



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

**ANNUAL ACCOUNTABILITY REPORT FOR THE FISCAL YEAR
2011-2012**

Final Report
July 27, 2012

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ACCOUNTABILITY STATEMENT

The Accountability Report of the Freedom of Information and Protection of Privacy Review Officer for the year ended March 31, 2012 is prepared pursuant to the *Finance Act* and government policies and guidelines. These authorities require the reporting of outcomes against Freedom of Information and Protection of Privacy Review Officer's Statement of Mandate for the fiscal year 2011-2012. The reporting of the Freedom of Information and Protection of Privacy Review Officer's outcomes necessarily includes estimates, judgments and opinions by the Freedom of Information and Protection of Privacy Review Officer's management.

We acknowledge that this Accountability Report is the responsibility of the management of the Office 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 Officer's 2011-2012 Statement of Mandate.

As the Review Officer established by the *Freedom of Information and Protection of Privacy Act, Part XX* of the *Municipal Government Act* and the *Privacy Review Officer Act*, collectively referred to herein as the *Acts*, I am under a statutory duty to file an Annual Report with the House of Assembly. This Accountability Report is consistent with the Freedom of Information and Protection of Privacy Review Officer's 2011 Annual Report [January to December 2011] tabled with the House of Assembly on May 9, 2012. All statistics for the Freedom of Information and Protection of Privacy Review Office are reported in the Review Office Annual Report. This Accountability Report is in large part a recap of what is contained in the calendar year Annual Report, but is based on the fiscal year and meets the Accountability Reporting Guidelines set out by the Treasury and Policy Board for Accountability Reports.

Dulcie McCallum, LLB
Deputy Head
Freedom of Information and Protection of Privacy Review Officer
June 29, 2012

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

Dulcie McCallum, Deputy Head

I am pleased to provide the Freedom of Information and Protection of Privacy Review Officer's Accountability Report for 2011-2012. I am appointed the Review Officer under 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 the 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 openness, transparency and accountability.

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. In last year's Accountability Report, I explained a change in how we report our success in meeting our goal of informal resolutions as a measure of our performance. As I indicated, 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 and applicants with the process. So while each staff member has the delegated authority to try to achieve informal resolution to promote early access to records held by the government, the actual number achieved is not an accurate measure of performance. In many respects the number of closed Review files as a result of informal resolution is largely beyond the control of the Review Officer. What is important is the percentage of Requests for Review that are closed based on an informal resolution that does not reach formal Review. We will once again be reporting on that basis.

The historical gap with respect to privacy oversight for provincial government bodies was rectified with the introduction and proclamation of, the *Privacy Review Officer Act*. While this legislation providing Nova Scotians with privacy protections was welcome, the Review Office has one outstanding 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 government 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 the 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 in 2010. 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 *Part XX* of the *Municipal Government Act* or the *Privacy Review Officer Act*. Both the Ministers of Justice and Service Nova Scotia and Municipal Relations have been receptive to the need to close the gap and to move forward with providing privacy oversight protection at the municipal level.

In Appendix A of this Accountability Report, I have reported, as is required by the *Public Interest Disclosure of Wrongdoing Act [PIDWA]* on any disclosures made to the Review Officer in 2011. In addition, as required by the *PIDWA*, I have named the Director for the Review Officer as the designate under the statute, to whom disclosures are to be reported.

This Accountability 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, LLB
Deputy Head
Freedom of Information and Protection of Privacy Review Officer

FINANCIAL RESULTS

Freedom of Information and Protection of Privacy Review Office 2011-2012		
	2011-2012 Estimate	2011-2012 Actual
	(\$ thousands)	(\$ thousands)
Program Expenses	92.0	61.6
Salaries and Employee Benefits	430.0	435.8
Subtotal	522.0	497.4
Less Chargeables to Other Departments (Salary Increases)	0	0
TOTAL	522.0	497.4
Funded Staff (FTEs)	6	6

MEASURING OUR PERFORMANCE

Measuring Our Performance as identified in the 2011-2012 Statement of Mandate:

1. Requests for Review of Access Decisions

Outcomes:

Educating applicants, third parties and those working as FOIPOP/IAP Administrators about 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 informative and clear public reports after formal Reviews that provide guidance including precedents and appropriate interpretation of access to information legislation.

Respond to 100% of all inquiries about access and Reviews at Intake within 2 business days.

Increase the number of Review Requests resolved early in the process through informal resolution.

Increase the number of Review Reports relied upon by the Portfolio Officers and the Investigator [now Director] for discussions and negotiations in achieving formal resolutions.

What Does this Measure Tell Us?

This measure is intended to demonstrate to the Review Officer 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 public bodies or municipalities 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 and increased to 54 in 2011. At the same time the number of formal Reviews Reports dropped from 16 in 2009 to 10 in 2010 and again dropped to 8 in 2011 [one Review Report collapsed four Requests for Review, thus the actual number of Review Reports issued was 8 in 2011 however counted as 12 Review Requests closed by formal Review].

Continued efforts to make the public more aware of the Review Officer 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 and again increased significantly to 1,852 in 2011. This constitutes a 41% increase in the number of inquiries at Intake.

In recent years the number of Requests for Review dropped from 85 provincial, 24 municipal with a total of 110 in 2009 to 77 provincial, 18 municipal for a total of 95 in 2010. In 2011 the number of Review Requests increased to 73 provincial, 34 municipal for a total of 107. Increase

in actual numbers of Review files is 12 which constitutes a 13% increase. Graphs of these statistics are available in the 2011 Annual Report attached hereto as Appendix B.

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. The volume of calls at Intake also impacts on the available time for Intake to devote to pursuing an informal resolution as soon as the Review file is opened.

The Review Officer still does not have discretion to decline Requests for Review that are frivolous, vexatious or made in bad faith though that has been rectified in the *Personal Health Information Act*, proclamation of which is pending. The Minister of Justice is aware of our request to have this considered as an amendment to the existing *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 companion increase in the number of Requests for Review indicates that the Review Officer is succeeding in educating the public about access and privacy and what remedies are available through a Request for Review.

Key to the effectiveness of the Review Officer is being able to process Requests for Review in a timely and efficient manner. To assist in this the Review Officer implemented two procedures last year that continue to prove effective.

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. The way in which this is accomplished is by making specific provision in all the staff delegations. 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.

A third procedure has been introduced to enhance effectiveness and accountability. This added step to the Review process was announced in the 2011 Annual Report: now all decision letters from public bodies provided to applicants and/or the Review Officer in response to the findings and recommendations in a formal Review Report will be posted on the Review Officer's website after the Review is concluded. In the past, the outcome of the public bodies' responses were simply reported as accepted, accepted in part or not accepted. A decision was made that if public

bodies and the public were aware of the exact reasons given by a public body for accepting or not accepting the Review Officer's recommendations, this would provide greater clarity. Public bodies being aware their decision letters will be made public may have the added benefit to assist in resolving, mediating and closing Review files prior to formal Review.

At all times, once a matter has been referred for formal Review, the Review Officer attempts to finalize the Review Report as quickly as possible. The time at formal Review ranges from 4 to 90 days for an average of approximately 40 days.

Changes in Measures

The change in how to measure informal resolutions by percentage rather than numbers continued in 2011. 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%. In 2011 of the 85 Requests for Review closed, 54 were informally resolved, which is 64%. This is 1% shy of the target of an increase of 5%.

Where Do We Want to Be?

In the future, the Review Officer 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 by the Review Officer 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. Government has been made aware and has recognized the increased demands on the Review Officer and has responded with respect to limiting the reduction of resources to the office.

The increased demand at Intake and the increased number of Requests for Review indicate a growing public understanding about the role of the Review Officer. Looking at the number of reviews opened by applicant group indicate an increase in the number of access requests from the general public [64 in 2010 and 72 in 2011] and from organizations [16 in 2010 and 25 in 2011]. The volume of work and the limited number of staff equate to Reviews not being processed in as timely a fashion as would be ideal. The proposed additional mandates planned for the Review Officer will compound this problem without additional staff.

2. Requests for Review of Privacy Complaints

Outcomes:

Educating applicants, third parties and public bodies regarding the Privacy Review Officer as the statutory oversight body for privacy complaints under the *Privacy Review Officer Act*.

Be open to all requests for a privacy consultation from public bodies.

Initiating own motion privacy investigations where appropriate.

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

Continue to improve and upgrade website in order to provide more information about access and privacy to the public.

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 understand 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 2010, 8 complaints were received, 6 privacy files were closed and there were 73 privacy inquiries at Intake. In 2011, 7 privacy complaints were received, 3 privacy files were closed and there were 228 privacy inquiries at Intake. This is an increase of 155 inquiries, which constitutes a 47% increase. We achieved the privacy goal to provide comprehensive information to all inquiries received at Intake. Graphs of these statistics are available in the Review Officer's 2011 Annual Report attached hereto.

The Review Officer initiated one own-motion investigation into allegations of Workers' Compensation Board disclosing personal information of many workers/claimants constituting a breach that resulted in a public report *Privacy Matters: Creating a Zero Tolerance Privacy Environment*. This highly publicized report enabled the Review Officer to achieve the privacy goal to conduct a thorough and impartial investigation while at the same time educating the public.

The Review Officer received two requests for consultation from public bodies. One request was from the Office of the Premier regarding the collection and sharing of personal information (age) under the new *Elections Act*. The second consultation request was from the Capital Health Authority regarding proposed information sharing guidelines in its mental health program.

Where do We Want to be?

Where we want to be in the coming year: 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 and municipal public bodies. The gap with respect to oversight of privacy matters at the local government level: cities, municipalities, towns, villages, district authorities and police departments, has been corrected.

The Review Officer will continue to do her 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 and to work with the Ministers of Justice and Service Nova Scotia and Municipal Relations to that end.

The Review Officer 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 investigations where appropriate. In this way we can help to clarify our mandate publicly and educate all Nova Scotians regarding their privacy rights and protections.

3. Access and Privacy: Education and Outreach

Outcomes:

Educate the public about the role of the Review Officer with respect to access and privacy.

Provincial recognition that publicizes the Review Officer gained accreditation as an in international Data Protection and Privacy office.

Explore training needs of local governments.

Take steps to prepare for the proclamation of the new *Personal Health Information Act*.

Engage in one educational event at the international level.

Plan at least one event to mark Right to Know Week.

Host or support an event to mark Data Privacy Day.

Continue to offer to assist to provide training about the Review process for local/municipal public bodies.

Initiate or respond to at least two meetings or consultations with health custodians, health officials or other stakeholders.

What Does this Measure Tell Us?

This measure indicates to the Review Officer whether the public has a good understanding that the Review Officer is the independent oversight statutory body where they can find out information about their right to access information and right to privacy and how and where to seek an impartial review of decisions made by provincial and municipal [not privacy yet] public bodies against whom Request for Review has been filed.

Where Are We Now?

The Review Officer was a speaker at the 7th International Conference of Access to Information Commissioners in Ottawa, hosted by the Canadian Office of the Information Commissioner. As part of a panel, the Review Officer provided an overview on exercising discretion for discretionary exemptions.

The Review Officer was invited to be a keynote speaker at the Canadian Access and Privacy Association [CAPA] Conference in Ottawa.

The Review Officer attended the annual Federal Provincial Territorial Commissioners' meeting held in Quebec City. This two-day closed meeting enables commissioners to discuss important issues of the day and to exchange best practices.

During Right to Know Week, the Review Officer held an Open House to which all FOIPOP/IAP Administrators were invited. The attendees were given light refreshments and a tour of the office. The event was well attended and well received. We plan to keep this as an annual event and encourage FOIPOP/IAP Administrators to attend.

Review Officer staff presented on the Review process at the Atlantic Access and Privacy Workshop.

With respect to educational outreach, the Review Officer continued to promote the plain language guide - *Respecting your Access and Privacy Rights, A Citizen's Guide for Nova Scotians* - and other information through direct distribution including the Review Officer's website and Right to Know Week, Data Privacy and Law Day events.

A representative of the Review Officer is a member of the French-language Services Committee and the Review Officer is committed to equal access to the Review Office for all Nova Scotians. To that end, the *Citizen's Guide* has been translated into French and is available on the Review Officer's website in order to promote greater understanding of citizens' access to information and privacy rights in the Acadian and francophone communities.

One of our strategic actions for 2011 was to empower parties in the Review process including Applicants. A document *What an Applicant Needs to Know: Your Responsibilities* first appeared in our 2011 Annual Report and is now shared through the initial communications with applicants and is available at public education sessions. The other half of the equation in the Review process is what is meant by a public body's statutory duty to assist applicants, which will also be available on the web and at FOIPOP/IAP Administrators' training events. These companion

pieces help to clarify all parties' roles and responsibilities and are made available to develop respectful relationships with all parties to a Review.

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 Officer 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, and to the Canadian Legal Information Institute ["CanLII"].

We hosted an information booth to provide information regarding privacy protections at the Dalhousie University Data Protection Day.

In April, 2011, we also hosted an information booth to provide access and privacy information at the Provincial Courthouse on Law Day.

A plan to work with the Association of Municipal Administrators has been started to enable the Review Officer to provide training opportunities with respect to the Review process directly to those responsible for access and privacy at municipal public bodies.

The Review Officer received a request from the Office of the Premier to engage in a consultation regarding the collection and sharing of personal information (age) under the new *Elections Act*. This consultation was successful in working out a solution to identifying voters by age to enable government to improve voter turnout while at the same time protecting the personal information of voters [age].

The Review Officer also undertook a consultation at the request of Capital District Health Authority with respect to Mental Health Information Sharing Guidelines.

Continued another year of consultation with Department of Health officials with respect to the pending proclamation of the *Personal Health Information Act*. The discussions focused on both access and privacy rights in the health context particularly in relation to the new health [private sector] custodians.

Where do We Want to be?

A pre-planned program of opportunities for training on access and privacy for municipal public bodies.

A pre-planned program of opportunities for training on access and privacy and for the new custodians under the pending *Personal Health Information Act*.

Increased number of requests to speak at non-traditional groups.

Supplemental Information and Appendices

Appendix A

Annual Report under Section 18 of the *Public Interest Disclosure of Wrongdoing Act*

Table A.1

The following is a summary of disclosures received by the Freedom of Information and Protection of Privacy Review Officer

Information Required under Section 18 of the Act	Fiscal Year 2011 - 2012
The number of disclosures received	Nil
The number of findings of wrongdoing	N/A
Details of each wrongdoing	N/A
Recommendations and actions taken on each wrongdoing	N/A

Appendix B

Section 33(7) of the *Freedom of Information and Protection of Privacy Act* states:

*The Review Officer shall issue an annual report on the exercise of the functions of the Review Officer under this Act and shall lay the report before the House of Assembly.
[Act to be read as Acts to include other governing statutes]*

The Accountability Reporting Guidelines provide that any information required by legislation, not required by the guidelines should be included in the Accountability Reports. To the extent that this Accountability Report does not give a full report on the functions of the Review Officer.

Complete details regarding the work of the Freedom of Information and Protection of Privacy Review Officer can be found in the 2011 Annual Report for the Freedom of Information and Protection of Privacy Review Officer [tabled with the House of Assembly on May 9, 2012], appended hereto. The Annual Report is available electronically through the Publications link on our website at

www.foipop.ns.cahttp://www.foipop.ns.ca/fib_annual.html<http://www.foipop.gov.ns.ca>