



Office of the Information and Privacy Commissioner for Nova Scotia

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## Know Your Rights How to Make a Privacy Complaint

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### **Notice to Users**

This document is intended to provide general information and it is not intended nor can it be relied upon as legal advice. The contents of this document do not fetter or bind this office with respect to any matter. The Information and Privacy Commissioner for Nova Scotia will keep an open mind if this office receives a review request (appeal) on the subject matter of this document. As an independent agency mandated to oversee compliance with *FOIPOP* and *Part XX* of the *MGA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot investigate in advance any concerns from an applicant related to an access to information request, so if there are concerns with a public body's or municipality's decision, the applicant must file a review request for this office to investigate the issue and to provide recommendations in response to those appeals. It remains the responsibility of each public body or municipality to ensure that it complies with its responsibilities under the relevant legislation.

## INTRODUCTION

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Under Nova Scotia's privacy laws, individuals have the right to file a formal privacy complaint when they are concerned that their own personal information was collected, used or disclosed by a public body or municipality without proper authority under the applicable privacy law.<sup>1</sup> This guide is part of our series entitled *Know Your Rights* and is intended to help the public understand how to make a privacy complaint.

**If a public body or municipality does not have the legal authority to collect, use or disclose your personal information, it is considered a privacy breach.**

## LEGISLATION

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There are several privacy laws in Nova Scotia. This document addresses the *Freedom of Information and Protection of Privacy Act (FOIPOP)* which applies to government departments, agencies, universities and regional centres for education (formerly called school boards) and *Part XX* of the *Municipal Government Act (MGA)* which applies to organizations such as municipalities, municipal police forces and public libraries.<sup>2</sup>

There is another law, the *Privacy Review Officer Act (PRO)*, that sets out rules about requests for review of privacy complaints to the OIPC for public bodies under *FOIPOP*. See page 5 of this guide for more information about requests for review.

The privacy rules apply to how your personal information is handled by public bodies and municipalities.

Appendix 1 includes a list of the authorized reasons that a public body or municipality can collect, use and disclose your personal information. If a public body or municipality does not have the legal authority to collect, use or disclose your personal information, it is considered a privacy breach. Other examples of privacy breaches may include unauthorized disclosures as a result of unreasonable security or a response to an access to information request that results in an unreasonable invasion of a third party's personal privacy.<sup>3</sup>

### **Reasonable security:**

Public bodies and municipalities are required to protect personal information by making reasonable security arrangements against risks such as unauthorized access, use, collection, disclosure or disposal.<sup>4</sup>

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<sup>1</sup> The *Freedom of Information and Protection of Privacy Act (FOIPOP)* applies to public bodies as defined under s. 3(1)(j) of *FOIPOP*. *Part XX* of the *Municipal Government Act (MGA)* applies to municipalities and municipal bodies as defined under s. 461(d) and 461(e) of the *MGA*.

<sup>2</sup> In addition, there is the *Personal Health Information Act (PHIA)* in Nova Scotia. *PHIA* applies to health custodians' handling of personal health information. This document does not include guidance on submitting a privacy complaint under *PHIA*. Please see our website for information about *PHIA*: <https://oipc.novascotia.ca>.

<sup>3</sup> These examples are further explained in Appendix 1.

<sup>4</sup> *FOIPOP* s. 24(3) ; *MGA* s. 483(3).

### **Unreasonable invasion of personal privacy:**

If an individual makes an access to information request for records that have someone else's personal information on them, Nova Scotia's access to information laws have protections in place to stop disclosure of personal information if it would be an unreasonable invasion of that other person's privacy.<sup>5</sup>

## **HOW TO MAKE A PRIVACY COMPLAINT**

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If you believe your privacy has not been respected or protected, you have the right to complain about it.

### **Step 1: Identify the public body or municipality**

Determine which public body or municipality you believe has violated your privacy rights by not following the privacy rules set out in either *FOIPOP* or the *MGA*.

Look up the contact information for that public body or municipality's designated contact person for *FOIPOP* and *MGA* requests and complaints. We provide a list of public body and municipality contact information on our website: [Public Body/Municipality Contact](#).

**Feel free to contact the public body/municipality's privacy officer to talk about your privacy concerns and to learn about their privacy complaint process.**

### **Step 2: Prepare your privacy complaint in writing**

A privacy complaint must be submitted in writing to the public body or municipality.<sup>6</sup> Prepare your written privacy complaint and ensure it includes the following elements:

- date;
- a statement that you are filing a privacy complaint under either *FOIPOP* or the *MGA* (depending on if it is a public body or a municipality);
- an explanation of your privacy complaint and concerns;
- any evidence you have to support your complaint;
- any questions you have about what happened with regard to the collection, use, disclosure or protection of your personal information;
- what you want to happen in order for your privacy concerns to be satisfactorily resolved; and
- your contact information so the public body or municipality can respond to your complaint.

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<sup>5</sup> *FOIPOP* s. 20(1); *MGA* s. 480(1).

<sup>6</sup> Under *FOIPOP* and the *MGA*, only the individual (or a representative with the individual's consent) whose information is affected can make a privacy complaint. If you become aware that someone else's personal information may have been breached, please report it immediately to the public body or municipality's privacy officer. It is the public body's or municipality's responsibility to proceed with managing the breach and if necessary, notifying the individual affected. The public body or municipality cannot disclose to you what happens when it deals with a privacy breach of someone else's personal information.

**Public bodies and municipalities cannot charge fees to investigate privacy complaints.**

**Step 3: Submit your privacy complaint to the public body or municipality**

Send your written privacy complaint to the designated contact person you found under Step 1 above. If you are unsure how to submit the complaint (i.e. mail, email, fax), contact the public body or municipality to ask.

**Keep a copy of your privacy complaint and keep a record of the date you submitted it to the public body or municipality.**

**AFTER MAKING A PRIVACY COMPLAINT**

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**Step 4: Follow up with the public body or municipality**

Once you have submitted your privacy complaint, do not hesitate to call the public body or municipality to make sure they received it and understand what your privacy concerns are.

**Step 5: Wait for the response**

Neither *FOIPOP* nor the *MGA* set out a timeline for when a public body or municipality is required to respond to a privacy complaint. Public bodies and municipalities have their own processes for responding to privacy complaints, but normally a public body or municipality will take the following steps:

1. Determine whether or not your privacy has been breached.
2. If a privacy breach is discovered, complete an investigation into the matter.
3. If the public body or municipality finds that your privacy has not been breached, the public body or municipality must explain why, including the relevant authority that authorizes the use, collection or disclosure of your personal information.
4. If a breach occurred, determine the risk and potential for harm.
5. Explain how they plan to remedy the situation, if applicable.

The [Nova Scotia Government Privacy Policy](#) provides that government entities shall respond to the complainant within a reasonable timeframe, and where possible, within 30 calendar days. Not all public bodies subject to *FOIPOP* and *PRO* are subject to this privacy policy.

**Keep in contact with the public body or municipality.**

## REQUESTS FOR REVIEW

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The law requires that the public body or municipality respond to your privacy complaint. If you are not satisfied with the public body's response, you can request a review with the OIPC within 60 days of when you received the response from the public body. However, **the OIPC does not have jurisdiction to investigate requests for review of privacy complaints made to municipalities.**<sup>7</sup>

### How to request a review

Before submitting a request for review to the OIPC, you must first complain directly to the public body.<sup>8</sup>

**You cannot file a privacy complaint with the OIPC first. You must file your privacy complaint with the public body first.**

Grounds to submit a request for review include:

- The public body improperly collected, used or disclosed your personal information.
- The public body failed to adequately secure your personal information.

**You have a maximum of 60 days from the date you received the public body's response to your privacy complaint to submit a request for review to the OIPC.**

To submit a request for review to the OIPC, complete the [Privacy Request for Review Form](#) and submit it to the OIPC. Include any evidence you have that the public body has violated your privacy rights.

- You have a maximum of 60 days to submit the request for review from the date you received the public body's response to your privacy complaint.<sup>9</sup>
- If you are not satisfied with the public body's response to your privacy complaint once you receive it, you will need to file a new review request with the OIPC.

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<sup>7</sup> Section 5(1) of the *Privacy Review Officer Act (PRO)* gives the Information and Privacy Commissioner (referred to as the Review Officer in *PRO*) authority to investigate requests for review of privacy complaints made to public bodies that are subject to *FOIPOP*. No such provision providing this authority under the *MGA* exists. The OIPC has publicly recommended that the *MGA* be amended to provide this authority. See recommendation #32 of [Accountability for the Digital Age: Modernizing Nova Scotia's Access & Privacy Laws](#).

<sup>8</sup> *Privacy Review Officer Act*, s. 5(2).

<sup>9</sup> *FOIPOP*, s. 34, *MGA* s. 488.

### **How are days counted?**

Generally, they are counted in calendar days, not business days. However, if the 60<sup>th</sup> day falls on a weekend or a statutory holiday, different rules may apply. The rules are set out in Nova Scotia's [Interpretation Act](#).

**Attach a copy of the public body's response, if available, to your privacy complaint when you submit your request for review.**

There are no fees associated with filing a request for review with the OIPC.

### **What will happen if you request a review of a privacy complaint with the OIPC?**

There are three main stages of a privacy complaint investigation at the OIPC:

1. Intake
2. Investigation & informal resolution
3. Formal review

If you file a privacy complaint to the OIPC and the matter does not resolve informally, a formal report may be issued publicly or privately to protect your identity. Recommendations to a public body may include changes to the way it collects, uses, discloses or secures personal information. If your complaint raises issues affecting the privacy rights of a significant number of people, the OIPC may issue a public report describing the public body's responsibilities and the OIPC's recommendations. The OIPC will investigate the circumstances and if the findings do not support your complaint the OIPC will let you know.

### **Is there any compensation for a violation of privacy rights?**

Maybe. You may receive an apology from the public body and help to limit the damage from the breach, but the OIPC cannot get you money or issue penalties to a public body. You may also receive an explanation for how the public body intends to prevent a similar breach from happening in the future. There are examples of people who have sued a public body in civil court and received money to compensate for a privacy breach. For more information about civil lawsuits, contact a lawyer.

## **APPEALS TO NOVA SCOTIA SUPREME COURT**

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### **Direct appeals**

Individuals who submit privacy complaints to public bodies or municipalities under *FOIPOP* or the *MGA* can appeal the public body or municipality's response to the privacy complaint directly to the Nova Scotia Supreme Court.<sup>10</sup> The appeal must be made within 30 days of the public body or municipality's response to the privacy complaint and must follow the [Civil Procedure Rules](#). The OIPC is not a party to the appeal.

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<sup>10</sup> *FOIPOP* s. 32(1); *MGA* s. 487(3).

**You have a maximum of 30 days from the date you received the public body's or municipality's response to your privacy complaint to submit an appeal to the Nova Scotia Supreme Court.**

There are fees to file an appeal with the Nova Scotia Supreme Court and many people choose to be represented in court by a lawyer. Legal fees vary by the lawyer and complexity of the case. For information on court processes and court fees, contact the Nova Scotia Supreme Court: [www.courts.ns.ca](http://www.courts.ns.ca).

### **How are days counted?**

Generally, they are counted in calendar days, not business days. However, if the 30<sup>th</sup> day falls on a weekend or a statutory holiday, different rules may apply. The rules are set out in Nova Scotia's [Interpretation Act](#).

### **Appeals after review report**

If the OIPC has issued a review report with recommendations resulting from a request for review of an individual's privacy complaint made against a public body, the public body must either accept or reject the OIPC's recommendations within 30 days. The complainant has the right to file an appeal of the public body's response to the OIPC's recommendations directly to the Nova Scotia Supreme Court within 30 days of the public body's decision to accept or reject the recommendations.<sup>11</sup>

**You have a maximum of 30 days from the date the public body responds to the OIPC's recommendation(s) to submit an appeal to the Nova Scotia Supreme Court.**

The appeal must follow the [Civil Procedure Rules](#). The OIPC is not a party to the appeal. For information on court processes and fees, contact the Nova Scotia Supreme Court: [www.courts.ns.ca](http://www.courts.ns.ca).

## **QUESTIONS?**

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This guide was prepared by the Office of the Information and Privacy Commissioner for Nova Scotia. Whether you are a complainant, a public body or a municipality, we encourage you to contact us if you have any questions about the privacy complaint process in Nova Scotia. If you are a public body or municipality, please submit your request on the OIPC's [Consultation Request Form](#).

Phone: 902-424-4684  
Toll Free (NS): 1-866-243-1564  
TDD/TTY: 1-800-855-0511  
Fax: 902-424-8303  
Email: [oipcns@novascotia.ca](mailto:oipcns@novascotia.ca)

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<sup>11</sup> FOIPOP ss. 40(1) and 41(1); MGA s. 494(1)

## Appendix 1: Relevant Statutory Provisions

### *Freedom of Information and Protection of Privacy Act*

#### **Collection:**

- 24** (1) Personal information shall not be collected by or for a public body unless
- (a) the collection of that information is expressly authorized by or pursuant to an enactment; or
  - (b) that information is collected for the purpose of law enforcement; or
  - (c) that information relates directly to and is necessary for an operating program or activity of the public body.

#### **Use:**

- 26** A public body may use personal information only
- (a) for the purpose for which that information was obtained or compiled, or for a use compatible with that purpose;
  - (b) if the individual the information about has identified the information and has consented, in the prescribed manner, to the use; or
  - (c) for the purpose for which that information may be disclosed to that public body pursuant to Sections 27 to 30.

#### **Disclosure**

**20** (1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

- 27** A public body may disclose personal information only
- (a) in accordance with this Act or as provided pursuant to any other enactment;
  - (b) if the individual the information is about has identified the information and has consented in writing to its disclosure;
  - (c) for the purpose for which it was obtained or compiled, or a use compatible with that purpose;
  - (d) for the purpose of complying with an enactment or with a treaty, arrangement or agreement made pursuant to an enactment;
  - (e) for the purpose of complying with a subpoena, warrant, summons or order issued or made by a court, person or body with jurisdiction to compel the production of information;
  - (f) to an officer or employee of a public body or to a minister, if the information is necessary for the performance of the duties of, or for the protection of health or safety of, the officer, employee or minister;
  - (g) to a public body to meet the necessary requirements of government operation;
  - (h) for the purpose of



- i. collecting a debt or fine owing by an individual to Her Majesty in right of the Province or to a public body; or
  - ii. making a payment owing by Her Majesty in right of the Province or by a public body on an individual;
- (i) to the Auditor General or any other prescribed person or body or audit purposes;
- (j) to a member of the House of Assembly who has been requested by the individual, whom the information is about, to assist in resolving a problem;
- (k) to a representative of the bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry;
- (l) to the Public Archives of Nova Scotia, or the archives of a public body, for archival purposes;
- (m) to a public body or a law-enforcement agency in Canada to assist in an investigation
  - i. undertaken with a view to a law-enforcement proceeding, or
  - ii. from which a law-enforcement proceeding is likely to result;
- (n) if the public body is a law-enforcement agency and the information is disclosed
  - i. to another law-enforcement agency in Canada, or
  - ii. to a law-enforcement agency in a foreign country under arrangement, written agreement, treaty or legislative authority;
- (o) if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety;
- (p) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted; or
- (q) in accordance with Section 29 or 30.

**29** A public body may disclose personal information for a research purpose, including statistical research, if

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;
- (b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- (c) the head of the public body concerned has approved conditions relating to
  - i. security and confidentiality,
  - ii. the removal or destruction of individual identifiers at the earliest reasonable time, and
  - iii. the prohibition of any subsequent use or disclosure of that information in individually identifiable form without express authorization of that public body; and
- (d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

- 30** The Public Archives of Nova Scotia, or the archives of a public body, may disclose personal information for archival or historical purposes where
- (a) the disclosure would not be an unreasonable invasion of personal privacy pursuant to Section 20;
  - (b) the disclosure is for historical research and is in accordance with Section 29;
  - (c) the information is about someone who has been dead for twenty or more years; or
  - (d) the information is in a record that is in the custody or control of the archives and open for historical research on the coming into force of this Act.

- 31** (1) Whether or not a request for access is made, the head of a public body may disclose to the public, to an affected group of people or to an applicant information
- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people; or
  - (b) the disclosure of which is, for any other reason, clearly in the public interest.
- (2) Before disclosing information pursuant to subsection (1), the head of a public body shall, if practicable, notify any third party to whom the information relates.
- (3) Where it is not practicable to comply with subsection (2), the head of the public body shall mail a notice of disclosure in the prescribed form to the last known address of the third party.
- (4) This Section applies notwithstanding any other provision of this Act.

### **Reasonable Security**

- 24** (3) The head of the public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

## ***Part XX, Municipal Government Act***

### **Collection**

- 483 (1) Personal information shall not be collected by, or for, a municipality unless
- (a) the collection of that information is expressly authorized by, or pursuant to, an enactment;
  - (b) that information is collected for the purpose of law enforcement; or
  - (c) that information relates directly to, and is necessary for, an operating program or activity of the municipality.

### **Use**

- 485 (1) A municipality may use personal information only
- (a) for the purpose for which that information was obtained or compiled, or for a use compatible with that purpose;
  - (b) if the individual the information is about has identified the information and has consented to the use; or
  - (c) for a purpose for which that information may be disclosed to the municipality pursuant to this Section.

## **Disclosure**

**480** (1) The responsible officer shall refuse to disclose personal information to an applicant, if the disclosure would be an unreasonable invasion of a third party's personal privacy.

**485** (2) A municipality may disclose personal information only

- (a) in accordance with this Part or as provided pursuant to another enactment;
- (b) if the individual the information is about has identified the information and consented in writing to its disclosure;
- (c) for the purpose for which it was obtained or compiled, or a use compatible with that purpose;
- (d) for the purpose of complying with an enactment or with a treaty, arrangement or agreement made pursuant to an enactment;
- (e) for the purpose of complying with a subpoena, warrant, summons or order issued or made by a court, person or bod with jurisdiction to compel the production of information;
- (f) to an officer or employee of a municipality if the information is necessary for the performance of duties of, or for the protection of the health or safety of, the officer or employee;
- (g) to a municipality to meet the necessary requirements of municipal operation;
- (h) for the purpose of
  - i. collecting a debt or fine owing by an individual to the municipality, or
  - ii. making a payment owing by the municipality to an individual;
- (i) to the auditor for audit purposes;
- (j) to a representative of the bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry;
- (k) to the Public Archives of Nova Scotia, or the archives of a municipality, for archival purposes;
- (l) to a municipality or a law-enforcement agency in Canada to assist in an investigation
  - i. undertaken with a view to a law-enforcement proceeding, or
  - ii. from which a law-enforcement proceeding is likely to result;
- (m) if the information is disclosed by a law-enforcement agency to
  - i. another law-enforcement agency in Canada, or
  - ii. a law-enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;
- (n) if the responsible officer determines that compelling circumstances exist that affect anyone's health or safety;
- (o) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted; or
- (p) for research, archival and historical purposes as provided in Section.

**485** (4) A municipality may disclose personal information for a research purpose, including statistical research, if

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;

- (b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- (c) the responsible officer has approved conditions relating to
  - i. security and confidentiality,
  - ii. the removal or destruction of individual identifiers at the earliest reasonable time, and
  - iii. the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of the municipality; and
- (d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Part and any of the municipality's policies and procedures relating to the confidentiality of personal information.

**485** (5) The Public Archives of Nova Scotia, or the archives of a municipality, may disclose personal information for archival or historical purposes where

- (a) the disclosure would not be an unreasonable invasion of personal privacy;
- (b) the disclosure is for historical research;
- (c) the information is about someone who has been dead for twenty or more years; or
- (d) the information is in a record that is in the custody or control of the archives and open for historical research on the coming into force of this Part.

**486** (1) Whether or not a request for access is made, the responsible officer may disclose to the public, to an affected group of people or to an applicant information

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people; or
  - (b) the disclosure of which is, for any other reason, clearly in the public interest.
- (2) Before disclosing information pursuant to subsection (1), the responsible officer shall, if practicable, notify any third party to whom the information relates.
- (3) Where it is not practicable to comply with subsection (2), the responsible officer shall mail a notice of disclosure to the last known address of the third party.

### **Reasonable Security**

**483** (3) The responsible officer shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.