



# **2017 - 2018 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.

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### 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.



November 14, 2018

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

Dear Mr. Speaker,

Pursuant to s. 33(7) of the *Freedom of Information and Protection of Privacy Act*, s. 4(3) of the *Privacy Review Officer Act* and s. 93(b) of the *Personal Health Information Act*, I submit this annual report for the 12 month period of April 1, 2017 through to March 31, 2018.

Respectfully submitted,

Catherine Tully  
Information and Privacy Commissioner for Nova Scotia

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# *Commissioner's Message*



Does our law allow the government to keep its secrets? In 1993, then Minister of Justice, the Honourable William Gillis, stated that what Nova Scotians do not want is an Act that allows the government to keep its secrets. Twenty-five years on, how successful have we been in meeting that goal?

We dealt with more than 2600 matters in the past year. Based on that experience, I have highlighted below a few of the trends we have observed on the effectiveness of Nova Scotia's access and privacy laws.

Nova Scotians complained most frequently about the failure of public bodies to fully disclose information requested. Forty percent of the appeals filed with our office related to denial of access to records. Other areas of ongoing frustration for the public are failure to conduct adequate searches for records and failure to respond on time.

*Nova Scotians want to know where they stand with their government. They want their rights to information and their rights to privacy defined with precision, and they want procedural fairness. What they do not want is an Act that allows the government to keep its secrets.*

The Honourable William Gillis  
Minister of Justice  
Introduction of FOIPOP  
Nova Scotia Assembly Debates,  
Monday, November 8, 1993



## Commissioner's Message

In the past year we saw a distinct difference between acceptance of review report recommendations by government departments versus by other public bodies. Municipalities accepted review report recommendations two thirds of the time while government departments accepted recommendations just half of the time. For example, the Department of Fisheries and Aquaculture refused to comply with a recommendation to fully disclose records withheld in five related access requests about fish farms.<sup>1</sup> On appeal of the Department's refusal to follow the recommendations to the Nova Scotia Supreme Court, the Court ordered that the records be disclosed in full.

An area of access oversight that has worked very effectively is our consultation service. Through this service we offer public bodies and municipalities the opportunity to discuss issues with us before they make a decision. This has been highly effective in increasing the release of records in compliance with the law. Of the 114 consultation requests we responded to in 2017/2018, we received no requests for review where the public body followed our guidance. This is good for public bodies and good for Nova Scotians.



Likewise, our informal resolution process was highly successful. Public bodies and municipalities resolved 96% of their cases through informal resolution guided by our investigators. Government departments were less successful, resolving just 83% of appeals this way.

***Public bodies and municipalities resolved 96% of their cases through informal resolution guided by our investigators.***

These trends with respect to access rights in Nova Scotia highlight the need to modernize our access laws. Order-making power for the Information and Privacy Commissioner would both improve the quality of the evidence provided in support of exemptions and also motivate public bodies to more actively participate in informal resolution. After all, if at the end of the day they are required to comply with the Commissioner's recommendations, informal resolution will likely be a more attractive option. Informal resolution decreases the time to resolve complaints and, of course, improves the resolution of matters to the satisfaction of both parties.

One of the most significant trends in privacy is the growing collection of databases containing personal information. These databases are becoming increasingly interoperable. We saw evidence of this during a privacy breach investigation we conducted in relation to the Drug Information System. During the course of this investigation that began in late 2017, we discovered that the governance and monitoring of broad access, multi-custodian, electronic personal health information databases is a critical vulnerability in the province. There is an urgent need to strengthen and clarify the responsibilities for and monitoring of interoperable health information databases to protect the privacy of Nova Scotians' health information.

<sup>1</sup> Review Report 17-03.

# Commissioner's Message

Along with the ever-increasing collection of data about individuals is the growing desire by governments and industry to take advantage of the data through advanced data analytics. While there is no question that big data can serve the



best interests of citizens, it does not come without significant risks. In October 2017 we issued *Big Data Guidelines for Nova Scotia*. Those guidelines provide a series

of recommendations to help public bodies deal with the privacy and ethical issues raised by the use of big data analytics.

Jurisdictions around the world have been grappling with these same issues. Effective May 25, 2018, the European Union's General Data Protection Regulation (GDPR) came into effect. It sets some very high standards for industry and governments who process personal information of Europeans. The GDPR's standards are at the forefront of modern privacy protections. They include mandatory privacy impact assessments, mandatory privacy breach reporting and significant rights for citizens including the right to be informed, the right to be forgotten and the right to data portability.

Two things are important for Nova Scotians. First, to the extent that Nova Scotians want to conduct business with Europeans, they may find that they must also comply with these higher privacy standards or face very significant fines. Second, the world of data knows no boundaries. The standards set by the GDPR will increasingly become standards expected around the world. Nova Scotia's privacy laws fall far short of these standards. Last year I issued a special report listing numerous recommended modernizations of our privacy rights and included among them were many standards similar to the GDPR such as the need to establish mandatory privacy impact assessments and mandatory privacy breach reporting requirements.

*The investigations we have conducted in the past year have served only to further illustrate the urgent need to update our privacy laws.*

The investigations we have conducted in the past year have served only to further illustrate the urgent need to update our privacy laws.

There are numerous individuals working within municipalities, universities, health authorities, Information Access and Privacy Services and provincial government departments to ensure Nova Scotians' access and privacy rights are respected and protected. It is a tough job in this time of competing priorities and technical complexities. I recognize and respect those efforts. I am also grateful to the staff of my office for their excellent, dedicated hard work over the past year.

Nova Scotians deserve modern access and privacy protections including effective oversight of their rights. Our current laws are no longer up to the task. Consistent with my recommendations last year, I once again recommend that the laws be modernized to ensure that Nova Scotia and Nova Scotians are ready and able to meet the challenges of today and tomorrow.

Yours sincerely,

Catherine Tully  
Information and Privacy Commissioner  
for Nova Scotia



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

<b>Summary of All Files Opened</b> <b><i>FOIPOP, MGA, PRO</i></b>			
	2017 - 2018	2016 - 2017	2015 - 2016
<b>Access and Correction Requests for Review</b>			
FOIPOP	126	126	106
MGA	54	42	34
<b>Privacy Complaints<sup>2</sup></b>			
Privacy Complaints Received	5	6	8
Commissioner Own-Motion	3	0	5
<b>Files Initiated by Public Bodies</b>			
Breach Notifications	2	3	4
Privacy Impact Assessments	1	1	1
Access and Privacy Consultations	83	78	58
Time Extension Requests	65	53	48
Late Transfer Request	4	1	
<b>Outreach and Education</b>			
Inquiries	986	1133	1287
Media Requests	35	26	23
Speaking Engagements	32	70	55
Staff Training and Conferences	3	1	6
Tools Made Available	12	11	16
Committees <sup>3</sup>	5	9	8
Projects <sup>4</sup>	21	16	15
Other <sup>5</sup>	19	9	1
<b>Total</b>	<b>1456</b>	<b>1585</b>	<b>1675</b>
<sup>2</sup> Privacy complaints are made under the <i>Privacy Review Officer Act (PRO Act)</i> . The <i>PRO Act</i> applies only to those public bodies to which <i>FOIPOP</i> applies, not the <i>MGA</i> . <sup>3</sup> Committees include: international memberships such as the Common Thread Network, the International Conference of Data Protection & Privacy Commissioners and the Global Privacy Enforcement Network (GPEN) and cross-jurisdictional initiatives. <sup>4</sup> Projects include: participation in multi-jurisdictional initiatives such as Data Privacy Day and Right to Know Week, access and privacy awards, distribution of the June 2017 Accountability for Digital Age report and production of internal and external resources such as disclosures without consent and open government research. <sup>5</sup> Other includes: submissions on Bills, providing statistics and responses to external organizations, distribution of materials and tools, providing unsolicited advice on public body initiatives and analyzing whether various organizations are a public body within the meaning of <i>FOIPOP</i> .			

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

Outcome	FOIPOP Reviews Closed			MGA Reviews Closed			PRO Complaints Closed		
	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16
Review Report	11	10	10	2	4	2	1	4	1
Mediation	0	0	0	0	0	0	0	0	0
Informal Resolution	87	76	86	31	30	32	3	3	5
Withdrawn	7	12	4	1	1	3	1	0	0
Abandoned	2	6	4	1	1	1	0	0	0
Screened*	4	4	10	2	2	2	1	2	7
<b>Total</b>	<b>111</b>	<b>108</b>	<b>114</b>	<b>37</b>	<b>38</b>	<b>40</b>	<b>6</b>	<b>9</b>	<b>13</b>

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

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

Year	Agree with Public Body	Agree in-part with Public Body	Disagree with Public Body
2017/18	2 (7%)	1 (3%)	27 (90%)
2016/17	1 (7%)	4 (29%)	9 (64%)
2015/16	0	7 (58%)	5 (42%)

## Public Bodies' Responses to the Commissioner's Recommendations

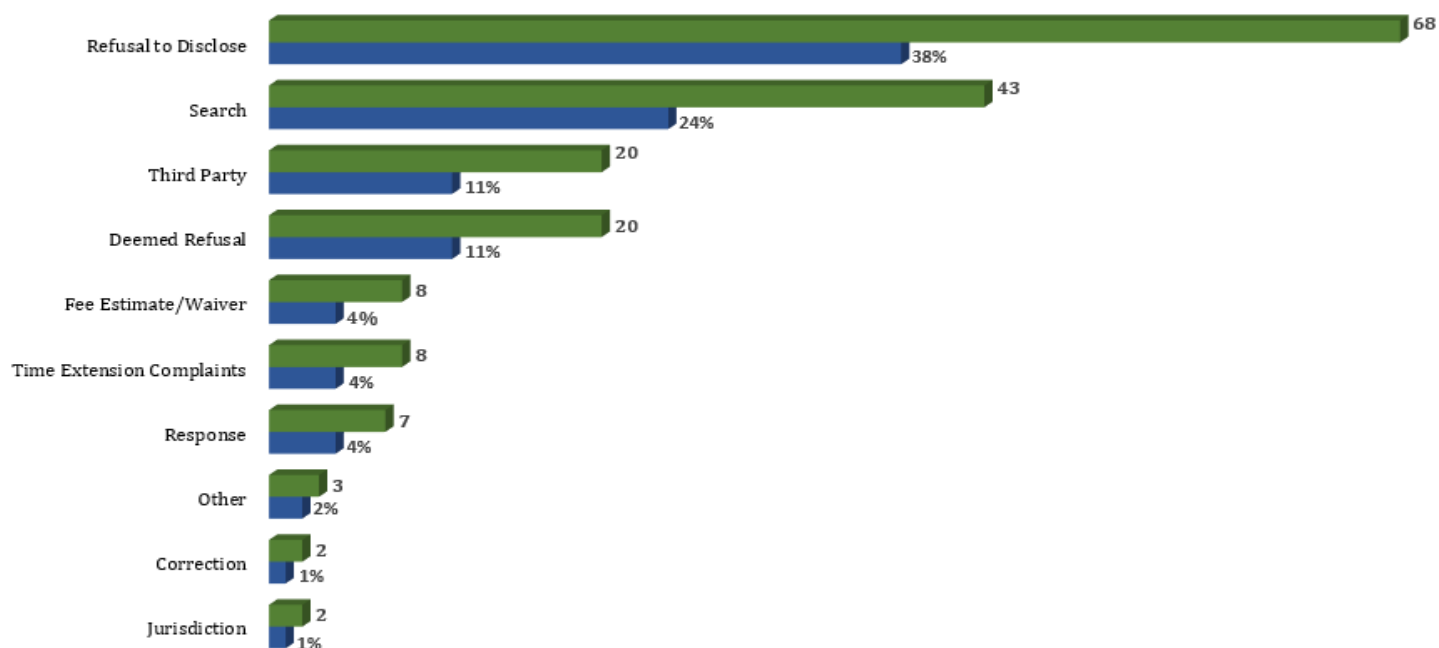
Year	Accepted	Partial Acceptance	Rejected
2017/18	18 (60%)	2 (7%)	10 (33%)
2016/17	8 (57%)	4 (29%)	2 (14%)
2015/16	6 (50%)	6 (50%)	0

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

	2017-2018	2016-2017	2015-2016
Access and Correction Requests for Review	148	146	153
Privacy Complaints Received and Own-Motion	7	9	15
Files Initiated by Custodians or Public Bodies	159	135	112
Inquiries	986	1133	1287
Outreach and Education	136	141	102
<b>Total</b>	<b>1436</b>	<b>1564</b>	<b>1669</b>

## Issues Under Review 2017-2018

### *FOIPOP and MGA Access & Correction Reviews*



The OIPC identified 181 issues in the 180 review files received.

## Issues Under Review 2017-2018

### *FOIPOP Privacy Complaints*



The OIPC identified 9 issues in the 8 complaint files received.

# Quick Wins - Early Resolution Case Summaries

## Early Resolution

**In 2017-2018, our intake manager resolved 30% of all new request for review files within 39 days of receipt of the review.**

### Consult First

An applicant requested his client's program file from a public body. The public body withheld part of the records claiming solicitor-client privilege. The applicant filed a request for review with the OIPC under *FOIPOP*.

During the intake process, the applicant submitted that the public body could not claim solicitor-client privilege for the records because they were not the public body's records, but rather records of a different public body.



The public body advised the OIPC that it had not previously contacted the other public body to consult about the requested records. At the OIPC's request, the public body consulted with the other public body

who consented to the release of the records.

The public body disclosed the requested records to the applicant.

**Lesson:** Consult first, not last.

## Private Sector Business - Getting Privacy Right

A small business owner in Nova Scotia contacted the OIPC seeking guidance about disclosing personal information

that was in his business' custody. He wanted to make sure that disclosing the personal information would not invade anyone's



privacy. The OIPC confirmed for the business owner that it was the right thing to do to stop and consider the privacy rights of these people before disclosing any of their personal information.

The OIPC explained that private sector businesses are not covered by Nova Scotia's provincial privacy legislation, but they are covered by Canada's federal *Personal Information Protection and Electronic Documents Act (PIPEDA)*. The OIPC referred the business owner to the Office of the Privacy Commissioner of Canada to obtain guidance about this disclosure to ensure it is compliant with the *PIPEDA* law.

**Lesson:** All organizations that are entrusted with personal information must ensure they understand their obligations under the applicable privacy law when handling personal information.

The intake manager reviews every new request for review file that is received by the OIPC. During the intake process, she confirms the issues, works with the parties involved to clarify the law and seeks out opportunities for an early resolution if possible.

# Quick Wins - Early Resolution Case Summaries

## Unreasonable Invasion Claim Not So Reasonable

An applicant requested access to a report made by a public body concerning her. The public body disclosed part of the record and withheld the

remainder saying it was third party personal information. The applicant filed a request for review with the OIPC.

During the intake process, the OIPC reviewed the records, which revealed that the withheld parts were information supplied to the public

body by the applicant, information already supplied to the applicant by the public body and other people's opinions about the applicant.

The OIPC encouraged the public body to follow the process established by the Nova Scotia Supreme Court when evaluating whether or not the law requires that a public body refuse to disclose third party personal information.

The OIPC's opinion also relied on Nova Scotia Review Report 17-05, which states that the knowledge of the applicant weighs heavily in favour of disclosure. In this case, the applicant already knew the information in the records as evidenced by the records themselves. Where the applicant provided the information to the public body, clearly the applicant did not mean to keep the information confidential from herself, and where the public body already provided the information to the applicant, clearly it did not mean to keep the information confidential from the applicant.

**Did you know the OIPC provides free access and privacy consultations to custodians, public bodies and municipalities?**

The OIPC also advised the public body that the law states that other people's opinions about the applicant are not the personal information of a third party, rather they are the personal information of the applicant.

After considering the OIPC's opinion, the public body disclosed the withheld portions of the records to the applicant.

**Lesson:** It is not enough for a public body to claim invasion of privacy, it must prove that the invasion of privacy is unreasonable.



## Making It Easy - Routine Access

An individual contacted the OIPC because he wanted a copy of his own employment records from a public body. He asked if the public body could provide the records upon his verbal request (routine access) or if it is necessary for him to make an access to information request under *FOIPOP*. The OIPC explained that the decision as to whether or not records will be provided routinely (verbal request) or will require an application under *FOIPOP* must be decided by the public body. However, the OIPC recommends that all public bodies have a routine access policy in place because it is beneficial for all parties involved.

**Lesson:** Having an established routine access policy in place increases efficiency of processing requests for public bodies and can decrease fees and wait times for applicants.



## *In the Supreme Court of Nova Scotia*

### ***Raymond v. Nova Scotia (Freedom of Information and Privacy Commissioner), 2017 NSSC 322***

In 2017, a decision of the Information and Privacy Commissioner was subject to judicial review. The Commissioner had determined that an applicant's request to a municipal body was a demand for information in the form of answers to questions rather than a request for records. As such, the Commissioner determined that the application did not qualify as a request for records under *Part XX* of the *Municipal Government Act*. That being the case, the applicant did not have a right to request a review. The Commissioner declined to proceed with the review and closed the applicant's file. It was this decision that prompted the application for judicial review.

The Court determined that the standard for review was one of reasonableness. Deference must be given to the decision rendered by the Commissioner because the question to be decided dealt with the Commissioner's procedures when conducting a review.

***"...there is no provision in the legislation for a question and answer, or inquisitorial process."***

Such a decision, the Court said, fell squarely within the Commissioner's specialized expertise and related directly to an interpretation of the Commissioner's home statute.

The Court agreed that there is no provision in the legislation for a question and answer, or inquisitorial process. The information to which one is entitled is to be gleaned by reference to the record containing it, unless the record itself is exempt from production pursuant to one of the exemptions. The Commissioner had determined that a valid application for records had not been made and so she was without jurisdiction to proceed with the review. The Court concluded that this interpretation was, at the very least, an "eminently reasonable" one and on that basis, the application for judicial review was dismissed.

This matter is now under appeal to the Nova Scotia Court of Appeal.





# Inadvertent Security Breach Highlights Uninformed Surveillance Program

Investigation Report IR17-01 (October 12, 2017) published the results of an investigation following a news report of a website that streamed live



video feeds from surveillance cameras at a school operated by a school board, (now) the Cape Breton-Victoria Regional Centre for Education (CBVRCE), a public body subject to *FOIPOP*. The investigation identified

security weaknesses with the internet-enabled video surveillance cameras and a video surveillance program based on a perception of fulfilling a security purpose. Video cameras capturing students entering and leaving a boys' washroom were of particular concern because information about students entering and exiting a washroom may be more sensitive than images of students in other public areas of a school.

The CBVRCE substantiated its surveillance program based on the concept of CPTED (Crime Prevention Through Environmental Design), and gave no indication that it had considered the responsibilities of a public body collecting, storing and using personal information under *FOIPOP*. Video surveillance collects the personal information of anyone captured and when operated by a public body it is subject to *FOIPOP*. When evaluating the authority to collect personal information, a public body must consider whether the collection is expressly authorized by law, whether it is necessary for the operation of its program, the sensitivity and nature of the information collected and whether another less privacy intrusive method is an option. The CBVRCE had never conducted a privacy impact assessment (PIA).

The OIPC's recommendations to CBVRCE were accepted in part and led to the following specific actions:

- Default passwords on the cameras were changed and this stopped the video feed to the linked website.
- Two representatives attended a workshop on how to conduct a PIA of video surveillance in schools.

- A committee was established to review and implement accepted OIPC recommendations and conduct a PIA.

To date, the CBVRCE committee has:

- Initiated a draft PIA of its video surveillance program.
- Created and partially installed signage notifying of surveillance cameras in operation.
- Implemented a video surveillance retention period.
- Developed an annual privacy and passwords training module. Delivery to employees began in September 2018 and is ongoing.
- Created an initial inventory of all video surveillance cameras in use.

To date, the CBVRCE committee has discussed but has not implemented:

- Technology needed to review and produce records from video surveillance for *FOIPOP* access to information requests.
- Surveillance video monitoring screen access and placement policy.
- A privacy breach management protocol beyond the province's general guide.

Significant OIPC recommendations rejected by the CBVRCE are:

- Disable the video surveillance outside the boys' washroom; rather the CBVRCE adjusted the capture so that it now collects images outside of both the boys' and girls' washrooms.
- Discontinue using video cameras that are no longer supported for security patch updates by the manufacturer.



## Outcome

The CBVRCE has not yet established that its ongoing video surveillance program is in compliance with *FOIPOP*. Some identified and foreseeable areas of residual security risk remain and a PIA has not been completed.

Investigation Report IR17-01 is publicly available on our website at <https://oipc.novascotia.ca>.

# One Year At-a-Glance

# 2017

June

Commissioner issues a special report including 34 recommendations to strengthen and modernize Nova Scotia's access and privacy laws.

## Accountability for the Digital Age

Modernizing Nova Scotia's Access & Privacy Laws

A Report by the  
Information and Privacy Commissioner for Nova Scotia

June 2017



Report available on the OIPC website at:  
<https://oipc.novascotia.ca>.

Sept

OIPC staff conducts public information sessions across Nova Scotia in the spirit of Right to Know Week.



## ACCESS TO INFORMATION: DO IT YOURSELF

### Right to Know Week Information Session

September 25 – October 1, 2017 is Right to Know Week in Nova Scotia. Join us and learn more about:

- ✓ What is covered under Nova Scotia's access to information laws.
- ✓ How to exercise your rights and request records from public bodies and municipalities.
- ✓ What to do if your request for access to information is denied.

**It's ATI: DIY!**



Former Review Officer Darce Fardy wins the Grace-Pépin Award.

Nov

OIPC delivers Chief Privacy Officer training to 40 participants.

## Chief Privacy Officer Toolkit

Office of the Information and Privacy Commissioner for  
Nova Scotia





# 2018



Jan

OIPC staff conduct an informal survey of Chief Privacy Officers in Nova Scotia for Data Privacy Day. Turns out, they are not easy to find!

## COMMENTARY: A fruitless search for privacy watchdogs

CATHERINE TULLY

Published January 24, 2018 - 8:49pm

Last Updated January 25, 2018 - 8:26am

## Nova Scotia's privacy commissioner says businesses need to increase privacy awareness

Of 52 businesses contacted by the Office of the Information and Privacy Commissioner, only six had privacy leaders who could answer "rudimentary privacy questions"

Feb

OIPC staff stay current in technology, privacy and security at the 19th Annual Privacy & Security Conference.



March

OIPC releases its Citizen's Guide to Access and Privacy Rights in Nova Scotia in French.



## Guide du citoyen sur les droits à l'accès à l'information et à la protection de la vie privée en Nouvelle-Écosse

Commissariat à l'information et à la protection de la vie  
privée de la Nouvelle-Écosse



**Annual Report Statistics**  
**Personal Health Information Act**

<b>Summary of All Files Opened PHIA</b>			
	2017 - 2018	2016 - 2017	2015 - 2016
<b>Access and Correction Requests for Review</b>			
Access	3	9	11
Correction	1	0	1
<b>Privacy Complaints</b>			
Privacy Complaints Received	5	1	0
Commissioner Own-Motion	3	9	1
<b>Files Initiated by Custodians</b>			
Privacy Impact Assessments	0	0	0
Access and Privacy Consultations	31	39	29
Time Extension Requests	0	0	0
Disclosure Without Consent to Researcher	96	103	60
Breaches with No Potential for Harm or Embarrassment	934	712	591
Breach Notification	1	3	1
Prescribed Entity's Information Practices	0	0	0
<b>Outreach and Education</b>			
Inquiries	111	160	105
Media Requests	4	12	2
Speaking Engagements	15	16	13
Staff Training and Conferences	0	0	2
Tools Made Available	4	1	3
Committees <sup>6</sup>	2	2	0
Projects <sup>7</sup>	4	2	3
Other <sup>8</sup>	9	3	0
<b>Total</b>	<b>1223</b>	<b>1072</b>	<b>822</b>
<sup>6</sup> Committees include: Canada Health Infoway Privacy Forum and Canadian Privacy Commissioners Health Privacy Committee. <sup>7</sup> Projects include: <i>PHIA</i> disclosures without consent, recommendation follow-up, internal staff training program and offense provision research. <sup>8</sup> Other includes: tracking notifications, unsolicited advice and submission on federal Regulations.			



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

	2017 - 2018	2016 - 2017	2015 - 2016
Review Report	0	1	0
Mediation	0	0	0
Informal Resolution	7	15	7
Withdrawn	0	1	0
Abandoned	0	1	0
Screened	1	1	5
Decision not to Investigate	0	0	0
<b>Total</b>	<b>8</b>	<b>19</b>	<b>12</b>

### Summary of All Files Closed *PHIA*

	2017 - 2018	2016 - 2017	2015 - 2016
Access and Correction Requests for Review	4	9	10
Privacy Complaints Received and Own-Motion	4	10	2
Files Initiated by Custodians <sup>9</sup>	1067	855	685
Inquiries	111	160	105
Outreach and Education	31	37	23
<b>Total</b>	<b>1217</b>	<b>1071</b>	<b>825</b>

<sup>9</sup> This number includes 96 disclosures without consent to researchers (s. 57(d) *PHIA*) and 934 breaches with no potential for harm or embarrassment (s. 69(2) *PHIA*).

## Issues Under Review 2017-2018

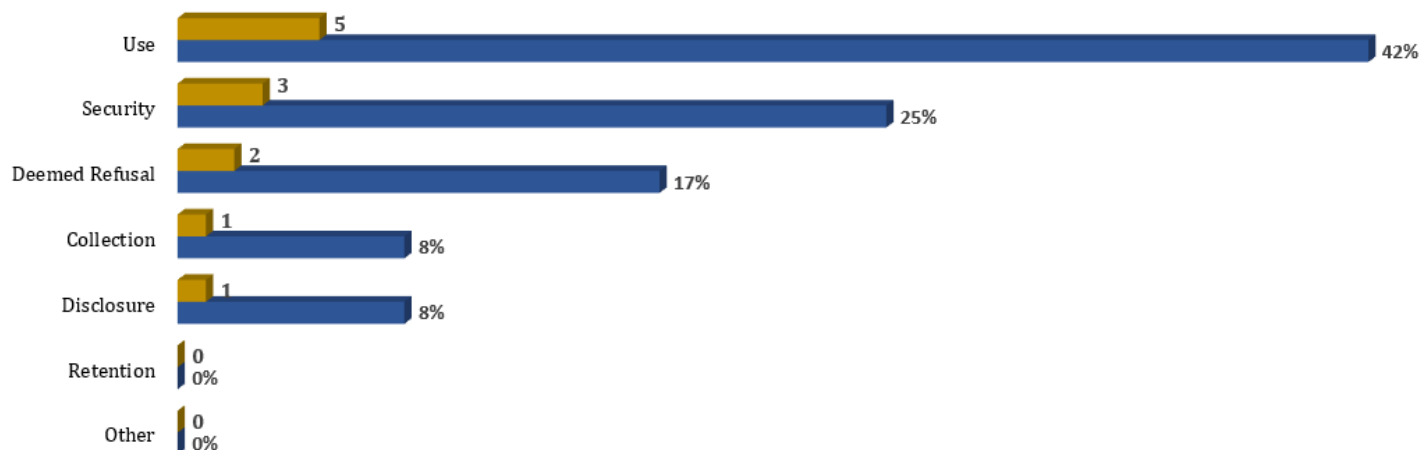
### PHIA Access & Correction Reviews



The OIPC identified 4 issues in the 4 review files received.

## Issues Under Review 2017-2018

### PHIA Privacy Complaints



The OIPC identified 12 issues in the 8 complaint files received.



# ***Snooping - A Serious Invasion of Privacy***

The development of electronic health records and databases over the last decade has provided powerful technology to assist health care providers to deliver the best and most informed services. Sometimes, people who are authorized to access personal health information (PHI) abuse their authority and access PHI for purposes other than providing health care. This behavior of peering into PHI without a valid reason has come to be known as “snooping” in health care circles. However, the behavior is a serious invasion of privacy and a prosecutable offense under the *Personal Health Information Act*. The Nova Scotia Health Authority (NSHA) has experienced some high-profile incidents of staff misusing their access privileges, including one scenario that resulted in a class action lawsuit that cost tax payers more than a million dollars. The OIPC completed a separate investigation of NSHA in 2017 involving the unauthorized access of 335 individual PHI records by six different staff at multiple worksites. Our investigation revealed a dangerous and insidious culture of entitlement to view health records, with accounts of unauthorized access that, in some cases, took place over a long period of time.

The Nova Scotia Health Authority was created in 2015 following the amalgamation of nine health authorities across the province. The NSHA established a Privacy Office, staffed by individuals who take the matter seriously.

***Our investigation revealed a dangerous and insidious culture of entitlement to view health records***



The NSHA cooperated with the OIPC during the 2017 investigation and accepted all of the OIPC’s recommendations, putting into action a multi-layered and multi-year approach to implementation. The recommendations are designed to strengthen NSHA’s ability to detect and respond to this kind of privacy breach and influence the workplace culture around privacy.

Recommendations accepted and being implemented by the NSHA are:

- Strengthened privacy breach management protocol, completed May 25, 2018.
- Online privacy training module and privacy pledge for all staff implemented. Progress being tracked to reach 100% of employees by December 31, 2018.
- Policy implemented requiring annual renewal of privacy training module and pledge.
- Developed privacy training for leadership roles, to be delivered by December 31, 2018.
- Culture shifting campaign: Privacy Awareness Week, developed and hosted May 7 - 11, 2018.
- Implemented two new proactive user audit flags: high profile patient and excessive patient access.
- Coordination with human resources information in progress to implement proactive user audit flag of looking up co-worker records by December 31, 2018.
- Implement a fully integrated electronic records access control program by December 31, 2020.

*continued on page 22...*

## ***Snooping - A Serious Invasion of Privacy***

Ongoing investigations of other custodians in other health care settings reveal that this type of privacy breach is not limited to any one type of staff or custodian. Larger custodians have a heavier burden to prevent such unauthorized access because their systems and networks tend to be more complex with more people and access, but all authorized users of PHI databases are potential sources of this kind of privacy breach. The behavior itself is not new. Curiosity, busybodies, nosiness and other more malicious reasons for unauthorized access to information are known human motivators. As PHI databases grow and access expands, the damage and degree of privacy invasion from this behaviour also grows. Custodians must be vigilant and cannot rest on an honour system, nor on the ethical standards of a professional designation, as the means to guard against unauthorized access by authorized users.

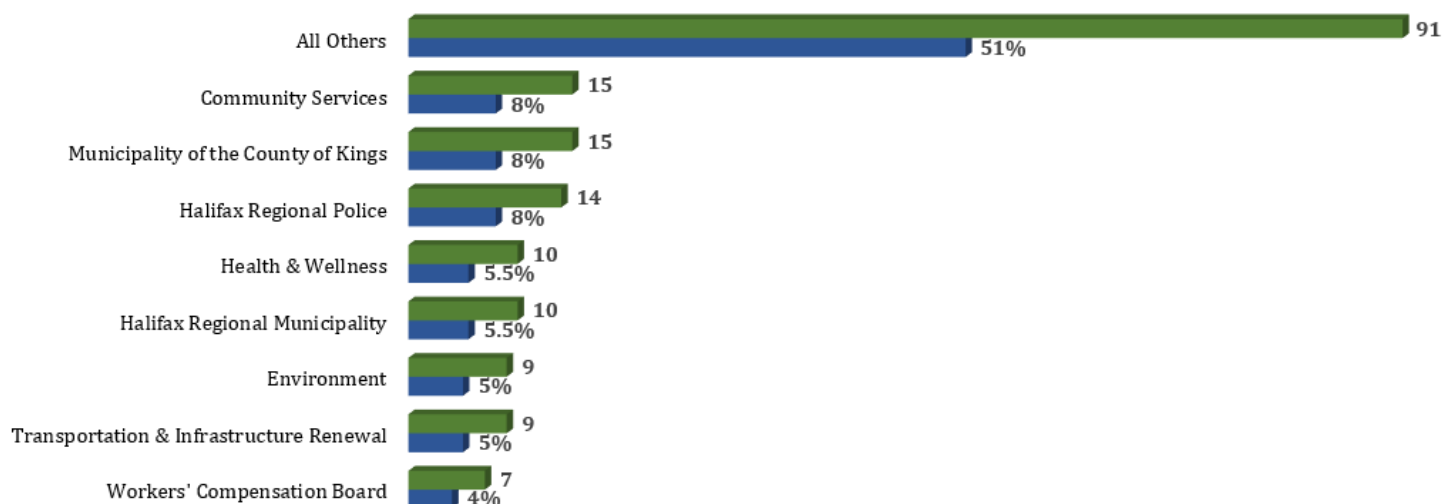
***Custodians must be vigilant and cannot rest on an honour system, nor on the ethical standards of a professional designation, as the means to guard against unauthorized access by authorized users.***

***As PHI databases grow and access expands, the damage and degree of privacy invasion from this behaviour also grows.***

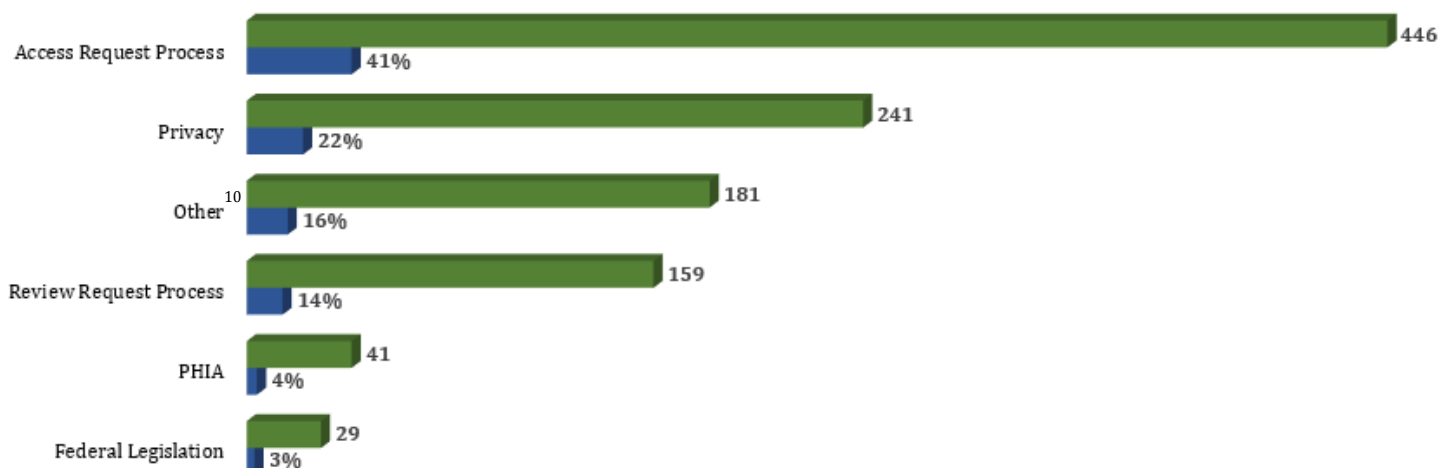
By engaging an electronic system and database, the custodian becomes responsible for specific steps to secure the system, ensure limited role-based access and monitor user activity. The custodian must proactively curb a workplace culture that encourages or turns a blind eye to such behavior and must take steps to fully investigate and contain any privacy breaches that occur. Without a thorough and strategic approach, the behaviour will continue to go undetected causing harm to individuals and will undermine public trust in the health care system.



## Top 8 Public Bodies and Custodians Review Requests Received in 2017-2018 *FOIPOP, MGA, PRO and PHIA*



## Inquiries Received in 2017-2018 *FOIPOP, MGA, PRO and PHIA*

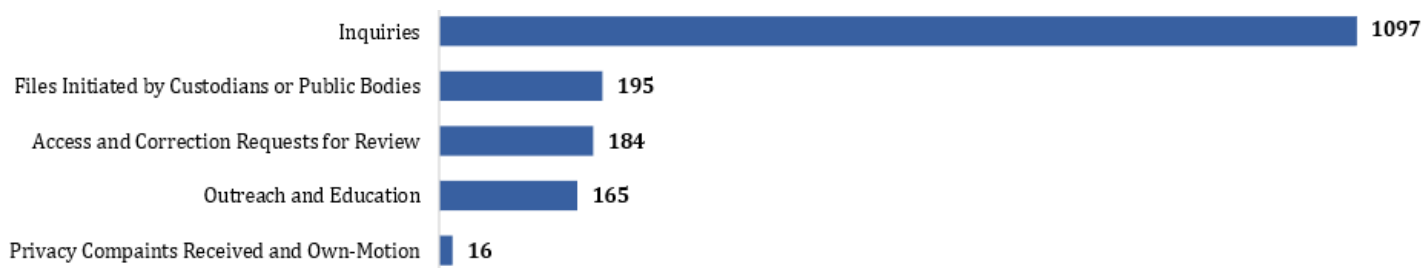


<sup>10</sup> Other includes: media requests; conference, presentation, meeting and committee invitations; business administration and wrong numbers.

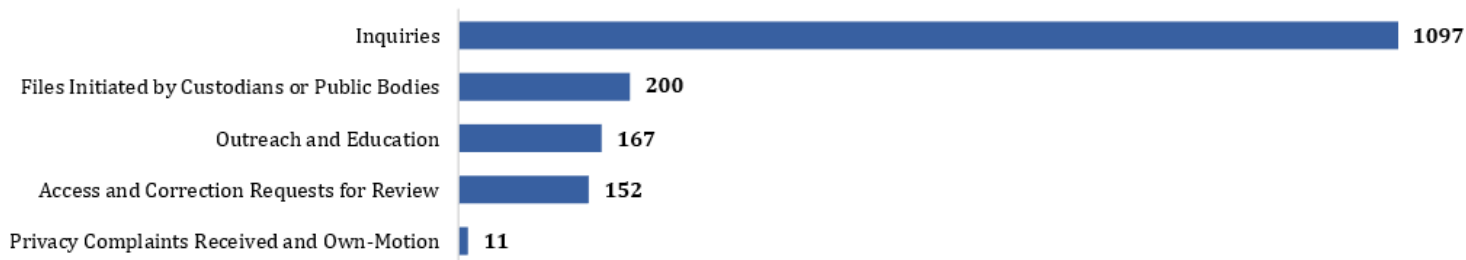
## Management of All Review and Complaint Files *FOIPOP, MGA, PRO, PHIA*



## Summary of All Files Opened 2017-2018 *FOIPOP, MGA, PRO, PHIA*



## Summary of All Files Closed 2017-2018 *FOIPOP, MGA, PRO, PHIA*





# Service Plan for the Office of the Information and Privacy Commissioner

April 1, 2018 – March 31, 2019

## Introduction

This Service Plan serves as our Statement of Mandate and our Accountability Report. The Service Plan reports on the outcome of our performance in the past two years 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,<sup>11</sup> 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.

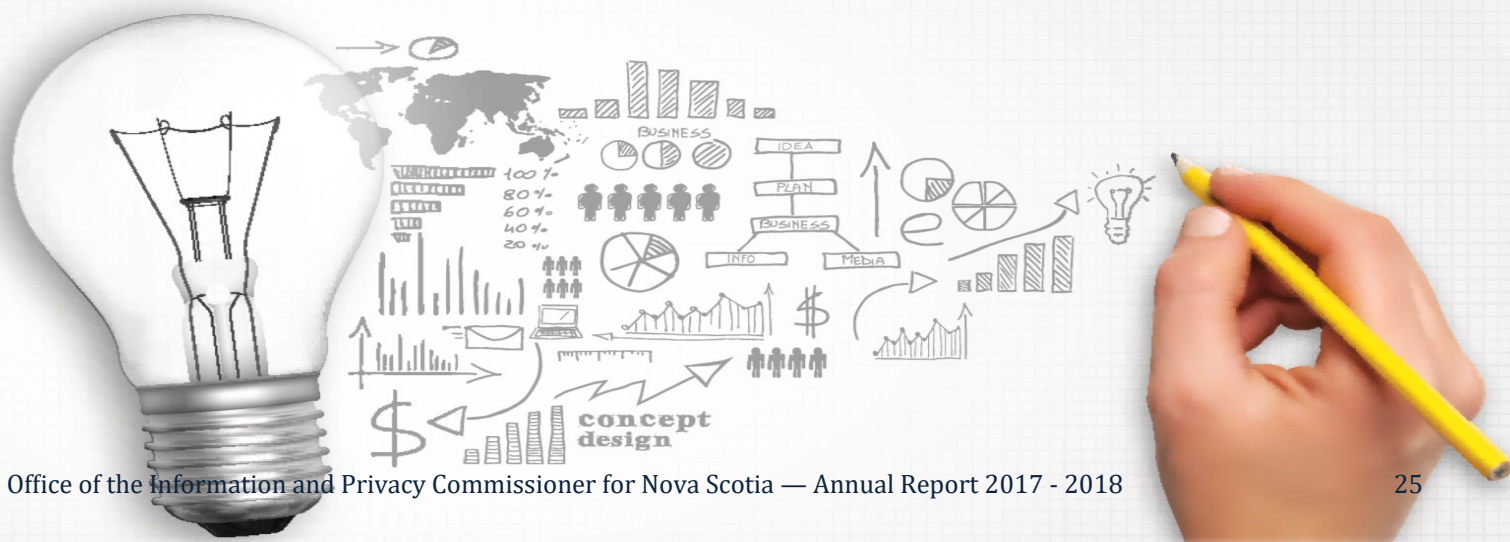
There are more than 26,000 health custodians and agents in Nova Scotia subject to the rules set out in *PHIA*. *PHIA* sets out a complex series of rules regarding the use of personal health information. In discharging its mandate, the OIPC investigates and mediates access appeals and privacy complaints, conducts formal hearings and issues recommendation reports. The OIPC also receives privacy breach reports voluntarily and 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

<sup>11</sup> Now known as regional centres for education.



## 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 access and privacy implications of programs and systems, engages in public education and issues formal reports.

### Outcome Highlights

We met or exceeded all of our performance measures although we continue to be challenged to reduce our average resolution time. The only measure not substantially achieved was outside of my office's control – the percentage of access requests processed by government departments within 30 days.

The outcomes below indicate that the public, public bodies and health custodians have come to rely on this office's leadership and expertise in the area of access and privacy law in Nova Scotia.

We are an energetic and nimble organization working hard to set and meet challenging and meaningful performance standards.

### Goal 1: An Open and Accountable Public Sector

The goal of having an open and accountable public sector goes to the heart of the purpose of access to information laws. One of the ways to measure the effectiveness of those laws is to monitor the timeliness of responses. After all, access delayed is access denied. The first measure we use is a measure not within our control. It is the timeliness of government's response to access to information requests as reported by the government in its annual report.<sup>12</sup>

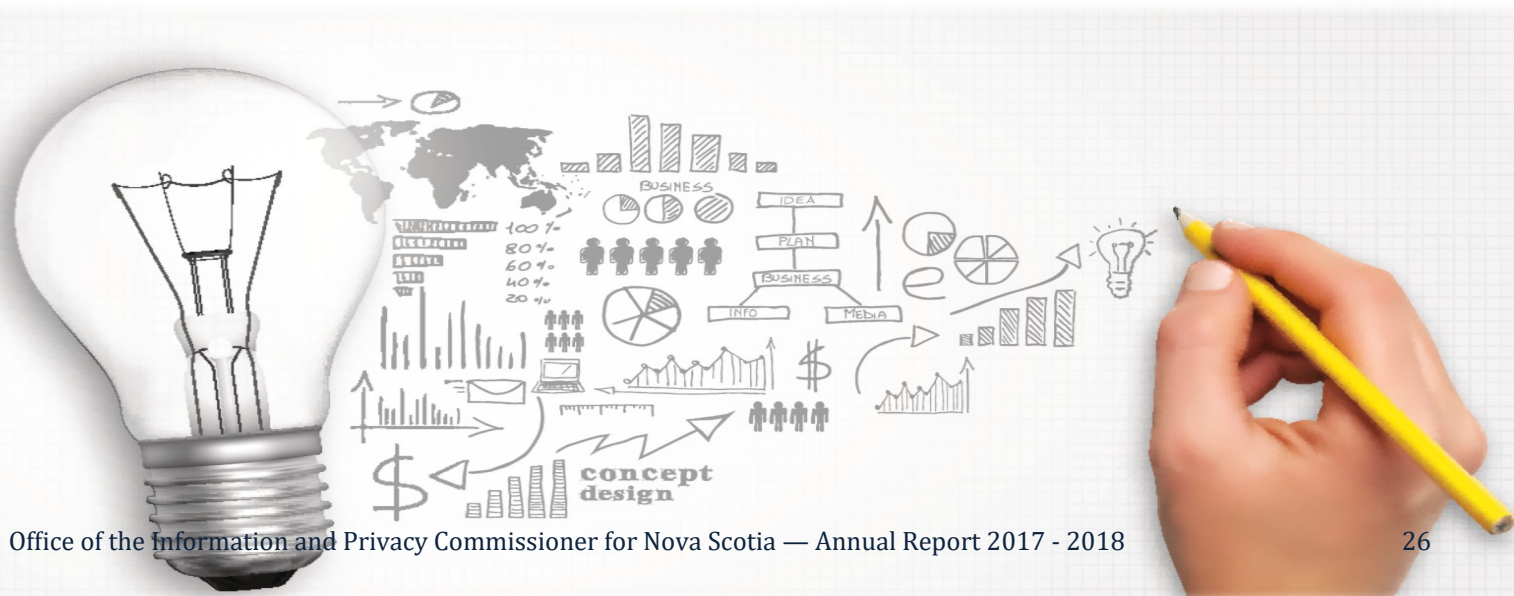
#### 2017/2018 Outcomes

In 2015<sup>13</sup> the government centralized the processing of access to information requests for government departments within the Department of Internal Services, Information Access and Privacy Services (IAP Services). IAP Services reports that in 2017/2018, government departments responded within 30 days 82% of the time. This is an average performance in comparison with other jurisdictions in Canada. Newfoundland, for example, responded on time 95% of the time.<sup>14</sup>

<sup>12</sup> Information Access and Privacy Services Annual Report 2017-2018 available at: <https://beta.novascotia.ca/sites/default/files/documents/1-1300/information-access-and-privacy-services-annual-report-2017-2018-en.pdf>.

<sup>13</sup> Effective April 1, 2015, with transition happening in 2015-2016.

<sup>14</sup> British Columbia reported 80% of responses occurred within 30 days, Ontario reported 70%, Saskatchewan reported 76% and Newfoundland reported 95% for an average of 80%.





The statistic has its limitation because while the law requires a response within 30 days, it does permit time extensions in limited and specific circumstances. So, a perfect outcome will not necessarily be 100%, but certainly the departments should be aiming to be well above 90%. Government departments reported a new statistic this year that indicates that in 11% of cases, government departments did not respond on time, even taking into account permitted time extensions. In other words, in 247 cases, the government violated *FOIPOP* timelines. While it is commendable that government departments are being transparent about this shortcoming in their access to information request processing, it is a serious concern that any access request is processed outside of permitted timelines including time extensions authorized under *FOIPOP*. In fairness, this problem is common to other jurisdictions in Canada. The solutions to this problem include providing additional resources for the processing of access to information requests, amending the time extension provisions of *FOIPOP* to permit time extensions with the consent of applicants and order-making power for the Commissioner to compel timely responses.

In addition to monitoring government performance, we celebrated Right to Know Week by hosting public events at public libraries in Margaree Forks, Mabou,

Dartmouth, Shelburne, Amherst, Sherbrooke and Guysborough. On Right to Know Day, the Commissioner was the keynote speaker at the Knowledge Management Day Conference hosted by Dalhousie University.

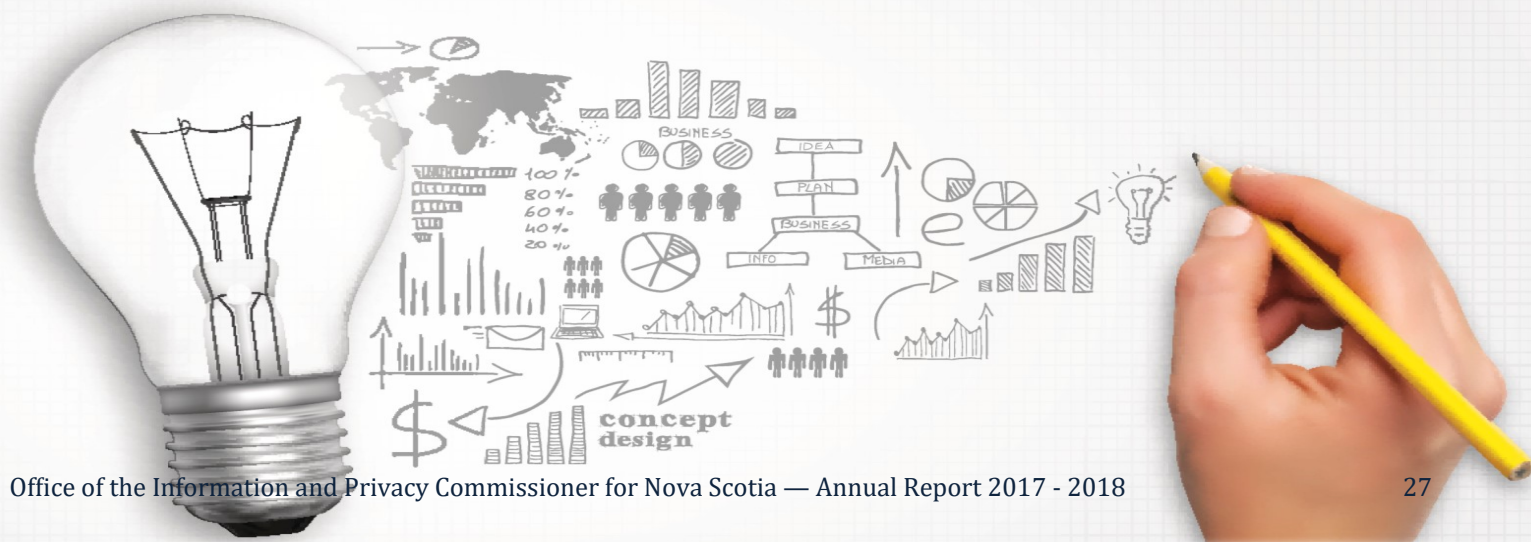
We had some challenges due to our high caseload combined with staffing shortages so the open government project was one project that was not completed last year.

### 2018/2019 Strategies

We have three main strategies this year:

- **Open Government Week:** Open Government Week is a new international event celebrating transparency, accountability and participation in government. We organized an event to celebrate this week in May 2018.
- **Right to Know Week:** Right to Know Week is an important event for highlighting the significance of access to information legislation. Each year we develop a strategy to communicate the right to know to citizens in Nova Scotia. This year our focus was on university students.
- **Duty to Assist:** One of the core responsibilities for public bodies under our access laws is the duty to assist Nova Scotians who make access to information requests. We plan to develop and publish guidance materials to help public bodies and municipalities understand and comply with the duty to assist.

Performance Measure	2016/17	2017/18	2018/19
1. Percentage of requests processed within 30 days by government departments.	Goal = 85% Outcome = 81%	Goal = 90% Outcome = 82%	Goal = 90%



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

### 2017/2018 Outcomes

We measure “respect for and protection of privacy” by assessing compliance by public bodies, municipal bodies and health custodians with recommendations they have agreed to during our informal resolution process. Our strategy is to follow up about six months post-investigation to confirm that the recommendations have been implemented. So far we have maintained a 100% compliance rate. This tells us that the informal resolution strategy can be very effective in finding solutions to privacy complaints.

Almost 40 chief privacy officers, privacy leads and privacy champions in Nova Scotia attended a training session on how to implement a privacy management program in 2017/2018. Included in the training was a discussion of the key roles and responsibilities for chief privacy officers. The demand for this type of training remains high and we plan to repeat the training again this year.

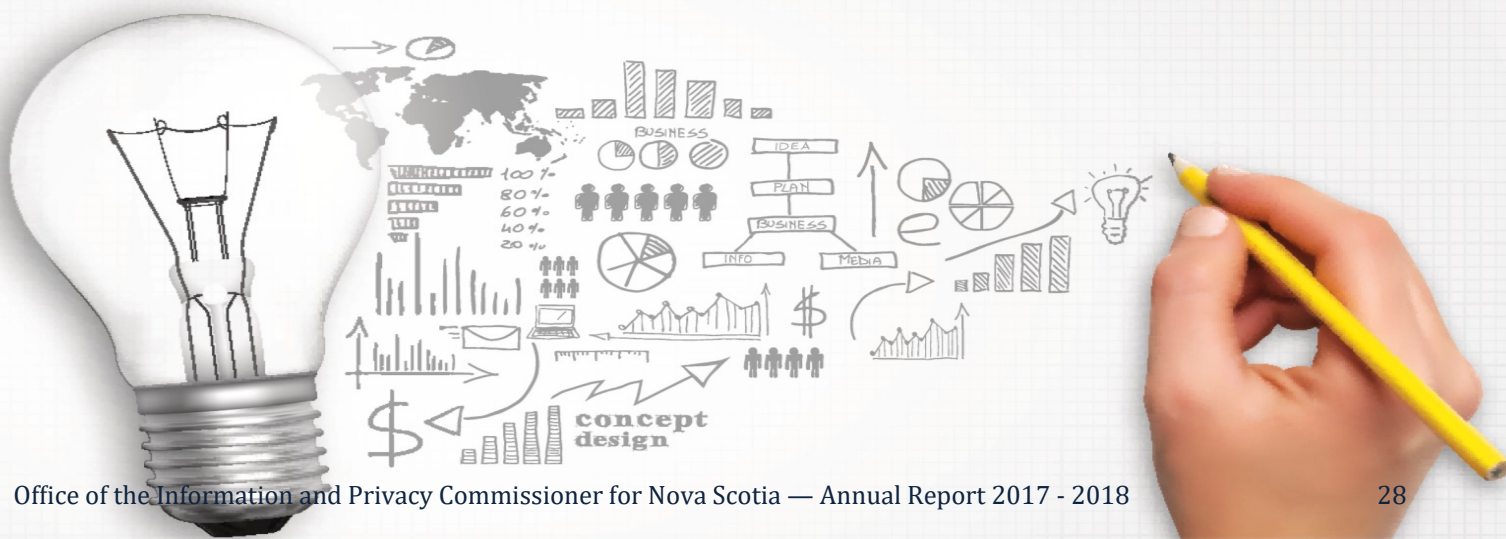
We had also planned to develop *Personal Health Information Act* training that health custodians could use to train their staff. It remains on our list of projects and, resources permitting, will be completed this year.

### 2018/2019 Strategies

The best way to improve respect for and protection of privacy among public bodies, municipal bodies and health custodians is to provide training and information so that those tasked with ensuring compliance with privacy laws understand the rules.

- **Deliver privacy training:** Last year we sought regular feedback from access and privacy professionals around the province regarding their training needs. Based on that feedback, we will offer the following training sessions this year:
  - ♦ How to Build a Privacy Management Program
  - ♦ How to Manage a Privacy Breach
  - ♦ Privacy Awareness
  - ♦ Access and Privacy Basics for Administrators
- **Doctors Nova Scotia newsletter:** We will continue to contribute six articles to the Doctors Nova Scotia newsletter this year, covering topics related to doctors, privacy and the rules in the *Personal Health Information Act*.

Performance Measure	2016/17	2017/18	2018/19
2. Percentage of OIPC privacy complaint and breach investigation recommendations implemented by affected public bodies and health custodians.	Goal = 83% <b>Outcome = 100%</b>	Goal = 85% <b>Outcome = 100%</b>	Goal = 87%



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

#### 2017/2018 Outcomes

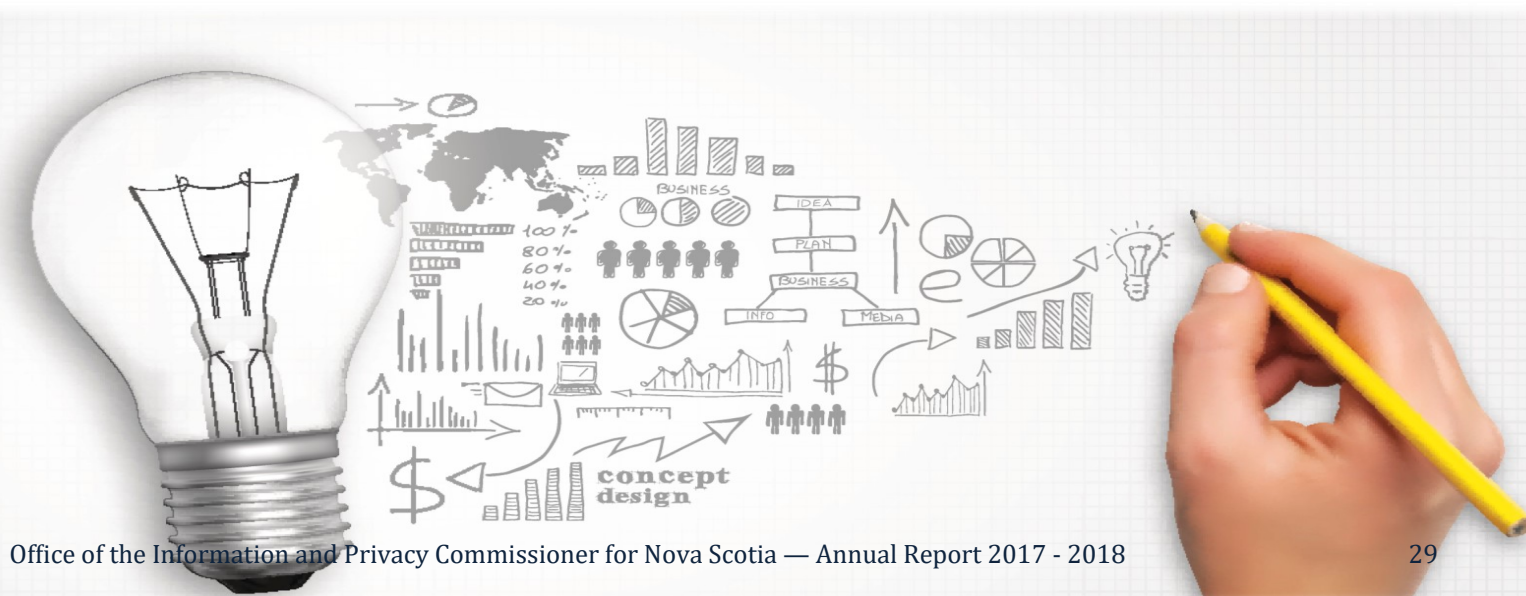
2017/2018 was once again a banner year for participation in OIPC-delivered events. More than 1300 people in Nova Scotia attended events where we were either a presenter or the organizer. The topics included basic access and privacy responsibilities, duty to document and privacy, ethics and big data. We released an extensive report identifying strategies to modernize Nova Scotia's access and privacy laws and we updated our Citizen's Guide to Access and Privacy Rights in Nova Scotia. That Guide was issued in French and English. We advised the Human Rights Commission and the Halifax Regional Police on the privacy implications of street checks.

#### 2018/2019 Strategies

- **Doing Business with Government:** We plan to attend the Reverse Trade Show to provide information to businesses in Nova Scotia on the access to information rules that apply to records of their government business partners.
- **Privacy Essentials for Students:** We plan to deliver basic privacy rules training to university level students who are training for careers that will require them to understand the privacy rules that apply to public bodies.

Performance Measure	2016/17	2017/18	2018/19
3. Total number of individuals who attend OIPC presentations in Nova Scotia.	Goal = 250 Outcome = 1454	Goal = 300 Outcome = 1343	Goal = 700
4. Number of OIPC presentations, media articles and tools. <sup>15</sup>	Goal = 40 Outcome = 125	Goal = 40 Outcome = 109	Goal = 40

<sup>15</sup> Number of OIPC presentations includes speeches, media articles and tools. In 2017/2018 we had 55 speaking engagements, 38 media requests and 16 new tools created.





## Goal 4: Efficient and Effective OIPC Operations

### 2017/2018 Outcome

Last year we opened a total of 395 new matters and resolved 363 matters.<sup>16</sup> Obviously, the only way we are able to retire the backlog of cases is to resolve more matters than we receive. Although we continued to focus our resources on our caseload, our growing caseload has outpaced our ability to keep up to date on reviews even with a full complement of staff.

We were nevertheless successful in resolving more files in 2017/2018 than we had in any previous year.<sup>17</sup> Our file resolution rate has risen steadily since I arrived in 2014. In 2017/2018 we resolved 363 matters compared to only 147 matters in 2013.

Our informal resolution process has been highly successful. As noted on page 31, we have an 89% informal resolution rate.

We regularly respond to inquiries within two days. We had aimed to have an average resolution time (overall) of 430 days but were slightly higher at 446 days. Acceptance (full and partial) of review report recommendations dropped from 81% to 67%. The fact that public bodies and municipalities are not required to comply with recommendations is a significant weakness in our access law.

Currently the burden is on the public to bare the costs of litigation to appeal a public body's decision not to comply with a recommendation. There was a distinct difference between full acceptance of review report recommendations by government departments versus by all other public and municipal bodies in 2017/2018. Municipalities, police forces, universities and agencies accepted review report recommendations in full an average of 65% of the time. Government departments accepted recommendations just 54% of the time in 2017/2018.<sup>18</sup>

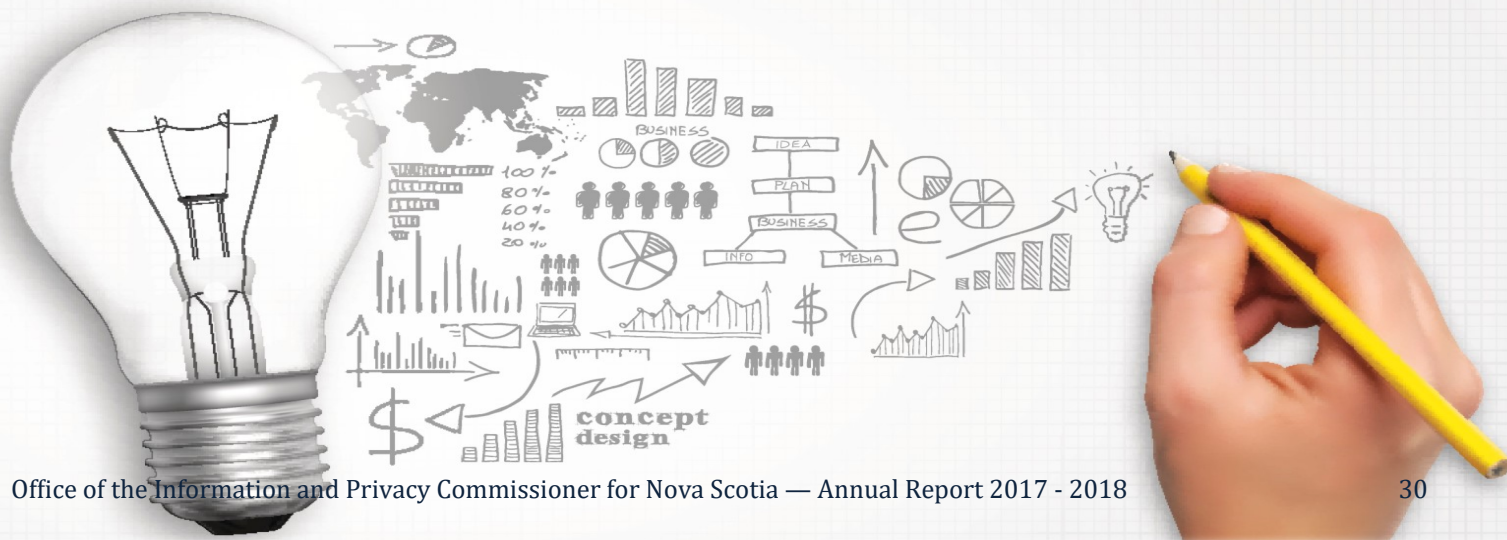
### 2018/2019 Strategies

The focus of our strategies for efficient and effective OIPC operations is to ensure that our staff have the training and support they need to do their jobs well. We set performance standards, conduct regular file reviews and team meetings. We also provide regular in-service training on everything from investigation techniques to ethics and big data, and regular reviews of leading cases. We regularly read and discuss books on topics ranging from statutory interpretation to privacy and policing, to administrative law. In addition, we support each staff member to attend one outside conference or training session aimed at improving his or her knowledge, skills or abilities to do the work.

<sup>16</sup> We received 395 new access and correction requests for review + privacy complaints and own-motion investigation + files initiated by custodians or public bodies = 184 + 16 + 195 = 395. We closed 152 + 11 + 200 = 363 matters.

<sup>17</sup> In 2017/2018 we resolved 363 matters. The number of similar matters resolved in previous years were 2016/2017 = 350, 2015/2016 = 337. In 2014 we closed 225 files and in 2013 the office closed a total of 147 files.

<sup>18</sup> The weaknesses of the recommendation-only model are also discussed in *Accountability for the Digital Age – Modernizing Nova Scotia's Access and Privacy Laws*, see recommendation 26.



This year, in an attempt to finally reduce the wait time for files assigned to investigators, we have decided to limit the time a review file is in investigation to 60 days. At day 60, any unresolved matter will then proceed to the Commissioner for completion of a review report. This is an attempt to keep files moving through the process and we hope it will help us

resolve more files in a much more timely fashion. However, this strategy may reduce the percentage of files that are resolved informally. I have kept our goal at 85% but suspect that we may not reach this standard as public bodies adjust to our more stringent timelines.

Performance Measure	2016/17	2017/18	2018/19
5. Percentage of access and privacy inquiries that receive a response within two days. <sup>19</sup>	Goal = 98% <b>Outcome = 99%</b>	Goal = 98% <b>Outcome = 99%</b>	Goal = 98%
6. Percentage of reviews ( <i>FOIPOP</i> , <i>MGA</i> and <i>PHIA</i> ) that are resolved informally. <sup>20</sup>	Goal = 80% <b>Outcome = 86%</b>	Goal = 85% <b>Outcome = 89%</b>	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 = 500 days <b>Outcome = 518 days</b>	Goal = 430 days <b>Outcome = 446 days</b>	Goal = 400 days <sup>21</sup>
8. Percentage of review report recommendations accepted by public bodies and municipal bodies.	Goal = 55% <b>Outcome = 81%</b> <sup>22</sup>	Goal = 60% <b>Outcome = 67%</b> <sup>23</sup>	Goal = 65%

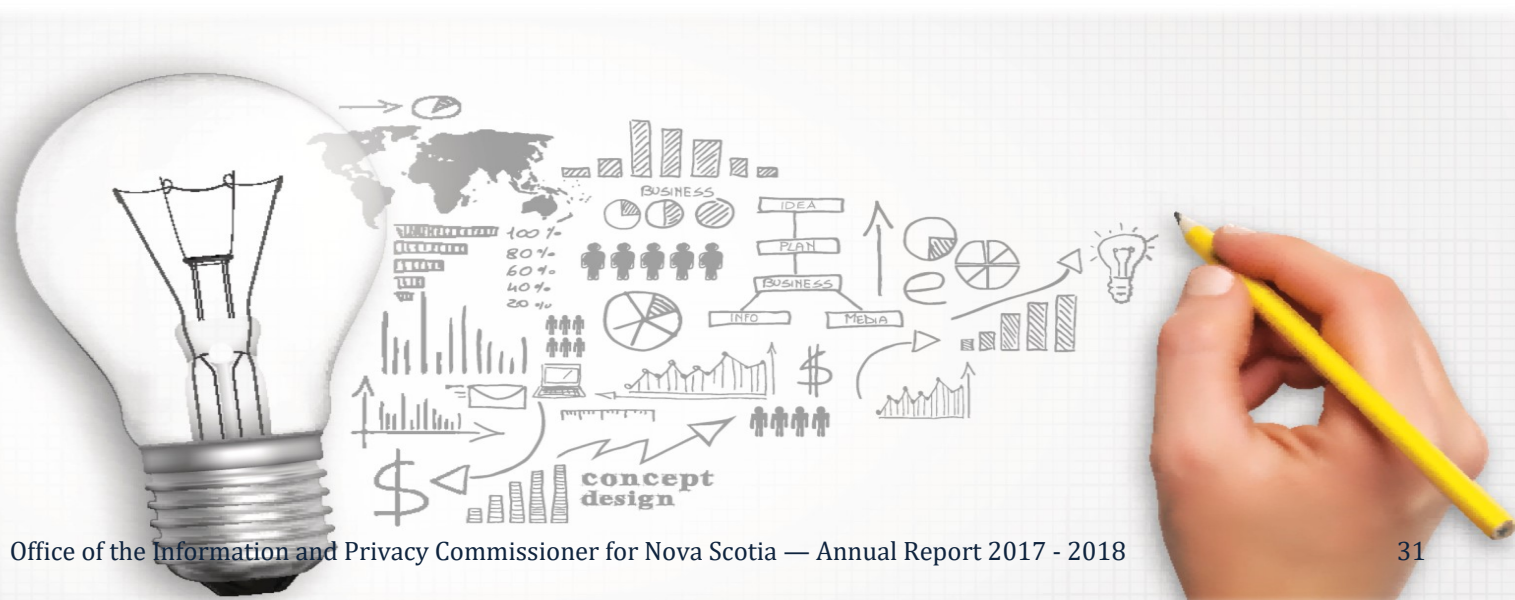
<sup>19</sup> Inquiries are telephone calls, letters and emails that request basic access and privacy information such as how to file an access request, where to file a request, how to file a review and general privacy rights. In 2017/2018 we responded to 1091/1097 inquiries within two days.

<sup>20</sup> Mediation, informal resolution, 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. In 2016/2017, 133 of 155 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally and in 2017/2018, 135 of 152 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally.

<sup>21</sup> I estimate that our average resolution time will be 400 days in the next year assuming we remain fully staffed.

<sup>22</sup> 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.

<sup>23</sup> Between April 1, 2017 and March 31, 2018 the Commissioner issued 6 review reports that related to 12 files. In total, the Commissioner made 30 recommendations of which 18 were accepted, 2 were partially accepted and 10 were rejected.



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

Category	Forecast for 2018-2019	Actual for 2017-2018	Actual for 2016-2017
Salaries and Benefits	606,400	534,880	527,880
Travel	3,009	12,212	6,911
Professional/Special Services <sup>24</sup>	38,900	57,697	40,151
Supplies and Services	10,288	21,652	11,581
Other	48,403	51,458	43,403
Adjustments <sup>25</sup>	0	(9,335)	(10,131)
Total Budget Spent	707,000	668,565	629,926
Total Budget Given	707,000	683,000	603,000
% of Budget Spent	100%	98%	104%

<sup>24</sup> This amount includes funding a full-time temporary agency employee to address our staffing needs for a full year.

<sup>25</sup> This amount reflects a transfer of funds for salaries.

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:

<b>Information Required Under Section 18 of the <i>Act</i></b>	<b>Fiscal Year 2017/2018</b>
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    ● = Public information session or resources provided

\*19 MLA offices contacted in Halifax Regional Municipality

## **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

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