



Office of the Information & Privacy Commissioner

Nova Scotia

David Nurse
Information & Privacy Commissioner for Nova Scotia
5657 Spring Garden Road, Suite 502
Post Office Box 181
Halifax, NS B3J 2M4

Email: oipecns@novascotia.ca
Tel: (902) 424-4684
Fax: (902) 424-8303
Website: <https://oipc.novascotia.ca>

August 26, 2026

The Honourable Scott Armstrong
Attorney General and Minister of Justice
Department of Justice
1690 Hollis Street
P.O. Box 7, Halifax, NS B3J 2L6

//and//

The Honourable Jill Balser
Minister of Service Nova Scotia
Service Nova Scotia
1505 Barrington Street
Maritime Centre, 7th Floor
PO Box 10, Station Central
Halifax, NS B3J 2L7

//via email//

Dear Ministers Armstrong and Balser,

**RE: Recommendations of the Information and Privacy Commissioner on the new
*FOIPOP Act***

On October 3, 2025, the Government of Nova Scotia passed the new, consolidated *Freedom of Information and Protection of Privacy Act* (the “*FOIPOP Act*”). The *FOIPOP Act* comes into force on April 1, 2027.

Over the past several months, staff with the Office of the Information and Privacy Commissioner for Nova Scotia (“OIPC”) have been in regular contact with senior staff at Information, Access and Privacy (“IAP”) Services regarding the implementation of the *FOIPOP Act*. We appreciated the periodic updates and the opportunity to comment during the development of the *FOIPOP Act*, its regulations, and its forms. We look forward to working with you, and your senior teams, in the year ahead.

While the new *FOIPOP Act* will improve our access and privacy laws, the purpose of this letter is to share several of our concerns regarding the new law, in hopes that amendments might be made during the upcoming fall or spring sitting of the legislature.

1. POLICY ISSUES

a. Mandatory Exemption for all Executive Council Records

The current *FOIPOP Act* provides adequate protection for cabinet-level records, by providing the head of the public body the discretion to withhold information that would “reveal the substance of deliberations” of the Executive Council. Under the existing law, only background information is routinely disclosed, and only when the decision of the Executive Council has been made public or implemented, or five years or more have passed since the matter was considered. Other records become available after 10 years.

While there is limited transparency around Executive Council records in the current *FOIPOP Act*, there is still some. However, in implementing s. 32 of the *FOIPOP Act*, the Government of Nova Scotia elected for less transparency around cabinet records, and a longer waiting period for the public to have meaningful access to these records. The exemption will also become mandatory, meaning the head of the public body must refuse all access to such records.

Executive Council record now defined term with a wide scope

Pursuant to s. 32(1) of the *FOIPOP Act*, an “Executive Council record” is now a defined term. The term is defined broadly and includes “any schedules and any supplementary or supporting documents submitted with the report and recommendation, memorandum or presentation.” Coupled with the new mandatory nature of the exemption, this definition will prevent all access to a broad class of records.

Fifteen years before access

Section 32(3) of the *FOIPOP Act* will also prevent any access to Executive Council records, including background information, until the record is 15 years old.

Change was not needed

In our view, there was no valid reason for such dramatic changes to the law. Nova Scotians were not being granted unreasonable access to vital cabinet documents under the existing law. The current iteration of the law, (s. 13), effectively protects information that would “reveal the substance of deliberations” of Executive Council, and is aligned with the law in numerous other jurisdictions, including British Columbia and Newfoundland and Labrador. We strongly encourage the Government of Nova Scotia to consider a return to the language of the current *FOIPOP Act*.

b. No Timelines for Reviews

A request for review to the Commissioner is intended to be a no-cost, speedy alternative to an application to court. But due to a rise of requests, complexities of reviews and lack of resources, the original intent of our access and privacy legislation continues to not be realized.

Like many Past Commissioners, we suggest mandatory timelines be set in the *FOIPOP Act*, requiring the OIPC to complete a review within a fixed time period.

A time limit on the Commissioner to resolve cases will encourage public bodies to properly resource their access and privacy groups so that they can actively participate in the resolution

process. It will also ensure that all matters brought to the OIPC are addressed in a timely manner. While our office continues to make significant strides in our current backlog, any wait for a decision is not acceptable.

2. ISSUES IMPACTING OUR INVESTIGATIONS

a. Compelling and Inspecting Legal Privilege Records

Pursuant to s. 86(2) and s. 112(2) of the *FOIPOP Act*, the OIPC will not be able to compel or inspect records that are subject to legal privilege for access requests and privacy reviews. We would be forced to take the public body's word that they are acting in good faith and are truly withholding records subject to legal privilege.

This undermines the review process and weakens a citizen's right of access. Without being able to understand and see what is being withheld, the investigation of these records would not be effective.

Because of this, we suggest that requests involving legal privilege only be filed and reviewed by the Courts. We do not take this suggestion lightly as courts are more costly and have been facing significant backlogs themselves, which limits those who can have access to a review. But the Courts will be the only ones who can truly review the records and determine whether legal privilege applies.

b. Changes to "Own Motion" Investigations

Pursuant to s. 103 of the *FOIPOP Act*, the Commissioner, in the absence of a privacy review request, may initiate a privacy review if they have reasonable grounds to believe that a person has contravened or will contravene a privacy provision in the *FOIPOP Act*.

The wording "in the absence of a privacy review request" would limit the OIPC when large-scale privacy related breaches occur and reviews are filed before we have a chance to initiate an "own motion" investigation. Rather than having one investigation, the OIPC, public bodies and municipalities would need to manage and address multiple (sometimes hundreds) of privacy review requests filed for the same privacy breach. This would cause unnecessary work and cause further delays in completing investigations.

Given the volatile privacy landscape and the increase of large-scale privacy related incidents, we would suggest that the wording "in the absence of a privacy review request" be removed from s. 103 of the *FOIPOP Act* to allow some flexibility in managing investigations.

3. TECHNICAL ISSUES

a. Options for Compelling Records

Pursuant to s. 86(1)(a) of the *FOIPOP Act*, the OIPC will continue to have the ability to require the production of any records that are in the custody or under the control of the public body. But the public body may now comply with said requirement by providing the Commissioner with an opportunity to examine the records at the offices of the public body pursuant to s. 86(5).

As it is currently written, it is at the discretion of the public body as to how they can comply with s. 86(1)(a) of the *FOIPOP Act*. Should the public body have discretion to decide how we can review records, it would prove challenging to our operations. For one review, we would be required to travel and review large volumes of records for days. We simply do not have the resources to do this.

We would ask that the opportunity to examine records at a public body's office be at the discretion of the OIPC, rather than the public body. Alternatively, we suggest that the subsection be adjusted so that like s. 44(4) of British Columbia's *Freedom of Information and Protection of Privacy Act*, the opportunity to examine records is available if it is not practicable to make a copy of the record.

b. Third Party Review Notice

Pursuant to s. 51(3) of the *FOIPOP Act*, where the notice from a public body is given to a third party advising them that access to records will be given to an applicant, the third party will have 20 business days after notice is given to file an access review request.

Both the OIPC and IAP Services have faced complications when a third-party access review request is filed at end of the 20th day, as applicants are also entitled to the records before the end of the 20th day. As a result, sending an applicant the records before a third-party files their access review request is more than likely to occur.

We would recommend that s. 51(3) of the *FOIPOP Act* be amended so that access is given to the applicant within 21 business days. The extra day will help account for the 20-business day notice to the third party. In addition, we would recommend that s. 80 of the *FOIPOP Act* have an additional subsection that states that when a third-party files an access review request under section 80(3) of the *FOIPOP Act*, the third party will also notify the public body who issued the decision. This will ensure that public bodies are alerted more promptly.

c. The Need for Additional Review Filing Requirements

While the prescribed forms in the *FOIPOP Act* remain relatively the same, we believe the forms can be improved to ensure that all the information needed to complete our intake process is obtained in a timely manner. As such, we suggest that the request for review forms ask for the following information and documents: the name of the public body, the public body file number, the text of the access request, correction request or privacy complaint filed with the public body, the decision issued by the public body, contact information, the reason(s) for the request or review, and the remedy sought.

d. Information Necessary for Medical Treatment

Pursuant to s. 55(b) of the *FOIPOP Act*, a public body can collect information from someone other than the individual the information is about if it is necessary for the medical treatment of that individual and is not possible to collect this information directly from that individual or obtain authority through another method of collection.

As this pertains to seeking information from someone if it is necessary for medical treatment, we recommend an additional subsection be included, with the *Personal Health Information Act* referenced to ensure medical information is not collected pursuant to s. 55(b).

e. New *FOIPOP Act* Inconsistent on Records of Hospitals and Universities

Pursuant to s. 34(1) of the *FOIPOP Act*, the head of a local public body that is not a municipality may refuse to disclose to an applicant information that would reveal a draft of a resolution, bylaw, private bill or other legal instrument by which the local public body acts, and information that would reveal the substance of deliberations in a meeting held in private.

While this is a discretionary exemption, it is written to be more restrictive than its governmental (s. 32) and municipal (s. 33) counterparts. Section 34 of the *FOIPOP Act* does not have any circumstances under which background information may be released. We would suggest that a new subsection be added so that background information may be released, as seen in sections 32 and 33.

f. Readability

It is important for legislation to be fundamentally sound, well-organized, coherent, and clear. We believe that improvements can be made within the *FOIPOP Act* to enhance its readability.

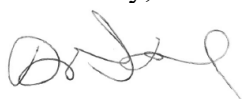
First, there is a lack of subtitles which makes it difficult for a reader to find what they are looking for. We recommend adding subtitles.

Second, there is a lack of consistency with some provisions. We recommend standardized formatting and referencing to help with the uniformity of the *FOIPOP Act*.

4. CONCLUSION

We hope that the Government of Nova Scotia will consider our concerns, and meaningfully engage with us, before the *FOIPOP Act* comes into force on April 1, 2027.

Yours truly,



David Nurse
Information and Privacy Commissioner for Nova Scotia

- c. Alex Ikejiani, Deputy Minister, Department of Justice
Joanne Munro, Deputy Minister, Department of Service Nova Scotia
Michelle Higgins, Associate Deputy Minister, Department of Justice
Gary O'Toole, Associate Deputy Minister, Department of Service Nova Scotia
Arilea Sill, Executive Director, Corporate & IAP Services, Department of Service Nova Scotia