaint files were closed.



PHIA—Reported Privacy Breaches in 2013

Nursing the Report

A health care professional contacted the custodian to inform it that some patient reports had been received in error—they should, instead, have been sent to the family physician. The choice of licensed practical nurse (LPN) was accidentally selected from the drop down list in the patient information system, directing the clerk to send the records to the incorrect custodian. Because the LPN immediately reported the breach and was bound by the confidentiality obligations of the District Health Authority where she worked, there was no reasonable threat of harm or embarrassment resulting from the breach.

Lesson: It is important to understand who a patient record should be sent to so a custodian does not receive information about patients with whom they are not currently involved .

Excel(lent) Catch!

When the employee of a custodian found her job was phased out, she decided to take all of her personal files that were on her work computer home with her. She uploaded them to a USB flash drive. Unfortunately, the employee also unintentionally grabbed an Excel file with patient personal health information included. When the employee discovered her mistake, she immediately contacted the custodian and arranged to have the custodian's IT staff wipe the computer. Because of the immediate notification of the error by the employee and the rigorous efforts to wipe the computer, it was determined that no harm or embarrassment could reasonably have resulted from this breach.

Lesson: You may want to think twice before you store personal files on your work computer. If you do, be careful what you take home.

Floored

While custodians under *PHIA* bear the legislated responsibility to protect personal health information in their custody or control, patients also bear some responsibility to look out for their own information. One custodian reported that it discovered a patient label lying on the floor by an elevator; it had been dropped by the patient. An employee of the custodian found the label within a short period and returned it to the Privacy Officer, who notified the Review Officer.

Lesson: Individuals should be careful with how they secure their own personal health information.

The Name Game

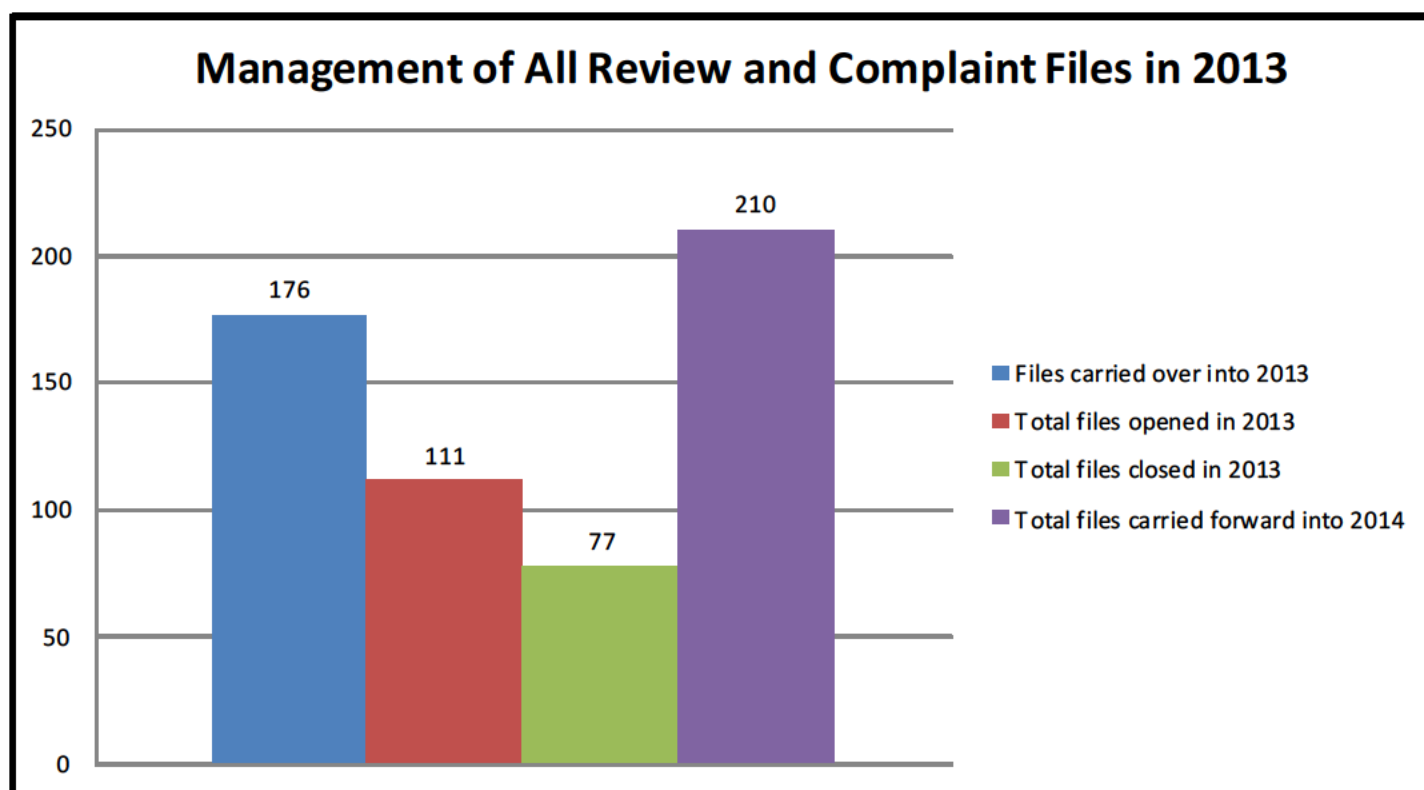
One custodian's employee tried to email his manager for advice on what to do about a patient. The manager shared the same first and last name as the employee of another custodian. The employee was not paying attention and because of an auto-complete email function, it was the other employee who got the request, not the manager. Due to the fact that the other custodian's employee faces the same confidentiality obligations, and because it was immediately reported to the originating custodian, the risk of harm or embarrassment to the patient was found to be low.

Lesson: Sometimes auto-completing address books in email programs can result in a privacy breach. Don't discover this the hard way like this person.





Summary of all 2013 Files Received by the Review Office



As of the issuing of this report we have a backlog of 223 files dating from 2009. Our first priority in the coming months is to reduce the backlog.

Finances

Budget History 2011 to 2013

Category	Expenditures*		
	2013	2012	2011
Salaries and Benefits	380,877	329,686	316,309
Travel	5,642	2,905	6,060
Professional / Special Services	28,788#	24,047#	0
Supplies and Services	3,360	7,854	3,658
Other	27,692	44,322	28,538
Reclassification (pay adjustments)	-5,249	0	0
Transfer of Funds	0	-65,000	0
Total Budget Spent	441,110	343,815	354,565
Total Budget	560,000	543,000^	522,000
% of Budget Spent by 3rd Quarter	78%	63%	68%
* Budget reporting is on a fiscal year basis from April 1 to March 31. The expenditures reported represent April 1 to December 31 of each year. For full fiscal-year reporting, see our Accountability Report.			
# This amount includes funding a full-time temporary agency employee to address our staffing needs.			
^ This amount includes a one-time payment of \$25,000 to host the Federal/Provincial/Territorial Commissioners' Summit.			

There is no budget history to report for *PHIA* as no budget was given. All additional work has been absorbed and reported within the existing budget.

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