



ABOVE BOARD

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“The Commissioner’s role is to facilitate the effort of a requestor to seek access to information [...] and is effectively an ombudsman or liaison between the citizen and government in attempting to resolve the request by mediation or otherwise if documents or information known to be existing are being withheld in whole or in part for various reasons”

*Justice Harrington, NL
CA, NL (Information and
Privacy Commissioner) v.
NL (Attorney General)*

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ACTING COMMISSIONER APPOINTED

Welcome Commissioner Woodworth-Lynas

Victoria was born and raised in Cupids. She received her Bachelors degree from Memorial University in 2004.

Her career has been primarily focused on privacy and access to information. Victoria has worked with the Government of Newfoundland and Labrador since 2011. Most recently, she served as the Director of Legislative Renewal, with the Department of Municipal Affairs and Environment. While in this role, she undertook a review of municipal legislation governing the province’s cities and municipalities. Prior to this, she held the position of Director of Access to Information and Protection of Privacy with the ATIPP Office in the Department of Justice and Public Safety.

Before starting her career with government, Victoria worked in the

private sector in Alberta with the Real Estate Council of Alberta where she served as a case presenter and as the company’s privacy officer.

Victoria was appointed Acting Information and Privacy Commissioner of Newfoundland and Labrador by the Honourable Perry Trimper, Speaker of the House of Assembly, effective March 21, 2019.



OIPC REMINDERS AND UPDATES

Searching the OIPC Website

Coordinators are reminded that the OIPC website is searchable using free-form text/Boolean searches. The search feature is located under the [Reports menu](#). Additional search features will be added to our website in the near future.

Search results will capture all .pdf documents contained on the website including, but not limited to, Commissioner’s Reports, guidance documents, annual reports, and presentations.

OIPC Workshop—April 1, 2019

The April OIPC Workshop discussed the development of Privacy Management Programs (PMPs). Analyst Ruth Marks discussed the importance and role of policies and procedures in instituting a PMP and creating a protection of privacy culture. We examined necessary policy topics and essential discussion points.

A copy of the presentation is available on our [website](#) along with our previous PMP presentations and guidance.



**2020 APSIM
Conference**

We are approximately one year away from the next APSIM Conference. Be certain to mark your calendars for April/May 2020 and stayed tuned to the OIPC website for updates as they become available.

Practice Tip – Computer Time-outs

After a period of inactivity public body computers should “time-out” making the computer inaccessible until a password is entered.

Computers may use a default time-out period, however you should consider whether a particular computer, if it is located in an area accessible to other staff, may require a shortened time-out period. This is particularly important where computers are used to enter or access sensitive personal information.

DEFINITION OF “HOLIDAY” AND CALCULATING BUSINESS DAYS

The definition of “holiday” as contained in the [Interpretation Act](#) has been amended. This affects the calculation of business days for any access requests received on or after April 2, 2019.

Going forward the following days are holidays and must not be included in the calculation of business days:

1. Saturdays and Sundays;
2. New Years Day;
3. Good Friday;
4. Victoria Day;
5. Canada Day;
6. Regatta Day (St. John’s and Harbour Grace)/Municipal Civic Holiday (one per year set by Council);
7. Labour Day;
8. Thanksgiving Day;
9. Remembrance Day;
10. Christmas Day; and
11. Boxing Day;

All other days not listed above are business days for *ATIPPA, 2015* purposes. Our [Estimated Response Time Calculator](#) and the [ATI Complaint Checker](#) have been updated accordingly.

INSTANT MESSAGING

An instant message is a “record” as defined in section 2 of the *ATIPPA, 2015*. Where an instant message contains a discussion that has business value, it is considered a record and must be transferred to a medium where it can be appropriately managed, including being located in response to an access request. The Office of the Chief Information Officer recommends transferring the content to an appropriate medium by immediately sending an email to all those involved in the conversation, containing the contents of the instant message.

To help in deciding whether an instant message has “business value”, you may wish to consider:

- Does the message approve or authorize an action?
- Is it a communication between staff relating to work?
- Are policy changes or developments discussed?
- Are there any business commitments or arrangements made?
- Is someone required to act, within the scope of their employment duties, based on the discussion?
- Are you providing or receiving work-related advice?
- Will the information be used to make a work-related decision?
- Is the information necessary to ensure continuity in a position, project or activity?

Keep in mind that you must communicate expectations regarding instant messaging and retention of records to staff and provide training as necessary to ensure that policies and procedures are fully understood and complied with.

NEWFOUNDLAND AND LABRADOR v NLTA – LEAVE DENIED

In March, 2016 a journalist requested the “name, job title and corresponding taxable income for the 2015 tax year for all English School District employees earning more than \$100,000.” The Newfoundland and Labrador English School District made a decision to disclose the information. An appeal was commenced by the Newfoundland and Labrador Teachers’ Association (NLTA) directly to the Supreme Court, Trial Division to prevent the disclosure in accordance with section 40. The appeal was allowed and the name was found to be protected by section 40. Subsequently, the Province appealed that decision to the Court of Appeal, which held that the name of a third party who occupies a position is information about the third party’s position in accordance with section 40(2)(f) and the disclosure of that information is primarily concerned with the transparency of information surrounding the spending of public funds. The Court went on to find that there is significant public interest in the information and the public has a “legitimate and significant interest in the identities of the people who receive public money” both to promote meaningful participation in the democratic process and to ensure that public bodies are held accountable for their actions. The Court also focused on the employment and pay equity, and political neutrality in the civil service. The Appeal Court ruled that while the privacy interests at stake are real, they are outweighed by the public interest in the information. The NLTA later applied to the Supreme Court of Canada for leave to appeal the [decision of the Court of Appeal](#).

On April 11, 2019, the Supreme Court of Canada [dismissed the application for leave to appeal](#). As a result, the decision of the Court of Appeal of Newfoundland and Labrador stands.

This means public bodies must disclose an employee’s name, position, functions and remuneration (including salary), where requested under the *ATIPPA, 2015*.

ATIPP POLICIES & PROCEDURES – TRAINING COMMITMENT

Public bodies should have policies and procedures in place regarding access to information and the protection of personal information. These policies and procedures should be documented and made available to employees. To enhance awareness and to ensure that employees understand their responsibilities, public bodies should provide training and education as appropriate considering the employee’s role and their normal exposure or interaction with personal information at work. In addition to training on internal policies and procedures, public bodies should commit to providing training on employees’ obligations under the *ATIPPA, 2015*.

Training should be provided on an on-going basis and a record should be kept of the training offered and attendance. Public bodies should also review the policies and procedures with employees, as needed, to ensure that employees have the necessary tools for implementation (for example: does the employee have access to a filing cabinet that can be locked, if the policy requires personal information to be stored in such fashion.)

The documentation of policies, procedures and training will form a necessary component of your privacy management program.

RECENT OIPC REPORTS

[Report A-2019-006 - Department of Finance](#)

The Department of Finance received an access to information request for a breakdown of deficit reduction since 2016. The Department responded, providing the Complainant with the information requested. The Complainant claimed the provided information was not factual and also that there was information lacking from the response for the period of March 2018 to the date of the request. The Complainant supplied his own breakdown of numbers to suggest the information provided by the Department was not accurate.

The Department explained that records from March to October 2018 were unavailable because they did not exist at the time the request was made. The Commissioner accepted this explanation and found there was no merit to the Complainant's assertion that the Department's search was inadequate.

As for the Complainant's allegation that the records provided by the Department were deceptive, the Department provided a reasonable explanation of why the information was different than provided by the Complainant. The Commissioner determined the Department appropriately responded to the Complainant's request and found that the Department adequately discharged its duty to assist under the *ATIPPA, 2015*.

[Report A-2019-008 - Newfoundland and Labrador English School District](#)

The Complainant made a request to his child's school for a copy of the child's report cards and attendance records, as well as personal information, such as the student's address and an explanation of why the child had transferred schools. When the Complainant did not receive a response, he then contacted the NLESD for assistance. The school subsequently provided the Complainant with copies of the student's report cards and attendance records, but did not provide the Complainant with the remainder of the requested information.

The Commissioner determined, under the *ATIPPA, 2015*, that the Complainant was not entitled to the requested personal information as disclosure would be an unreasonable invasion of the student's personal privacy (section 40). The Commissioner further concluded that section 12(2) of the *School's Act, 1997* is not a mandatory provision concerning disclosure and "equitable access" is not akin to an unalienable right to information. In reaching her conclusion, the Commissioner found no basis upon which to conclude that a conflict exists between the *ATIPPA, 2015* and the *Schools Act, 1997* in these circumstances. Section 12 of the *Schools Act, 1997* establishes a process, at the discretion of the District, for a parent or student to review the student record in person with NLESD staff. The *ATIPPA, 2015* establishes a right of access which includes a right to obtain a copy of a record. That right is abrogated only if an exception applies.

The NLESD also argued that the Complainant's request did not constitute a formal access request under the *ATIPPA, 2015*. The Commissioner determined the Complainant had made an access request under the *ATIPPA, 2015*, and that the NLESD failed to appropriately respond to the request, including a failure of the duty to assist and a failure to provide an advisory and final response.

ATIPPA, 2015 PRIVACY BREACH STATISTICS Jan. 1 – Mar. 31, 2019

During this reporting period (January 1 – March 31, 2019), the OIPC received 75 privacy breach reports from 21 public bodies under the ATIPPA, 2015. This is a 56% increase in the number of breaches from the previous reporting period and in stark contrast to the number of breaches reported quarterly in 2018, which fluctuated between 58 and 59 breaches per quarter.

If any public body would like the OIPC to deliver training regarding privacy breaches, or any other topic relating to access or privacy, contact our Office to arrange a time.

Summary by Public Body	
City of Corner Brook	1
City of St. John's	4
College of the North Atlantic	6
Dept. of Advanced Education, Skills and Labour	9
Dept. of Children, Seniors and Social Development	7
Dept. of Finance	1
Dept. of Justice and Public Safety	7
Dept. of Transportation and Works	1
House of Assembly	1
Human Resource Secretariat	2
Human Rights Commission	1
Memorial University	8
Newfoundland and Labrador English School District	3
Newfoundland and Labrador Housing Corporation	4
Newfoundland and Labrador Legal Aid Commission	3
Royal Newfoundland Constabulary	1
Service NL	8
Town of Conception Bay South	2
Town of Gander	2
Town of Paradise	1
Western Integrated Health Authority	3

