



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

**ANNUAL ACCOUNTABILITY REPORT FOR THE FISCAL YEAR
2012-2013**

Final
August 1, 2013

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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, 2013 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 2012-2013. 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.

We 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 Officer's 2012-2013 Statement of Mandate.

As the Review Officer established by the *Freedom of Information and Protection of Privacy Act [FOIPOP Act]*, Part XX (20) of the *Municipal Government Act [MGA]*, the *Privacy Review Officer Act [PRO Act]*, and the *Personal Health Information Act [PHIA]* collectively referred to herein as the *Acts*, I am under a statutory duty to file an Annual Report with the House of Assembly [no specified date]. This Accountability Report is consistent with the Freedom of Information and Protection of Privacy Review Officer's 2012 Annual Report [January to December 2012] tabled with the House of Assembly on April 18, 2013. All statistics for the Freedom of Information and Protection of Privacy Review Officer are reported in the Review Officer's Annual Report. This Accountability Report is consistent with what is reported in the 2012 Annual Report, but is based on the fiscal rather than the calendar 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
Privacy Review Officer
August 1, 2013

**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 2012-2013. I am appointed the Access and Privacy Review Officer (Commissioner) under the *Acts*. The Review Officer is established as the statutory independent oversight body mandated to investigate and review decisions made by provincial public bodies, municipalities, and health custodians regarding access to information requests and correction of personal information requests. The Review Officer is also the oversight for privacy complaints for provincial public bodies and health custodians.

The Review Office was particularly busy during 2012 because in addition to fulfilling its statutory mandates I hosted the Federal/ Provincial/ Territorial Information and Privacy Commissioners' Summit in Halifax from September 04 – 07, 2012.

I am able to report that the Office of the Review Officer has largely achieved its goals. In those cases where full realization of the goal was not possible, I am satisfied that the Review Office has done its due diligence and made all reasonable efforts to achieve its goal. Where goals and outcomes have been changed it is largely as a result of decisions made by public bodies beyond the control of the Review Officer.

Last year once again, I identified the gap with respect to privacy oversight for municipalities as an outstanding concern. This had already been brought to the attention of government and the House of Assembly. The concern that there is no statutory privacy independent oversight for local government bodies such as cities, municipalities, towns, villages, district authorities and police departments, which remains a problem as it was not rectified during 2012.

I identified privacy consultations as one of the best forums in which to educate and build relationships with public bodies. These requests are made under the *PRO Act* [and will also be available in 2013 under the *PHIA*]. These consultations have proven to be highly successful.

Preparation for *PHIA* was given considerable attention by the Review Office during 2012. The proclamation of this new legislation scheduled for 2012 was delayed to 2013. Despite the delay,

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the Review Officer recognized that the new statute will present many new challenges for the investigative team which required advance attention and study.

As one of the several independent oversight 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.

Appendix A reports to this Report provides, as is required by the *Public Interest Disclosure of Wrongdoing Act [PIDWA]*, that there have been no disclosures of wrongdoing reported our office between April 1, 2012 and March 31, 2013.

Appendix B provides a link to my 2012 Annual Report that reports information that goes beyond the requirements outlined in the Guidelines for the Accountability Report.

Respectfully submitted,

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 2012-2013		
	2012-2013 Estimate	2012-2013 Actual
	(\$ thousands)	(\$ thousands)
Program Expenses	99.0	130.6
Salaries and Employee Benefits	444.0	448.5
Subtotal	543.0	590.9
Less Chargeables to Other Departments (Salary Increases)	0	68.3
TOTAL	543.0	510.8
Funded Staff (FTEs)	6	6

MEASURING OUR PERFORMANCE

Measuring Our Performance as identified in the 2012-2013 Statement of Mandate:

1. Requests for Review of Access Decisions

Outcomes:

Educating applicants, third parties and those working as FOIPOP Administrators about the role of the Review Officer and, in particular, under PHIA.

Encouraging all parties to apply precedents to the matter at hand thereby expediting the resolution of Requests for Review to better serve the public and public bodies.

Issuing informative and clear public Reports after formal Review that provide guidance including precedents and the appropriate interpretation of access to information legislation.

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

Maintain the percentage of Review Requests resolved early in the process through informal resolution.

Maintain the number of Review Reports relied upon by the Review Office team in negotiating and achieving informal resolutions during intake and investigations.

What Does this Measure Tell Us?

This measure is intended to demonstrate the Review Officer's ability to comply with the "forthwith" requirement upon receiving a Request for Review and the extent to which our efforts to educate the public and the professionals working in the access and privacy field are having the desired outcome - earlier access to information through informal resolutions during the Review process.

Where Are We Now?

The number of Review files resolved through Informal Resolution increased to 58 in 2012 from 54 in 2011.

At the same time the number of formal Reviews Reports dropped from 10 in 2010 to 8 in 2011 and remained steady at 8 in 2012.

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 1,309 calls in 2010 to 1,852 in 2011 with another increase to 1,866 in 2012.

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. In 2012 the number of Requests for Review increased to 78 provincial, 34 municipal for a total of 112.

The number of Time Extension Requests increased dramatically to 48 in 2012 from 22 in 2011. Additionally, the number of Time Extension Complaints increased from 2 in 2011 to 7 in 2012. The number of “deemed refusals” increased from 1 in 2011 to 8 in 2012. These statistics indicate a pattern of some concern to the Review Officer as to the ability of some public bodies to meet their obligatory statutory timelines to make a decision and to process an Application for Access to a Record in a timely fashion.

Where Do We Want to Be?

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 thought no increase to reflect new mandates.

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 to 86 in 2012]. 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 additional mandates planned in 2013 for the Review Officer will compound this problem without additional staff.

We want to explore strategies that will improve the performance of public bodies to meet their statutory obligations particularly with respect to timeliness.

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* and *PHIA*.

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

Initiate own motion privacy investigations where appropriate.

Provide comprehensive information to all privacy inquiries and conduct thorough 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.

Monitor media and public reports on privacy to evaluate whether a privacy breach has occurred or a privacy issue has the potential to affect the public's privacy rights under the governing statutes.

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 statutory independent oversight 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.

The number of requests for consultation will be an indication as to the extent to which public bodies understand the new statutory roles of the Privacy Review Officer.

Where Are We Now?

In 2011, 7 privacy complaints were received, 3 privacy files were closed and there were 228 privacy inquiries at Intake. This was an increase of 155 inquiries, which constitutes a 47% increase. In 2012 the number of privacy inquiries dropped to 170.

The Review Officer received two requests for consultation from public bodies in 2011. The number increased dramatically in 2012 to 12 [total of 11 as one was non-jurisdictional]. Five consults were undertaken and completed. Six are ongoing in 2013. Privacy consultations can only be undertaken at the request of a public body. What goes on in the consultation is held in confidence. The list what agencies made the consultation requests is available in the Annual Report at p. 20.

Improvements to the website were delayed due to government as a whole undergoing transition to a new system. At the time of writing this report the problem has been resolved. The content management of our website can now be done in-house in a more comprehensive and timely manner.

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, will be corrected.

PHIA will be proclaimed in 2013 as it did not get proclaimed during 2012 as planned. The plans with respect to proclamation are totally within the control of the Department of Health and Wellness. A Proclamation date for *Part XX* (20) of the *MGA* privacy oversight has not been set but is planned for 2013.

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 international Data Protection and Privacy office.

Explore training needs of smaller municipalities and other small public bodies.

Take steps to prepare for the proclamation of the new *PHIA*.

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

Hosting or supporting an event to mark Data Privacy Day.

Engage in one educational event at the international level.

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 the extent to which the Review Officer has taken the initiative to try and improve the public's understanding of the role of a statutory independent oversight body with respect to access and privacy.

Where Are We Now?

In April 2012, Director of the Review Office hosted an information table at Law Day in Halifax.

At the Annual to Maritime Access and Privacy Conference held in Halifax, the Review Officer made a presentation on the importance and role of an Annual Report for a statutory independent oversight body – June 06 & 07, 2012.

The Review Officer hosted the Annual Federal/Provincial/Territorial Information and Privacy Commissioners' Summit in Halifax. The Minister of Justice was the keynote speaking at the

opening reception at Pier 21 which included key stakeholders. The three day meeting period included a reception with the Lieutenant Governor and the Speaker of the House. Key topics formed the agenda: legislative reform, MLA/MP expenses, electronic records management, biometrics, smart data, identity management and perimeter security – September 04 – 07, 2012.

Review Office staff attended and participated in one FOIPOP Administrator Training by Justice – September 26, 2012.

During International Right to Know Week, the Review Officer held its second annual 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 – September 27, 2012

Also in celebration of International Right to Know Week, the Review Office made presentations at the Dalhousie University Schulich School of Law – September 27, 2012, the Dalhousie School of Business Administration, the Dalhousie School of Public Administration – October 11 & 22, 2012 and several Halifax Regional libraries – November 16 & 28, 2012.

In October 2012 the Review Office made a presentation at the Halifax Labour Law Conference on employment and privacy.

In November 2012, the Review Officer and the Intake Portfolio Officer made a presentation at the Association of Municipal Administrators' (AMA) Annual Conference on the impact of privacy oversight for municipalities.

Review Officer was invited and attended as a guest speaker (no cost to Nova Scotia) the International Ombudsman Institute World Conference (Ombudsman and Access to Information) in Wellington, New Zealand – November 13 – 16, 2012.

At the Annual Data Protection Day event organized by Dalhousie University, the Review Officer hosted a reception following the speeches to allow for informal networking between the local, national and international presenters. We continued our tradition of having an information table available for participants during the day event – January 30, 2013

Where do We Want to be?

Continuing opportunities for presentations and training on access and privacy for public bodies, municipalities and health custodians.

Increasing one-on-one privacy educational opportunities in privacy by responding positively and promptly to public body and health custodian requests for privacy consultations under the *PRO Act* and *PHIA*

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 2012 – 2013
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 state that any information required by a statute, not required by the Guidelines, should be included in the Accountability Reports. Appendix B is attached to include the information that this Accountability Report does not provide as to 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 2012 Annual Report for the Freedom of Information and Protection of Privacy Review Officer [tabled with the House of Assembly on April 18, 2013], appended hereto. The Annual Report is available electronically through the Publications link on our website at <http://www.foipop.ns.ca/annual-reports>