

NEWS RELEASE

For immediate release

September 26, 2025

Initial Statement of the Information and Privacy Commissioner on the Government's new FOIPOP Legislation

The Information and Privacy Commissioner ("the Commissioner") welcomes the provincial government's decision to table legislation today that amends the province's access and privacy laws. The Commissioner and OIPC staff have not yet completed a comprehensive review of the bill introduced today, however the Commissioner is able to offer several preliminary comments. While the Commissioner is encouraged by, and welcomes, many aspects of the proposed legislation, he has several concerns and recommendations.

Before turning to the details of the bill, the Commissioner would like to acknowledge the excellent work of Department of Justice and Information Access and Privacy Services staff at Service Nova Scotia who contributed to this project over the past several years. The Commissioner also thanks the Ministers of Justice and Service Nova Scotia for the opportunity to review a draft of the legislation, and OIPC staff for their expert and practical advice.

Positive Changes

There are numerous positive changes proposed by Bill No. 150. All of the changes mentioned below were advocated for by past Commissioners, and the government should be recognized for taking up, and implementing, these recommendations.

Consolidating our access and privacy laws

Consolidating our access and privacy laws into one piece of legislation is appropriate. The patchwork of rules (and roles) set out in the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, the *Privacy Review Officer Act (PRO)* and the *Municipal Government Act (MGA)* was confusing for public bodies, municipalities and for Nova Scotians, and required consolidation.

Making the Commissioner an Officer of the Legislature

Making the Commissioner an Officer of the Legislature is a positive change. To provide truly independent oversight of public bodies, the Commissioner must be, and be seen to be, fully independent of any government department. Until now, the Commissioner had a degree of independence and security of tenure (they could only be removed following a vote in the House), however the Commissioner required budget approval, including for routine staff travel, from the Department of Justice and the Office of the Premier. This undermined the OIPC's independence, and the change is appropriate and necessary. Officially enshrining the name "Information and

Privacy Commissioner” in the legislation is a small amendment, but has been requested for several years, and brings Nova Scotia in line with other jurisdictions.

Extending the OIPC’s role in privacy oversight to municipalities

Extending the OIPC’s role in privacy oversight to municipalities is also a welcome and overdue change. Nova Scotia’s Information and Privacy Commissioners have consistently called for this, including Commissioner Catherine Tully in her June 2017 report regarding modernization of our access and privacy laws. Commissioner Tully stated:

As a result of having the rules scattered across these various statutes a number of inconsistencies arise. First, although the *MGA* access and privacy rules are essentially the same as the *FOIPOP* rules, because the privacy oversight powers of the Commissioner are set out in a third Act, the *Privacy Review Officer Act*, municipal bodies, including police, are subject to privacy rules but are not subject to any privacy oversight.

As a result of the new law, the Commissioner will finally exercise independent privacy oversight of municipalities, including municipal police services.

Making privacy assessments mandatory

Making privacy assessments mandatory is a significant improvement to our law. This was recommended by former Commissioner Catherine Tully in 2017, and her comments then apply equally today: “privacy impact assessments are internationally recognized tools that permit such an assessment to occur. These assessments also help identify privacy risks early and require the development of a mitigation strategy before it is too late.”

Concerns

The Commissioner has several concerns regarding the bill as introduced and recommends that amendments be explored in the following areas.

Purpose section of the Act

The purpose section of the new bill, while it may be in line with other Canadian jurisdictions, makes two significant deletions from Nova Scotia’s existing *FOIPOP* Act. First, the word “fully” is deleted from the reference to making public bodies “accountable.” Secondly, the current section 2(b) states that the purpose of the Act includes:

- (b) to provide for the disclosure of all government information with necessary exemptions, that are limited and specific, in order to
 - (i) facilitate informed public participation in policy formulation,
 - (ii) ensure fairness in government decision-making,
 - (iii) permit the airing and reconciliation of divergent views;

This section has been deleted.

In the well-known O’Connor decision, the Nova Scotia Court of Appeal found that *FOIPOP*’s existing purpose section is unique in Canada; the Court concluded that “...the **FOIPOP Act** in Nova Scotia is the only statute in Canada declaring as its purpose an obligation both to ensure



that public bodies are fully accountable and to provide for the disclosure of all government information subject only to ‘necessary exemptions that are limited and specific.’”

A statute’s purpose clause is important as it informs the interpretation of the statute’s other provisions. The Commissioner calls on the government to restore 2(b) of the Act’s purpose section.

No Timeline for Reviews

Past Commissioners have recommended that mandatory timelines be set in the law, requiring the Commissioner to complete their review within a fixed period of time. Former Commissioner Catherine Tully recommended a 90-day period. Newfoundland and Labrador currently has a 65-day period. Such a requirement would force the Commissioner to deal with requests for reviews immediately and issue brief, timely, and relevant recommendations on recent decisions by public bodies. No such timeline has been introduced today, which is a missed opportunity.

Moving to a system where the Commissioner must immediately initiate reviews will obviously require the current backlog of cases to be addressed. This could be done in a variety of ways in the next 18 months, prior to the implementation of the new law. Some additional short-term resources would be required, but OIPC staff are already making significant strides in reducing the current backlog. The Commissioner will also use the power to refuse to conduct or discontinue reviews where appropriate, which may also assist in resolving the backlog.

Until the Commissioner is regularly issuing *timely decisions on recent decisions* made by public bodies, the original intent of our access and privacy legislation will not be realized. A request for review to the Commissioner is intended to be a no-cost, speedy alternative to an application to court; a four-year wait for a decision is not acceptable.

Commissioner’s control of review procedures

Past Commissioners have recommended that our legislation specifically set out that the Commissioner controls procedures for reviews. This is – in the Commissioner’s view – a vital aspect of full independence. This should be explicitly provided for in the legislation, as it is in Saskatchewan, for example. The current draft bill does not enhance the Commissioner’s control over review procedures. Rather, it grants to Cabinet regulation-making power over review procedures and the content of the Commissioner’s annual report; this should be reconsidered.

- 30 -

For more information, contact:

Sara Hollett
Office of the Information and Privacy Commissioner
Phone: 902-424-4684
Email: oipcms@novascotia.ca

PO Box 181
Halifax NS, B3J 2M4



Toll Free
1-866-243-1564