



**OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER**

NEWFOUNDLAND AND LABRADOR



**Business Plan
2011 – 2014**

Message from the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner of Newfoundland and Labrador is accountable to the House of Assembly of the Province and to the people of Newfoundland and Labrador.

This Business Plan has been prepared in accordance with Government's commitment to accountability as outlined in the *Transparency and Accountability Act* (the "Act"). The Act provides the legislative framework for strengthening accountability of government entities through multi-year performance-based plans and annual performance reports that are presented to the House of Assembly.

It will allow us to shape and measure our performance and our goals for the current year and will serve as a foundation for the future.

Our Office has been designated a Category 2 Government Entity under the *Transparency and Accountability Act*. As such, we are required to prepare a business plan that sets a clear direction for our activities for the next three years, taking into account the legislative framework and mandate as well as our resources.

Our Office continues to have ongoing responsibility for the *Access to Information and Protection of Privacy Act* (*ATIPPA*). The access provisions of the *ATIPPA* were proclaimed in January 2005 and the privacy provisions proclaimed January 2008.

In addition, the new *Personal Health Information Act* (*PHIA*) was passed through the House of Assembly in June 2008. The Office of the Information and Privacy Commissioner will be the oversight body for this legislation. *PHIA* was fully proclaimed into force on April 1, 2011. We continue to cope with our current workload level, however, our ability to achieve the goals identified in this Business Plan as it relates to the additional demands required by the *PHIA*, will be directly proportional to the level of resources of the Office.

Our Office, its organization and resources will continue to be aware of the changing access and privacy environment as well as emerging issues related to personal health information and will monitor related issues as we move forward.

As the Information and Privacy Commissioner, I recognize my obligation under the *Transparency and Accountability Act* and I am accountable for the preparation of this Plan and for the achievement of the goals and objectives contained therein.

A handwritten signature in black ink, appearing to read 'E. P. Ring', is written over a long, thin horizontal line that extends to the right.

Edward P. Ring
Information and Privacy Commissioner

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OVERVIEW

The Office of the Information and Privacy Commissioner became fully operational and opened to the public on January 17, 2005. The Office was created by statute, *The Access to Information and Protection of Privacy Act (ATIPPA)*, which was proclaimed on January 17, 2005 for the access provisions. The privacy provisions were proclaimed on January 16, 2008.

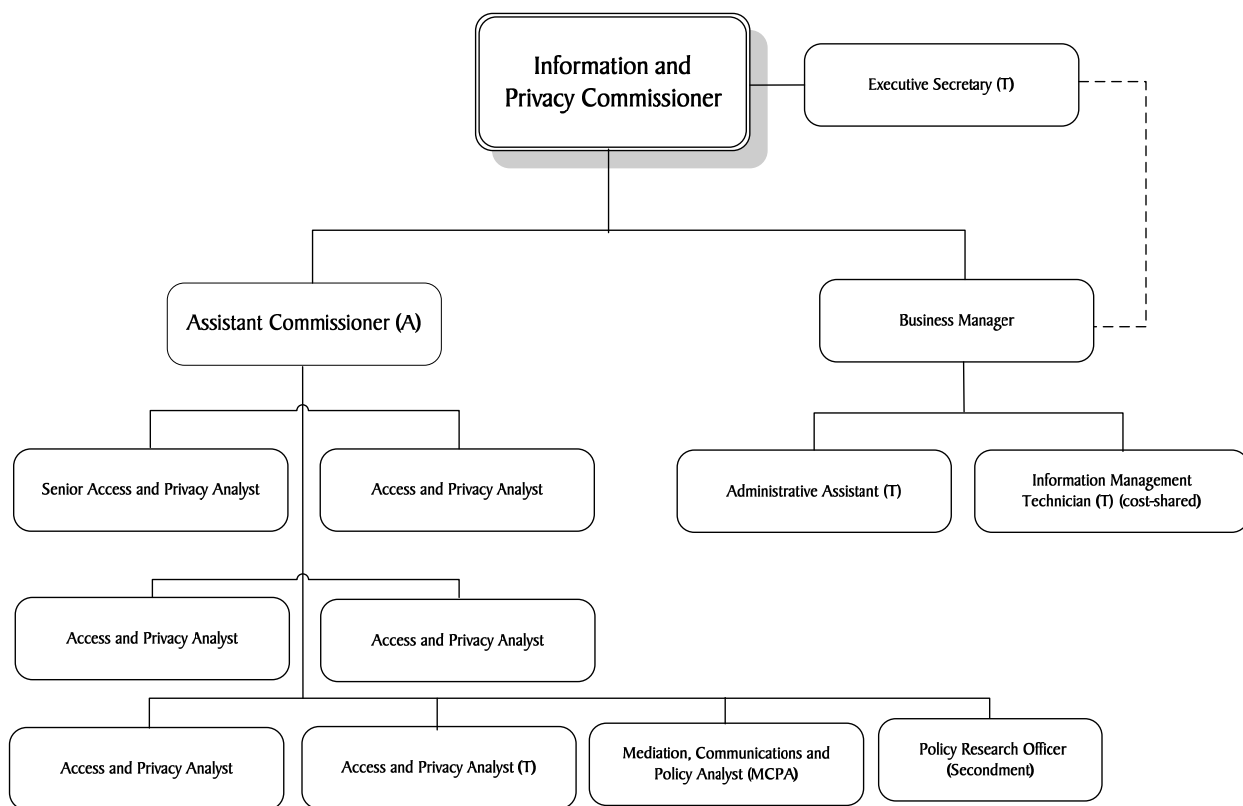
The current Information and Privacy Commissioner, Edward Ring, was appointed to the position of Acting Information and Privacy Commissioner on December 17, 2007 and his appointment was confirmed by resolution of the House of Assembly on April 10, 2008. Mr. Ring was subsequently appointed as Acting Information and Privacy Commissioner on April 10, 2010. On June 24, 2010 Mr. Ring was re-appointed as Information and Privacy Commissioner for a further term of two years.

The Commissioner is an independent Officer of the House of Assembly and reports directly to the Legislature through the Speaker of the House. The staff of the Information and Privacy Commissioner are members of the Public Service, Government of Newfoundland and Labrador.

The Office of the Information and Privacy Commissioner was created pursuant to Part IV.1 of the *ATIPPA*. The Office has oversight responsibilities under the *ATIPPA* and *PHIA*.

Under *ATIPPA*, the Office is responsible for protecting and upholding access to information and protection of privacy rights. The *ATIPPA* provides individuals with the right of access to information in the custody or control of public bodies, including provincial government departments, Crown corporations, municipalities, and health care and education bodies. The privacy provisions (Part IV) ensure that appropriate protocols are in place for the collection, use and disclosure of personal information by public bodies. There are approximately 460 public bodies that are responsive to *ATIPPA*. Under *PHIA*, the Office is responsible for upholding and protecting the access to personal health information and the protection of privacy rights of citizens. There will be thousands of custodians of personal health information that will be responsive to *PHIA*.

For the year ending March 31, 2012, the annual budget for the Office is \$1,204,400. Our website, www.oipc.nl.ca provides general information about this Office, instructions on how to submit a Request for Review and copies of our Reports in pdf format. In addition, our website contains appropriate forms and other resources as well as links to the legislation, fee schedule and all provincial and federal oversight offices, table of concordance, privacy policy, polices and procedures manual, inter-jurisdictional cooperation, list of annual events, eg. Right to Know Week, Data Privacy Day.



The Office has a total of 14 staff including: the Commissioner, one Assistant Commissioner, one Senior Access and Privacy Analyst, five Access and Privacy Analysts (4 permanent and 1 temporary), one Mediation, Communications and Policy Analyst, one Policy Research Officer, one Business Manager, one Administrative Officer, one Administrative Assistant, and one Information Management Technician.

The House of Assembly Management Commission approved the budget of \$1,204,400 for the Office of the Information and Privacy Commissioner for fiscal year 2011-2012. The details are noted below:

Salaries	\$887,200
Employee Benefits	\$18,800
Transportation and Communications	\$79,700
Supplies	\$16,300
Professional Services	\$95,000
Purchased Services	\$102,400
Property, Furnishings and Equipment	\$5,000
TOTAL	\$1,204,400

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MANDATE

The mandate of the Office of the Information and Privacy Commissioner is derived from the provisions of the *ATIPPA* and the *PHIA* and includes:

Under *ATIPPA*:

- giving the public a right of access to records;
- giving individuals a right of access to, and a right to request correction of, personal information about themselves;
- preventing the unauthorized collection, use or disclosure of personal information by public bodies;
- providing for an independent review of decisions made by public bodies under the *ATIPPA*;
- reviewing a decision, act or failure to act of a public body that relates to an access request or a request to correct personal information;
- investigating complaints about an extension of time for responding to a request or a fee required under the *Act*;
- making recommendations to ensure compliance with the *Act* and regulations;
- informing the public about the *Act*;
- receiving comments from the public about the administration of the *Act*;
- commenting on the information and privacy implications of proposed legislation and programs;
- commenting on the implications of record linkages and information technology on the protection of privacy;
- informing the head of a public body about a failure to adequately assist an applicant;
- making recommendations to public bodies or the minister responsible for this *Act* about the administration of the *Act*.

Under *PHIA*

- review a decision, act or failure to act of a custodian that relates to an access request for personal health information or a request for correction of personal health information;
- review complaints where an individual believes on reasonable grounds that a custodian has contravened or is about to contravene a provision of this *Act* or the regulations in respect to his or her personal health information or the personal health information of another;
- make recommendations to ensure compliance with the *Act*;
- inform the public about the *PHIA*;
- receive comments from the public about matters concerning the confidentiality of personal health information or access to that information;
- comment on the implications for access to or confidentiality of personal health information of proposed legislation schemes or programs or practices of custodians;
- comment on the implications for the confidentiality of personal health information of using or disclosing personal health information for records linkage or using information technology in the collection, storage, use or transfer of personal health information.

LINES OF BUSINESS

In delivering its mandate, the Office of the Information and Privacy Commissioner provides the following lines of business.

Investigations

The Office reviews decisions, acts or failures to act by heads of public bodies at the request of applicants and third parties, with respect to access to information requests. The Office also investigates decisions to extend the timeframe to respond to access requests and decisions with respect to fees charged by public bodies for access to records. The Office also conducts reviews into the failure or refusal by a head of a public body or custodian to correct personal

information or personal health information that is in its control or custody. The Office will conduct investigations based on complaints from citizens relating to the collection, use or disclosure of personal information and personal health information by a public body or custodian. Additionally, the Office will conduct comprehensive investigations into significant privacy breaches at the request of a public body or custodian or as deemed appropriate by the Commissioner.

Public Education

The Office ensures that the public is aware of its rights to access information and personal health information and is aware of how it can exercise those rights. The Office maintains a large amount of information on its website for this purpose. As appropriate, the Office informs the public about these rights through public commentary and education programs aimed at explaining the administration and operations of the *ATIPP*, the *PHIA* and our Office.

Oversight

The Office acts as an oversight body and comments on the implications for access to information or for protection of privacy of proposed legislative schemes or programs of public bodies and custodians.

VALUES

The OIPC has been in existence for six years. The initial priority of this Office was to build an awareness of access to information principles and best practices both within provincial government institutions and within the larger public body sector. We also needed to build our own capacity within this Office including basic knowledge of the legislation, and of our general role and activities plus the key role of accessing and interpreting the relevant judicial and Commissioner rulings and precedents. The challenges in this latter area are many as there has been a worldwide expansion in laws covering access to information and privacy issues. In addition, there are growing challenges related to the changing environment of information technology, and the rapid expansion of surveillance practices throughout the world. It is a significant challenge for this Office to be aware

and to be current on all advances in the information management field in order to provide citizens of Newfoundland and Labrador with the appropriate and best available assistance as they exercise their rights under the *ATIPPA* and the *PHIA*. These challenges will be significant especially in light of emerging technologies and the development of electronic health records.

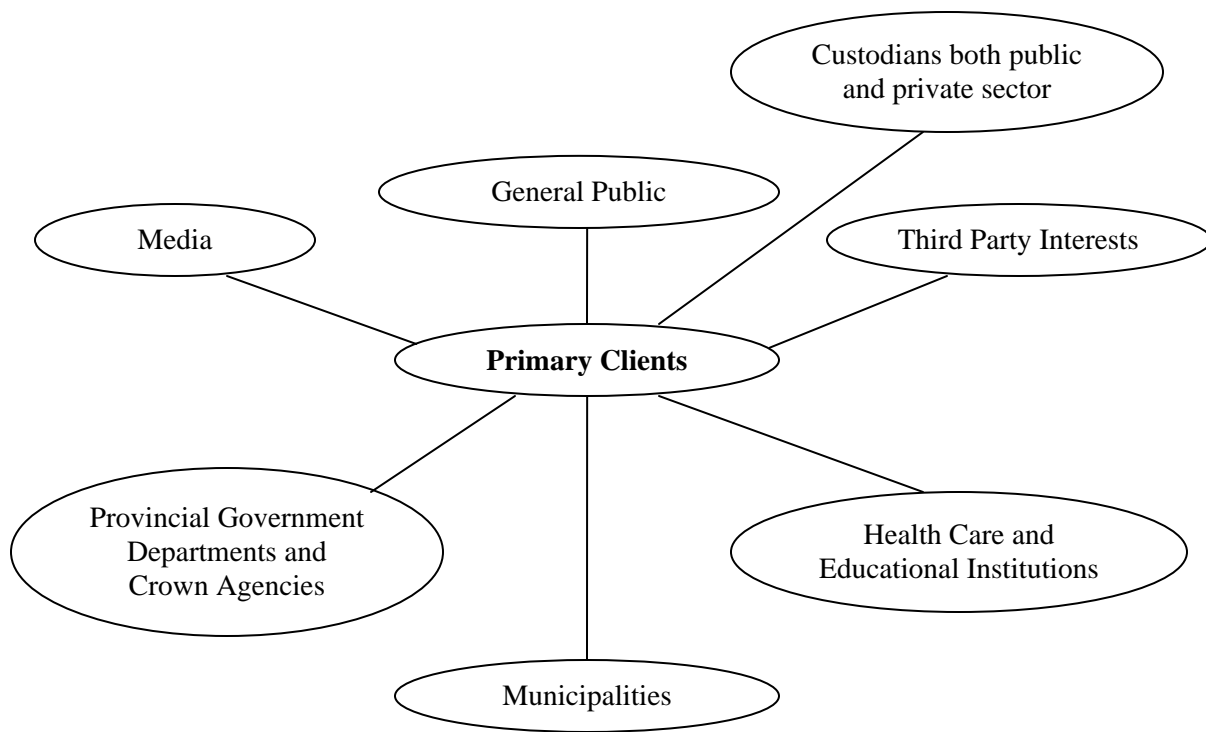
We have made good progress in this area early on in our mandate. Our main focus has been dealing with requests from the public for reviews of decisions by public bodies. The volume of these requests has increased over the past number of years. We have also taken considerable time to provide advice and assistance to public bodies on access and privacy related issues. We have promoted education and awareness to the general public through presentations, preparation of brochures and media contact.

This Office values our role as an independent supporter and advocate for the access to information and protection of privacy rights of the citizens of the Province. Every effort is taken to ensure our integrity such that we are trusted by those we serve, as well as by public bodies and custodians who are bound by the laws we oversee. The following actions flow from these value statements and will guide the Office as we move forward.

Value	Action Statements
Independence	Each individual will conduct investigations independent of any influence.
Integrity	Each individual will ensure the provision of accurate, unbiased advice and recommendations.
Confidentiality	Each individual will exercise absolute confidentiality in accordance with the <i>ATIPPA</i> and <i>PHIA</i> .
Judgment	Each individual will use their professional knowledge and judgment in interpreting policies, practices and procedures to ensure compliance with the <i>ATIPPA</i> and <i>PHIA</i> .
Respect	Each individual listens to and considers the ideas and opinions of others and works collaboratively to achieve results.

PRIMARY CLIENTS

The Office of the Information and Privacy Commissioner defines its primary clients as those individuals who are the principle beneficiaries of the services which it provides. These clients are made up of several groups – those public bodies and custodians which have information and personal health information and those people or groups which have rights to access that information. They include the following:



VISION

Our vision is one where public bodies and custodians operate in a fashion that is transparent and accountable to the people, always in consideration of the privacy rights of the citizens of Newfoundland and Labrador.

MISSION

The mission statement of the Office of the Information and Privacy Commissioner outlines the priority focus over the next planning cycle. It represents our plan for the future and identifies various measures and indicators which will assist in the monitoring and evaluation process.

Mission: By 2017, the Office of the Information and Privacy Commissioner will have improved the capacity and effectiveness of the Office such that the citizens of the Province enjoy the full measure of the access to information and personal health information as well as the privacy rights which are guaranteed by the *Access to Information and Protection of Privacy Act* and the *Personal Health Information Act*.

Measure: Improved capacity and effectiveness of the Office to provide service and support decisions.

Indicators:

- Reduced timeframes to conduct access reviews, increased number of informal resolutions and published review reports and recommendations.
- Increased awareness initiatives.
- Developed ability to deal with privacy complaints and personal health information breach complaints.
- Improved investigative methodology and continued with the development and production of a comprehensive policy and procedures manual to guide the work of the Office as it relates to *ATIPPA* and developed investigative methodologies to cater to *PHIA* issues.
- Researched and developed comprehensive policies and procedures to guide the work of the Office as it relates to the *PHIA*.
- Identified all governing bodies, colleges, boards and/or associations for the major custodian groups under *PHIA*.

- Conducted liaison/consultation and education meetings with the governing bodies/associations.
- Enhanced and updated the OIPC website as *PHIA* issues develop and mature.
- Enhanced and/or introduced follow-up for 2011 ATIPP public body survey.

ISSUES

Issue 1 – *Personal Health Information Act*

Under the *ATIPPA*, the Commissioner's office attempts to resolve requests for review under Section 43 or complaints under Section 44 informally to the satisfaction of the applicant and the public body. Where an informal settlement is not successful within 30 days of receipt of the request, a formal review is conducted with a requirement that it be completed within 90 days of the request and a report is issued.

For fiscal year 2009/2010 there was a total of 164 reviews and investigations involving access to information. There were 26 active privacy investigation files for the same period. For fiscal year 2010-2011 up to February 21, 2010 there were 161 reviews and investigations involving access to information. For the same period there were 34 active privacy investigation files.

Meeting the legislated timeframes in the *ATIPPA* has been a major challenge in many cases, especially those which require the examination of literally thousands of documents and/or the utilization of specialized knowledge of access law, practices and technology. In such cases, applicants have been understanding, however it is not desirable to experience excessive delays in the process and every effort is being taken to improve our timelines for file closure. As our workload increases, additional resources will indeed be required to achieve this goal. This is particularly relevant now, with *PHIA* being fully proclaimed on April 1, 2011. There will be thousands of custodians responsive to this legislation, both public and private sectors. The OIPC will be the oversight body legislated to ensure compliance with this legislation.

Accessing information and providing the review mechanism to applicants in a timely fashion, as well as ensuring compliance with the privacy provisions of *ATIPPA* and *PHLA*, is key to enhancing public awareness and confidence about accountability and transparency. Delays, particularly on the review side, could result in diminished respect for the Office of the Information and Privacy Commissioner. Delays also impact on the fundamental right to know of the people of the Province. A further source of delay is due to a successful court challenge by the provincial government, Newfoundland and Labrador (Attorney General) vs. Newfoundland and Labrador (Information and Privacy Commissioner), 2010 NLTD31. The result of this decision is that public bodies are no longer required to provide records to this Office for the purpose of conducting an access to information review if the public body claims the records are covered by solicitor-client privilege. An increasing number of files are now being held in abeyance because this decision has eliminated the possibility of informal resolution of those matters, which is how most files are closed quickly and efficiently. Furthermore, it appears likely that if this decision stands, it may become routine for the Office to resort to the courts to adjudicate every claim of solicitor-client privilege, thus adding further to delays which have already accumulated. An appeal, by this Office, of the decision is tentatively scheduled for June 10, 2011.

It should be emphasized that unless a favourable decision is rendered on appeal, the result will likely be that the majority of files where there has been a claim of Section 21, will be concluded with a formal report rather than informal resolution, which will involve a much greater time period for file closure than would be the case with informal resolution.

The Office continues to be challenged to deal with the number of access requests, complaints and privacy files, even though during the past two years, the House of Assembly Management Commission have provided a number of staff as a result of the increased workload of the Office. We continue to deal with a carry over of files from one year to the next. These carry over file numbers appear to be stabilizing as a result of the additional staff. The carry over is mainly due to the legislation maturing and along with that, some applicants have become more sophisticated in their use and understanding of the *ATIPPA*, resulting in access requests that are much more complicated, and consequently result in more complex investigations.

Additionally, privacy breach investigations continue to increase. At this point, we can only speculate on the level of workload activity that will result from the proclamation of *PHIA*. However, based on our research with other jurisdictions in this country that have been dealing with personal health information for years and based on expert opinion from these jurisdictions, it is likely that *PHIA* could result in approximately 40-50% of our Office workload being required to deal with issues resulting from that legislation.

Goal: By March 31, 2014, the Office of the Information and Privacy Commissioner will have assessed the magnitude of the *PHIA* workload requirements and will have developed internal processes to deal with the requirements to provide services.

Measure: Assessed the magnitude of the *PHIA* workload requirements and will have begun development of internal processes to deal with the requirements to provide services.

Indicators:

- Developed increased capacity of the Office.
- Developed processes for monitoring *PHIA* related activity.
- Resolved both *ATIPPA* and *PHIA* requests for review and complaints to the extent possible, by informal resolution.
- Developed a *PHIA* policies and procedures manual.

Objective 1: By March 31, 2012 the Office of the Information and Privacy Commissioner will have developed preliminary policies and procedures to guide and enhance the work of the Office as it relates to *PHIA*.

Indicators:

- Jurisdictional search conducted with other jurisdictions who have responsibility for personal health information legislation.

- Compiled and reviewed all material gathered as a result of jurisdictional scan, including best practices.
- Conducted periodic staff sessions to identify and discuss policy and procedure needs necessary to deal with *PHIA* requests, complaints and privacy breaches.
- Appointed lead person to undertake this initiative.
- Held a series of staff discussions to improve proposed policies and procedures followed by a series of decision meetings.
- Initiated action to compile the draft *PHIA* policy and procedures into a manual.

Objective 2: By March 31, 2013 the Office of the Information and Privacy Commissioner will have continued work on the draft *PHIA* policy and procedures manual.

Objective 3: By March 31, 2014 the Office of the Information and Privacy Commissioner will have completed and published its *PHIA* policy and procedures manual.

Issue 2 – Public Education

During the several year period leading up to the proclamation of the access provisions of the *ATIPPA*, and a similar period prior to the proclamation of the privacy provisions of the same *Act*, the Department of Justice, the department responsible for the administration of this *Act*, conducted training programs aimed at public bodies covered by the *ATIPPA*. In addition, a comprehensive policy and procedures manual was prepared and distributed to those public bodies. The Department of Health and Community Services, the Department responsible for the administration of the *PHIA*, created a number of tools and resources to assist custodians in becoming *PHIA* compliant, as well as developed resources for custodians to educate themselves and train their staff.

This Office has been very supportive of these education and awareness programs and encourages both Departments to continue their initiatives in this regard and to conduct program reviews and where necessary, upgrade their training programs as well as their policy and procedures manuals and resources.

This Office takes its responsibility to educate the public about both the *ATIPPA* and the *PHIA* very seriously. Significant effort and resources have been expended by our Office to ensure, to the extent possible, that the citizens of the Province have received adequate and timely information on the *ATIPPA*. We will approach our public education mandate under *PHIA* with equal enthusiasm and effort.

Goal: By March 31, 2014, the Office of the Information and Privacy Commissioner will have undertaken initiatives to educate and inform the public on the *PHIA* and the role and function of the OIPC and continue our education initiatives on the *ATIPPA*.

Measure: Undertaken initiatives to educate and inform the public.

Indicators:

- Maintained the number and type of presentations/meetings conducted compared to the previous reporting period.
- Encouraged greater participation at education sessions.
- Analyzed feedback received from the general public.
- Maximized the number of opportunities to participate in various media forums (radio, TV, print media, etc.).
- Launched initial brochure mail out initiative.

Objective 1: By March 31, 2012 the Office of the Information and Privacy Commissioner will have completed as many presentations/meetings as possible on both *PHIA* and *ATIPPA* in various locations throughout Newfoundland and Labrador.

Measure: Will have completed as many presentations/meetings as possible.

Indicators:

- Tracked the number of presentations/meetings completed.
- Analyzed feedback of information received.

- Tracked the number of requests for presentations/meetings received.
- Launched brochure mail out initiative.

Objective 2: By March 31, 2013 the Office of the Information and Privacy Commissioner will have continued to accomplish its goal of conducting briefings/meetings in various locations throughout Newfoundland and Labrador.

Objective 3: By March 31, 2014 the Office of the Information and Privacy Commissioner will have continued to accomplish its public education program and will have identified further locations/opportunities/organizations to be targeted for educational purposes.

Issue 3 – Stakeholder Engagement

During the past several years significant efforts have been made to interact and engage with the ATIPP Coordinating Office of the Department of Justice and with public bodies under the *ATIPPA*, particularly the larger government departments and agencies. This effort has proven to be successful and has contributed to a slowly emerging environment of collaboration and cooperation between the major public bodies under the *ATIPPA*. To some degree, this collaboration has contributed to the development of protocols and procedures at the applicant/complainant, public body and OIPC levels that have contributed to clearer and more open lines of communication. This communication and collaboration has contributed to the maturity of the legislation as well as to the maturity of the associated processes. Much of the detail surrounding the above developments have been reflected in the comprehensive OIPC submission during the *ATIPPA* legislative review that occurred between January – November 2010.

It is the intention of the OIPC to engage the custodian groups under the *PHIA* even more extensively because they are much greater in number, and the Department of Health and Community Services will not be providing the coordinating role with *PHIA* to the same extent as the Department of Justice does for the *ATIPPA*. Additionally, we plan to open dialogue, discussion and consultation with the governing bodies of the custodian groups, whether they be colleges, associations or boards. As a result of these deliberations, it is hoped that the lines of communication and contact points can be established between custodians, governing bodies and the OIPC.

Goal: By March 31, 2014, the Office of the Information and Privacy Commissioner will have researched, identified and implemented processes to engage and consult with all custodian group governing bodies/associations under the *PHIA* and continued its liaison and collaboration with public bodies under the *ATIPPA*.

Measure: Researched, identified and implemented processes to engage and consult with all custodian group governing bodies/associations under the *PHIA* and continued liaison and collaboration with public bodies under the *ATIPPA*.

Indicators:

- Co-hosted a major conference in Newfoundland and Labrador focused primarily on *ATIPPA* but will contain significant *PHIA* content.
- Identified and met with all custodian group governing bodies/associations under *PHIA*.
- Met with major custodians under *PHIA*.
- Engaged in presentations, panels, discussions as possible with custodians.
- Tracked and analyzed feedback from custodians and major custodian groups and public bodies.

Objective 1: By March 31, 2012 the Office of the Information and Privacy Commissioner will have initiated action to identify and meet with custodian governing bodies/associations.

Measure: Will have initiated action to identify and meet with custodian governing bodies/associations.

Indicators:

- Conducted discussions/meeting with fifteen governing bodies.
- Analyzed feedback received.

Objective 2: By March 31, 2013, the Office of the Information and Privacy Commissioner will have conducted twenty meetings with major custodian group governing bodies and where necessary, with custodians and public bodies.

Objective 3: By March 31, 2014, the Office of the Information and Privacy Commissioner will have completed meetings/discussions with all identified custodian group governing bodies and a large number of individual custodians and public bodies.