



**Office of the
Freedom of Information and Protection of Privacy
Review Officer
Dulcie McCallum, Freedom of Information and Protection of Privacy Review
Officer/Deputy Head**

**Statement of Mandate
2012 - 2013**

April 3, 2012

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Freedom of Information and Protection of Privacy
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**Message from the Freedom of Information and Protection of Privacy Review
Officer/Deputy Head
Dulcie McCallum**

April 3, 2012

The mandate of the Review Officer is set out in the *Freedom of Information and Protection of Privacy Act* [FOIPOP], *Part XX of the Municipal Government Act* [MGA] and the *Privacy Review Officer Act* [PRO Act]. In addition to the three separate pieces of legislation which now govern our role as the independent oversight body for decisions made by public bodies with respect to access to information requests and privacy complaints, a fourth statute - the *Personal Health Information Act* [PHIA] will be added in 2012.

The particulars of the Review Officer's role are comprehensively laid out in a plain language guide for citizens - *Respecting Your Access and Privacy Rights: A Citizen's Guide for Nova Scotians* that available on-line at www.foipop.ns.ca, and at public libraries, MLA constituency offices and Access Nova Scotia offices. In 2011, a French transcript of the Guide was made available on our website.

Beginning in 2011, the Review Officer was able to take a more proactive approach to privacy issues with her new powers under the *PRO Act*: own-motion investigations, public body consultation requests, systemic issues, and education. These initiatives will continue in 2012-2013 when the Review Officer deems it appropriate.

While the Review Officer operates at arm's length from government, our priorities for 2012-2013 will be, in part, in line with two of the three government priorities. First, government has identified that one of the priorities is to "Make health care better for you and your family" consistent with its 2010 Better Care Sooner Plan. Over the past few years, the Review Office has devoted considerable time collaborating with and providing feedback to the Department of Health and Wellness with respect to proposed personal health information legislation. The Bill passed the House of Assembly in the fall of 2010. *PHIA* is earmarked for proclamation in June 2012. The legislation mandates new independent oversight responsibilities for the Review Officer with respect to access to personal health information and the privacy protection of personal health information. This includes the use of electronic health records, which may enhance the opportunity for more timely health care closer to home. Our task will be to ensure the use of electronic health records is consistent with privacy best practices, regulations and *PHIA*. In the coming year, the Review Office will continue to adopt a collaborative and constructive

approach with the Department of Health and Wellness as the province moves towards proclamation of the personal health information legislation.

PHIA will present a major challenge for the Review Office. The issues surrounding access and privacy with respect to health records, in particular electronic health records, are complex and novel. The Review Officer will give priority to developing respectful sound working relationships with all the designated custodians of personal health information [custodian examples: doctors, nurses, pharmacists, chiropractors, optometrists, psychologists, dieticians, dentists] many of whom will be unfamiliar with this kind of oversight.

The second government priority that helps define the work of the Review Office is to “Get back to balance and ensure government lives within its means.” *PHIA* incorporates many of the new features in the *PRO Act* including self-initiated complaints, education and consultation by request. In addition, a valuable feature of *PHIA* is the discretion for custodians and the Review Officer to refuse to process a request if it is frivolous, vexatious or an abuse of process. The Review Officer has suggested this same provision be included in other governing statutes. As part of a commitment to being fiscally responsible and living within our means, we will use our statutory discretion to refuse to conduct a Review in any case where there is no possible benefit for the individual or to the system. We believe putting this discretionary provision in *PHIA* enables the Review Officer to avoid wasting public funds on Reviews where individuals have another more appropriate avenue of redress or the Request for Review is frivolous, vexatious or made in bad faith. The Review Officer will continue to suggest legislative amendments that also meet this fiscal responsibility test for *FOIPOP*, *MGA* and *PRO Act*.

One of the priorities of the Review Officer in 2011, which will continue in the coming year, is to take all necessary steps to enhance the privacy protections under the *PRO Act* for citizens at the municipal level. The Review Officer will continue to pursue a legislative improvement to fill the gap in the *PRO Act* so as to provide privacy oversight protection for citizens at the local government level.

In 2011, the Review Officer recognized an important goal: to make continuous improvements to our website for the benefit of the public. Given our mandate to promote access to information and protection of privacy and given the global reliance on the internet for information about access and privacy, improvements to our website will be a priority for 2012-2013.

The Review Office will continue to contribute to the Right to Know Week celebrations in the fall that highlight the importance of the right of access to information. Also, the Review Office continues to support and celebrate Data Privacy Day in January at the event hosted and presented by Dalhousie University.

The Review Office is committed to continue working with public bodies, Information Access and Privacy professionals [FOIPOP Administrators] in Nova Scotia and all the other Canadian federal, provincial and territorial Commissioners. This work continues to

the benefit of everyone's efforts to promote access to information and privacy protection for all citizens.

In keeping with the goal of promoting an integrated and cooperative approach for all Canadian Commissioners, I will host the first official meeting in Nova Scotia of the annual federal/provincial/territorial Commissioners' Summit in Halifax in September 2012. I intend to take this opportunity to highlight Nova Scotia's commitment to access to information and privacy protections and the independence of the Nova Scotia Review Officer.

This Statement of Mandate for 2012-2013 is publicly available and is intended to assist the citizens of Nova Scotia to understand the mandate and priorities and performance of the Review Officer. Completing the Statement of Mandate complements the Review Officer's duty to file an Annual Report with the House of Assembly.

Respectfully submitted,

Dulcie McCallum
Freedom of Information and Protection of Privacy Review Officer

Receipt Acknowledged

Honourable Ross Landry
Attorney General and Minister of Justice

Review Officer's Mandate

The Review Officer provides independent impartial oversight of decisions made by public bodies by receiving Requests for Review under the *Freedom of Information and Protection of Privacy Act, Part XX* of the *Municipal Government Act* and of privacy matters under the *Privacy Review Officer Act* ["Acts"].

The Review Officer investigates the requests/complaints from individuals and/or groups who feel public bodies have not respected their access to information rights or their privacy rights, as provided for in the governing *Acts*. After an investigation, the Review Officer may issue a public Report that will include findings and recommendations to the named provincial, municipal or local public body to reaffirm, alter or modify its decision and to rectify its processes and practices with respect to access to information requests and/or protection of privacy.

In addition, under the *Privacy Review Officer Act*, the Review Officer is empowered to monitor how privacy provisions are administered, initiate an investigation of privacy compliance, undertake research matters, inform/educate the public and, on request of a public body, provide advice and comments on privacy.

In the near future, the Review Officer's statutory mandate will be expanded to include independent oversight under the *Personal Health Information Act*. *PHIA* gives the Review Officer the statutory authority to conduct reviews of complaints arising from the access and privacy provisions, initiate an investigation of privacy compliance, undertake research matters, inform/educate the public and, on request of a public body, provide advice and comments on privacy.

RIGHT TO ACCESS: Requests for Review of Public Body Access Decisions					
Outcome	Measure	Base Calendar Year	Target : 2012 - 2013	Ultimate Target	Strategic Actions
<p>Educating applicants, third parties and those working as FOIPOP Administrators about the role of the Review Officer and, in particular, under PHIA.</p> <p>Encouraging all parties to apply precedents to the matter at hand thereby expediting the resolution of Requests for Review to better serve the public and public bodies</p> <p>Issuing informative and clear public Reports after formal Review that provide guidance including precedents and the appropriate interpretation of access to information legislation.</p>	<p>Respond to 100% of all inquiries about access and Reviews at Intake within 2 business days.</p> <p>Maintain the percentage of Review Requests resolved early in the process through informal resolution.</p> <p>Maintain the number of Review Reports relied upon by the Review Office team in negotiating and achieving informal resolutions during intake and investigations.</p>	<p>Intake Inquiries: 2008 - 741. 2009 - 1163. 2010 - 1309. 2011 - 1851</p> <p>Informal Resolutions: 2009 - 66 [Represents 54% of all Review files closed] 2010 - 53 [Represents 68% of all Review files closed] 2011 - 54 [Represents 63.5% of all Review files closed]</p> <p>Reviews Closed by Public Reports: 2009 - 14* 2010 - 6 2011 - 10*</p> <p>*More than one Review merged for purpose of Public Report</p> <p>Privately Issued Letter Review Reports: 2011 - 2</p>	<p>2010 Increase the number of informal resolutions by 5% over 2009.</p> <p>2011 Increase the percentage of informal resolutions by 5% over 2010.</p> <p>2012 Maintain the percentage of information resolutions.</p> <p>2013 Maintain the number of informal resolutions.</p>	<p>Over half of all Review files closed by informal resolution in 2012 - 2013 through negotiation efforts by Review Office staff resulting in fewer Reviews proceeding to formal Review.</p> <p>Finalize re-evaluated internal investigative processes and timelines for the Investigation phase of the Review process.</p> <p>Ensure the formal Review process occurs in a timely fashion when all other avenues of resolution are exhausted.</p>	<p>Providing parties with research, precedents, tests, statutory references and definitions early in the process when issues have been clearly established, so all Review parties can make informed decisions throughout the Review process.</p> <p>Empowering Review parties to become part of the process by developing new resources for applicants.</p> <p>Develop and design a model for a Letter Review Report to close a Review where there is no possible benefit for the individual or the system under the governing statutes in a manner that is comprehensive and succinct.</p> <p>Developing respectful and assistive relationships with public body employees responsible for administering and making decisions under the governing statutes.</p>

RIGHT TO PRIVACY: Requests for Review of Privacy Complaints					
Outcome	Measure	Base Calendar Year	Target : 2012 - 2013	Ultimate Target	Strategic Actions
<p>Educating applicants, third parties, and public bodies regarding the Privacy Review Officer as the statutory oversight body for privacy complaints under the <i>Privacy Review Officer Act</i> and <i>PHIA</i>.</p> <p>Be open to all requests for a privacy consultation from public bodies.</p> <p>Initiating own-motion privacy investigations where circumstances deem it appropriate.</p>	<p>Provide comprehensive information to all privacy inquiries and conduct thorough investigations into all Privacy Requests for Review opened.</p> <p>Continue to improve and upgrade website in order to provide more information about access and privacy to the public.</p> <p>Monitor media and public reports on privacy to evaluate whether a privacy breach has occurred or a privacy issue has the potential to affect the public's privacy rights under the governing statutes.</p>	<p>Intake Privacy Inquiries: 2008 - 95 2009 - 136 2010 - 73 2011 - 217</p> <p>Privacy Complaints Received: 2008 - 2 2009 - 8 2010 - 8 2011 - 7</p> <p>Informal Resolutions Privacy: 2009 - 0 2010 - 4 2011 - 0</p> <p>Privacy Consultation Requests from Public Bodies: 2011 - 9</p> <p>Privacy Consultation Requests from Public Bodies Completed: 2011 - 2</p> <p>Active Privacy Review Files: 2011 - 4</p> <p>Privacy Reviews Closed by Public Report: 2011 - 1*</p> <p>*Review Officer-initiated review of WCB's systemic privacy practices</p>	<p>100% of privacy investigations within our jurisdiction are opened and investigated.</p> <p>At least 50% of all requests for a privacy consultation from public bodies responded to positively.</p> <p>100% of all own motion investigations initiated and investigation commenced.</p>	<p>100% of jurisdictional privacy complaints received are opened and investigation commenced.</p> <p>100% of privacy inquiries are answered at Intake and appropriate referrals made or Review files opened.</p> <p>Explore additional ways in which to apply informal resolutions to open privacy complaints.</p>	<p>Pro-actively educate the public with respect to the Privacy Review Officer's statutory privacy oversight mandate.</p>

ACCESS AND PRIVACY: Education and Outreach					
Outcome	Measure	Base Calendar Year	Target : 2012 - 2013	Ultimate Target	Strategic Actions
<p>Educate the public about the role of the Review Officer with respect to access and privacy.</p> <p>Provincial recognition that publicizes the Review Officer gained accreditation as an international Data Protection and Privacy office.</p> <p>Explore training needs of smaller municipalities and other small public bodies.</p> <p>Take steps to prepare for the proclamation of the new <i>PHIA</i>.</p>	<p>Plan at least one event to mark Right to Know Week.</p> <p>Hosting or supporting an event to mark Data Privacy Day.</p> <p>Engage in one educational event at the international level.</p> <p>Continue to offer to assist to provide training about the Review process for local/ municipal public bodies.</p> <p>Initiate or respond to at least two meetings or consultations with health custodians, health officials or other stakeholders.</p>	<p>Statutory mandate for education with respect to privacy in <i>PRO Act</i> and <i>PHIA</i>.</p> <p>No statutory mandate for education with respect to access to information.</p> <p>2010 First full year of privacy education mandate.</p> <ul style="list-style-type: none"> • Data Privacy Day at Dalhousie. • Hosted one event for Right to Know Week. • Three PHIA consultations meetings with the Department of Health and Wellness. <p>2011</p> <ul style="list-style-type: none"> • Data Privacy Day at Dalhousie. • Open House at the Review Office for FOIPOP Administrators for Right to Know Week. • Hosted one Right to Know Week event. 	<p>Continue to mark Right to Know Week in collaboration with all Canadian federal, provincial and territorial Commissioners and host at least one local Right to Know event.</p> <p>Attend one international or national access to information and/or privacy event.</p> <p>Host or support at least one event to mark Data Privacy Day.</p> <p>Respond positively to consultation requests from the Department of Health and Wellness and other personal health information custodians.</p> <p>Host Canadian Commissioners' 2012 Summit in Halifax to promote an integrated and cooperative approach to access and privacy.</p>	<p>Respond affirmatively to all appropriate requests for public education events.</p>	<p>Develop a creative approach to fulfilling the statutory mandate of public education on privacy matters.</p> <p>Develop a strategy to engage the appropriate authorities to urge them to provide training or provide up-to-date on-line materials with respect to access to information under the <i>MGA</i>.</p> <p>Continue consultations with the Department of Health and Wellness and other personal health information custodians pre and post proclamation and during implementation of <i>PHIA</i>.</p>

Budget Context for FOIPOP Review Office

	2011-2012 Estimate	2011-2012 Forecast	2012-2013 Estimate
Program & Service Area	(\$ thousands)	(\$ thousands)	(\$ thousands)
Gross Department Expenses			
Administration	\$ 522	\$ 522	\$543*
Total Gross Departmental Expenses	\$ 522	\$ 522	\$543*
Additional Information:			
Fees and Other Charges	None	None	None
Ordinary Recoveries	None	None	None
TCA Purchase Requirements	—	—	—
Provincial Funded Staff (FTEs)	6	6	7

* Included in this Estimate is a one-time \$25,000 allocation from the Department of Justice to the FOIPOP Review Office to cover the costs associated with hosting the 2012 Annual Summit of the federal/provincial/territorial Access to Information and Protection of Privacy Commissioners of Canada in Halifax September 4-7, 2012.