



**Freedom of Information and Protection of Privacy
Review Office**

Business Plan 2009-2010

September 24, 2009

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Freedom of Information and Protection of Privacy Review Office

Message from the Freedom of Information and Protection of Privacy Review Officer

This Business Plan marks the second anniversary of my appointment as Nova Scotia's Freedom of Information and Protection of Privacy Review Officer. Our work continues to be interesting with many new developments. Presenting my third Business Plan provides the entire Review Office team the opportunity to reflect on our challenges and goals in relation to the purposes set out in our governing statutes.

Many of the strategies identified by the Review Office focus on the goals of improving public inclusion, participation, consultation and engagement. The mandate of our Office set out in the *Freedom of Information and Protection of Privacy Act* and *Part XX* of the *Municipal Government Act* is to provide an independent review for access and privacy decisions and to promote the public's right to access information and protection of privacy enhancing the public's opportunity to actively participate in our democracy. To that end, we have produced a plain language guide for citizens - *Respecting Your Access and Privacy Rights: A Citizen's Guide for Nova Scotians* - to help them further understand access and privacy issues, which is now available on-line at www.foipop.ns.ca, and through all public libraries, MLA constituency offices and Access Nova Scotia offices.

Since 2008, the Review Office team has enjoyed a full complement of staff on a temporary basis. The additional funding given to the Review Office to address our staffing needs has proven an excellent use of resources. I am most appreciative of the staff at the Review Office for their hard work and dedication to the purposes outlined in our governing statutes. The collaboration with Justice officials and all the Information, Access and Privacy professionals working for public bodies in Nova Scotia and amongst all the other Canadian Commissioners continues to the benefit of everyone's efforts to promote access to information and privacy protection for Nova Scotians.

Stabilizing staffing enhancements at the Review Office, public education, privacy protections and compliance with the legislation are a few of the major issues that will face the Review Office in the coming year. This Business Plan for 2009-2010 will assist us in keeping our independent oversight work focused, productive and professional.

Respectfully submitted,

Dulcie McCallum,
Freedom of Information and Protection of Privacy Review Officer for Nova Scotia

Receipt Acknowledged

Honourable Ross Landry
Attorney General and Minister of Justice

Mission

To provide independent non-partisan oversight of decisions made by public bodies under the *Freedom of Information and Protection of Privacy Act* and *Part XX of the Municipal Government Act* [“the Acts”], to receive Requests for Review and thereafter investigate complaints from individuals and groups who feel their access to information rights or their privacy rights, as provided for in both *Acts*, have not been respected, and to make findings and recommendations to all provincial, municipal and local public bodies to rectify their processes and practices with respect to access requests and/or protection of privacy.

Planning Context

The Review Officer, appointed by the Governor in Council pursuant to the *Freedom of Information and Protection of Privacy Act*, oversees the *Acts*, with respect to conducting Requests for Review. The Review Officer, at the request of applicants, reviews decisions made by government and public bodies in response to Applications for Access to a Record and correction of personal information in the custody or under the control of those bodies. The Review Officer has temporarily agreed to investigate Privacy Complaints related to the *Acts*, with the co-operation of the Public Body to which a complaint is directed. There are plans by the Department of Justice to provide greater clarity regarding privacy protection for citizens in the near future. This may result in an enhanced mandate for the Review Office that may require additional resources in future years.

The Review Officer has initiated a strategy to give priority to trying to settle matters through informal resolution at all stages of the Review process, which is proving highly effective. Each Review Request is subject to Intake, Analysis, Investigation, and some to Mediation but any Review can be resolved informally at any one of these stages. If not resolved informally, the matter is referred to the Review Officer for formal Review and a public Review Report. The formal Review will confirm, modify or disagree with the decision of the public body and, where applicable, make findings and recommendations for the decision to be adjusted or changed or will confirm the accuracy of the decision by the public body. An additional function of the Review Office is to be a proactive educational leader in the areas of access and privacy.

The Nova Scotia Freedom of Information and Protection of Privacy Review Office [“Review Office”] currently employs five people and has one office located in Halifax. As of 2007, the four full time employees included a Review Officer, a Mediator/Investigator, a Case Review Analyst and an Intake/Administrative Assistant. Since October 2008, we have had a second temporary Case Review Analyst. We have requested funding for an increase in our budget so that this position can become a permanent FTE. The rationale behind confirming this temporary staff position to permanent has been provided to the Minister of Justice and the Treasury and Policy Board. Having a full staff complement of five will allow the Review Office to continue to move forward with greater emphasis on timeliness of Requests for a Review.

The Review Office has completed a highly successful project funded by the Office of the Privacy Commissioner of Canada [“OPC”] as part of their new Atlantic Canada regional engagement. The project was to promote education on the *Personal Information Protection and Electronic Documents Act* (“*PIPEDA*”) by collaborating with the Crime Prevention Society of Nova Scotia

and the OPC to host Identity Theft prevention training sessions. Over one hundred volunteers received the train-the-trainer certification who then provided training to the private sector across the province.

The reclassifications of the Mediator/Investigator and the Case Review Analyst positions was completed by the Review Office in October 2007 and is presently with the Public Service Commission. This reclassification proposal was to align these positions with their equivalent positions in other jurisdictions. The Review Office reclassifications have been put on hold until the work of the Public Service Commission Evaluation Committees is completed, which was expected in September 2008.

Late in 2007, because of a secondment request by the incumbent Mediator/Investigator, an opportunity was created to allow two existing staff to move into Acting positions thus enabling mobility within our small organization and a chance for existing staff to fully understand and appreciate the roles of their other teammates. The Mediator/Investigator position was vacated last year, which allowed the Review Officer to request that the senior staff member continue in that role, in an acting capacity, to allow the Review Office to enjoy greater stability for a period of time and enable continued attention to the Reviews in progress. The competition to fill the position permanently will commence this year.

Strategic Goals, Core Business Areas, Priorities and Performance Measures _

Strategic Goals

In accomplishing its mission, the Review Office plans to contribute to the Government's priorities by holding all public bodies accountable for all decisions made with respect to access and privacy. Thus, in addition to continuing with initiatives around privacy, the Review Office will focus on the importance of access to information for all citizens of Nova Scotia as a foundational piece of facilitating the public's opportunity to participate in policy formulation, ensuring fairness in government decision-making and permitting the airing and reconciliation of divergent views.

In order to accomplish its mission, the goals of the Freedom of Information and Protection of Privacy Review Office 2009-2010 are:

1. Continue to develop relationships with FOIPOP Administrators and the NS Information Access and Privacy ["IAP"] Office [formerly the FOIPOP Coordinator's Office] with a view to offering assistance in the training of Administrators with respect to the role of the Review Office. This level of support is intended to promote greater access to information for citizens in the first instance, thus decreasing the number of Requests for Review. This offer to participate in training is to improve the overall understanding of the legislation by those working with it on a daily basis and of the decisions and Review Reports made under the governing statutes. Particular attention will be given as to how to improve training for Administrators who work under *Part XX* of the *Municipal Government Act*. Discussions will be initiated regarding the possibility of reviving the FOIPOP Steering

Committee that was made up of the Review Office, IAP and FOIPOP Administrators or for more participation at the IAP Forums.

2. Ensure that the Government formally recognizes the privacy oversight rights of citizens under the *Acts* by proclaiming the *Privacy Review Officer Act [Bill 234]* and appointing a Privacy Review Officer. Although it is not known at this time who will receive the mandate, the Review Officer has indicated her availability to consult on whatever decision the Government makes so the privacy rights of citizens will be formally recognized in Nova Scotia. The companion piece to the appointment of a Nova Scotia Privacy Review Officer is to ensure provision is made for independent oversight with respect to access and privacy under upcoming electronic health records legislation.
3. Increase public awareness regarding access/privacy and legislated rights and obligations under the *Acts* including the role of the Review Office. Through public outreach specifically address the lack of diversity of the Applicants who file a Request for Review received by the Office. Encourage Government to reduce the costs associated with making an access request so no one is unable to make access requests based on their socio-economic status.
4. Promote systemic change by researching best practices, evaluating current policies and procedures, networking with other Canadian oversight bodies [Commissioners] and developing new tools and resources which support the Review Officer's mandate and by addressing broader access and privacy issues.

Core Business Areas

1. Requests for Review of Access Decisions

Ensure Nova Scotians understand their right to access personal and other information held by public bodies and their right to an independent oversight and review of decisions made with respect to those requests for access through:

- Promoting the new Plain Language Guide - *Respecting your Access and Privacy Rights, A Citizen's Guide for Nova Scotians* - that is user-friendly and accessible to all Nova Scotians as an educational tool.
- Preparing and publicly releasing all Review Reports on the website and ensuring that each Report is comprehensive and lays out jurisprudence from earlier Reviews in Nova Scotia and other Canadian jurisdictions with similar cases. Making all Review Reports available will provide an educational tool for FOIPOP Administrators and others working in the field of access to information, applicants and third parties. At the beginning of each Review Report is a summary, list of key words and the Recommendations to permit professionals and the public ease of access.
- Providing notice, on our website, if Recommendations were followed by a public body in any particular Review.

2. Privacy Complaints

While awaiting proclamation of the *Privacy Review Officer Act*, the Review Officer will make every effort to ensure Nova Scotians' privacy complaints are addressed in a systematic, objective and independent manner through:

- Establishing best practices during the Intake, Analysis, Investigation, Mediation and formal Review of privacy complaints and investigations.
- Recommending ways to improve privacy protection for all Nova Scotians through public and private Reports.
- Addressing privacy issues [particularly after proclamation] through workshops, guidelines and other forms of outreach with public bodies and the general public.
- Consulting with the Department of Health regarding the access and privacy components of proposed electronic health record legislation.

3. Awareness and Education

Increase awareness, understanding and education of the *Acts*. Enhance the development of our communication strategy and increase citizens' accessibility to information and privacy through:

- Being available to provide an orientation to all new FOIPOP Administrators on the role and responsibilities of the Review Office and on the Review process as part of the FOIPOP training done through the IAP Office.
- Undertaking communication initiatives to increase the profile of the Review Office and of privacy and access rights, such as continued promotion of and participation in the Atlantic Access and Privacy Conference, and in particular continue consulting on upcoming electronic health records legislation.
- Continuing accessibility of Review decisions/Reports by continuing publication on the Review Office Website, CanLII, Quicklaw and the Review Office Listserv.
- Reaching out to participate in Government initiatives to highlight the role of access to information and protection of privacy as cornerstones of democracy.
- Responding positively, whenever possible, to all requests for speeches and other public outreach opportunities, to maximize the opportunities for the right to information and protection of privacy message to be communicated publicly.
- Providing all of the Review Office staff with training opportunities that will enhance their delivery of the message and demonstrate a commitment to life-long learning. Focus will be on such training as: Diversity and Employment Equity, the Information Access and Protection of Privacy Certificate program through the University of Alberta, Presentation Skills and Business Process Improvement.

4. Best Practices

Create and promote best practices in the Review process through:

- Maintaining an independent oversight Review process that is timely, competent and respectful by ensuring it is adequately resourced.
- Networking with other Canadian Information and Privacy Commissioner Offices to find new tools, best practices and methods of investigation and review.
- Evaluating and auditing current internal practices.

- Participating in educational conferences with provincial/territorial/federal counterparts.
- Continuing to consult on potential legislative improvements with the Minister of Justice as needed. This would not be solely with respect to the Review Officer's role but to take into account the rapid changes and emerging issues in the areas of privacy, technology, information management and security which is important to the protection of all Nova Scotians [for example, electronic health records, privacy, enhanced driver's licence, etc].

Priorities

1. Requests for Review of Access Applications

Our priorities for 2009-2010 are as follows:

- Continuing efforts to advance the awareness of all Nova Scotians about their rights to access information, personal and other, and their right to an independent Review of all decisions made by public bodies in that respect.
- Continuing to engage the Minister of Justice on the need to review legislation for any necessary amendments and improvements.
- Participating in training events for FOIPOP Administrators, including those hosted by Justice or speaking at conferences, to advance the quality of decisions made in the first instance when responding to access requests from the public, thus decreasing the necessity to rely on Requests for Review.
- Priority will be given to identify training needs for those working under *Part XX* of the *Municipal Government Act*.

2. Privacy Complaints

Our priorities for 2009-2010 are as follows:

- Seeking clarification of privacy rights for all Nova Scotians and the role of the present Review Officer in that respect.
- Developing staff training plans including training on privacy issues in order to remain current and knowledgeable on emerging issues and trends.

3. Awareness and Education

Our priorities in 2009-2010 are as follows:

- Advocating for the spirit and intention of the legislation including increasing the awareness of citizens and public servants of their rights and obligations under the *Acts*.
- Developing and implementing a public outreach plan to enhance the profile and accessibility of the Review Office especially in rural Nova Scotia and with groups that represent the diversity of the Nova Scotia public.
- Continuing to distribute our Citizen's Guide for Nova Scotians which is currently available on-line, through all public libraries, MLA constituency offices and Access Nova Scotia offices.
- Offering the Review Officer as a member on the French Language Services Coordinating Committee.

4. Best Practices

Our priorities in 2009-2010 are as follows:

- Providing sufficient information and assistance as is practicable and appropriate [primarily through Review Reports] to FOIPOP Administrators to promote best practices in facilitating the public's right to access including timeliness of processing access requests, improved quality of decisions to applicants and enhanced practice in fulfilling the statutory duty to assist.
- Networking with other Canadian Information and Privacy Commissioners through continued participation in national workshops, conferences, summits and seminars.
- Initiating discussions regarding the possibility of reviving a mechanism to carry on the work of the FOIPOP Steering Committee that was made up of the Review Office, the IAP Office and FOIPOP Administrators, for example through participation in the FOIPOP Administrators' Forums.
- Working towards a University of Alberta Information Access and Protection of Privacy certification for all staff.
- Evaluating current practices and researching review practices in other jurisdictions and conducting an internal self-audit.

Performance Measures

| Review of Access Applications | | | | | |
|---|---|---|--|---|--|
| Outcome | Measure | Base Calendar Year | Target : 2008/2009 | Ultimate Target | Strategic Actions |
| Educating the public and those working as FOIPOP Administrators on the role of the Review Office and encouraging those parties to apply precedents to the matter at hand. | Increase the number of Review Requests resolved early in the process through informal resolution. | 2007 - 9 resolved early. 2008 - 28 resolved early. | 2009 - increase the number of early resolutions by 5% over 2008. 2010 - increase the number of early resolutions by 5% over 2009. | 34 Reviews closed by early informal resolution in 2012, the result is fewer Reviews proceeding to formal Review where there has been a lack of communication or a misunderstanding of the process. Continue to evaluate internal processes and timelines for the Review process. | Providing parties with research, precedents, tests, statutory references and definitions early in the process when the issues have clearly established, so that all parties to the Review can make informed decisions on the likely outcomes and their position on the issue(s) under Review. Empowering the parties in the Review to become part of the process. |

| Review of Privacy Complaints [until the <i>Privacy Review Officer Act</i> is proclaimed] | | | | | |
|--|--|--|---|--|---|
| Outcome | Measure | Base Calendar Year | Target : 2008/2009 | Ultimate Target | Strategic Actions |
| Promoting the Review Officer as the oversight for privacy complaints. Promoting public education on privacy protections. | Increased number of privacy inquires and investigations. | 2006 - 5 privacy complaints were accepted, 1 was not investigated. Privacy inquiries were not tracked. 2007- 5 privacy complaints were accepted. 49 privacy inquiries received. 2008 - 2 privacy complaints received. 95 privacy inquiries received. | 100% of privacy investigations within our jurisdiction are opened and investigated. | 100% of privacy complaints received within our jurisdiction are opened and investigated. 100% of privacy inquiries are answered at intake and appropriate referrals made. | Publicly clarifying privacy rights under the jurisdiction of the Review Office for all Nova Scotians. |

| AWARENESS AND EDUCATION | | | | | |
|---|---|---|--|---|--|
| Outcome | Measure | Base Calendar Year | Target : 2008/2009 | Ultimate Target | Strategic Actions |
| Increased awareness of the right to access information and protection of privacy. | Increase in the number of presentations, information sessions and training on the role of the Office and governing legislation. | Base calendar year 2004 - 8 2005 - 13 2006 - 10 2007 - 8 2008 - 8 | 2009 - increase in the number of presentations and information sessions by 10% over 2008. 2010 - increase the number of presentations and information sessions by 10% over 2009. Sessions to be throughout Nova Scotia as 44.2% of citizens live in rural communities. | In the year 2012, provide 20 presentations and information sessions throughout the province so that all Nova Scotians have an opportunity to participate in public outreach programs. | Developing and implementing an educational outreach program accessible to all Nova Scotians . Provide staff with training opportunities in cultural competency and dealing with challenging individuals. Promoting and hosting Right to Know Week. |

| BEST PRACTICES | | | | | |
|---|--|--|---|--|--|
| Outcome | Measure | Base Calendar Year | Target : 2008/2009 | Ultimate Target | Strategic Actions |
| Providing information on the internal process and functions of the Review Office, including tools, tips, resources and processes. | Key documents posted to the Review Office website. | 2008 - 3 resource documents posted on our website. | Review policies and procedures on an annual basis and make available to the public. | Ensure that 100% of those involved in the Review Process are informed and have the information that they need to fulfill their part. | Contribute staff time and resources to auditing and evaluating current practices. Develop a research networking plan to find best practices in other jurisdictions. |

Human Resource Strategy

Office Demographics:

As of September 2007, the Freedom of Information and Protection of Privacy Review Office has had a staff of four approved FTEs. We have requested an increase in our budget from the Department of Justice to fund a second Case Review Analyst FTE. Since August 2008 we have had funding for this position to be filled on a temporary basis. Having five staff members has made a significant difference in our ability to manage our caseload particularly with respect to early informal resolutions and to manage the backlog of cases built up in prior years.

The Office has experienced and reported one occupational health and safety incident in the past fiscal year.

The Freedom of Information and Protection of Privacy Review Office will work towards aligning with the Human Resource Strategy:

- monitor workload especially with regards to access investigations to determine if additional investigation/analytical staff are required.
- initiate the process to fill all staff positions permanently.
- continue to negotiate to secure the fifth FTE, as requested.
- continue to participate in healthy workplace initiatives.
- continue staff participation in diversity training.
- continue efforts to provide publications in English and French by using translation services.
- continue with its practice of encouraging and accommodating staff who enroll in post-secondary programs.

Budget Context:

| | 2008-2009 Estimate | 2008-2009 Actual | 2009-2010 Estimate |
|-----------------------------------|-------------------------------|-----------------------------|-------------------------------|
| Program & Service Area | (\$ thousands) | (\$ thousands) | (\$ thousands) |
| Total Program Expenses | | | |
| Administration | \$ 427 | \$ 404 | \$ 400 |
| Total Program Expenses | \$ 427 | \$ 404 | \$ 400 |

| | | | |
|----------------------------------|------------|------------|------------|
| TCA Purchase Requirements | --- | --- | --- |
| Funded Staff (FTEs) | 4.0 | 4.4 | 4.0 |