



2015 - 2016 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 Commission operations.



Office of the Information & Privacy Commissioner

Nova Scotia

June 28, 2016

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 April 1, 2015 through to March 31, 2016.

Respectfully submitted,

Catherine Tully
Information and Privacy Commissioner for Nova Scotia



Table of Contents

Commissioner's Message	5
Statistical Reports & Case Summaries	
<i>FOIPOP & MGA</i>	9
<i>PHIA</i>	15
Service Plan 2016-2017	20
Budget History	26
Appendix A: Annual Report Under Section 18 of the <i>Public Interest Disclosure of Wrongdoing Act</i>	27

Commissioner's Message



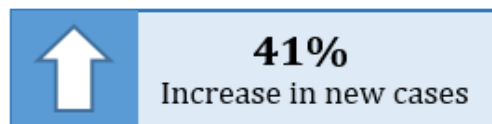
It was 22 years ago that the Office of the Information and Privacy Commissioner for Nova Scotia first came into existence. At the time the office was known as the FOIPOP Review Office and was staffed part time by the Review Officer. Now there are six staff working with the Information and Privacy Commissioner to provide leadership, independent oversight and to protect and promote the access and privacy rights of citizens. In the following report you will read about the work we have undertaken in the past year, the challenges and the successes.

We are responsible for monitoring and overseeing compliance with four access and privacy statutes in Nova Scotia. In discharging our mandate we investigate and mediate access appeals and complaints, conduct formal hearings, issue recommendation reports, conduct privacy investigations, comment on the privacy implications of new programs, policies and technologies and conduct public education. As a result of that work, we are in a unique position to evaluate the successes and failures of access and privacy laws in Nova Scotia.

How Did We Do?

The past year was extraordinary in terms of the demand for our services. There was a 41% increase overall in our caseload. This increase included a 17% increase in reviews and complaints, a five-fold increase in consultation requests and a doubling of our outreach caseload. There were significant increases in virtually every area of our work.¹

Despite this increase in our workload we had a highly successful year, meeting or exceeding all of the performance standards set in last year's Service Plan.



The workload increases were a huge challenge for a small office on a very limited budget. At the same time it is heartening to see that more and more individuals, public bodies, municipalities and health custodians have become aware of the work of our office and are seeking out our advice and expertise in the areas of access and privacy law. We endeavor to provide thoughtful, accessible and timely advice to anyone who contacts us.

Important Developments In Citizens' Rights

Our casework resulted in two important developments in citizens' rights to access government information this year. First, a number of public bodies agreed to disclose contract and funding agreement information following intervention by our office. I issued four separate Review Reports relating to access requests for government contracts or funding agreements. In all four cases, third parties objected to the disclosure of the business

¹ In 2015/2016 we had a total of 87 consultation requests compared to 13 requests in 2014. In 2015/2016 we opened 147 new outreach files compared with 67 new outreach files in 2014.

information contained in the records. In all four cases, I recommended further disclosure of financial information including full disclosure of a contract with IBM, further disclosure of information in a venture capital investment agreement and a payroll rebate agreement, and full disclosure of an agreement to donate land to a municipality. In all four cases the public body or municipality involved fully accepted my recommendation and disclosed further information. This type of information is very important for ensuring that taxpayers know how their money is being spent. It is a hallmark of accountability and transparency that this type of financial information is made available to citizens.

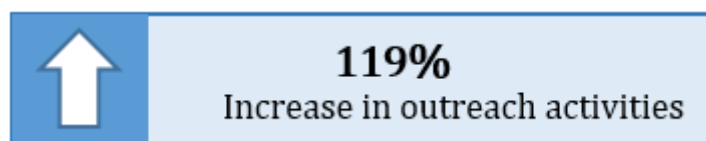
A second important development this year is related to access requests by former foster children. In the past several years we received a total of 11 requests for review from former foster children, all seeking more information about their families and the reasons why they were placed into care as children. I issued two Review Reports recommending that the Department of Community Services disclose significantly more information to applicants. While the Department only partially accepted my recommendations, it agreed to revisit all 11 appeals and, as a result of those reviews, released significantly more information to former foster children.

Breach Investigation

For the first time ever my office conducted a self-initiated investigation into a privacy breach by a government department: The Office of the Premier. I initiated the investigation because a very public disclosure of personal health information occurred and was reported in the media. The *Privacy Review Officer Act* provides that I may initiate an investigation of privacy compliance if there are reasonable grounds to believe that a person has contravened the privacy provisions. Our investigation revealed that an unauthorized disclosure of personal information had occurred. I made six recommendations for improvement in areas such as privacy training and contract terms and most importantly recommended the appointment of a privacy champion. The Office of the Premier accepted these recommendations and has already begun work on implementing changes to the government's privacy management program.

Outreach Efforts

In the past year we opened 147 outreach files. This represents an increase of 119% over last year. These files include speeches and presentations, tool development, meetings and media requests. In total we met with over 800 Nova Scotians in the past year, far exceeding our planned goal of 200 people. One of our major initiatives was the creation of the Access & Privacy Toolkit for Municipalities. Using the toolkit, we delivered a series of one-day training sessions to more than 30 municipal administrators. The training includes a detailed discussion of access and privacy rules and practical examples of access and privacy problems.

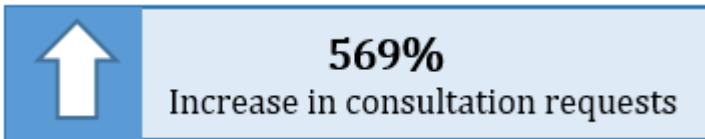


On every trip we make we try to stop at MLA offices, libraries and malls to distribute our updated pamphlets that explain access and privacy rights to citizens. In addition, we launched our very successful Twitter account this year and have already gained hundreds of followers.



Consultation Requests

Consultation requests are questions from public bodies, municipal bodies and health custodians. These entities seek our comment in advance of making access or privacy decisions. We had 87 consultation requests last year compared to only 13 in 2014 - a whopping 569% increase in consultation requests in 2015/2016. We view these



requests as a priority because we hope that by providing some advance guidance, public bodies, municipalities and health custodians will make better decisions. A better decision is good for the entities, good for citizens and good for us since it reduces the chance

that an appeal will be filed. Typically, we provide information including leading cases and an explanation of the steps they need to take to make a decision. We provide our comments on the understanding that if we receive a review or complaint on the same matter, we will consider it afresh based on whatever evidence and argument we receive at the time. This program has been highly successful and thus far, we have not received any reviews or complaints related to a matter for which we had been previously consulted.

Backlog

Last year our priority was to tackle the backlog of cases in existence when I arrived in the fall of 2014. At that time the backlog included cases as far back as 2009. In the past 1.5 years we have assigned and/or resolved 4 years of backlog. Our ongoing challenge is that, as noted above, we are the victim of our own success. The demand for our services continues to grow. Despite this increase in demand and the fact that we were short-staffed for 9 months in 2015/2016, we resolved 10% more reviews and complaints than in 2014.

Without additional resources we will struggle to keep up with the increasing demands on our office. But to be clear, the problem is the volume. Once the files are assigned my staff resolves matters, on average, within 65 days of assignment.

Time to Modernize Nova Scotia's Access to Information Law

The time has come to modernize Nova Scotia's access to information laws. In my previous annual reports I pointed out a number of shortcomings in our laws: lack of breach notification, privacy impact assessments and notices of collection. I also noted the lack of privacy oversight of police and municipalities and the importance of making the Information and Privacy Commissioner an Officer of the Legislature. These concerns remain. This year I want to highlight again the need for a statutory duty to report privacy breaches.

I noted above that we conducted a breach investigation into a government department for the first time ever. The reason that this was the first such investigation in 22 years is that government departments are not required to report privacy breaches to this office. Nor, indeed, are they required to give notice to individuals when a government department has committed a privacy breach. This is a significant shortcoming of our laws.

In other jurisdictions, this shortcoming is mitigated to a certain extent by voluntary breach reporting by government and other public bodies. In Nova Scotia this rarely occurs. In 2015/2016 government departments voluntarily reported two privacy breaches.

I am increasingly concerned that Nova Scotians are not hearing about privacy breaches that experience and common sense dictate must be occurring in government departments and municipalities. They happen in every organization and public body across the country. The causes are varied but they include human error, technical errors and criminal attacks.



Under Nova Scotia's health privacy legislation, my office is notified of minor breaches. Last year I discussed the need to amend this provision to provide my office with notice of breaches that result in a real risk of significant harm. However, even hearing about only minor breaches raises concerns for me as the number of minor breaches health custodians reported to my office increased 75% this year. Was there an equal increase in the number of significant breaches? I don't know because I am not advised of these breaches.

Further, based on publicly reported breach statistics in other jurisdictions, it is likely that public bodies in Nova Scotia suffered at least 10 significant privacy breaches in 2015 and possibly as many as 154 breaches in total.²

It is time to amend Nova Scotia's access laws to modernize it in all of the ways I listed in my report last year, but most importantly to ensure that individuals and my office receive notice of significant privacy breaches.

Looking Forward

Included in this report is our Service Plan for the coming year. For the coming year I have set out an ambitious plan to continue working on the backlog but also to participate actively in improving knowledge of and compliance with the access and privacy laws of Nova Scotia.

Over the past year I had the pleasure of meeting hundreds of Nova Scotians who are working to administer access and privacy laws on behalf of their organizations. These administrators sought out the support and assistance of my office as they strive to become leaders in this field. Their work is the key to ensuring that citizens have meaningful access and privacy rights.

I am proud of the work of my staff and grateful for their efforts in the past year. We will continue to work diligently on our caseload and we will continue to participate in outreach efforts in an attempt to educate the public, public bodies and health custodians on the access and privacy rights of Nova Scotians.

Yours sincerely,



Catherine Tully
Information and Privacy Commissioner for Nova Scotia

² This is based on a per capita calculation using federal government statistics. A similar number of material breaches occurred using the British Columbia voluntary report numbers. In 2015, federal government departments were required by Treasury Board policy to report material privacy breaches to the Office of the Privacy Commissioner of Canada. The Treasury Board policy can be found at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26154>. The federal government reported that it had suffered 5,853 breaches in 2015 of which 303 material breaches occurred that were reported to the Office of the Privacy Commissioner. See <http://ipolitics.ca/2016/04/16/reporting-of-government-privacy-breaches-varies-widely-ebsc/> for a discussion of the federal department breach reporting patterns. In British Columbia, public bodies voluntarily report breaches to the Office of the Information and Privacy Commissioner. They reported 64 such breaches in 2014/2015.

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)* sets access and privacy standards for 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 for privacy oversight of the bodies covered by *FOIPOP*.

Summary of All Files Opened FOIPOP, MGA, PRO			
	2015 - 2016	2014	2013
Access and Correction Requests for Review			
FOIPOP	106	100	82
MGA	34	25	22
Privacy Complaints³			
Privacy Complaints Received	8	3	2
Commissioner Own-Motion	5	2	2
Files Initiated by Public Bodies			
Breach Notifications (new)	4		
Privacy Impact Assessments	1	0	0
Access and Privacy Consultations ⁴	58	4	11
Time Extension Requests	48	62	56
Outreach and Education			
Inquiries	1287 ⁵	1710 ⁶	1982
Media Requests (new)	23		
Speaking Engagements	55	45	8
Staff Training and Conferences	6	10	7
Tools Made Available	16	5	27
Committees	8	2	3
Projects (new)	15		
Other (new)	1		
Total	1675	1,968	2,202
³ The <i>PRO Act</i> applies only to those public bodies to which <i>FOIPOP</i> applies, not the <i>MGA</i> .			
⁴ Access consultations were not reported in 2013 and 2014.			
⁵ Although we recorded 1287 inquiries we believe that the number of inquiries has not actually dropped over last year for three reasons. First, as noted last year, 1710 was an estimate due to a failure to accurately hand record inquiries. Secondly, in the past we had a practice of double recording inquiries. When a phone call was passed on to a second employee, the call was counted twice - we no longer do this. Finally, this is the first full year in which we have recorded all inquiries in our case management system which provided us with this year's statistic.			
⁶ 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.			

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

Outcome	FOIPOP Reviews Closed			MGA Reviews Closed			PRO Complaints Closed		
	2015/16	2014	2013	2015/16	2014	2013	2015/16	2014	2013
Review Report	10	14	8	2	2	1	1	0	1
Mediation	0	1	0	0	0	0	0	0	0
Informal Resolution	86	53	35	32	15	11	5	5	1
Withdrawn	4	12	6	3	9	2	0	0	0
Abandoned	4	17	7	1	5	0	0	3	0
Screened*	10	3	5	2	2	0	7	1	0
Total	114	100	61	40	33	14	13	9	2

*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
2015/16	0	7 (58%)	5 (42%)
2014	5 (31%)	3 (19%)	8 (50%)
2013	3 (33%)	0	6 (67%)

Public Bodies' Responses to the Commissioner's Recommendations

Year	Accepted	Partial Acceptance	Rejected
2015/16	6 (50%)	6 (50%)	0
2014	9 (56%)	1 (6%)	6 (38%)
2013	4 (44.5%)	4 (44.5%)	1 (11%)

Summary of All Files Closed 2015-2016 *FOIPOP, MGA and PRO*

Access and Correction Requests for Review	153
Privacy Complaints Received and Own-Motion	15
Files Initiated by Custodians or Public Bodies	112
Inquiries	1287
Outreach and Education	102
Total	1669

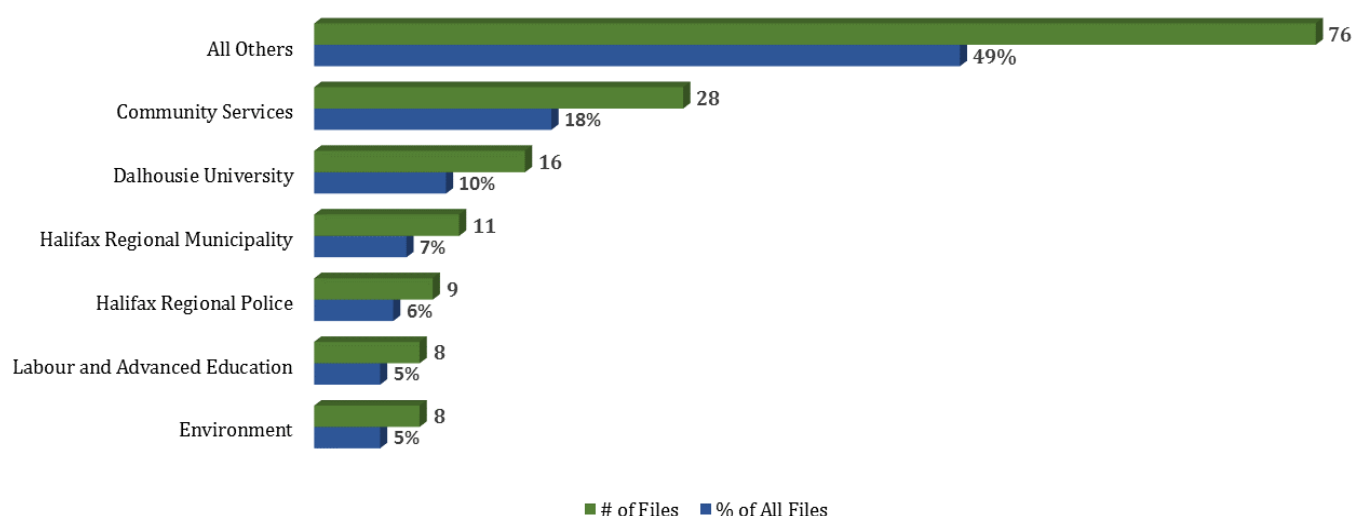
Statistic Highlights

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

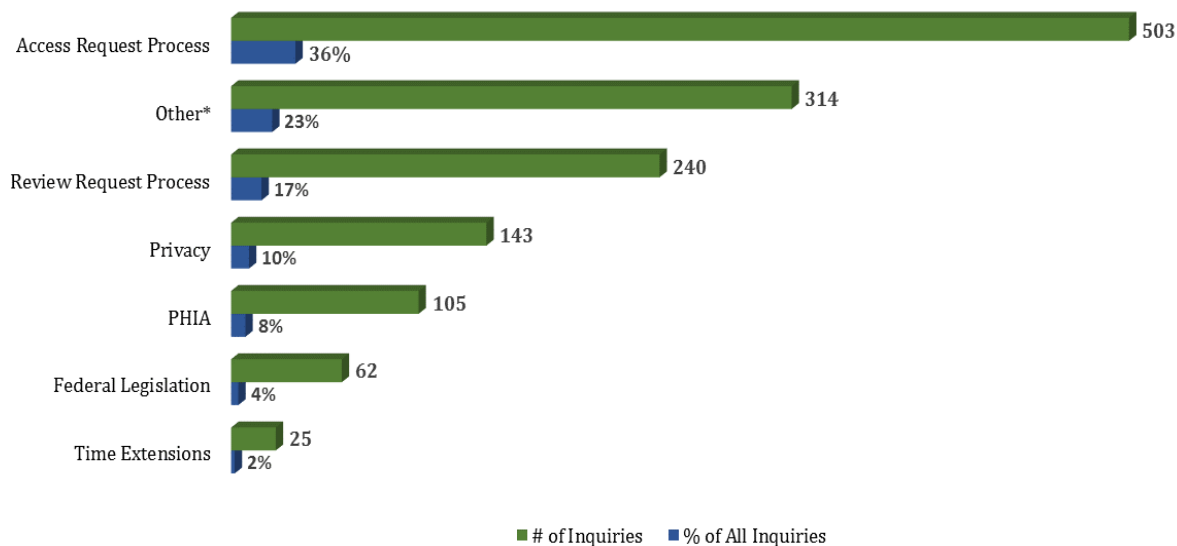
This year was an extremely busy year. Despite being short-staffed most of the year and having a 41% increase in our overall caseload we managed to resolve 10% more review and complaint files over the last year. Our caseload increase was due in large part to the five-fold increase in consultation requests from public bodies, municipal bodies and health custodians. This is certainly a trend we have encouraged in hopes that if we provide early advice and guidance to administrators of the *Acts*, citizens will receive better and more timely service.

In addition to our ever-increasing caseload, we managed a whopping 119% increase in outreach matters. This included speeches, creation of tools and media requests.

Top 6 Public Bodies and Custodians: Review Requests Received in 2015-2016



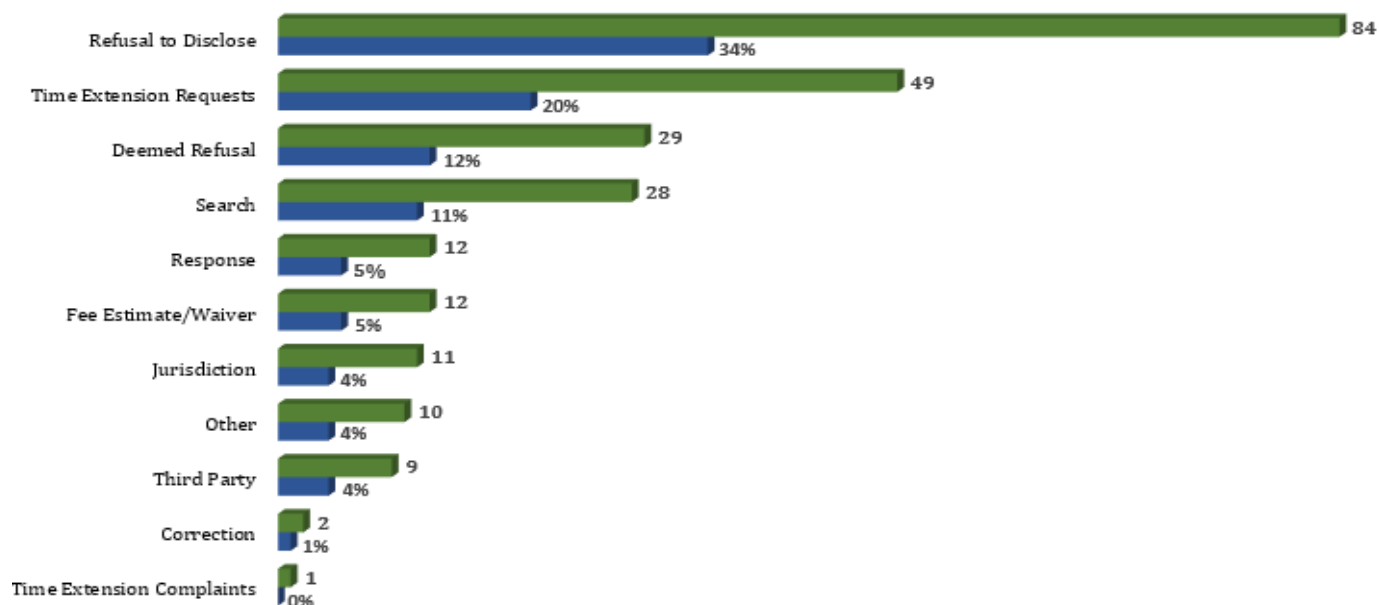
Inquiries Received in 2015-2016



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

Issues Under Review 2015-2016

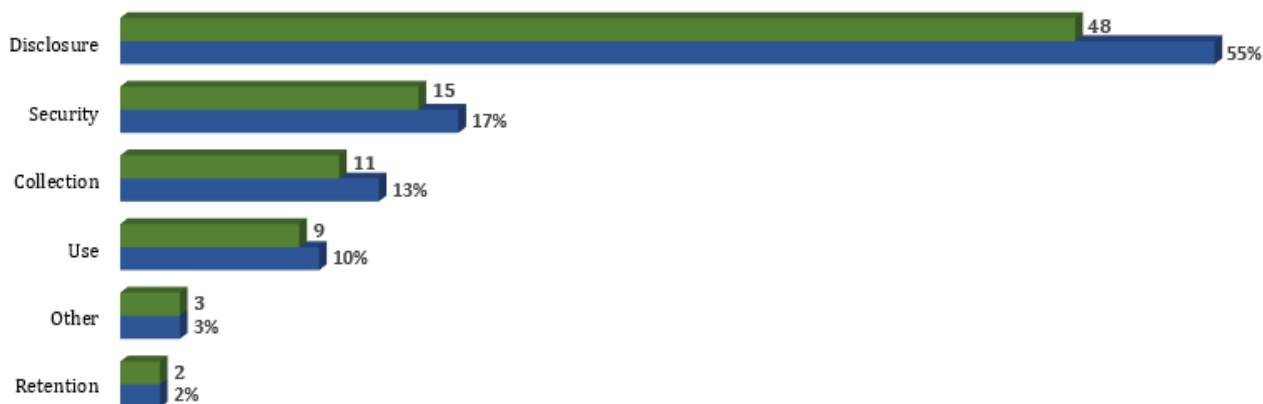
Access & Correction Reviews



Based on 247 issues. There can be more issues than files.

Issues Under Review 2015-2016

Privacy Complaints and Files Initiated by Public Bodies



Based on 88 issues. There can be more issues than files.

FOIPOP & MGA Informal Resolution Summaries

Third Parties Need Information

The applicant requested the contract and related records between a third party service provider and a public body. The public body withheld the substance of the contract information, relying on representations of the third party that disclosure would result in harm to its business interests. During the informal resolution discussions the OIPC shared recent Commissioner's reports, case law and research on the third party confidential business exemption with the third party. As a result, the third party consented in full to the release of the information.

Lesson: The third party confidential business exemption in *FOIPOP* provides a three-part test that includes the requirement of evidence of harm to the third party should the information be released. Providing additional information to third parties about this exemption allows them to make more informed decisions about their business information.

Access Request Requirements - Applicant's Responsibilities

A public body required that an applicant pay a \$25 fee and provide sufficient particulars to identify the requested records before processing his access request. The applicant filed a Request for Review seeking a fee waiver and providing further information on the records he requested. The public body was informed that the fee for filing an access request was only \$5. The applicant was informed that \$5 fee was mandatory under the *Act* and that he was required to provide sufficient particulars to enable the public body to identify the record. The OIPC shared the applicant's additional information regarding the requested records with the public body and the file was resolved.

Lesson: The \$5 fee and sufficient particulars are required before an access request can be processed.

Premature Decision

A public body refused access to records requested regarding a university consultation claiming the records constituted advice to the Minister. During the intake process it was discovered that the public body did not gather and review the records prior to issuing its decision. After gathering and reviewing the responsive records, the public body released the records in full to the applicant and the file was resolved.

Lesson: Even if a public body believes requested records would not be disclosed, the records must always be retrieved and reviewed line-by-line before issuing a decision.

Toilets, Taverns and Telephone Poles Tell-All

A public body released records to an applicant on which it placed a condition that the applicant could not disseminate the records without the public body's consent. The public body advised the OIPC that this was a general practice because it did not want its records distributed in toilets, taverns or telephone poles. The OIPC informed the public body that the *Act* provides limited exceptions to withhold records from an applicant; however the *Act* contains no provision for placing conditions on records once disclosed under the *Act*. The public body removed the condition from the records and advised that it had ceased its general practice of placing this condition on disclosed records.

Lesson: Publication of records received in response to a *FOIPOP* request, even if it's through posting in toilets, taverns and on telephone poles is perfectly consistent with the purposes of the *Act*: making public bodies and municipalities accountable to the public.

Criminal Record Checks - Should You?

It came to the attention of the OIPC that many colleges and universities ("schools") in Nova Scotia have made it a practice to collect criminal record checks from students, and potential students, for some of their program areas. This information is then used by the schools to make decisions about student placements for program practicums and in some cases whether or not the student will be admitted to the program at all.

One of the purposes of *FOIPOP* is to ensure that public bodies are fully accountable to the public by preventing the unauthorized collection, use or disclosure of personal information. Criminal record checks, by their nature, contain very sensitive personal information.

The OIPC created a guidance document that explains these rules and provides 17 best practice suggestions that schools should consider when deciding whether to collect, use or disclose criminal record checks as part of their admittance and placement processes. This document is available on our website and can be used by anyone who is thinking about collecting criminal record checks.

Annual Report Statistics

Personal Health Information Act

The *Personal Health Information Act (PHIA)* came into force on June 1, 2013. *PHIA* governs the collection, use, disclosure, retention, disposal and destruction of personal health information. *PHIA* applies to all personal health information held by custodians in Nova Scotia.

Summary of All Files Opened			
<i>PHIA</i>			
	2015 - 2016	2014	2013
Access and Correction Requests for Review			
Access	11	6	2
Correction	1	1	0
Privacy Complaints			
Privacy Complaints Received	0	1	0
Commissioner Own-Motion	1	4	1
Files Initiated by Custodians or Public Bodies			
Privacy Impact Assessments	0	0	0
Access and Privacy Consultations ⁷	29	9	4
Time Extension Requests	0	0	0
Disclosure Without Consent to Researcher	60	71	0
Breaches with No Potential for Harm or Embarrassment	591	338	10
Breach Notification (new)	1		
Prescribed Entity's Information Practices	0	0	0
Outreach and Education			
Inquiries	105	90 ⁸	77
Media Requests (new)	2		
Speaking Engagements	13	5	0
Staff Training and Conferences	2	0	0
Tools Made Available	3	0	0
Committees	0	0	0
Projects (new)	3		
Other (new)	0		
Total	822	525	94
⁷ Access consultations were not reported in 2013 and 2014.			
⁸ 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.			



Outcomes for Review and Complaint Files Closed *PHIA*

	2015	2014	2013
Review Report	0	0	0
Mediation	0	0	0
Informal Resolution	7	15	0
Withdrawn	0	0	0
Abandoned	0	1	0
Screened	5	4	0
Decision not to investigate	0	1	0
Total	12	21	0

Summary of All Files Closed 2015-2016 *PHIA*

Access and Correction Requests for Review	10
Privacy Complaints Received and Own-Motion	2
Files Initiated by Custodians or Public Bodies ⁹	685
Inquiries	105
Outreach and Education	23
Total	825

⁹ This number includes 640 disclosures without consent to researcher (s. 57(d) *PHIA*) and breaches with no potential for harm or embarrassment (s. 69(2) *PHIA*).

PHIA – Informal Resolution Summaries

All in the Family

A patient disclosed the fact that she was pregnant to a custodian. The patient had been attending the custodian's family practice for many years, and so they felt friendly with each other. This friendly feeling overshadowed the clinical context in which the disclosure was made and exposed a gap in the custodian's privacy management framework. The custodian, in a subsequent appointment with the patient's relative, let slip the good news. The patient complained the disclosure was unauthorized. The custodian apologized and agreed to take the OIPC's recommended steps to begin building a privacy management framework.

Lesson: This custodian's privacy management framework is reflective of most custodians' in the province. Significant education is required to get private practices' privacy programs up to the requirements of PHIA. The OIPC has a series of tools especially designed to assist health custodians to build a strong privacy management program.

Leave Your Work at Work

The OIPC was contacted by a custodian's agent. She had taken two hard drives home. One contained all of the office's patient records, the other was the backup. The agent intended to finish up some file notes. Her house was broken into and the device containing the personal health information was stolen along with the backup device. Patients were notified, the police were notified and the agent conducted regular checks on websites that sell used goods. The patient information was of a highly sensitive nature, which is almost always the case with health information. While there was no indication that the personal health information had been used by the thief, the device was not password protected or encrypted, which significantly increased the likelihood of misuse.

Lesson: Do not take personal health information home with you, but if you need to, only travel with the minimum information necessary and ensure you have adequate security in place including locked storage. Devices that contain personal health information must always be protected using encryption. Never store both the original and backup copies together.



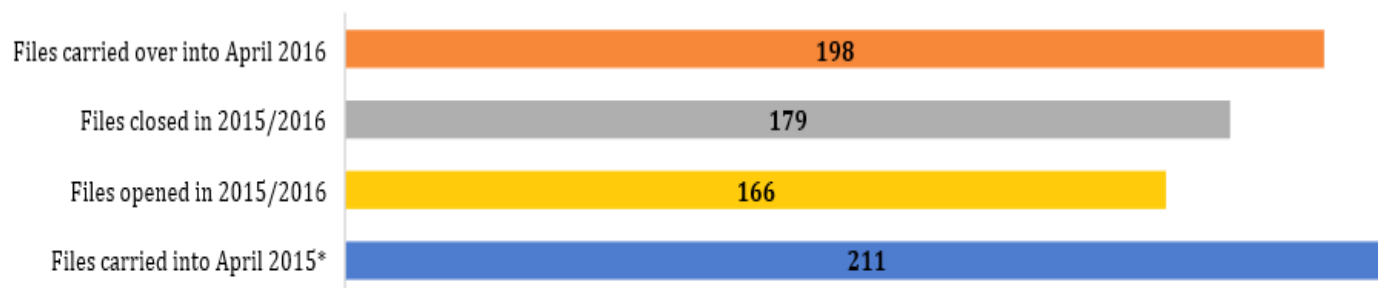
Strategies to Reduce Fees for Medical Records

An applicant sought access to her medical records when she found a new doctor several months after her previous doctor retired. Her previous doctor had sent her medical file to a records management company outside of the province to ensure the file was kept secure and confidential. Upon requesting the file, the applicant was informed that she must pay a fee before her file would be released to her. The applicant was unable to afford the fee and contacted the OIPC. The OIPC contacted the records management company and was informed that applicants can contact the company to explain the reason they are unable to pay the fee. The records management company confirmed that it may waive fees upon request if it determines the applicant cannot afford to pay the fees. In this instance, the records management company waived the fee for this applicant, and released her medical file to her.

Lesson: Communication between the applicant and the custodian or agent in custody or control of the personal health information when fees are being charged is necessary. The custodian or agent has the authority to waive or reduce the fees if it is his or her opinion that the applicant cannot afford to pay the fees or for any other reason it is fair to excuse payment. Another option is to have the new healthcare provider request the records directly from the records management company. Fees do not apply when a request for the records is made from a regulated health professional who is entitled to personal health information in accordance with consent given by the individual whose personal information is the subject of the request.

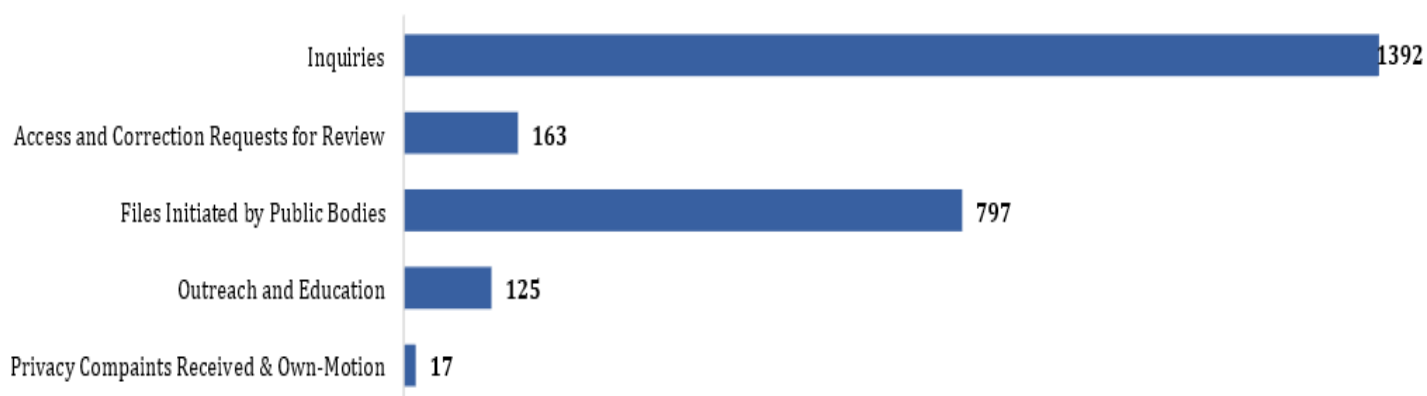


Management of All Review and Complaint Files *FOIPOP, MGA, PRO and PHIA*



* This number was represented as 238 in last year's Annual Report. We needed to merge a number of files to correct entry errors, so the actual number carried into April 2015 has been corrected to reflect this.

Summary of All Files Closed 2015 - 2016 *FOIPOP, MGA, PRO and PHIA*



Service Plan for the Office of the Information and Privacy Commissioner¹⁰

April 1, 2016 – March 31, 2017

Introduction

In last year's Annual Report I explained that we have decided to combine several reporting requirements into one report. This Service Plan is intended to provide the same 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*, 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.

¹⁰ Effective September 1, 2015 we changed our office name from FOIPOP Review Office to the Office of the Information and Privacy Commissioner for Nova Scotia. For more information on the name change see our press release at <http://foipop.ns.ca/sites/default/files/Press-Releases/NS%20OIPC%20Press%20Release%202015%2009%2001.pdf>.



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

In 2015/2016 we met or exceeded all of our performance targets set out in last year's Service Plan even though we had a 41% increase in the total number of new files received.¹¹ Part of the reason for the extraordinary increase in our new cases may well have been the huge success of our outreach program. We opened 119% more outreach files in 2015/2016 compared to last year.¹² We far exceeded our goal of 30 presentations, media articles and tools. Instead we completed a total of 114.

Goal 1 – An Open and Accountable Public Sector

2015/2016 Outcomes

Last year, we chose percentage of requests processed within 30 days by government departments as an indicator of success of our Goal 1. This is, of course, not a measure within the control of my office. Rather, it is a measure of how quickly government departments are processing access requests. Last year I indicated that the baseline was to be established. This year, I have set the baseline at 78%. This is the percentage of requests that government departments reported that they had processed within the 30 day statutory timeline in its 2014 annual report.¹³

¹¹ In 2015/2016 we received 264 new *FOIPOP*, *MGA* and *PRO* matters and 43 *PHIA* matters for a total of 307 new files. In 2014 that number was 217. An increase of 90 new matters equals a 41% increase.

¹² In 2014 we opened a total of 67 outreach files. In 2015/2016 we opened 147 new outreach files which included speech requests, training, tool creation and media requests.

¹³ 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>.



2016/2017 Strategies

We have two main strategies planned for 2016/2017:

- **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.¹⁴ While the OIPC has no control over response times, we have set optimistic goals in light of the recent centralization of much of the government's access request processing. Time will tell whether this centralization has a positive effect on request processing timelines.
- **Right to Know Week:** We intend to once again organize an event in celebration of Right to Know Week in September 2016. 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.

Performance Measure	Baseline	2016/17 Target	2017/18 Target	2018/19 Target
1. Percentage of requests processed within 30 days by government departments.	78%	85%	90%	95%

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

2015/2016 Outcomes

This year we began to monitor outcomes of complaint investigations and breach monitoring to evaluate the effectiveness of our informal recommendations. We followed up with all public bodies and health custodians to find out whether our recommendations had been implemented. We determined that 79% of recommendations were implemented and so this forms the baseline for the target we set for ourselves in 2016/2017.

We also conducted our first ever investigation into a privacy breach by a government department.¹⁵ The Office of the Premier responded to the recommendations set out in that report and published its response on its website.

The majority of our speaking requests were focused on privacy. For example, I met with all of the police chiefs at their annual general meeting in the spring of 2015 and provided them with a variety of privacy protection tools including information about evaluating the privacy implications of body-worn cameras and how to manage a privacy breach.

¹⁴ 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.

¹⁵ Investigation Report IR 16-01.



2016/2017 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 a number of projects intended to improve respect for and protection of the privacy of Nova Scotians. These projects include:

- **Video Surveillance:** We plan to conduct an evaluation of the use of video surveillance by public bodies and municipalities in Nova Scotia and will produce guidance materials to help ensure that any use of video surveillance is in compliance with privacy laws.
- **International Privacy Sweep:** We intend to participate in a project with other privacy regulators around the world known as the Privacy Sweep. This year the project involves spending one day reviewing the privacy policies of suppliers of internet-enabled devices. Our focus will be on health-related devices commonly available in Nova Scotia.
- **PHIA Review:** We plan to provide submissions to the Ministry of Health during its review of the *Personal Health Information Act* that is scheduled to occur this year.

Performance Measure	Baseline	2016/17 Target	2017/18 Target	2018/19 Target
2. Percentage of OIPC privacy complaint and breach investigation recommendations implemented by affected public bodies and health custodians.	79%	83%	85%	90%

Goal 3 – Public Awareness of Access and Privacy Rights

2015/2016 Outcomes

2015/2016 was an extraordinary year for the OIPC in terms of our public awareness efforts. Our goal was to complete 30 presentations, media articles and tools but in fact we completed a total of 114. Instead of just 200 people attending our presentations we spoke to 787 people across Nova Scotia. For the first time we tracked contacts initiated by the media (25 contacts). We also developed and delivered a new training program for administrators in municipalities around Nova Scotia. A total of 31 administrators attended 3 training sessions.

We delivered numerous speeches, training sessions and presentations on topics such as records management, privacy in the age of big data, privacy for managers, privacy breach management and access and privacy in policing. Whenever we travel we try to also stop at local libraries, malls and MLA offices to provide information intended to help citizens better understand their access and privacy rights. We visited a total of 23 MLA offices, 3 libraries and 1 mall.

Some of the new tools we created included privacy management program gap analysis for public bodies and health authorities, access and privacy toolkit for municipalities and time extension guidelines for public bodies. We also updated our mini guides intended to help citizens understand their access, privacy and health privacy rights.



2016/2017 Strategies

Next year we have three main outreach projects planned:

- **Breach Management Training** – This year many of the administrators we spoke with indicated an interest in receiving training focused on how to manage a privacy breach. We intend to develop and deliver this training course in the coming year.
- **Children's Privacy Project** – Other regulators across Canada have developed some very helpful tools relating to children's privacy online. We intend to take advantage of these existing tools to develop information for Nova Scotians. We hope to engage other interested stakeholders in this project.
- **Training for Colleges and Universities** – We are in the process of assessing interest in an access and privacy training program aimed specifically at administrators in colleges and universities. If sufficient interest exists we will develop and deliver this training in the coming year.

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

Goal 4 – Efficient and Effective OIPC Operations

2015/2016 Outcome

This year we worked diligently on the backlog of review and complaint files in our office. Despite being short-staffed for 9 of the 12 months covered by this report we managed to reduce the backlog of pre-2015 files by 60%.¹⁷

The number of new reviews and complaints received in 2015/2016 increased 17%.¹⁸ We had a great deal of success resolving 51% of these new matters at the intake stage. Of the 166 new reviews and complaints received, there remain 53 yet to be assigned and resolved.¹⁹

We had predicted that our average days to resolve a file would remain at about 700 days but our actual average was 521 days mainly because we were short one investigator for most of the year. It is the investigators who tackle the oldest files. The average resolution time was only 521 days because fewer than anticipated older files were closed while intake continued to do excellent work resolving the newer files. Of the 307 new files (of all types) received, 220 files were resolved usually within the first 35 days.²⁰

¹⁶ Number of OIPC presentations includes speeches, media articles and tools. In 2014 we had 45 speaking engagements and 5 new tools made available. In 2015/2016 we had 25 media requests, 68 speaking engagements and 19 tools made available.

¹⁷ We had 200 files awaiting assignment on April 1, 2015. We now have 79 files yet to be assigned from 2014 or earlier.

¹⁸ In 2015/2016 we received a total of 153 *FOIPOP*, *MGA* and *PRO* reviews and complaints and 13 *PHIA* reviews and complaints for a total of 166. In 2014 we received a total of 130 + 12 = 142 reviews and complaints. The increase of 166-142 = 24 or 17% increase.

¹⁹ There are now a total of 159 review and complaint files to be assigned. The Management of All Review and Complaint Files chart on page 19 lists files carried forward into April 2016 = 198. This is made up of the 156 files yet to be assigned and the 42 files assigned and in progress.

²⁰ 307 new files were opened consisting of reviews and complaints, investigations, consultations, breach notifications, time extension requests and privacy impact assessments. The intake team alone resolved 141 files with an average resolution time of 34 days.



2016/2017 Strategies

The case backlog will continue to be a priority for the OIPC. All new matters go through an early resolution process with our manager of intake. We have performance standards for all staff which include timelines. We conduct regular training to improve the quality of our work and we conduct regular file reviews to ensure that any roadblocks to resolution are examined and resolved as quickly as possible. If we stay fully staffed and if our new caseload does not increase next year, we plan to have assigned all of the 2015 files by May, 2017 and plan to have assigned all of the 2016 files by the end of 2017. These are challenging goals but we will work diligently to meet these targets.

Performance Measure	2015/16 Target	2015/16 Outcome	2016/17 Target	2017/18 Target
5. Percentage of access and privacy inquiries that receive a response within two days. ²¹	98%	98%	98%	98%
6. Percentage of reviews (<i>FOIPOP</i> , <i>MGA</i> and <i>PHIA</i>) that are resolved informally. ²²	75%	90%	80%	85%
7. Average number of days to resolve <i>FOIPOP</i> , <i>MGA</i> , <i>PRO</i> , <i>PHIA</i> reviews and complaints. ²³	700 days	521 days	500 days	90 days
8. Percentage of Review Report recommendations accepted by public bodies and municipal bodies. ²⁴	50%	50%	55%	60%

²¹ 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.

²² Mediation, informal resolution, decision not to investigate, screened 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.

²³ The target was based on the length of time it took to resolve 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 for both the target and outcome in 2015/2016 were done manually from a series of databases. Once all pre-2015 cases are resolved our new database will calculate processing time for us.

²⁴ Between April 1, 2015 and March 31, 2016 the Commissioner issued 12 Review Reports. In six cases the public body or municipality accepted the recommendations and in six they accepted the recommendations in part.



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

Category	Forecast for 2016-2017	Actual for 2015-2016	Actual for 2014-2015
Salaries and Benefits	504,000	470,300	471,004
Travel	6,000	9000	5870
Professional/Special Services ²⁵	43,000	52,200	52,215
Supplies and Services	5,000	31,000	10,979
Other	45,000	46,900	42,029
Adjustments ²⁶	0	(44,000)	(22,274)
Total Budget Spent	603,000	609,400	582,097
Total Budget Given	603,000	593,000	565,000
% of Budget Spent	100%	103%	103%

²⁵ This amount includes funding a full-time temporary agency employee to address our staffing needs for a full year.

²⁶ 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 <i>Act</i>	Fiscal Year 2015/2016
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

Contact Information:

509-5670 Spring Garden Road, Halifax, NS B3J 1H6

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

