



Office of the Information
& Privacy Commissioner
Nova Scotia

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January 10, 2019

The Honourable Stephen McNeil
Premier of Nova Scotia
Office of the Premier
Email: premier@novascotia.ca

The Honourable Mark Furey
Attorney General and Minister of Justice
Department of Justice
Email: justmin@novascotia.ca

The Honourable Chuck Porter
Minister of Municipal Affairs
Department of Municipal Affairs
Email: dmamin@novascotia.ca

//via email//

Dear Premier McNeil, Minister Furey and Minister Porter:

**Re: Essential modernization of the *Freedom of Information and Protection of Privacy Act*,
Municipal Government Act and the *Privacy Review Officer Act***

I have just completed my investigation into the Freedom of Information Access website breach. My report will be made public on Tuesday, January 15, 2019. However, this investigation, together with other investigations recently completed by my office, have reinforced my view that Nova Scotia's laws to protect privacy are not up to the task. There have been significant advances in the legal frameworks and understanding of how public bodies must go about protecting privacy in the modern world since Nova Scotia's *Freedom of Information and Protection of Privacy Act* was passed 25 years ago.

The recommendations listed below are based on national and international standards. While I have not included the extensive background that supports these recommendations, I would be happy to meet with you to discuss them if you have any questions.

I recommend the following immediate amendments to both the *Freedom of Information and Protection of Privacy Act (FOIPOP)* and to the *Municipal Government Act (MGA)*, with any necessary changes to the *Privacy Review Officer Act*.

(a) Privacy impact assessments

- i. Require that public bodies and municipalities complete a privacy impact assessment on all new or significantly modified projects, programs, systems, enactments and activities utilizing or impacting personal information.
- ii. Require that privacy impact assessments involving sensitive personal information or involving common or integrated programs or activities be approved by the Information and Privacy Commissioner.

(b) Mandatory privacy breach notification

- i. Require notification to affected individuals and the Information and Privacy Commissioner, as expeditiously as possible and without unreasonable delay, of all privacy breaches involving a real risk of significant harm.
- ii. Require that public bodies and municipalities take all reasonable efforts to notify affected individuals.
- iii. Provide explicit parameters to delaying notification to affected individuals when police are involved in containing a privacy breach.
- iv. Specify requirements for the content of privacy breach notification to individuals be written in plain language and that it includes:
 - details about the cause of the breach,
 - a list of the data affected by the breach,
 - an explanation of the risks of harm to affected individuals,
 - how individuals can obtain further information, and
 - information about the right to complain to the Information and Privacy Commissioner.
- v. Authorize the Information and Privacy Commissioner to order notification to an individual affected by a privacy breach.
- vi. Require maintenance of a record of all data breaches (whether or not notification is required) with specified details which shall be made available to the Information and Privacy Commissioner upon request.

(c) Authority to verify accuracy of personal information

Where a public body or municipality is attempting to notify an individual affected by a privacy breach or to obtain consent to the disclosure of personal information under *FOIPOP* or the *MGA*, add a provision that permits other public bodies and municipalities to disclose personal information for the purpose of verifying the accuracy of personal information held by other public bodies or municipalities.

(d) Authority of the Information and Privacy Commissioner

Accord appropriate order-making power to the Commissioner or shift the burden onto the public body or municipality to seek a declaration of the Nova Scotia Supreme Court whenever the public body or municipality decides that it will not follow the recommendations of the Commissioner.

(d) Power to compel production and witnesses

- i. Require any person to produce a record for the Information and Privacy Commissioner that is in the person's custody and control, including personal information or information subject to solicitor-client privilege, if it is required for a matter under review or investigation by the Information and Privacy Commissioner.
- ii. Require any person to appear before the Information and Privacy Commissioner as a witness if it is required for a matter under review or investigation by the Information and Privacy Commissioner.

(e) Update the offense provisions

- i. Update the offense provisions to remove the requirement for maliciousness.
- ii. Include obstructing the Information and Privacy Commissioner, misleading the Commissioner, knowingly making a false statement to the Commissioner, directing another to destroy, alter, falsify, or conceal any record, and willfully or knowingly collecting, using, or disclosing personal information in contravention of the law as offences.
- iii. Set the limitation period for the prosecution of offenses to two years from the date of discovery of the offense.

(f) Statutory mechanism to recover breached data

- i. Provide a statutory mechanism for a public body or municipality to retrieve records obtained in an unauthorized manner, by unauthorized access, error, or omission, whether or not an offense was committed.
- ii. Provide a statutory mechanism for a public body or municipality to obtain the identity of a user behind an electronic or internet address for the purpose of recovering breached data.

In June 2017, I proposed significant modernizations to our access and privacy laws in my report, *Accountability for the Digital Age*. Many of the recommendations listed above were included in that report. To date, the government has taken no action to implement my 2017 recommendations. With each privacy breach that occurs, the need to modernize our privacy laws becomes more acute. Once again, I recommend that it is time, indeed past time, to complete a thorough update of our access and privacy laws.

January 10, 2019

On January 15, 2019, I will publish a copy of this letter to my website as a means of keeping the public informed about the state of our privacy laws.

Yours truly,

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

Catherine Tully
Information and Privacy Commissioner for Nova Scotia

- c. The Honourable Patricia Arab, Minister, Department of Internal Services
Jeffrey Conrad, Deputy Minister, Department of Internal Services
Laura Lee Langle, Deputy Minister, Office of the Premier
Karen Hudson, Q.C., Deputy Minister, Department of Justice
Kelliann Dean, Deputy Minister, Department of Municipal Affairs