



ABOVE BOARD

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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:

- COVID-19 Resources
- OIPC Updates
- Access Requests Made by Representatives
- Informal Resolution
- ATIPPA, 2015 Privacy Breach Statistics July 1 – September 30, 2021
- Job Opportunity

COVID-19 Resources

OIPC has received a number of inquiries from public bodies and members of the public about COVID-19 and various government programs. Below is a handy guide for Coordinators who may also receive requests or calls.

OIPC is able to accept privacy complaints from individuals with specific concerns regarding the collection, use and/or disclosure of personal information, including collections, uses and disclosures involved in COVID-19 initiatives of public bodies. Our complaint form is available online [here](#).

Concerns about Government Policies - Concerns about government policies, such as the vaccine passport or vaccination mandate for employees, could be directed to Members of the House of Assembly (MHAs). Contact information for all provincial MHA's is available [online](#). They could also be directed to the specific Department.

Concerns about Human Rights Violations - The Newfoundland and Labrador Human Rights Commission has developed a [resource page](#) on Human Rights and COVID-19 that addresses many topics of interest, including vaccine mandates, vaccine passports and mandatory masking. The Human Rights Commission cannot take complaints from people if they want to challenge the validity of the vaccine mandate and/or passport or feel that their rights under the Charter of Rights and Freedoms have been violated. To discuss the role of the Charter with respect to federal or provincial government actions, we encourage you to reach out to a private lawyer. A person who chooses not to get vaccinated because of a personal choice or belief, is not protected under the *Human Rights Act* and does not have the right to be accommodated.

Concerns About Unfair Treatment of Citizens by Government Offices and Agencies - The Office of the Citizen's Representative (OCR) accepts complaints from citizens who feel they have been treated unfairly with respect to their contact with provincial government offices and agencies. The OCR does not have jurisdiction of federal or municipal public bodies. If you have faced an unreasonable barrier to a provincial government program or service as a result of your vaccination status, contact OCR (citizensrep.nl.ca). Please note that OCR cannot investigate decisions made by an MHA, Executive Council (Cabinet), or the House of Assembly, therefore, it cannot investigate complaints regarding the government's direction on the COVID-19 pandemic. The OCR also does not have jurisdiction of private businesses or private employers such as restaurants, movie theatres, retail stores, etc. who may require a confirmation of vaccination. The OCR has developed an FAQ resource on Vaccine Passports, available online [here](#).

Concerns About Compliance with the Vaccine Passport Program - If you believe your information is being collected in a way that is not in accordance with the [Special Measures Orders](#), it is Environmental Health Officers with the Department of Digital Government and Service NL that monitor the implementation of the vaccination record verification program, and are available to respond to public complaints about particular businesses or organizations. They can be reached by email at servicenlinfo@gov.nl.ca.

OIPC Updates

OIPC welcomes Kimberly Ryan as an Access and Privacy Analyst! Kimberly joins the Advocacy and Compliance team for a six month secondment. OIPC also welcomes Karen Squires to the role of Administrative Assistant; Karen will be with OIPC until at least March 31st. We are delighted to welcome both Kimberly and Karen to the OIPC team!

OIPC published its Annual Report 2020-21, available on our website at [Annual Report 2020-2021 \(oipc.nl.ca\)](#). Did you know that during 2020-21, OIPC received 479 requests for time extensions under *ATIPPA, 2015*? Of this total, 218 requests were processed during the public health emergency order issued under the *Public Health Protection and Promotion Act* from April 1, 2020 to July 6, 2020 and February 15, 2021 to March 26, 2021. OIPC approved the extensions requested in 355 of the cases, partially approved 75, denied 18, and 31 were withdrawn by the public body. During the same time frame, OIPC received 45 applications to disregard an access to information request and of these 21 were approved, three were partially approved, 11 were denied, and 10 were withdrawn by the public body. The Annual Report discusses these facts and much more. Have a look today!

Did you know that OIPC is available to consult and/or review Privacy Impact Assessments (PIAs)? While section 72 of *ATIPPA, 2015* requires PIAs for common or integrated programs or services be shared with OIPC for review and comment, OIPC also reviews PIAs shared with our Office as a courtesy. OIPC finds this exercise to be beneficial and hope those that who have done this in the past feel the same! PIA resources are on the OIPC's website [here](#).

Access Requests Made by Representatives

Sometimes when processing access requests, Coordinators may encounter situations where the applicant is requesting personal information on behalf of another. There have been a number of Commissioner reports from various jurisdictions that examine this issue. At the heart of all cases is the determination of whether applicants are acting on behalf of another or for their own or other purposes. In some reports, it was concluded that the applicants were not acting on behalf of or in the sole interest of the third party, but rather for collateral purposes. Any that are not acting on behalf of or in the interests of the individual whose personal information is being requested have been treated as would any applicant requesting the personal information of another.

Section 108 of *ATIPPA, 2015* states:

Exercising rights of another person

108. A right or power of an individual given in this Act may be exercised
- (a) by a person with written authorization from the individual to act on the individual's behalf;
 - (b) by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian;
 - (c) by an attorney acting under a power of attorney, where the exercise of the right or power relates to the powers and duties conferred by the power of attorney;
 - (d) by the parent or guardian of a minor where, in the opinion of the head of the public body concerned, the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the minor's privacy; or
 - (e) where the individual is deceased, by the individual's personal representative, where the exercise of the right or power relates to the administration of the individual's estate.

Some of the above are straightforward; others may require additional considerations. The ATIPP Office, a division of the Department of Justice and Public Safety, has developed a [Proof of Authority form](#) that applicants may be required to complete when requesting the personal information of another.

We examined this issue in [Report 2006-12](#). A request, signed by a minor, was received seeking access to notes and/or the transcript of an interview conducted with him by two Consultants from the Department of Education. The Report examined who the actual applicant was and then explored their right of access to the responsive record.

Prior to this access request, a similar access request had been made by the mother of the minor. In response to that request, the Department released records containing the personal information of the mother and father, while access to records containing the personal information of the minor had been denied. A new request was submitted for those records, this time signed by the minor. It is the second request that was examined as part of the complaint file. During the investigation, it was noted that the address and telephone number on the minor's application was the same as the contact information contained on the mother's original application. It was concluded that, as the

son lives with the parents, it was reasonable to assume that release to the son would be release to the parents.

The Department argued that the son was not capable of fully comprehending the nature of his request, nor the process involved in filing such a request. Taking into consideration the mother's previous attempts to gain access to this information, the Department determined that the request was effectively for the benefit of the mother. The Department maintained that releasing the information to the son would be tantamount to releasing it to the parents, thereby creating an unreasonable invasion of the son's privacy. At no point did the son submit any information on his own behalf nor make any claim of ownership with respect to this request.

The Report examined section 65(d) of *ATIPPA*, which is now section 108(d) of *ATIPPA, 2015*, using a two-step process. First, it examined if the individual was a parent or guardian of a minor and then it determined whether or not there existed an unreasonable invasion of the minor's privacy.

In reaching a conclusion on this issue, reports from several other jurisdictions were considered. In [Order 00-40](#), OIPC BC dealt with the refusal of a school board to provide an Applicant with copies of a school counsellor's notes of interviews with the Applicant's children. The Report stated, in part:

Dorgan J.'s concern may have stemmed from her perception that a parent could, in a case such as this, purport to rely on s. 3(a) of the Regulation in order to, in effect, claim an unfettered right of access to his or her minor children's personal information.

... As my predecessor said in Order No. 53-1995, where an applicant is not truly acting "on behalf" of an individual described in s. 3 of the Regulation, the access request is to be treated as an ordinary, arm's-length request under the Act, by one individual for another's personal information...

(Emphasis added)

The report also references [P-673](#), a decision by then Assistant Commissioner Irwin Glasberg of Ontario's OIPC. Glasberg examined a complaint where a father was seeking access to information of both himself and his son. While the Ministry located and released records containing the father's own personal information, it refused to disclose records containing the personal information of his son and other named individuals, in whole or in part.

The report notes that the son was nine when the relevant records were created and was 14 when the report was published. It stated, in part:

The records at issue in the present appeal relate to a custody and child protection dispute involving the father and his former spouse. The documents also explain the roles of the Ministry's Office of Child and Family Service Advocacy (OCFSA), the Children's Aid Society of Metropolitan Toronto (CASMT) and other government agencies in dealing with these matters. The records collectively contain extremely sensitive information including the views of a very young child on this difficult situation.

I have carefully reviewed the representations provided to me in conjunction with the records at issue. While the father has argued that he requires his son's personal

information to determine whether the various government agencies acted within their statutory mandates, he has failed to convince me that he is exercising such a right of access on behalf of his son. Rather, my conclusion is that the father, while acting in good faith, is seeking this information to meet his personal objectives and not those of his son.

The Commissioner also concluded that, because of the sensitive nature of the materials contained in the records, that the release of the son's personal information would not serve the best interests of the child.

After investigating the complaint in Report 2006-12, the Commissioner concluded that, based on the specific circumstances of the case, the Applicant was actually the mother of the minor and not the minor himself. The Commissioner concluded that the release of the information to the mother would be an unreasonable invasion of the minor's privacy.

Another report that establishes some considerations is OIPC BC's [Order F17-04](#). In this report, a mother was seeking access to notes from counselling sessions with her children. The Report determined that there must be a careful distinction between the right of a parent to access information on behalf of a child' and a parent's desire to access their child's record at arms-length from the interests of the child. The four questions used to determine the issue:

- 1. Is the applicant the child's "guardian"?*
- 2. Is the applicant acting "for" the child?*
- 3. Is the child "incapable of acting" under s. 5?*
- 4. Is exercising the child's rights under FIPPA "within the scope of the guardian's duties or powers"?*

Additional considerations are located at paragraph 17:

[17] I take from this that the two terms mean similar things. In my view, therefore, acting "for" or "on behalf of" a minor child in exercising the child's access rights, under both FIPPA and the CFCSA, means acting to benefit the child, to further the child's own goals or objectives and in the child's best interests.

Coordinators that receive requests for the personal information of others should satisfy themselves that the individual does indeed have the authority to act on behalf of the individual before releasing any information.

Informal Resolution

Did you know that many complaints filed with OIPC do not result in a report being published? The first part of the complaint process is an attempt at informal resolution.

ATIPPA, 2015 gives the Commissioner's Office a period of 30 business days from the date of receipt of an access complaint to informally resolve the matter to the satisfaction of the parties involved. This can involve public bodies providing additional records, or, where appropriate, removing redactions to some information. Sometimes it involves simply providing a better explanation to the applicant of why the information is being withheld.

A common theme in access complaints before this Office has been a complainant's belief that further records ought to exist and should have been located and provided by the public body. While a public body has an obligation to conduct a reasonable search under section 13 (duty to assist), a search need not be perfect and sometimes additional records indeed do not exist. In these circumstances, public bodies which have been able to clearly describe its search efforts to the complainant, and are willing to conduct further, targeted searches for records, have been able to contribute to an informal resolution of the complaint.

Informal resolution is also an objective in privacy complaints. Privacy complaints are more likely to be resolved informally where a public body has been willing to acknowledge the privacy breach, if one occurred, and demonstrate to both this Office and the complainant that appropriate processes and policies are in place to avoid breaches of privacy and that the public body has learned from the breach. Where the collection, use, or disclosure of personal information is permitted by the relevant statute, a clear explanation of the necessity of the collection, use, or disclosure can help resolve a complaint informally.

If the Complaint is not resolved informally within the legislated time period, and this time has not been extended with agreement of the parties, then the Commissioner will conduct a formal investigation where the Commissioner is satisfied that there are reasonable grounds to do so.

OIPC's 2020-21 Annual Report provides details on the number of files that are resolved informally, stating:

Of the 164 active access complaints (124 new complaints and 40 carried forward from the previous reporting period), 61 were resolved through informal resolution and 42 were concluded with a Commissioner's report. The remaining 61 files were either resolved by other means or carried over to the 2021-2022 fiscal year.

Of the 55 active privacy investigations (39 new complaints and 16 carried forward from the previous reporting period), 17 were resolved through informal resolution and six were concluded with a Commissioner's report. The remaining 32 files were either resolved by other means or carried over to the 2021-2022 fiscal year.

ATIPPA, 2015 Privacy Breach Statistics July 1 – September 30, 2021

During the third quarter of 2021 (July 1 – September 30, 2021), OIPC received 49 privacy breach reports from 22 public bodies under *ATIPPA, 2015*; 28 of the breaches involved email. Public bodies are reminded that tips on avoiding breaches, including email breaches, can be found [here](#).

TIP: Did you know that you can disable the “auto complete list” feature on your e-mail? This should help avoid misdirected emails to individuals with similar names!

Job Opportunity – NL Centre for Health Information

The NL Centre for Health Information is currently advertising for the temporary position of Privacy Officer. For more information, please see the full job ad on the Centre's website [here](#).