



# **2014 - 2015 Annual Report**

*Nova Scotia Freedom of Information  
and Protection of Privacy Review Officer*





## Report Highlights

### Combined Report

This year we have combined the four annual reports we deliver into one report which includes:

- Annual Report for *Freedom of Information and Protection of Privacy Act, Privacy Review Officer Act, Municipal Government Act (Part XX)*
- Annual Report for *Personal Health Information Act*
- Statement of Mandate
- Accountability Report

We have also re-aligned the timing of the report so that from now on, our combined report will be on a fiscal year basis. In order to make this adjustment, this report is for a 15 month period from January 1, 2014 – March 31, 2015.

### The Current State of Access and Privacy in Nova Scotia

This report highlights some existing and emerging trends in Nova Scotia including:

- Access request processing times are increasing, the proportion of information fully disclosed is decreasing and there was a dramatic increase in fees charged in 2012;
- There is significant work to be done in most public bodies and municipalities to develop mature and effective privacy management controls;
- Serious privacy breaches are not regularly reported to the Review Office; and
- Nova Scotia privacy laws are missing essential modern privacy protections.

### Major Review Office Accomplishments in 2014-2015

In the past nine months we made significant progress in addressing our backlog of cases. We resolved double the number of cases in 2014 than were resolved in 2013, we cleared the backlog of cases received from 2009 – 2011, managed a twofold increase in new cases, developed and produced 14 public education documents and conducted more than 50 stakeholder meetings.

*The purpose of providing for the disclosure of all government information with necessary exemptions, that are limited and specific is to facilitate informed public participation in policy formulation, ensure fairness in government decision-making and to permit the airing and reconciliation of divergent views.*

*Freedom of Information and Protection of Privacy Act, Nova Scotia*

June 10, 2015

Honourable Kevin Murphy  
Speaker of the Legislative Assembly  
1<sup>st</sup> Floor, Province House  
PO Box 1617  
Halifax, Nova Scotia B3J 2Y3

Dear Mr. Speaker,

Pursuant to s. 33(7) of the *Freedom of Information and Protection of Privacy Act*, s. 4(3) of the *Privacy Review Officer Act* and s. 93(b) of the *Personal Health Information Act*, I submit these annual reports for the 15 month period January 1, 2014 through to March 31, 2015.

Because we have combined all of our reporting requirements into one report to efficiently provide a full and complete picture of the work accomplished by this office, this year we are adjusting our reporting period from calendar year to fiscal year.

Respectfully submitted,



Catherine Tully  
Freedom of Information and Protection of Privacy Review Officer

## Table of Contents

Review Officer's Message.....	5
Statistical Reports & Case Summaries	
<i>FOIPOP &amp; MGA</i> .....	12
<i>PHIA</i> .....	17
Accountability Report 2014-2015 .....	21
Service Plan 2015-2016 .....	23
Budget History.....	27



## Review Officer's Message

Access and privacy legislation is essential to ensuring a healthy and vibrant democracy in Nova Scotia. I function as the information and privacy commissioner for Nova Scotia and as such am responsible for providing independent oversight of compliance with four access and privacy laws.

In this report I have set out some observations regarding the access and privacy challenges facing Nova Scotia, described the major accomplishments of my office in the past 15 months and set some ambitious goals going forward.

### *The Current State of Access and Privacy in Nova Scotia*

I have been Nova Scotia's Review Officer since September, 2014. Over the course of the last nine months I have had the pleasure of meeting with hundreds of Nova Scotians who have an interest in access and privacy. As a result of these meetings and as a result of our casework including reviews, complaint investigations, consultations and self-initiated privacy investigations I have gained a clearer understanding of what the access and privacy issues and challenges are in Nova Scotia. I am concerned that significant work is required to ensure that Nova Scotia's access to information regime remains meaningful and effective. I believe that public bodies and municipalities in particular must implement more meaningful privacy management strategies and that several core changes need to be made to our access and privacy laws to ensure that they remain effective in the digital age.

### **Access to Information**

The purpose of access legislation is to ensure that government is fully accountable to the public. What does this mean practically for citizens? In the digital age, this should mean that government information is, for the most part, readily available online and without request. The information should be well-indexed and easily accessible. In fact in the 21<sup>st</sup> century, this also means that government makes available large data sets of information to allow citizens to take advantage of information collected and used by governments.

A healthy, well-functioning access to information process would mean that very few access to information requests are made because essential information is readily available. The formal access to information process serves as a safety net. When access requests are made they are responded to quickly, thoroughly and with minimum fees charged. So how does Nova Scotia measure up?

### **Our Vision**

*Nova Scotia's public sector is open and accountable.  
Privacy rights of citizens are respected and protected.*

One of the challenges with assessing the health of Nova Scotia's access to information processes is the lack of current and reliable government statistics. The most current statistics publicly available are from 2012.<sup>1</sup> The outcomes do not include files carried over from previous years which means that the outcomes described do not include many of the oldest files completed in any given year. Nevertheless, the statistics do reveal some concerning patterns including: a significant decrease in the proportion of information fully disclosed over the previous decade and a dramatic increase in fees charged in 2012. Overall there has been a steady increase in the number of requests received by government which may explain some of the patterns described above. However, since the statistics are two years old it is difficult to know for certain if any or all of these patterns have continued.

At pages 12 and 13 of this report I have provided a statistical description of files opened and closed by my office. Those statistics indicate that requests for time extensions have been slowly increasing as have the number of deemed refusal complaints (complaints that no response at all has been provided within 30 days). Both statistics support the conclusion that processing times by public bodies and municipalities are increasing overall. Our review and complaint case load rose 28% in 2014. In the first three months of 2015 we have received an extraordinary 69 reviews and complaints compared with an average of 28 during the same three months in 2014 and 2013. The increase in the Review Office caseload is likely due at least in part to an increase in access requests made generally.

**28%** *Increase in the number of requests for review and complaints received by the Review Officer in 2014.*

Another source of information on how well Nova Scotia is meeting its access to information obligations is the annual Canadian Newspaper Association Audit.<sup>2</sup> In 2012 Nova Scotia earned a B for speed and an A for completeness. Both marks dropped in 2014 when Nova Scotia earned a C for speed and a B for completeness.

On the positive side, I have met with over 50 access administrators for small and large public bodies, municipalities and health custodians. They impressed me with their dedication to providing good service to Nova Scotians and their desire to stay informed about developments in the law and best practices.

Clearly changes are needed to improve access to government information in Nova Scotia. I have had discussions with government about the development and implementation of open government strategies which include both open information and open data. In addition, government advised my office that effective April 1, 2015 the processing of provincial access requests will be managed centrally through the Information Access and Privacy Services program in the Department of Internal Services. This group is led by the Chief Information Access and Privacy Officer for Nova Scotia.

I am hopeful that this new approach to processing access requests will result in better service to Nova Scotians and more accurate and timely statistics from government. I look forward to seeing statistics for both 2013 and 2014 which will form a baseline for assessing how well the new service delivery model is working.

<sup>1</sup> Nova Scotia Information & Privacy Office 2012 Annual Statistical Report: <http://novascotia.ca/just/IAP/docs/FOIPOPAnnualReport2012.pdf>

<sup>2</sup> The National Freedom of Information Audit documents are available at <http://www.newspaperscanada.ca/FOI>



## Privacy

In order to effectively protect the privacy of citizens, government must build privacy protections into all programs, processes, legislation and systems. This means that departments, municipalities and health custodians should have processes to analyze privacy risks and implement risk mitigation strategies before breaches occur. One essential and standard tool for this is a privacy impact assessment. In addition, once breaches occur (as they inevitably do), organizations must have in place a breach management policy and practice to ensure that breaches are effectively managed. My early observations reveal that there is significant work to be done in most public bodies and municipalities in Nova Scotia to develop mature and effective privacy management programs. Fortunately, health custodians, particularly in larger institutions, have made significant progress in implementing effective privacy management programs.

### ***Breach reporting***

I was very surprised to discover that as a general rule, public bodies, municipalities and health custodians do not regularly report serious privacy breaches to my office. Nova Scotia law does not mandate breach reporting to my office except for relatively minor breaches under health privacy law discussed below. However, in most Canadian jurisdictions seeking advice and guidance from the information and privacy commissioner in these circumstances is considered best practice. In some jurisdictions it is required.<sup>3</sup> Between January 1, 2014 and March 31, 2015 we received only nine breach reports, none from any government department. During my meetings with administrators I recommended the practice of reporting breaches to my office.

The only privacy breaches regularly reported to my office are relatively minor breaches under the *Personal Health Information Act* – breaches where “there is no potential for harm or embarrassment to the individual”.<sup>4</sup>

338

*The number of breaches reported by health custodians as having “no potential for harm or embarrassment to individuals”*

In 2014 we received 338 reports of minor breaches from health authorities. There are three patterns of concern: first the number of breaches is very high, one former health authority alone reported a total of 167 minor breaches. Another former health authority reported 0 breaches and so accuracy is also a concern. In the coming months we will investigate the accuracy of both sets of data. The third pattern of concern is that only five minor breaches were reported by health custodians in private practice despite the fact that such reports

are mandatory and the fact that there are approximately 26,000 health custodians in Nova Scotia. This is clearly an education challenge for my office. It indicates that health custodians outside of health authorities are unaware of their obligations to report these types of breaches to our office. We have already begun developing training tools for health custodians in private practices.

In 2014 we followed up in-depth on six of the minor breach reports to further evaluate whether or not the approach taken (no notification to affected individuals) was appropriate in the circumstances. In all cases we determined that the health authority had appropriately evaluated the risks. In several cases we recommended further prevention strategies.

<sup>3</sup> See section 34.1(1) of Alberta’s *Freedom of Information and Protection of Privacy Act*: [http://www.qp.alberta.ca/1266.cfm?page=F25.cfm&leg\\_type=Acts&isbncln=9780779762071](http://www.qp.alberta.ca/1266.cfm?page=F25.cfm&leg_type=Acts&isbncln=9780779762071). Federal institutions are required to report “material” privacy breaches to the Privacy Commissioner of Canada see: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26154>

<sup>4</sup> Nova Scotia *Personal Health Information Act* s. 70(2).

When reporting minor breaches to our office health custodians do not always adequately describe the nature of the breach. However, in 75% of the cases we had enough information to characterize the problem. 59% of these minor breaches resulted from health information being sent in error to the wrong health custodian. In 4% of the cases the information was sent to the wrong patient. Generally in these cases the individual who incorrectly received the information immediately reported the error and returned or destroyed the mis-sent information. Other errors included failing to adequately secure the information (4%), mis-filing information (4%) and in 1% of the cases the error was a misuse of data.

Another privacy concern is that most smaller public bodies and municipal bodies that I met with have not yet developed a clear method for identifying and managing privacy breaches. Many are unaware of the existence of the FOIPOP Review Office and its mandate. In addition to encouraging consultation with my office whenever a breach involving a real risk of significant harm occurs, I have also produced and widely distributed a document that outlines the appropriate steps organizations must take when faced with a privacy breach. The approach I have recommended is consistent with best practices in the public and private sectors in all other Canadian jurisdictions.

### ***Modern privacy protections missing***

Nova Scotia has had access legislation since 1977. The law was expanded to include privacy rights in 1993 and privacy oversight by my office was added in 2009 with protection of personal health information added in 2013.<sup>5</sup> Unfortunately our privacy laws are missing some very core modern-day privacy protections found in other Canadian jurisdictions including:

- **Breach Notification:** Public bodies including government departments, municipalities and health custodians should be required to report privacy breaches to affected individuals and to the Review Officer whenever there is a real risk of significant harm to individuals;<sup>6</sup>
- **Privacy Impact Assessments:** Whenever public bodies, municipalities or health custodians plan new or significantly changed projects, programs, systems or legislation they should be required to conduct an assessment of the privacy impacts and to assess the quality of the security arrangements. For major projects involving data linking or data sharing across public bodies, the legislation should require independent review of the privacy impact assessment by the Review Officer;
- **Notice of Collection:** Notification of purpose is an essential element of modern privacy legislation. Nova Scotia's legislation should include a requirement that individuals be provided with notice of the purpose and authority for any direct collection of personal information by governments;
- **Privacy Oversight of Police & Municipalities:** Police and municipalities are subject to privacy rules set out in the *Municipal Government Act* but not to independent oversight by this office. This is a significant shortcoming and one that should be remedied.
- **Officer of the Legislature:** As my predecessors noted in their annual reports, in order to provide effective and fully independent oversight of both privacy and access requirements I recommend that the position of FOIPOP Review Officer be made an officer of the legislature.

---

<sup>5</sup> In the coming year there will be a unique opportunity to improve privacy protections in the *Personal Health Information Act*. PHIA came into effect on June 1, 2013. Section 108 provides that within three years after the coming into force of the Act the Minister shall undertake a comprehensive review with public input and within one further year shall submit a report to the Assembly.

<sup>6</sup> I note that the *Personal Health Information Act* requires notification of breaches to the Review Officer, but only in minor cases where individuals are not notified because there is no potential for harm or embarrassment.

These protections are essential to ensuring that citizens' data is protected and that there is proper oversight of the activities of government that impact individuals' privacy.

*The ability of individuals to control their personal information is intimately connected to their individual autonomy, dignity and privacy. These are fundamental values that lie at the heart of a democracy.*

Abella and Cromwell JJ.

## ***Major Accomplishments – January 1, 2014 – March 31, 2015***

Shortly after assuming my role as Review Officer nine months ago, I issued our 2013-2014 Annual Report in which I highlighted three priorities for 2014 -2015: addressing the backlog of cases in the Review Office, developing education materials and providing guidance on the implementation of open government and open data initiatives.

Since that time we have made significant progress in addressing our backlog of cases, managed a twofold increase in new cases,<sup>7</sup> developed and produced 14 public education documents and conducted more than 50 stakeholder meetings.

### **Backlog**

I noted in last year's annual report that we had a backlog of 223 files dating from 2009. We have worked diligently at resolving these files and in 2014 we resolved a total of 163 reviews and complaints, more than double the number resolved in 2013. We made significant progress resolving the oldest files. As of the writing of this report, all matters received in 2009 through 2011 have been assigned and most have been resolved. We are currently assigning matters received in 2012 and 2013 to investigators.

One of the biggest challenges for my office was the lack of a case management system. When I arrived cases were managed using a series of nine different databases. As a consequence, most of the calculations in this and previous annual reports are manual. However, effective April, 2015 we now have a case management system which we will use to manage all of our new cases. The new system will allow us to accurately assess time, caseloads and outcomes.

---

<sup>7</sup>In 2014 we received 142 reviews and complaints and 484 files initiated by public bodies for a total of 626 new matters compared to 192 new files received in 2013. While we saw an increase in virtually all file types, the bulk of this increase is attributable to two new reporting requirements under the *Personal Health Information Act*: minor privacy breaches and disclosures without consent to researchers.

## Public Education

Since my arrival in September, 2014 my office has produced and distributed 15 new publications - some aimed at public bodies, health custodians and municipalities and some aimed at informing the general public. Our new publications include: *Privacy Management Framework at a Glance* (November, 2014), *Privacy Tips for Christmas Shoppers* (December, 2014), *Key Steps to Responding to a Privacy Breach & Breach Checklist* (December, 2014), *Privacy Impacts of Body Worn Cameras* (joint paper with other Information and Privacy Commissioners) (February 2015) and the *Reasonable Security Checklist for Personal Information* (March, 2015). In addition we had more than 50 speaking engagements between January 1, 2014 and March 31, 2015.

## Open Government and Open Data

I met with the Deputy Ministers' Council and with the Nova Scotia Open Data Council to discuss approaches to open government and open data. I encouraged both groups to consider international standards set in this area and to learn from the Canadian government experience - in particular by reviewing the results of the independent audit conducted in relation to Canada's open data initiative. I also discussed the challenges of privacy and big data and the need to develop an effective anonymization strategy.

## Looking Forward

### Priorities for fiscal year 2015 - 2016

We have identified four goals for the FOIPOP Review Office:

1. An open and accountable government.
2. Respect for and protection of privacy by public bodies, municipal bodies and health custodians.
3. Public awareness of access and privacy rights.
4. Efficient and effective Review Office operations.

Included in this report at page 23 is our Service Plan (Statement of Mandate) for 2015/2016. That plan describes our four goals, our strategies for each and sets out 8 performance measures.

Prior to my arrival the Acting Review Officer also completed a Statement of Mandate for fiscal year 2014-2015. Acting Review Officer Stuart identified a series of goals and we have reported on the outcome of those goals in our last Accountability Report at page 21 of this report. In future years both our Statement of Mandate and our Accountability Report will be reported in our Service Plan section of the Annual Report.

## Future Trends

What do Nova Scotians have to be concerned about in 2015-2016? Here are some key issues of concern:

- **Police surveillance databases** – sometimes known as “haystacks”. This is the information police gather about all citizens, law abiding or not. Privacy commissioners across Canada raised concerns about the lack of independent oversight of these vast collections of data, particularly when collection of personal information occurs without judicial oversight.



- **Big data** – Nova Scotia is very active in the development and use of big data analytics. Acadia University, Dalhousie University and St. Mary’s University all have big data institutes. There are a number of very significant big data companies working in and around Halifax. Organizations generally are collecting vast amounts of data about us as a result of our use of the internet, smart phones, the Internet of Things including everything from our cars to our fridges. Everything tells a story. In addition, governments want to correlate multiple separate datasets looking for improvements in citizen and government service delivery. Algorithms will predict everything from our trustworthiness to our preference for peanut butter cookies. But what are the implications for privacy? We must develop and adopt new privacy rules to take into account the new challenges posed by this new technology.
- **Cloud computing** – The advantages of cloud computing make these services highly attractive particularly in a tight economy. However, the implications for both access and privacy rights are significant. Data in the cloud can be difficult to track when companies act across multiple jurisdictions. The security of the data can also be a challenge including control over secondary uses of the data.

It is an exciting and challenging time for access and privacy rights. I am optimistic that Nova Scotia’s access and privacy rights will continue to be valued and protected. I look forward to further developments in open government for Nova Scotia. I am hopeful that the new centralized model for provincial access request processing will improve citizens’ access rights and I will continue to work diligently at encouraging the implementation of effective privacy management frameworks across all government institutions.

Yours sincerely,

Catherine Tully  
Freedom of Information and Protection of Privacy Review Officer



## Annual Report Statistics

### *Freedom of Information and Protection of Privacy Act, Privacy Review Officer Act, Municipal Government Act (Part XX)*

The *Freedom of Information and Protection of Privacy Act (FOIPOP)* governs access and privacy requirements by provincial departments, local public bodies, universities, school boards and health authorities (for non-personal health information). *Part XX* of the *Municipal Government Act (MGA)* is a mirror piece of legislation to *FOIPOP* but applies to municipalities, villages, towns and municipal police departments. The *Privacy Review Officer Act (PRO)* provides individuals with privacy oversight of the bodies covered by *FOIPOP*.

<b>Summary of All Files Opened FOIPOP, MGA, PRO</b>			
	2015 (3 months)	2014	2013
<b>Access and Correction Requests for Review</b>			
FOIPOP	60	100	82
MGA	8	25	22
<b>Privacy Complaints*</b>			
Privacy Complaints received	0	3	2
Review Officer Own-motion	5	2	2
<b>Files Initiated by Public Bodies</b>			
Privacy Impact Assessments	0	0	0
Privacy Consultations	5	4	11
Time Extension Requests	15	62	56
<b>Outreach and Education</b>			
Inquiries	399	1710 <sup>^</sup>	1982
Media Requests (new)	4		
Speaking Engagements	6	45	8
Staff Training and Conferences	2	10	7
Tools Made Available	10	5	27
Committees	1	2	3
<b>Total</b>	<b>515</b>	<b>1,968</b>	<b>2,202</b>
*The <i>PRO Act</i> applies only to those public bodies to which <i>FOIPOP</i> applies, not the <i>MGA</i> .			
<sup>^</sup> Unfortunately, due to staff shortages we experienced in 2014, we failed to accurately record inquiries received by this office. This figure is an estimate based on the months that we know to be most accurate.			
Statistics for 2015 are for the first quarter only (January, February and March). All other years reflect the full calendar year. In future years, the statistics will be reported for the fiscal period (April to March).			

## Outcomes for Review & Complaint Files Closed *FOIPOP, MGA and PRO*

Outcome	FOIPOP Reviews Closed			MGA Reviews Closed			PRO Complaints Closed		
	2015	2014	2013	2015	2014	2013	2015	2014	2013
Review Report	0	14	8	0	2	1	0	0	1
Mediation	0	1	0	0	0	0	0	0	0
Informal Resolution	10	53	35	5	15	11	4	5	1
Withdrawn	1	12	6	0	9	2	1	0	0
Abandoned	1	17	7	1	5	0	0	3	0
Screened*	1	3	5	0	2	0	1	1	0
<b>Total</b>	<b>13</b>	<b>100</b>	<b>61</b>	<b>6</b>	<b>33</b>	<b>14</b>	<b>6</b>	<b>9</b>	<b>2</b>

\*Files can be screened for a number of reasons including: the review was filed without the applicant first filing an access request, the date for issuing a decision is not yet due or the matter falls under federal legislation.

### Conclusions of the Review Officer where Reports were Issued (Access Only)

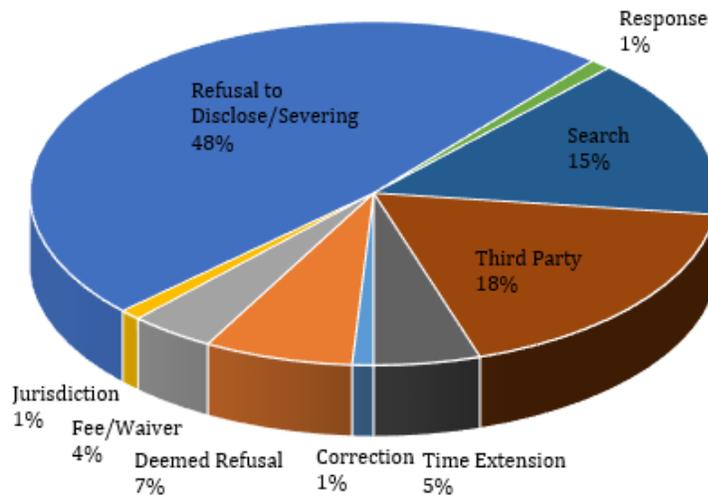
Year	Agree with Public Body	Agree in-part with Public Body	Disagree with Public Body
2015	N/A	N/A	N/A
2014	5 (31%)	3 (19%)	8 (50%)
2013	3 (33%)	0	6 (67%)

### Public Bodies' Responses to the Review Officer's Recommendations

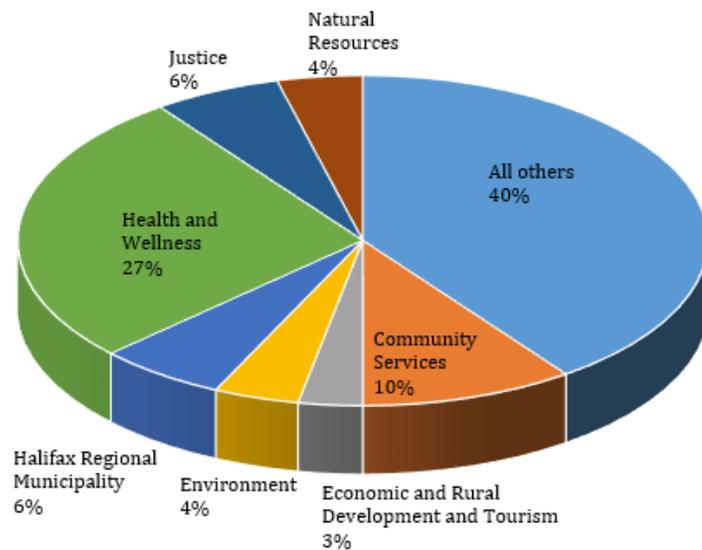
Year	Accepted	Partial Acceptance	Rejected
2015	N/A	N/A	N/A
2014	9 (56%)	1 (6%)	6 (38%)
2013	4 (44.5%)	4 (44.5%)	1 (11%)

Statistics for 2015 are for the first quarter only (January, February, and March). All other years reflect the full calendar year. In future years, the statistics will be reported for the fiscal period (April to March).

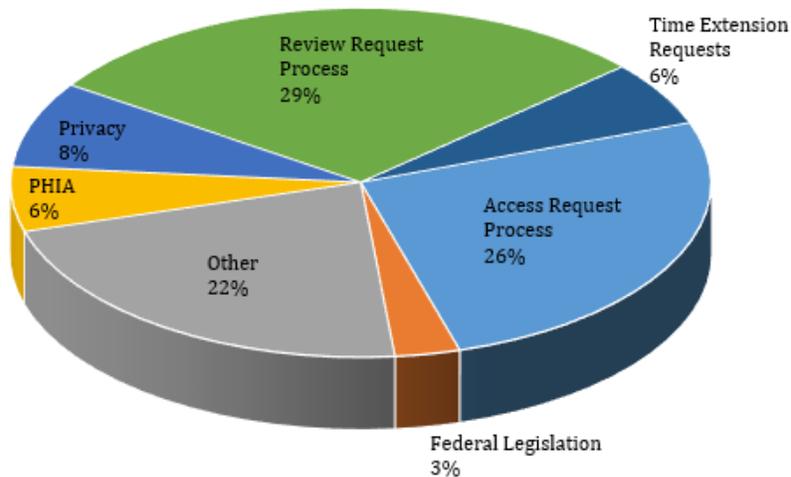
### Issues under Review in 2014-2015 (15 months)



### Top 6 Public Bodies: Review Requests Received in 2014-2015 (15 months)



### Inquiries Received in 2014-2015 (15 months)



# FOIPOP & MGA – Informal Resolution Summaries

## ***Bridging the Knowledge Gap***

An applicant filed a review of a public body's fee estimate. The Review Office's Intake Manager facilitated communication between the applicant and the public body resulting in clarification of the request and a narrowed scope of requested records. The public body waived fees and the file was informally resolved.

**Lesson:** Working closely with an applicant not only reduces the amount of work for the public body, it can make the right to access information more accessible to the public. Applicants often cast a wide net because they do not know what to ask for. This knowledge imbalance can be leveled through conversation.

## ***Third Parties: Information Leads to Resolution***

A public body provided notice to a third party that it proposed to disclose information that may affect his personal privacy. Although the third party requested a copy of the proposed disclosure to help decide whether or not to consent to the disclosure, it was not provided by the public body. The third party filed a review of the public body's decision to partially disclose third party records. During the review, the Review Office arranged for the public body to provide the third party with a copy of the proposed disclosure. The third party was satisfied with the proposed disclosure and the file was informally resolved.

**Lesson:** Without knowing what information is at stake, third parties are not likely to consent to disclosure of their personal information. Public bodies should always provide a copy of the record, showing the proposed severing (if any), so that a review can be avoided.

## ***Third Parties: Information Leads to Resolution (Again)***

An applicant sought access to all by-law infraction information related to an identified property. The homeowner refused to consent to disclosure and filed a third party review request when the public body decided to disclose the record with some severing. During the review, the third party was provided with a copy of the record as severed. The homeowner's concerns were addressed and she withdrew her objections. The severed record was disclosed to the applicant.

**Lesson:** Consulting with third parties is only meaningful if they understand the record at issue and how the exceptions work. In the absence of information, meaningful participation in the process is impossible.

### ***Personal Information: It's More Than a Name***

A member of the media sought all documentation arising from the alleged misconduct of a school board employee. The case was highly publicized and even with the name of the employee redacted, the individual was identifiable. During the review the applicant was advised that the information severed by the public body fell within the personal information exemption. The applicant accepted the Investigator's opinion and the file was closed.

**Lesson:** Simply removing a name does not mean that someone cannot still be identified.

### ***A Search for Non-Existent Records***

An applicant sought access to documentation surrounding the issuing of a legal order. The applicant was advised by his lawyer that the order was illegally issued and was told to "FOIPOP" the records. During the course of the review, our research revealed that there would be no record existing to show the information the applicant was seeking. The applicant was provided with information that explained the authority for the order and addressed his concerns directly. The applicant was satisfied with the information provided and was satisfied that the search for records was no longer an issue.

**Lesson:** Just because you think there should be records, does not mean they actually exist.

## Annual Report Statistics *Personal Health Information Act*

The *Personal Health Information Act (PHIA)* came into force on June 01, 2013. *PHIA* governs the collection, use, disclosure, retention, disposal and destruction of personal health information. *PHIA* applies to all health information held by custodians in Nova Scotia.

<b>Summary of all Files Opened</b>			
<b><i>PHIA</i></b>			
	2015 (3 months)	2014	2013
<b>Access and Correction Requests for Review</b>			
Access	1	6	2
Correction	0	1	0
<b>Privacy Complaints</b>			
Privacy Complaints Received	0	1	0
Review Officer Own-Motion	3	4	1
<b>Files Initiated by Custodians</b>			
Privacy Impact Assessments	0	0	0
Privacy Consultations	5	9	4
Time Extension Requests	0	0	0
Disclosure Without Consent to Researcher	2	71	0
Breaches with No Potential for Harm or Embarrassment	169	338	10
Prescribed Entity's Information Practices	0	0	0
<b>Outreach and Education</b>			
Inquiries	31	90*	77
Media Requests (new)	3		
Speaking Engagements	0	5	0
Staff Training and Conferences	0	0	0
Tools Made Available	1	0	0
Committees	0	0	0
<b>Total</b>	<b>215</b>	<b>525</b>	<b>94</b>
* Unfortunately, due to staff shortages we experienced in 2014, we failed to accurately record inquiries received by this office. This figure is an estimate based on the months that we know to be most accurate.			
Statistics for 2015 are for the first quarter only (January, February, and March). All other years are the full calendar year. In future years, the statistics will be reported for the fiscal period (April to March).			



**Outcomes for Review and Complaint Files Closed**  
***PHIA***

	2015	2014	2013
Review Report	0	0	0
Mediation	0	0	0
Informal Resolution	3	15	0
Withdrawn	0	0	0
Abandoned	0	1	0
Screened	0	4	0
Decision not to investigate	0	1	0
<b>Total</b>	<b>3</b>	<b>21</b>	<b>0</b>

Statistics for 2015 are for the first quarter only (January, February, and March). All other years reflect the full calendar year. In future years, the statistics will be reported for the fiscal period (April to March).

# PHIA – Informal Resolution Summary

## ***File Left Behind***

A home care assistant accidentally left a file in the home of an elderly patient. The folder contained a weekly schedule with the names and addresses of 13 agency clients. There was also a care plan and agency notes relating to six other clients. The file was discovered by the in-home care-giver just after the home care assistant left the house. The care-giver phoned the office first thing the next morning to report the discovery. He was well-known to the agency and he confirmed that he knew immediately that the information was confidential and had not read any of the information contained in the file. The file was immediately retrieved by the agency. With assistance from Review Office staff the health custodian conducted a review of the breach using four key steps:

**1. Containment** – The file was retrieved within hours of the breach being discovered. No records were missing. The individual who discovered the records said he had not read, copied or shared the file with anyone.

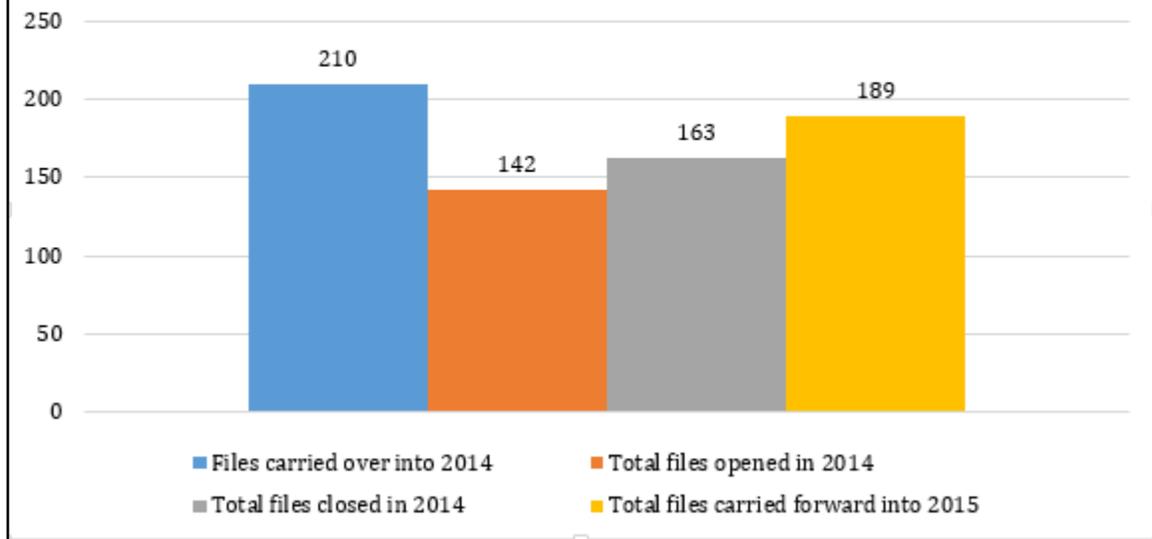
**2. Risk Assessment**

- Nature of the personal information: 19 individual names and addresses and the fact that they were home care clients was potentially disclosed. For 6 of the 19 some details of their care plan was also at risk.
- Relationship: The individual who discovered the records immediately reported the breach, had no motivation to make use of the information and confirmed that he had not actually even looked at the record. The agency had a long term relationship with this individual and so trusted his reporting of the matter.
- Cause of the breach: The breach was caused by an accident, there was no motivated thief involved.
- Scope: A limited and identifiable group of individuals was affected.
- Containment Efforts: The file was recovered and the individual who discovered the records said he had not read the file and understood the need for confidentiality.
- Foreseeable Harm: No risk of financial harm or identity theft, a low risk of embarrassment.

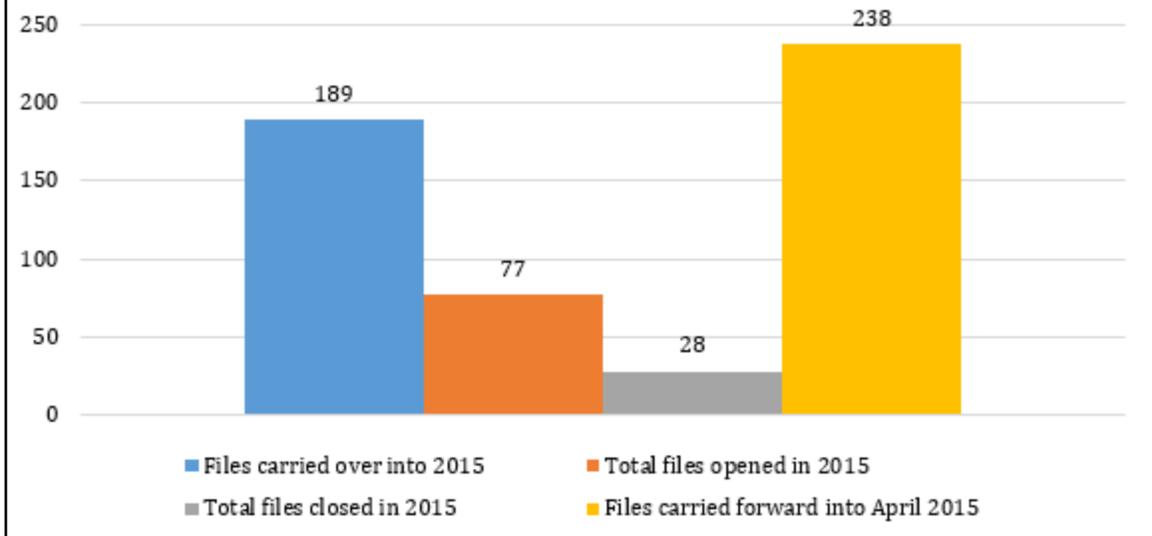
**3. Notification** – *PHIA* requires that notification occur if information is subject to unauthorized access, use or disclosure and as a result, there is potential for harm or embarrassment to the individual. Notification is not required where it is unlikely that a breach of the personal health information has occurred or there is no potential for harm or embarrassment to the individual as a result. The pragmatic approach adopted by most other Canadian privacy commissioners is that there must be some value to the individual of receiving the notification. Notification should empower individuals to avoid or mitigate harm to themselves. Since the health custodian was satisfied that the individual did not access the personal health information they decided that notification of the individuals was not required.

**4. Prevention** – As a final step health custodians should evaluate any technical, physical, administrative and personnel related strategies to prevent any future related breaches. In this case we recommended that the health custodian evaluate the practice of carrying one week's worth of hard copy health information into homes. We recommended reducing the scope of the information, and if possible carrying it electronically on an encrypted device.

### Management of All Review and Complaint Files in 2014 (12 months)



### Management of All Review and Complaint Files in 2015 (3 months)





## **2014-2015 Accountability Report**

### **Measuring our performance against the goals set in the Statement of Mandate**

#### **1. Requests for Review of Public Body Access Decisions – Right to Access**

What outcomes did we seek?

- Public service optimized – be an accessible helpful resource.
- Respectful and productive relationships developed with public bodies' delegated decision makers.
- All parties encouraged to apply precedents to the matter at hand thereby expediting early resolution of requests for review to better serve the public and public bodies.
- Informative and clear public and private reports issued.
- Proactive disclosure and routine access policies promoted.

What does this tell us?

The Review Office is committed to sharing information with applicants, potential applicants, third parties and those working in access and privacy roles. When more information is available, making decisions is easier and the likeliness of an informal resolution is greater.

What were the measures and results?

- *Respond to 100% of all inquiries about access and reviews at intake within 2 business days.* Inquiries are responded to within 2 days 99.2% of the time.
- *Maintain the percentage of review requests resolved early in the process through informal resolution.* The number of review files resolved through informal resolution increased to 74% in 2014 from 64% in 2013. In the first three months of 2015, 81% were closed by informal resolution.
- *Maintain the percentage of review reports relied upon by the Review Office team in negotiating and achieving informal resolutions during intake and investigations.* The number of reviews reports issued increased to 16 in 2014 from 10 in 2013. No review reports were issued in the first three months of 2015.

#### **2. Requests for Review of Privacy Complaints – Right to Privacy**

What outcomes did we seek?

- To educate applicants, third parties, public bodies and custodians regarding the Privacy Review Officer as the statutory oversight body for privacy complaints under the *PRO Act* and *PHIA*.
- Be open and receptive to all privacy consultation requests from public bodies and custodians.
- Track privacy issues through own-motion privacy investigations where circumstances deem it appropriate.

What does this tell us?

Continuing to receive privacy complaints and inquiries is a measure that confirms that the public continues to understand that the Privacy Review Officer is the statutory independent oversight body when privacy rights are violated. Receiving requests for consultation indicates that public bodies understand the consultation and education roles of the Privacy Review Officer.

What were the measures and results?

- *Provide comprehensive information to all privacy inquiries and conduct thorough investigations into all privacy requests for reviews opened.* Eight percent of the calls the Review Office received were privacy inquiries. Three privacy complaints were received under *PRO* and one under *PHIA*.
- *Continue to improve and upgrade website in order to provide more information about access and privacy to the public.* We reorganized the material on our website to make access more intuitive for users. Nine tools were added to the website, and five others were created and made available for use in 2014 and the first three months of 2015.
- *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.* The Review Officer initiated two own-motion privacy investigations under the *PRO Act* and four under *PHIA*.

### **3. Consultation, Education and Outreach – Access and Privacy**

What outcomes did we seek?

- Educate the public about the role of the Review Officer with respect to access and privacy.
- Health custodians see the FOIPOP Review Officer as a valuable resource in ensuring *PHIA* compliance.

What does this tell us?

The Review Office is committed to continuous learning in the evolving field of access and privacy. The Review Office provides training externally, and as experts in access and privacy, the Review Office staff engages in specialized training.

What were the measures and results?

- *Plan at least one event to mark Right to Know Week.* The Review Officer hosted a meet and greet for access and privacy professionals and we encouraged the province and municipalities to proclaim Right to Know Week in their jurisdiction.
- *Host or support an event to mark Data Privacy Day.* This day was marked by the Review Officer issuing a press release.
- *Engage in one educational event at the local, national or international level.* The Review Office participated in 12 educational events.
- *Continue to offer to provide training about the review process for local/municipal public bodies.* The Review Office participated in three training sessions.
- *Initiate or respond to at least two meetings or consultations with health custodians, health officials or other stakeholders.* The Review Office participated in 5 meetings and 16 consultations.

# Service Plan for the FOIPOP Review Office

April 1, 2015 – March 31, 2016

## Vision

- Nova Scotia's public sector is open and accountable.
- Privacy rights of citizens are respected and protected.

## Statement of Mandate

The Freedom of Information and Protection of Privacy (“*FOIPOP*”) Review Office is the impartial oversight agency responsible for monitoring and overseeing compliance with four statutes: the *Freedom of Information and Protection of Privacy Act* (“*FOIPOP*”), the *Privacy Review Officer Act* (“*PRO*”), the *Municipal Government Act (Part XX)* (“*MGA*”) and the *Personal Health Information Act* (“*PHIA*”).

Under *FOIPOP* and the *MGA* the Review Office provides impartial oversight over more than 400 public bodies that include government departments, universities, school boards, municipalities and municipal bodies, police, transit authorities, agencies, boards and commissions. In discharging its mandate, the Review Office investigates and mediates access appeals and complaints, conducts formal hearings, and issues recommendation reports. Under the *PRO* the Review Office investigates privacy complaints, conducts investigations into privacy breaches – including through self-initiated investigations, provides comments on the privacy implications of proposed legislation, programs, policies and technologies, conducts research and educates the public about their privacy rights and public bodies about their legal obligations.

There are more than 26,000 health custodians and agents in Nova Scotia subject to the rules set out in *PHIA*. *PHIA* sets out a complex series of rules regarding the use of person health information. In discharging its mandate the Review Office investigates and mediates access appeals and privacy complaints, conducts formal hearings and issues recommendation reports. The Review Office also receives privacy breach reports as mandated under the legislation and reports regarding disclosures for research purposes. The Review Office may conduct self-initiated investigation and may provide comments on the privacy implications of proposed legislation, programs, policies and technologies, conducts research and educates the public about their privacy rights and health custodians about their legal obligations.

## Who We Serve

Under *FOIPOP*, *PRO*, *MGA* and *PHIA* we serve:

- Citizens
- The Legislative Assembly of Nova Scotia

## How We Do Our Work

The FOIPOP Review Office mediates and investigates access to information reviews and privacy complaints, conducts self-initiated investigations, provides comments on the privacy implications of programs and systems, engages in public education and issues formal reports.

## Goal 1: An Open and Accountable Public Sector

### Strategies:

One of the key measures of an open public sector is the time it takes to respond to formal access requests. The Nova Scotia government produces statistics in relation to its performance under *FOIPOP*.<sup>8</sup> However, a careful review of those statistics this year revealed that further work is required to ensure that the data is reliable. In the coming years we will monitor the progress of government departments in meeting the 30 day time line required under *FOIPOP*.

The development of open government programs and the use of routine disclosures generally are two other important strategies for ensuring open access to information by the public. The FOIPOP Review Office will continue to provide information on how to develop an open government program.

Performance Measure	Baseline	2015/16 Target	2016/17 Target	2017/18 Target
1. Percentage of requests processed within 30 days by government departments.	To be established.			

## Goal 2 - Respect for and Protection of Privacy by Public Bodies, Municipal Bodies and Health Custodians

### Strategies:

The FOIPOP Review Office has historically focused most of its resources on access to information reviews and complaints. However, we also have the authority to respond to privacy consultation requests and to investigate breach notifications and privacy complaints. This year we will begin to monitor outcomes of complaint investigations and breach monitoring to evaluate the effectiveness of our informal recommendations. We will also conduct an investigation into the minor privacy breach reports received by health custodians to ensure that the personal health information of Nova Scotians is being properly managed in accordance with the *Personal Health Information Act* requirements.

Because big data is an emerging and significant issue, we will dedicate some resources to researching privacy protection strategies. We will work with other regulators across the country, with big data institutes in Nova Scotia and with industry groups to identify effective privacy protection strategies.

---

<sup>8</sup> The Annual Reports are available on the Department of Justice website at: <http://novascotia.ca/just/IAP/resources.asp>. In future they will likely be available on the Department of Internal Services website because the Information Access and Privacy Division has been transferred to this Department.

Police surveillance databases are also a significant issue. One of the challenges for the FOIPOP Review Office is that we do not have oversight over the privacy provisions of the *MGA* which govern police. However, we will continue to use our general public education mandate to provide information and education to police and to the public on this important issue.

Performance Measure	Baseline	2015/16 Target	2016/17 Target	2017/18 Target
2. Percentage of FOIPOP Review Office privacy complaint and breach investigation recommendations implemented by affected public bodies and health custodians.	To be established.			

### Goal 3 – Public Awareness of Access and Privacy Rights

#### Strategies:

While individual file work forms the foundation of our in-depth understanding of how the access and privacy rules work in Nova Scotia, it is through public education efforts that we are able to use that information to ensure that the public is able to understand their access and privacy rights. It is also through public education that we use the information gained through our file work to teach valuable lessons to public bodies, municipal bodies and health custodians. Our key public awareness strategies are to create practical tools, to give speeches and to develop workshops particularly for smaller public bodies, municipal bodies and health custodians to ensure that they have the knowledge and tools to deliver effective access and privacy programs.

Performance Measure	Baseline	2015/16 Target	2016/17 Target	2017/18 Target
3. Total number of individuals who attend FOIPOP Review Office presentations in Nova Scotia.	168	200	250	300
4. Number of FOIPOP Review Office presentations, media articles and tools. <sup>9</sup>	50	30	40	40

<sup>9</sup>Number of FOIPOP Review Office presentations includes speeches, media articles and tools. In 2014 we had 45 speaking engagements and 5 new tools made available.



**Goal 4 – Efficient and Effective Review Office Operations**

**Strategies:**

The FOIPOP Review Office, like many other information and privacy commissioner offices, has a backlog of cases. As of March 31, 2015 we had more 200 files awaiting assignment in part due to an extraordinary influx of files in January of 2015. The oldest of the files awaiting assignment dates from 2012. One of the significant developments in early 2015 is that we have almost completed the implementation of a new case management system which will allow us for the first time, to track processing time automatically rather than manually.

Because of the age of the cases we closed this year, our average days to resolve files is an incredible two years. We will continue to work diligently at reducing the backlog of files but for at least the next year we will be working on cases from 2012, 2013 and 2014 and continuing to close older files that are still being investigated. As a result, it is realistic to expect that our average processing time will continue to be two years for at least one more year. In 2016 we will begin investigating 2015 cases but will still be closing some of the older cases. Barring an unexpected increase in new cases, I anticipate that in 2017 that we will reach our goal of an average processing time of 90 days for reviews and complaints.

Performance Measure	Baseline	2015/16 Target	2016/17 Target	2017/18 Target
5. Percentage of access & privacy inquiries <sup>10</sup> that receive a response within two days.	98%	98%	98%	98%
6. Percentage of reviews (FOIPOP, MGA and PHIA) that are resolved informally. <sup>11</sup>	69%	75%	80%	85%
7. Average number of days to resolve FOIPOP, MGA, PRO, PHIA reviews and complaints. <sup>12</sup>	742 days	700 days	500 days	90 days
8. Percentage of Review Report recommendations accepted by public bodies and municipal bodies.	44% <sup>13</sup>	50%	55%	60%

<sup>10</sup> Inquiries are telephone calls, letters and emails that request basic access and privacy information such as how to file an access request, where to file a request, how to file a review and general privacy rights.

<sup>11</sup> Mediation, informal resolution, decision not to investigate and withdrawn cases are included in this category. In 2014 106/154 FOIPOP, MGA and PHIA reviews were resolved informally.

<sup>12</sup> The baseline is made up of all reviews and complaints under FOIPOP, MGA, PRO and PHIA including own-motion investigations under PRO and PHIA for the period April 1, 2014 to March 31, 2015. The calculation was done manually from a series of databases. Our new case management system will allow automated calculations in the future.

<sup>13</sup> From 2012 to 2014 public bodies fully accepted recommendations in 14 of 32 reports issued.

## Budget History (for FOIPOP, MGA and PRO)

Category	Forecast for 2015-2016	Actual for 2014-2015	Actual for 2013-2014
Salaries and Benefits	504,000	471,004	496,535
Travel	12,700	5,870	5,642
Professional/Special Services	59,900 <sup>#</sup>	52,215 <sup>#</sup>	43,647 <sup>#</sup>
Supplies and Services	15,300	10,979	6,275
Other	42,100	42,029	37,315
Adjustments	(41,000)*	(22,274)	(30,349)
Total Budget Spent	634,000	582,097	589,414
Total Budget Given	593,000	565,000	560,000
% of Budget Spent	106%	103%	105%

<sup>#</sup> This amount includes funding a full-time temporary agency employee to address our staffing needs for a full year.

\*This reflects a one-time transfer of funds for clerical services.

There is no budget history to report for *PHIA* as no budget was given. All additional work has been absorbed and reported within the existing budget.

### Contact Information:

Centennial Building, 1660 Hollis Street, Suite 1002, Halifax, NS B3J 1V7

PO Box 181, Halifax, NS B3J 2M4

Phone: 902-424-4684    No Charge-Dial: 1-866-243-1564

TDD/TTY: 1-800-855-0511    Fax: 902-424-8303