



ABOVE BOARD

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How has *ATIPPA, 2015* Fared During the Pandemic?

As of June 25, 2020, Newfoundland and Labrador is at Alert Level 2 under the Province's COVID-19 Alert System and many public bodies have largely returned to something approaching normal operations. This includes the Office of the Information and Privacy Commissioner (OIPC). The past four months have held numerous hardships for public servants and access and privacy professionals. However, while some *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* deadlines were extended and this Office provided extensions to public bodies in receipt of access to information requests, our Office has endeavored to continue responding to access and privacy complaints under *ATIPPA, 2015* as well as under the *Personal Health Information Act (PHIA)*. We are gratified to have had the support and cooperation of many public bodies and custodians in these efforts. Despite the shutdown of many government offices, difficulties posed by staff working remotely, and the suspension of certain deadlines and availability of other time extensions, most public bodies in Newfoundland and Labrador have nonetheless continued to respond to access to information requests from the public, respond to investigations conducted by this Office and protect the privacy of Newfoundlanders and Labradorians.

Responding to Access to Information Requests

During the pandemic, the OIPC granted time extensions to public bodies processing access to information requests in accordance with the extraordinary circumstances provisions of *ATIPPA, 2015*. Since March 18, this Office granted 171 open-ended time extensions, of which at least 119 have been closed with the public body providing a response to the applicant. The OIPC is tracking outstanding extensions to ensure those requests are responded to within a reasonable period of time. Core provincial government public bodies have responded to at least 433 access to information requests for general information in this time, which is highly commendable under the circumstances and a testament to the dedication and professionalism of those who were tasked with this work.

Cooperation with OIPC Investigations

On March 18, the OIPC had 35 open files. Between March 18 and June 25 we received 29 further complaints under *ATIPPA, 2015* and 2 under *PHIA* and opened investigations. Our Office appreciates that responding to a complaint can be a significant undertaking at the best of times, but many public bodies worked diligently with our Access and Privacy Analysts to provide responsive records and submissions for our review. In several cases, complaints have even been informally resolved to the satisfaction of the parties. While the following is not nearly an exhaustive list of all public bodies or ATIPP Coordinators who have continued to discharge their duties under *ATIPPA, 2015*, OIPC staff would like to recognize the efforts of several public bodies.

- **Central Health:** has been very active in responding to several requests from this Office under both *ATIPPA, 2015* and *PHIA*. We have also had several productive consultations about privacy considerations.
- **City of Mount Pearl:** has continued to respond proficiently to several investigations throughout the shutdown;
- **Town of Grand Falls–Windsor:** responded to challenging access to information requests and cooperated fully with our Office in subsequent complaints.
- **Department of Tourism, Culture, Industry, and Innovation:** provided formal submissions and was able to provide a response to Report A-2020-007.
- **Department of Justice and Public Safety:** responded in a timely fashion with public body records and submissions for several investigations being conducted by this Office.
- **Newfoundland and Labrador English School District:** responded to investigations and has consulted with this Office regarding privacy questions regarding its online learning initiatives.

COVID-19-Related Privacy Breaches

Finally, responding to a major public health emergency such as COVID-19 requires a careful and at times difficult balancing of the protection of personal privacy with ensuring that public bodies are sharing necessary information with each other and the public. Immediately prior to the declaration of the public health emergency our Office released “[Don't Blame Privacy – What to Do and How to Communicate in an Emergency](#)” to help guide custodians and public bodies in the handling of personal information and personal health information.

There are many ways privacy may be impacted during a pandemic: contact tracing efforts may require the collection of personal information; public bodies may be relying more on fax or electronic communications to avoid contact between staff; anxiety about the spread of COVID-19 may prompt custodians or staff to improperly seek out information about patients and test results; and working from home may also pose challenges with securing personal information. Since March 18, seven breaches related to the COVID-19 pandemic have been reported by public bodies and custodians. However, these represent only 10% of the 70 breaches reported during this period. Any privacy breach is serious but this Office is thankful that the pandemic has not resulted in more breaches.

OIPC is Hiring: Senior Access and Privacy Analyst

The OIPC is currently advertising for the permanent position of Senior Access and Privacy Analyst. This position is a member of the OIPC's management team. For more information, please see [the full job ad](#) at the Human Resources Secretariat Online Job Portal.

Changes to COVID-19 Time Extensions

At the start of the COVID-19 pandemic this Office provided all public bodies seeking a time extension an open-ended extension under *ATIPPA, 2015*'s extraordinary circumstances provisions. Since July 7, the OIPC is now requiring public bodies seeking a time extension to use the request form and provide reasons – the public health emergency will no longer be considered a default justification for a time extension. Public bodies should describe their individual circumstances and reasons for requiring additional time to respond to an access to information request.

As a reminder, when a public body has been granted a time extension by this Office, they are required pursuant to section 23(6) of *ATIPPA, 2015* to notify the applicant. When notifying the applicant, the public body should also send a copy of the notice to our Office, de-identified if possible. This applies to extensions granted during extraordinary circumstances, such as January's state of emergency and those that our Office may grant at this time during the present pandemic, and it also applies when public bodies return to normal operations.

Email Breaches

Emails are a common source of inadvertent breaches reported to our Office. Incorrectly entered email addresses, or emails that have gone to another public body employee with the same name as the intended recipient, risk breaching the privacy of personal information.

Often, if the error is discovered early on, public bodies have reported their efforts to “recall” an email through Outlook. However, employees should be aware that there are shortcomings in Outlook's recall function and it should not be relied on to protect against breaches. A message can only be recalled within the same organization; recall will not work if the recipient is using Outlook Web App (“OWA”) webmail or if they are not connected to the network; and, perhaps it goes without saying, recall will not work if the message has already been read.

The following are steps that employees can take to reduce or prevent email-related breaches.

- Turn off Outlook's Auto-Complete address feature under File > Options > Mail > Send Messages; this can prevent you from sending an email to a recipient with a similar name.
- Use your address book to populate To, Cc and Bcc fields.
- Instead of composing a new message, use a previous email from the intended recipient and reply.
- Delay the delivery of emails through Outlook's Rules & Alerts. An extra two minutes spent in the Outbox might be enough to realize a mistake and catch an error before it is sent.

ATIPPA, 2015 Statutory Review Announced

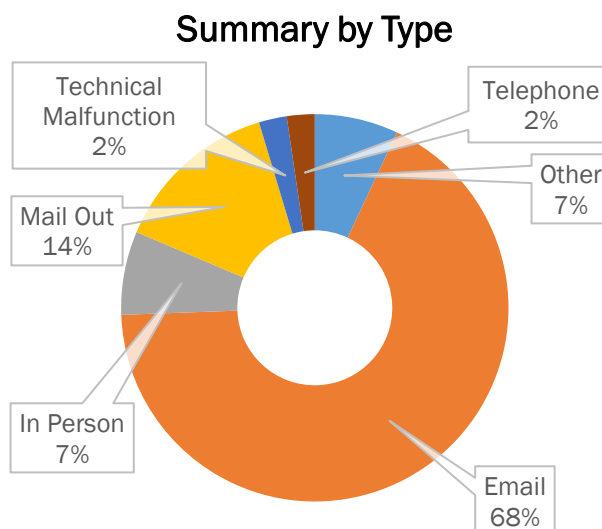
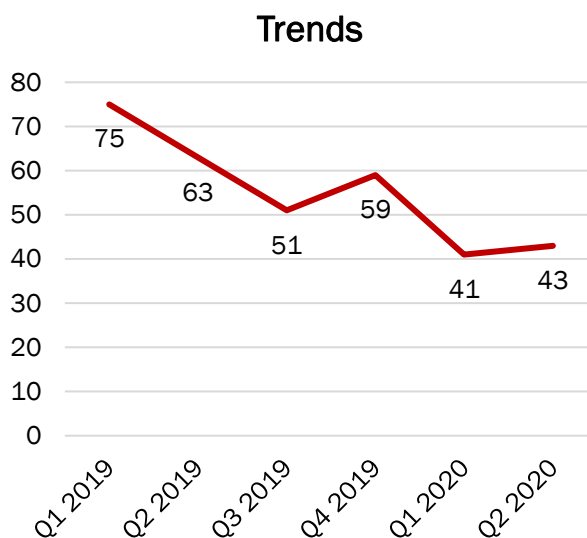
On July 27, the appointment of former Chief Justice David B. Orsborn to conduct a review of *ATIPPA, 2015* [was announced](#). Retired Justice Orsborn has been the author of several key decisions interpreting *ATIPPA, 2015* and the OIPC looks forward to participating in this process and working with him.

ATIPPA, 2015 Privacy Breach Statistics April 1 – June 30, 2020

During the second quarter of 2020 (April 1 to June 30, 2020), the OIPC received 43 privacy breach reports from 20 public bodies under ATIPPA, 2015. This is a small increase from the 41 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	
Central Health	1
City of Mount Pearl	1
City of St. John's	3
College of the North Atlantic	5
Department of Children, Seniors and Social Development	1
Department of Education and Early Childhood Development	1
Department of Fisheries and Land Resources	1
Department of Justice and Public Safety	1
Department of Service NL	7
Human Resource Secretariat	1
Memorial University	5
Nalcor Energy	2
Newfoundland and Labrador English School District	3
Newfoundland and Labrador Housing Corporation	2
Newfoundland and Labrador Legal Aid Commission	3
Office of the Information and Privacy Commissioner	1
Public Service Commission	1
Town of Bay Bulls	1
Town of Howley	2
Workplace NL	1



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