



**FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY
REVIEW OFFICE**

ANNUAL ACCOUNTABILITY REPORT FOR THE FISCAL YEAR

2008-2009

September 10, 2009

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ACCOUNTABILITY STATEMENT

The Accountability Report of the Freedom of Information and Protection of Privacy Review Office for the year ending March 31, 2009 is prepared pursuant to the Provincial Finance Act and government policies and guidelines which require the reporting of outcomes against the Freedom of Information and Protection of Privacy Review Office Business Plan for the 2008-2009 fiscal year. The reporting of the Freedom of Information and Protection of Privacy Review Office outcomes necessarily includes estimates, judgments and opinions.

I acknowledge that this Accountability Report is the responsibility of the Freedom of Information and Protection of Privacy Review Officer. The Report is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in the Freedom of Information and Protection of Privacy Review Office Business Plan for the fiscal year 2008-2009. The Accountability Report [April to March] is consistent with the Freedom of Information and Protection of Privacy Review Officer's 2008 Annual Report [January to December] tabled with the House of Assembly on April 30, 2009.

Dulcie McCallum
Freedom of Information and Protection of Privacy Review Officer
September 10, 2009

Receipt Acknowledged

Ross Landry
Attorney General and Minister of Justice

**MESSAGE FROM THE FREEDOM OF INFORMATION AND PROTECTION OF
PRIVACY REVIEW OFFICER**

Dulcie McCallum

I am pleased to present the Accountability Report for the Freedom of Information and Protection of Privacy [“FOIPOP”] Review Office for 2008-2009. The FOIPOP Review Officer is established as the independent statutory oversight body to investigate and review decisions made by public bodies regarding citizens’ access to information and correction of personal information requests. The Review Officer has also agreed, at the Minister of Justice’s request, to investigate complaints from Nova Scotians about alleged privacy breaches by public bodies, with the public body’s cooperation.

The FOIPOP Review Officer is pleased to report that the Office has achieved most of its goals. In those cases where full realization of the goal was not possible, I am satisfied that the Review Office did its due diligence and made all reasonable efforts to achieve the goal. Steps were taken to make government aware of the lack of protection under the Freedom of Information and Protection of Privacy Act and Part XX of the Municipal Act [“Acts”] with respect to privacy protections. The Review Office will continue to pursue solutions to enhance privacy protections for Nova Scotians with all parties.

One Review in the past year caused an unexpected challenge for the Review Office in terms of both financial and staff resources. During the Review it was necessary for me to make an application to the Nova Scotia Supreme Court in accordance with the requirements of the FOIPOP Act. This resulted in 6.5 percent of our budget and a significant amount of staff time being consumed by this one Review.

This Report will outline the Freedom of Information and Protection of Privacy Review Office’s progress, accomplishments and priorities such as:

- Working effectively with public bodies to promote a culture of openness, accountability and transparency throughout all levels of government at the provincial and municipal levels.
- Providing an effective and efficient Intake, Case Review Analysis, Investigation, Mediation and formal Review process for Requests for Review of decisions made by public bodies with respect to Applications for Access to a Record.
- Working towards citizens having adequate legislative protection of their privacy under the *Acts*.

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- Through education and outreach, increasing public bodies' and citizens' awareness and understanding of legislated rights and obligations under the *Acts* and the role of the Review Office.

Dulcie McCallum

Freedom of Information and Protection of Privacy Review Officer

INTRODUCTION

This document is based on the goals and priorities identified in the FOIPOP Review Officer's 2008-2009 Business Plan. A copy of that Business Plan is available on the FOIPOP Review Office's website at http://www.foipop.ns.ca/pub_admin.html.

This report will outline the progress made towards achieving the goals and priorities with a particular focus on the core businesses of Intake, Case Review Analysis, Investigation, Mediation and formal Review in Review Requests and Privacy Complaints, Awareness and Education, and Best Practices.

The FOIPOP Review Office met its budget targets during 2008-2009.

In the following pages, information will be provided to report against the specific goals and priorities identified in the 2008-2009 Business Plan. This Report is organized around the strategic goals of the Review Office and will outline the progress made toward achieving the stated goals and priorities. The final sections set out financial information and performance measures.

PROGRESS AND ACCOMPLISHMENTS

Strategic Goals, Priorities and Accomplishments

The Accountability Report details the initiatives undertaken since our 2008-2009 Business Plan to achieve the priorities established by that plan:

1. Requests for Review of Access Decisions

Continue to develop relationships with FOIPOP Administrators and the Information Access and Privacy Office [formerly the FOIPOP Coordinator's Office] with a view to improving the training of administrators and the level of support given by the Review Office to promote greater access in the first instance thus decreasing the number of Access Requests for Review and to improve the understanding of the legislation by those working with it on a daily basis and the decisions under the statutes. Particular attention will be given as to how to improve training for administrators who work under Part XX of the Municipal Government Act.

Ensure Nova Scotians understand their right to access personal and other information held by public bodies and their right to an independent Review of decisions made with respect to those requests for access to information.

Accomplishments:

- Researched and prepared a Brief sent to the Minister of Justice regarding potential legislative amendments to the *Acts* for consideration with respect to privacy protections.
- Continued to issue comprehensive detailed Access Review Reports, 9 in total, with sufficient jurisprudence and precedent to maximize the value to all heads of public bodies and FOIPOP Administrators.
- Prepared and publicly released all Access Review Reports on the FOIPOP Review Office website.
- Clarified the roles and responsibilities of the stages in the Access Review process, which defines the boundaries between Intake, Case Review Analysis, Investigation, Mediation and informal resolution.
- Initiated the practice at the Review Office of producing an Investigation Summary that is always shared with all parties prior to the matter being referred to Mediation and/or formal Review by the Review Officer. Included in the Summary are relevant precedents to assist parties to understand their position and the requirements when writing their formal Representations to the Review Officer.
- Reported in the Annual Report of the FOIPOP Review Officer and on the Review Office website, whether public bodies did or did not follow the Recommendations in the Review

Report.

- Tabled the 2007 Annual Report of the FOIPOP Review Officer and thereafter distributed to all MLAs and posted it to the website.
- Initiated an Access Star Award for the 2008 Annual Report to be awarded to a public body that demonstrated, at any stage of the Access Review process, an approach and attitude in line with the purposes of the governing legislation.
- Distributed the *Respecting Your Access and Privacy Rights: A Citizen's Guide for Nova Scotians* to all public libraries, Access Nova Scotia outlets and MLA constituency offices.

2. Privacy Complaints

To formally recognize the investigation of privacy complaints under the Freedom of Information and Protection of Privacy Act and under Part XX of the Municipal Government Act falling within the Review Officer's mandate and to undertake the required public education process with respect to protection of privacy.

Ensure Nova Scotians' privacy complaints are addressed in a systematic, objective and independent manner.

Accomplishments:

- Recommended ways to improve legal privacy protections for all Nova Scotians through public and private Reports to the Minister of Justice.
- Met with the Minister of Justice, the Deputy Minister of Justice and Justice officials including presentation of briefs to continue to pursue the legislative gap in privacy protections.
- Coordinated with the Office of the Privacy Commissioner of Canada and the Crime Prevention Society of Nova Scotia to develop and deliver a "train-the-trainer" workshop on Identity Theft Awareness.
- Included an Insert in the Citizens' Guide clarifying that the jurisdiction of the Review Officer remains outstanding with respect to privacy protections, however in the meantime, the FOIPOP Review Officer will continue its practice of doing privacy investigations but only with the consent of the public body.
- Initiated the design of templates and processes regarding privacy complaints and investigations.
- Prepared and publicly released one Privacy Complaint Report on the FOIPOP Review Office website.
- Pending government's decision to move forward on enhancing privacy protections, the Review Office put its public education and outreach regarding privacy on hold.

3. Awareness and Education

Increase public awareness, access and understanding of legislated rights and obligations under the governing statutes with respect to access to information; and the role of the Review Office, including public outreach to specifically address the lack of diversity of the Applicants in the applications received by the Office.

Increase awareness, understanding and education of the Freedom of Information and Protection of Privacy Act and Part XX of the Municipal Government Act. Enhance the development of our communication strategy, mandate of the Review Office and increase citizens' accessibility to information on access and privacy.

Accomplishments:

- Presented to the FOIPOP Administrators' meeting to discuss recent issues of importance and to answer questions.
- Attended and participated in the Atlantic Access and Privacy Conference in Moncton. The Review Officer was on the planning committee to assist in program development with Verney Management.
- Participated in training including: Diversity and Employment Equity, Respectful Workplace, Web Accessibility, Identity Theft Awareness, St. John's Ambulance Emergency First Aid CPR Level A and French.
- Staff completed the University of Alberta's Information Access and Protection of Privacy certificate program and the Saint Mary's University Negotiation, Mediation and Conflict Resolution certificate program.
- The Review Office publication, *Respecting Your Access and Privacy Rights - A Citizen's Guide for Nova Scotians*, was complete in March 2008 and has now been widely distributed to all public libraries, all Access Nova Scotia offices and all Members of the Legislative Assembly constituency offices and is still available on the Review Office website www.foipop.ns.ca and is distributed to the public on request.
- Continued to be involved in the GoverNext Steering Committee.
- Participated as speakers and/or participants at the Institute of Public Administration of Canada's Freedom of Information and the Right to Know Symposium, the Association of Canadian College and University Ombudspersons Annual Conference in Halifax, Mount Saint Vincent University, the NS Canadian Bar Society Privacy Law Subsection in Halifax, Women's Resource Centre in Antigonish and Training Workshop for Investigators in Ottawa.
- Participated in the Canada Health Infoway ["CHI"] Forums in Ottawa, Victoria and St. Johns as the independent oversight body by attending meetings with respect to the introduction of electronic health records legislation. All these meetings are paid for in full by CHI.

4. Best Practices

Freedom of Information and Protection of Privacy Review Office

To promote systematic change by researching best practices, evaluating current policies and procedures, networking with other oversight bodies and developing new tools and resources which support the Review Officer’s mandate and also by addressing broader access and privacy issues.

Create and promote best practices in the Access Review process.

Accomplishments:

- Continued to try to focus Review Report Findings and Recommendations on best practices for the purpose of assisting FOIPOP Administrators in the course of responding to Applications for Access to a Record.
- Attended the Federal-Provincial-Territorial Commissioners’ Meetings in Regina and Ottawa at which there was an exchange of information about best practices.
- Attended the Annual Investigators conference/training hosted by the Office of the Privacy Commissioner of Canada, in Ottawa. Many presentations on best practices and tools were provided and opportunities to network were available.
- Offered to consult with Justice on future legislative changes where there are access and privacy issues including Electronic Health Records legislation.
- Consulted on a regular basis with the Department of Health officials on the electronic health records legislation in development.
- Suggested and attended a presentation by Department of Health officials to independent oversight bodies including the Office of the Public Trustee and the Office of the Ombudsman.

FINANCIAL RESULTS

Freedom of Information and Protection of Privacy Review Office 2008-2009		
	2008-2009 Estimate	2008-2009 Actual
	(\$ thousands)	(\$ thousands)
Program Expenses	427	404
Salaries and Employee Benefits	277	306
Funded Staff (FTE’s)	4	4.4*

* Note: The FTE increase is due to an additional Case Review Analyst casual position.

PERFORMANCE MEASURES

During this period, considerable time and attention was dedicated to staffing and the orientation of new staff. Despite the challenges of new staff and the court application, the Review Office able to attain most of its performance targets. Staffing remains a challenge and the Review Officer will continue to pursue this in the future.

Core Business areas identified in the 2008-2009 Business Plan:

1. Core Business Area 1: Requests for Review of Public Body Access Decisions

Outcome:

Educating the public and those working as a FOIPOP Administrator on the role of the Review Office and encourage dialogue between those parties.

The measurement for this desired outcome may be an increase or decrease in the number of Review Requests received. If there is an improved communication between FOIPOP Administrators and the public, there may be a decrease in Requests for Review. If the public becomes more informed about their right to Request a Review of a decision made by a public body, there may be an increase in Requests for Review.

What Does this Measure Tell Us?

By improving the public's understanding of the role of the Review Officer and improving the FOIPOP Administrators' understanding of the work of the Review Officer it will have a positive influence on the quality of the access process and public bodies' decisions. And it will hopefully open a dialogue between those parties, prior to a file coming to Review, resulting in fewer Reviews.

Where Are We Now?

We did not decrease the number of Reviews; there was an increase of 49%. This measure has been amended for the next fiscal to better reflect an outcome over which the Review Office can have some level of control. Although it can encourage dialogue, the Review Office has no actual control over that relationship. The increase actually reflects the greater public awareness of the work of the Review Office and the increasingly complex nature of Applications for Access to a Record and Requests for Review.

Of interest but not identified as a measure, there was a total of 573 access related inquiries in 2008-2009.

The public that contact the Review Office are sometimes well informed about the Request for

Review process and about the role of the Office, but other times less so. While there were limited resources available for public outreach, the Review Office has attempted to put information on our website in a plain language format that will assist the public such as a Frequently Asked Questions section. In addition, the focus in the Business Plan for this year was the production of a citizens' guide to access and privacy in plain language and a wide distribution of the guide. This priority resulted in less attention to any outreach and no participation in Right to Know Week in September/October. The guide - *Respecting Your Access and Privacy Rights: A Citizens' Guide for Nova Scotians* - is now available at all public libraries throughout Nova Scotia, MLA constituency offices and Access Nova Scotia outlets.

There was little opportunity, unlike in the past when the FOIPOP Coordinator's Office had an active training schedule, to do presentations and teaching to new and existing FOIPOP Administrators on the role of the Review Officer. Ultimately, the Review Officer was able to be placed on one of their agendas and made a presentation and fielded questions from the FOIPOP Administrators.

Some of the smaller public bodies who receive few Applications for Access to a Record appear to be less familiar with the provisions of the statute and how to process these requests. Many of these public bodies have identified this as a problem and have stated an interest in receiving more training. As the Review Office staff become aware of this, these Administrators are directed to the NS Information Access and Privacy Office at Justice that is responsible for training and to Service Nova Scotia and Municipal Relations that is involved in the training of municipal authorities.

With a view to promoting greater understanding of Information Management, the Review Officer recommended Nova Scotia's new Chief of Information Greg Keefe be a keynote speaker at the Maritime Access and Privacy Conference in 2009.

This year the Office attempted to shift the focus to core duties while participating in private sector privacy outreach and involvement in consultations on the new Electronic Health Record legislation.

Where Do We Want to Be?

Educating the public and FOIPOP Administrators on the role of the FOIPOP Review Office and encouraging those parties to apply precedents to the matter at hand.

A measure of this desired outcome would be a significant increase in the number of Access Review Requests resolved early in the process through informal resolution.

2. Core Business Area 2: Privacy Complaints

Outcome 1:

Promoting the Review Officer as the oversight for privacy complaints.

A measure of this desired outcome would be twofold; clarity of the legislated authority to receive and investigate privacy complaints and an increase in the number of privacy inquiries and privacy investigations received by the statutory authority.

What Does this Measure Tell Us?

Continuing to receive privacy complaints and privacy related inquiries is a measure that confirms that the public continues to view the FOIPOP Review Office as the place to complain about privacy and as the independent oversight body to perform this role.

Where Are We Now?

The target regarding privacy inquiries was met because 100% of jurisdictional complaints received were open and investigated. The Review Office has agreed that the Office be the avenue available, with the public body's agreement, for privacy oversight.

There was a significant increase in the number of general inquiries concerning privacy during 2008-2009, particularly ones that were jurisdictional. No public body refused to consent to the Review Office's Investigations.

The Review Office is committed to continue to pursue a solution to the absence of provincially-legislated protections for citizens with respect to their privacy rights. The gap in protection remains a major concern of the Review Officer.

In November 2008, an opposition private member's bill, the Privacy Review Officer Act, was introduced and passed in the House of Assembly. This statute, which has not been proclaimed, provides for privacy protection in the public sector and calls for the appointment of the Freedom of Information and Protection of Privacy Review Officer or another person as the Privacy Review Officer. A brief was prepared and submitted to the Minister of Justice regarding some of the factors that should be taken into consideration in the decision making process regarding which model to choose.

Nova Scotia remains the only jurisdiction in Canada denied accreditation by the International Accreditation for Privacy oversight bodies. The Office of the Privacy Commissioner of Canada and all other provincial and territorial FOIPOP offices have received accreditation.

Respecting Your Access and Privacy Rights: A Citizen's Guide for Nova Scotians which was developed, designed and sent for printing last year, has now been distributed throughout the province. The Guide now includes an insert identifying the fact that privacy protections are not in place at this time.

Identity theft has now surpassed the drug trade as the most costly crime in society. In order to try

and improve the awareness of privacy matters for Nova Scotians, the FOIPOP Review Officer partnered with the Crime Prevention Society of Nova Scotia, who received funding from the federal Office of the Privacy Commissioner, to develop and deliver a train-the-trainer session in Identity Theft Awareness. There was significant community interest in the program. The training was held in January 2009 in Halifax with over 100 participants trained. Two of the Review Office staff participated in the training.

The Department of Health is developing personal health information legislation and the Review Officer has been actively consulted regarding the need for independent oversight with respect to privacy and access for health information. In addition, the Review Officer is an active participant in the pan-Canadian Forum set up by CHI that brings together health officials and independent oversight bodies from across Canada.

Where do We Want to be?

We will continue to promote the FOIPOP Review Officer as the oversight for privacy complaints, until such time another option for oversight is decided by government. A measure of this desired outcome would be an increase in the number of privacy inquiries and privacy investigations.

Our goal last year was to ensure legislative improvements by the end of 2008. While the goal to obtain clarity on privacy oversight for Nova Scotians has not yet been achieved, the issue has moved forward and will continue to be a priority.

Outcome 2:

Systematic efficient and effective privacy complaint process.

A measure of this desired outcome would be the development of processes and procedures to measure the timelines of privacy investigations.

What Does this Measure Tell Us?

The Review Office is committed to providing efficient and fair public service and by identifying strengths and weakness in processes and procedures and will be able to improve and build upon the way service is delivered.

Where Are We Now?

This goal was not met. Pending the outcome of the decision with respect to privacy oversight, the Review Office will continue to do investigations with the consent of the public body and will put any outreach initiatives in this regard on hold.

Where do We Want to be?

Our goal last year was to ensure legislative improvements by the end of 2008. Our goal to obtain

clarity on privacy oversight for Nova Scotians, whether it be the Review Officer or an alternate oversight body, has not been achieved. Hopefully in 2009-2010, privacy protections will be put in place for Nova Scotians at the provincial and municipal levels.

3. Core Business Area 3: Awareness and Education

Outcome:

Increased awareness of the right to access information and protection of privacy.

A measure of this desired outcome would be an increase in the number of presentations, information sessions and training on the role of the FOIPOP Review Officer and governing legislation.

What Does this Measure Tell Us?

This measure shows the FOIPOP Review Officer's commitment to ensure the public is familiar with its rights under the Freedom of Information and Protection of Privacy Act and Part XX of the Municipal Government Act.

Where Are We Now?

The target to increase the number of sessions was not met. Although staff participated in eight sessions, which was equal to the previous year, staff were encouraged to respond to requests to speak at local universities and not-for-profit organizations.

A listing of functions, presentations, information sessions and other engagements can be found in the 2008 Annual Report [January to December].

There were no programs put on by the Review Office during the Right to Know Week.

The plain language guide - *Respecting Your Access and Privacy Rights: A Citizens' Guide for Nova Scotians* - has been published [English only] and widely distributed.

Where Do We Want to be?

Increased awareness continues to be a commitment for the FOIPOP Review Office, which could include a dynamic program during the Right to Know Week if resources permit.

4. Core Business Area 4: Best Practices

Outcome:

Providing information on the internal process and functions of the Review Office, including tools, tips, resources and processes.

A measure of this desired outcome would be to have key documents posted to the FOIPOP Review Office website and creating a new link devoted to privacy on our website.

What Does this Measure Tell Us?

This measure shows the FOIPOP Review Office's commitment to making sure the public is familiar with its rights under the Freedom of Information and Protection of Privacy Act and Part XX of the Municipal Government Act and helping parties to understand what to expect during the Access Review process.

Identifying best practices from other jurisdictions and promoting them within Nova Scotia will assist the Access Review Office to assure itself that its practices and processes are in line with quality and effective service as an independent oversight body and those we promote are of assistance to FOIPOP Administrators and heads of public bodies.

Where Are We Now?

The target to review internal policies and procedures and making them available to the public has been met. During this period, the Access Review Process document, which explains to the parties what to expect during all stages of the Access Review process was updated. This document was also shared with FOIPOP Administrators who provided feedback which was considered prior to its completion. It has been posted to our website.

Key documents, such as Helpful Hints, are posted to the FOIPOP Review Officer website and are updated as needed.

Best practices have been identified as a factor to be considered in all FOIPOP Review Officer Reports in Findings and Recommendations to provide guidance to all FOIPOP Administrators and heads of public bodies.

Where Do We Want to be?

To allocate staff time to identify the need for, to research and to develop best practices for the processing of Access Review Requests and the investigating of Privacy Complaints that are consistent with and in-line with other like-minded Commissioners/oversight bodies across Canada and internationally.