



**FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY
REVIEW OFFICER
Dulcie McCallum**

**ANNUAL ACCOUNTABILITY REPORT FOR THE FISCAL YEAR
2010-2011**

Final
July 5, 2011

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ACCOUNTABILITY STATEMENT

The Freedom of Information and Protection of Privacy Review Office Accountability Report for the year ending March 31, 2011 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's Statement of Mandate for the 2010-2011 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 Review Officer and as 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 Statement of Mandate for the fiscal year 2010-2011. This Accountability Report [April to March] is consistent with the Freedom of Information and Protection of Privacy Review Office 2010 Annual Report [January to December 2010] tabled with the House of Assembly on April 1, 2011. As a public office required by statute to file an Annual Report with the House of Assembly, this Accountability Report is largely a recap of what is contained in the calendar year Annual Report but based on the fiscal year.

Dulcie McCallum

Freedom of Information and Protection of Privacy Review Officer

June 29, 2011

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

Dulcie McCallum

I am pleased to provide the Freedom of Information and Protection of Privacy Review Office's Accountability Report for 2010-2011. 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 provincial and municipal public bodies regarding access to information requests, and correction of personal information requests. The Review Officer is also the oversight for Review of provincial public bodies responses to privacy complaints. As one of several independent offices in Nova Scotia including the Auditor General, the Ombudsman, the Chief Electoral Officer and the Human Rights Commissioner, I am fully committed to the principles of open, transparent and accountable government.

I can report that the Review Office has largely achieved 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. After careful review, one of the measures of performance is being reconsidered. Each Review is distinct and the extent to which the staff at the Review Office are able to achieve an informal resolution is open to a multitude of variables including the issues at stake, willingness of parties, and the competence, familiarity and experience of FOIPOP/IAP Administrators with the process. So while each staff person has the delegated authority to try to achieve informal resolution to promote early access to records held by government, the actual number achieved is not an accurate measure of performance. In many respects the number is beyond the control of the Review Office. What is important is the percentage of Requests for Review that do not reach formal Review.

The historical 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*. While this legislation providing Nova Scotians with privacy protections was welcome, the Review Office has one major concern, which has been brought to the attention of government and the House of Assembly. The concern is that there is no statutory privacy independent oversight for local governments bodies such as cities, municipalities, towns, villages, district authorities and police departments. These public bodies fall under *Part XX* of the *Municipal Government Act* but are not covered under the *Privacy Review Officer Act*, which means citizens do not have the ability to have their privacy complaint against a municipal public body reviewed by the Review Officer as an independent oversight body. Upon application by the FOIPOP Review Officer, Nova Scotia was granted international accreditation at the 32nd International

Conference of Data Protection and Privacy Commissioners Conference held in Israel last October. Having received international accreditation for data protection, it is important that this gap in independent oversight of local government be closed by an amendment to *Privacy Review Officer 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, Mediation and formal Review process for Requests for Review of decisions made by public bodies with respect to Applications for Access to a Record and privacy complaints.
- 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, Deputy Head
Freedom of Information and Protection of Privacy Review Officer

FINANCIAL RESULTS

Freedom of Information and Protection of Privacy Review Office 2010-2011		
	2010-2011 Estimate	2010-2011 Actual
	(\$ thousands)	(\$ thousands)
Program Expenses	57	59.4
Salaries and Employee Benefits	341	392.2
Subtotal	398	451.6
Less Chargeables to Other Departments (Salary Increases)	0	53.7
TOTAL	398	397.9
Funded Staff (FTE's)	5.0	5.2

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 our full compliment of staff has allowed for a realignment of business processes that will greatly assist in meeting the challenges at the Review Office and enhancing public service.

Measuring Our Performance as identified in the 2010-2011 Statement of Mandate:

1. Requests for Review of Access Decisions

Outcome:

Educating the public and those working as FOIPOP/IAP Administrators on the role of the Review Office and encouraging those parties to apply precedents to the matter at hand thereby expediting the resolution of Request for Review to better serve the public. Issuing public reports after formal Review that provide guidance with respect to the interpretation of access legislation.

Increase the number of Request for Review resolved earlier in the process either at Intake, during Case Review Analysis or Investigation through informal 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 - earlier access to information held by government and earlier resolution of Requests for Review.

Where Are We Now?

The number of Review files resolved through Informal Resolution decreased from 66 in 2009 to 53 in 2010. At the same time the number of formal Reviews Reports dropped from 16 in 2009 to 10 in 2010. Continued efforts to make the public more aware of the Review Office are reflected in other statistics. For example, the number of inquiries fielded at Intake increased from 1,163 calls in 2009 to 1,309 calls in 2010. Despite this increased call volume, indicating increased awareness of the work of the Review Office, the number of Requests for Review continued to drop from 85 provincial, 24 municipal with a total of 110 in 2009 to 77 provincial, 18 municipal for a total of 95 in 2010. Graphs of these statistics are available in the 2010 Annual Report attached hereto.

It has become apparent that it is difficult to measure success based on the number of informal resolutions in Reviews. There are many variables that impact on the opportunity to reach an informal resolution: issues at stake, willingness of parties, and the competence, familiarity and experience of FOIPOP/IAP Administrators with the process.

At present, the Review Office has no discretion to decline Requests for Review that are frivolous, vexatious or made in bad faith. The Minister of Justice is aware of our request to have this considered as an amendment to the *Acts*. It is important that such complaints are handled early in the process because where no real remedy is available under the *Acts* applicants can become frustrated, cynical and often angry. An increased number of calls at Intake 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 Friday April 1, 2011.

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 available tools such as previous Review Reports, Court decisions and other persuasive precedents and jurisprudence 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/IAP 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 a full and comprehensive investigation, based on the circumstances, some Reviews may need to be expedited. The test used by the Review Officer to expedite is where the circumstances require more urgency than others, such as health or safety reasons or where it is in the public interest such as where an applicant demonstrates access to a Record after the fact will render the purposes stipulated in the legislation - for engagement of the public in policy formulation and airing of divergent views - frustrated and meaningless.

With respect to educational outreach, the Review Office 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, the Right to Know Week event at Kings College in Halifax and the Dalhousie University Data Protection Day. Steps have been taken to have the *Citizen's Guide* translated into French to promote greater understanding of citizens' access to information and privacy rights in the Acadian and francophone communities.

The Review Office 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 [or list serve, means a software program that manages email

transmissions of messages and Review Reports from the Review Officer to a list of voluntary subscribers] ensuring that each Report is comprehensive and lays out jurisprudence from earlier Reviews Reports, Court cases in Nova Scotia and other Canadian precedents. The Review Office has made all Review Reports available to be an educational tool for FOIPOP/IAP 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 precedents. All Review Reports are available on our website at www.foipop.ns.ca through the link at All Reports to the Canadian Legal Information Institute ["CanLII"].

Changes in Measures

One of the goals of the Review Office set out in the 2010-2011 Statement of Mandate was not reached: the number of informal resolutions did not increase. Each Review is distinct and the extent to which the staff at the Review Office is able to achieve an informal resolution open to a multitude of variables including the issues at stake, willingness of parties, competence, and familiarity and experience of FOIPOP/IAP Administrators with the process. So while each staff person has the delegated authority to attempt informal resolution to promote early access to records held by government, the actual number achieved is not an accurate measure of performance. In many respects the number is beyond the control of the Review Office. What is important is the percentage of Requests for Review that do not reach formal Review. The performance measure of simply recording the number of informal resolutions is being reconsidered. The numbers explain the issue. In 2008 there was a total of 59 Requests for Review closed of which 28 were informally resolved, just under 50%. In 2009 of the 123 Requests for Review closed, 66 were informally resolved, approximately 50%. In 2010 of the 78 Requests for Review closed, 53 were informally resolved, which is nearly 60%. It is the percentage of closed Review Requests that are informally resolved that is the more accurate measure of performance. Had we chosen this measure originally, the Review Office would have fully met this goal.

Where Do We Want to Be?

In the future, the Review Office wants the public and those working as FOIPOP/IAP Administrators to have a greater understanding of process by providing parties with research, precedents, tests, statutory references in the legislation and definitions early in the process. This allows for issues to be clearly established so that all parties to the Review can make informed decisions on the likely outcomes and their position on the issues in the Review thus increasing the numbers of informal resolutions. In addition, business improvements are being implemented at the Review Office which should achieve a higher rate of early resolution of Reviews, both informal and formal.

Best practices in all Canadian Review Officer/Commissioners' offices mean maintaining an

independent oversight review process that is timely, competent and respectful. In order to properly serve the public, we have committed to working with the Treasury Board and Policy and Priorities Committee and the Minister of Justice in the Review Office's Statement of Mandate for 2010-2011 to properly and fairly evaluate the additional modest resources required for the Review Officer to fulfill her mandates. This was achieved.

2. Requests for Review of Privacy Complaints

Outcome:

Educating the public regarding the Privacy Review Office as the statutory oversight body for privacy complaints. Fulfilling the statutory mandate of public education on privacy matters.

Provide comprehensive information to all privacy inquiries and conduct through investigations into all Privacy Requests for Review opened.

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 know that the Privacy Review Officer is the independent oversight statutory body where they can find out information about their privacy rights and/or to seek an impartial review of decisions made by provincial public bodies against whom a privacy complaint has been lodged.

Where Are We Now?

In 2008, there were 2 Privacy Requests for Review and 95 privacy inquiries at Intake. In 2009, there were 8 Privacy Requests for Review opened, 5 privacy files closed and 136 privacy inquiries at Intake. In 2010, 8 complaints were received, 6 privacy files were closed and there were 73 privacy inquiries at Intake. Graphs of these statistics are available in the 2010 Annual Report attached hereto.

We achieved the privacy goal to provide comprehensive information to inquiries and conduct thorough and impartial investigations.

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.

The Review Office appreciates the need for greater understanding of the new privacy protections. To this end we have been committed to fulfilling the statutory education mandate by promoting consultations with public bodies and to initiating our own privacy complaints where appropriate. In this way we can help to clarify our mandate publicly and educate all Nova Scotians regarding privacy rights.

Supplemental Information and Appendices

For more details regarding the work of the Review Office, refer to the 2010 Annual Report for the Freedom of Information and Protection of Privacy Review Officer tabled with the House of Assembly on April 1, 2011 and is appended hereto. The Annual Report is available electronically through the Publications link on our website at www.foipop.ns.ca