



ABOVE BOARD

A quarterly newsletter published by the Office of the Information and Privacy Commissioner

Volume 12, Issue 1

January 2020

Contact Information

Office of the Information and Privacy Commissioner

3rd Floor, 2 Canada Drive
Sir Brian Dunfield Building
P.O. Box 13004, Station A
St. John's, NL A1B 3V8

Telephone:

709-729-6309

Fax:

709-729-6500

Toll Free in Newfoundland and Labrador:

1-877-729-6309

Email:

commissioner@oipc.nl.ca

www.oipc.nl.ca

This Issue:

- Welcome to Commissioner Michael Harvey
- Reminders and Updates – Training and 2020 Calendar
- Contact Information for Privacy Breach Notifications
- Saskatchewan OIPC Guidance on Privacy Breach Management and Investigations
- Section 39 and Applicable Burdens of Proof
- Data Privacy Day
- Quarterly Breach Statistics for Third and Fourth Quarters of 2019

Welcome to Commissioner Michael Harvey

On July 23, 2019, the House of Assembly confirmed by resolution the appointment of Michael Harvey as the next Information and Privacy Commissioner for Newfoundland and Labrador. He took over from Acting Commissioner Victoria Woodworth-Lynas who was appointed following the resignation of former Commissioner Donovan Molloy in February, 2019.

Michael joined the Government of Newfoundland and Labrador in January 2006. His time was divided between Executive Council (Intergovernmental Affairs Secretariat and Cabinet Secretariat) and line departments (Departments of Children, Youth and Family Services; and Health and Community Services). Michael's most recent appointment prior to serving as Commissioner was as Assistant Deputy Minister of Policy, Planning and Performance Management in the Department of Health and Community Services. In this capacity, among other things, he was responsible for the ongoing statutory review of the *Personal Health Information Act*. He also worked extensively on Government's eHealth agenda, including promoting and facilitating the development of the Newfoundland and Labrador Centre for Health Information (NLCHI) Data Warehouse and Data Lab, increasing data analytics capacity for clinical decision-making and decision support, and advancing virtual care. He was also responsible for the Department's mandate to promote health research in the



Province. To advance these objectives he served on the Boards of Directors of NLCHI and the Health Research Ethics Authority.

Michael has lectured in political science and public administration at Memorial University, the University of Guelph and the University of Toronto. He is a graduate of Memorial University, with a BA (Honours) in Political Science; and an MA in Political Studies from Queen's University. He also holds an Executive Certificate in Conflict Management from the University of Windsor, Faculty of Law/Stitt Feld Handy Group.

Reminders and Updates

Training

Did your staff have *ATIPPA, 2015* training in 2019?

If not, now is a great time to start 2020 off on a good foot and consider contacting our Office for training. We offer training on all aspects of *ATIPPA, 2015* and would be happy to work with you on any specific access or privacy topic you would like to focus on. Requests for training can be sent to commissioner@oipc.nl.ca.

Our training and education contact is Andrew Collins and he can be reached directly at 709-729-6247.

2020 Calendar

The OIPC has produced a new resource for ATIPP Coordinators in the Province: a calendar to help calculate deadlines by highlighting days which are not business days as defined by *ATIPPA, 2015* and the *Interpretation Act*. We hope that this resource proves helpful for when Coordinators are responding to access to information requests or investigations by this Office. If you have not received a calendar, or would like additional copies, please contact us at commissioner@oipc.nl.ca. The OIPC also has several other resources and pamphlets detailing the role of our Office if further information is needed.

Contact Information for Privacy Breach Notifications

Pursuant to section 64(4) of *ATIPPA, 2015*, all public bodies are required to report breaches of personal information to the Office of the Information and Privacy Commissioner. In many cases, public bodies are required to also report breaches to the affected individuals, unless the public body can demonstrate that the breach does not create a risk of significant harm. When notifying affected individuals of a breach of their personal information, public bodies should also provide contact information for this Office in the event that an affected individual wishes to file a complaint.

However, public bodies should be mindful of ensuring that privacy breach notices effectively communicate necessary information about the breach and clearly distinguish between the public body and this Office. Occasionally, affected individuals are left with the impression that this Office may be able to provide additional information about the breach, when typically the public body itself is best positioned to provide information to affected individuals in the immediate aftermath of a breach.

In order to ensure effective communication of a breach, our Office recommends:

- breach notifications should contain all relevant facts of the breach, as known to the public body at the time the notice is sent;
- clearly identify a contact person and/or contact number within the public body for affected individuals seeking more information about the breach itself. Such contact information should precede and be at least as visible as contact information for this Office;
- be prepared to provide update information to affected individuals as the public body learns more about the breach; and
- provide contact information for this Office and note our role in investigating breaches of personal information.

The Office of the Information and Privacy Commissioner is always available to assist a public body when dealing with a privacy breach, including any assistance required with completing the breach report to this Office or in notifying affected individuals.

Saskatchewan OIPC Guidance on Privacy Breach Management and Investigations

A recent decision from the Saskatchewan Office of the Information and Privacy Commissioner provides helpful guidance to public bodies on best practices for managing and investigating a privacy breach.

Following the receipt of several breach reports from the Saskatchewan Health Authority concerning cases where home care schedules containing the personal health information of patients had been lost or stolen, the Commissioner conducted an investigation to determine whether an unaddressed systemic issue was present. The [resulting report](#), which covers the results of four investigations, provides guidance for containing a privacy breach, notifying affected individuals, investigating the breach, preparing a plan for preventing future privacy breaches and finally for preparing an investigation report.

A privacy breach report should include the following:

- a summary of the incident and immediate steps taken to contain the breach;
- background of the incident, timelines and a chronology of events;
- description of the personal information involved and affected individuals;
- a description of the investigative process;
- the root and contributing causes of the incident;
- a review of applicable legislation, safeguards, policies and procedures; and
- a summary of possible solutions and recommendations for preventing future breaches. This should include specific timelines and responsibility for implementation of each action.

This Office encourages all Coordinators to review and familiarize themselves with [Saskatchewan OIPC Investigation Report 126-2019, 137-2019, 182-2019, 191-2019](#) and take what steps may be necessary to update their public body's privacy breach response and investigation procedures.

Section 39 and Applicable Burdens of Proof

Section 39 is a mandatory exception to access under *ATIPPA, 2015* for business information of a third party. Public bodies should be aware that the applicable burden will shift depending on who is filing a complaint to this Office – whether it is the third party seeking to have its business information withheld or if it's the original applicant who had requested the information. The same access request may result in complaints from both of these parties.

Burden when Complaint is from a Third Party

Where a public body has notified a third party of its intention to release information potentially subject to section 39, and the third party has complained, the burden of establishing that the information at issue meets the three-part test under section 39 falls on the third party.

Burden when Complaint is from the Access to Information Applicant

Where a public body has determined that information qualifies to be withheld under section 39 and has withheld the information in its final response to the applicant, the public body bears the burden of establishing to this Office in any subsequent complaint that the three-part test has been met.

In any investigation conducted by this Office, there is an initial informal period where the parties may attempt to reach a mutually agreeable settlement of a complaint. In a complaint from a third party, this may involve the public body agreeing to withhold third party business information without holding the third party to the strict burden of proof; or without a recommendation from this Office to do so. A public body should be aware that in the event of a subsequent complaint from the original access to information applicant, the burden will then be on the public body to justify its decision to withhold, with reference to the three-part test. If, at that point, the test cannot be met then this Office would have to recommend disclosure notwithstanding the earlier agreed resolution with the third party.

Data Privacy Day



Data Privacy Day is marked on January 28 each year. Data Privacy Day is an international effort to empower individuals and business to respect privacy, safeguard data and enable trust.

On the occasion of Data Privacy Day 2020, the OIPC joined its Atlantic counterparts in Nova Scotia, Prince Edward Island and New Brunswick in issuing a joint statement on the privacy implications of facial recognition technology. Atlantic Information and Privacy

Commissioners have noticed the increasing use of facial recognition technology by public bodies and private companies around the world.

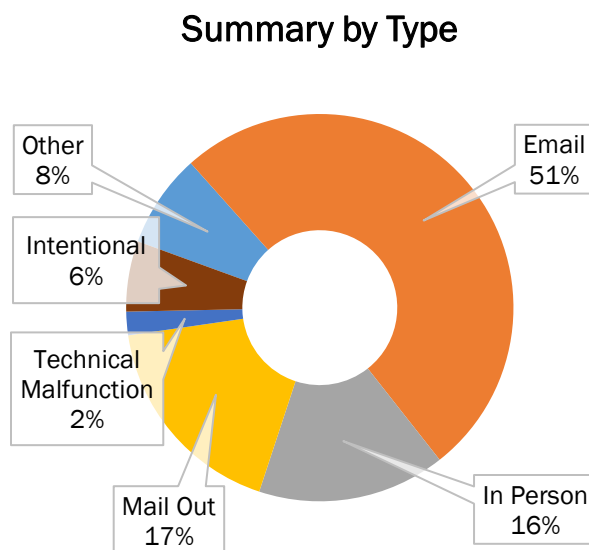
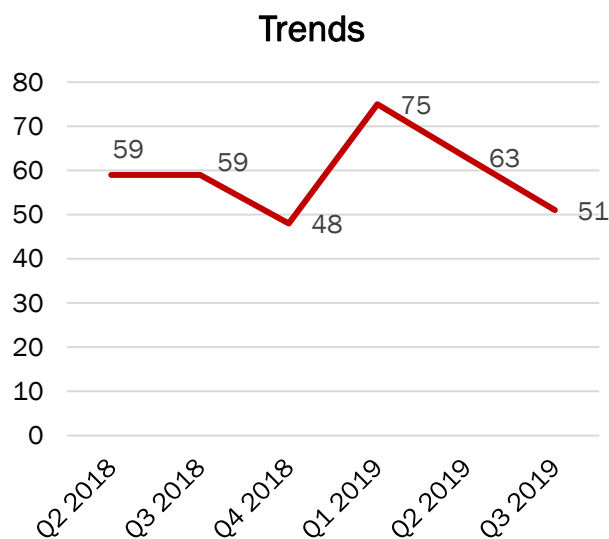
For more information about Data Privacy Day and the Atlantic IPC's joint statement on facial recognition technology, please see our [news release](#).

ATIPPA, 2015 Privacy Breach Statistics for the Third Quarter of 2019

During the third quarter of 2019 (July 1 to September 30, 2019), the OIPC received 51 privacy breach reports from 18 public bodies under ATIPPA, 2015. This is a significant decrease from the 63 breaches reported during the previous quarter.

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

Summary by Public Body	
City of St. John's	1
Town of Conception Bay South	1
Newfoundland and Labrador English School District	2
College of the North Atlantic	1
Memorial University	6
Human Resource Secretariat	3
Department of Service NL	8
Department of Finance	1
Department of Justice and Public Safety	2
Department of Municipal Affairs and Environment	1
Department of Advanced Education, Skills and Labour	9
Human Rights Commission	1
Newfoundland and Labrador Legal Aid Commission	5
Newfoundland and Labrador Housing Corporation	5
Royal Newfoundland Constabulary	1
Office of the Public Trustee	1
Nalcor Energy	1
Public Service Commission	2



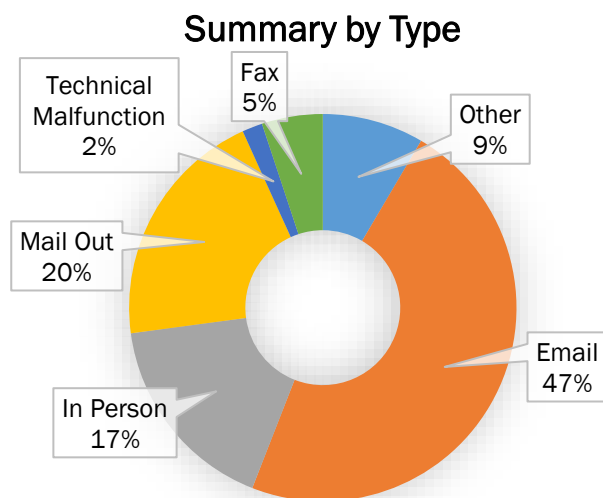
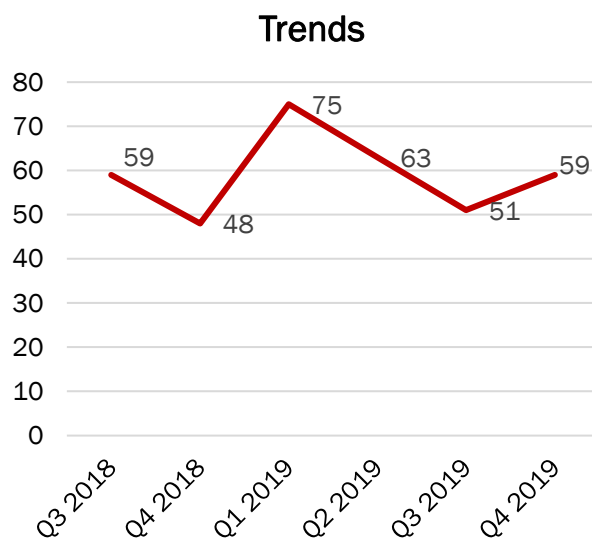
The OIPC has issued a [Tip Sheet](#) on avoiding inadvertent privacy breaches

ATIPPA, 2015 Privacy Breach Statistics for the Fourth Quarter of 2019

During the fourth quarter of 2019 (October 1 to December 31, 2019), the OIPC received 59 privacy breach reports from 16 public bodies under ATIPPA, 2015. This is a 16% increase from the 51 breaches reported during the previous quarter.

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

Summary by Public Body	
City of St. John's	2
Newfoundland and Labrador English School District	3
College of the North Atlantic	3
Memorial University	10
Human Resource Secretariat	3
Department of Service NL	11
Department of Justice and Public Safety	1
Department of Advanced Education, Skills and Labour	7
Newfoundland and Labrador Housing Corporation	2
Royal Newfoundland Constabulary	2
Nalcor Energy	4
Workplace NL	4
Town of Kippens	1
Department of Fisheries and Land Resources	2
Department of Children, Seniors and Social Development	3
Office of the Information and Privacy Commissioner	1



The OIPC has issued a [Tip Sheet](#) on avoiding inadvertent privacy breaches