



2016 - 2017 Annual Report

*Office of the Information and
Privacy Commissioner for Nova Scotia*





Our Vision

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

What We Do

Established in 1994, the Office of the Information and Privacy Commissioner is the impartial oversight agency responsible for monitoring and overseeing compliance with four statutes:

- the *Freedom of Information and Protection of Privacy Act* which applies to more than 335 public bodies including government departments, agencies, boards and commissions,
- the *Privacy Review Officer Act* which applies to the same 335 public bodies,
- the *Municipal Government Act, Part XX* which applies to more than 65 municipal bodies including municipalities, police forces and library boards, and
- the *Personal Health Information Act* which applies to more than 26,000 health custodians and agents in Nova Scotia.

Strategic Goals

1. An open and accountable public sector.
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 OIPC operations.



June 27, 2017

Honourable Kevin Murphy
Speaker of the Legislative Assembly
1st 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 this annual report for the 12 month period of April 1, 2016 through to March 31, 2017.

Respectfully submitted,

Catherine Tully
Information and Privacy Commissioner for Nova Scotia



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Commissioner's Message



As Nova Scotia's Information and Privacy Commissioner my mission is to provide impartial oversight of government compliance with our access and privacy laws. The purpose of such oversight is to ensure that Nova Scotia's public sector is open and accountable and that privacy rights of citizens are respected and protected.

When I arrived in the fall of 2014 I immediately set to work on two tasks. First, I wanted to tackle the backlog of cases awaiting resolution. Second, I wanted to change the focus of the office to a more proactive approach to oversight. In the past year we have had a great deal of success on both fronts. One of the proactive tasks I undertook was to review the adequacy of our access and privacy laws. In doing so I looked at developments in all other Canadian jurisdictions and around the world. The results? Nova Scotia's access and privacy laws are simply no longer up to the task.

Accountability for the Digital Age – Modernizing Nova Scotia's Access and Privacy Laws

Effective access to information rights and strong privacy protections promote the common good and support human flourishing. Nova Scotians deserve and expect to have a robust, modern law to protect these essential rights, but the law that protects them, the *Freedom of Information and Protection of Privacy Act*, hasn't had significant updates since it was passed in 1993. Twenty-four years ago, the world was a different place. In 1993 there were only 130 websites. Today there are one billion. Google wasn't founded until 1998 and Facebook wasn't created until 2004. Big data was the realm of scientists and dreamers.

The digital age is upon us and our laws are quite simply no longer up to the task. Significant improvements are required to bring our access and privacy rights into the 21st century. There are four core areas of weakness in Nova Scotia's access and privacy laws.

**The digital age is upon us and
our laws are quite simply no
longer up to the task**

1. *Modernizing Access Rights:*

One of the key weaknesses of our current access law is that it fails to enshrine a right to receive information in an electronic format so that the data is open, reusable and accessible. Further, modern democracies have embraced open government as a means of ensuring transparency in decision making. To protect and advance these efforts it is important to have statutory provisions that support open government as a citizen's right. Another key modern access provision is a legal obligation to create records in the first place. A right to access government information is meaningless if no record exists. Finally, Nova Scotia has the weakest public interest override of any Canadian jurisdiction. Such a right ensures that, no matter what exemption is claimed, public bodies must always consider whether or not disclosure would nonetheless be in the public interest.

2. *Modernizing Privacy Rights:*

Nova Scotia's privacy laws lack virtually all of the essential modern privacy protections found in other Canadian jurisdictions. The need for these privacy protections has grown exponentially thanks to two key developments: the arrival of big data and increased expectations from citizens that government entities respond to citizens' needs first, and bureaucratic borders second. Government entities want to use big data for the benefit of citizens. They want to work together to deliver integrated programs and activities for the benefit of citizens and in response to their demands. Privacy rules affect their ability to do so. But privacy rules can facilitate their ability to do so when the laws include clear processes and strong privacy protections so the services can be created and delivered while privacy rights remain secure.

Without those fundamental privacy protections, databases of citizen information are not adequately protected for the 21st century. Fundamental privacy protections that enable innovation in government services include mandatory requirements for privacy impact assessments, information sharing agreements, mandatory breach notifications, and consultations on draft legislation. Nova Scotia's laws also need to include privacy management program requirements, requirements for collection notification, and effective provisions to ensure that public bodies create an inventory of all of the personal information they collect about citizens.

3. *Improving Oversight:*

One of the core purposes of access and privacy law is to allow for independent oversight of government decisions. There are a variety of core elements of independence missing in Nova Scotia's model including the fact that the Commissioner is not an independent officer of the legislature and that public bodies can simply choose to ignore the Commissioner's recommendations. It is time to strengthen the oversight provisions to ensure that citizens' right to an impartial review of government decisions and actions is meaningful and effective.

4. *Organization and Coverage:*

There is a confusing array of four laws governing public sector access and privacy rights in Nova Scotia. Having four separate access and privacy laws does not make sense to citizens. Their expectations with respect to their rights to access information or to protection of their personal information is the same no matter what level of government has the information. They are often surprised to learn that, because of a quirk of our legislation, they have no right to receive an independent review of a municipality's privacy practices. One streamlined, consistent law for all government bodies would be more accessible and comprehensible for citizens and the public bodies themselves.

Added to this issue is the fact that, over time, various governments have chipped away at Nova Scotians' access and privacy rights by creating exemptions and notwithstanding provisions sprinkled across numerous other pieces of legislation. This repeal by degrees has diluted access to information rights, slowly weakening legislation essential to the health of the province's democracy.

A list of all 34 recommendations is included in this Annual Report. A detailed explanation of each of these recommendations is contained in the report entitled, *Accountability in the Digital Age: Modernizing Nova Scotia's Access and Privacy Laws* available on the OIPC website at www.foipop.ns.ca.

How Did We Do?

Whatever the shortcomings of our access and privacy laws, over the last year, Nova Scotians have shown that they expect their rights to be protected. The demands for our services, both as a proactive advisor and a reactive oversight authority, showed significant growth again in 2016/2017. Our overall caseload of appeals, consultations and outreach matters increased 21% over last year.¹ In fact, there has been a steady rise in the use of our services since I arrived in 2014. Our overall caseload is 93% higher this year than it was in 2014.² This has been a huge challenge given that during the same time period we had no increase in funding or staff. Fortunately, this year we received an increase in funding that will allow us to hire a new Senior Investigator.

Since 2014 the use of our services has increased 93%

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¹ In 2016/2017 we opened 549 new files. In 2015/2016 we opened 454 new files.

² In 2016/2017 we opened 549 new files and outreach matters (371 files+178 outreach). In 2014 we opened 284 new files and outreach matters (217 files + 67 outreach).

Despite the increase in demand, my very capable staff have worked diligently at resolving the backlog of cases. All but a handful of files that greeted me when I arrived in September of 2014 have now been resolved. Once assigned, my investigators resolve matters within an average of 67 days. The number of files we are resolving has risen steadily over the past 2.5 years. This year we resolved a total of 528 matters, a 14% increase over last year.³ But the fact is that while we worked on the older files, new files poured into our office. We continue to work as diligently as possible on these files and hope, by 2018, to have our overall response time down to a reasonable three to four months.

My office has significantly increased its proactive approach to oversight. We completed 178 outreach projects last year – an increase of 166% over 2014.⁴ Outreach files include creating new tools, delivering speeches, developing and delivering training, and media interviews. This year we spoke with pharmacists, nurses, students, members of the public, new municipal councillors, librarians, municipal development officers, deputy ministers, access administrators, and chief privacy officers. In total, 1454 Nova Scotians took part in events led by OIPC staff. We developed and delivered training on a range of topics including privacy breach management, university and college access and privacy programs, and the right to be forgotten. We published new tools such as the *Video Surveillance Guidelines, Access and Privacy – A Councillor’s Guide* and the *Instant Messaging and Personal Email Accounts Guide*. All our materials are available on our website, we tweet about them regularly and have discussed various access and privacy issues on the radio, television, online, and in local newspapers.

**1454 Nova Scotians attended
events lead by OIPC staff**

One significant outreach project this year was our contribution to the statutory review of the *Personal Health Information Act*. We provided a detailed preliminary submission to the Department of Health and Wellness and then followed that up with a detailed response to the list of 37 questions provided by the Department.

I have included our Service Plan at the end of this Annual Report. It shows that we had a highly productive year meeting and sometimes far exceeding our goals. I have set more ambitious goals for next year in several areas so that we continue to strive to improve.

Conclusion

I am grateful for the hard work and dedication of my staff. It has also been a pleasure to meet with so many Nova Scotians dedicated to ensuring that access and privacy rights remain meaningful. We will continue to work at ensuring that public bodies and municipalities are fully accountable to the public and that Nova Scotians’ privacy rights are protected and respected.

I am optimistic that the recommendations I have made to modernize our laws will prompt a robust conversation about the strengths and weaknesses of our access and privacy laws. I am hopeful that the conversation will lead to a consensus that it is indeed time to modernize Nova Scotia’s access and privacy regime.

Yours sincerely,



Catherine Tully
Information and Privacy Commissioner for Nova Scotia

³ Files closed in 2016/2017: 174 reviews and complaints + 176 files initiated by public bodies + 178 outreach = 528 completed files. In 2015/2016 we completed 462 files.

⁴ In 2014 we received 67 new outreach files. In 2016/2017 we received 178 new outreach files.

Annual Report Statistics
Freedom of Information and Protection of Privacy Act, Privacy Review Officer Act,
Municipal Government Act (Part XX)

Highlights:

In 2016/2017 our caseload of reviews, complaints, and files initiated by public bodies rose to 310 new files from 264 in 2015/2016. In fact, since 2013 this case load has increased 77%. At the same time, we had an outstanding year developing new tools, planning and delivering training, answering media requests, and giving speeches. In total we opened 142 new outreach files and we spoke to more than 1400 people in Nova Scotia about access and privacy rights and responsibilities. There was a slight decrease in the number of inquiries received this year. Inquiries are basic questions usually from the public. We believe that at least part of the decrease is a result of our website being more user-friendly and so some people were able to find the answers to their questions online. One final pattern of interest is that despite the challenges of an ever increasing case load, my staff resolved more files this year than last year, closing a total of 290 reviews, complaints, and files initiated by public bodies compared with 280 last year.

Summary of All Files Opened			
FOIPOP, MGA, PRO			
	2016 - 2017	2015 - 2016	2014
Access and Correction Requests for Review			
FOIPOP	126	106	100
MGA	42	34	25
Privacy Complaints⁵			
Privacy Complaints Received	6	8	3
Commissioner Own-Motion	0	5	2
Files Initiated by Public Bodies			
Breach Notifications	3	4	
Privacy Impact Assessments	1	1	0
Access and Privacy Consultations ⁶	78	58	4
Time Extension Requests	53	48	62
Late Transfer Request (new)	1		
Outreach and Education			
Inquiries	1133	1287	1710
Media Requests	26	23	
Speaking Engagements	70	55	45
Staff Training and Conferences	1	6	10
Tools Made Available	11	16	5
Committees ⁷	9	8	2
Projects ⁸	16	15	
Other ⁹	9	1	
Total	1585	1675	1968

⁵ The *PRO Act* applies only to those public bodies to which *FOIPOP* applies, not the *MGA*.

⁶ Access consultations were not reported in 2014.

⁷ Committees include: international memberships such as the Common Thread Network, International Conference of Data Protection & Privacy Commissioners and Global Privacy Enforcement Network, conference planning, and provincial government responsibilities.

⁸ Projects include: legislation amendment recommendations, participation in multi-jurisdictional initiatives such as the GPEN privacy sweep, internal and external resources such as the guide to the OIPC processes, and video surveillance survey.

⁹ Other includes: submissions on Bills, providing statistics and responses to external organizations, distribution of materials and tools.

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

Outcome	FOIPOP Reviews Closed			MGA Reviews Closed			PRO Complaints Closed		
	2016/17	2015/16	2014	2016/17	2015/16	2014	2016/17	2015/16	2014
Review Report	10	10	14	4	2	2	4	1	0
Mediation	0	0	1	0	0	0	0	0	0
Informal Resolution	76	86	53	30	32	15	3	5	5
Withdrawn	12	4	12	1	3	9	0	0	0
Abandoned	6	4	17	1	1	5	0	0	3
Screened*	4	10	3	2	2	2	2	7	1
Total	108	114	100	38	40	33	9	13	9

*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 Commissioner where Reports were Issued (Access Only)

Year	Agree with Public Body	Agree in-part with Public Body	Disagree with Public Body
2016/17	1 (7%)	4 (29%)	9 (64%)
2015/16	0	7 (58%)	5 (42%)
2014	5 (31%)	3 (19%)	8 (50%)

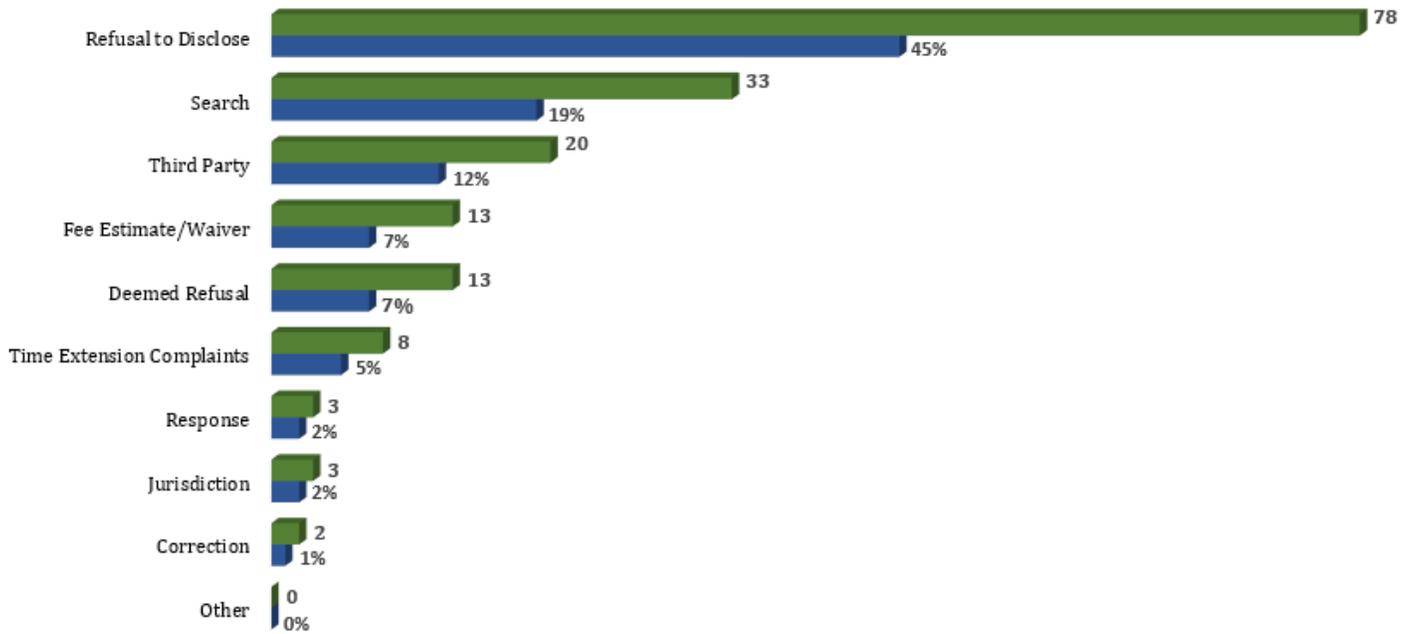
Public Bodies' Responses to the Commissioner's Recommendations

Year	Accepted	Partial Acceptance	Rejected
2016/17	8 (57%)	4 (29%)	2 (14%)
2015/16	6 (50%)	6 (50%)	0
2014	9 (56%)	1 (6%)	6 (38%)

Summary of All Files Closed *FOIPOP, MGA, PRO*

	2016-2017	2015-2016
Access and Correction Requests for Review	146	153
Privacy Complaints Received and Own-Motion	9	15
Files Initiated by Custodians or Public Bodies	135	112
Inquiries	1133	1287
Outreach and Education	141	102
Total	1564	1669

Issues Under Review 2016-2017 *FOIPOP* and *MGA* Access & Correction Reviews



The OIPC identified 173 issues in the 168 review files received.

Issues Under Review 2016-2017 *FOIPOP* Privacy Complaints



The OIPC identified 8 issues in the 6 complaint files received.

FOIPOP & MGA Informal Resolution Summaries

Fee Estimates and Time Extensions

A public body submitted a request to the OIPC to take a time extension under sections 9(1)(b) and 9(1)(c) of *FOIPOP*. In reviewing the public body's request, the OIPC noted that the public body issued a fee estimate to the applicant and had not yet received the applicant's response or payment. The OIPC explained to the public body that a time extension was premature because the 30 day timeline to respond to the applicant is stopped while awaiting the applicant's payment.

Lesson: If a public body issues a fee estimate to an applicant, the 30 day timeline stops until the applicant submits the payment (or the public body decides to waive the fee). Upon receipt of payment, the 30 day timeline resumes.

Tool: OIPC Time Extension Guidelines and request forms for public bodies and municipalities are available on the OIPC website: <https://foipop.ns.ca/publicbodytools>.

Routine Release – An Easy Win

A public body received an access to information request from a reporter and released the records with some redactions. Later, a different reporter called the public body to request the exact same records. The public body contacted the OIPC to ask if it is necessary under *FOIPOP* for the new applicant to submit his request in writing (Form 1), or if it is necessary for the public body to have a routine access policy in place. The OIPC explained that there is no legislated requirement to have a routine access policy, however, it is best practice to do so. It is also not necessary for the public body to require a formal access to information request under *FOIPOP* if it determines the records can be released routinely. In this case, the redactions and records would be unchanged, and it was recommended that they be released without requiring a formal application.

Lesson: Having an established routine access policy in place is beneficial for all parties involved. It can increase efficiency of processing requests for the public body and decrease fees and wait times for applicants. It's a win-win!

Public Interest Fee Waivers

The applicant requested records about land returned to a municipality and requested that the fees be waived in the public's interest. The municipality refused to waive the fees and the applicant requested a review.

The OIPC had the applicant provide the municipality with more detailed reasons for why he believed a fee waiver was in the public's interest. After considering the applicant's more comprehensive reasons for a public interest fee waiver, the municipality agreed to waive the fees.

Lesson: Explaining your position brings about understanding and resolution.

Release Employee Names

An applicant requested access to all records of when she attended an office on a specific date. The public body disclosed the records in part and withheld some names under section 20(1) of *FOIPOP* because it thought disclosure would be an unreasonable invasion of a third party's privacy.

The OIPC reviewed the records and discovered that the withheld names were those of people retained under an employment contract to perform services for the public body and therefore met the definition of public body employees under *FOIPOP*.

The OIPC asked the public body to revisit its decision and consider section 20(4)(e) of *FOIPOP* which states that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, function or remuneration as an employee of a public body.

The public body reconsidered its decision and disclosed the employee names to the applicant.

Lesson: It is not an unreasonable invasion of privacy to disclose the names and positions of public body employees.

Embarrassing Emails

An applicant asked for every record from a public body that had her name on it. The applicant had a fractious relationship with staff in the public body. A search for records produced a number of emails. A small handful reflected the degree of frustration felt by staff, describing the applicant in insulting and disrespectful terms. The public body was reluctant to disclose the embarrassing emails. However, embarrassment is not a permitted exemption. The matter resolved when the applicant decided to withdraw her access request.

Lesson: Access requests do not discriminate between professional and unprofessional correspondence. Emails are government records, and as such, government employees are well-advised to remember that today's email could become part of tomorrow's responsive record.

Focus on Faxing

Investigation report considered privacy risks of faxing personal health information

In April 2016, CBC News reported that the owner of a Bedford business had been receiving mental health referral information on her fax machine. The referrals were intended to be sent to the Bedford-Sackville Mental Health Clinic (Clinic), part of the Nova Scotia Health Authority (NSHA). The Clinic's fax number was one digit different from the business'. The business owner agreed to turn over to the Office of the Information and Privacy Commissioner the two referral forms that she had received most recently. One was from October 2015, the other from March 2016.



At first our investigation followed the usual approach to privacy breach investigations. We confirmed that the breach was contained and we contacted the two sending physicians to discuss notification requirements and prevention strategies. As those investigations were wrapping up in June 2016, the business owner contacted us to report that she had received a third fax, again from a different physician.

We followed the familiar privacy breach investigation approach with this physician as well. However, the evidence of a recurring pattern led us to consider whether the Clinic's ability to receive faxes was reasonably secure. Our investigation revealed that not only were the two numbers only off by one digit, but also that the only different digit was in the exchange for two adjacent communities, the different digits were side-by-side on the keypad, and both numbers reached fax machines.

Our initial reaction was to suggest to the NSHA that the Clinic needed to change its fax number. The NSHA and its telecommunications provider noted several obstacles. The evidence provided satisfied us that changing the fax number was an incomplete solution to the problem while at the same time posing a significant risk to service delivery for patients of the Clinic.

Instead, we focused on training to highlight the importance of good fax practices. As a result, the NSHA has revised its mental health referral form to include a clear statement that protecting patient privacy requires a careful check of the fax number. The form notes that sending personal health information via fax poses the inherent risk of a mis-dial. The NSHA has confirmed that it has highlighted the issue of faxing personal health information in internal staff training communications.

For our part, we mailed a notice to the 350 physicians who had referred a patient to the Clinic within the previous 18 months. The notice warned physicians of the heightened risk of a privacy breach when faxing to the Clinic, and made four recommendations to ensure the physicians' fax practices were consistent with privacy best practices. We followed up the written notice with phone calls to all 350 physicians. We spoke with staff or the physicians themselves in 80% of those calls, and 90% confirmed that they would implement or partially implement the faxing best practices recommendations.

The business owner agreed to advise us should she receive another fax containing personal health information.

The report marked a significant success in terms of raising the importance of good privacy practices throughout the information life cycle, and ensuring that the privacy management framework requirements of the *Personal Health Information Act* are properly addressed.

Investigation Report IR16-02 is publicly available on our website at www.foipop.ns.ca.

Annual Report Statistics

Personal Health Information Act

Highlights:

PHIA came into effect in June 2013 and since that time our caseload has risen steadily. This year we received 61 new reviews, complaints and files initiated by health custodians – an increase of 42% over last year. *PHIA* also requires health custodians to report privacy breaches with no potential of harm and to report disclosures of personal health information without consent to researchers. Reports of these two types of incidents have risen from 10 in 2013 to 815 this year. As a result of this increase in our oversight responsibilities, this year the OIPC was granted funding for a new Senior Investigator who will be primarily responsible for health privacy issues.

Summary of All Files Opened			
<i>PHIA</i>			
	2016 - 2017	2015 - 2016	2014
Access and Correction Requests for Review			
Access	9	11	6
Correction	0	1	1
Privacy Complaints			
Privacy Complaints Received	1	0	1
Commissioner Own-Motion	9	1	4
Files Initiated by Custodians			
Privacy Impact Assessments	0	0	0
Access and Privacy Consultations	39	29	9
Time Extension Requests	0	0	0
Disclosure Without Consent to Researcher	103	60	71
Breaches with No Potential for Harm or Embarrassment	712	591	338
Breach Notification	3	1	
Prescribed Entity's Information Practices	0	0	0
Outreach and Education			
Inquiries	160	105	90
Media Requests	12	2	
Speaking Engagements	16	13	5
Staff Training and Conferences	0	2	0
Tools Made Available	1	3	0
Committees ¹⁰	2	0	0
Projects ¹¹	2	3	
Other ¹²	3	0	
Total	1072	822	525
¹⁰ Committees include: Canada Health Infoway Privacy Forum and oversight group. ¹¹ Projects include: s. 70 privacy breach reporting and the <i>PHIA</i> legislation review. ¹² Other includes: submissions on Bills and responses to external organizations.			



Outcomes for Review and Complaint Files Closed
PHIA

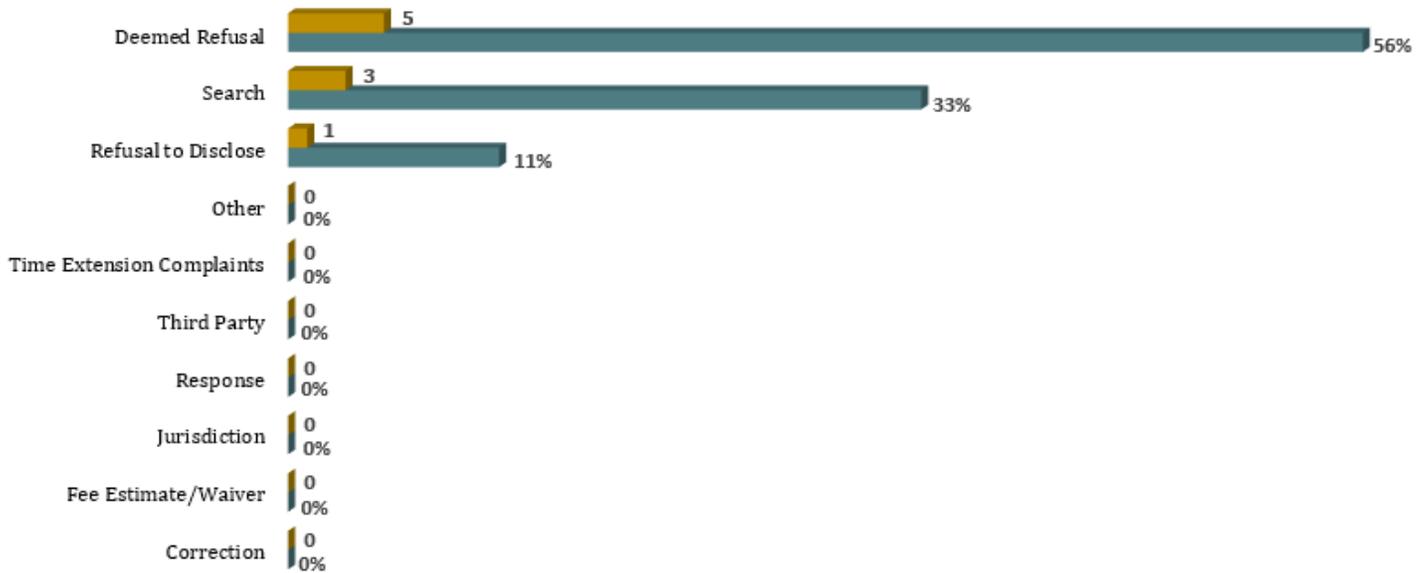
	2016 - 2017	2015 - 2016	2014
Review Report	1	0	0
Mediation	0	0	0
Informal Resolution	15	7	15
Withdrawn	1	0	0
Abandoned	1	0	1
Screened	1	5	4
Decision not to Investigate	0	0	1
Total	19	12	21

Summary of All Files Closed
PHIA

	2016-2017	2015-2016
Access and Correction Requests for Review	9	10
Privacy Complaints Received and Own-Motion	10	2
Files Initiated by Custodians ¹³	855	685
Inquiries	160	105
Outreach and Education	37	23
Total	1071	825

¹³ This number includes 103 disclosures without consent to researchers (s. 57(d) *PHIA*) and 711 breaches with no potential for harm or embarrassment (s. 69(2) *PHIA*).

Issues Under Review 2016-2017 *PHIA Access & Correction Reviews*



The OIPC identified 9 issues in the 9 review files received.

Issues Under Review 2016-2017 *PHIA Privacy Complaints*



The OIPC identified 17 issues in the 10 complaint files received.



PHIA Informal Resolution Summaries

Access After Death

For the purpose of planning for his own future health care, an applicant requested his deceased father's medical records specific to his hereditary illness from the custodian (nursing home). The custodian denied access to the records, stating a power of attorney was necessary. The OIPC contacted the custodian to explain that personal health information of a deceased person can be released to the child of that person if the information is required for the recipient to make decisions about his own health care (section 40(1)(c) of *PHIA*). Power of attorney is not required to disclose the requested personal health information.

Lesson: *PHIA* includes a number of provisions regarding the disclosure of personal health information without consent under specific circumstances (sections 36-46).

Patient Access Rights – Timelines & New Doctors

A patient filed a request for review under *PHIA* when he did not receive a response to his request for access to his personal health information from a custodian within 30 days. The custodian believed the proper procedure for patients to gain access to their files was to have the records transferred to a new physician.

The OIPC educated the custodian that a physician-to-physician transfer is a separate process from an individual requesting access to personal health information under section 84 of *PHIA*, which requires custodians to respond to a patient's request for records within 30 days. The issue of fees was also explored including the fact that certain limited fees can be charged for providing a copy of personal health information to an individual, but a custodian cannot charge fees to an individual for providing a copy of a medical file to another regulated health professional (*PHIA* Regulations at section 12(f)).

In this case, the custodian provided the patient with a copy of his personal health information, and in light of the delay, also waived the fees.

Lesson: Individuals can request a copy of their personal health information at any time, not only when transferring to a new doctor.

The Dumpster Strategy

The OIPC received a call from a concerned individual about patient records that were found in a dumpster. These records were located behind an office building where most of the tenants are medical professionals who are subject to *PHIA*. Two boxes of records were pulled from the dumpster and put into a secure storage space until the matter could be sorted out.

After viewing the records on-site, the OIPC identified the physician responsible for the records. Unfortunately, he had left the building and closed his practice. The physician had a records retention schedule that allowed for him to destroy any record that had reached its end of life cycle. However, during the move out process, these records were not discovered until after the shredding company that securely disposed of other records left. In the urgency of moving out, the records were discarded into a dumpster.

A physician that closes up shop is still subject to *PHIA* and must follow all of its rules, including the requirement to keep personal health information secure. When the OIPC contacted the physician about these records he took immediate action to hire a secure record shredding company to destroy the records.

Lesson: Secure disposal of personal health information is essential when records reach their end of life, even if you are in a hurry.

Tool: Doctors Nova Scotia has information available on its website to assist physicians who are closing up their practice:

<http://www.doctorsns.com/site/media/DoctorsNS/BOM-C4-closingapractice.pdf>.

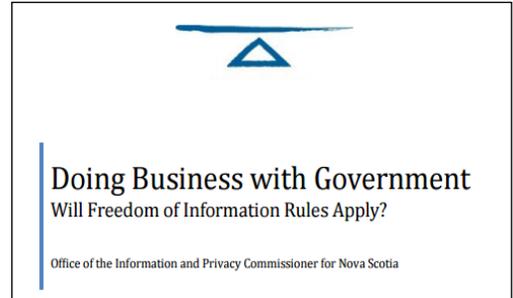


OIPC Year in Review

2016

November

Reverse Trade Show for Business
Halifax, Nova Scotia



Right to Know Event - Halifax, Nova Scotia
Freedom of Information: Does It Work?

FREEDOM OF INFORMATION
DOES IT WORK?

OPEN TO THE PUBLIC

SPONSORS

Office of the Information & Privacy Commissioner
Nova Scotia

WHEN
November 15, 2016
6:30pm - 8pm

WHERE
Auditorium 1, McCain Building
Dalhousie University
6135 University Avenue, Halifax, NS

Join our panel for a debate on what is and is not working in Nova Scotia's access to information regime. How does Nova Scotia's access to information law measure up? Moderated by Fred Vallance-Jones of the University of King's College, the discussion panel will include David MacKenzie of the NSGEU, Rachel Ward, CBC Reporter and Kevin Lacey, Atlantic Director of the Canadian Taxpayers Federation. Our panelists will provide practical information based on their years of experience using access laws.

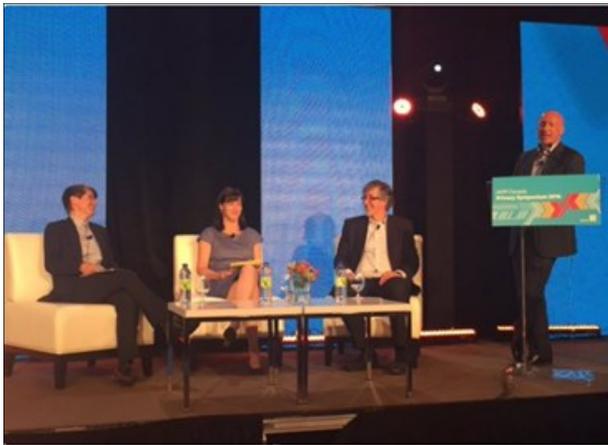
CENTRE FOR LAW AND DEMOCRACY

UNIVERSITY OF KING'S
COLLEGE - DALHOUSIE
SCHOOL OF JOURNALISM

DALHOUSIE UNIVERSITY
SCHOOL OF INFORMATION MANAGEMENT

May

IAPP Canada Conference,
Toronto, Ontario



August

Published PHIA Rules Summary
& Checklist for Custodians

OIPC NS @NSInfoPrivacy · Aug 10

Check out our new tool summarizing the key rules in PHIA:
foipop.ns.ca/sites/default/...pic.twitter.com/l6ChJqdKtw

September

Published Instant Messaging &
Personal Email Accounts Guide

Instant Messaging and
Personal Email Accounts:
Meeting Your Access and Privacy
Obligations

September 2016
Office of the Information and Privacy Commissioner for Nova
Scotia

OIPC NS @NSInfoPrivacy

OIPC staff ready for the Freedom of Information Does It Work debate! McCain Building Dalhousie at 6:30pm.

OIPC Year in Review


2017

March

Delivered Access & Privacy Training for Universities and Colleges

Access & Privacy Toolkit For Universities and Colleges 2017

Office of the Information and Privacy Commissioner for Nova Scotia
oipecns@novascotia.ca 902-424-4684 www.foipop.ns.ca

January

Data Privacy Day: January 28
Published editorial describing results of municipal video surveillance surveys

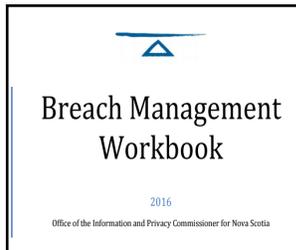


Published new tools:

- Video Surveillance Guidelines
- Video Surveillance Template



Delivered training sessions on topics including Privacy Breach Management

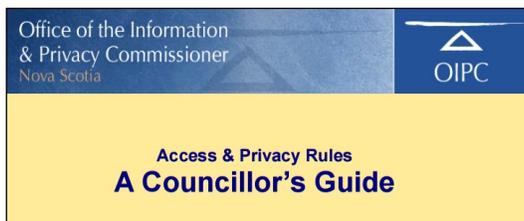


Video Surveillance Guidelines

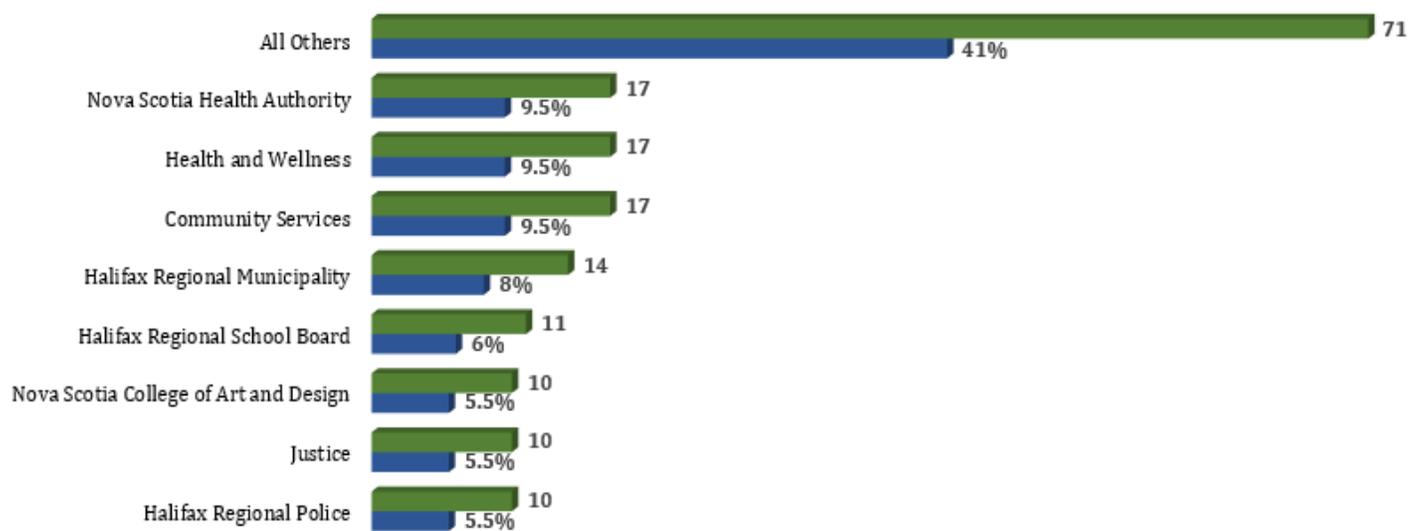
Office of the Information and Privacy Commissioner of Nova Scotia



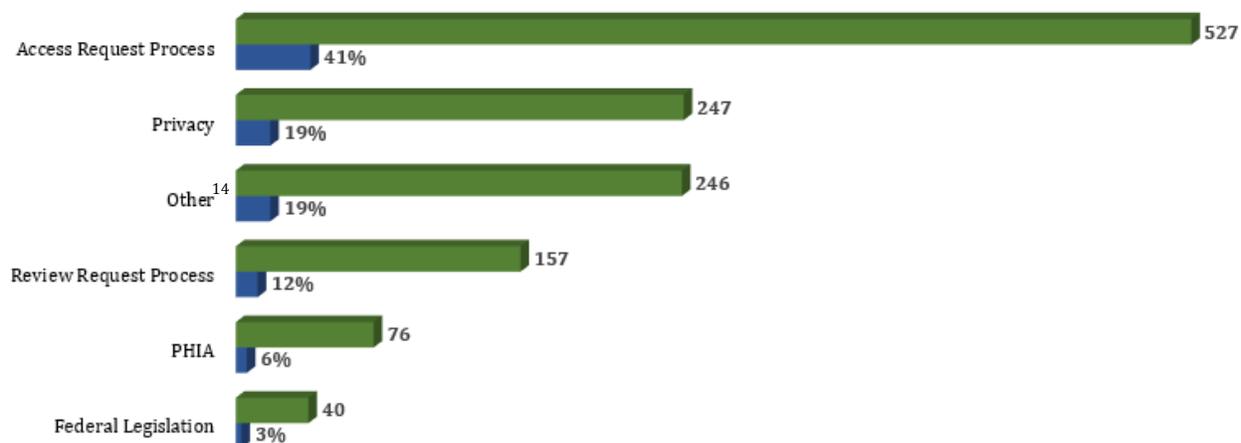
Published new materials



Top 8 Public Bodies and Custodians Review Requests Received in 2016-2017 *FOIPOP, MGA, PRO and PHIA*

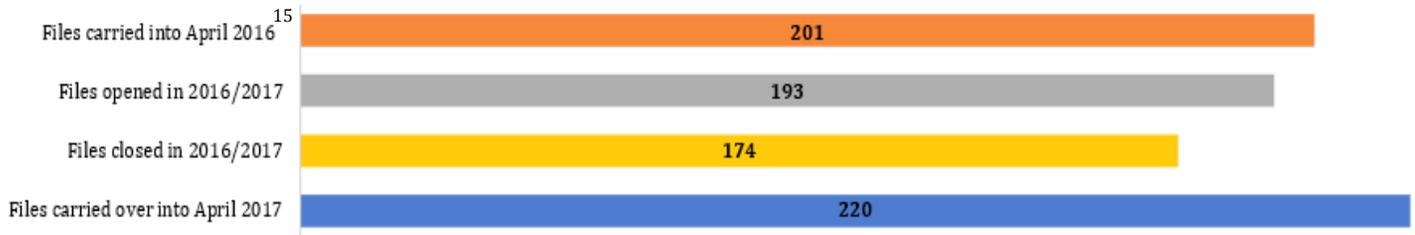


Inquiries Received in 2016-2017 *FOIPOP, MGA, PRO and PHIA*

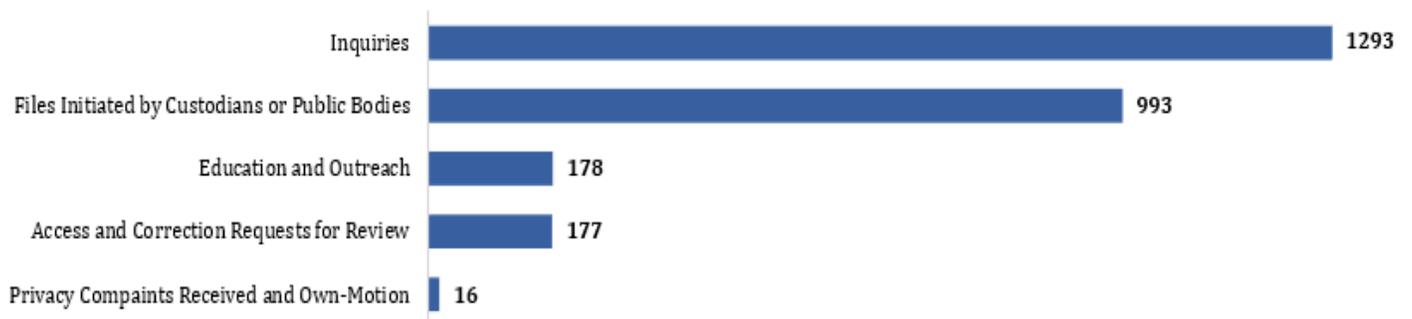


¹⁴ Other includes: media requests; conference, presentation, meeting and committee invitations; business administration and wrong numbers.

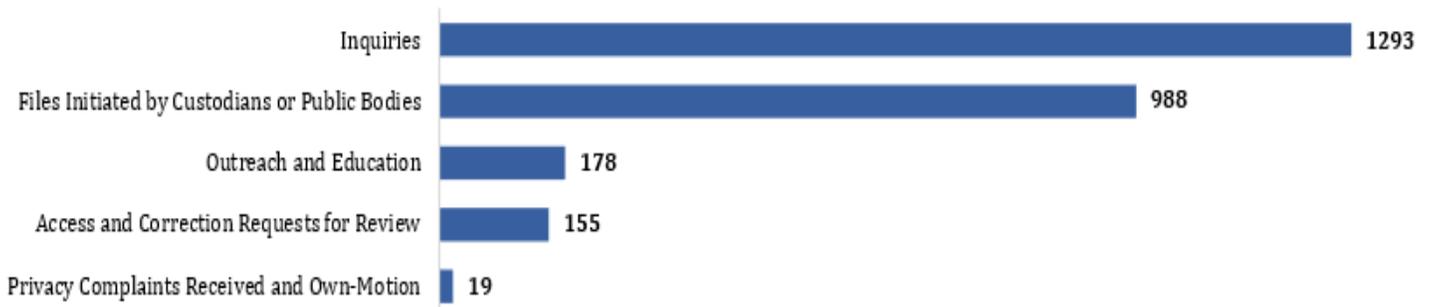
Management of All Review and Complaint Files *FOIPOP, MGA, PRO, PHIA*



Summary of All Files Opened 2016-2017 *FOIPOP, MGA, PRO, PHIA*



Summary of All Files Closed 2016-2017 *FOIPOP, MGA, PRO, PHIA*



¹⁵ The OIPC reported this as 198 last year. This discrepancy was likely caused by backdating closed files.

Accountability in the Digital Age

Modernizing Nova Scotia's Access and Privacy Laws

Summary of Recommendations

Organization and Coverage

Recommendation #1: Organization of the Acts

Combine the access and privacy rules contained in the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, *Municipal Government Act Part XX (MGA)*, *Personal Information International Disclosure Protection Act (PIIDPA)*, and *Privacy Review Officer Act (PRO)* into one complete *Freedom of Information and Protection of Privacy Act*.

Recommendation #2: Extending coverage

- a) Create a clear, criteria-based definition of public body.
- b) Make MLA offices and officers of the legislature subject to the privacy rules set out in *FOIPOP*.

Recommendation #3: Conflict with other enactments

- a) Conduct a thorough review of all of the conflict clauses listed in ss. 4A(2) of *FOIPOP* and 464A(2) of the *MGA* with a view to reducing the list to only those that are demonstrably necessary. The review should take into consideration the exemptions to disclosure already in existence and should particularly avoid unnecessary exclusions in light of the exemptions.
- b) Require periodic statutory reviews of ss. 4A(2) of *FOIPOP* and 464A(2) of the *MGA*.
- c) Add a provision to specify the criteria for when a notwithstanding clause would be appropriate in *FOIPOP* and the *MGA*.
- d) Add a provision requiring government to list provisions in statutes that prevail over *FOIPOP* and the *MGA* in schedules to the Acts and include a review of these schedules in any regular review of *FOIPOP* or the *MGA*.

Modernizing Access Rights

Recommendation #4: Protecting applicant identity

Add a provision to Nova Scotia's access law requiring that the name of applicants be kept confidential except as specifically enumerated for the purposes of processing an access request or appeal related to that request.

Recommendation #5: Fees

- a) Eliminate the \$5 application fee.
- b) Allow for a minimum of five hours of search and processing time before any fee is charged.
- c) Prohibit charging of fees for time spent severing the record.
- d) Impose timelines for decisions relating to fee waiver requests.
- e) Add public interest as a ground for fee waivers by municipalities.
- f) Require refund of fees when decisions are issued late.

Recommendation #6: Format of records

Amend s. 8(2) of *FOIPOP* and s. 468(2) of the *MGA* to specify that when a record is in electronic form, the head shall give access to the record in an open, reusable and accessible format.

Recommendation #7: Time

- a) Require public bodies and municipalities to respond to correction requests within 30 days.
- b) Amend s. 9 of *FOIPOP* and s. 469 of the *MGA* to permit public bodies and municipalities to take a time extension of up to 30 days with the consent of the applicant.
- c) Impose timelines for decisions related to fee waiver requests (consistent with recommendation #5(d) above).

Recommendation #8: Modernizing exemptions

- a) Place a time limit on each exemption.
- b) Exclude business contact information from the definition of personal information.

Recommendation #9: Duty to document

Create a legislated duty to document in *FOIPOP* and the *MGA*. Subject this duty to the oversight of the Commissioner.

Recommendation #10: Authorization to disregard requests

Add a provision to *FOIPOP* and the *MGA* that allows for public bodies and municipalities to disregard requests that would amount to an abuse of process with the permission of the Commissioner.

Recommendation #11: Open government

- a) Amend *FOIPOP* to ensure that the Commissioner has oversight over public body compliance with the publication requirement set out in s. 48.
- b) Add a provision to *FOIPOP* requiring that the Minister responsible for the Act deliver an annual statistical report regarding government's performance to the House of Assembly. Require that the report be published within four months of year end.
- c) Remove s. 48(7) and provide, at a minimum, that all government departments must comply with the publication requirement without a need for any further regulation.

Recommendation #12: Public interest override

- a) Make the public interest override provision mandatory.
- b) Add a new provision requiring public bodies and municipalities to always consider the public interest before exempting information under a discretionary exemption.

Modernizing Privacy Rights**Recommendation #13: Standards of sharing personal information**

- a) Repeal ss. 27(f) and 27(g) of *FOIPOP* and ss. 485(2)(f) and 485(2)(g) of the *MGA* and replace those provisions with provisions that permit disclosure within the public body or within the municipality where the information is necessary for the performance of the duties of the employee of or service provider to the public body or municipality.
- b) Add new provisions that permit disclosure for the purposes of the delivery of a common or integrated program or service. Add a definition of common or integrated program or activity that requires documentation of the program and a privacy impact assessment. Require public bodies to notify the Commissioner as early as possible of any proposed common or integrated program or activity. Make privacy impact assessments mandatory for any common or integrated program or activity and require public bodies to provide a copy of the privacy impact assessment for comment by the Commissioner.
- c) Add a new provision that permits disclosure of personal information to a provincial identity service provider. Authorize the Minister responsible for the Act to designate a public body as the provincial identity service provider and set out the permitted activities of such an entity. The amendments should include limitations on the collection of personal information by the provincial identity service provider.
- d) Add a new provision that permits disclosure of personal information to a big data institute. Define the nature of the institute and require that it include privacy, human rights, and ethical expertise in data integration and analytics. Include a requirement for data minimization, mandatory privacy impact assessments to be provided to the Commissioner, and threat risk assessments for all big data initiatives. Include these initiatives in the mandatory breach notification process.



Recommendation #14: Core privacy standards

Add three core privacy standards to *FOIPOP* and the *MGA*:

- a) Prohibit collection, use, or disclosure of personal information if other information will serve the purpose.
- b) Limit collection, use, and disclosure of personal information to the minimum personal information necessary.
- c) Permit disclosure of personal information within an organization only on a need to know basis.

Recommendation #15: Privacy impact assessments

- a) Require that public bodies and municipalities complete a privacy impact assessment on all new projects, programs, systems, enactments, and activities.
- b) Require that public bodies that are government departments submit their privacy impact assessments to the Minister responsible for the Act for the Minister's review and comment.
- c) Where the proposed program, project, system, or activity involves a common or integrated program or activity, require that the privacy impact assessment be provided to the Commissioner for comment (consistent with recommendation #12(b) above).
- d) Where the proposed program, project, system, or activity involves big data, require that a privacy impact assessment be completed and provided to the Commissioner for comment (consistent with recommendation 13(d) above).

Recommendation #16: Information sharing agreements

- a) Amend *FOIPOP* and the *MGA* to require that any regular sharing of personal information by public bodies or municipalities be in writing in the form of information sharing agreements. Include requirements regarding the content of the information sharing agreements.
- b) Require public bodies and municipalities to notify the Commissioner of all new or amended agreements to share personal information and give the Commissioner explicit authority to review and comment on the agreements.
- c) Require publication of the existence and nature of the information sharing agreements between public bodies, municipalities, and with other external bodies.

Recommendation #17: Privacy management program requirements

Add a requirement that public bodies and municipalities have a privacy management program that:

- a) Designates one or more individuals to be responsible for ensuring that the public body or municipality complies with *FOIPOP* and the *MGA* from within the organization.
- b) Is tailored to the structure, scale, volume, and sensitivity of the personal information collected by the public body or municipality.
- c) Includes policies and practices that are developed and followed so that the public body or municipality can meet its obligations under *FOIPOP* or the *MGA*, and makes policies publicly available.
- d) Includes mandatory privacy training for all employees.
- e) Has a process to respond to complaints that may arise respecting the application of *FOIPOP* or the *MGA*.
- f) Is regularly monitored and updated.

Recommendation #18: Mandatory privacy breach notification

- a) Require notification to affected individuals and the Commissioner, without unreasonable delay, of all privacy breaches involving a real risk of significant harm.
- b) Specify content requirements for notification to individuals including: details about the cause of the breach, a list of the type of data lost or stolen, an explanation of the risks of harm affected individuals may experience as a result of the breach, and information about the right to complain to the Commissioner.
- c) Authorize the Commissioner to order notification to an individual affected by the breach.
- d) Require maintenance of a record of all data breaches with specified details available to the Commissioner upon request.



Recommendation #19: Mandatory consultation on draft legislation

- a) Impose a duty on Ministers to consult with the Commissioner on any proposed Bill that could have implications for access to information or protection of privacy prior to introduction into the House.
- b) Provide the Commissioner with the necessary general power to comment on the implications for access to information or for protection of privacy of proposed legislative schemes.

Recommendation #20: Collection notification

- a) Add a requirement to *FOIPOP* and the *MGA* that personal information must be collected directly from the individual the information is about unless the law authorizes another method of collection.
- b) Where information is collected directly from an individual, require that the public body or municipality tell the individual from whom it collects personal information the purpose for collecting it, the legal authority for collecting it, and the contact information of an individual who can answer any questions.

Recommendation #21: Personal information banks

- a) Repeal s. 48(7) so that the requirement for personal information banks applies to all public bodies and without any further legislative effort (consistent with recommendation 11(c)).
- b) Require that municipalities publish and maintain personal information banks.

Improving Oversight**Recommendation #22: Officer of the legislature**

Make the Information and Privacy Commissioner (Review Officer and Privacy Review Officer) an officer of the legislature.

Recommendation #23: Name change

Change the name of the oversight body in *FOIPOP* with necessary consequential amendments to *PRO*, the *Personal Health Information Act (PHIA)* and the *MGA* to “Information and Privacy Commissioner”.

Recommendation #24: Employees, experts, and support

- a) Authorize the Commissioner to appoint employees she considers necessary in such positions she considers appropriate under such classification ratings and at such rates of remuneration within those classification ratings established by the Public Service Commissioner.
- b) Authorize the Commissioner to engage the services of such counsel or other professionals or experts to advise or assist the Commissioner notwithstanding any government procurement rules or policies.
- c) Authorize the Commissioner to delegate any of her powers except the power to delegate. Make clear that such delegation may occur when the Commissioner declares a conflict of interest.

Recommendation #25: Restrictions on disclosure and immunity

Add a provision enumerating the permitted uses and disclosures of information by the Commissioner and her staff and a provision specifying the immunity of the Commissioner and her staff.

Recommendation #26: Authority of the Commissioner

Amend *FOIPOP* and the *MGA* to shift the burden onto the public body or municipality to seek a declaration of the Nova Scotia Supreme Court whenever the public body or municipality decides that it will not follow the recommendations of the Commissioner.

Recommendation #27: Power to determine procedure

Amend s. 38 of *FOIPOP* and s. 491 of the *MGA* to add general powers of the Commissioner that include the power to determine the procedure to be followed in the exercise of the powers or performance of any duties pursuant to the *MGA* or *FOIPOP*.



Recommendation #28: Power to compel production

Amend s. 38 of *FOIPOP* to:

- a) Make clear that solicitor-client privilege is not affected by disclosure to the Commissioner.
- b) Require any person to produce a record for the Commissioner that is in the person's custody or control, including personal information.
- c) Require the Commissioner to return any record or copy of any record produced by the public body concerned.

Recommendation #29: Information sharing between oversight agencies

Amend *FOIPOP* and the *MGA* to allow the Commissioner to exchange information with extra-provincial Commissioners for the purpose of coordinating activities and handling reviews and complaints involving two or more jurisdictions.

Recommendation #30: Grounds to refuse to proceed with a review

- a) Amend *FOIPOP* and the *MGA* to add a provision that states that where the Commissioner is satisfied that there are reasonable grounds to review any matter, the Commissioner shall review the matter. Include grounds where the Commissioner may refuse to conduct a review including where the application is frivolous or vexatious, not made in good faith, concerns a trivial matter, does not contain sufficient evidence, has already been the subject of a report by the Commissioner, the public body has responded adequately to the complaint, the length of time that has elapsed, or for any other reason it is fair and reasonable not to conduct a review.
- b) Amend s. 39 of *FOIPOP* and s. 492 of the *MGA* to provide that on completing a review the Commissioner "may" prepare a written report rather than "shall" prepare a written report.

Recommendation #31: Review and complaint time limits

Amend *FOIPOP* and the *MGA* to provide that the Commissioner should conclude her investigation and mediation processes and, if necessary, issue a report within 90 days of receipt of a complaint or request for review. Include an option to allow for longer period of time at the Commissioner's discretion and with written notice to the parties.

Recommendation # 32: General powers of Commissioner

Amend s. 38 of *FOIPOP* and s. 491 of the *MGA* to add general powers of the Commissioner that include the following:

- a) Monitor how the privacy and access provisions are administered and conduct reviews of access and privacy complaints arising from the access and privacy provisions.
- b) Initiate investigations of access and privacy compliance including matters or allegations of unauthorized destruction of records.
- c) Make recommendations on and mediate access and privacy complaints.
- d) Undertake research matters concerning privacy and access legislation.
- e) Inform the public about the Acts.
- f) Conduct audits.
- g) Authorize public bodies and municipalities to disregard requests.
- h) Determine OIPC procedures.
- i) Comment on the implications for access to information or for protection of privacy of any matter including proposed projects, activities, systems, information sharing agreements and legislative schemes of public bodies and municipal bodies.



Offences

Recommendation #33: Update offence provisions

Update Nova Scotia's offence provisions by:

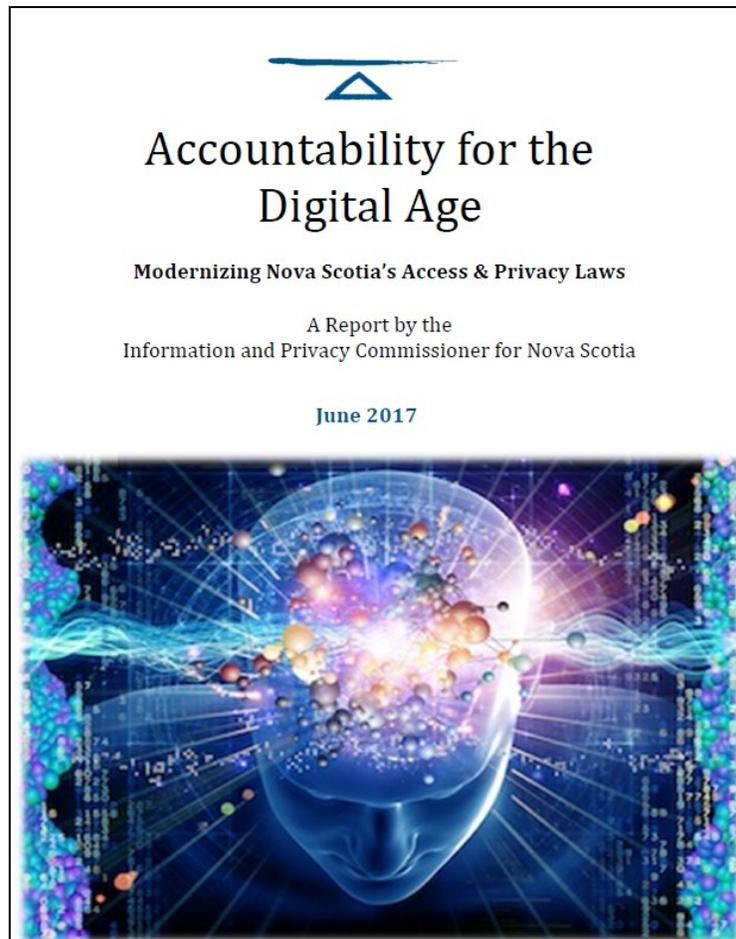
- a) Making the following offences under the law:
 - obstructing the Commissioner;
 - misleading the Commissioner and knowingly making a false statement to the Commissioner;
 - obstructing the right of access by destroying, altering, falsifying, or concealing a record with intent to evade a request for access;
 - directing another to destroy, alter, falsify, or conceal any record; and
 - willfully or knowingly collecting, using, or disclosing personal information in contravention of the law.
- b) Set the fine on conviction at a maximum of \$20,000 for individuals and higher for organizations and service providers.

Review of the Acts

Recommendation #34: Review of the Acts

Amend s. 50 of *FOIPOP* and add provisions to *PRO*, *PIIDPA* and the *MGA* to require that:

- a) A review must be conducted of each Act at least every six years.
- b) The reviews must be conducted by an independent committee of the legislature.
- c) All submissions and reports of the committee must be made public.
- d) Each review must include a mandatory review of any and all notwithstanding clauses and a review of s. 4A(2) of *FOIPOP* and s. 464A(2) of the *MGA*.



Service Plan for the Office of the Information and Privacy Commissioner

April 1, 2017 – March 31, 2018

Introduction

This Service Plan includes all of the information found in the Statement of Mandate and the Accountability Report. Last year, our Service Plan set standards for our performance in the past year. This year, the Service Plan reports on the outcome of our performance and sets new performance measures for the coming year.

Vision

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

Statement of Mandate

The Office of the Information and Privacy Commissioner (OIPC) 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 OIPC 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 OIPC investigates and mediates access appeals and complaints, conducts formal hearings, and issues recommendation reports. Under the *PRO* Act the OIPC 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 personal health information. In discharging its mandate, the OIPC investigates and mediates access appeals and privacy complaints, conducts formal hearings, and issues recommendation reports. The OIPC also receives privacy breach reports as mandated under the legislation and reports regarding disclosures for research purposes. The OIPC conducts self-initiated investigations and may provide comments on the privacy implications of proposed legislation, programs, policies and technologies, and 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 Office of the Information and Privacy Commissioner 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.

Outcome Highlights

We had a highly productive year meeting and sometimes far exceeding our goals. Public awareness of our office has increased dramatically over the past two-and-a-half years. This year more than 1400 people attended presentations, speeches, or training sessions put on by the OIPC. We have also grown ever more efficient. Our intake team responded to telephone inquiries within two days 99.6% of the time and our investigation team informally resolved reviews 86% of the time. There is increasing acceptance of recommendations made by the OIPC both in review reports and in our privacy investigations.

There is no doubt that our increasing caseload has been a huge challenge for us. Our average number of days to resolve these types of files was basically the same as last year because we continued to work on older files. In January 2017, we moved into assigning and resolving 2015 files. Every file is immediately assigned to the intake team as soon as it is received and our very capable intake team attempts an early resolution of each one. Last year, for example, our intake team resolved 36% of all new files within an average of 22 days.

Goal 1: An Open and Accountable Public Sector

2016/2017 Outcomes

Our goal of an open and accountable public sector is based on the essential purposes of the access provisions in *FOIPOP* and the *MGA*. Our performance measure is the percentage of requests processed within 30 days by government departments. This measure is not a measure within the control of my office. Rather, it is a measure of how quickly government departments are processing access requests. Time is of the essence in ensuring that the public sector is accountable.

Last year I set the baseline at 78% of requests processed within 30 days based on government's performance in 2014. I set a goal of 85% of requests processed within 30 days for the 2016/2017 fiscal year. Government statistics are not yet available for 2016/2017.

In 2016 the government released a report of statistics for the calendar year 2015 and for the new reporting period by fiscal year 2015/2016 (April 1, 2015 – March 31, 2016). For calendar year 2015, government departments responded within 30 days 81% of the time. For fiscal year 2015/2016, government departments responded within 30 days 84% of the time. This is an important improvement over the 78% baseline.¹⁶

¹⁶ The 2014 FOIPOP Annual Report produced by the Department of Internal Services is available online at: <http://novascotia.ca/is/reports/foipop-annual-report-2014-15.pdf>. The 2015/16 Annual Report is available at <https://novascotia.ca/is/reports/FOIPOP-Annual-Report-2015-2016.pdf>.



Another significant improvement in accountability was the decision of government to publish completed access to information request responses online – known as a disclosure log. As a result of this effort, applicants can search the growing catalogue of records already released and can access the information online without the need for making a new access to information request.¹⁷

In 2016/2017 we had a very successful Right to Know Week event held at Dalhousie University. The event was co-sponsored by the Centre for Law and Democracy and the University of Kings College School of Journalism. Raising public awareness about access rights is an important strategy for ensuring that we maintain an open and accountable public sector.

2017/2018 Strategies

We have three main strategies planned for 2017/2018:

- **Monitor Government Performance:** We will continue to monitor and report on government’s performance under *FOIPOP* on such basic metrics as response times, average fees charged and outcomes of requests.¹⁸
- **Right to Know Week:** We intend to once again organize an event in celebration of Right to Know Week in September 2017. This is a unique opportunity to raise the public’s awareness of their right to know and to hear from the public about their concerns regarding their rights to access government information.
- **Open Government:** There has been significant work recently on how to develop and implement meaningful open government initiatives. In 2017/2018 we intend to undertake research on best practices internationally and plan to develop a made in Nova Scotia guide to implementing open government.

Performance Measure	2015/16	2016/17	2017/18
1. Percentage of requests processed within 30 days by government departments.	Goal = 78% Outcome = 84%	Goal = 85%	Goal = 90%

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

2016/2017 Outcomes

Last year we identified three strategies and one performance measure in support of this goal. Our performance measure was the percentage of OIPC privacy recommendations implemented by the affected public body or health custodian. Our goal was 83%. Our outcome was 100%.

¹⁷ The disclosure log can be accessed at: <https://foipop.novascotia.ca/foia/#/home>.

¹⁸ The government reports all of this information in its annual report. Outcomes of requests are reported in the table entitled “Decisions” which sets out the portion of responses that granted access in full, in part, denied access, or no record was found.



We also identified three strategies. We successfully completed all three projects. I have summarized their outcomes below.

- **Video Surveillance:** We conducted two surveys of the use of video surveillance in Nova Scotia. Our first survey revealed that all of the main streets in the seven Nova Scotia towns we surveyed had extensive video surveillance but very little notification warning of the surveillance. Our second survey revealed that 70% of municipalities in Nova Scotia have video cameras but none had conducted a privacy impact assessment before implementing the video surveillance system. Based on those results we developed a video surveillance guideline and a video surveillance policy template which we published on our website and provided directly to all of the municipalities in Nova Scotia.
- **International Privacy Sweep:** For the first time, my office participated in the Global Privacy Enforcement Network's privacy sweep. The study, by 25 data protection regulators around the world, looked at devices like smart electricity meters, internet-connected thermostats and watches that monitor health, and considered how well companies communicate privacy matters to their customers. The Office of the Information and Privacy Commissioner for Nova Scotia joined the study, reviewing the privacy protocols of 14 internet of things devices produced by nine manufacturers and available in Nova Scotia retail stores. Most of the devices available in Nova Scotia stores were health or health care related. The report showed that internationally 59% of devices failed to adequately explain to customers how their personal information was collected, used and disclosed, 68% failed to properly explain how information was stored, and 72% failed to explain how customers could delete their information off the device. The results in Nova Scotia were consistent with the international outcomes.
- **PHIA Review:** Our third strategy identified last year was that we would participate in the statutory review of the *Personal Health Information Act*. We provided a detailed preliminary submission to the Department of Health and then followed that up with a detailed response to the list of 37 questions provided by the Department.



2017/2018 Strategies

We will continue to monitor the percentage of our recommendations that are implemented by public bodies and health custodians. In addition, we have designed two new projects intended to improve respect for and protection of the privacy of Nova Scotians:

- **PHIA Training Deck:** We will develop a *PHIA* training presentation that health custodians can use to train their staff (agents) about the privacy rules and obligations under the *Personal Health Information Act*.
- **Chief Privacy Officer Training:** We will develop and deliver training for chief privacy officers, privacy leads and privacy champions for public bodies, municipalities and health custodians across Nova Scotia. The training will teach these privacy leads how to effectively build privacy into their organizations.



Performance Measure	2015/16	2016/17	2017/18
2. Percentage of OIPC privacy complaint and breach investigation recommendations implemented by affected public bodies and health custodians.	Baseline = 79%	Goal = 83% Outcome = 100%	Goal = 85%

Goal 3: Public Awareness of Access and Privacy Rights

2016/2017 Outcomes

I reported last year that 2015/2016 was an extraordinary year for the OIPC in terms of our public awareness efforts. The same was true for 2016/2017 both in terms of our performance measures and in terms of the three projects we identified to support this goal.

We set a goal of 250 individuals attending OIPC presentations in Nova Scotia. In total, 1454 individuals attended our presentations and events in 2016/2017. We overshot our target in part because we attended two trade fairs. The youth expo in particular resulted in 600 visitors to our booth. We also had extraordinary interest in the training programs we offered. For example, we anticipated providing three breach management training sessions but ended up giving 12 because of the keen interest from public bodies, municipalities and health custodians. We set a goal of 40 presentations, media articles and tools. The outcome in 2016/2017 was a total of 125 presentations, media articles and tools.

In terms of the three projects to improve public awareness of access and privacy rights, we were more successful than we had anticipated. Interest in each of the projects was extremely high and all of our sessions were very well attended. I have summarized the outcomes below:

- **Breach Management Training:** This year we developed and delivered breach management training to 125 individuals responsible for managing privacy within their organizations. Because of the high interest, we held 12 separate training sessions. Participants were provided with a toolkit for managing breaches that included a breach management guide, breach reporting checklist, and breach management protocol template.
- **Children’s Privacy Project:** We participated in the Passport 2 Youth Expo held in Halifax in November. At that event we spoke to almost 600 youth about privacy, particularly in the online environment.
- **Training for Colleges and Universities:** We developed and delivered an access and privacy training program designed specifically for colleges and universities. These public bodies had requested this type of training. All but two colleges in Nova Scotia sent representatives to this full day training. Participants were provided with a workbook that included information on access and privacy rules and a significant number of tools meant to assist administrators in properly applying *FOIPOP*.



2017/2018 Strategies

We will continue to monitor our performance using the two performance measures listed in the table below. We have also identified three new projects. The first is intended to raise awareness of access and privacy rights by highlighting the need to modernize our laws. The last two projects are focused on matters of particular concern to citizens.

- **Accountability for the Digital Age:** Concurrent with the release of this Annual Report we will release a report focused on identifying strategies to modernize Nova Scotia’s access and privacy laws which are seriously out of date. The last significant amendments to our laws occurred more than 20 years ago. The report identifies 34 proposed improvements that will modernize the laws. A summary of the 34 recommended improvements is at pages 24-29 of this report.

- **Police Street Check Resource:** Recently, there has been significant discussion in Nova Scotia about the police practice of checking the identity of individuals in public areas. Concerns have been raised about this practice from a human rights perspective, but there are significant privacy implications as well. We plan to research the privacy issues associated with street checks and develop a privacy resource useful to both the police and to citizens concerned with this practice.
- **Citizens' Privacy Rights:** So much of the technology available now has implications for the privacy of users. Often, protecting privacy rights involves knowing how to properly secure your personal information. There are numerous resources already available for citizens to navigate the privacy challenges of today's technology. We plan to review these existing resources with a view to adapting them for Nova Scotians

Performance Measure	2015/16	2016/17	2017/18
3. Total number of individuals who attend OIPC presentations in Nova Scotia.	Goal = 200 Outcome = 787	Goal = 250 Outcome = 1454	Goal = 300
4. Number of OIPC presentations, media articles and tools. ¹⁹	Goal = 30 Outcome = 114	Goal = 40 Outcome = 125	Goal = 40

Goal 4: Efficient and Effective OIPC Operations

2016/2017 Outcome

We have effectively retired the six year backlog of files that greeted me when I arrived as the new Information and Privacy Commissioner in the fall of 2014.²⁰ But, there have been two significant developments in the past two-and-a-half years that have impacted our ability to progress through files we have received since my arrival. First, with the increase in our outreach efforts more and more Nova Scotians have gained awareness of their right to file access requests and appeals and to file privacy complaints. Our caseload of files doubled between 2013 and 2016/2017.²¹ At the same time our staff compliment did not change and we had an eight month period when we were short-staffed. As a result, I have had to re-evaluate our 2017/2018 target to set a more realistic goal given the unexpected increase in new files.

In 2016/2017 we continued to focus the majority of our resources on ensuring that we are efficient and effective in responding to inquiries and appeals from the public. Telephone inquiries generally receive same day responses. Responses are received within two days 99% of the time.²² The majority of review requests are resolved informally. We exceeded our 80% goal and resolved 86% of these files informally with the cooperation of both the applicant and the public body, municipality, or health custodian. Another important development this year was an increase in the willingness of many public bodies and municipalities to accept the recommendations of the Information and Privacy Commissioner. This year 81% of recommendations were accepted compared with 50% last year.

The only target we did not quite reach was our goal of resolving complaints and reviews within 500 days. The final outcome was 518 days. Given the manual nature of developing the goal, the 518 day outcome is well within our expectations. Our real goal though, is to resolve reviews and complaints within an average of 90 days. Effective April 1, 2017 we received additional funding for one new Investigator position. I am hopeful that with the addition of one new staff member as a Senior Investigator we will now have the resources to reach this ambitious goal.

¹⁹ Number of OIPC presentations includes speeches, media articles and tools. In 2016/2017 we had 86 speaking engagements, 38 media requests and 12 new tools created.

²⁰ We have 12 files from 2014. All files before then have been resolved. Of the 12, all but three have been assigned and are in active mediation.

²¹ Files consist of reviews, complaints, consultations, breach reports, PIA reviews, time extensions and late transfer requests, and own-motion investigations. In 2013 we opened 182 new files. This increased to 217 in 2014, 307 in 2015 and 371 in 2016/2017, an overall 104% increase.

²² Any response beyond two days is generally because the call was received late on a Friday or immediately before a holiday.

2016/2017 Strategies

We will continue our strategies of setting performance measures for staff, staff training, regular case file reviews, using early intervention to find quick resolutions wherever possible, and encouraging public bodies and applicants to communicate well and often to find opportunities for informal resolution.

Performance Measure	2015/16	2016/17	2017/18
5. Percentage of access and privacy inquiries that receive a response within two days. ²³	Goal = 98% Outcome = 98%	Goal = 98% Outcome = 99.6%	Goal = 98%
6. Percentage of reviews (<i>FOIPOP</i> , <i>MGA</i> and <i>PHIA</i>) that are resolved informally. ²⁴	Goal = 75% Outcome = 90%	Goal = 80% Outcome = 86%	Goal = 85%
7. Average number of days to resolve <i>FOIPOP</i> , <i>MGA</i> , <i>PRO</i> , <i>PHIA</i> reviews and complaints.	Goal = 700 days Outcome = 521 days	Goal = 500 days Outcome = 518 days	Goal = 430 days ²⁵
8. Percentage of review report recommendations accepted by public bodies and municipal bodies. ²⁶	Goal = 50% Outcome = 50%	Goal = 55% Outcome = 81%	Goal = 60%

²³ 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. In 2016/2017 we responded to 1288 of 1293 inquiries within two days.

²⁴ Mediation, informal resolution, and withdrawn cases are included in this category. In 2014, 106 of 154 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally. In 2015/2016, 146 of 163 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally. In 2016/2017, 133 of 155 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally.

²⁵ Based on our performance in 2016/2017, I estimate that we can resolve approximately 180 review and complaint files in the next year. This includes those received and resolved in 2017 by our intake staff and older files that are resolved by the investigators. Looking at our file inventory and assigning a realistic average file resolution time to each, I estimate we will complete all of the files received to the end of 2015 in the next year. We are aiming to begin assigning 2016 files by December 2017. I have therefore adjusted our goal from the overly ambitious 90 days set two years ago to 430 days.

²⁶ Between April 1, 2016 and March 31, 2017 the Commissioner and her delegate issued 16 review reports containing a total of 31 recommendations. Public bodies agreed or partially agreed with 25 of those recommendations.



Budget History (for *FOIPOP, MGA, PRO*)

Category	Forecast for 2017-2018	Actual for 2016-2017 ²⁷	Actual for 2015-2016
Salaries and Benefits	583,000	527,880	470,300
Travel	7,000	6,911	9,000
Professional/Special Services ²⁸	40,000	40,151	52,200
Supplies and Services	11,000	11,581	31,000
Other	42,000	43,403	46,900
Adjustments	0	(10,131) ²⁹	(41,000) ³⁰
Total Budget Spent	683,000	629,926	609,400
Total Budget Given	683,000	603,000	593,000
% of Budget Spent	100%	104%	103%

²⁷ We have been advised by Justice's finance department that these amounts are subject to further change.

²⁸ This amount includes funding a full-time temporary agency employee to address our staffing needs for a full year.

²⁹ This includes a transfer of funds for legal services.

³⁰ 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.



Appendix A: Annual Report Under Section 18 of the *Public Interest Disclosure of Wrongdoing Act*

The following is a summary of disclosures received by the Office of the Information and Privacy Commissioner for Nova Scotia:

Information Required Under Section 18 of the Act	Fiscal Year 2016/2017
The number of disclosures received	0
The number of findings of wrongdoing	N/A
Details of wrongdoing	N/A
Recommendations and actions taken on each wrongdoing	N/A

Where We've Been



Legend:

- = MLA Office*
- = Training
- = Mall or Public Library

* 7 MLA offices visited in Halifax and
7 MLA offices visited in Dartmouth

Contact Information:

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