



**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
2013 - 2014**

April 11, 2013

TABLE OF CONTENTS

Message from the Review Officer/Deputy Head	3-5
Freedom of Information and Protection of Privacy Review Officer's Mandates.....	6
Performance Measurements.....	7-11
Budget Context12

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**Message from the Review Officer/Deputy Head
Dulcie McCallum**

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It is neither appropriate nor necessary for an independent non-partisan oversight body to consider the priorities of any government in fulfilling its statutory mandates. The mandates of the Freedom of Information and Protection of Privacy Review Officer are set out in four statutes: the *Freedom of Information and Protection of Privacy Act [FOIPOP]*, *Part XX of the Municipal Government Act [MGA]*, the *Privacy Review Officer Act [PRO]* and the *Personal Health Information Act [PHIA]*.

Our priorities for 2013-2014 will be to fulfil our statutory obligations under existing legislation and meet the challenges that will inevitably arise under our newest statute, the *PHIA* scheduled to become law as of June 1, 2013. The FOIPOP Review Officer has a relatively small budget to meet all the legal obligations set out under the governing legislation. Our goal is to process all Requests for Review accurately, judiciously and in a timely manner while at the same time to encourage government to have clear Routine Access policies and proactive disclosure policies.

With respect as to whether there is any compatibility with government's priorities, first, government has identified that one of the priorities is to "Provide better healthcare for you and your family." The Review Officer has devoted a great deal of time collaborating with and providing feedback to the Department of Health and Wellness with respect to proposed personal health information legislation that has been four years in the making. The Bill passed the House of Assembly in the fall of 2010. *PHIA* was proclaimed in December 2012 and will come into force on June 1, 2013. The coming year will mean a large expansion of the mandate of the Review Officer.

The legislation mandates new independent oversight responsibilities for the Review Officer with respect to access to and privacy protection of personal health information. This includes the use of electronic health records, which may enhance the opportunity for timelier health care closer to home. Our mandate will be to ensure custodians' compliance with access to information and privacy best practices in relation to personal health information. Recently we consulted on the Regulations under *PHIA*, a Toolkit and breach notification. In the coming year, the Review Officer will consult with the Department of Health and Wellness when a request to consult is received under the *PRO Act* or the *PHIA*.

PHIA will present a major challenge for the Review Officer and custodians. The issues surrounding access and privacy with respect to health records, in particular electronic health/medical records, are complex and unique. 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 independent oversight of their decisions and most of whom have not had the benefit of any educational preparation training. During 2012-2013 we reached out to custodians who had been cited as being responsible for highly publicized privacy breaches. This proactive outreach has met with very favourable responses from public bodies/custodians and will need to be continued with even greater vigour and attention in 2013-2014. This outreach will include to professional groups such as Doctors NS. While often time-consuming, this consultation-based approach promotes greater information-sharing and relationship-building.

One of the primary goals of the Review Officer is to promote proactive disclosure and routine access policies amongst all public bodies and municipalities. Where governments adopt these two proactive approaches to “pushing the information out” investors and companies will find the open information environment much more conducive to investment and business. This relates to the second government priority: “Create good jobs and grow the economy.” Part of rising to that challenge is for government to acknowledge and act on the fact that companies favour communities that have a reputation for being open, transparent and efficient.

The fourth government priority that is in line with 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 own-motion complaints, public 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 and has made this request of government. Unfortunately, it appears this initiative will not move forward in the coming year. As part of a commitment to being fiscally responsible and living within our means, we would use a statutory discretion provision 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 seek legislative amendments that also meet this fiscal responsibility test for the *FOIPOP*, *MGA* and *PRO Acts*.

As the Review Officer I 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. Municipal representative organizations have indicated to me that legislation is pending that will extend privacy oversight of the Review Officer for municipality privacy decisions in 2013 though this has not been confirmed by the department responsible.

The Review Officer prioritized making improvements to our website a priority for 2012-2013. Due to limited resources this initiative was delayed until recently. The plan is to have this situation rectified early in the year and that steps will be taken government by to enable the Review Officer to enhance our existing capacity to self-manage all upgrades, enhancements and improvements to the Nova Scotia Freedom of Information and Protection of Privacy website. This will become increasingly important with the potential addition of two additional statutory mandates in 2013-2014. In the information age, the Review Officer strives to be an example of the kinds of information available to the public on the web.

The Review Officer 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 late 2012 the Review Officer and the Director of Legislative Processes at Community Services initiated a joint one-on-one training session of best practices with respect to Applications for Access to a Record and Requests for Review. This training will continue throughout 2013-2014.

This Statement of Mandate for 2013-2014 is publicly available and is intended to assist the public to understand the mandates and priorities and performance of the Review Officer. Completing the Statement of Mandate complements but does not replace the Review Officer's statutory duty to table 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

Freedom of Information and Protection of Privacy Review Officer's Mandates

The Freedom of Information and Protection of Privacy 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.

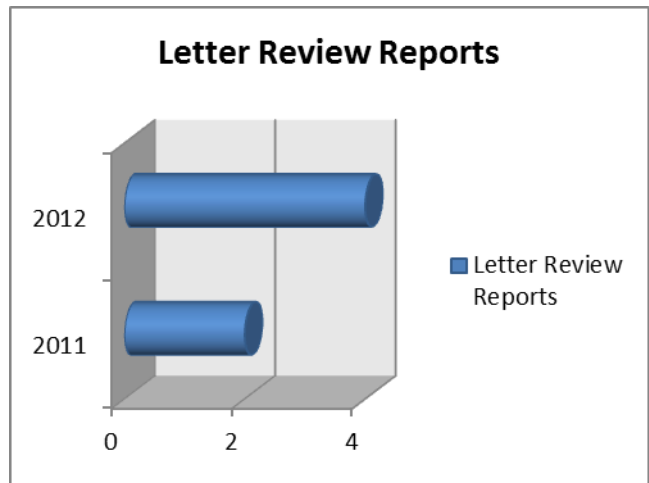
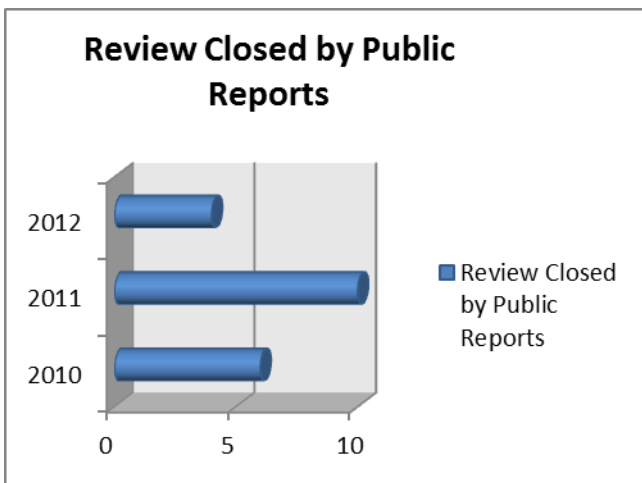
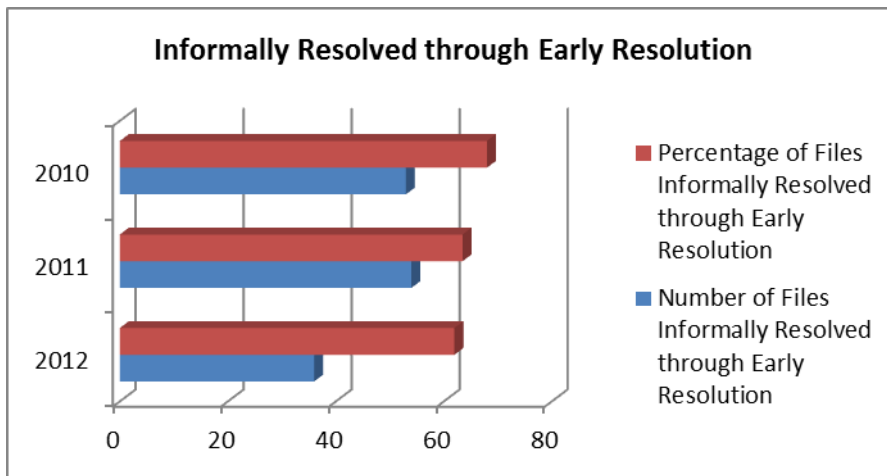
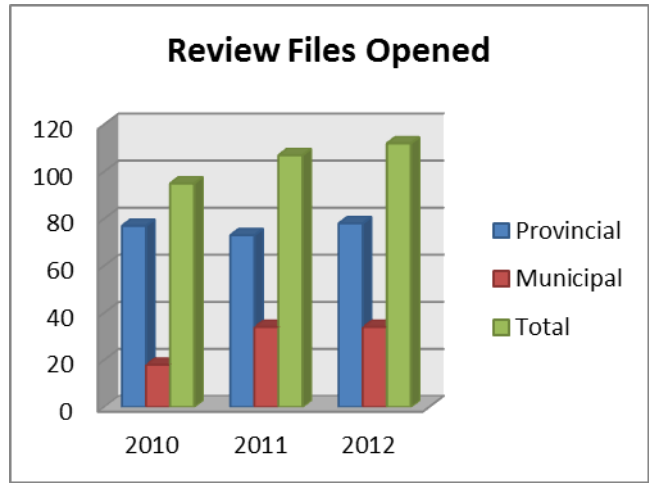
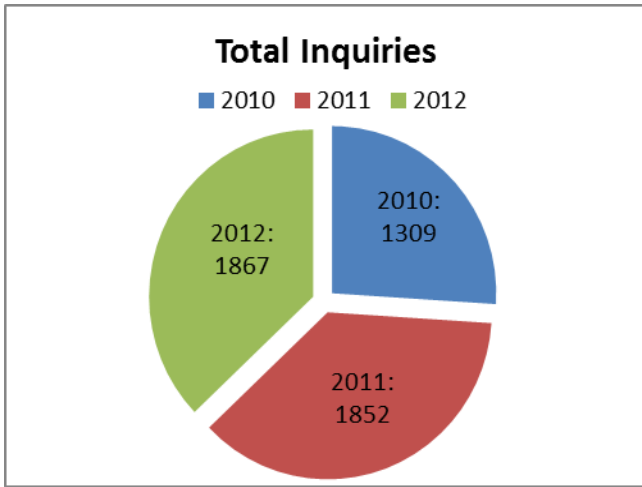
In addition, under the *Privacy Review Officer Act*, the Review Officer is empowered to monitor how privacy provisions are administered, initiate an investigation of privacy compliance, undertake research matters, inform/educate the public and, on request of a public body, provide advice and comments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

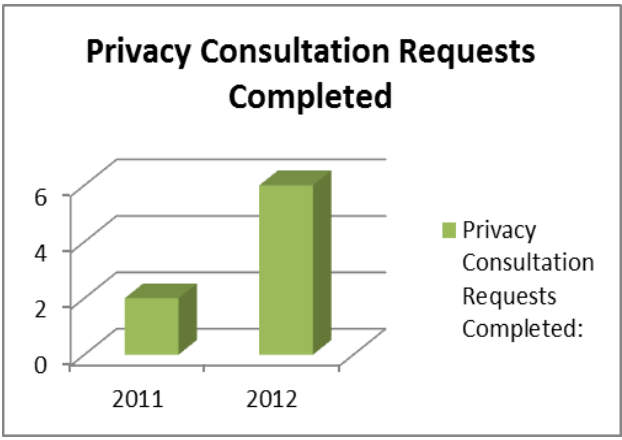
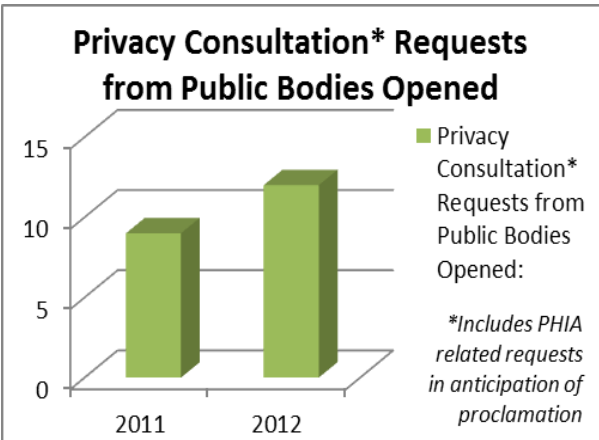
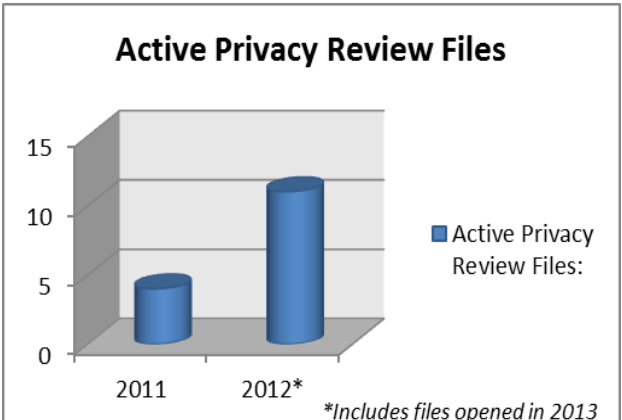
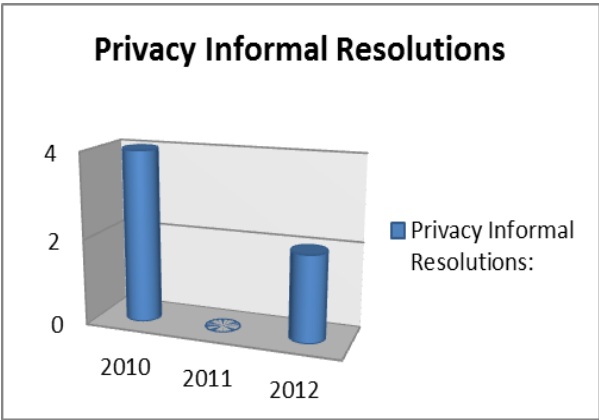
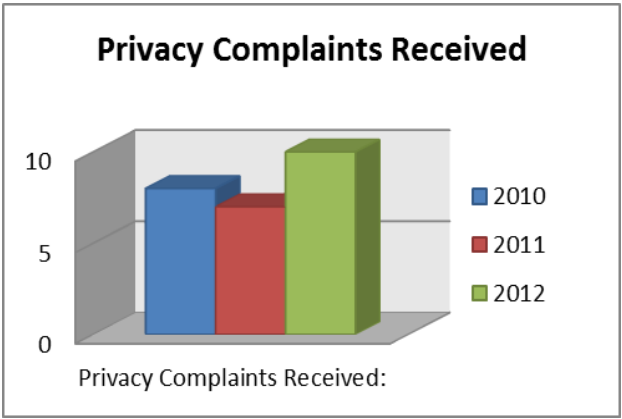
Municipalities have also been advised that during 2013-2014 new legislation will provide for independent oversight for privacy decisions made by municipalities at a date to be announced.

Performance Measures

RIGHT TO ACCESS: Requests for Review of Public Body Access Decisions				
Outcome	Measure	Target : 2013 - 2014	Ultimate Target	Strategic Actions
<p>Optimize service to the public as an accessible helpful resource.</p> <p>Developing respectful and productive relationships with public bodies' delegated decision makers.</p> <p>Encouraging all parties to apply precedents to the matter at hand thereby expediting early resolution of Requests for Review to better serve the public and public bodies</p> <p>Issuing informative and clear public and private Reports.</p> <p>Promote proactive disclosure and routine access policies.</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 percentage of Review Reports relied upon by the Review Office team in negotiating and achieving informal resolutions during intake and investigations.</p>	<p>Continue to meet statutory requirement to respond to all inquiries and requests "forthwith."</p> <p>Maintain the percentage of informal resolutions.</p>	<p>Improved timelines for processing investigations.</p> <p>Strive for improved compliance of public bodies with Review Officer Recommendations in Public and Private Review Reports.</p> <p>Strive to close more Review files by informal resolution.</p> <p>Strive to ensure the formal Review Reports are issued in a timely fashion when other avenues of resolution have been exhausted.</p>	<p>Increase public declarations by the Review Office of the importance of proactive disclosure and routine access policies.</p> <p>Explore educational learning opportunities for public bodies.</p> <p>Empower parties to a Review to become involved in the Review by developing new resources for applicants such as Applicant's Responsibilities.</p> <p>Promote reliance on Letter Review Reports to close a Review where there is no possible benefit to the individual.</p> <p>Continue to promote amendments to the legislation to give the Review Officer discretion to refuse to conduct a Review.</p>



RIGHT TO PRIVACY: Requests for Review of Privacy Complaints				
Outcome	Measure	Target : 2013 – 2014	Ultimate Target	Strategic Actions
<p>Contribute to education of applicants, third parties and public bodies regarding the Privacy Review Officer as the statutory oversight body for privacy complaints under the <i>PRO Act</i> and <i>PHIA</i>.</p> <p>Open and receptive to all privacy consultation requests from public bodies.</p> <p>Privacy issues tracked through 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 Reviews 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>100% of privacy investigations within our jurisdiction are opened and investigated.</p> <p>All privacy consultation requests from public bodies are opened.</p> <p>100% of all own motion investigations initiated and investigation are commenced.</p> <p>100% of all <i>PHIA</i> investigations that should be opened are investigated.</p>	<p>90 – 100 % of public body requests for privacy consultations accepted.</p> <p>100% of jurisdictional privacy complaints received opened and investigation commenced.</p> <p>100% of privacy inquiries are answered at Intake and appropriate referrals made.</p> <p>100% of all Privacy Request for Review files opened.</p>	<p>Pro-actively educate the public with respect to the Privacy Review Officer's statutory privacy oversight mandate.</p> <p>Pro-actively contact public bodies/custodians where a breach has been made public to offer a privacy consultation.</p> <p>Provide a public explanation where discretion exercised under <i>PHIA</i> not to accept a Request for Review.</p>



ACCESS AND PRIVACY: Consultation, Education and Outreach					
Outcome	Measure	Base Calendar Year	Target : 2013 – 2014	Ultimate Target	Strategic Actions
<p>The public is educated about the role of the Review Officer with respect to access and privacy.</p> <p>Health custodians see the FOIPOP Review Officer as a valuable resource in preparation for <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 local, national or international level.</p> <p>Continue to offer 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>Participate in Data Privacy Day at Dalhousie.</p> <ul style="list-style-type: none"> • <p>Host one event for Right to Know Week.</p>	<p>Respond positively to all privacy consultation requests from public bodies.</p> <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 local, national or international access to information and/or privacy event.</p> <p>Host or support at least one event to mark Data Privacy Day.</p>	<p>Respond affirmatively to all appropriate requests for public education opportunities .</p>	<p>Initiate training opportunities for strategically identified public bodies.</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 and privacy under the <i>MGA</i>.</p> <p>Target specific consultation opportunities with the Department of Health and Wellness and other personal health information custodians during implementation of <i>PHIA</i>.</p>

Budget Context for Freedom of Information and Protection of Privacy Review Officer

	2012-2013 Estimate	2012-2013 Forecast	2013-2014 Estimate
Program & Service Area	(\$ thousands)	(\$ thousands)	(\$ thousands)
Gross Department Expenses			
Administration	\$543	\$543	\$560
Total Gross Departmental Expenses	\$543	\$543	\$560
Additional Information:			
Fees and Other Charges	None	None	None
Ordinary Recoveries	None	None	None
TCA Purchase Requirements	—	—	—
Provincial Funded Staff (FTEs)	6	6	6