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“The manner in which public bodies respond to our involvement is a key factor in how the public measures the true commitment of the government and its agencies to the principles and spirit of the legislation.”

**OIPC
Annual Report
2009-2010**

ABOVE BOARD

A QUARTERLY NEWSLETTER PUBLISHED BY THE
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This fourth edition of our newsletter marks our first of 2012. This will be the last time we will be doing a blanket mail out of hard copies of this newsletter. Future editions will be produced in electronic form and sent by e-mail, as well as posted on our site. We know that some of you are unable to access the newsletter online, so we ask that you let us know if you wish to continue receiving a hard copy version of the newsletter in the future, and we will ensure this happens.

This edition offers summaries of two recent OIPC Reports, updates on the Right to Know Week 2011 Essay Competition, Data Privacy Day 2012, our Office's new Twitter account, as well as the regular features (Council Corner, Access and Privacy News, and an updated Resource List).



Summary of OIPC Reports

Report A-2011-015 - The Applicant applied to the College of the North Atlantic (“the College”) for access to e-mail records containing references to herself and to another individual. The request was accompanied by a letter of authorization from that individual. The College disclosed a number of records, some of which it had severed claiming several exceptions to disclosure. The Applicant asked the Commissioner to review the severing. A number of issues were resolved through informal resolution. However, it was discovered that the College had withheld records from the Applicant on the basis that since they had been sent to or from the Applicant, the Applicant could be presumed to already have them. The fact that those records had been withheld was not communicated to the Applicant, nor to this Office. The Commissioner concluded that there was no basis under the *ATIPPA* for this approach to records that were sent to or from an applicant. The Commissioner also concluded that by failing to disclose its actions to either the Applicant or to this Office, the College had failed in its duty to assist the Applicant. The Commissioner therefore recommended that the College review its access to information policies and practices, remedy any deficiencies, communicate the results of the review to this Office, and take greater care in future to perform its duties in a manner consistent with the *ATIPPA*.

Report A-2012-001 - The Applicant applied to the City of Corner Brook (the “City”) for access to the minutes from Council “in-committee” meetings conducted during a specific timeframe. The City responded by issuing a fee estimate and also indicating that if the estimate was paid and records were released, information would be severed from those records pursuant to section 19(1)(c). At a later date, the City also claimed sections 26, 27, and 30 of the *ATIPPA*. The Applicant filed both a Fee Complaint and Request for Review with this Office. The Commissioner found that the City had improperly applied sections 19(1)(c), 26, 27 and, in certain instances, section 30, and determined that aside from the correct usage of section 30, all other information in the records should be released. The Commissioner also indicated that the City should reduce the fee estimate to reflect the time spent severing the information recommended to be withheld and the actual costs of copying. Furthermore, the City should only charge this fee if the Applicant wishes to have a copy of the responsive records rather than simply viewing them. The Commissioner also recommended that the City's practices of recording, tabling and adopting Council minutes be reviewed and revised, both for privileged and public meetings, as they are not in accordance with the recommended practices of the Department of Municipal Affairs.

Update on the Recent Court of Appeal Decision

On October 26, 2011, the Newfoundland and Labrador Court of Appeal (CA) released an important decision confirming the Commissioner's authority to review records where a public body has denied access to an applicant based on solicitor-client privilege (section 21). In our November newsletter (Vol. 1, No. 3), we provided the history of this case. Below is an update on the OIPC's progress in reviewing records which had previously been withheld from the Office.



Fourteen files had been held in abeyance pending the CA's decision. The Commissioner obtained a court order for production of the records in dispute in that case, and also obtained the remaining records that had been withheld from us by the other public bodies which had outstanding claims of section 21.

Once the outstanding claims of solicitor-client privilege had been reviewed, it became clear that there was a wide variation in their validity. In the majority of the files, more than half of the records for which solicitor-client privilege was claimed did not, in fact, fit within the scope of the exception. Some of those records included publicly available documents such as legislation, a collective agreement and a human resources policy manual. In one case the public body even claimed privilege over correspondence that had been written by the person who applied for access to the records in the first place. In other instances the matter was less obvious, but when claims of solicitor-client privilege were subjected to scrutiny by the OIPC, the public body was unable to offer a reasonable explanation for their claim. In the majority of such cases, we were able to resolve those issues by pointing out the inadequacy of the claims. This resulted in decisions by public bodies to release those records.

There were also, of course, a number of valid claims of solicitor-client privilege. In such instances, we assured applicants that the claims appeared to be valid, and in so doing we worked towards resolving those files as well.

Were some claims of solicitor-client privilege blatant misuse? No firm conclusions can be drawn at this point. There were clearly instances where inexperience and a simple misunderstanding of the concepts in solicitor-client privilege might be at the root of the problem. In other cases, including some of the most obvious misapplications of the exception, the initial claims appeared to be made with the support of experienced legal counsel, which is certainly troubling.

Our experience with these files provides strong support for the conclusions of the Court of Appeal. If we could not independently review these files, large quantities of records would be improperly withheld from applicants. Alternatively, a judge would have to do the reviewing. The prospect of having each of these 14 files brought to court in separate applications would be a significant cost to the taxpayer and to the applicant, as well as a significant delay in providing applicants with information which they have the right to obtain. Such an unwieldy process would be a major deterrent to applicants, and would be contrary to the purpose and spirit of the *ATIPPA*. Thankfully, with the Court of Appeal decision, the highest Court in the province has recognized the necessity of this Office maintaining the ability to conduct these reviews.

Recent OIPC Events and Activities

On January 28, Canada, along with many countries around the world, celebrated **Data Privacy Day (DPD)**. Recognized by privacy professionals, corporations, Government officials, academics and students around the world, DPD highlights the impact that technology is having on our privacy rights and underlies the importance of valuing and protecting personal information. The OIPC celebrated in 2012 with a number of events and activities, including presentations to schools, a public information fair, and a public awareness campaign featuring a poster mail out to Government agencies and departments.



The **Right to Know (RTK) Week 2011 Essay Competition** winners were selected in late January by a judging panel comprised of the four competition sponsors, the OIPC, Memorial University, the College of the North Atlantic, and Cox & Palmer. On February 17, 2012, a prize presentation was held at the OIPC offices to award Amit Negandhi, Gina Colbourne, and Dave Jerome their first (\$500), second (\$200) and third (\$100) place awards, respectively. Each of these winning essays can be viewed at our website, along with pictures from the prize presentation.

For more information on all of the above, please visit:

<http://oipc.nl.ca/events.htm>

OIPC Joins Twitter!



The OIPC has recently decided to join Twitter as part of our communications practices. The content of our tweets includes: links to news releases, reports, speeches, presentations and other publicly available OIPC material; links to relevant information produced and published elsewhere; interesting facts, quotes, videos or observations related to access and privacy; and topical questions related to access and privacy meant to provoke discussion.

For more information about our Twitter policy and practices, please visit:

<http://www.oipc.nl.ca/oipc-twitter.htm>

To follow us on Twitter, please visit:

<http://twitter.com/#!/OIPCNL>



Resource List

- <http://www.justice.gov.nl.ca/just/info/schedule.html> (ATIPPA, Regulations and Fee Schedule)
- <http://www.justice.gov.nl.ca/just/departement/branches/division/atipp.html> (ATIPP Office)
- http://www.justice.gov.nl.ca/just/info/access_policy_and_procedures_manual.pdf (Access Policy and Procedures Manual)
- http://www.justice.gov.nl.ca/just/info/privacy_policy_and_procedures_manual.pdf (Privacy Policy and Procedures Manual)
- http://www.justice.gov.nl.ca/just/atipp_training/index.html (ATIPP Training)
- <http://www.oipc.nl.ca/accessreports.htm> (OIPC Commissioner's Reports on Access to Information)
- <http://www.oipc.nl.ca/privacyreports.htm> (OIPC Commissioner's Reports on Privacy)
- <http://twitter.com/#!/OIPCNL> (OIPC Twitter)

Access & Privacy News

A call for nominations for this year's **Grace-Pepin Access to Information Award** has been launched.

The Grace-Pepin Award was established by the Office of the Information Commissioner of Canada in collaboration with its provincial and territorial counterparts in an effort to recognize exceptional contributions to the promotion and support of the principles of transparency, accountability, and the public's right to access information held by public institutions.

For more information on the award and how to submit nominees for 2012, please visit:

<http://www.righttoknow.ca/en/content/grace-pepin-award-prix.asp>

The **7th Annual Newfoundland & Labrador Access & Privacy Workshop**, presented by Newfoundland and Labrador's Offices of the Information and Privacy Commissioner and ATIPP Coordinator, as well as Memorial University's Information Access and Privacy Protection Office will be held at the Holiday Inn Government Centre in St. John's, NL on June 18 and 19, 2012.

This year's theme is "Maintaining Progress" and will offer, once again, a day and a half of plenary and breakout sessions, with optional workshops available to the eager learners, on the afternoon of June 19, 2012.

For more information and to register, please visit:

<http://www.verney.ca/nlapw2012/index.php>

Council Corner

Records Management

It is important to develop and maintain adequate records management policies and procedures. This should include how records in your custody and control will be stored (what security measures you have in place), the retention period for those records, as well as how older records are to be destroyed.

Good records management is key to an effective access to information process. If you can quickly search for and identify requested records, you will respond more accurately and efficiently to access requests and help avoid having the matter come to the OIPC for review.

For more information about records management, please contact ARMA: <http://www.armacanada.org/>