



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

ANNUAL ACCOUNTABILITY REPORT FOR THE FISCAL YEAR

2007-2008

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ACCOUNTABILITY STATEMENT

The Accountability Report of the Freedom of Information and Protection of Privacy Review Office for the year ending March 31, 2008 is prepared pursuant to the *Provincial Finance Act* and government policies and guidelines which require the reporting of outcomes against the Freedom of Information and Protection of Privacy Review Office Business Plan for the 2007-2008 fiscal year. The reporting of the Freedom of Information and Protection of Privacy Review Office outcomes necessarily includes estimates, judgments and opinions.

I acknowledge that this Accountability Report is the responsibility of the Freedom of Information and Protection of Privacy Review Officer. The report is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in Freedom of Information and Protection of Privacy Review Office Business Plan for the year.

Dulcie McCallum
Freedom of Information and Protection of Privacy Review Officer
November 24, 2008

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

I am pleased to present my second Accountability Report on behalf of the Freedom of Information and Protection of Privacy (FOIPOP) Review Office for 2007-2008. The FOIPOP Review Officer is established as the independent statutory oversight body to investigate and review decisions made by public bodies regarding citizens' access for information and correction of personal information requests. The Review Officer has also historically received complaints about possible breaches of Nova Scotians' personal privacy by public bodies.

The FOIPOP Review Officer is pleased to report that the Office has achieved most of its goals. Steps to ensure public access and understanding of *Freedom of Information and Protection of Privacy Act (FOIPOP)* and *Part XX of the Municipal Act* have been well received.

This document illustrates the Freedom of Information and Protection of Privacy Review Office's contribution to the Government's priority of providing accessible, transparent, responsible and accountable government. Key to the success of these efforts can be described as follows:

- Providing an effective intake, investigation and review process for access to information requests and, where appropriate, mediation and informal resolution.
- Ensuring citizens have adequate protection of their personal information held by public bodies.
- Increasing public awareness and understanding of legislated rights and obligations under the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act* and the role of the Review Officer and her staff through education and outreach.
- Working with government and public bodies towards promoting a culture of openness, accountability and transparency thereby reducing the need of Requests for Review.

The FOIPOP Review Officer will continue to focus on efficiency and effectiveness as an independent oversight body dedicated to promoting the public's right to access and to pursuing improved protection of privacy for Nova Scotians.

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's 2007-2008 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.

The report will outline the progress made towards achieving the goals and priorities with a particular focus on the core businesses of Intake, Investigation, Mediation and Review Request Processing, Awareness and Education and Public Administration. The FOIPOP Review Office did meet its budget targets during 2007-2008.

In the following pages, information will be provided to report against the specific goals and priorities identified in the 2007-2008 Business Plan. This Report is organized around the strategic goals of the Review Office and will outline the progress made toward achieving the stated goals and priorities. The final sections set out financial information and performance measures.

PROGRESS AND ACCOMPLISHMENTS

Strategic Goals, Priorities and Accomplishments

The Accountability Report details the initiatives undertaken since our 2007-2008 Business Plan to achieve the priorities established by that plan:

1. *Investigations of Privacy Complaints*

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

To ensure Nova Scotian privacy complaints are addressed in a systemic, objective and independent manner through:

- Establishing best practices during the intake, analysis, investigation, mediation and formal investigation of privacy complaints.
- Recommending ways to improve privacy protection for all Nova Scotians through public and private reports.
- Providing follow-up to determine if recommendations were adopted.
- Proactively addressing privacy concerns through workshops, guidelines and other forms of outreach with public bodies and the general public.

Accomplishments:

With regards to privacy, the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act* do not provide for clear statutory authority for the Review Officer in privacy matters. The *Acts* have, however, as one of their core purposes a provision for an independent review of all decisions made under the statutes. The Minister of Justice has stated that notwithstanding the purpose of the legislation, oversight is not presently within the mandate of the Review Officer. The Review Officer, however, has historically conducted privacy investigations where there is mutual cooperation of all concerned parties. The Minister of Justice has asked the Review Officer to continue to conduct privacy investigations on that basis until there is a legislative solution. The Review Officer plans to continue to seek changes to the existing legislation with regards to privacy oversight or to pursue an adequate means by which Nova Scotians' privacy concerns are adequately and appropriately addressed.

The Review Office is in the process of establishing templates and process documents specifically for privacy complaints and investigations.

There were no public privacy reports issued during this reporting period. The privacy investigations that are ongoing will be reported publicly, where appropriate, and to the Legislative Assembly in the 2008 Annual Report.

Consultation has taken place with public bodies on privacy policies including, for example, the Halifax Space-Time Activity Research (STAR) Project.

The plans to conduct a reorganization of work and reclassification for the office was undertaken. Considerable work was done on the updating job descriptions and reorganizing who is responsible for what part of the operations. Our work in this regard has been stalled by the Public Service Commission [“PSC”] project to bring parity to positions across government. We continue to await the work of the PSC before we are able to continue our initiative regarding staff job descriptions and possible reclassifications.

As a result of the understanding with the Department of Justice that we do not have privacy jurisdiction, no training on privacy issues for staff were pursued.

2. Awareness and Education

Increased public awareness and understanding of legislated rights and obligations under the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act* and the role of the Review Officer, including public outreach to specifically address the lack of diversity in the applications received by the Office.

Increase awareness, understanding and education of the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act*. Enhance the development of our communication strategy, mandate of the Review Officer and increase citizens’ accessibility to information and privacy through:

- Developing and maintaining links with public bodies such as continued participation on the Interdepartmental FOIPOP Steering Committee.
- Providing orientation to new FOIPOP Administrators on the role and responsibilities of the Review Office and on the Review process.
- Undertaking communication initiatives to increase the profile of the Review Office and of privacy and access rights, such as continued promotion of participation in the Atlantic Access and Privacy Conference and the Canadian Bar Association.
- Creating public outreach programs for citizens, interest groups and organizations on access and privacy issues.
- Improving the accessibility of Review decisions/reports by continuing publication on the Review Office Website, CanLII, Quicklaw and Listserv.

Accomplishments:

The Review Officer was accepted as a mentor in the launch GoverNext mentorship program.

Shortly after the Provincial FOIPOP Coordinator at Justice retired during this period, the Department of Justice made a decision to disband the FOIPOP Steering Committee.

The FOIPOP Review Office co-hosted the Atlantic Access and Privacy Conference held in Halifax in June 2007. This provided an opportunity for the access and privacy community to meet, network and share ideas with colleagues across the Atlantic Provinces.

During the first week of October 2007, the FOIPOP Review Office participated in Right to Know Week, a Canada-wide effort to raise awareness of the right to access information and its value, with a local focus on what it means to those living and working in Nova Scotia. The FOIPOP Review Office hosted events in Lunenburg, Halifax, Wolfville and participated in an event at the University of King's College in Halifax, hosted by the Right to Know Coalition of Nova Scotia.

Training taken by the staff included Leading through Difficulty, Working with the Media [Communications Nova Scotia], Workplace Violence Prevention. All the training was to improve the Review Office's openness, accountability, transparency and diversity competence.

Two publications developed during this period both focussed on education in a model that employed plain language and accessibility. The Annual Report tabled on March 20, 2008 is designed in a tabloid format that is attractive, bilingual and in plain language. The Review Office Citizen's developed, designed and completed in March 2008 a publication titled *Respecting Your Access and Privacy Rights - A Citizen's Guide for Nova Scotians*. The Guide can be viewed on the Review Office website at http://www.foipop.ns.ca/pub_hints.html. Widespread distribution of that Guide will be reported in next year's Accountability Report.

Recent Review Reports are available on the Review Office website and all Review Reports are also distributed and available through CanLII, Quicklaw and Listserv.

The Review Officer was frequently an invited speaker at conferences and meetings. See attached Schedule of "Out and About."

During this period, three staff members attended French training.

3. Best Practices

To promote systematic change by researching best practices, evaluating current policies and procedures, networking with other oversight bodies and developing new tools and resources

which support the Review Officer's mandate and also by addressing broader access and privacy issues.

Create and promote best practices in the Review process through:

- Researching and beginning to establish best practices during the intake, analysis, investigation, mediation and formal investigations of privacy complaints.
- Recommending ways to improve privacy protection for all Nova Scotians through education and public and private reports.
- Providing follow-up to determine if recommendations were adopted.
- Proactively addressing privacy concerns through workshops, guidelines and other forms of outreach with public bodies and the general public.

Accomplishments:

The Review Officer participated in the International Privacy Conference in Montreal, Federal-Provincial/Territorial Commissioners' Summit in Victoria, and Review Office staff participation in the Investigators' Conference hosted by the Office of the Privacy Commissioner of Canada in Ottawa.

The Review Officer was frequently an invited speaker and participant at conferences and meetings. See attached Schedule of "Out and About."

Researched and prepared a Brief to be sent to the Minister of Justice regarding potential legislative amendments to the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act* for his consideration.

One staff person has completed the University of Alberta's Information Access and Protection of Privacy certificate program and one staff person registered to begin work toward certification during this period.

The Review Officer has begun to design templates and processes regarding privacy investigations.

Encouraged a role for the Review Officer of consulting on future legislative changes including Mandatory Reporting of Gunshot Wounds and Electronic Health Records legislation.

FINANCIAL RESULTS

Freedom of Information and Protection of Privacy Review Office Expenses 2007-2008		
	Budget	Actual
	(\$ thousands)	(\$ thousands)
Net Program Expenses	383	342*
Salaries and Employee Benefits	260**	258
Funded Staff (FTE's)	4	4.08

Notes:

* As a result of staff vacancies, there is a shortfall in the Actual expenditures as compared to the original planned Budget. These vacancies have now been filled.

** In the 2007-2007 Business Plan the budget item for Salaries and Employee Benefits is shown as 216 (\$ thousands), which was the original figure provided to the Review Office by Finance, but was subsequently adjusted by Finance to 260 (\$ thousands).

PERFORMANCE MEASURES

This fiscal year was met with staff in transition, on secondment with staff assuming temporary reclassifications. This meant that there were some challenges faced but balanced with opportunities gained. And despite such challenges, the Freedom of Information and Protection of Privacy Review Office attained or exceeded the majority of its performance targets.

Core Business areas identified in the 2007-2008 Business Plan:

1. Core Business Area 1: Privacy Complaints

Outcome 1:

To ensure the systematic, efficient and effective privacy investigation process and promote the Freedom of Information and Protection of Privacy Review Officer as the oversight for privacy complaints.

What Does this Measure Tell Us?

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

Where Are We Now?

There was a significant increase in the number of general inquiries concerning privacy during 2007-2008. There were 103 privacy inquiries in 2007-2008; 54 jurisdictional and 49 non-jurisdictional as compared to 75 privacy inquiries in the equivalent period a year earlier; 34 jurisdictional and 41 non-jurisdictional. There were 5 privacy complaints opened as jurisdictional and with consent in 2007-2008 compared with only 3 opened in the year prior.

Increased meetings with the Department of Justice officials regarding the lack of clarity with respect to privacy jurisdiction of the Review Officer.

Application to the International Accreditation for Privacy oversight bodies; Nova Scotia is the only jurisdiction in Canada denied accreditation.

Respecting Your Access and Privacy Rights: A Citizen's Guide for Nova Scotians was developed, designed and sent for printing.

Where Do We Want to Be?

Our goal is to ensure there are legislative improvements by the end of 2008. We hope to obtain clarity on privacy oversight for Nova Scotians, whether it be the Review Officer or an alternate oversight body.

2. Core Business Area 2: Awareness and Education

Outcome 2:

Increased public awareness, access and understanding of legislated rights and obligations under the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act* and the role of the Review Officer, including public outreach to specifically address the lack of diversity in the Applications received by the Office.

What Does this Measure Tell Us?

This measure is difficult to evaluate because of the problem collecting personal information regarding Applicants and their affiliation with marginalized groups or as members of a diverse group. Informally we are attempting to monitor and are doing outreach to try and encourage applications from people who have not historically been aware of our Office.

Where Are We Now?

FOIPOP staff team has been involved in more outreach within government, Healthy Workplace, French language training, GoverNext Mentorship program, GoverNEXT Steering Committee.

Right to Know Week presentations were expanded and planned for rural locations; Lunenburg, Wolfville, Amherst in addition to Halifax.

The Review Officer has made presentations to groups of persons with disabilities. More effort needs to be put into reaching out to do presentations to multicultural groups.

Where do We Want to be?

In the future, the Review Office would like to have Applications for Review from more people from multicultural and diverse groups. To some extent this is dependent on the access requests received by public bodies.

3. Best Practices

Outcome 3:

To promote systemic change by researching best practices, evaluating current policies and procedures, networking with other oversight bodies and developing new tools and resources which support the Review Office's mandate and also by addressing broader

access and privacy issues.

What Does this Measure Tell Us?

Researching best practices from other jurisdictions will assist the Review Office to assure itself that its practices and processes are in line with quality and effective service as an independent oversight body.

Where Are We Now?

During 2007-2008 the Review Office designed and publicized one new procedures/process document: September 10th Procedure regarding Requests for Time Extensions.

The Review Officer was invited as a participant at Canada Infoway meetings held twice a year across the country to engage all access and privacy provincial and territorial Commissioners and health government officials in discussions regarding electronic health records legislation, policies and practices.

Attendance at the International Privacy Conference on Database protection and privacy in Montreal, hosted by Canada's Office of the Privacy Commissioner.

Request from New Brunswick Director-Consultation and Review of Executive Council Office to provide a submission on the new proposal for Ombudsman and Access and Privacy legislation reform.

Increased attendance at local training sessions including provincial records management association and Right to Know presentations in rural locations as well as Halifax.

All staff training plans include access to and accommodation in post secondary programs.

Where Do We Want to be?

To have recognized best practices in place for the processing of Review Requests and the investigating of privacy complaints that are consistent with and in-line with other like-minded Commissioners/oversight bodies across Canada.

SCHEDULE

**“OUT AND ABOUT”
WHERE WE WERE IN 2007-2008**

Month	Event
April 07	Canadian Bar Association Meet and Greet with the new Review Officer, Presentation by Dulcie McCallum
	Women's Institute Port Bickerton and Sherbrooke Presentation by Dulcie McCallum on FOIPOP – Access and Privacy
May 07	Meeting with Federal Privacy Commissioner of Canada and Federal Information Commissioner of Canada, Ottawa, ON
	Newfoundland and Labrador Access and Privacy Workshop, St. John’s, NL
	Forum of Canadian Ombudsman Biennial Conference, Montreal, QC Presentation by Dulcie McCallum <i>Apology – The Larger Context</i>
June 07	Atlantic Access and Privacy Workshop, Halifax, NS
	Participation in Commissioners’ Panel by Review Officer, Dulcie McCallum
	Access and Privacy Conference, Edmonton, AB
	Participation in Panel Discussion by Review Officer, Dulcie McCallum
	20 th Anniversary Conference of the Halifax Chapter of the Association of Records Managers and Administrators, Halifax, NS
September 07	Canadian Information and Privacy Commissioners’ Annual Meeting, Fredericton, NB
	Right to Learn Symposium, Halifax, NS
September 07	29th International Conference of Data Protection and Privacy Commissioners, Montreal, QC
October 07	Nova Scotia Association for Community Living in partnership with the Disabled Persons Commission and People First Nova Scotia Forum, Dulcie McCallum – Resource Person
	Right to Know Week 2007 Presentations and Events <ul style="list-style-type: none"> ■ South Shore Library, Lunenburg, NS ■ Spring Garden Rd. Memorial Public Library, Halifax, NS ■ Right to Know Coalition of Nova Scotia Coalition Forum, Halifax, NS – Participation by Review Officer, Dulcie McCallum ■ Wolfville Library, Wolfville, NS
November 07	Canada Health Infoway Privacy Forum, Toronto, ON
February 08	Attended 2008 Conference For Privacy Investigators, Ottawa, ON

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	Canada Health Infoway Privacy Forum, Ottawa, ON
	Attended Annual Federal/Provincial Access and Privacy Commissioners Meeting, Vancouver, BC
	NSARM Lunch and Learn, Halifax, NS Speech given by Dulcie McCallum
	Attended GoverNEXT Annual General Meeting
March 08	<p>Assistant Privacy Commissioner Visit, Halifax, NS including:</p> <ul style="list-style-type: none"> ■ Media Interview with the Chronicle Herald Editorial Board ■ Fraud Off! at Dalhousie University ■ ITANS Membership Luncheon ■ Meeting at Department of Justice to discuss Privacy issues ■ Crime Prevention Committee of Nova Scotia meeting ■ Closing debrief at FOIPOP Review Office