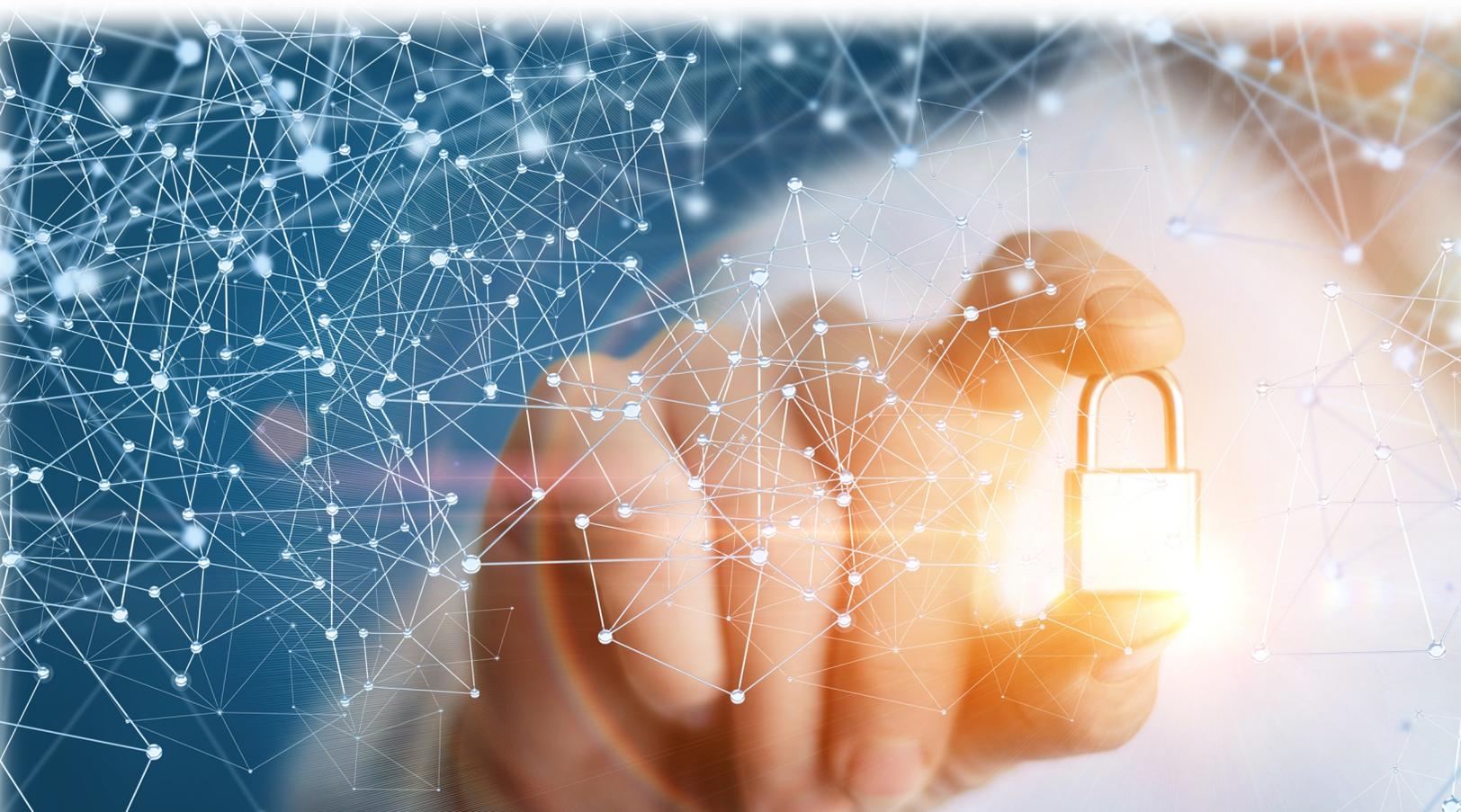




# **2021 - 2022**

# **Annual Report**

*Office of the Information and  
Privacy Commissioner for 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

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October 26, 2022

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

Dear Speaker of the House,

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, 2021 through to March 31, 2022.

Respectfully submitted,

Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia

PO Box 181  
Halifax NS, B3J 2M4



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## **Abbreviations:**

OIPC	Office of the Information and Privacy Commissioner for Nova Scotia
IPC	Information and Privacy Commissioner
IAP Services	Information Access and Privacy Services for the Government of Nova Scotia
<i>FOIPOP</i>	<i>Freedom of Information and Protection of Privacy Act</i>
<i>MGA</i>	<i>Municipal Government Act</i>
<i>PHIA</i>	<i>Personal Health Information Act</i>
<i>PRO Act</i>	<i>Privacy Review Officer Act</i>

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

Nova Scotia was once a proud leader in the access to information realm as the first in Canada to enact a *Freedom of Information Act* in 1977. Unfortunately, despite replacing that Act with the existing *Freedom of Information and Protection of Privacy Act (FOIPOP)* in 1993, Nova Scotia is no longer a leader. Instead, because Nova Scotia has not significantly updated its *FOIPOP* legislation in 29 years, the laws are outdated and not up to the task of protecting Nova Scotian's access and privacy rights.

## ***Modernizing Nova Scotia's Access & Privacy Laws - The Time for Change is Now***

In September 2021, the Nova Scotia Government gave the Minister of Justice a mandate to amend the *Freedom of Information and Protection of Privacy Act*.<sup>1</sup> I believe that a comprehensive review of Nova Scotia's access and privacy laws must be undertaken, and the entire legislative scheme overhauled, to bring it in line with modern access and privacy best practices. Thankfully, there are many examples of statutory language from other jurisdictions that can be used as models for modernizing Nova Scotia's access and privacy legislation. Many jurisdictions have had updated legislation in place for years. There is no need to reinvent the wheel – Nova Scotia can look to other jurisdictions to speed along this process.

On top of that, in 2017, former Commissioner Catherine Tully published a report titled *Accountability for the Digital Age - Modernizing Nova Scotia's Access & Privacy Laws* (2017 Special Report). In it, she reviewed the adequacy of Nova Scotia's access to information and privacy laws and provided 34 recommendations for modernizing the legislative scheme. I had intended to publish an updated version of the 2017 Special Report as a stand-alone document along with this annual report, but frankly, much of the report would have been identical to the 2017 Special Report. This is because the same changes that were needed in 2017 are still needed in 2022. I decided to change course and set out the 34 recommendations from the 2017 Special Report in this annual report instead. I have updated the 2017 recommendations to reflect additional best practices that have evolved since that time.

## ***Recommendations for Legislative Change***

There are four core areas of weakness in Nova Scotia's access to information and privacy laws. There are 34 recommendations to fix these weaknesses. They fall into four broad categories:

1. Organization and Coverage
2. Modernizing Access Rights
3. Modernizing Privacy Rights
4. Improving Oversight

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<sup>1</sup> Tim Houston, Department of Justice Mandate Letter (September 2021), online: <[https://novascotia.ca/exec\\_council/letters-2021/ministerial-mandate-letter-2021-AG-DOJ.pdf](https://novascotia.ca/exec_council/letters-2021/ministerial-mandate-letter-2021-AG-DOJ.pdf)>.

# Commissioner's Message

## 1. Organization and Coverage

Nova Scotia has a puzzling array of five access to information and privacy laws.<sup>2</sup> As a result, access to information and privacy protections differ depending on what level of government or what organization holds the information. This is confusing for the public. One example is that the Information and Privacy Commissioner (IPC) has oversight over the privacy practices of provincial public bodies under *FOIPOP*, but not municipalities under *Part XX* of the *Municipal Government Act*. The public deserves the same level of protection, regardless of what level of government holds the information. Another example is the various other pieces of legislation that chip away at Nova Scotians' access to information and privacy rights through the creation of notwithstanding clauses.

## 2. Modernizing Access Rights

There are many ways that access to information rights in Nova Scotia can be improved, such as strengthening the weak public interest override provision, creating a duty to document, giving the IPC the ability to disregard frivolous or vexatious requests and implementing time limits where they are missing from the legislation.

## 3. Modernizing Privacy Rights

Nova Scotia's privacy laws contain flaws and loopholes and lack almost all the essential modern privacy protections found in other Canadian jurisdictions. At a time when public bodies and municipalities are collecting more personal information than ever, the laws have not kept up to ensure protection of that information. Nova Scotia's laws need foundational privacy protections such as requirements for mandatory privacy impact assessments, mandatory privacy breach notifications, privacy management programs and collection of personal information notification.

## 4. Improving Oversight

An independent review process and the IPC position are critical to the success of the access to information and privacy regime. The problem is that Nova Scotia's laws are missing several core elements of independence. Many people would be surprised to learn that Nova Scotia is the only jurisdiction in Canada where the IPC is not an independent officer of the House of Assembly. And, because Nova Scotia uses the recommendation-making model, public bodies and municipalities can choose to ignore the IPC's recommendations.

*I believe that a comprehensive review of Nova Scotia's access and privacy laws must be undertaken, and the entire legislative scheme overhauled, to bring it in line with modern access and privacy best practices.*

## Conclusion

Access to information and privacy rights are fundamental to the functioning of an effective democracy. I am hopeful that the recommendations put forth by my predecessor and I will be accepted and implemented sooner rather than later. The time for change is now.

I conclude by thanking my staff for their dedication to improving the access to information and privacy rights of Nova Scotians. Despite being understaffed, we will continue working towards reducing our backlog and striving for the implementation of meaningful access to information and privacy laws in this province.

Yours sincerely,



Tricia Ralph  
Information and Privacy Commissioner  
for Nova Scotia

<sup>2</sup> These laws are the *Freedom of Information and Protection of Privacy Act*, *Part XX* of the *Municipal Government Act*, the *Privacy Review Officer Act* and the *Personal Health Information Act*. In addition, there is also the *Personal Information International Disclosure Protection Act*.

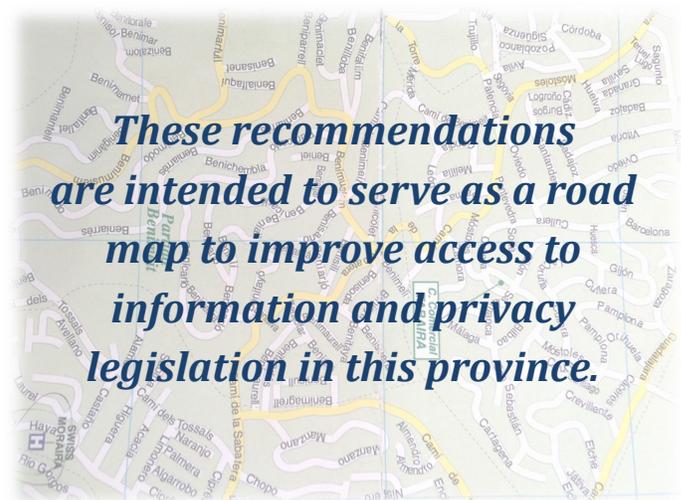
# Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

Access to information and privacy rights are critical components of a healthy democracy. These rights support citizens' ability to participate in public life and to hold public bodies and municipalities fully accountable. Privacy rights have been recognized as being quasi-constitutional in Canada.

The current *Freedom of Information and Protection of Privacy Act (FOIPOP)* came into effect almost 30 years ago. Very little has changed in those 30 years with only one statutory review in October 2003.<sup>3</sup> Nova Scotia was once a leader. Now its laws fall short of the rigorous and substantive protections we see in other jurisdictions across the country.

In 2021, the Government of Nova Scotia included in its mandate letter to the Minister of Justice a direction to amend *FOIPOP* to give order-making power to the Information and Privacy Commissioner.<sup>4</sup> While order-making power is welcome, the entire regime is now so outdated that it needs a fulsome overhaul to properly support such a power if it is granted, and to make other necessary updates.

The 34 recommendations that follow build upon former Commissioner Tully's 2017 report: *Accountability for the Digital Age - Modernizing Nova Scotia's Access & Privacy Laws* (2017 Special Report). I had at first intended to issue a stand-alone update to the 2017 Special Report. However, it became apparent that a new report was not needed, as the recommendations made in 2017 are still needed today in 2022. Where necessary, I have updated the 2017 recommendations in the pages that follow. Otherwise, the recommendations set out below are the same as those made five years ago.



These recommendations are intended to serve as a road map to improve access to information and privacy legislation in this province. They can be used as a guide for the Government of Nova Scotia and the Nova Scotia Legislature in taking steps forward to modernize Nova Scotia's laws. They are also intended to raise public awareness so that citizens understand where Nova Scotia's access to information and privacy laws are lacking and can hold their government to account for updating the laws to provide them with the rights they deserve. The time for change is now.

The recommendations are focused on curing Nova Scotia's trailing public sector access and privacy laws: *Freedom of Information and Protection of Privacy Act, Part XX of the Municipal Government Act* and *Privacy Review Officer Act*. They fall into four broad categories:

1. Organization and Coverage
2. Modernizing Access Rights
3. Modernizing Privacy Rights
4. Improving Oversight

<sup>3</sup>The Advisory Committee on FOIPOP, *The Freedom of Information and Protection of Privacy Act: Advisory Committee Report*, (October 2003), online: <<https://www.novascotia.ca/just/IAP/review/docs/foipopreviewreportoct24.pdf>>.

<sup>4</sup>Tim Houston, Department of Justice Mandate Letter (September 2021), online: <[https://novascotia.ca/exec\\_council/letters-2021/ministerial-mandate-letter-2021-AG-DOJ.pdf](https://novascotia.ca/exec_council/letters-2021/ministerial-mandate-letter-2021-AG-DOJ.pdf)>.

# Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

## Organization and Coverage

### Recommendation #1: Organization of the Acts [2017 Special Report](#)

Combine the access and privacy rules contained in the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, *Municipal Government Act Part XX (MGA)*, *Personal Information International Disclosure Protection Act (PIIDPA)*, and *Privacy Review Officer Act (PRO)* into one complete *Freedom of Information and Protection of Privacy Act*.

#### 2022 Update:

While the 2017 Special Report spoke to the issue of the lack of privacy oversight rules applying to municipalities, this issue was not addressed specifically in a recommendation.

As such, Recommendation #1 is updated as follows:

- a) Combine the access and privacy rules contained in the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, *Municipal Government Act Part XX (MGA)*, *Personal Information International Disclosure Protection Act (PIIDPA)*, and *Privacy Review Officer Act (PRO)* into one complete *Freedom of Information and Protection of Privacy Act*.
- b) Establish the Commissioner as responsible for independent privacy oversight for municipalities (the OIPC will require additional resourcing to implement this recommendation).

***There is no public policy reason why all professional colleges and regulatory bodies should not be subject to privacy protection rules and independent oversight of their compliance with such rules.***

### Recommendation #2: Extending coverage [2017 Special Report](#)

- a) Create a clear, criteria-based definition of public body.
- b) Make MLA offices and officers of the legislature subject to the privacy rules set out in *FOIPOP*.

#### 2022 Update:

It is not only MLA offices and officers of the House of Assembly that should be subject to the privacy rules in *FOIPOP*. Currently *FOIPOP* also sets out a Schedule that lists a variety of other bodies that meet the definition of “public body”. This schedule to *FOIPOP* has not been updated in many years and causes confusion where some professional regulatory boards are included, for example the Board of Embalmers and Funeral Directors and the Denturist Licensing Board of Nova Scotia, but other similar professional regulatory bodies are not, such as the Provincial Dental Board of Nova Scotia.

Professional colleges and regulatory bodies carry out functions pursuant to statutes in the public interest and they collect and use sensitive personal information in the course of their work. Many currently do not have to follow any privacy rules at all. There is no public policy reason why all professional colleges and regulatory bodies should not be subject to privacy protection rules and independent oversight of their compliance with such rules.

As such, Recommendation #2 is updated as follows:

- a) Create a clear, criteria-based definition of public body.
- b) Make all organizations and entities in Nova Scotia who are operating in the public interest and/or are publicly funded, who collect and handle personal information and who currently are not covered by any privacy laws, such as officers of the House of Assembly, Members of the Legislative Assembly offices, and professional regulatory bodies, subject to the privacy rules under the oversight of the Commissioner.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Organization and Coverage

#### **Recommendation #3: Conflict with other enactments - [2017 Special Report](#)**

- a) Conduct a thorough review of all of the conflict clauses listed in ss. 4A(2) of *FOIPOP* and 464A(2) of the *MGA* with a view to reducing the list to only those that are demonstrably necessary. The review should take into consideration the exemptions to disclosure already in existence and should particularly avoid unnecessary exclusions in light of the exemptions.
- b) Require periodic statutory reviews of ss. 4A(2) of *FOIPOP* and 464A(2) of the *MGA*.
- c) Add a provision to specify the criteria for when a notwithstanding clause would be appropriate in *FOIPOP* and the *MGA*.
- d) Add a provision requiring government to list provisions in statutes that prevail over *FOIPOP* and the *MGA* in schedules to the Acts and include a review of these schedules in any regular review of *FOIPOP* or the *MGA*.

#### **2022 Update:**

These blanket exclusions also have the effect of removing the applicability of the privacy obligations under *FOIPOP* and the *MGA* and people's related privacy rights, including in some cases the oversight authority of the Commissioner.

As such, Recommendation #3 is updated as follows:

- a) Conduct a thorough review of all of the conflict clauses listed in ss. 4A(2) of *FOIPOP* and 464A(2) of the *MGA* with a view to reducing the list to only those that are demonstrably necessary. The review should take into consideration the exemptions to disclosure already in existence and should particularly avoid unnecessary exclusions in light of the exemptions.
- b) Require periodic statutory reviews of ss. 4A(2) of *FOIPOP* and 464A(2) of the *MGA*.
- c) Add a provision to specify the criteria for when a notwithstanding clause would be appropriate in *FOIPOP* and the *MGA*.
- d) Add a provision requiring government to list provisions in statutes that prevail over *FOIPOP* and the *MGA* in schedules to the Acts and include a review of these schedules in any regular review of *FOIPOP* or the *MGA*.
- e) Add a provision that explicitly states that any notwithstanding *FOIPOP* or *MGA* clauses do not alter a public body or municipality's privacy responsibilities under those Acts.

### Modernizing Access Rights

#### **Recommendation #4: Protecting applicant identity - [2017 Special Report](#)**

Add a provision to Nova Scotia's access law requiring that the name of applicants be kept confidential except as specifically enumerated for the purposes of processing an access request or appeal related to that request.

#### **2022 Update:**

No change.

#### **Recommendation #5: Fees [2017 Special Report](#)**

- a) Eliminate the \$5 application fee.
- b) Allow for a minimum of five hours of search and processing time before any fee is charged.
- c) Prohibit charging of fees for time spent severing the record.
- d) Impose timelines for decisions relating to fee waiver requests.
- e) Add public interest as a ground for fee waivers by municipalities.
- f) Require refund of fees when decisions are issued late.

#### **2022 Update:**

No change.

# Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

## Modernizing Access Rights

### Recommendation #6: Format of records

#### [2017 Special Report](#)

Amend s. 8(2) of *FOIPOP* and s. 468(2) of the *MGA* to specify that when a record is in electronic form, the head shall give access to the record in an open, reusable and accessible format.

#### 2022 Update:

No change.

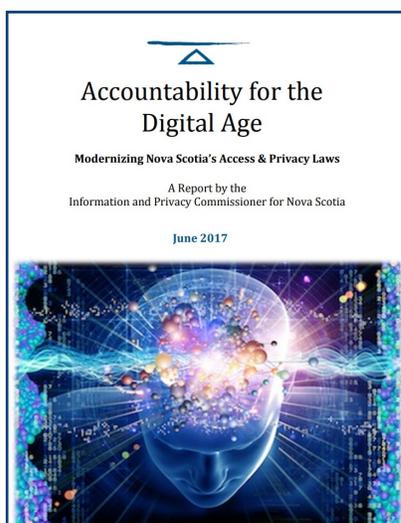
### Recommendation #7: Time

#### [2017 Special Report](#)

- a) Require public bodies and municipalities to respond to correction requests within 30 days.
- b) Amend s. 9 of *FOIPOP* and s. 469 of the *MGA* to permit public bodies and municipalities to take a time extension of up to 30 days with the consent of the applicant.
- c) Impose timelines for decisions related to fee waiver requests (consistent with recommendation #5(d) above).

#### 2022 Update:

The experience of the COVID-19 pandemic revealed that there are occasionally other kinds of extraordinary circumstances that may warrant the Commissioner extending a public body or municipality's time to respond to an access to information request such as when public health orders prevent employees from attending sites to look for records.



As such, Recommendation #7 is updated as follows:

- a) Require public bodies and municipalities to respond to correction requests within 30 days.
- b) Amend s. 9 of *FOIPOP* and s. 469 of the *MGA* to permit public bodies and municipalities to take a time extension of up to 30 days with the consent of the applicant.
- c) Impose timelines for decisions related to fee waiver requests (consistent with recommendation #5(d) above).
- d) Enable the Commissioner to extend the time public bodies and municipalities have to respond to requests where she considers it reasonable and necessary in the circumstances.

### Recommendation #8: Modernizing exemptions

#### [2017 Special Report](#)

- a) Place a time limit on each exemption.
- b) Exclude business contact information from the definition of personal information.

#### 2022 Update:

No change.

### Recommendation #9: Duty to document

#### [2017 Special Report](#)

Create a legislated duty to document in *FOIPOP* and the *MGA*. Subject this duty to the oversight of the Commissioner.

#### 2022 Update:

No change.

### Recommendation #10: Authorization to disregard requests - [2017 Special Report](#)

Add a provision to *FOIPOP* and the *MGA* that allows for public bodies and municipalities to disregard requests that would amount to an abuse of process with the permission of the Commissioner.

#### 2022 Update:

No change.

# Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

## Modernizing Access Rights

### Recommendation #11: Open government [2017 Special Report](#)

- a) Amend *FOIPOP* to ensure that the Commissioner has oversight over public body compliance with the publication requirement set out in s. 48.
- b) Add a provision to *FOIPOP* requiring that the Minister responsible for the Act deliver an annual statistical report regarding government's performance to the House of Assembly. Require that the report be published within four months of year end.
- c) Remove s. 48(7) and provide, at a minimum, that all government departments must comply with the publication requirement without a need for any further regulation.

#### 2022 Update:

Currently, only public bodies have publication requirements as set out in s. 48 of *FOIPOP*. However, the benefits of open government practices apply to municipalities as well.



As such, Recommendation #11 is updated as follows:

Amend Nova Scotia's access to information and privacy laws to:

- a) Ensure that both public bodies and municipalities are subject to publication requirements.
- b) Ensure that the Commissioner has oversight over public body and municipality compliance with publication requirements.
- c) Add a provision requiring that the Minister responsible for the Act deliver an annual statistical report regarding public body and municipality performance to the House of Assembly. Require that the report be published within four months of year-end.
- d) Remove s. 48(7) of *FOIPOP* and provide, at a minimum, that all public bodies and municipalities must comply with the publication requirements without a need for further regulation.

### Recommendation #12: Public interest override [2017 Special Report](#)

- a) Make the public interest override provision mandatory.
- b) Add a new provision requiring public bodies and municipalities to always consider the public interest before exempting information under a discretionary exemption.

#### 2022 Update:

No change.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Modernizing Privacy Rights

#### **Recommendation #13: Standards of sharing personal information - [2017 Special Report](#)**

- a) Repeal ss. 27(f) and 27(g) of *FOIPOP* and ss. 485(2)(f) and 485(2)(g) of the *MGA* and replace those provisions with provisions that permit disclosure within the public body or within the municipality where the information is necessary for the performance of the duties of the employee of or service provider to the public body or municipality.
- b) Add new provisions that permit disclosure for the purposes of the delivery of a common or integrated program or service. Add a definition of common or integrated program or activity that requires documentation of the program and a privacy impact assessment. Require public bodies to notify the Commissioner as early as possible of any proposed common or integrated program or activity. Make privacy impact assessments mandatory for any common or integrated program or activity and require public bodies to provide a copy of the privacy impact assessment for comment by the Commissioner.
- c) Add a new provision that permits disclosure of personal information to a provincial identity service provider. Authorize the Minister responsible for the Act to designate a public body as the provincial identity service provider and set out the permitted activities of such an entity. The amendments should include limitations on the collection of personal information by the provincial identity service provider.

- d) Add a new provision that permits disclosure of personal information to a big data institute. Define the nature of the institute and require that it include privacy, human rights, and ethical expertise in data integration and analytics. Include a requirement for data minimization, mandatory privacy impact assessments to be provided to the Commissioner, and threat risk assessments for all big data initiatives. Include these initiatives in the mandatory breach notification process.

#### **2022 Update:**

No change.

#### **Recommendation #14: Core privacy standards [2017 Special Report](#)**

Add three core privacy standards to *FOIPOP* and the *MGA*:

- a) Prohibit collection, use, or disclosure of personal information if other information will serve the purpose.
- b) Limit collection, use, and disclosure of personal information to the minimum personal information necessary.
- c) Permit disclosure of personal information within an organization only on a need to know basis.

#### **2022 Update:**

No change.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Modernizing Privacy Rights

#### **Recommendation #15: Privacy impact assessments - [2017 Special Report](#)**

- a) Require that public bodies and municipalities complete a privacy impact assessment on all new projects, programs, systems, enactments, and activities.
- b) Require that public bodies that are government departments submit their privacy impact assessments to the Minister responsible for the Act for the Minister's review and comment.
- c) Where the proposed program, project, system, or activity involves a common or integrated program or activity, require that the privacy impact assessment be provided to the Commissioner for comment (consistent with recommendation #12(b) above).
- d) Where the proposed program, project, system, or activity involves big data, require that a privacy impact assessment be completed and provided to the Commissioner for comment (consistent with recommendation 13(d) above).

#### **2022 Update:**

No change.

#### **Recommendation #16: Information sharing agreements - [2017 Special Report](#)**

- a) Amend *FOIPOP* and the *MGA* to require that any regular sharing of personal information by public bodies or municipalities be in writing in the form of information sharing agreements. Include requirements regarding the content of the information sharing agreements.
- b) Require public bodies and municipalities to notify the Commissioner of all new or amended agreements to share personal information and give the Commissioner explicit authority to review and comment on the agreements.
- c) Require publication of the existence and nature of the information sharing agreements between public bodies, municipalities, and with other external bodies.

#### **2022 Update:**

No change.

#### **Recommendation #17: Privacy management program requirements - [2017 Special Report](#)**

Add a requirement that public bodies and municipalities have a privacy management program that:

- a) Designates one or more individuals to be responsible for ensuring that the public body or municipality complies with *FOIPOP* and the *MGA* from within the organization.
- b) Is tailored to the structure, scale, volume, and sensitivity of the personal information collected by the public body or municipality.
- c) Includes policies and practices that are developed and followed so that the public body or municipality can meet its obligations under *FOIPOP* or the *MGA*, and makes policies publicly available.
- d) Includes mandatory privacy training for all employees.
- e) Has a process to respond to complaints that may arise respecting the application of *FOIPOP* or the *MGA*.
- f) Is regularly monitored and updated.

#### **2022 Update:**

No change.

#### **Recommendation #18: Mandatory privacy breach notification - [2017 Special Report](#)**

- a) Require notification to affected individuals and the Commissioner, without unreasonable delay, of all privacy breaches involving a real risk of significant harm.
- b) Specify content requirements for notification to individuals including: details about the cause of the breach, a list of the type of data lost or stolen, an explanation of the risks of harm affected individuals may experience as a result of the breach, and information about the right to complain to the Commissioner.
- c) Authorize the Commissioner to order notification to an individual affected by the breach.
- d) Require maintenance of a record of all data breaches with specified details available to the Commissioner upon request.

#### **2022 Update:**

No change.

## ***Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws***

### **Modernizing Privacy Rights**

#### **Recommendation #19: Mandatory consultation on draft legislation**

##### **2017 Special Report**

- a) Impose a duty on Ministers to consult with the Commissioner on any proposed Bill that could have implications for access to information or protection of privacy prior to introduction into the House.
- b) Provide the Commissioner with the necessary general power to comment on the implications for access to information or for protection of privacy of proposed legislative schemes.

##### **2022 Update:**

No change.

#### **Recommendation #20: Collection notification**

##### **2017 Special Report**

- a) Add a requirement to *FOIPOP* and the *MGA* that personal information must be collected directly from the individual the information is about unless the law authorizes another method of collection.
- b) Where information is collected directly from an individual, require that the public body or municipality tell the individual from whom it collects personal information the purpose for collecting it, the legal authority for collecting it, and the contact information of an individual who can answer any questions.

##### **2022 Update:**

No change.

#### **Recommendation #21: Personal information banks - 2017 Special Report**

- a) Repeal s. 48(7) so that the requirement for personal information banks applies to all public bodies and without any further legislative effort (consistent with recommendation 11(c)).
- b) Require that municipalities publish and maintain personal information banks.

##### **2022 Update:**

It is clear in 2022 that public bodies and municipalities must go further than what was contemplated in 2017 in order to implement reasonable safeguards to protect the information they hold within personal information banks. Authorized users of electronic information systems pose a substantial risk to the information held by public bodies and municipalities, such that implementing regularized auditing of user activity within information banks is an important modern safeguard to protect privacy and so that any instances of accessing the information for unauthorized purposes is identified and appropriately responded to as a breach of privacy.

As such, Recommendation #21 is updated as follows:

Amend Nova Scotia's access to information and privacy laws to:

- a) Repeal s. 48(7) of *FOIPOP* so that the requirement for personal information banks applies to all public bodies and without any further legislative effort.
- b) Introduce statutory provisions to implement the same requirement for personal information banks for municipalities under *Part XX* of the *MGA*.
- c) Require that public bodies and municipalities publish and maintain personal information banks.
- d) Require that public bodies and municipalities conduct regular monitoring and audits of authorized users' access to personal information banks.

# Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

## Improving Oversight

*Nova Scotia is the only jurisdiction in Canada where the Information and Privacy Commissioner is not an independent officer of the House of Assembly*

### **Recommendation #22: Officer of the legislature - [2017 Special Report](#)**

Make the Information and Privacy Commissioner (Review Officer and Privacy Review Officer) an officer of the legislature.

#### **2022 Update:**

This recommendation requires an update to reflect the more accurate terminology used by other officers and the Nova Scotia House of Assembly.

As such, Recommendation #22 is updated as follows:

Amend Nova Scotia's access to information and privacy laws to make the Information and Privacy Commissioner (Review Officer and Privacy Review Officer) an officer of the House of Assembly.

### **Recommendation #23: Name change [2017 Special Report](#)**

Change the name of the oversight body in *FOIPOP* with necessary consequential amendments to *PRO*, the *Personal Health Information Act (PHIA)* and the *MGA* to "Information and Privacy Commissioner".

#### **2022 Update:**

No change.

### **Recommendation #24: Employees, experts, and support - [2017 Special Report](#)**

- a) Authorize the Commissioner to appoint employees she considers necessary in such positions she considers appropriate under such classification ratings and at such rates of remuneration within those classification ratings established by the Public Service Commissioner.
- b) Authorize the Commissioner to engage the services of such counsel or other professionals or experts to advise or assist the Commissioner notwithstanding any government procurement rules or policies.
- c) Authorize the Commissioner to delegate any of her powers except the power to delegate. Make clear that such delegation may occur when the Commissioner declares a conflict of interest.

#### **2022 Update:**

No change.

### **Recommendation #25: Restrictions on disclosure and immunity - [2017 Special Report](#)**

Add a provision enumerating the permitted uses and disclosures of information by the Commissioner and her staff and a provision specifying the immunity of the Commissioner and her staff.

#### **2022 Update:**

No change.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Improving Oversight

#### **Recommendation #26: Authority of the Commissioner - [2017 Special Report](#)**

Amend *FOIPOP* and the *MGA* to shift the burden onto the public body or municipality to seek a declaration of the Nova Scotia Supreme Court whenever the public body or municipality decides that it will not follow the recommendations of the Commissioner.

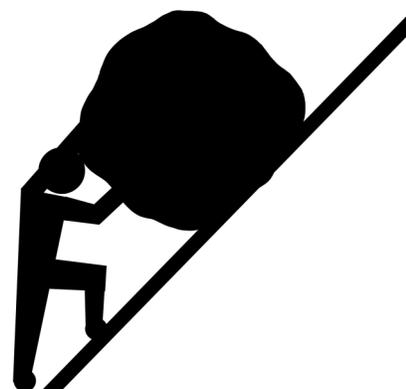
#### **2022 Update:**

Currently, applicants bear the burden of taking public bodies and municipalities to court if they do not follow the Commissioner's recommendations. An alternative to the proposed modified recommendation model is to simply provide the Commissioner with order-making power. This was the direction contemplated in the Premier's 2021 mandate letter to the Minister of Justice.

As such, Recommendation #26 is updated as follows:

Amend Nova Scotia's access to information and privacy laws to:

- a) Shift the burden onto the public body or municipality to seek permission from the Nova Scotia Supreme Court whenever the public body or municipality decides that it will not follow the recommendations of the Commissioner.
- b) Alternatively, grant order-making power to the Commissioner (this approach would require significantly more OIPC resources).



*Currently, applicants bear the burden of taking public bodies and municipalities to court if they do not follow the Commissioner's recommendations.*

#### **Recommendation #27: Power to determine procedure - [2017 Special Report](#)**

Amend s. 38 of *FOIPOP* and s. 491 of the *MGA* to add general powers of the Commissioner that include the power to determine the procedure to be followed in the exercise of the powers or performance of any duties pursuant to the *MGA* or *FOIPOP*.

#### **2022 Update:**

No change.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Improving Oversight

#### **Recommendation #28: Power to compel production - [2017 Special Report](#)**

Amend s. 38 of *FOIPOP* to:

- a) Make clear that solicitor-client privilege is not affected by disclosure to the Commissioner.
- b) Require any person to produce a record for the Commissioner that is in the person's custody or control, including personal information.
- c) Require the Commissioner to return any record or copy of any record produced by the public body concerned.

#### **2022 Update:**

The Commissioner's powers with respect to the ability to compel witnesses and evidence under oath are absent in Nova Scotia's laws. Nova Scotia's legislation does not contain provisions that would allow the Commissioner's office to compel oral or written evidence on oath or affirmation. This is unlike almost every other Canadian jurisdiction. In practice, this means that the Commissioner must accept the statements made by public bodies, municipalities and applicants as the truth, without any rigor or assurance. Unlike in some other jurisdictions, the current laws in Nova Scotia carry no consequences for lying to or misleading the Commissioner.

As such, Recommendation #28 is updated as follows:

Amend s. 38 of *FOIPOP* and s. 491 of the *MGA* to:

- a) Make clear that solicitor-client privilege is not affected by disclosure to the Commissioner.
- b) Require any person to produce a record for the Commissioner that is in the person's custody or control, including personal information.
- c) Require a person to answer the Commissioner's questions on oath or affirmation or give the Commissioner all the powers of a Commissioner under the *Public Inquiries Act*.
- d) Require the Commissioner to return any record or copy of any record produced by the public body concerned.

#### **Recommendation #29: Information sharing between oversight agencies**

##### **[2017 Special Report](#)**

Amend *FOIPOP* and the *MGA* to allow the Commissioner to exchange information with extra provincial Commissioners for the purpose of coordinating activities and handling reviews and complaints involving two or more jurisdictions.

#### **2022 Update:**

No change.

#### **Recommendation #30: Grounds to refuse to proceed with a review - [2017 Special Report](#)**

- a) Amend *FOIPOP* and the *MGA* to add a provision that states that where the Commissioner is satisfied that there are reasonable grounds to review any matter, the Commissioner shall review the matter. Include grounds where the Commissioner may refuse to conduct a review including where the application is frivolous or vexatious, not made in good faith, concerns a trivial matter, does not contain sufficient evidence, has already been the subject of a report by the Commissioner, the public body has responded adequately to the complaint, the length of time that has elapsed, or for any other reason it is fair and reasonable not to conduct a review.
- b) Amend s. 39 of *FOIPOP* and s. 492 of the *MGA* to provide that on completing a review the Commissioner "may" prepare a written report rather than "shall" prepare a written report.

#### **2022 Update:**

No change.

## ***Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws***

### **Improving Oversight**

#### **Recommendation #31: Review and complaint time limits - [2017 Special Report](#)**

Amend *FOIPOP* and the *MGA* to provide that the Commissioner should conclude her investigation and mediation processes and, if necessary, issue a report within 90 days of receipt of a complaint or request for review. Include an option to allow for longer period of time at the Commissioner's discretion and with written notice to the parties.

#### **2022 Update:**

Having statutory time limits for the Commissioner's processes makes good sense and provides applicants, public bodies and municipalities with assurance about the timeliness of the administration of justice. However, for Nova Scotia, the underlying issue of insufficient resourcing for the OIPC, which resulted in the current four-year backlog of review files, must be addressed in order to meet any kind of statutory review time deadline. The OIPC would not currently be in a position to fulfill statutory time limits on its processes without being provided with additional resources.

At the time of the 2017 Special Report, investigators were provided with about 60 days to informally resolve the matter or move it forward to a public review report. Since that time, the OIPC has increased that timeframe to 80 days as many public bodies and municipalities requested additional time for this process. There are many occasions when more time can be fruitful in terms of resolving the matter informally, especially if the matter includes third party interests.

As such, Recommendation #31 is updated as follows:

Amend Nova Scotia's access to information and privacy laws to provide that the Commissioner should conclude the review of a matter and, if necessary, issue a report within 120 days of receipt of a complaint or request for review. Include an option to allow for a longer period of time at the Commissioner's discretion and with written notice to the parties (the OIPC will require additional resourcing to implement this recommendation).

#### **Recommendation # 32: General powers of Commissioner - [2017 Special Report](#)**

Amend s. 38 of *FOIPOP* and s. 491 of the *MGA* to add general powers of the Commissioner that include the following:

- a) Monitor how the privacy and access provisions are administered and conduct reviews of access and privacy complaints arising from the access and privacy provisions.
- b) Initiate investigations of access and privacy compliance including matters or allegations of unauthorized destruction of records.
- c) Make recommendations on and mediate access and privacy complaints.
- d) Undertake research matters concerning privacy and access legislation.
- e) Inform the public about the Acts.
- f) Conduct audits.
- g) Authorize public bodies and municipalities to disregard requests.
- h) Determine OIPC procedures.
- i) Comment on the implications for access to information or for protection of privacy of any matter including proposed projects, activities, systems, information sharing agreements and legislative schemes of public bodies and municipal bodies.

#### **2022 Update:**

No change.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Improving Oversight

#### Recommendation #33: Update offence provisions - [2017 Special Report](#)

Update Nova Scotia's offence provisions by:

- a) Making the following offences under the law:
  - obstructing the Commissioner;
  - misleading the Commissioner and knowingly making a false statement to the Commissioner;
  - obstructing the right of access by destroying, altering, falsifying, or concealing a record with intent to evade a request for access;
  - directing another to destroy, alter, falsify, or conceal any record; and
  - willfully or knowingly collecting, using, or disclosing personal information in contravention of the law.
- b) Set the fine on conviction at a maximum of \$20,000 for individuals and higher for organizations and service providers.

#### 2022 Update:

Other statutes in Nova Scotia that contain regulatory offences usually contain clear enforcement mechanisms that designate who is responsible for enforcement actions and investigations. For example, Nova Scotia's *Environment Act* and *Occupational Health and Safety Act* set out who is responsible for enforcement of the regulatory offences provided within them. The offence provisions in Nova Scotia's access and privacy laws do not set out a mechanism to trigger an investigation or prosecution of the offences. The OIPC has inquired about how offences in Nova Scotia could be brought forward for prosecution. The result of the OIPC's inquiries is that no one is clearly responsible for the investigation and enforcement of the freedom of information and protection of privacy offences set out in Nova Scotia's laws. Regulatory offences related to freedom of information and protection of privacy are common across Canada. Those jurisdictions who have successfully prosecuted individuals are those that also contain an explicit power for the Information and Privacy Commissioner's office to enforce the offence provisions within the legislation.

In addition to the gap in the enforcement mechanism, Nova Scotia's laws are also silent on the time limit within which a prosecution must be started. Because of the nature of the offences set out in the Acts, the time limits for bringing forward prosecution are set out in the *Criminal Code of Canada* in conjunction with Nova Scotia's *Summary Proceedings Act*. Those rules say that a prosecution must be commenced within twelve months of the commission of the offence.

Twelve months from the date of commission of the offence is not enough time to initiate prosecution of this type of offence. Many times, this type of offence is not discovered until much later. It is very common with regulatory offences for the time limits to be set out in the statute that contains the offences and for the time limit to be two years from the date of discovery of the offence. This is also reflected in Nova Scotia's *Environment Act* and *Occupational Health and Safety Act*. It is more typical of access and privacy legislation, particularly in jurisdictions that have successfully prosecuted these types of offences, to provide the limitation period in the statute that sets out the offences, and to establish a limitation period of two years from the date the offences are discovered.

In addition, Nova Scotia's offence provisions do not adequately reflect the changing technology and uses of information. For example, identifying or attempting to identify a natural person using de-identified information is now an offence under Quebec's law. This is a new offence provision that reflects new types of behaviour and risks from the proliferation of personal information and the use of de-identified information in new ways.

## Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws

### Improving Oversight

As such, Recommendation #33 is updated as follows:

Amend Nova Scotia's access to information and privacy laws to:

- a) Make the following offences:
  - Obstructing the Commissioner or otherwise impeding the progress of an inquiry or investigation of the Commissioner.
  - Misleading the Commissioner or knowingly making a false statement to the Commissioner.
  - Obstructing or impeding the right of access by destroying, altering, falsifying, concealing or delaying the release of a record with intent to evade a request for access.
  - Directing another to destroy, alter, falsify or conceal any record, or unduly delaying the release of a record.
  - Willfully or knowingly collecting, using or disclosing personal information in contravention of the law.
  - Identifying or attempting to identify a natural person using de-identified information without authority.
- b) Set the fine on conviction at a maximum of \$20,000 for individuals and higher for organizations and service providers.
- c) Designate an enforcement body responsible for initiating the investigation of offences and referring matters to Nova Scotia's Public Prosecution Service and include a provision authorizing the enforcement body's disclosure of information relating to the commission of an offence. Consider making the OIPC the enforcement body.
- d) Remove the "malicious" threshold in the offence provisions.
- e) Allow the prosecution of offences to be initiated within two years of discovery of an offence.

### Recommendation #34: Review of the Acts [2017 Special Report](#)

Amend s. 50 of *FOIPOP* and add provisions to *PRO*, *PIIDPA* and the *MGA* to require that:

- a) A review must be conducted of each Act at least every six years.
- b) The reviews must be conducted by an independent committee of the legislature.
- c) All submissions and reports of the committee must be made public.
- d) Each review must include a mandatory review of any and all notwithstanding clauses and a review of s. 4A(2) of *FOIPOP* and s. 464A(2) of the *MGA*.

### 2022 Update:

No change.

# ***Summary of Recommendations to Modernize Nova Scotia's Access & Privacy Laws On the Horizon: Privacy Sector Privacy Rules***

Nova Scotia does not have private sector privacy rules. However, these types of rules are increasing in jurisdictions across Canada. Separate private sector legislation has long been established in British Columbia, Alberta and Quebec. In 2020, Ontario showed signs of considering the need for this legislation.<sup>5</sup>

Businesses operating in Nova Scotia are subject to the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)* and are under the jurisdiction of the Privacy Commissioner of Canada. However, the protections of *PIPEDA* are limited because it applies only to personal information an organization collects, uses or discloses in the course of commercial activities. This means only customer or consumer information. Employee information collected by a business is only covered if the information is collected, used or disclosed in connection with the operation of a federal work, undertaking or business. Most businesses operating in Nova Scotia are not in connection with a federal work, undertaking or business.

Other types of private organizations in Nova Scotia, such as not-for-profit organizations, political parties, unions and professional regulatory bodies fall through the cracks of privacy legislation. Because they are not carrying on commercial activities, these other types of organizations are not subject to *PIPEDA*. There is no other protection of privacy law applicable in Nova Scotia and therefore they do not have to follow any privacy rules at all.

Over time, the OIPC has received complaints about various organizations not subject to privacy laws in Nova Scotia. For example, because of the lack of coverage under Nova Scotia's laws, the OIPC has been unable to take action in relation to complaints received from clients of regulatory bodies and not-for-profit organizations or from employees of businesses. There is no public policy reason why organizations who collect, use and disclose personal information should not be subject to privacy protection rules set out in the law and there is no public policy reason why Nova Scotians should be left without any protection or recourse in relation to their personal information collected, used and disclosed by organizations operating in Nova Scotia.

In 2019, Information and Privacy Commissioners across Canada unanimously called for all public and private sector entities, including political parties, that are engaged in collecting, holding using and disclosing personal information to be subject to privacy laws.<sup>6</sup> Having applicable privacy laws in place is a critical component of a modern privacy protection regime and is needed to ensure that Nova Scotia has a coherent framework for privacy protection.

Nova Scotians' privacy is not well protected where whole sectors that collect, use and disclose personal information are not subject to any privacy laws. In addition to the recommendations set out above, I encourage the Government of Nova Scotia to consider whether private sector privacy laws should be enacted in this province.

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<sup>5</sup> Ontario Information and Privacy Commissioner, *Ontario Private Sector Privacy Reform: Improving private sector privacy for Ontarians in a digital age* (October 2020), online: <<https://www.ipc.on.ca/newsrelease/the-time-has-come-for-a-made-in-ontario-private-sector-privacy-law/>>.

<sup>6</sup> Canada's Information and Privacy Commissioners, *Effective privacy and access to information legislation in a data driven society* (October 2019), online: <<https://oipc.novascotia.ca/sites/default/files/Other/FPT%20Resolution%202019%2011%2006%20English.pdf>>.

# THE YEAR IN NUMBERS

Total Number of  
New Files

588

We received **246** reviews and complaints and **342** files initiated by public bodies, municipalities and health custodians.

Education &  
Outreach



- 895** Inquiries
- 28** Media Requests
- 26** Speaking Engagements
- 4** New Tools



866

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.

86

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



79% of review files resolved informally

# Regarding the Backlog

## An ongoing issue

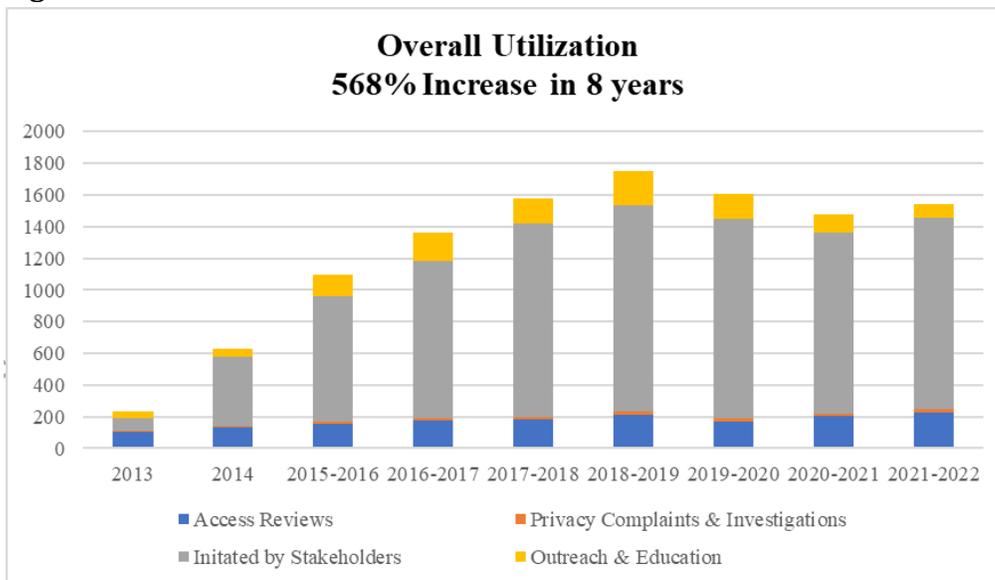
The OIPC has a significant backlog of cases. Most of these are cases where a public body<sup>7</sup> or health custodian withheld information and the applicant believes they are entitled to it. The applicants have asked that our office review the severing to ensure it is compliant with the law. We have cases waiting to be assigned that were received as far back as 2018. In other words, it takes at least four years for applicants to have their requests for review heard by our office.

Our capacity reached a critical point years ago. We have exceeded the limit of our ability to keep pace with the utilization of our office. This is evidenced by our substantial backlog. 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. We have acknowledged and reported on our backlog for many years in our previous annual reports and we are doing it again this year as there is no end in sight.

Our resources have been stretched thin for many years. In 2013, our office underwent an independent review by the Nova Scotia Treasury Board to assess our efficiency. Aside from a few recommendations, all of which have since been implemented, our office was found to be running efficiently at that time.

Since 2013, utilization of our office has steadily increased.<sup>8</sup> Figure #1 below demonstrates the overall increase in utilization since 2013, broken down by our mandate areas. An example of an area where we have received a significant increase in requests from public bodies and health custodians is time extension requests. In 2013, we received 56 such requests. In 2021-2022, we received 242. That is a 332% increase in eight years. Investigators who are tasked with receiving, assessing and approving or denying these requests are not able to work on review files in the backlog.

**Figure #1**



<sup>7</sup> Public bodies include government departments, universities, regional centres for education, municipalities and municipal bodies, municipal police, transit authorities, health authorities, agencies, boards and commissions.

<sup>8</sup> All historical information, in the form of year-by-year statistical reporting, can be found on our website going back to 2011: <<https://oipc.novascotia.ca/node/369#overlay-context=node/369>> or back to 1999 in our annual reports: <<https://oipc.novascotia.ca/annual-reports>>.

# Regarding the Backlog

## An ongoing issue

We have also seen increased utilization by the public for independent review of public body and health custodian decisions on access to information and privacy matters,<sup>9</sup> which increased 122% since 2013. Overall, the use of OIPC services has increased 568% since 2013. The increased utilization of the OIPC shows no sign of abating.

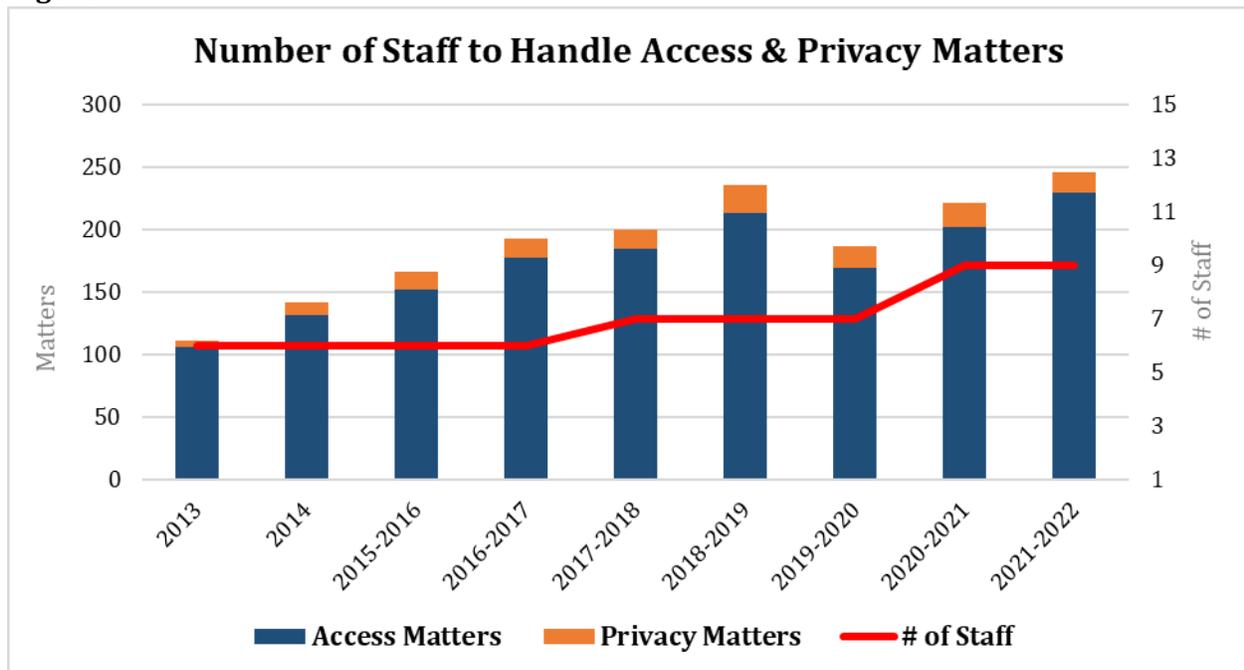
Despite the 2013 Treasury Board findings, we continue to look for ways to improve our processes to try to reduce the backlog. In January 2020, we made several changes to our processes, including substantially modifying the process for conducting reviews where information has been severed. The number of access reviews we closed increased by 42%, however that was offset by a 13% increase in new access review files received.

In terms of staffing, Figure #2 demonstrates the number of OIPC staff in comparison with the number of reviews we received per year.

**Overall, the use of OIPC services has increased 568% since 2013.**

Since 2013, we have received approval for two additional positions: a senior investigator and an executive director. We asked for three more permanent investigators for the last two years. Unfortunately, our requests were denied. However, we were loaned three temporary positions for two years by the Nova Scotia Government. Those three term positions were filled in early 2022 so the impact of their contribution cannot be measured yet. Absent additional permanent staffing, we anticipate the result will be that the backlog will continue to grow, and applicants will be waiting longer than ever for their independent and accessible mechanism of administrative justice.

Figure #2



<sup>9</sup> The OIPC does not have jurisdiction to investigate privacy complaints made against municipalities under *Part XX* of the *MGA*.

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

April 1, 2022 – March 31, 2023

## 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 bodies<sup>10</sup> 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

The results of our performance measures were mixed. The two most noteworthy were:

- We saw a significant improvement in the acceptance rate of the Commissioner’s recommendations - from 37.5% in 2020/2021 to 74% in 2021/2022.
- We saw a significant decrease in our informal resolution rate - from 91% in 2020/2021 to 79% in 2021/2022.



<sup>10</sup> Public bodies include 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 outside of our control. It is the timeliness of government's responses to access to information requests as reported by the government in its annual report.<sup>11</sup>

### 2021/2022 Outcomes

The government does not report statistics on its performance until September following the close of the fiscal year. At the time of drafting this report, its statistics had not yet been released. Therefore, this report addresses government's performance from 2020/2021. Information Access and Privacy (IAP) Services reported that in 2020/2021, government departments responded to access to information requests within 30 days 74% of the time. This is 1% higher than the previous year. The statistic is somewhat limited because while the law requires a response within 30 days, it also permits time extensions in some circumstances. What this means is that a perfect outcome will not necessarily be 100%, but certainly the departments should be aiming to be well above 90%. This year's 74% response rate falls well below the 90% target rate we set for this performance measure.

There are two other measures we track in terms of how long government takes to process access to information requests: time extension requests<sup>12</sup> and deemed refusals.<sup>13</sup> In 2021/2022, based on our own statistics, the trend we observed is promising because in both cases the increase was less than in previous years. Time extension requests increased by only 1% in 2021/2022, while in 2020/2021, they increased by 21%. Deemed refusal reviews stayed the same in 2021/2022, while in 2020/2021 they increased by 33%. While this is a move in the right direction, we would like to see both numbers come down further and applicants getting their decisions within 30 days most of the time.

### 2022/2023 Strategies

We have two 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 engaged in a social media campaign and a public presentation
- **Duty to Assist:** A foundational responsibility of public 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 understand and comply with their duty to assist.

Performance Measure	2020/21	2021/22	2022/23
1. Percentage of requests processed within 30 days by government departments.	Goal = 90% Outcome = 74%	Goal = 90% Outcome = not yet reported	Goal = 90%

<sup>11</sup> Information Access and Privacy Services 2020/2021 Annual Report available at: <<https://openinformation.novascotia.ca/Other-Disclosure/IAP-Services-Annual-Report-2020-2021/88si-3x55>>.

<sup>12</sup> Time extension requests occur when a public body or health custodian seeks approval from the OIPC to extend the time to respond to an access to information request to more than 60 days. There are several legislated criteria that the public body or health custodian must meet in order to be granted a time extension.

<sup>13</sup> Deemed refusals are cases where the public body or health custodian has not responded at all within the legislated timelines (with or without a time extension) and so they are deemed to have refused to provide the information requested.

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

### 2021/2022 Outcomes

It is difficult to measure respect for and protection of privacy by public bodies and health custodians. One way is to examine the number of privacy complaints we receive on a yearly basis. In 2019/2020 we introduced a new measure to track this change and set a goal of reducing the number of new privacy complaints by 20%. In 2021/2022, we received 13 privacy complaints, which is the baseline. While this was not less than the baseline set in 2019/2020, it was a 13% reduction from 2020/2021. This is a disappointing outcome. On the one hand, it could reflect that the tools our office has been producing are having some effect. On the other hand, it highlights the continued impact that the pandemic has had on our training programs. We did not offer any privacy training sessions in 2021/2022.

A good way to improve respect for and protection of privacy among public bodies and health custodians is to provide training and information so that those tasked with ensuring compliance with privacy laws understand the rules. Last year, we were only able to reach 537 people with our education and outreach program.



We offer a variety of services to public bodies and health custodians to assist them with privacy issues. This year, the following services were sought by public bodies and health custodians looking for advice and guidance:

- 45 privacy consultations were completed.
- 9 voluntary breach reports were received and feedback was given.
- 1 privacy impact assessment was reviewed and feedback was given.

While the numbers above are a significant decrease from 2020/2021 across the board, we still view this as being a good indicator that public bodies and health custodians are showing respect for privacy.

### 2022/2023 Strategies

Because it is still not clear how the pandemic will continue to impact our ability to provide training, next year's focus is to produce guidance materials for public bodies and health custodians. We had put training on pause because of both the pandemic and because we are not provided with enough human resources to fulfill this aspect of our mandate. This year, we will resume training, although most likely in a reduced capacity than in previous years. Specifically, we will:

- **Produce privacy-related materials:** We will monitor the questions we receive and the complaints that we hear about to identify materials to focus on.
- **Doctors Nova Scotia newsletter:** We will continue to contribute articles to the Doctors Nova Scotia newsletter.

Performance Measure	2020/21	2021/22	2022/23
2. Reduction in the number of privacy complaints received. (Baseline = 13)	Outcome = ↑15% <sup>14</sup>	Goal = ↓20% <b>Outcome = no change</b> <sup>15</sup>	Goal= ↓20%

<sup>14</sup> We received 15 privacy complaints in 2020/2021.

<sup>15</sup> We received 13 privacy complaints in 2021/2022.

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

#### 2021/2022 Outcomes

Our third goal was to increase the public’s awareness of their access to information and privacy rights. We measure this goal by keeping track of the number of individuals who attend OIPC presentations and by tracking our presentations, tools and media articles.

In 2021/2022, we did not do in-person activities to promote awareness due to safety precautions during the pandemic, so we focused our efforts on the limited virtual sessions available. There were limited virtual sessions available because many organizations scaled back on their own presentations, which meant the OIPC received less requests to attend and present at them. The main message was the need for modernization of Nova Scotia’s legislation. We were only able to share our message with about 75% of the 700 individuals we were aiming to reach (those that we could count).

We also produced or supported new tools aimed at educating citizens about their access to information and privacy rights:

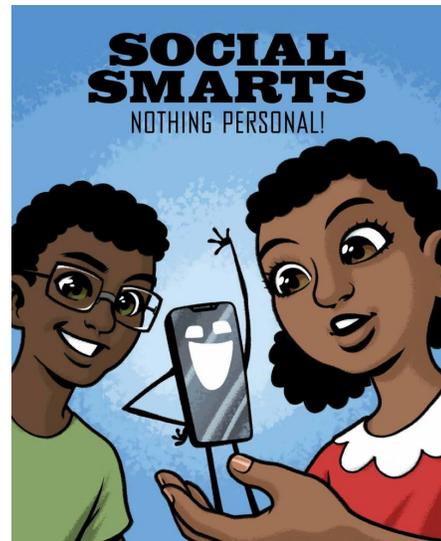
- [Know Your Rights - Missing Records?](#)
- [Know Your Rights - Glossary: Privacy Terms \(Personal Health Information Act\)](#)
- [Questions about Nova Scotia’s Proof of Full Vaccination Policy](#)
- [Graphic Novel - Social Smarts: Nothing Personal!](#)

In addition, we expanded the options available for searching review reports issued under *PHIA* on our website and posted more training toolkits for those who are responsible for administering access and privacy programs for their organizations.

#### 2022/2023 Strategies

We are optimistic that the pandemic will not have the same impact as the last two years on our ability to put on in-person presentations for Nova Scotians. We will be looking for opportunities to get into the community and participate in in-person events. We will continue to explore and participate in virtual and hybrid opportunities as well.

In addition, we will continue to develop tools for the public to post on our website.



Performance Measure	2020/21	2021/22	2022/23
3. Total number of individuals who attend OIPC presentations in Nova Scotia. <sup>16</sup>	Goal = 700 Outcome = 722+ <sup>17</sup>	Goal = 700 Outcome = 537	Goal = 700
4. Number of OIPC presentations, media articles and tools. <sup>18</sup>	Goal = 40 Outcome = 66	Goal = 40 Outcome = 60	Goal = 40

<sup>16</sup> Presentations include speeches, meetings, training sessions and public education sessions.

<sup>17</sup> Four of our virtual sessions were hosted by different organizations so we do not know the number of participants that attended. It is likely that this number was much higher but we cannot say for certain.

<sup>18</sup> Presentations include speeches, meetings, training sessions and public education sessions, not necessarily in Nova Scotia.

## Goal 4: Efficient and Effective OIPC Operations

### 2021/2022 Outcomes

Our final goal was to implement efficient and effective OIPC operations. Every year it becomes more difficult to achieve this goal because most years we get more files than the year before without a corresponding increase in our number of staff. 2021/2022 was the first time in many years that we saw a decrease in new files. At the same time, we closed more files than we received, which hasn't happened in years. As a result, our backlog leveled off, which is progress.

Four factors contributed to progress that we made in 2021/2022:

- The overhaul and revamp project of our procedure for processing applicants' requests for review.<sup>19</sup>
- Changes to our consultation process.<sup>20</sup> We received 23% fewer consultation requests, allowing us to focus on reviews and complaints.
- Changes to how we process deemed refusal reviews.<sup>21</sup> We received 27% fewer deemed refusal review requests. This should reflect that applicants are getting decisions in a timely fashion without the need for the OIPC's involvement.
- Three new staff for part of the year. In the last two months of 2021/2022, we onboarded three new temporary two-year term investigators. While they were still in training during this reporting period, their presence is a welcome relief for the staff who have been carrying the load for years. Our office grew by a third and we look forward to their positive impact in 2022/2023.

In 2021/2022, we responded to 99% of access to information and privacy inquiries within two days, despite working remotely for part of the year due to the pandemic.

Unfortunately, we were not as successful in resolving files without the need to go on to a public review report. This year our informal resolution rate was 79%.

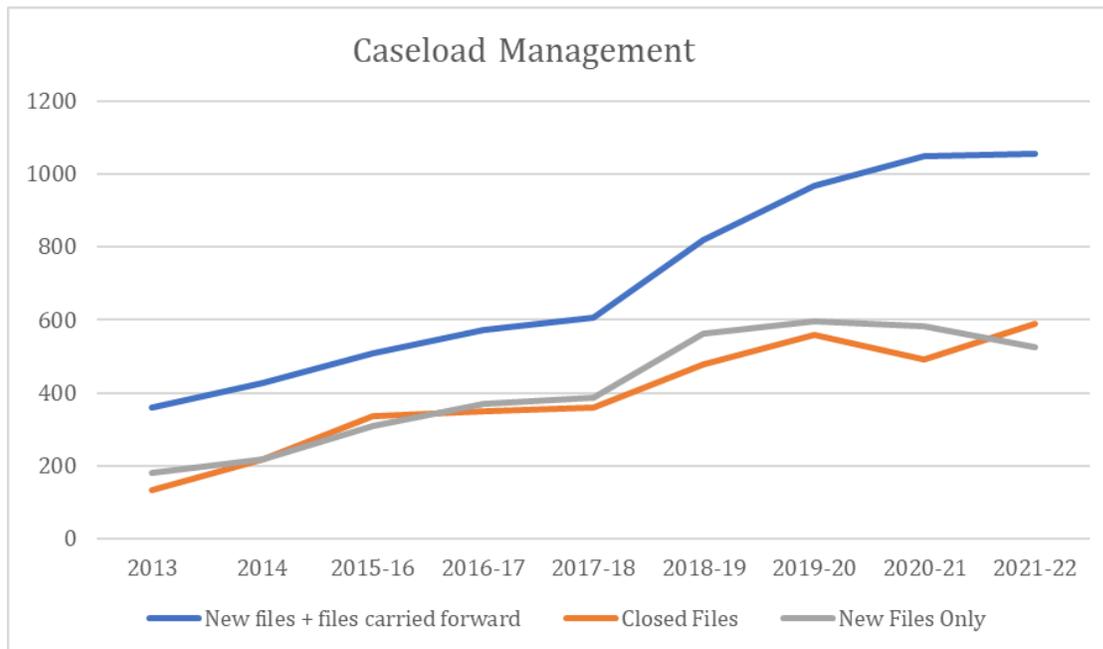
On the other hand, where a review report was issued, we saw a significant increase in the uptake of the Commissioner's recommendations. This year, the number of recommendations accepted by public bodies and health custodians doubled over 2020/2021. Of all the Commissioner's recommendations, 74% were accepted. We are optimistic that this trend will continue, but we continue to believe that the fact that public bodies and health custodians are not required to comply with the Commissioner's recommendations is a significant weakness in our access to information laws. We will persist in advocating for the laws to be modernized to fix this weakness.

*This year, the number of recommendations accepted by public bodies and health custodians doubled over 2020/2021. Of all the Commissioner's recommendations, 74% were accepted.*

<sup>19</sup> See page 16 of our [2020-2021 Annual Report](#) for more information about the changes made.

<sup>20</sup> See page 16 of our [2020-2021 Annual Report](#) for more information about the changes made.

<sup>21</sup> See page 16 of our [2020-2021 Annual Report](#) for more information about the changes made.



### 2022/2023 Strategies

The main way we achieve efficient and effective operations is to provide our staff with the training and support they need to do their jobs well. We will continue our strategies of regular case file reviews, team meetings and staff training. This year we received positive news. We had previously never been allocated a training budget and so were forced to divert funding from other areas of our operating budget. This year, our request to have a training budget was approved.

In terms of the acceptance rate of the Commissioner’s recommendations, this measure is largely out of our control. We have and will continue to encourage the government to strike an independent committee that seeks input from various stakeholders, including the OIPC, when it complies with its own mandate<sup>22</sup> to amend the legislation. We will continue to examine our processes for opportunities for improvement.

Finally, 2022/2023 will be the new temporary investigators’ first full year. We are excited to see the impact this will have on our backlog.

Performance Measure	2020/21	2021/22	2022/23
5. Percentage of access and privacy inquiries that receive a response within two days. <sup>23</sup>	Goal = 98% Outcome = 99%	Goal = 98% Outcome = 99%	Goal = 98%
6. Percentage of reviews (FOIPOP, MGA and PHIA) that are resolved informally. <sup>24</sup>	Goal = 85% Outcome = 91%	Goal = 85% Outcome = 79%	Goal = 85%
7. Percentage of review report recommendations accepted by public bodies and municipalities.	Goal = 65% Outcome = 37.5%	Goal = 65% Outcome = 74% <sup>25</sup>	Goal = 65%

<sup>22</sup> This mandate was issued to the Minister of Justice by Premier Houston on September 14, 2021.

<sup>23</sup> Inquiries are telephone calls, letters, emails and faxes 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 2021/2022 we responded to 887 of 894 inquiries within two days.

<sup>24</sup> Mediation, informal resolution, screened and withdrawn cases are included in this category. In 2021/2022, 132 of 167 FOIPOP, MGA and PHIA reviews were resolved informally.

<sup>25</sup> Between April 1, 2021 and March 31, 2022, the Commissioner issued 21 access review reports that related to 21 files. In total, the Commissioner made 31 recommendations of which 23 were accepted and 8 were rejected.

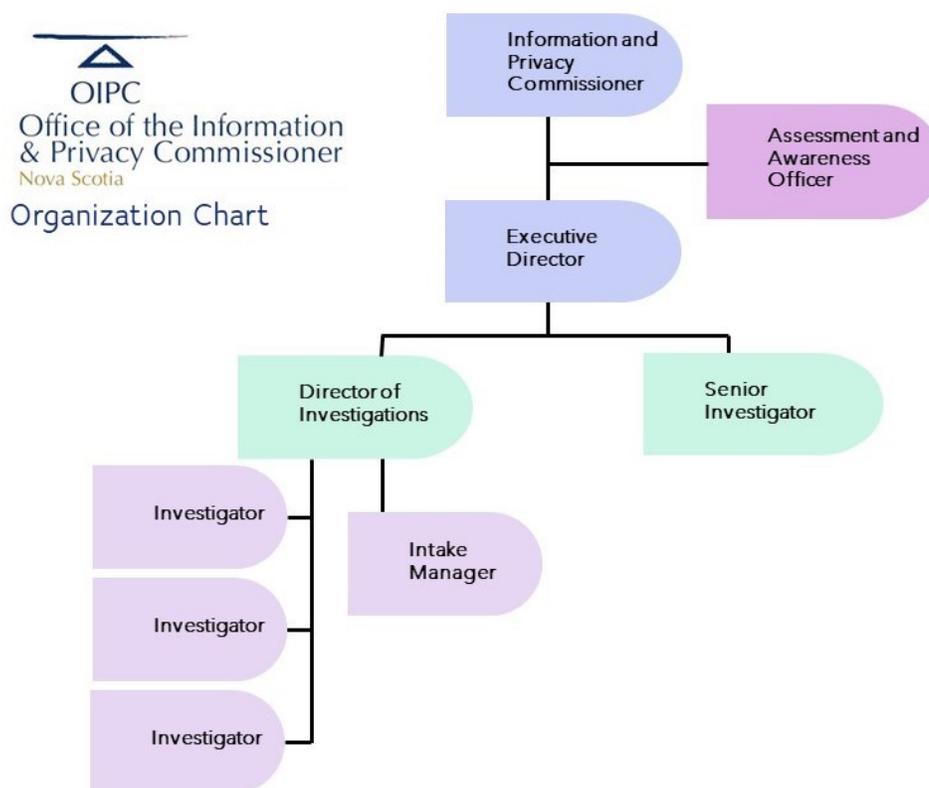
# Annual Report Statistics

## 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, PRO & MGA OPENED	PHIA OPENED	TOTAL OPENED	FOIPOP, PRO & MGA CLOSED	PHIA CLOSED	TOTAL CLOSED
<b>Access and Correction Requests for Review</b>						
Reviews	216	13	229	157	10	167
<b>Privacy Complaints</b>						
Privacy complaints received	7	6	13	5	6	11
Commissioner own-motion	3	1	4	2	1	3
<b>Files Initiated by Public Bodies</b>						
Breach notifications	3	5	8	3	6	9
Privacy impact assessments	0	1	1	0	1	1
Access and privacy consultations	52	34	86	51	35	86
Time extension requests	242	0	242	242	0	242
Late transfer requests	5	0	5	5	0	5
Disclosures without consent to researcher		0	0		0	0
Breaches with no potential for harm or embarrassment		866	866		866	866
Prescribed entity's information practices		0	0		0	0
<b>Outreach and Education</b>						
Inquiries	764	131	895	764	130	894
Media requests	27	1	28	27	1	28
Speaking engagements	19	7	26	20	9	29
Public education	0	0	0	0	0	0
Staff training and conferences	7	0	7	6	0	6
Tools made available	1	3	4	6	3	9
Committees	6	1	7	6	1	7
Projects	9	2	11	7	2	9
Other	5	2	7	5	2	7
<b>Total</b>	1366	1073	2439	1306	1073	2379

## Budget History and Organizational Chart

<b>Budget History (for FOIPOP, MGA, and PRO)</b>			
Category	Forecast for 2022-2023	Actual for 2021-2022	Actual for 2020-2021
Salaries and Benefits	977,000	1,007,467	798,882
Travel	10,000	0	124
Professional/Special Services	6,000	1,413	43,727
Supplies and Services	21,500	21,369	17,537
Other	135,500	60,381	74,126
Adjustments	0	(130,491)	0
Total Budget Spent	1,150,000	1,090,630	934,396
Total Budget Given	1,150,000	957,000	947,000
% of Budget Spent	100%	114%	98.7%



\*Please note that our office has received three two-year term investigator positions. They started in early 2022 and will end early in 2024. Because they are loaned by the Province of Nova Scotia, they do not affect our staffing count (nine permanent staff, including the Commissioner) or our budget.

**Appendix 1**  
**Annual Report Under Section 18 of the**  
***Public Interest Disclosure of Wrongdoing Act***

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

<b>Information Required Under Section 18 of the Act</b>	<b>Fiscal Year 2021/2022</b>
The number of disclosures received	0
The number of findings of wrongdoing	N/A
Details of wrongdoing	N/A
Recommendations and actions taken on each wrongdoing	N/A





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