



Office of the Information & Privacy Commissioner

Nova Scotia



Vision

Nova Scotia's public sector is open and accountable. Privacy rights of citizens are respected and protected.





Office of the Information & Privacy Commissioner

Nova Scotia

July 15, 2020

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

Dear Mr. Speaker,

Pursuant to s. 33(7) of the *Freedom of Information and Protection of Privacy Act*, s. 4(3) of the *Privacy Review Officer Act* and s. 93(b) of the *Personal Health Information Act*, I submit this annual report for the 12 month period of April 1, 2019 through to March 31, 2020.

Respectfully submitted,

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

PO Box 181
Halifax NS, B3J 2M4



Toll Free
1-866-243-1564

TABLE OF CONTENTS

Commissioner's Message	5
The Year in Numbers	7
OIPC in the Community	8
Case Summaries	9
Tools Created	14
Regarding the Backlog	15
Trends We're Seeing	16
Appendix 1: Service Plan 2020/2021	19
Appendix 2: Annual Report Statistics	25
Appendix 3: Budget History	27
Appendix 4: Annual Report Under Section 18 of the <i>Public Interest Disclosure of Wrongdoing Act</i>	28

If you are reading a paper copy of this report you will need to visit the electronic version of this report on our website to benefit from the hyperlinks throughout: <https://oipc.novascotia.ca>.



Commissioner's Message

Last year was a busy year for access and privacy in Nova Scotia, as reflected in this annual report. There was also much change in this office, with Catherine Tully retiring as Information and Privacy Commissioner in August and Carmen Stuart then temporarily acting in that role. This report is a reflection of their hard work and that of the staff of this office. Another big change for the office came with the announcement that government is creating a new executive director of privacy position for this office. This will be a very welcome addition. We are looking forward to having an additional resource to address our backlog of cases.

In the last month of our reporting (and my first month of starting this position), COVID-19 ushered in drastic changes to the way this office, and the world, worked. Within a very short timeframe, public bodies, municipalities and health custodians had to switch to working almost entirely remotely. Employers had to very quickly learn to protect privacy while working from home. I was pleased to see the Government of Nova Scotia include fulsome messaging to all its staff about how to protect privacy while working from home.

Another way that COVID-19 affected access and privacy was that public bodies, municipalities and health custodians quickly realized that they would struggle to respond to access to information requests within the timeframe set out by law.

Information and privacy commissioners across the world encouraged governments to ensure that proper documentation of government decision-making continued, despite the pandemic. On the other hand, it was recognized that some access to information resources would be tied up with pandemic work. Further, staff responsible to process access to information requests were not at the office to search through paper records and sometimes staff could not access electronic records from home.

In some Canadian jurisdictions we saw information and privacy commissioners granting public bodies time extensions for responding to access to information requests to reflect that public bodies realistically were tied up with the focus of saving the lives of Canadians from this virus. However, in Nova Scotia the provincial and municipal access and privacy legislation was not drafted to give the Commissioner discretion to extend timelines unless there is also a request for a large volume of records.

Information and privacy commissioners across the world encouraged governments to ensure that proper documentation of government decision-making continued, despite the pandemic.

Commissioner's Message

This type of circumstance where discretion could be warranted was not considered back when the laws were last updated. The *Personal Health Information Act*, which came into force in 2013, does give this discretion to the Commissioner. Thus, a situation arose where a blanket time extension was granted to health custodians but there was no discretion to grant the same time extension to public bodies or municipalities.

This challenge highlighted that there is room for improvement in Nova Scotia's access and privacy laws. Living in a digital age has markedly changed the way we live from over 25 years ago when Nova Scotia created the *Freedom of Information and Protection of Privacy Act*. That was a time when we lived in a world of paper records and without the ubiquitous access to the internet that we see today.

For some time now, information and privacy commissioners across the country have been urging their respective governments to update their access and privacy laws. In 2017, my predecessor Catherine Tully released a special report on modernizing Nova Scotia's access and privacy legislation. This report outlined four core areas of weakness in Nova Scotia's access and privacy laws and provided detailed recommendations on how to address those weaknesses in modernized legislation.

Overhauling the legislation will be a significant undertaking and will take time and consideration. In addition to having provided the recommendations set out in the special report, this office remains open and available to provide expertise to the government for such an initiative.

It will take leadership from politicians to update our access and privacy laws. As citizens, we also have a role to play.

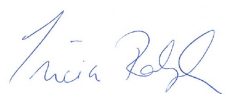
Every year, we conduct reviews of decisions and actions that would be moot if amendments to the legislation had been made. This adds to our significant backlog of files. This year's annual report includes case summaries of files or inquiries we likely would have never received or that would have had a different outcome if the laws were amended.

It will take leadership from politicians to update our access and privacy laws. As citizens, we also have a role to play. It is up to us to become overseers of our own data and promoters for access to information and privacy reform.

Looking forward, my priorities for this year will be to meet with stakeholders, address the backlog of cases in this office and provide guidance on updating Nova Scotia's access and privacy laws.

To conclude, I would like to thank my staff for all their hard work in advancing the mandate of this office. Having joined the office in March as Information and Privacy Commissioner, I felt welcomed to the province and encouraged by the competence and expertise exhibited by OIPC staff.

Yours sincerely,



Tricia Ralph
Information and Privacy Commissioner
for Nova Scotia



THE YEAR IN NUMBERS

Total Number of
New Files

596

We received **187** reviews and complaints and **409** files initiated by public bodies, municipalities and health custodians.

Education &
Outreach Opened



1032 Inquiries
39 Media Requests
39 Speaking Engagements
16 Training Sessions
14 New Tools



855

Breaches Reported -
Personal Health
Information Act

Under section 70 of the Personal Health Information Act, health custodians are required to notify the Information and Privacy Commissioner of breaches of personal health information where the custodian has determined there is no potential for harm or embarrassment to the individual and has not notified the affected individual.

178

Access and/or privacy
consultations with public
bodies, municipalities and
health custodians



847

Individuals attended OIPC-led
presentations in Nova Scotia

OIPC IN THE COMMUNITY



Policing: Access & Privacy 26

Halifax Regional Police managers engaged in discussions about access & privacy while policing.

116



Tweets

@NSInfoPrivacy

53 businesses

received information about how Nova Scotia's access to information laws apply to their communications with public bodies.

37

Media Interviews



By-Law Privacy Training

delivered to Atlantic By-Law Enforcement Officers.

35 attendees



Access & Privacy Training

provided to residential care facility staff.

33 attendees



Staff Training

OIPC staff attended professional development training.

8 sessions



Privacy Management Training

provided to First Nations health custodians.

26 attendees



RIGHT TO KNOW

Right to Know Week panel discussion. Watch it here: **Democracy in Action: The Future of Your Right to Know.**

30 attendees

Case Summaries

The OIPC has been highlighting the need to modernize Nova Scotia's access and privacy laws for several years. The case summaries on the following pages 9-13 represent request for review files or inquiries the OIPC received that may not have been necessary or would have had different outcomes had the OIPC's recommended changes to the legislation been implemented.

The burden of appeal is more onerous on applicants than public bodies

Currently, the Commissioner has recommendation-making power and not order-making power. If an applicant disagrees with a public body's¹ decision not to follow the recommendations of the Commissioner, the onus is on the applicant and not the public body to appeal to the Nova Scotia Supreme Court. The [Accountability for the Digital Age Special Report](#) issued by the OIPC in 2017 recommended that the legislation be amended to shift the burden of appeal to the public body (see recommendation #26).

In [Review Report 20-01](#), the OIPC recommended that the public body provide a response to the applicant within the time frame set out by law. In its response to the recommendation, the public body stated that it intended to provide a response to the applicant, just not within the time frame recommended by the OIPC or required by the legislation. The public body did not accept the OIPC recommendation. Thus, if the applicant wished to have the public body comply with the legislated time frame, they would have had to take the public body to court.



In cases where the matter was appealed to the Nova Scotia Supreme Court and the court issued a decision, its decision or findings were consistent with the OIPC recommendations and findings 100% of the time.

It is a heavy burden on applicants to seek a court order to force public body compliance with access to information legislation. Court processes are expensive and more intimidating for applicants.

It has been three years since the Commissioner recommended changes to the laws. Since then, 26 review reports have been issued. Of those, 19 were eligible to be appealed to court because the public body did not accept the Commissioner's recommendations in full. Only seven applicants (37% of those who were eligible) chose to appeal to court, at their own expense, in an attempt to get the public body to comply with the law.

In cases where the matter was appealed to the Nova Scotia Supreme Court and the court issued a decision, its decision or findings were consistent with the OIPC recommendations and findings 100% of the time. This means that the Commissioner's recommendations were upheld by the court every time an applicant appealed a public body's refusal to comply with them. If the law was changed and the public body was the one who had to appeal to the court to reject the recommendations, those applicants would not have borne the expense of having their access rights upheld.

¹ Throughout these case summaries, unless otherwise stated, the term "public body" includes both public bodies covered by the *Freedom of Information and Protection of Privacy Act* and municipalities and municipal bodies covered by *Part XX of the Municipal Government Act*.

Case Summaries

When 30 days is not enough

Under s. 9(1) of *FOIPOP*, public bodies may take a 30 day time extension to respond to access to information requests in prescribed circumstances.² A further time extension may be granted with the permission of the Commissioner.³

In one case this year, a public body received an access to information request and took a 30 day time extension because there was a large amount of records and responding on time would unreasonably interfere with its operations. With the applicant's consent, it also placed the file on hold to allow the applicant time to obtain consent from a third party to disclose the third party's personal information.

The OIPC has seen a significant increase in the number of requests from public bodies to take a time extension. See page 17 for a detailed look at this trend.

The public body then sought a further extension from the OIPC. The OIPC denied the public body's request for a time extension because the on-hold time for the applicant to obtain the third party's consent was not authorized under the law. This placed the public body past the 30 day statutory timeline to respond to the request. If the statutory deadline for responding has passed, a public body is not authorized to extend the time for responding. Similarly, if the deadline for responding has passed, the OIPC cannot grant a longer time extension.

The circumstances in this case highlight two shortcomings in Nova Scotia's access to information laws. First, the request was placed on hold to allow the applicant to take an action that would have facilitated additional disclosure.

While other jurisdictions' access and privacy laws permit on-hold time for applicants to obtain third party consent, Nova Scotia's laws do not. Second, the applicant agreed to place the request on hold. Nova Scotia's laws do not permit time extensions based on the consent of applicants. In the [Accountability for the Digital Age Special Report](#), the Commissioner recommended a change to the laws to allow time extensions in these cases (see recommendation #7b).

The OIPC has seen a significant increase in the number of requests from public bodies to take a time extension. See page 17 for a detailed look at this trend.

Documenting decisions supports accountability and access rights

Nova Scotia does not have a statutory duty to document. This is an important issue from an access to information perspective because if records are not created documenting decisions, actions and deliberations, there are no records to access. The [Accountability for the Digital Age Special Report](#) recommended making the duty to document a statutory obligation (see recommendation #9).

This year, the OIPC had a case where an applicant appealed because she believed records were missing from a public body's response to her request for records. The applicant requested records documenting interactions with a public body employee. The public body did not find any responsive records. The applicant provided evidence that the records were missing which included knowledge of the interactions and that the employee had an obligation under a policy to create the type of documentation requested. The public body confirmed that the employee failed to follow the policy to create records of the interactions. If there was a legislated duty to document, the applicant would have an avenue to pursue the failure to document the interactions.



² See [Time Extension Guidelines for Public Bodies](#) and [Time Extension Guidelines for Municipalities](#) for more information on time extensions.

³ The same provisions apply to municipalities and municipal bodies under s. 469 of the *Municipal Government Act*.

Case Summaries

Under FOIPOP and the MGA, public bodies are not required to report privacy breaches to anyone.

Privacy breaches: We don't know what we don't know (part 1)

Under *FOIPOP* and the *MGA*, public bodies are not required to report privacy breaches to anyone. [The Accountability for the Digital Age Special Report](#) recommended the implementation of mandatory breach notification for public bodies and municipalities (see recommendation #18a).

In [Review Report 20-02](#), a health custodian under *PHIA* was subject to a successful phishing attack



that resulted in a privacy breach. During the investigation of the privacy breach, the OIPC became aware that some provincial departments, which are covered by *FOIPOP*, are served by the same provincial IT service

provider and had also experienced phishing attacks. It is unknown if any of those phishing attacks resulted in a privacy breach because there is no mandatory breach reporting required under *FOIPOP*.

In 2019/2020, the OIPC received six privacy breach reports from public bodies covered by *FOIPOP*, and one privacy breach report from a municipality covered by the *MGA*. The lack of mandatory privacy breach reporting makes the full extent of privacy breaches that occur at Nova Scotia public bodies unknown. Compared to reporting rates in other jurisdictions with mandatory reporting, very few privacy breaches in Nova Scotia come to light. The lack of reporting of privacy breaches makes the oversight of privacy provisions very difficult.

Privacy breaches: We don't know what we don't know (part 2)

Unlike *FOIPOP* and the *MGA*, *PHIA* does require health custodians to notify individuals if there is a privacy breach that creates a potential for harm or embarrassment to the affected individuals.

However, there is no requirement that the health custodian notify the OIPC of this type of privacy breach.

A patient of a health custodian received a letter from the privacy officer notifying her of a privacy breach affecting her personal health information. An employee



of the health custodian accessed her medical records without proper authority. The patient called the OIPC to ask questions about what

happened. Under *PHIA*, if a health custodian determines that notification to the affected individual is required because there is potential for harm or embarrassment, the health custodian is not required to notify the OIPC. As a result, unless the health custodian voluntarily notifies the OIPC, the OIPC is unaware of privacy breaches where the affected individual is notified. In

this case, the call from the affected individual was the first notice the OIPC had that the breach occurred.



The Commissioner made submissions during the provincial government's review of *PHIA* in 2016 requesting an amendment to require the Commissioner to also receive notice of breaches where there is a real risk of significant harm to affected individuals. Without knowing a breach occurred, we cannot effectively assist individuals seeking our advice or understand the volume of breaches occurring in Nova Scotia. Only three serious breaches were reported to the OIPC by custodians in 2019/2020.

Case Summaries

If it's unenforceable, it's just a threat

Both *FOIPOP* and the *MGA* contain offence and penalty provisions only if a person *maliciously* collects or discloses personal information in contravention of these Acts or regulations. Furthermore, there are no time limits within Nova Scotia's *PHIA*, *FOIPOP* or *MGA* offence provisions, meaning that prosecutions must start within 12 months of the offence. The [Accountability for the Digital Age Special Report](#) recommended that these provisions under *FOIPOP* and the *MGA* be amended to remove the threshold of maliciousness and to extend the timeframes for prosecution (see recommendation #33). The Commissioner has also made submissions to the Department of Health and Wellness to strengthen the offence provisions found in *PHIA* to make them useable.

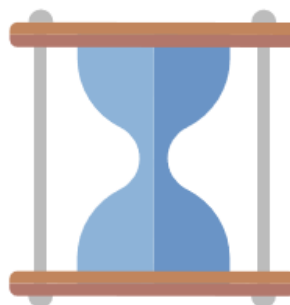
Over the last few years, the OIPC has investigated multiple privacy breaches where it may have been appropriate to lay charges because an offence had been committed, but was unable to do so because of the restrictiveness of wording and lack of time frames in the provisions. Some matters were reported publicly and some were informally resolved. A few examples include:

- A pharmacist who used the provincial Drug Information System to look up their own doctor, co-workers, former classmates, child's girlfriend and her parents, as well as teachers in their child's school, among others.
- An emergency medical technician who used their authorized access to emergency call records to snoop for unknown, unauthorized purposes.
- A transcriptionist employed by a health custodian who looked up medical records of acquaintances, ex-partners, a current partner's ex-spouse and children and then used the information for improper purposes.

Weaknesses in Nova Scotia's offence provisions prevented the OIPC from initiating prosecution of the most egregious cases. Other jurisdictions with effective privacy offence provisions have successfully prosecuted individuals for using their authorized access for unauthorized purposes.

Weaknesses in Nova Scotia's offence provisions prevented the OIPC from initiating prosecution in the most egregious cases.

The known cases in Nova Scotia demonstrate that the activity may continue for many years before



being discovered. The lack of time limits written into *PHIA*, *FOIPOP* and *MGA* offence provisions means that general time limits for summary offences in the *Criminal Code of Canada* apply. As of

September 2019, prosecution must commence within 12 months of the offence (up from six months). Modern offence provisions that allow for prosecution within two years of discovery, similar to what currently exists under Nova Scotia's *Environment Act*, would make the privacy offence provisions more meaningful and allow for prosecution in appropriate cases.

Modern offence provisions that allow for prosecution within two years of discovery...would make the privacy offence provisions more meaningful and allow for prosecution in appropriate cases.

Case Summaries

Patchwork is good for quilts, not privacy laws

Currently, the patchwork of privacy laws in Nova Scotia is inconsistent. The Commissioner has privacy oversight for health custodians under *PHIA* and for public bodies under *FOIPOP*, but does not for municipalities or municipal bodies under the *MGA*.

The [Accountability for the Digital Age Special Report](#) recommended that the legislation be amended to ensure that the OIPC can investigate all privacy complaints.

Multiple reviews filed this past year involved privacy complaints concerning municipalities or municipal bodies. Absent oversight, the OIPC was only able to provide guidance and advice, but was unable to investigate such complaints.

Lack of oversight leaves privacy obligations under the MGA vulnerable to neglect.

The OIPC had one inquiry where an individual who worked for a municipality contacted the OIPC because he learned that his supervisor told his co-workers the specific reasons he was recently absent from work for a few days. The reasons were of a very personal nature and the employee felt embarrassed that his co-workers knew about it. The OIPC explained that municipalities are subject to the privacy provisions in *Part XX* of the *MGA* and that he had the right to file a formal privacy complaint to the municipality to have his concerns investigated and addressed. In other cases where the employer is a public body subject to *FOIPOP*, the individual would also have the right to appeal the response the employer provided as a privacy complaint to this office. The OIPC does not have authority to conduct reviews of privacy complaints made against municipalities or municipal bodies under the *MGA*. The result was that this individual did not have any right to appeal to the OIPC because he worked for a municipality and not a public body.

There is no oversight body to which he could complain if he was not satisfied with his employer's handling of his privacy concerns.

Lack of oversight leaves privacy obligations under the *MGA* vulnerable to neglect. The Commissioner has recommended that the laws be cleaned up to be consistent (see recommendations #1 and #32).

If you would put it on a business card, it's not an invasion of privacy

There is currently no exclusion of business contact information from the definition of personal information in Nova Scotia's access to information and privacy legislation, which is the case in many of the other access and privacy laws in Canada. The [Accountability for the Digital Age Special Report](#) recommended removing business contact information from the definition of personal information (see recommendation #8b).

An applicant made an access to information request for the winning bids and related scoring/awarding documentation on a public body tender process where the tender was awarding multiple contracts. The public body withheld the vast majority of responsive records claiming both s. 20 (personal information) and s. 21 (third party business confidential information) of *FOIPOP* applied. Some of the information that was severed was business contact information. It is well established that business contact information is releasable. While it is considered personal information because it has not been excluded from the definition of personal information, it would not be an unreasonable invasion of privacy to release it. Yet, public bodies routinely over-sever documents following the "see a name, take a name" approach or consult third parties seeking consent where it is not required.



Having business contact information excluded from the definition of personal information would likely prevent such over-severing from occurring and result in fewer requests for review.

TOOLS CREATED



New tools created for the public, public bodies, municipalities and health custodians in Nova Scotia

For public bodies, municipalities and health custodians:



Duty to Assist #4: How to Calculate Fees

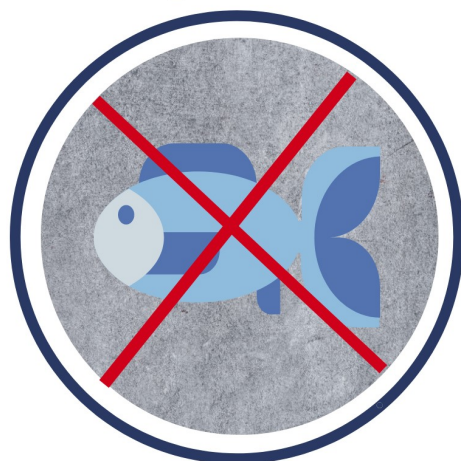


PHIA: Disclosures to Researchers



Training Materials for Access & Privacy Administrators

For the public:



Protect Against Phishing: Technology Fact Sheet



Know Your Rights Glossary: Review Request Terms



Know Your Rights: How to Make an Effective Access to Information Request

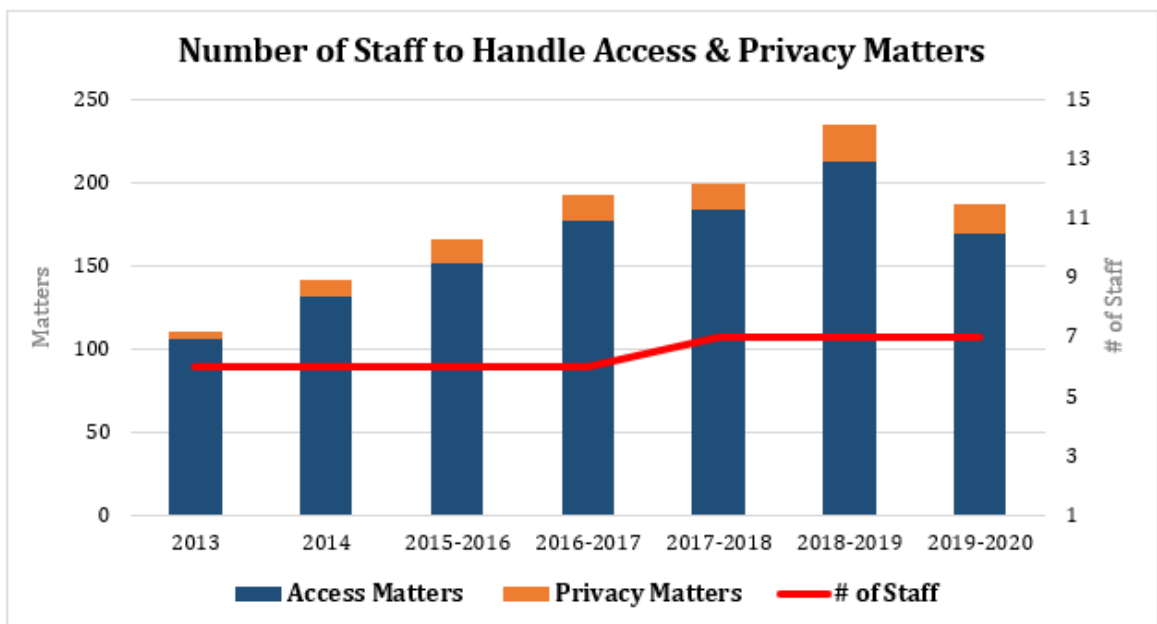
Regarding the Backlog

Unfortunately, the OIPC has a backlog of cases.⁴ We have cases waiting to be assigned that were received as far back as 2016. Our capacity has reached a critical point. Utilization of our office has seen a steady and unabated increase over the past seven years.⁵ This office has employed every known technique to achieve greater efficiency with the allocated resources.

The underlying objective of *FOIPOP, Part XX* of the *MGA, PRO* and *PHIA* is to provide an avenue for administrative justice that is inexpensive, expeditious and accessible to the public. The OIPC's lack of capacity to respond in a timely manner frustrates this objective. The increases in utilization across the spectrum of OIPC work is a function of factors that are outside of OIPC control. The OIPC simply responds to public bodies, municipalities, health custodians and members of the public who recognize our statutory mandates and access our services.

The increased utilization of the OIPC shows no sign of abating. The figure below demonstrates the overall increase since 2013 broken down by statutory mandate areas.

This year, the Treasury and Policy Board has approved our yearly request for additional resources and we have been allotted a new senior management position.⁶ We are optimistic that this new position will help us to slow down the growth of the backlog by focusing on stakeholder-initiated files, privacy matters and education and outreach. This will also free up our investigation team to focus on the review files – the files that make up our backlog. However, the real need for new resources is at the investigation stage to deal with the backlog on access to information reviews that make up 98% of our backlog. Next year we will be asking for more investigators.



⁴ As of March 31, 2020, we had 293 review files and 6 privacy complaint files (299 total) waiting to be assigned to an investigator. This is considered the backlog.

⁵ All historical utilization information, in the form of year by year statistical reporting, can be found on our website going back to 2011: <https://oipc.novascotia.ca/sites/default/files/Proactive%20Disclosure/2018-2019%20Statistics.pdf> or back to 1999 in our Annual Reports: <https://oipc.novascotia.ca/annual-reports>.

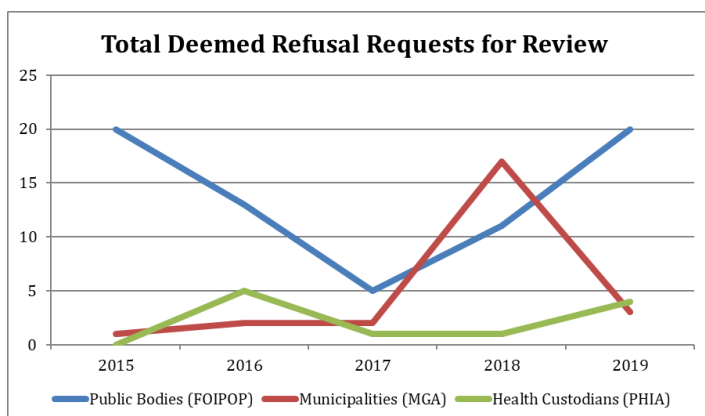
⁶ We were also given permission to permanently hire an employee into the position that we have been filling through a temporary agency hire since 2012.

Trends We're Seeing

Deemed Refusals

When a public body, municipality or health custodian does not respond to an access to information request within the legislated timeframe, it is deemed to have refused access to the information (deemed refusal). The graph below depicts requests for review of deemed refusals received by the OIPC for all public bodies, municipalities and health custodians.⁷

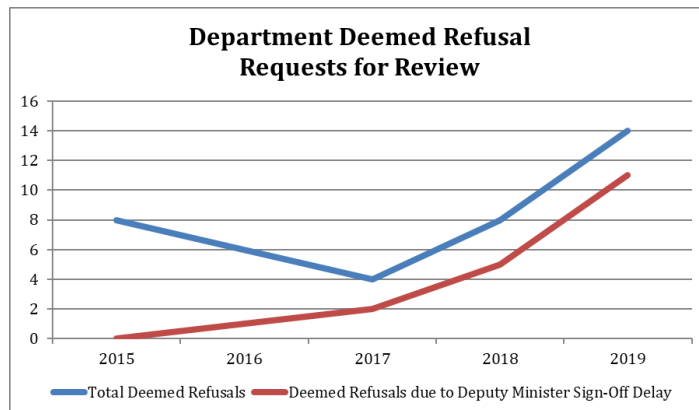
FOIPOP does not allow public bodies to extend the time to respond to an access to information request for the purpose of waiting for sign-off.



The graph below depicts the requests for review of deemed refusals the OIPC has received for access to information requests made to provincial government departments only and further highlights the trend of increased deemed refusals due to a delay in deputy minister sign-off. Review requests for department deemed refusals due to delay in deputy minister sign-off more than doubled between 2018 and 2019.

Review requests for department deemed refusals due to delay in deputy minister sign-off more than doubled between 2018 and 2019.

The OIPC has taken notice of an increasing trend where provincial government departments are delayed in responding to access to information requests because the file is awaiting sign-off by the department's deputy minister. *FOIPOP* does not allow public bodies to extend the time to respond to an access to information request for the purpose of waiting for sign-off.



⁷ In 2018, the OIPC received 12 requests for review for deemed refusals by a single municipality, which resulted in the issuance of [Review Report 18-06](#).

Trends We're Seeing

Time Extension Requests

FOIPOP and the MGA require public bodies and municipalities to make decisions in response to applications for access to a record within 30 calendar days. Extensions can be taken in limited circumstances. If the circumstances exist, public bodies and municipalities can take up to 30 more days on their own accord, or for a longer period of time (no time limit) with the Commissioner's permission. For more information about time extensions, including the limited circumstances of when they can be taken, see our [Time Extension Guidelines for Public Bodies](#) and [Time Extension Guidelines for Municipalities](#), available on our website.

The OIPC has seen a significant increase in the number of requests for permission to respond to access to information requests past 60 days.

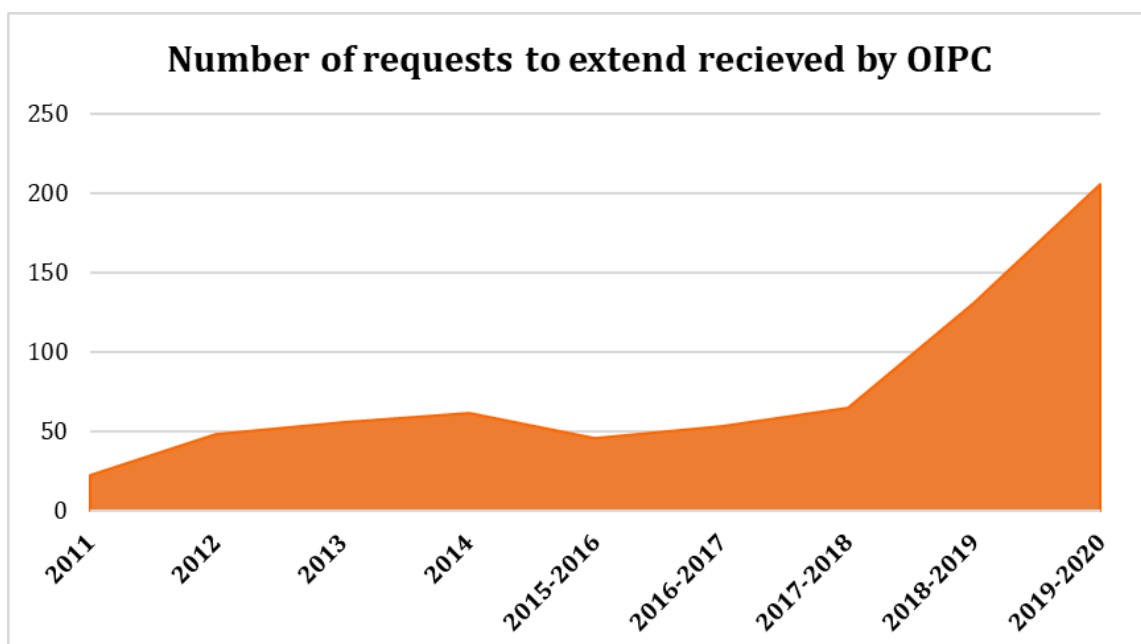
Because the OIPC only becomes involved if a public body or municipality wishes to take more than 60 days to respond, it is not known how many extensions were taken for 31-60 days.

Access delayed is access denied.

As shown in the graph below, the number of time extension requests has increased approximately three-fold since 2017/2018. Without speculating, we cannot say for sure what this trend represents. Regardless of the underlying reason, any delay is concerning. As noted in [Review Report 20-01](#) issued this year, timely responses are of the utmost importance:

The timeliness of granting access to information is often very important to applicants and their ability to hold government accountable. Ensuring that public bodies are fully accountable to the public goes to the heart of the purpose of this Act. That is why FOIPOP places a deadline on public bodies.

The chart below provides a visual representation of this trend.



Trends We're Seeing

Section 70 Privacy Breach Notifications (PHIA)

Under *PHIA*, when a privacy breach occurs, the health custodian responsible for the breach must



notify someone. In cases where there is the potential for harm or embarrassment, health custodians must notify the individual(s) affected by the privacy breach. In cases where the health custodian does not believe there is such potential for harm or

embarrassment, the health custodian must notify the Commissioner (see s. 70 of *PHIA*).

All except a couple of breach notifications the OIPC received this year came from four health custodians. Nova Scotia has 26,000 health custodians covered by *PHIA*. The chart below shows a breakdown of the numbers from the notifications the OIPC received this year.

All except a couple of breach notifications the OIPC received this year came from four health custodians.

	Department of Health & Wellness	IWK Health Centre	Nova Scotia Health Authority	All other health custodians	Total
Reports received	105	191	454	105	855
# of affected individuals	277	187	460	107	1031
# of breaches where the # of affected individuals was unknown	0	16	8	0	24

Basically, these are the “minor” privacy breaches that occur during the day-to-day activities of running a large health care organization. Some of the examples of the breaches reported to the OIPC this year include:

- Faxing personal health information to the wrong physician.
- Selecting the wrong patient from the patient registry database.
- Selecting the wrong physician from the physician-listing database.
- Lost records.
- Records left behind or out in the open.

While these do not seem like particularly egregious breaches, we have noticed a few trends.⁸ Some of these trends include:

- 20% of the breaches were caused because personnel selected the wrong patient from the patient registry database.
- 43% of the breaches were caused because personnel selected the wrong physician from the physician-listing database.
- 3% of the breaches affected an unknown number of individuals.
- Health custodians are not notifying the OIPC of minor breaches. It is improbable that only 5 of 26,000 health custodians had minor breaches.

⁸ This past year was the first year the OIPC could conduct an analysis of the breach notifications received under s. 70 of *PHIA* because we updated the way we collected and tracked the data. The [Breach Notification Form](https://oipc.novascotia.ca) used to collect the data is available on the OIPC website: <https://oipc.novascotia.ca>.

Appendix 1

Service Plan for the Office of the Information and Privacy Commissioner

April 1, 2020 – March 31, 2021

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 these four statutes, the OIPC provides impartial oversight over more than 400 public bodies⁹ and more than 26,000 health custodians.

Who We Serve

Under *FOIPOP*, *PRO*, *MGA* and *PHIA* we serve:

- Citizens
- The Legislative Assembly of Nova Scotia

How We Do Our Work

Pursuant to the statutory duties assigned to the OIPC, we investigate access to information appeals and privacy complaints, conduct investigations into privacy breaches (including through self-initiated investigations), provide comments on the privacy and access implications of proposed legislation, programs, policies and technologies, conduct research, and educate the public about their access and privacy rights and public bodies about their legal obligations. Where necessary, the Commissioner conducts formal hearings and issues recommendation reports.

Outcome Highlights

Last year the results of our performance measures were mixed. We exceeded all three performance measures we set for ourselves but we failed to meet the four performance measures that we set for, or shared with, public bodies, municipal bodies and health custodians. Several highlights of this past year were:

- We co-hosted a very successful, dynamic panel discussion with an engaged audience for Right to Know Week.
- We received funding for two new positions.
- Our informal resolution rate went down significantly.
- The time it is taking provincial departments to respond to access to information requests is growing.

⁹ This includes government departments, universities, regional centres for education, municipalities and municipal bodies, municipal police, transit authorities, health authorities, agencies, boards and commissions.

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 responses to access to information requests as reported by the government in its annual report.¹⁰

2018/2019 Outcomes

The government does not report statistics on its performance until September following the close of the fiscal year. Therefore, the most recent statistics available for government performance are from 2018/2019. In summary, Information Access and Privacy (IAP) Services reported that in 2018/2019, government departments responded within 30 days 73% of the time - this is down from 82% the previous year.

There continue to be other worrying signs that the trend of government taking longer to process access to information requests got worse in 2019/2020. There has been a 75% increase in the number of deemed refusal¹¹ requests for review filed this year over last year for government departments. That trend has its own trend which is that the reason given is the decision in response to the request is waiting for deputy minister sign-off. We had 11 deemed refusal review files where this was given as the justification for the delay (75% of the cases) and we issued [Review Report 20-01](#) in response to one of these cases. See page 16 for more information about this new trend.

The second trend that we noticed regarding delays to access to information was that the number of time extension requests submitted

to our office for approval by government departments increased by 42% over the previous year.¹² See page 17 for a closer look at this trend.

In addition to monitoring government performance, we celebrated the 25th anniversary of the current version of Nova Scotia's access to information law and the 25th anniversary of the office. This year's Right to Know Week theme was "Democracy in Action: The Future of Your Right to Know". We reflected on the legislation we have and focused on the legislation we need. If you missed it, it's on our [YouTube channel](#).¹³

We also created one new tool for our Duty to Assist series: [How to Calculate Fees](#).

2020/2021 Strategies

This year we plan to promote an open and accountable public sector by highlighting citizens' access and privacy rights. We have three main strategies this year.

- **Right to Know Week:** Right to Know Week is an event that calls attention to the significance of access to information legislation. This year we will develop a strategy to communicate the right to know virtually to citizens of Nova Scotia.
- **Know Your Rights Series Tools:** We will also continue to develop Know Your Rights guidance tools for our website.
- **Duty to Assist Series Tools:** A foundational responsibility of public bodies and municipal bodies under our access to information laws is the duty to assist applicants who make access to information requests. We plan to continue our past work on this topic by developing and publishing guidance materials to help public bodies and municipal bodies understand and comply with their duty to assist.

¹⁰ The most recent report available for Information Access and Privacy Services is the 2018/2019 Annual Report available at: <https://beta.novascotia.ca/sites/default/files/documents/1-1822/information-access-and-privacy-services-annual-report-2018-2019-en.pdf>

¹¹ Deemed refusals are cases where the public body, municipal body or health custodian has not responded within 30 days and so they are deemed to be refusing the information requested.

¹² The OIPC received 120 time extension requests in 2018/2019 and 170 time extension requests in 2019/2020.

¹³ Democracy in Action: The Future of Your Right to Know - <https://www.youtube.com/watch?v=Sqd2-y-a1uw>

Performance Measure	2018/19	2019/20	2020/21
1. Percentage of requests processed within 30 days by government departments.	Goal = 90% Outcome = 73%	Goal = 90% Outcome = not yet reported	Goal = 90%

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

2019/2020 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 was to follow up about six months post -investigation to confirm that the recommendations have been implemented. We have consistently maintained a 100% compliance rate. While we believe this tells us that the informal resolution strategy can be very effective in finding solutions to privacy complaints, it can be time consuming to do the follow up and we have some concerns about the accuracy of the responses we receive. We are retiring this measure this year so that we can focus on our backlog and not closed cases.

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. In total, 847 Nova Scotians attended training, speeches and events hosted by this office. This year we began posting all of our access and privacy training toolkits to our website.

In concert with issuing [Review Report 20-02](#) about an email phishing privacy breach, we made a new tool available: [Protect Against Phishing - Technology Fact Sheet](#).

We contributed four articles to the Doctors Nova Scotia newsletter this year, covering topics related to doctors, privacy and the rules set out in the *Personal Health Information Act*.

2020/2021 Strategies

Last year, our major strategy to improve respect for and protection of privacy by public bodies, municipal bodies and health custodians was to provide training to those entities. This year, we anticipate COVID-19 will greatly hinder our ability to offer this service. We will be looking for opportunities to provide training and information in other ways this year. We will continue to develop tools for posting to our website and to respond to access and privacy consultation requests.

Another way we strove to improve respect for and protection of privacy by health custodians was to contribute four articles per year to the Doctors Nova Scotia newsletter. We are continuing this commitment this year.

We are replacing our retired performance measure with one that is intended to proactively reduce the number of privacy complaints about public bodies or health custodians that we receive. Many of the complaints that we receive are because the person has gone through the public body’s or health custodian’s internal complaint procedure and does not understand the response they received from the public body or health custodian, or those who have been notified that their privacy has been breached do not understand the notice they received.

Through education and consultation, we will work with public bodies and health custodians¹⁴ to better craft their letters to make them more clear and understandable.

The goal is to reduce the number of complaints to our office because those that receive the letters understand what they are being told.

Performance Measure	2018/19	2019/20	2020/21
2. Reduction in the number of privacy complaints about public bodies and health custodians received.	N/A	Baseline = 13	Goal= ↓20%

Goal 3: Public Awareness of Access and Privacy Rights

2019/2020 Outcomes

We knocked it out of the park again this year with our efforts to raise awareness. Almost 850 people in Nova Scotia attended events where we were either a presenter or the organizer and we had 85 opportunities to meet with individuals face-to-face. We started a new “Know Your Rights” series focused on educating the public about their access and privacy rights. We posted two new tools from this new series to our website:

- [Glossary: Review Request Terms](#)
- [How to Make and Effective Access to Information Request](#)

2020/2021 Strategies

This year, we anticipate that COVID-19 will negatively impact our ability to put on in-person presentations for Nova Scotians. We will try to adapt to this by moving to a virtual setting. In addition, we will be focusing on developing tools for the public to post on our website. We will continue to develop and publish more Know Your Rights series tools. These tools will address such topics as how to file a privacy complaint, how to appeal to court and how to understand fees.

Performance Measure	2018/19	2019/20	2020/21
3. Total number of individuals who attend OIPC presentations in Nova Scotia.	Goal = 700 Outcome = 1108	Goal = 700 Outcome = 847	Goal = 700
4. Number of OIPC presentations, media articles and tools. ¹⁵	Goal = 40 Outcome = 156	Goal = 40 Outcome = 85	Goal = 40

¹⁴ We will also provide the same consultation and education services to municipal bodies but because we do not have privacy oversight of municipal bodies under the *MGA*, we already do not receive privacy complaints about municipal bodies.

¹⁵ Presentations include speeches, meetings, training sessions, public education sessions and are not necessarily in Nova Scotia.

Goal 4: Efficient and Effective OIPC Operations

2019/2020 Outcomes

Two patterns of concern in relation to these performance measures are:

- There was only one time that a public body fully accepted the recommendations found in a review report. This is a 14% acceptance rate.
- The overall informal resolution rate is also down across the board. Last year, our informal resolution success rate was 81% and this year it is just 75%. This is an all-time low.

While these are viewed as failures, both are really out of our control with our current legislation. The Commissioner has recommendation-making power only. If public bodies, municipal bodies and health custodians do not follow the Commissioner's recommendations, the only recourse available to an applicant is to file an often costly appeal to court. Applicants rarely do this. Thus, there is little incentive to comply with the Commissioner's recommendations.

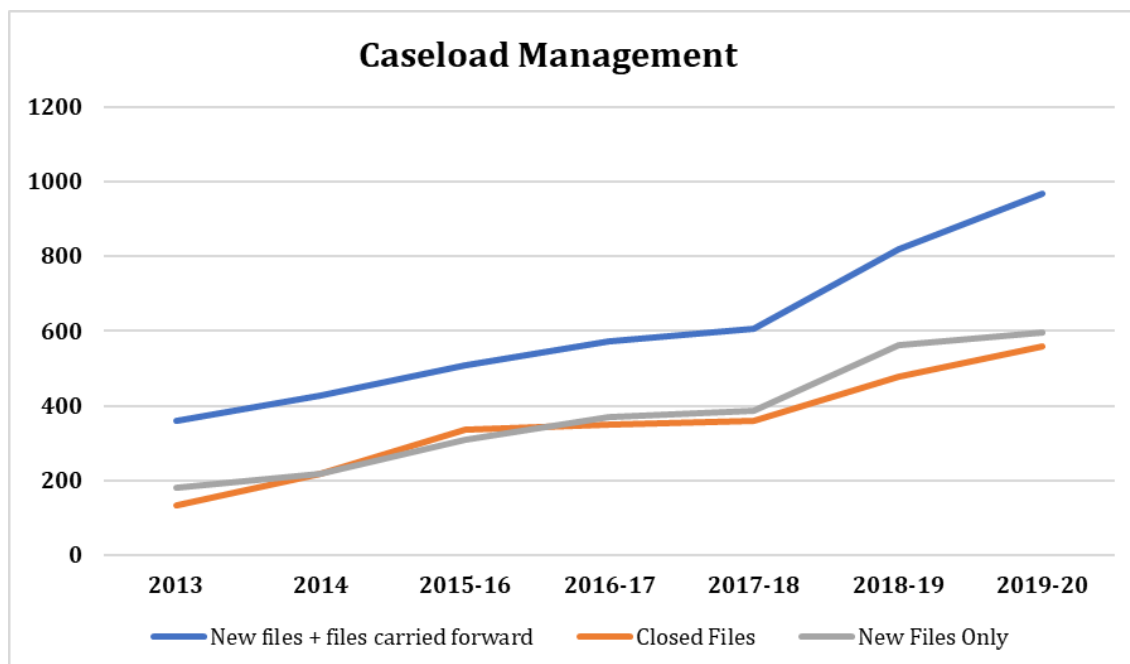
We are an extremely efficient office. Our greatest efficiency achievement has been that we have gone from resolving just 133 files in 2013 to resolving 559 files in 2019/2020.

This is an extraordinary 320% increase in file resolutions with only one new position added to the office in the past seven years.

One of our ongoing challenges has been our constantly expanding caseload in the face of static resourcing of the office. The graph below illustrates the issue.

But as the graph below illustrates, while our staff complement increased by just one person, and while we exponentially increased the number of matters we resolved in each of the past seven years, the number of new matters coming into the office has also increased. We've almost stayed on top of new matters but even a small gap between new matters and closed files adds to the backlog pile which is illustrated by the space between the blue line and the orange line in the graph below. The blue line shows our backlog, and it is consistently growing, even though file closures are also growing. We just do not have capacity to keep up. We are working to our maximum capacity, well beyond what the office was doing in 2013/2014 and we cannot reduce the backlog while keeping up with the exponential increase in new files. As a result, this means that where once we had the backlog down to just over one year, it has now grown again to an over three year wait.

We acknowledge that this is not an acceptable level of service. We are pleased to be granted one new management position starting in 2020/2021.



2020/2021 Strategies

As highlighted in the Outcomes section, our backlog is significant. For a long time, we have been working at over capacity. We simply do not have enough staff to address the significant backlog in place at this office. The office has reached a critical point. The reality is that if an applicant disagrees with the public body and seeks to engage the oversight functions of this office, they are then waiting over three years to have their request for review completed. Waiting that long to have ones review heard by this office raises serious access to justice concerns.

This year we will be examining our processes and procedures with a view to reduce our backlog. While we are an efficient office, there is always room for improvement and we will be looking for ways to increase our output, including addressing a need for more human resources to this office. This year we were allotted an executive director of privacy position. This will be a welcome resource to this office. We are hopeful that this position will help us to somewhat reduce our backlog.

However, given the size of the backlog, one additional resource will not likely be enough to address it, especially if the number of new cases continues to rise. Next year, we plan to request additional resources in the form of more investigators so that we can reduce our backlog and keep up with the increasing external demands on this office.

Typically, under this measure we also speak to the professional development plans of this office. We set performance standards, conduct regular file reviews and have team meetings. It is important that our staff have the training and support they need to do their jobs well. This year, COVID-19 travel restrictions will negatively impact our ability to support the professional development of staff. We will need to come up with creative ways to provide professional development.

Performance Measure	2018/19	2019/20	2020/21
5. Percentage of access and privacy inquiries that receive a response within two days. ¹⁶	Goal = 98% Outcome = 99%	Goal = 98% Outcome = 99%	Goal = 98%
6. Percentage of reviews (<i>FOIPOP</i> , <i>MGA</i> and <i>PHIA</i>) that are resolved informally. ¹⁷	Goal = 85% Outcome = 81%	Goal = 85% Outcome = 75%	Goal = 85%
7. Percentage of review report recommendations accepted by public bodies and municipal bodies.	Goal = 65% Outcome = 79%	Goal = 65% Outcome = 41% ¹⁸	Goal = 65%

¹⁶ 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 2019/2020 we responded to 1025/1029 inquiries within two days.

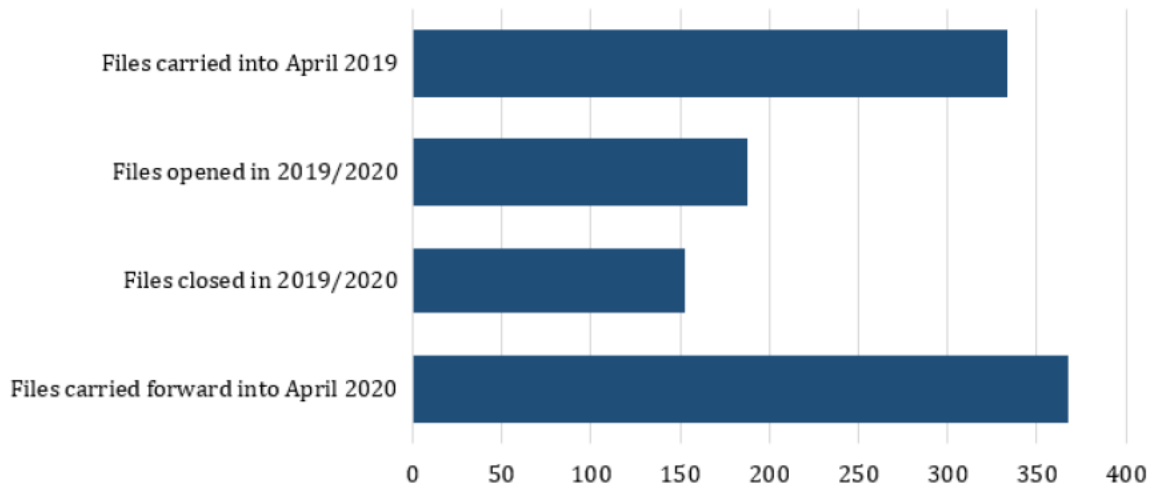
¹⁷ Mediation, informal resolution, screened and withdrawn cases are included in this category. In 2014, 106 of 154 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally. In 2019/2020, 101 of 134 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally. 45/67 (67%) government department appeal files were resolved informally. Other bodies resolved 56/67 (84%) informally.

¹⁸ Between April 1, 2019 and March 31, 2020, the Commissioner issued 7 review reports that related to 11 files. In total, the Commissioner made 17 recommendations of which 5 were accepted in full, 2 were accepted in part and 10 were rejected. The outcome figure is where the recommendation was accepted in full or in part (7/17). This number appears different than the statistic on page 9 because that statistic reflects where all the recommendations made in a report were accepted in full, and this statistic is based on all of the individual recommendations made (accepted in full or in part).

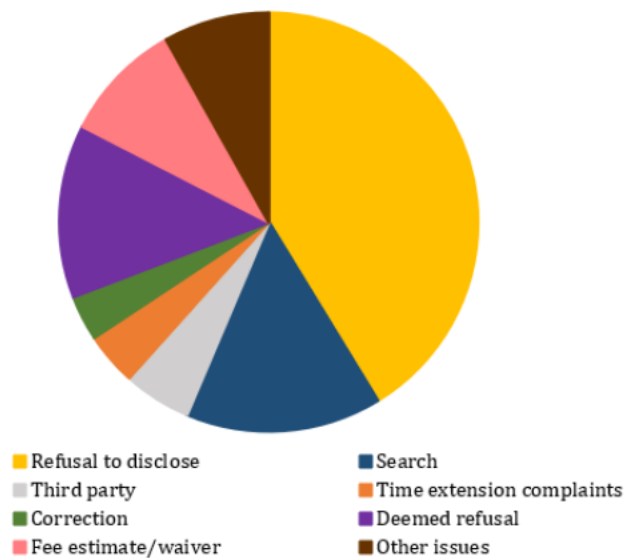
Appendix 2
Annual Report Statistics
All Files Opened and Closed Under
*Freedom of Information and Protection of Privacy Act, Privacy Review Officer Act,
Municipal Government Act (Part XX), Personal Health Information Act*

	FOIPOP & MGA OPENED	PHIA OPENED	TOTAL OPENED	FOIPOP & MGA CLOSED	PHIA CLOSED	TOTAL CLOSED
Access and Correction Requests for Review						
Reviews	160	9	169	126	8	134
Privacy Complaints						
Privacy complaints received	7	6	13	9	5	14
Commissioner own-motion	2	3	5	2	3	5
Files Initiated by Public Bodies						
Breach notifications	7	3	10	5	3	8
Privacy impact assessments	9	0	9	11	0	11
Access and privacy consultations	126	55	181	128	50	178
Time extension requests	206	0	206	206	0	206
Late transfer requests	3	0	3	3	0	3
Disclosures without consent to researcher		0	0		0	0
Breaches with no potential for harm or embarrassment		855	855		856	856
Prescribed entity's information practices		0	0		0	0
Outreach and Education						
Inquiries	861	171	1032	858	171	1029
Media requests	35	4	39	35	4	39
Speaking engagements	41	12	53	35	10	45
Public education	2	0	2	2	0	2
Staff training and conferences	6	2	8	6	2	8
Tools made available	14	0	14	7	0	7
Committees	9	1	10	6	1	7
Projects	13	3	16	9	2	11
Other	9	5	14	11	4	15
Total	1510	1129	2639	1459	1119	2578

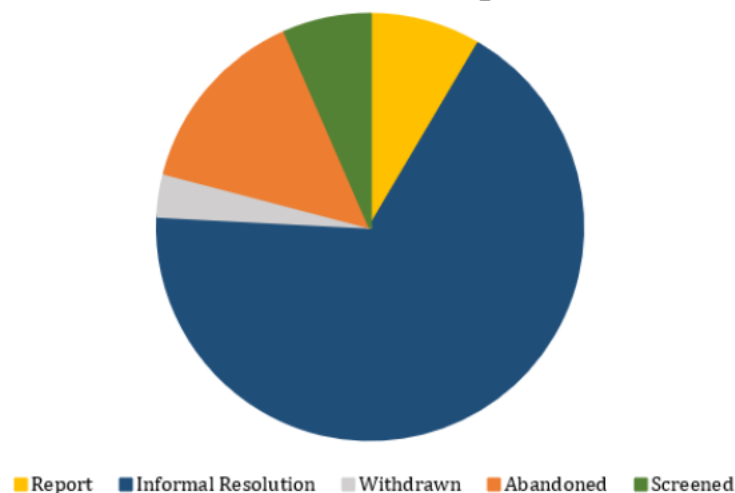
Management of All Review & Complaint Files



Issues Under Review - Access & Correction Reviews



Outcome for Review & Complaint Files Closed



Appendix 3

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

Category	Forecast for 2020-2021	Actual for 2019-2020	Actual for 2018-2019
Salaries and Benefits	857,000	610,235	602,324
Travel	6,200	9,569	8,971
Professional/Special Services ¹⁹	5,100	52,179	61,418
Supplies and Services	19,300	12,495	9,918
Other	59,400	53,044	53,225
Adjustments ²⁰	0	0	(20,181)
Total Budget Spent	947,000	737,522	735,856
Total Budget Given	947,000	715,000	707,000
% of Budget Spent	100%	103%	104%

¹⁹ This amount includes funding a full-time temporary agency employee to address our staffing needs for a full year in 2019/2020. As we have now been given a position starting in 2020/2021, these funds will be transferred into our salaries category.

²⁰ This reflects transfers of funds for salaries and for external legal services.

There is no budget history to report for *PHIA* as no budget was given. All additional work has been absorbed and reported within the existing budget.



Appendix 4
Annual Report Under Section 18 of the
Public Interest Disclosure of Wrongdoing Act

The following is a summary of disclosures received by the Office of the Information and Privacy Commissioner for Nova Scotia:

Information Required Under Section 18 of the Act	Fiscal Year 2019/2020
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



Top left to right: Julie Young, Tricia Ralph, Jason Mighton
Middle left to right: Sarah Gallant, Mary Kennedy
Bottom left to right: Janet Burt-Gerrans, Karlie Gurski, Carmen Stuart

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
Email: oipecns@novascotia.ca / Web: <https://oipc.novascotia.ca>
Twitter: [@NSInfoPrivacy](https://twitter.com/NSInfoPrivacy)