



# 2022 - 2023 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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June 20, 2023

The Honourable Keith Bain  
Speaker of the House of Assembly  
1<sup>st</sup> 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, 2022 through to March 31, 2023.

Respectfully submitted,

Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia

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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</i>	<i>Privacy Review Officer Act</i>
s.	section

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*

I am pleased to submit this report highlighting the work of the Office of the Information and Privacy Commissioner (OIPC) for 2022-2023. The report details our continuing efforts to both protect individuals' privacy rights and to uphold the public's right of access to information held by public bodies, municipalities and health custodians. This year, despite being understaffed, my employees again worked tirelessly to improve the access to information and privacy rights of Nova Scotians. I want to thank them for their dedication and commitment.

I had hoped that more than halfway through my five-year term as Information and Privacy Commissioner for Nova Scotia I would be able to report better news and not have to repeat that the same challenges continue to plague the OIPC despite our best efforts to resolve them. However, the same two issues continue to dominate our work at the OIPC:

- 1) Lack of sufficient resources resulting in a significant backlog of files.
- 2) Outdated legislation that is not up to the task of protecting Nova Scotians' access and privacy rights.

The OIPC has made no secret of its concerning backlog in reviewing decisions of public bodies, municipalities and health custodians in response to access to information requests. When I started this role, I inherited a four-year backlog and it remains the same. It was clear to me upon arrival that this is predominantly due to a lack of human resources. We do an incredible amount of work with our small staff compliment but there is simply too much work for the few people we have.

The OIPC has repeatedly made requests for more staff supported by detailed rationales and evidence of why they are needed. Last year we were loaned three two-year term positions and we were hopeful this would help us reduce our backlog. However, as is common with term positions, some left for permanent positions elsewhere. On top of that, the access and privacy fields are fairly niche ones so most new investigators that come to work with us require about six months of training. As a result, the gains we hoped to see were not as significant as we had anticipated. Our budget requests for additional permanent staff were once again rejected. It is troubling to me that the Nova Scotia Government is aware of our backlog and will not give us the resources we need to tackle it. Nova Scotians are waiting too long to have their requests for review heard by the OIPC.

# Commissioner's Message

The second major issue affecting our work is the outdated legislation in Nova Scotia. In September 2021, the government gave the Minister of Justice a mandate to amend the *Freedom of Information and Protection of Privacy Act (FOIPOP)* to give order-making power to the Commissioner. Nova Scotia currently has a recommendation-making model. Changing to an order-making model would likely achieve two things:

- 1) Improve the quality of evidence public bodies, municipalities and health custodians provide to support their decisions to refuse access to information.
- 2) Motivate public bodies, municipalities and health custodians to more actively participate in the review process with the OIPC with a goal to informally resolve the file rather than have to comply with an order from the Commissioner.

*In Nova Scotia, the Commissioner files her annual report with the House of Assembly but is required to seek budget approvals through the Department of Justice - a department over which she has oversight.*

When I arrived, I thought that the need for order-making power and lack of mandatory privacy breach notification were the biggest issues facing the OIPC and the access and privacy rights of Nova Scotians. After three years, while these issues are of critical importance, I now believe that so too is the independence of the OIPC. Unlike all other Canadian jurisdictions, my position is not classified as an independent officer of the House of Assembly. Independence requires security of tenure and financial independence from those subject to oversight. In Nova Scotia, the Commissioner files her annual report with the House of Assembly but is required to seek budget approvals through the Department of Justice - a department over which she has oversight. This significantly undermines the perception and reality of the independence of the OIPC.

Despite the mandate to amend *FOIPOP*, the OIPC has not been briefed on the status of its implementation. In last year's annual report, the OIPC updated the 2017 special report entitled [Accountability for the Digital Age - Modernizing Nova Scotia's Access and Privacy Laws](#). We reviewed access and privacy laws across the country and detailed updates to 34 recommendations to modernize Nova Scotia's legislation. This was a substantial project that we spent a significant amount of time on - time that was taken away from our ability to focus on our backlog. We had hoped that by now, government would have proposed a bill to amend the legislation or at the very least, initiated consultations on legislative amendment. Unfortunately, that hope did not come to be. Access and privacy legislation can and should be fairly consistent across jurisdictions. There is no need to reinvent the wheel.

It is long past time that government make the right of access to information and privacy a priority in Nova Scotia and acknowledge that it has a duty to safeguard and implement the quasi-constitutional right of access to information. Transparency plays a critical and foundational role in democracy. Over the past few years, we have seen what can happen when the public perceives that its governments are not being transparent. The public may turn to unreliable sources of misinformation and disinformation. The best way to combat this is to build trust through an open and transparent government. The Nova Scotia Government must make a real, tangible commitment to Nova Scotians' access to information and privacy rights by sufficiently funding this office and by modernizing its outdated access and privacy legislation.

I am hopeful that 2023-2024 will be a year of repair and not one of repeat. The time for change is overdue.



Yours sincerely,  
Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia



# THE YEAR IN NUMBERS

Total Number of  
New Files

4445

We received **168** reviews and complaints and **277** files initiated by public bodies, municipalities and health custodians.

Education &  
Outreach



- 820** Inquiries
- 21** Media Requests
- 43** Speaking Engagements
- 5** New Tools



678

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.

84

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



83% of review files resolved informally





# Snooping



## *A Profound Violation of Personal Privacy*

This year, the OIPC concluded a multi-year investigation into a series of privacy breaches reported by Nova Scotia Health (NSH) with the release of [Investigation Report IR23-01](#).

Following the tragic mass casualty event that took place in Portapique, Nova Scotia, on April 18-19, 2020, NSH proactively monitored its employees' access to the electronic health records of people involved in or related to the tragedy. It found that eight employees had used their access to NSH's systems to look at these people's electronic health records without an authorized work-related reason to do so. NSH then conducted additional audits of these employees' access to electronic health records, which in some cases revealed even more breaches going back years and affecting additional people.

This behaviour of using work permissions to access electronic health records without a work-related reason has commonly become known as "snooping". Snooping occurs when someone uses the personal information that they have access to for work purposes for their own personal purposes. It doesn't matter if it is done out of curiosity, concern or for personal gain - it is snooping. Snooping is considered a privacy breach under Nova Scotia's *Personal Health Information Act (PHIA)*.

***By its very nature, snooping should never be considered "innocent".***

After the release of [Investigation Report IR23-01](#), Nunavut's Information and Privacy Commissioner released *Report 23-239-RR*.<sup>1</sup> The report explains that following a workplace incident, a doctor repeatedly looked at the complainant's electronic health records despite having no clinical relationship with the complainant and no work-related reason to look at the complainant's records.

The complainant objected to the use of the word "snooping" because they felt that term has a connotation of innocent curiosity. The complainant thought that the term "snooping" downplayed the violation of their privacy rights. The Nunavut Commissioner agreed and instead used the term "data intruder".

As the terminology evolves, it is critical to remember that regardless of whether or not there is malicious or targeted intent, looking at another person's health records without a work-related reason is a profound violation of personal privacy. By its very nature, snooping should never be considered "innocent".

***The Commissioner's recommendations were focused on NSH improving its culture of privacy so that its employees understand this behaviour is a profound violation of privacy and is a prosecutable offence under PHIA.***

The urge to look at people's electronic health records may be hard for some employees to resist. That is why it is so important for organizations to have policies that quickly catch snooping, denounce it and enforce penalties for staff that do it. [Investigation Report IR23-01](#) noted that while NSH had many measures in place to reduce the risk of employee snooping, it could do more to further reduce this risk in the future. The Commissioner's recommendations were focused on NSH improving its culture of privacy so that its employees understand this behaviour is a profound violation of privacy and is a prosecutable offence under *PHIA*.

At the time we publicly released [Investigation Report IR23-01](#), we also produced a tool that provides tips to prevent and address employee snooping called: [Tips for Addressing Employee Snooping](#).

<sup>1</sup> *NU Review Report 23-239-RR, Department of Health (Re), 2023 NUIPC 6 (CanLII)*.

# Regarding the Backlog

## An ongoing issue

The OIPC has a significant backlog of cases. We report on it year after year and the only thing that seems to change is that it grows. But, it did change slightly in 2022-2023. It may be leveling off.

Most of these are cases where a public body<sup>2</sup> or health custodian has 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. The other type of case is privacy complaints. This is when a person has filed a privacy complaint with a public body or health custodian and they are not satisfied with the response they received, so they asked our office to have a closer look. We have cases waiting to be assigned that were received as far back as 2019. In other words, it can take four years for applicants and complainants to have their requests for review and privacy complaints heard by our office.

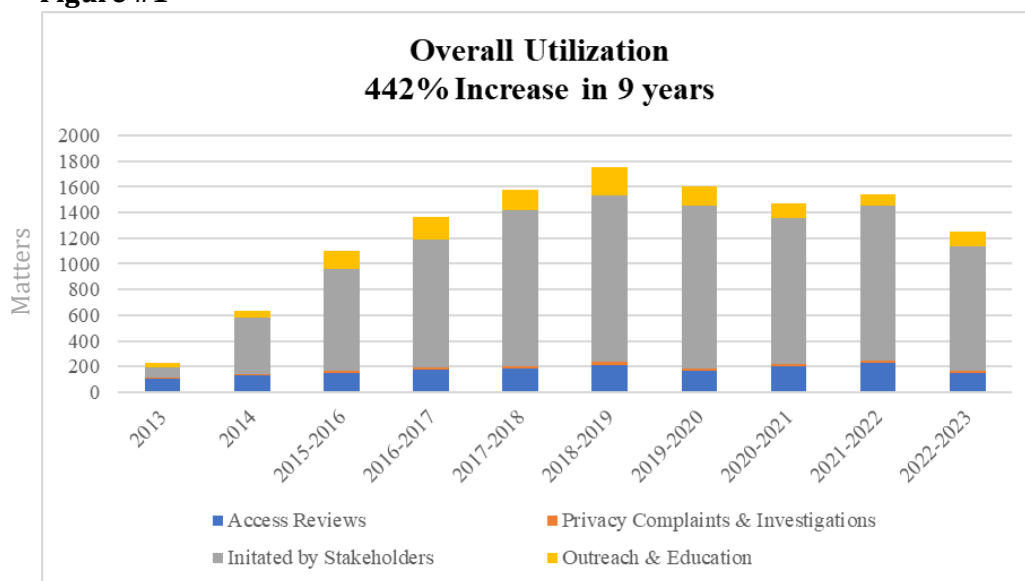
Our capacity reached a critical point many years ago. We have exceeded the limit of our

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 repeatedly 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 and significantly increased.<sup>3</sup> Figure #1 below demonstrates the overall increase since 2013, broken down by our statutory mandate areas.

**Figure #1**



<sup>2</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>3</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

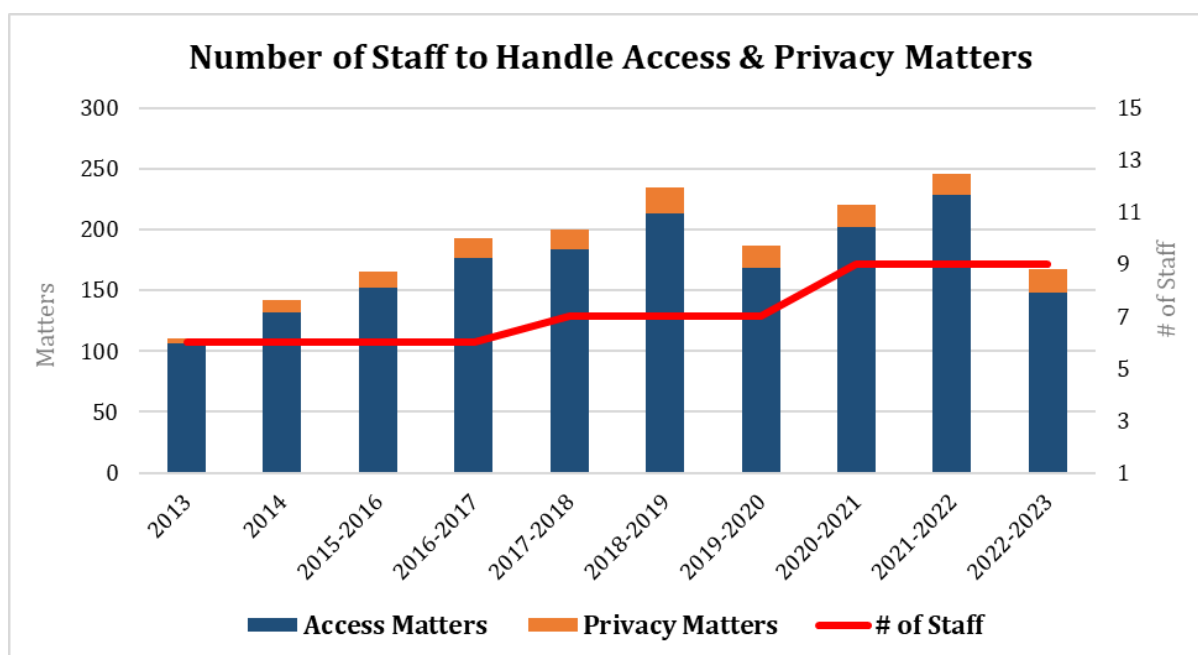
An example of an area where we have received a significant increase in requests from public bodies and health custodians is time extension requests. In 2013, we received 56 such requests. In 2021-2022, we received the greatest number of requests: 242 (a 332% increase in 8 years). We received less this year, only 181, which is still a lot. Investigators who are tasked with receiving, assessing and approving or denying these requests are not able to work on review or complaint files in the backlog.

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. We closed 213 review and complaint files this year, which may be an all-time record, compared to 178 in 2021-2022.

In terms of staffing, Figure #2 demonstrates the number of permanent OIPC staff in comparison

with the number of access reviews and privacy complaints we received per year. Since 2013, we have received approval for three additional positions: a senior investigator, an executive director and an assessment and awareness officer. We have nine staff, including the Commissioner.

Over the last three years, we asked for three more permanent investigators to repair the backlog. Unfortunately our requests were denied. However, the Nova Scotia Government loaned three temporary positions to us for two years. Those three term positions were filled in early 2022. It has been hard to monitor the impact. Due to the nature of term positions, we have lost the three original hires to full time employment elsewhere. We have also lost two other permanent staff. We are working to fill vacancies, but this is a time consuming, resource-heavy process. Absent additional permanent staffing, we anticipate that the backlog will continue to grow, and applicants will be waiting longer than ever for their independent and accessible mechanism of administrative justice.



# Quick Wins

## Informal Resolution Case Summaries

### Authorized exemptions only

An applicant requested access to the records a public body held about them. The public body released the records in part. In addition to severing information under s. 20 (personal information), the public body also withheld records saying they were “unreadable” and “duplicates”.



The OIPC explained to both parties that information on records can only be severed using exemptions in *FOIPOP*. There is no exemption in *FOIPOP* for information that is unreadable or duplicated. So, information cannot be withheld for those reasons. In response, the public body released the unreadable records to the applicant. The public body also showed the applicant which pages in the responsive records they received were the withheld duplicates.

**Lesson:** Information can only be withheld under authorized exemptions. Withholding information for any other reason is not authorized by *FOIPOP*.



### Video surveillance footage is a record like any other

An applicant requested video surveillance footage of an incident involving their child at a school. The public body withheld the footage in full claiming it could not be released because it contained images of other students so disclosure would be a breach of their privacy.

The OIPC explained to the public body that a whole record cannot be withheld because some of it contains information that should be redacted. Tools are available for purchase to allow portions of video surveillance footage to be blurred out (redacted). The public body purchased a program that could blur out the images of other students and released a redacted version of the footage to the applicant.

**Lesson:** If using video surveillance, a public body must also have the tools to blur images so that it can properly respond to an access request without invading the privacy of other individuals.

# Quick Wins

## Informal Resolution Case Summaries

### Judicial or quasi-judicial capacity?

An applicant requested access to all records about herself in the possession of a public body. The public body disclosed some records to the applicant but withheld others under s. 4 of *FOIPOP*. This section includes a list of records that are not accessible under *FOIPOP*. In this case, the public body claimed the records were outside the scope of access to information legislation because they were “a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity” (s. 4(2)(d)).

The OIPC reviewed the records and found that, given the specific content and relevant context, none of the withheld information related to or involved adjudicative actions. The OIPC suggested the public body withdraw its reliance on this exemption, which it did. The public body then disclosed the records to the applicant.

**Lesson:** Even when someone is acting in a judicial or quasi-judicial role, information about their non-adjudicative activities may not automatically be excluded from *FOIPOP*.



### A mere assertion of harm is not enough

In response to an access request, a municipality intended to disclose information related to a third party business. The third party objected to this proposed release and argued the information should be withheld because it would reveal business information that was supplied in confidence. The third party said disclosing the information could reasonably be expected to cause it harm.

Third parties sometimes find their business and other interests are at odds with access to information legislation. The only way the information can be withheld under Nova Scotia’s access to information legislation is if the information meets all three parts of a three-part test. The third part relates to harm.

In this case, the third party was only able to articulate a general worry that disclosing the requested information would in some way negatively impact its competitive position. It has been well established by courts, including the Supreme Court of Canada, as well as IPC’s across the country, that a general assertion of harm is not enough to meet the third part of the test. The third party must explain how the disclosure could reasonably be expected to harm its business interests. A mere assertion of harm is not enough.

Absent clear explanation, argument and evidence linking disclosure of the information to an identified harm in the legislation, the third party in this case did not meet its burden of proving the applicant had no right of access to the information. Following concession from the third party, the municipality upheld its original decision and disclosed the information to the applicant.

**Lesson:** A mere assertion of harm is not enough to establish the type of harms described in s. 481 of the *MGA*.



# Time Extension Requests

*FOIPOP* and the *MGA* require public bodies and municipalities to make decisions in response to access to information requests within 30 calendar days but also allow for time extensions in limited circumstances. If the circumstances exist, public bodies and municipalities can take up to 30 days more on their own accord, or for a longer period of time with the Commissioner's permission.

In November 2022, the Commissioner released updated *Time Extension Guidelines* and *Request Forms* for public bodies and municipalities to provide clarification on the circumstances under which she would consider time extensions beyond 60 days.<sup>4</sup>

The OIPC has also compiled these key points to assist with having a time extension approved. The guides and forms give more information, including how to present the requested information to the OIPC.

## Time extension requests for large volume of records & unreasonable interference - s. 9(1)(b) / s. 469(1)(b)

**TIP: This is a two-part requirement. Both a large volume of records and unreasonable interference with operations must be present.**

Requests should:

- be provided to the OIPC in a timely manner with all required fields on the form completed. The OIPC cannot approve extensions where the statutory deadline has expired.
- provide sufficient information to substantiate that the circumstances warrant a time extension. If insufficient information is provided, the time extension will not be approved.
- provide data supporting the size of the record for the file compared to the average record for the public body or municipality.

- include data supporting a spike in volume in the previous four months.
- provide a detailed explanation if the interference is due to non-volume circumstances (see the *Time Extension Guidelines* for examples).

## Time extension requests for consultation - s. 9(1)(c) / s. 469(1)(c)

**TIP: Mandatory and discretionary consultations are not the same. The request must demonstrate why a discretionary consultation justifies delaying the response to the applicant.**

Requests should:

- be for mandatory consultations, required by s. 22 of *FOIPOP* or s. 482 of the *MGA*. Mandatory consultations involve records where information may be withheld under the unreasonable invasion of privacy or the confidential business information exemptions (s. 20/480 or s. 21/481).
- explain why discretionary consultations are required before the public body or municipality can decide about providing access to the requested record.
- demonstrate that consultation packages were sent promptly, well before the statutory timeline elapsed, and show any follow-up that has been done so far.
- not be for consultations with staff in the same public body or municipality (e.g., legal counsel or program area).

There is a third circumstance where time extensions may be taken: if the applicant has not given enough detail. But, it is rarely used, so it has not been included here. There is information in the guides and forms if this situation arises.

If public bodies or municipalities need help completing the *Time Extension Request Form*, they can submit a consultation request to the OIPC using a [Consultation Request Form](#).

<sup>4</sup> The guidelines and forms are publicly available on our website: <https://oipc.novascotia.ca>.

# In the Supreme Court of Nova Scotia

*Parker Donham v. The Information and Privacy Commissioner for Nova Scotia, and the Attorney General for Nova Scotia, [2023 NSSC 87](#)*

In 2023, the OIPC's practice of accepting time extension requests was subject to judicial review.

The OIPC's long-standing practice has been to interpret the time extension provisions in *FOIPOP*<sup>5</sup> as permitting a public body to take a 30-day time extension of its own accord and then also permitting a public body to request a further time extension from the OIPC for a longer period. This means that a public body could take two time extensions when necessary. This practice is in line with other Canadian jurisdictions with similar wording in their laws.

In this case, the public body took a 30-day time extension but then found it still needed more time and so requested permission from the OIPC for a second time extension. The OIPC gave permission for the second time extension.



The applicant challenged the OIPC's ability to approve a second time extension because he thought the OIPC was misinterpreting the wording of s. 9(1) of *FOIPOP*. In his view, s. 9(1) must be interpreted as an either/or provision. In other words, the applicant thought that when public bodies are seeking time extensions, they can only do one of two things. Either, (1) take up to 30 additional days of their own accord, or (2) request permission from the OIPC for a longer time extension. His position was that the OIPC's practice of allowing public bodies to first take their own time extension and then also request a second time extension was inconsistent with the wording of *FOIPOP*.

*The Court said that the OIPC's decision to grant a second longer period time extension after the public body had already taken its initial 30-day time extension was "...justifiable, transparent and intelligible."*

The applicant's judicial review was dismissed. The Court said that the OIPC's decision to grant a second longer period time extension after the public body had already taken its initial 30-day time extension was "...justifiable, transparent and intelligible."

Timely access to information is of critical importance. After all, access delayed is access denied. For this reason, the OIPC carefully assesses time extension requests and only approves them when a public body can demonstrate that the circumstances set out in one of the time extension provisions in *FOIPOP* have arisen. If a public body cannot demonstrate this, the OIPC rejects the time extension request. The OIPC spends a significant amount of time responding to time extension requests - time that is taken away from tackling our backlog. A better use of everyone's time would be for public bodies to provide adequate resources to their access to information programs so that time extensions are needed less frequently.

*...the OIPC carefully assesses time extension requests and only approves them when a public body can demonstrate that the circumstances set out in one of the time extension provisions in FOIPOP have arisen.*

<sup>5</sup> The time extension provisions in the *MGA* are the same as those in *FOIPOP*. The OIPC interprets the time extension provisions in the *MGA* the same way it does for those in *FOIPOP*.



# *Privacy Breach Notifications*

## *Personal Health Information Act*

When there is a privacy breach of personal health information held by a health custodian, the *Personal Health Information Act (PHIA)* requires the health custodian to notify either the affected individual(s) or the Commissioner, depending on the circumstances of the privacy breach. Where the health custodian believes that as a result of the breach there is potential for harm or embarrassment, it must notify the affected individual(s) (a “s. 69 notification”). If the health custodian does not believe there is potential for harm or embarrassment, it may decide not to notify the individual(s) pursuant to s. 69, but is instead required to notify the Commissioner (a “s. 70 notification”).

Section 70 notifications are meant to cover those “minor” breaches that occur during the day-to-day activities of running healthcare organizations. Common examples include:

- Faxing personal health information to the wrong healthcare provider;
- Selecting the wrong patient from the patient registry database;
- Selecting the wrong physician from the physician provider database.

*Receiving s. 70 notifications allows the Commissioner to watch for trends indicating that systemic issues may be causing repeated similar privacy breaches.*

While these may not seem like particularly egregious privacy breaches warranting notification to affected individual(s), *PHIA* nevertheless requires health custodians to notify the Commissioner. Receiving s. 70 notifications allows the Commissioner to watch for trends indicating that systemic issues may be causing repeated similar privacy breaches. She can then open an investigation if the circumstances so warrant.



# Privacy Breach Notifications

## Personal Health Information Act

If a health custodian gives the affected individual(s) notice under s. 69, *PHIA* does not require the health custodian to give notice to the Commissioner. Nevertheless, the OIPC welcomes courtesy notifications from health custodians who have provided a s. 69 notification to the affected individual(s). The OIPC treats voluntary s. 69 notifications as privacy consultations and offers health custodians guidance and advice on managing the breach. Without a s. 69 notification to the OIPC of a privacy breach where there is potential for harm or embarrassment to the affected individual(s), the Commissioner has no knowledge of the nature of the privacy breach or the number of individuals affected.

As set out in the table below, this year the OIPC received 678 s. 70 notifications. These breaches affected at least 12,188 Nova Scotians. An emerging trend that the OIPC noticed this year was that some health custodians were incorrectly notifying the OIPC of a privacy breach under s. 70. Remember, s. 70 notifications are only to be used where the privacy breach does not create a potential for harm or embarrassment to the affected individual(s).

When the OIPC disagrees that notification should occur under s. 70, it rejects the s. 70 notification. This year, the OIPC rejected 14 s. 70 notifications. Reasons for the rejections included:

- Section 69 notification was provided to the affected individual because there was potential for harm or embarrassment. While the OIPC welcomes voluntary breach reports of s. 69 notifications, health custodians should not report them as s. 70 notifications.
- A health custodian meant to text personal health information to a physician but used the wrong number and sent it to an unknown non-healthcare professional. Sending an individual’s personal health information to a non-healthcare professional creates potential for harm or embarrassment to the affected individual and so requires notification to the affected individual under s. 69, not notification to the Commissioner under s. 70.
- The cause of the breach was intentional unauthorized access, or snooping. By its very nature, intentional unauthorized access requires a s. 69 notification to the affected individual(s).

### Section 70 notifications received by the OIPC where health custodians believed there was no potential for harm or embarrassment

	Dept. of Health and Wellness	IWK Health Centre	Nova Scotia Health	All Others	Total
# of notifications received	47	102	507	22	678
# of affected individuals	997	109	10,497	585*	12,188*
# of breach reports rejected by the OIPC	0	0	9	5	14

\*One notification did not specify how many individuals were affected. It merely stated it involved boxes of patient medical records. Because there was no number to include, this was recorded as “0” but likely affected 100s, if not 1000s, of individuals. The OIPC rejected this notification as it was not a minor breach. The OIPC suggested further investigation, including notification to all affected individuals, and offered to consult with the health custodian if needed.

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

April 1, 2023 – March 31, 2024

## 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>6</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 three most noteworthy were:

- We saw a substantial decrease in the acceptance rate of the Commissioner's recommendations - from 74% in 2021/2022 to 48% in 2022/2023.
- We saw a slight improvement in our informal resolution rate - from 79% in 2021/2022 to 83% in 2022/2023.
- The impact of the pandemic on our outreach efforts seems to be turning around. In 2022/2023 we interacted with 691 people, compared to just 537 in 2021/2022. We were just shy of our goal to reach 700 people.

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<sup>6</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>7</sup>

### 2022/2023 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 2021/2022. Information Access and Privacy (IAP) Services reported that in 2021/2022, government departments responded to access to information requests within 30 days 76% of the time. This is 2% 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 above 90%. Last year’s 76% 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>8</sup> and deemed refusals.<sup>9</sup> Time extension requests decreased by 34% in 2022/2023 and deemed refusal reviews decreased by 62%. These decreases are promising as they indicate that government is not taking as long when responding to applicants. 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.

### 2023/2024 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 will develop a strategy to communicate the right to know to citizens in Nova Scotia.
- **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	2021/22	2022/23	2023/24
1. Percentage of requests processed within 30 days by government departments.	Goal = 90% Outcome = 76%	Goal = 90% Outcome = not yet reported	Goal = 90%

<sup>7</sup> The most recent report available for Information Access and Privacy Services is the 2021/2022 Annual Report available at: <<https://beta.novascotia.ca/sites/default/files/documents/1-2551/information-access-and-privacy-services-annual-report-en.pdf>>.

<sup>8</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>9</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

### 2022/2023 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 2022/2023, we received 18 privacy complaints, which is 39% more than the baseline. This is a disappointing outcome.

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 just under 700 people with our education and outreach programs.

We offer a variety of services to public bodies and health custodians to assist them with privacy issues. This year, the following services were provided:

- 42 privacy consultations were completed.
- 7 voluntary breach reports were received and OIPC feedback was given.
- 2 privacy impact assessments were reviewed and OIPC feedback was given.

While the numbers above are almost the same as from 2021/2022 across the board, we still view this as being a good indicator that public bodies and health custodians are showing respect for privacy.

Despite the pandemic still impacting our ability to deliver training, we had five training sessions, attended by 71 people, both in-person and virtually.

In 2022/2023 we were a regular contributor for Doctors Nova Scotia’s newsletter. In addition, we also produced, or helped to produce, five privacy tools:

- [Tips for Addressing Employee Snooping](#)
- [Privacy at Home](#)
- [Privacy at Work](#)
- [Recommended legal framework for police agencies’ use of facial recognition - Joint Statement by Federal, Provincial and Territorial Privacy Commissioners](#)
- [Privacy guidance on facial recognition for police agencies](#)

### 2023/2024 Strategies

Next year’s focus is to produce guidance materials for public bodies and health custodians. In the last few years we had put training on pause because of both the pandemic and because we are not provided with enough human resources to fulfill this service requested by our stakeholders. This year, we will continue to offer training and produce tools. 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	2022/23	2023/24
2. Reduction in the number of privacy complaints received. (Baseline = 13)	Outcome = no change <sup>10</sup>	Goal = ↓20% <b>Outcome =</b> ↑39% <sup>11</sup>	Goal= ↓20%

<sup>10</sup> We received 13 privacy complaints in 2021/2022.

<sup>11</sup> We received 18 privacy complaints in 2022/2023.

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

#### 2022/2023 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 2022/2023, as safety precautions during the pandemic relaxed, we resumed some in-person activities, and continued to participate in the limited virtual sessions available. The effects of the pandemic were still present and the OIPC received less requests to attend and present at events hosted by other organizations. Our main message continued to be the need to modernize Nova Scotia’s legislation. We were able to share our message with about 691 individuals, which was just shy of our goal to reach 700. While we technically did not meet our goal, this was a success compared to 2021/2022, when we only reached about 75% of our goal.

#### 2023/2024 Strategies

We are optimistic that the pandemic will not have the same impact as the last three years on our ability have 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	2021/22	2022/23	2023/24
3. Total number of individuals who attend OIPC presentations in Nova Scotia. <sup>12</sup>	Goal = 700 Outcome = 537	Goal = 700 Outcome = 691	Goal = 700
4. Number of OIPC presentations, media articles and tools. <sup>13</sup>	Goal = 40 Outcome = 60	Goal = 40 Outcome = 58	Goal = 40

<sup>12</sup> Presentations include speeches, meetings, training sessions and public education sessions.

<sup>13</sup> Presentations include speeches, meetings, training sessions and public education sessions, not necessarily in Nova Scotia.



## Goal 4: Efficient and Effective OIPC Operations

### 2022/2023 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. In 2022/2023 we saw a notable decrease in new files and we also closed more files than we received. This is a promising trend, building on a slight turnaround started in 2021/2022. As a result, our backlog leveled off, which is progress.<sup>14</sup>

Noteworthy statistics from 2022/2023:

- We received 148 access reviews. This was 35% fewer than in 2021/2022. The last time we saw a number this low was 2015/2016.
- We closed 200 access reviews. This was 20% more compared to 2021/2022. This is the most files we have closed within a year.

*In 2022/2023 we saw a notable decrease in new files and we also closed more files than we received. This is a promising trend, building on a slight turnaround started in 2021/2022. As a result, our backlog leveled off, which is progress.*

In 2022/2023, we experienced multiple losses of staff resulting in vacancies and the need to hold job competitions which are very time consuming for staff. This definitely impacted our ability to work on files and reduce our backlog further. Nevertheless, we are confident we are headed in the right direction, and we are looking to have a full staff complement in 2023/2024.

*We closed 200 access reviews. This was 20% more compared to 2021/2022. This is the most files we have closed within a year.*

We had some success in resolving files without the need to go on to a public review report. This year our informal resolution rate was 83%, which is an improvement over our 79% informal resolution rate in 2021/2022. On the other hand, where review reports were issued, we saw a large decrease in public bodies' and health custodians' uptake of the Commissioner's recommendations. This year, the number of recommendations public bodies and health custodians accepted went from 74% in 2021/2022 to 48%. This is unfortunate. We were optimistic that the trend we saw the previous year would continue. We 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 and will continue to advocate for the laws to be modernized to fix this weakness.<sup>15</sup>

<sup>14</sup> See pages 10-11 of this Annual Report for more information about our backlog.

<sup>15</sup> See pages 8-22 of our [2021-2022 Annual Report](#) for more information about weaknesses that need to be repaired, not repeated.



## Goal 4: Efficient and Effective OIPC Operations

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. 2022/2023 was the first year we received a training budget. We were able to offer staff a variety of learning and development opportunities related to:

- specialized training for OIPC investigators;
- administrative justice;
- project management, change management and work process improvement;
- respectful workplace;
- team building and management;
- time management and productivity;
- workplace health, safety and wellness;
- diversity, culture, heritage and language;
- orientation, career and retirement.

### 2023/2024 Strategies

We will continue our strategies of regular case file reviews, team meetings and staff training. We will also continue to examine our processes for opportunities for improvement.

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 reviews the legislation.<sup>16</sup> We had expected this to have been completed in 2022/2023, but as far as we know, it has not started. We are hopeful that 2023/2024 will be a year of repair and not one of repeat. The time for change is overdue.

Performance Measure	2021/22	2022/23	2023/24
5. Percentage of access and privacy inquiries that receive a response within two days. <sup>17</sup>	Goal = 98% Outcome = 99%	Goal = 98% Outcome = 98%	Goal = 98%
6. Percentage of reviews ( <i>FOIPOP</i> , <i>MGA</i> and <i>PHIA</i> ) that are resolved informally. <sup>18</sup>	Goal = 85% Outcome = 79%	Goal = 85% Outcome = 83%	Goal = 85%
7. Percentage of review report recommendations accepted by public bodies and municipalities.	Goal = 65% Outcome = 74%	Goal = 65% Outcome = 48% <sup>19</sup>	Goal = 65%

<sup>16</sup> In 2021, the Minister of Justice was given a [mandate](#) to amend *FOIPOP* to give the Commissioner order-making power.

<sup>17</sup> 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 2022/2023 we responded to 799 of 814 inquiries within two days.

<sup>18</sup> Mediation, informal resolution, screened and withdrawn cases are included in this category. In 2022/2023, 166 of 200 *FOIPOP*, *MGA* and *PHIA* reviews were resolved informally.

<sup>19</sup> Between April 1, 2022 and March 31, 2023, the Commissioner issued 11 review reports that related to 14 files. In total, the Commissioner made 21 recommendations of which 10 were accepted and 11 were rejected.

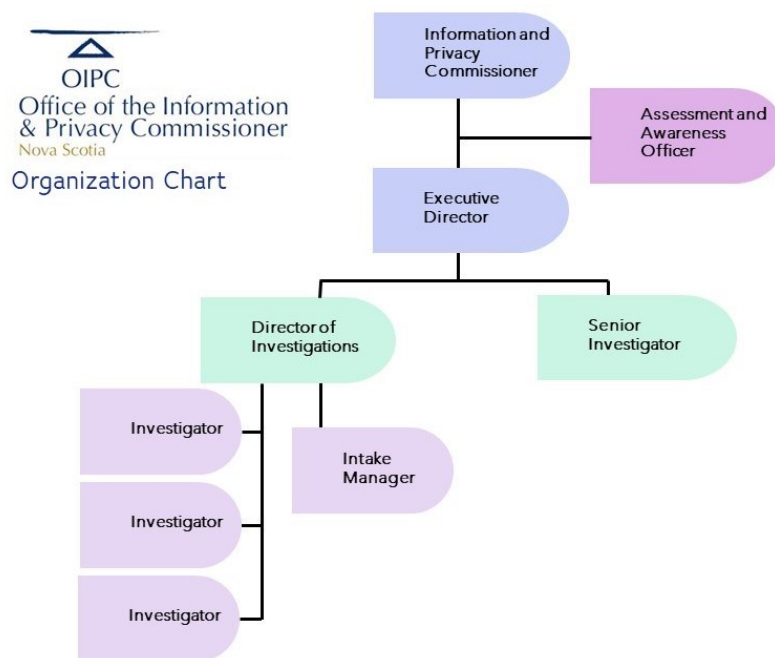
# Annual Report Statistics

## 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	141	7	148	193	7	200
<b>Privacy Complaints</b>						
Privacy complaints received	10	8	18	5	8	13
Commissioner own-motion	2	0	2	1	1	2
<b>Files Initiated by Public Bodies</b>						
Breach notifications	4	3	7	3	1	4
Privacy impact assessments	2	0	2	2	0	2
Access and privacy consultations	59	25	84	59	25	84
Time extension requests	181	0	181	180	0	180
Late transfer requests	3	0	3	3	0	3
Disclosures without consent to researcher		10	10		10	10
Breaches with no potential for harm or embarrassment		678	678		678	678
Prescribed entity's information practices		0	0		0	0
<b>Outreach and Education</b>						
Inquiries	690	130	820	690	130	820
Media requests	12	9	21	12	9	21
Speaking engagements	36	7	43	35	7	42
Public education	2	0	2	0	0	0
Staff training and conferences	26	0	26	25	0	25
Tools made available	5	0	5	2	1	3
Committees	6	2	8	6	2	8
Projects	5	2	7	4	2	6
Other	6	2	8	5	1	6
<b>Total</b>	1190	883	2073	1225	882	2107

## Budget History and Organizational Chart

Budget History (for FOIPOP, MGA and PRO)			
Category	Forecast for 2023-2024	Actual for 2022-2023	Actual for 2021-2022
Salaries and Benefits	1,018,000	1,232,909	1,007,467
Travel	9,000	6,093	0
Professional/Special Services	6,000	10,806	1,413
Supplies and Services	35,000	23,271	21,369
Other	123,000	111,323	60,381
Adjustments <sup>20</sup>	0	(256,788)	(130,491)
Total Budget Spent	1,191,000	1,384,402	1,090,630
Total Budget Given	1,191,000	1,150,000	957,000
% of Budget Spent	100%	117%	114%



\*Please note that our office has received three two-year term investigator positions. They started in early 2022 and will end at the end of 2023. Because the positions are loaned by the Province of Nova Scotia, they do not affect our staffing count (nine permanent staff, including the Commissioner) or our budget.

<sup>20</sup> Adjustments is the transfer of funds received from three departments to cover the three two-year term positions that were loaned to the OIPC. Because these were loaned, the costs associated with their salaries and benefits were not allotted to our budget; they were paid by the departments.

**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 2022/2023</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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