



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

**ANNUAL ACCOUNTABILITY REPORT FOR THE FISCAL YEAR
2009-2010**

June 28, 2010
Final

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ACCOUNTABILITY STATEMENT

The Freedom of Information and Protection of Privacy Review Office Accountability Report for the year ending March 31, 2010 is prepared pursuant to the *Finance Act* and government policies and guidelines that require the reporting of outcomes against the Freedom of Information and Protection of Privacy Review Office Business Plan for the 2009-2010 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 my responsibility as the Freedom of Information and Protection of Privacy and the Privacy Review Officer. The Report, to the extent possible, is 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 2009-2010. This Accountability Report [April to March] is consistent with the Freedom of Information and Protection of Privacy Review Office 2009 Annual Report [January to December] tabled with the House of Assembly on May 10, 2010. For those public offices that are required by statute to file an Annual Report with the House of Assembly, this Accountability Report is largely a recap of the Annual Report but for a different portion of the calendar/fiscal year.

Dulcie McCallum
Freedom of Information and Protection of Privacy Review Officer
June 28, 2010

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

Dulcie McCallum

I am pleased to present the Freedom of Information and Protection of Privacy Review Office Accountability Report for 2009-2010. I am appointed the Review Officer under the *Freedom of Information and Protection of Privacy Act* [“*FOIPOP Act*”], *Part XX of the Municipal Government Act* [“*MGA*”] and the *Privacy Review Officer Act* [“*PRO Act*”], collectively referred to as the “*Acts*”. The Review Officer is established as the independent statutory oversight body to investigate and review decisions made by public bodies regarding a citizen’s access to information requests, correction of personal information requests and privacy complaints. The Review Office was given clear authority to investigate provincial privacy matters as of September 25, 2009, at which time I was appointed the first Privacy Review Officer. For the purposes of this Report, I will refer to myself as the Review Officer.

I am pleased to report that the Review Office has achieved the majority 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. Those initiatives not realized were due to a lack of agreement with a public body or lack of resources.

Throughout this period, the Review Office continued to take steps to remind government about the lack of protection under the *Acts* with respect to independent oversight of privacy protections. The gap with respect to privacy oversight for provincial government bodies was rectified with the introduction and proclamation of new legislation, the *Privacy Review Officer Act*. Government chose to appoint me, the existing Freedom of Information and Protection of Privacy [“*FOIPOP*”] Review Officer, as the first Privacy Review Officer. I agreed to assume that role with no additional resources until the end of March 2010. The Review Office will continue to bring to the attention of government and the House of Assembly the gap that remains with respect to privacy oversight for local governments bodies such as cities, municipalities, towns, villages, district authorities and police departments, which, though they fall under the *MGA*, are not covered under the *PRO Act*.

This Report will outline the Review Office’s progress, accomplishments and priorities such as:

- Providing an effective and efficient Intake, Case Review Analysis, Investigation, Informal Resolution, 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 rights at all levels of government under the *Acts*.

Freedom of Information and Protection of Privacy Review Office

- Increasing public bodies' and citizens' awareness and understanding of legislated rights and obligations under the *Acts* and the role of the Review Officer through education and outreach.

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 Office 2009-2010 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, Informal Resolution, Mediation and formal Review in Access Requests for Review and Privacy Complaints [now called Privacy Requests for Review], Awareness and Education, and Best Practices.

The FOIPOP Review Office met its budget targets during 2009-2010.

In the following pages, information will be provided to report against the specific goals and priorities identified in the 2009-2010 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 to achieve the priorities established in the Review Office 2009-2010 Business Plan. These include:

1. Requests for Review of Access Decisions

The Review Office priorities for 2009-2010 can be summarized as follows:

- Continuing to advance the awareness of all Nova Scotians about their rights to access information, personal and other, and their right to an independent Review of all decisions made by public bodies in that respect.
- Continuing to engage the Minister of Justice on the need to review legislation for any necessary amendments and improvements.
- Participating in training events for FOIPOP Administrators, including those hosted by Justice or speaking at conferences, to advance the quality of decisions made in the first instance when responding to an Application for Access to a Record from the public, thus decreasing the necessity to appeal by way of a Request for Review.
- Giving priority to identify training needs for those working under *Part XX* of the *MGA*.

Accomplishments:

- Continued to promote the plain language guide - *Respecting your Access and Privacy Rights, A Citizen's Guide for Nova Scotians* - through direct distribution including the Review Office website and at the Dalhousie University Data Protection Day.
- Raised the issue of the need for statutory amendments and, in particular, a provision granting the Review Officer the discretion to refuse a Request for Review where the Request is frivolous, vexatious or made in bad faith. The need for the amendment was brought to Justice's attention by including a post-script in *Review Report FI-08-35/FI-08-54*. That Review Report considered an access to information decision by a different department and by forwarding a copy of the Report to the Department of Justice, the Review Office notified Justice of the need for this important provision .
- Continued to take an educational approach to improving knowledge about the right to access information by preparing and publicly releasing all Review Reports on the Review Office website and Listserv ensuring that each Report is comprehensive and lays out jurisprudence from earlier Reviews in Nova Scotia and other Canadian jurisdictions with similar cases. The Review Office has made all Review Reports available to be an educational tool for FOIPOP Administrators and others working in the field of access to information, applicants and third parties. At the beginning of each Review Report is a

summary of the case, a list of key words and all of the Findings and Recommendations to permit professionals and the public ease of access to precedent.

- Review Office staff attended and participated in access and privacy conferences in British Columbia, Alberta, Newfoundland and Nova Scotia to learn about emerging issues and trends and to remain up to date on best practices with respect to processing Requests for Review.
- Met with staff at BC Commissioner's office to exchange best practices.
- Promoted systemic change by addressing broader access issues by implementing a statistics tracking system for performance measurement.
- Maintained a link on the Review Office website to document and publicize whether Recommendations are followed by public bodies after they have received formal Review Reports.
- Promoted international and national Right to Know Week September 28 - October 2, 2009 by hosting an access to information quiz contest; the Review Officer wrote an Op Ed article for the Chronicle Herald and appeared on Breakfast Television.
- Consulted with the Department of Health five times regarding the independent oversight provisions with respect to access to information rights and protection of privacy under proposed personal health information legislation.
- Offered to engage in training for FOIPOP Administrators at the local government level, which proposal was not taken up by the Departments of Service Nova Scotia and Municipal Relations or Justice.

2. *Privacy Complaints*

The Review Office priorities for 2009-2010 can be summarized as follows:

- Seeking clarification of privacy rights for all Nova Scotians and the role of the present Review Officer in that respect.
- Developing staff training plans, including training on privacy issues to remain current and knowledgeable on emerging issues and trends.

Accomplishments:

- Successfully encouraged government to move forward with proclamation of the *Privacy Review Officer Act*, enabling the Review Officer to ensure Requests for Reviews of Nova Scotians' privacy complaints are addressed in a legal, systematic, objective and independent manner through a statutory oversight body.
- Confirmed jurisdiction to conduct investigations and Privacy Requests for Review concerning provincial public bodies with the proclamation of the *Privacy Review Officer Act*.
- Appointed as the first Privacy Review Officer.
- Raised two issues with the Department of Justice with respect to gaps in the new *Privacy*

- Review Officer Act*; no timelines for response by public bodies to privacy complaints [“deemed refusals”] and no provision for privacy oversight of municipal public bodies.
- Invited to the Dalhousie Data Protection Day where the Review Office team distributed the plain language *Citizens’ Guides* and last year’s Annual Reports.
 - Consulted with the Department of Health five times regarding the independent oversight provisions with respect to privacy rights under proposed personal health information legislation.
 - Participated at the national level in the Pan-Canadian Health Infoway Forums on electronic health records.

3. Awareness and Education

The Review Office priorities in 2009-2010 can be summarized as follows:

- Advocating for the spirit and intention of the legislation including increasing the awareness of citizens and public servants of their rights and obligations under the *Acts*.
- Developing and implementing a public outreach plan to enhance the profile and accessibility of the Review Office, especially in rural Nova Scotia and with groups that represent the diversity of the Nova Scotia public.
- Continuing to distribute the *Citizen’s Guide* for Nova Scotians which is currently available on the Review Office website, through all public libraries, MLA constituency offices and Access Nova Scotia offices.
- Proposed to offer the Review Officer as a member on the French Language Services Coordinating Committee.

Accomplishments:

- Promoted the reduction of the fee to make an Application for Access to a Record. Government did reduce the fee to \$5 for anyone making an Application for Access to a Record. There is no charge for access to personal information. The Review Office promoted this reduction to ensure more citizens would be able to afford making access to information requests and to promote greater diversity across socio-economic levels in the applicant population seeking access to information.
- Made Justice aware of the Review Office staff’s availability to participate in the orientation and training of all FOIPOP Administrators about the role and responsibilities of the Review Officer and on the Review process.
- By invitation from Justice, the Review Office Team presented to the Forum of FOIPOP Administrators on September 24, 2009.
- Continued ongoing consultations with Department of Health officials regarding an independent oversight mechanism to be part of proposed personal health information legislation.
- Attended the Canada Health Infoway Privacy Forum composed of oversight bodies and

- ministry representatives from across Canada regarding the implementation of a cross-jurisdictional electronic personal health records.
- Undertook several initiatives to increase the profile of the Review Office and access and privacy rights: continued promotion of and participation in the Canadian Bar Association Women in the Law Workshop, Canada Health Infoway Oversight Body Representative at all Canada Health Infoway Meetings, Member of Planning Committee and participated in the Atlantic Access and Privacy Conference and attended the Symposium on Privacy in St. John's, Newfoundland.
 - Continued to ensure the accessibility of all Review Reports by posting them on the Review Office website and Listserv, the Canadian Legal Institute, Quicklaw and using plain language in all publications, wherever possible.
 - Celebrated Right to Know Week: hosted a contest to test the public's knowledge and awareness of access to information and the Review Office process; the Review Officer appeared on Breakfast Television to bring awareness to the Week and had an Op Ed article published in the Chronicle Herald to bring awareness to citizens about their access to information rights.
 - Continued to respond positively, whenever possible, to all requests for speeches and other public outreach opportunities, to maximize opportunities for the right to information and protection of privacy message to be publicly communicated.
 - Provided all of the Review Office staff with training opportunities that has enhanced their knowledge of access, privacy and the business of government. Focus was on such training as Diversity and Employment Equity, the Information Access and Protection of Privacy Certificate program through the University of Alberta and Presentation Skills.
 - Proposed to offer participation on the French Language Services Coordinating Committee.

4. Best Practices

The Review Office priorities in 2009-2010 can be summarized as follows:

- Providing sufficient information and assistance as is practicable and appropriate [primarily through public Review Reports] to FOIPOP Administrators to promote best practices in facilitating the public's right to access information including timeliness of processing access to information requests, improved quality of decisions to applicants and enhanced practice in fulfilling the statutory duty to assist.
- Networking with other Canadian Information and Privacy Commissioners through continued participation in national workshops, conferences, summits and seminars.
- Initiating discussions regarding the possibility of reviving a mechanism to carry on the work of the FOIPOP Steering Committee that was made up of the Review Office, the Justice Information Access and Privacy ["IAP"] Office and FOIPOP Administrators, for example through participation in the FOIPOP Administrators' Forums.
- Working towards a University of Alberta Information Access and Protection of Privacy certification for all staff.

- Evaluating current practices and researching review practices in other jurisdictions and conducting an internal self-audit.

Accomplishments:

- Provided sufficient information and assistance as is practicable and appropriate [primarily through Review Reports] to FOIPOP Administrators to promote best practices in facilitating the public's right to access including timeliness of processing Applications for Access to a Record, improved quality of decisions to applicants and enhanced practice in fulfilling the statutory duty to assist.
- Networked with other Canadian Information and Privacy Commissioners through continued participation in national workshops, conferences, summits and seminars and, in particular, the Annual Commissioners'/Ombudsman/Review Officer Summit in St. John's, Newfoundland.
- Informally initiated discussions with Justice to reinstate the FOIPOP Steering Committee, but have abandoned this approach as the Justice IAP Office is pursuing other initiatives. The Review Office participated in the FOIPOP Administrators' Forum at the invitation of the IAP Office.
- Encouraged all staff to work towards a University of Alberta Information Access and Protection of Privacy certification: one staff member completed; one is progressing towards completion; two started this fiscal year.
- Significantly increased internal performance measurement through improved statistics gathering and, in particular, Reviews closed through Informal Resolution and total timelines for each stage in a Review. In that regard, a tracking system was put in place to determine exactly how much time is spent on each Review by Review Office staff versus how much time the Review is dormant at the Review Office as a result of delays/extensions caused by other parties.
- Initiated and continue to work on evaluating current and best practices in Nova Scotia and other jurisdictions. To that end, met with staff at the BC Commissioner's Office to discuss best practices and emerging access and privacy issues.
- Formulating, documenting and implementing ways to promote best practices has been hampered somewhat by limited resources.
- An internal self-audit continues to be a work in progress.

FINANCIAL RESULTS

Freedom of Information and Protection of Privacy Review Office 2009-2010		
	2009-2010 Estimate	2009-2010 Actual
	(\$ thousands)	(\$ thousands)
Program Expenses	400	394
Salaries and Employee Benefits	293	324
Funded Staff (FTE's)	4	5.0*

* New FTE given to the Review Office but the position was not funded.

PERFORMANCE MEASURES

During this period, considerable time and attention was dedicated to enhancing ways to process Requests for Review in a timely and effective manner. Having sufficient staff remains a challenge and the Review Officer will continue to pursue additional resources in the coming year because of the new privacy oversight mandate that was confirmed in 2009 and the expected oversight role with respect to upcoming personal health information legislation, expected to be tabled with the House of Assembly in the Fall of 2010. The request for these additional resources was denied for the 2010-2011 fiscal period.

Core Business areas identified in the 2009-2010 Business Plan:

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

Outcome:

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

The measurement for this desired outcome may be an increase in the number of Requests for Review resolved early in the process through Information Resolution.

What Does this Measure Tell Us?

This measure is intended to demonstrate to the Review Office the extent to which efforts to educate the public and the professionals working in the access and privacy field are having the desired outcome.

Where Are We Now?

The number of Review files resolved through Informal Resolution increased by 135% from 34 in 2008 to 66 in 2009. Continued efforts to make the public more aware of the Review Office are reflected in other statistics. For example, the number of inquiries increased significantly, 57% over 2008 as Intake staff fielded 1,163 calls. Despite this increased call volume, indicating increased awareness of the work of the Review Office, the number of Requests for Review dropped from 91 to 85. Since the Review Office has no discretion to decline Requests for Review that are frivolous, vexatious or made in bad faith, it is important that such complaints are handled early in the process. An increased number of calls and a declining number of Requests for Review indicates that the Review Office is succeeding in educating the public about what can and cannot be accomplished through a Request for Review. All statistics for the Freedom of Information and Protection of Privacy Review Office are reported in the Review Office Annual Report, which was tabled with the House of Assembly on Monday May 10, 2010.

Key to the effectiveness of the Review Office is being able to process Requests for Review in a timely and efficient manner. To assist in this the Review Office has implemented two procedures. The first is a direction from the Review Officer to all staff enabling and encouraging them to use all knowledge, skills and abilities to close Review files, at any stage of the Review process through Informal Resolution. This has proven to be extremely effective and demonstrates improved understanding of the role of the Review Office on the part of the public and FOIPOP Administrators. The second is a mechanism to allow the Review Officer to exercise her discretion to expedite a particular Request for Review. While all Requests for Review are given priority, the test used by the Review Officer is that the circumstances require more urgency than others, such as health or safety reasons.

The Review Office's request for an additional FTE for second Case Review Analyst was approved but was not funded. Through excellent budget management the Review Office has been able to fund the fifth FTE within the existing budget. The Review Office made a modest request for additional funding to enable more timely processing of Requests for Review. That request was denied and the Review Office budget was in fact reduced.

Where Do We Want to Be?

In the future, the Review Office wants the public and those working as FOIPOP Administrators to have a greater public understanding of the legislation by expanding an appreciation for precedent

and increasing the numbers of Informal Resolutions reached earlier in the Review process. This will enable the Review Office to continue to evaluate and improve the timelines for all phases in a Review.

Best practices in Review Officer/Commissioner offices mean maintaining an independent oversight review process that is timely, competent and respectful, which is largely dependent on being adequately resourced. In order to properly serve the public, the Review Office commits to working with the Treasury Board and Policy and Priorities Committee, and the Minister of Justice in the coming months in order to properly and fairly evaluate the additional modest resources that are required for the Review Officer to fulfill her new privacy mandate and anticipated health information oversight.

2. Core Business Area 2: Requests for Review of Privacy Complaints

Outcome:

Promoting the Review Officer as the independent oversight body for Privacy Requests for Review. Promoting public education on privacy protections.

In the 2009-2010 Business Plan the Review Office stated that the measure would be met if there was an increase in the number of privacy inquiries and investigations. During this last year, the Review Office has concluded that this is not an accurate way of measuring for the desired outcome particularly since the Review Office has no control over how many inquiries or complaints are received.

What Does this Measure Tell Us?

Continuing to receive Privacy Requests for Review 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. Up until September 2009, the oversight of public body decisions was done on a case by case basis with the consent of the public body against whom the complaint had been made. The requirement for obtaining a public body's consent had been a concern but during 2009-2010 there were no instances where a public body refused to participate in a Review Office investigation of a privacy matter.

Where Are We Now?

New legislation was proclaimed in September 2009 - the *Privacy Review Officer Act* - provides for clear statutory independent oversight of provincial public body decisions with respect to privacy protections contained in the *Freedom of Information and Protection of Privacy Act*.

The Review Office was committed to continue to pursue a solution to the gap in legislated protections for citizens with respect to their privacy rights. The gap in protection remained a major concern of the Review Officer during most of 2009. In November 2008, a private member's bill, the *Privacy Review Officer Act*, was introduced and passed in the House of Assembly. This statute was proclaimed just under a year later on September 25, 2009.

Respecting Your Access and Privacy Rights: A Citizen's Guide for Nova Scotians, which was developed and distributed in previous years, includes discussion on access and privacy.

The Department of Health is developing personal health information legislation and those responsible for its development have actively engaged the Review Officer in consultations regarding the means to achieve independent statutory oversight with respect to access and privacy for personal health information. The legislation continues to be a work in progress and expected to be tabled in the Fall of 2010. In addition, the Review Officer is an active participant in the Pan-Canadian Forum set up by Canada Health Infoway that brings together health officials and independent oversight bodies from across Canada.

In 2008 there were 2 Privacy Requests for Review and in 2009 there were 8 Privacy Requests for Review opened.

Where do We Want to be?

The proclamation of new legislation making provision for a provincial privacy oversight body - the Privacy Review Officer - has made the law clear that Nova Scotians now have access to a complaint mechanism with respect to privacy matters involving all provincial public bodies. There is a gap, however, as there is no equivalent oversight with respect to privacy matters at the local government level: cities, municipalities, towns, villages, district authorities and police departments. The Review Office will continue to do its part to promote the adoption of legislation to ensure that this absence of independent oversight for Privacy Requests for Review concerning local government public bodies is rectified in the near future.

3. Core Business Area 3: Awareness and Education

Outcome:

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

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

What Does this Measure Tell Us?

This measure shows the FOIPOP Review Officer's commitment to developing an education and communication strategy to ensure that members of the public are aware of and understand their rights under the *Acts*.

Where Are We Now?

A listing of functions, presentations, information sessions and other engagements can be found in the 2009 Annual Report [January to December] tabled May 10, 2009.

The local media, including newspaper and television, appear to be more aware of and engaged with the Review Office enabling it to promote its mandate in a broader and more visible way.

The Review Office held a contest during the 2009 Right to Know Week. This was a modest way for the Nova Scotia oversight body to participate in the provincially, nationally and internationally designated week to celebrate the right to access information with limited resources.

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, resources permitting.

Design a written communication strategy over the next 12 months.

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 Review Office website.

What Does this Measure Tell Us?

This measure shows the FOIPOP Review Office's commitment to making sure that members of the public are aware of and understand their rights under the *Acts* including to help parties to a Review understand what to expect during the Review process.

Identifying best practices from other jurisdictions and promoting them within Nova Scotia will assist the Review Office to assure itself that its practices and processes are in line with quality and effective service as one of the provincial/territorial independent oversight bodies and to ensure those promoted 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 was met in 2008. During that period, the Review Process document, which explains to the parties what to expect during all stages of the Review process, was updated and shared with FOIPOP Administrators. It has been posted to the Review Office website to assist the public and professionals to become familiar with Review processes. It was the main topic of the presentation by the Review Office at the Forum hosted by the Department of Justice IAP Office.

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

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

Where Do We Want to be?

Where we want to be remains unchanged from the last Accountability Report. Due to the fact that the Review Office is not funded beyond core activities, it lacks the resources to allocate staff time to identify, research and develop best practices for processing and investigating Access and Privacy Requests for Review that are consistent with and in-line with other like-minded Commissioners/Ombudsman/oversight bodies across Canada and internationally.

The Review Office also needs additional resources to upgrade its website particularly now with its mandate with respect to independent privacy oversight. This would include creating a new section devoted to privacy and an expanded Frequently Asked Questions section. The Review Office has never received an appropriate budget for website development or website management and has done it largely internally. The Department of Justice that provides some support services to the Review Office with respect to human resources and budget development has never provided appropriate support or resources to manage the website. In the age of information technology and given the role of the Review Office as the oversight body for access to information, this situation is very problematic and needs to be addressed in the near future.