

PROMOTING ACCESS & PROTECTING PRIVACY
FINDING THE BALANCE

2010 ANNUAL REPORT 2011



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Access

By providing a specific right of access and by making that right subject only to limited and specific exceptions, the legislature has imposed a positive obligation on public bodies to release information, unless they are able to demonstrate a clear and legitimate reason for withholding it. Furthermore, the legislation places the burden squarely on the head of a public body that any information that is withheld is done so appropriately and in accordance with the legislation.

NL OIPC Report 2005-002



Privacy

This Court has recognized that the value of privacy is fundamental to the notions of dignity and autonomy of the person [...] Equally, privacy in relation to personal information and, in particular, the ability to control the purpose and manner of its disclosure, is necessary to ensure the dignity and integrity of the individual. [...]

We also recognize that it is often important that privacy interests be respected at the point of disclosure if they are to be protected at all, as they often cannot be vindicated after the intrusion has already occurred [...]

R. v. Osolin, [1993] 4 S.C.R. 595
L'Heureux-Dubé]. (Dissenting)



Message From The Commissioner

December 1, 2011

The Honourable Ross Wiseman
Speaker
House of Assembly
Newfoundland and Labrador

I am pleased to submit to you the Annual Report for the Office of the Information and Privacy Commissioner in accordance with Section 59 of the *Access to Information and Protection of Privacy Act*. This Report covers the period from April 1, 2010 to March 31, 2011.

A handwritten signature in black ink that reads "E. P. Ring". The signature is written in a cursive style and is positioned above a long, thin horizontal line that extends to the right.

Edward P. Ring
Information and Privacy Commissioner

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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.”

Under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”), Newfoundlanders and Labradorians are given legal rights to access government information with limited exceptions. Access to information refers to the public’s right to access records relating to the operations of public bodies in the Province, ranging from general administrative records, financial records, permits, policies, etc. The basic objective is to make government open and transparent, and in doing so to make government officials, politicians, government departments, agencies and municipalities more accountable to the people of the Province.

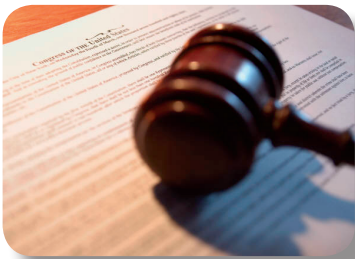


Over the past three decades, all jurisdictions in Canada have introduced legislation relating to the public’s right to access information and to their right to have their personal privacy protected.

These legislative initiatives represent an evolution from a time when governments in general consistently demonstrated stubborn resistance to providing open access to records. This concept has changed. Today, access to information is a clearly understood right which the public has demanded and which governments have supported through legislation and action. No doubt there are still instances when unnecessary delays and unsubstantiated refusals to release information are encountered by the public. But in this Province, such cases are more and more the exception. The rule and spirit of “giving the public a right of access to records” is increasingly the norm.

On January 16, 2008 Part IV of the Act was proclaimed into force. Part IV contains the privacy provisions of the ATIPPA, governing the collection, use and disclosure of personal information by public bodies. These provisions also give individuals a specific right to request the correction of errors involving their own personal information.

The ATIPPA, like legislation in all other Canadian jurisdictions, established the Information and Privacy Commissioner (the Commissioner) as an Officer of the House of Assembly, with a mandate to provide an independent and impartial review of decisions and practices of public bodies concerning access to information and privacy issues. The Commissioner is appointed under section 42.1 of the ATIPPA and reports to the House of Assembly through the Speaker. The Commissioner is independent of the government in order to ensure impartiality.



The Office of the Information and Privacy Commissioner (the “OIPC”) has been given wide investigative powers, including those provided under the *Public Inquiries Act*, and has full and complete access to all records in the custody or control of public bodies*. If the Commissioner considers it relevant to an investigation, he may require any record, including personal information, which is in the custody or control of a public body to be produced for his examination. This authority provides the citizens of the Province with the confidence that their rights are being respected and that the decisions of public bodies are held to a high standard of openness and accountability. While most citizens are prepared to accept that there may be instances of delays by public bodies, and that there may also be mistakes and misunderstandings, they also expect that such problems will be rectified with the help of this Office when they occur.

**Subject to two recent court decisions: 1) Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner) 2010 NLTD 19, in which Mr. Justice Fowler determined that the Commissioner was not empowered by the ATIPPA to compel production of records for which there has been a claim of section 5(1)(k); and 2) Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner), 2010 NLTD 31, in which Madame Justice Marshall determined that the Commissioner cannot compel the production of records for which there has been a claim of section 21 (solicitor client privilege). The latter decision has been appealed.*

Personal Health Information Act (PHIA)

Personal Health Information Act (PHIA) protects personal health information held by both public sector and private sector custodians.



I wish to take this opportunity to comment on government's plan to enact legislation which is specifically aimed at the protection of personal health information, to be called the *Personal Health Information Act*, or *PHIA*. Personal health information is indeed often the most sensitive form of personal information. Even though the *ATIPPA* currently protects personal health information as it does other types of personal information, the *ATIPPA* only applies to public bodies, whereas the intention with *PHIA* is that it will apply to personal health information held by both public sector and private sector custodians. Therefore, given that the scope of *PHIA* is much broader than the *ATIPPA*, this Office will be tasked with a broader mandate than currently maintained as the Office will not only serve as the oversight body for *ATIPPA* but for *PHIA* as well. Whereas there are approximately 429 public bodies designated under the *ATIPPA* that are subject to the oversight of this Office, there will be thousands of private and public sector custodians of personal health information whose compliance with the *PHIA* will be overseen by this Office.

This Office continues to take an active role in the preparation for the roll-out of *PHIA*. Specifically, a representative from the OIPC participates on the *PHIA* Implementation Steering Committee as well as both the Education Working Group and Regulations Working Group. I wish to note for the record that not all jurisdictions which have introduced personal health information legislation have invited and welcomed the participation of their respective Commissioners to the same extent that we have experienced. Not only have we been welcomed into the process, but our input has been actively sought and listened to on many important points along the way. In fact, my Office has promoted this process as a model to other jurisdictions across Canada who are or will be developing this type of legislation. It has been largely a stakeholder-driven process from the beginning, with excellent leadership and facilitation from day one. Although government must have the final say on the key issues, it is clear that their ultimate decision-making has been informed by an ongoing participatory and consultative process.

HEALTH INFORMATION

A PRIVATE MATTER

The various working groups associated with the *PHIA* Implementation Steering Committee can count a number of successes along the way. Products such as the Policy Development Manual, the Risk Management Toolkit, and the on-line *PHIA* Education Program (which is being hosted by the Newfoundland and Labrador Centre for Health Information), as well as the sample notice materials and posters will all help custodians as they work towards compliance with the *PHIA*. These materials and more will be available on the website of the Department of Health and Community Services. The challenge before us all in the coming months and years is to ensure that all custodians are fully aware of their obligations under the *PHIA*, and that these tools exist to help them meet those obligations. *PHIA* is expected to be proclaimed early in the next fiscal year.



Resources were provided in the 2009-2010 budget for the OIPC staff to undertake targeted and directed training specifically in preparation for the proclamation of *PHIA*. These resources were well used and I am confident that as a result of the training undertaken, the Office has made good progress in its ability to provide immediate, effective and efficient oversight of *PHIA*. Our preparation, training and educational initiatives, when available and where resources allowed, continued throughout fiscal year 2010-2011.

Accessing Information

It should not be a difficult process for individuals to exercise their right of access to records in the custody or control of a government department or other public body covered by the *ATIPPA*. Many people are seeking records containing information which may be handled without a formal request under the access legislation. This is referred to as routine disclosure and I am pleased to report that more and more information requests are being dealt with in this timely and efficient manner. Where the records are not of a routine nature, the public has a legislated right of access under the *ATIPPA*. The process is outlined below.



How to Make an Access to Information Request

- Determine which public body has custody or control of the record.
- Contact the public body, preferably the Access and Privacy Coordinator, to see if the record exists and whether it can be obtained without going through the process of a formal request. A list of Access and Privacy Coordinators and their contact information can be found at the [Department of Justice ATIPP website](#).
- To formally apply for access to a record under the *Act*, a person must complete an application in the prescribed form, providing enough detail to enable the identification of the record. Application forms are available from the public body or from the [Department of Justice ATIPP website](#).
- Enclose a cheque or money order for the \$5.00 application fee payable to the public body to which the request is submitted (or, if a government department, payable to the Newfoundland Exchequer).
- Within 30 days, the public body is required to either provide access, transfer the request, extend the response time up to a further 30 days or deny access. Additional fees may also be imposed for search, preparation, copying and delivery services.
- If access to the record is provided, then the process is completed. If access is denied or delayed unreasonably, or if you think the fee charged is inappropriate, or if you have experienced other problems with the access to information process, you (the applicant) may request a review by the Information and Privacy Commissioner, or you may appeal directly to the Supreme Court Trial Division.

How to File a Request for Review with the Information and Privacy Commissioner

- Submit a [Request for Review or Investigation of Complaint Form](#) to our Office.
- Upon receipt of a complaint or formal request for review, the Information and Privacy Commissioner will review the circumstances and attempt to resolve the matter informally.
- If informal resolution is unsuccessful, the Information and Privacy Commissioner will prepare a Report and, where necessary, will make recommendations to the public body. A copy of the Report is provided to the applicant and to any third party notified during the course of our investigation, and the Report is also posted on our website, www.oipc.nl.ca.
- Within 15 days after the Report is received, the public body must decide whether or not to follow the recommendations, and the public body must inform the applicant and the Commissioner of this decision.
- Within 30 days after receiving the decision of the public body, the applicant or the Information and Privacy Commissioner may appeal the decision to the Supreme Court Trial Division.



Withholding Information

While the *ATIPPA* provides the public with access to government records, such access is not absolute. The *Act* also contains provisions which allow public bodies to withhold certain records from disclosure. The decision to withhold records by governments and their agencies frequently results in disagreements and disputes between applicants and the respective public bodies. Although applicants are empowered to appeal directly to the Supreme Court Trial Division, the most common route for applicants in such cases is to the Office of the Information and Privacy Commissioner.

Complaints range from:

- being denied the requested records;
- being told there are no responsive records;
- being requested to pay too much for the requested records;
- being told by the public body that an extension of more than 30 days is necessary;
- not being assisted in an open, accurate and complete manner by the public body;
- other problems related to the *ATIPPA*.

While the Commissioner's investigations provide him access to records in the custody or control of public bodies, he does not have the power to order that a complaint be settled in a particular way. He and his staff rely on negotiation to resolve most disputes, with his impartial and independent status being a strong incentive for public bodies to abide by the legislation and provide applicants with the full measure of their rights under the *Act*. As mentioned, there are specific but limited exceptions to disclosure under the *ATIPPA*. These are outlined below:

Mandatory Exceptions

- *Cabinet confidences* - where the release of information would reveal the substance of deliberations of Cabinet.
- *Personal information* - recorded information about an identifiable individual, including name, address or telephone number, race, colour, religious or political beliefs, age, or marital status.
- *Harmful to business interests of a third party* - includes commercial, financial, labour relations, scientific or technical information and trade secrets.
- *House of Assembly service and statutory office records* - protects parliamentary privilege, advice and recommendations to the House of Assembly, and records connected with the investigatory functions of a statutory office.

Discretionary Exceptions

- *Local public body confidences* - includes a draft of a resolution, by-law, private bill or other legal instrument, provided they were not considered in a public meeting.
- *Policy advice or recommendations* - includes advice or recommendations developed by or for a public body or minister.
- *Legal advice* - includes information that is subject to solicitor-client privilege and legal opinions by a law officer of the Crown.
- *Harmful to law enforcement* - includes investigations, inspections or proceedings that lead or could lead to a penalty or sanction being imposed.
- *Harmful to intergovernmental relations* - includes federal, local, and foreign governments or organizations.
- *Harmful to financial or economic interests of a public body* - includes trade secrets, or information belonging to a public body that may have monetary value, and administrative plans/negotiations not yet implemented.
- *Harmful to individual or public safety* - includes information that could harm the mental or physical well-being of an individual.

Unsupported refusals to release information and delays in responding to requests for access are particularly frustrating to applicants as well as to this Office. This being said, it is of significant comfort to acknowledge that there is a sustained effort under way by government through the ATIPP Office in the Department of Justice to train public bodies in their obligations under the *ATIPPA*, especially as it relates to the timeframes for notification and action. The government's *ATIPPA* Policy and Procedures Manual is an integral part of the ongoing training program. This Office has and will continue to work with government in this effort.

It is noted here that public bodies often express resentment that they too often receive requests for information that they would call repetitive, trivial or even vexatious. They argue that knowing how much a minister or a CEO spends on hotel bills and meals doesn't do anything to promote good public policy, or that requesting copies of thousands of e-mails leading up to a dismissal of an employee does nothing to further the mandate or efficiency of an agency or municipality. Whether these assertions are correct or not, the fact is that in the grand scheme of things, requests for records which may seem petty to some, may be a serious issue for certain citizens whose right to make a request is protected by the *ATIPPA*. The legislation does not provide for or allow this Office to pick and choose whether an access request is important, useful, frivolous, vexatious or in bad faith. Referring back to the above examples, politicians who appreciate that their expenses may become public might be a little more conscious of thrift when traveling, while public bodies preparing to dismiss an employee may be a little more sensitive and professional in their human resources practices.

The bottom line is that it is inevitable that the public's recourse to access laws will likely grow. Whether they are policy, financial, economic, political or personal, issues are becoming more and more complex and the public is becoming more questioning. The right to demand access to such information, even if it seems trivial or unimportant to all but the requester, is still paramount in that process.



The Role of the Commissioner



The key tenet of our role is to keep the lines of communication with applicants, public bodies and affected third parties open, positive, and productive.

In accordance with the provisions of the *ATIPPA*, when a person makes a request for access to a record and is not satisfied with the resulting action or lack thereof by the public body, he or she may ask the Commissioner to review the decision, act or failure to act relating to the request. The Commissioner and this Office therefore have the key role of being charged by law with protecting and upholding access to information and protection of privacy rights under the *ATIPPA*.

This responsibility is specific and clear, and this Office takes it seriously. However, there are often questions concerning how we see our role, and how we do our job. It has been mentioned earlier that the Office is independent and impartial. There are occasions when the Commissioner has sided with applicants and other occasions when the Commissioner supports the positions taken by public bodies. In every case, having conducted our research carefully and properly, all conflicting issues are appropriately balanced, the law and common sense are applied and considered, and the requirements of the legislation are always met. Applicants, public bodies and third parties must understand that this Office has varied responsibilities, often requiring us to decide between many conflicting claims and statutory interpretations.

As noted, this Office does not have enforcement or order power. We do not see this as a weakness, rather it is a strength. Order power may be seen as a big stick which could promote an adversarial relationship between this Office and public bodies. We promote and utilize negotiation, persuasion and mediation of disputes and have experienced success with this approach. Good working relationships with government bodies are an important factor and have been the key to this Office's success to date.

Success can be measured by the number of satisfied parties involved in the process, by fewer complaints, and by more and more information being released by public bodies without having to engage the appeal provisions of the *ATIPPA*. We are equally committed to ensuring that information that should not be released is indeed protected.

This Office is committed to working cooperatively with all parties. We respect opposing points of view in all our investigations but pursue our investigation of the facts vigorously.

We are always available to discuss requests for review and related exceptions to the fullest extent at all levels without compromising or hindering our ability to investigate thoroughly. We emphasize discussion, negotiation and cooperation. Where appropriate, we are clear in stating which action we feel is necessary to remedy disagreements. In that regard, we will continue to make every effort to be consistent in our settlement negotiations, in our recommendations and in our overall approach.

Activities and Statistics

Education and Awareness

The following is a list of presentations, awareness activities and events conducted or attended by staff of the OIPC between April 1, 2010 – March 31, 2011.

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| April 7, 2010 | OIPC Initial briefing session with the <i>ATIPPA</i> Legislative Review Commissioner, Mr. John Cummings, Q.C. (St. John's) |
| April 13 - 14, 2010 | Participate with Newfoundland and Labrador Centre for Health Information and the Department of Health and Community Services in the development of the online training program in support of the <i>Personal Health Information Act (PHIA)</i> (St. John's) |
| April 15, 2010 | Joint Agenda planning meeting with officials from Memorial University and Eastern Health in preparation for a two day training seminar regarding <i>PHIA</i> , facilitated by Dr. Deborah Grant, Office of the Information and Privacy Commissioner of Ontario (St. John's) |
| April 19, 2010 | Regulations Working Group meeting (<i>PHIA</i>) (St. John's) |
| April 19 - 21, 2010 | International Association of Privacy Professionals (IAPP) Seminar (Washington) |
| April 21 - 22, 2010 | Canada Infoway Meeting (Privacy Forum) (Montreal) |
| April 29 - 30, 2010 | Media Relations Conference (Halifax) |
| May 3, 2010 | Consultation and participation in the Legislative Review of the <i>Child, Youth and Family Services Act</i> (St. John's) |
| May 4, 2010 | Presentation – Canadian Information Processing Society – Women in Technology (CIPS) (St. John's) |
| May 4, 2010 | <i>PHIA</i> Education Working Group meeting (St. John's) |
| May 6, 2010 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| May 17 - 18, 2010 | Access and Privacy Conference (St. John's) |
| May 19, 2010 | Presentation – Professional Development Day, Western Newfoundland Chartered Accountants (Corner Brook) |
| May 20, 2010 | Presentation to the International Association of Business Communicators (St. John's) |

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| May 25, 2010 | <i>PHIA</i> Private Sector Working Group Meeting (St. John's) |
| May 25 - 28, 2010 | Alternate Dispute Resolution Workshop (St. John's) |
| May 31, 2010 | Commissioner, guest on CBC "Cross Talk" to discuss issues around Facebook, Social Networking and Privacy (St. John's) |
| June 1, 2010 | Presentation to O'Donel High School (Mount Pearl) |
| June 4, 2010 | Presentation to the Canadian Bar Association, Access and Privacy Section (St. John's) |
| June 9 - 11, 2010 | International Association of Privacy Professionals (IAPP) Conference hosted by University of Alberta (Edmonton) |
| June 10, 2010 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| June 16 - 18, 2010 | Atlantic Region Access and Privacy Conference (Halifax) |
| June 23, 2010 | <i>PHIA</i> Education Working Group (St. John's) |
| June 28, 2010 | Participated in <i>PHIA</i> preparation seminar, hosted by Eastern Health with participation from a number of major stakeholders in personal health information (St. John's) |
| June 29, 2010 | Presentation/discussion with Research Ethics Board (St. John's) |
| July 6, 2010 | <i>PHIA</i> Regulations Working Groups (St. John's) |
| July 13 -14, 2010 | <i>PHIA</i> preparation seminar hosted by OIPC with keynote presenter – Commissioner Gary Dickson, Q. C., Information and Privacy Commissioner, Saskatchewan. Officials from the Regional Health Authority, Department of Health and Community Services, Newfoundland and Labrador Centre for Health Information, Pharmacists Association of Newfoundland and Labrador, Newfoundland and Labrador Pharmacy Board and Memorial University participated in the seminar. |
| July 20, 2010 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| July 20, 2010 | OIPC Meeting with <i>ATIPPA</i> Legislative Review Commissioner, Mr. John Cummings, Q.C. (St. John's) |
| July 23, 2010 | <i>PHIA</i> Education Working Group Meeting (St. John's) |
| July 27 - 28, 2010 | Administrative Professionals Summit (Toronto) |

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| July 28, 2010 | Meeting with the ATIPP Coordinator and the Associate Dean of Research for the Faculty of Medicine, Memorial University concerning <i>PHIA</i> (St. John's) |
| July 29, 2010 | Special <i>PHIA</i> Steering Committee Meeting (St. John's) |
| Aug. 30 - Sept. 3, 2010 | Federal/Provincial/Territorial Annual Conference for Information and Privacy Commissioners and Ombudspersons (Whitehorse) |
| Sept. 8, 2010 | Privacy and <i>PHIA</i> Presentation to staff of Chancellor Park (St. John's) |
| Sept. 9, 2010 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| Sept. 13, 2010 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| Sept. 15, 2010 | OIPC Presentation to House of Assembly Staff (St. John's) |
| Sept. 16, 2010 | Town Hall Presentation to <i>PHIA</i> Custodian Representative Groups (St. John's) |
| Sept. 17, 2010 | OIPC Presentation to Department of Finance (St. John's) |
| Sept. 19 - 20, 2010 | Canadian Bar Association Access and Privacy Law Symposium (Ottawa) |
| Sept. 21, 2010 | Meeting with Federal Privacy Commissioner and various other provincial commissioners to discuss material concerns and strategy development dealing with solicitor-client privilege challenges in a number of jurisdictions (Ottawa) |
| Oct. 4 - 6, 2010 | Canada Infoway, Privacy Forum meeting (Edmonton) |
| Oct. 7, 2010 | Presentation to the annual convention, Municipalities Newfoundland and Labrador (St. John's) |
| Oct. 8, 2010 | OIPC presentation – Gaining the Edge Negotiation Strategies for Lawyers Seminar (St. John's) |
| Oct. 24 - 26, 2010 | Alternate Dispute Resolution Workshop (Toronto) |
| Oct. 25 - 29, 2010 | International Conference for Data Protection Agency Heads (Jerusalem) |
| Nov. 15 - 16, 2010 | Privacy and Information Security Conference (Ottawa) |
| Nov 29 - 30, 2010 | <i>PHIPA</i> Summit 2010 – Meeting the Challenge of Managing Health Information (Toronto) |

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| Dec. 6, 2010 | OIPC presentation/discussion with Eastern College (St. John's) |
| Dec. 8, 2010 | OIPC/Newfoundland and Labrador Centre of Health Information Staff development day in preparation for <i>PHIA</i> proclamation (St. John's) |
| Dec. 9, 2010 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| Dec. 15, 2010 | Presentation to Eastern College (St. John's) |
| Jan. 6, 2011 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| Jan. 17, 2011 | Meeting/Consultation at Eastern College (St. John's) |
| Jan. 25, 2011 | Presentation to Canadian Bar Association on <i>Personal Health Information Act</i> (St. John's) |
| Jan. 27, 2011 | Privacy after hours event for stakeholders and supporters of Data Privacy Day (St. John's) |
| Jan. 28, 2011 | Data Privacy Day events – Information Booth at the Avalon Mall and Essay Competition (St. John's) |
| Feb. 10 - 11, 2011 | <i>PHIA</i> Steering Committee Meeting (St. John's) |
| Feb. 16 - 18, 2011 | Privacy and Security Conference (Victoria) |
| Feb. 23 - 24, 2011 | Public Sector Media Relations Training (Ottawa) |
| Feb. 28, 2011 | Consultation with Representatives of Infinid ID - Genesis Centre, Memorial University (St. John's) |
| Mar. 9 - 12, 2011 | IAPP Privacy Summit (Washington) |
| Mar. 9 - 11, 2011 | 2011 Information Management Access and Privacy Symposium (Toronto) |
| Mar. 8 - 11, 2011 | Advanced Alternate Dispute Resolution Workshop (Toronto) |
| Mar. 17 - 18, 2011 | Presentation and Panel Member, Angel Business Development Program, College of the North Atlantic (Grand Falls) |

OIPC Hosted Seminar



Commissioner Gary Dickson, Q.C., Information and Privacy Commissioner, Saskatchewan, was invited to be the event key note speaker and facilitator. Commissioner Dickson was appointed Saskatchewan's first full-time Information and Privacy Commissioner effective November 1, 2003. He was re-appointed by the Legislative Assembly in March 2009 for a further five year term. Saskatchewan has had its personal health information law enacted since 2004. During the one and a half day event, officials from the Regional Health Authorities, Department of Health and Community Services, Newfoundland and Labrador Centre for Health Information, the Newfoundland and Labrador Pharmacy Board, Pharmacy Association of Newfoundland and Labrador and Memorial University participated in the seminar.

We also take this opportunity to acknowledge the hard work, dedication and energy of the responsible officials in the Department of Health and Community Services, Regional Health Authorities and the Newfoundland and Labrador Centre for Health Information, and indeed, all stakeholders in advancing this significant and important piece of legislation.

Consultation/Advice

This Office continues to receive numerous inquiries and requests for advice and consultation. In response, our staff routinely provides guidance to individuals, organizations and public bodies.

We consider this to be an important aspect of our overall mandate and we encourage individuals and organizations to continue seeking our input on access and privacy matters. There may be times when we are unable to advise on a specific situation if it appears that the matter could subsequently be brought to the OIPC for investigation or review, however if that is the case we can still offer information about the applicable legislation and the complaint or review processes.

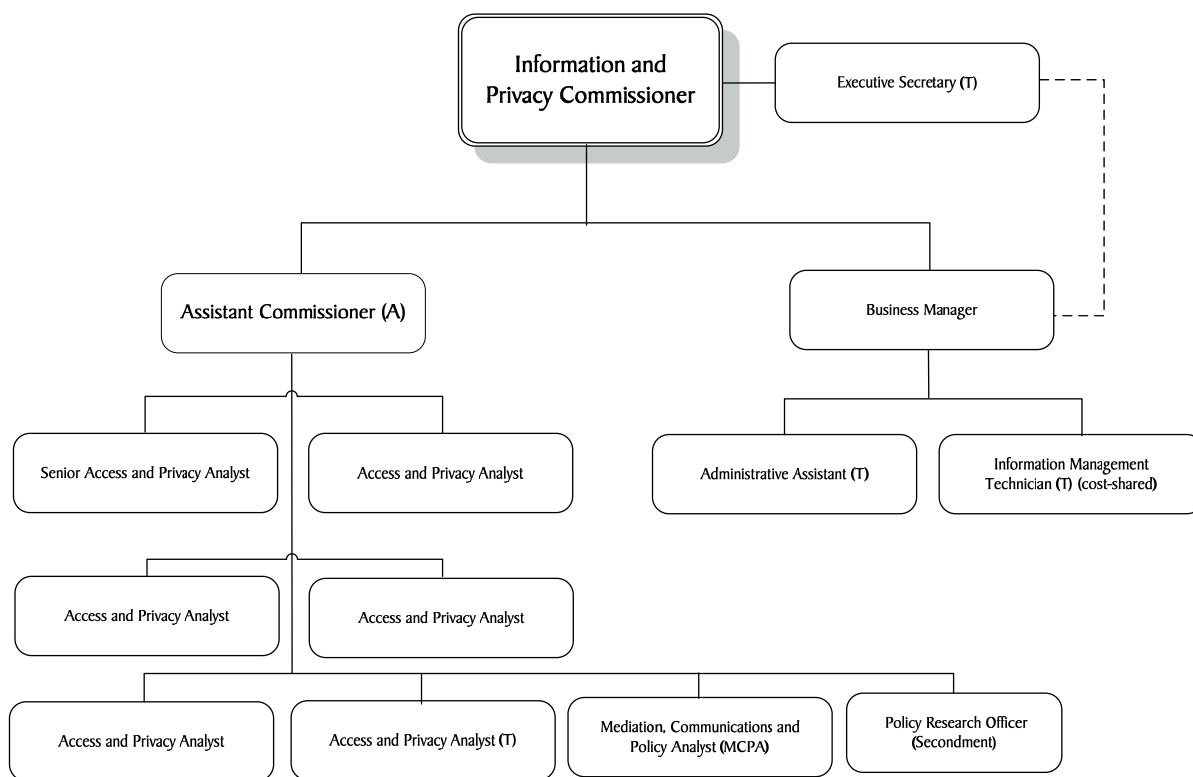
OIPC Website

Our website, www.oipc.nl.ca, continues to be a useful tool for members of the public and public bodies. There are a number of valuable resources there, with significant updates and additions planned in the coming year.

Among the information and resources available on this website, you will find a Table of Concordance for ATIPPA access and privacy review decisions, which allows anyone to choose a section of the ATIPPA and be quickly presented with links to all of the Commissioner's Reports which are relevant to that section.

Staffing

The Office has a total of 14 staff including: the Commissioner, Assistant Commissioner, Senior Access and Privacy Analyst, five Access and Privacy Analysts (4 permanent and 1 temporary), Mediation, Communications and Policy Analyst, Policy Research Officer, Business Manager, Administrative Officer, Administrative Assistant, and an Information Management Technician.



While all staff members work diligently to meet the challenges of increased workload demands, it is obvious that our work volume is quite high and will continue to be high for the foreseeable future. This situation is in part due to the continued expansion of our role to educate the public, and the demands of numerous consultations and inquiries. We have become more and more engaged with public bodies and other organizations - reviewing and commenting on draft privacy impact assessments, privacy policies and procedure development. Additionally, a senior staff member from the Office has continued to play

a significant role with the preparations for the roll-out of the *Personal Health Information Act (PHIA)*. Specifically, the OIPC representative serves on the *PHIA* Steering Committee, Regulations Working Group, and the Education Working Group, including the development of the online training program designed and developed to support *PHIA* implementation. The OIPC representative also makes a significant contribution to the ongoing work of the Canada Health Infoway Privacy Forum, which is a national body engaged in funding and setting pan-Canadian standards for the development of an interoperable electronic health record.

Individuals and organizations are now more familiar with this Office and with the *ATIPPA* and, as a result, are exercising their rights under the legislation more often. We are encouraged by this. I should also note that our Office has been challenged to cope with the demands placed on it due to the significant workload resulting from privacy breach investigations. The backlog of requests for review and privacy complaints has grown somewhat since the last reporting period. In addition, the *Personal Health Information Act (PHIA)* is expected to be proclaimed into law early in the next fiscal year. As with the *ATIPPA*, this Office will be the review mechanism for this new legislation. The *PHIA* will undoubtedly create even more demand on this Office and, as such, additional resources will be necessary. We will monitor the roll out of this legislation closely and we anticipate Government's support in seeking the necessary resource increase as appropriate to deal with the work flowing from *PHIA* requirements.



2010-2011 Statistics

As provided by the ATIPP Coordinating Office of the Department of Justice and the Information Management Office of the House of Assembly, the total number of access requests received by public bodies for the 2010-2011 fiscal year was 581. During the same timeframe, this Office received 84 requests for review under section 43 of the *ATIPPA* and 18 complaints under section 44 of the *ATIPPA*, for a total of 102 requests for review/complaints. This translates into 17.6% of these access requests being forwarded to this Office for review. Twenty-one privacy investigation requests under Part IV of the *ATIPPA* were also received. In addition, there were 65 requests for review, 8 complaints and 15 privacy investigations carried over from the previous year for a total of 149 requests for review, 26 complaints and 36 privacy investigations for the 2010-2011 fiscal year. This reflects a 5% increase in Requests for Review, an 18% increase for Complaints and a 39% increase for privacy investigations for active files during the 2010-2011 fiscal year.

Of the 149 Requests for Review, 58 were resolved through informal resolution and 21 resulted in a Commissioner's Report. The remainder were either closed or carried over to the 2011-2012 fiscal year. In addition to Requests for Review, this Office received 473 access to information related inquiries during the 2010-2011 year. Of the 26 complaints received under section 44, relating either to the fees being charged or to extensions of time by public bodies, 18 were investigated and concluded by this Office and the remainder were carried over to the 2011-2012 fiscal year.

Of the 175 Requests for Review and complaints dealt with in the 2010-2011 year:

- 158 (or 90%) were initiated by individuals;
- 7 (or 4%) were initiated by the media;
- 4 (or 2%) were initiated by political parties;
- 3 (or 2%) were initiated by businesses;
- 2 (or 1%) were initiated by legal firms;
- 1 (or 1%) was initiated by another public body.



Forty-two percent of all cases were related to provincial government departments. Twenty-nine percent of the cases were related to educational bodies. Eighteen percent of the cases were related to local government bodies. Eight percent of the cases were related to agencies of the Crown. One percent of the cases were related to health care bodies, one percent of the cases were related to businesses and one percent of the cases were related to the Legislative Assembly.

Of the 36 privacy investigations, 19 were closed and the remaining files were carried over to the 2011-2012 fiscal year. Closed privacy investigations include those which may have been resolved informally, as well as those which were concluded through a letter to the parties from the OIPC outlining our findings in cases where a public report was not warranted. In addition to privacy investigation requests, this Office received 314 privacy related inquiries during the 2010-2011 year.

Of the 36 privacy investigations dealt with in the 2010-2011 year:

- 30 (or 83%) were initiated by individuals;
- 2 (or 5%) were initiated by local government bodies;
- 1 (or 3%) was initiated by an education body;
- 1 (or 3%) was initiated by the OIPC;
- 1 (or 3%) was initiated by an interest group;
- 1 (or 3%) was initiated by a business.



In the case of the privacy investigation initiated by the OIPC, there was no complaint by a complainant or reported incident by the public body involved, however, the matter was of a level of significance that the Commissioner felt it was appropriate to initiate the investigation.

Thirty-six percent of all privacy cases were related to provincial government departments. Thirty-one percent of the cases were related to health care bodies. Seventeen percent of the cases were related to agencies of the Crown. Eight percent of the cases were related to local government bodies. Eight percent of the cases were related to education bodies.

For more information on the statistics for the year 2010-2011 see the Figures and Tables in Appendix A.

Part IV of the ATIPPA, was proclaimed on January 16, 2008, which contains provisions governing the collection, use and disclosure of personal information by public bodies in Newfoundland and Labrador.

Balance

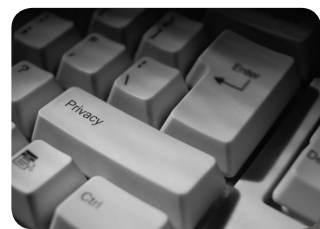
The OIPC will react to all formal privacy breach complaints and will conduct an investigation as appropriate. It should be noted that the OIPC preserves the right to initiate an investigation into privacy breach matters when it appears to be in the public interest to do so, without a formal submission from a complainant. The Office may also conduct a privacy investigation at the request of the head of a public body or his or her representative.

The OIPC is not bound by statute to issue reports on its privacy investigations, although we have done so in some cases because it is something we consider to be a valuable part of our tool-kit as an oversight body. Our Office has developed internal criteria, such as whether a conclusion would set a legal precedent, or whether a Report might have significant educational value, to help decide whether a report should be issued in any particular case. There have been many cases in which we have opted instead to simply write a letter to the public body and complainant, following the investigation of a privacy complaint, outlining the results, either agreeing with the public body or making recommendations for changes. We have tried to be careful, however, not to place ourselves in a situation where we are issuing a public report every time we have found that a public body has made an error, but only sending a private letter to the parties when we find that there has been no breach, or that the public body has done something correct. In other words, we want to present to the public through our reports not only the failures of compliance, but the successes too.

It should be re-emphasized that it is access issues, rather than privacy issues, which have constituted the bulk of our work in the past year. A lot of credit for the fact that privacy issues have not been as numerous as might have been expected, goes to the Department of Justice ATIPP Office and to the Office of the Chief Information Officer, for being proactive on privacy, for concentrating on privacy impact assessments, for responding quickly to gaps in policies and procedures when they are identified, and for cooperating fully with our Office. Privacy is all about prevention, and sometimes the preventive work goes unrecognized. I want to take this opportunity to recognize the good work that is being done here in Newfoundland and Labrador.

Privacy in the Coming Year

During the past year we have had the opportunity to gain significant exposure to the issues which are at the forefront for the other privacy oversight bodies in Canada. That experience indicates that health information privacy will be a high priority for our Office. There are many other valid, pressing and interesting issues competing for our attention: developments in case law, transnational data flows, advances in information security, video surveillance - the list goes on. But the privacy of a person's health information affects every single individual in this country, and the information systems and legislative solutions that are being developed in most jurisdictions are moving ahead at a rapid pace. Privacy oversight bodies such as this Office must be part of the process. My view is that the more engagement from privacy oversight bodies at the beginning and along the way, the better the final product will be. Fortunately, here in Newfoundland and Labrador I can report that this is indeed, to a large degree, the case. Work in the development of the electronic health record is being spearheaded here by the Newfoundland and Labrador Centre for Health Information, and supported by the provincial Department of Health and Community Services. To date, this Office has been fully engaged with these parties, and looks forward to continued cooperation. We also have had a significant involvement with the development of the *Personal Health Information Act (PHIA)*, and we continue to participate fully in the implementation process.



The fact that *PHIA* is intended to cover custodians of health information in the private sector as well as the public sector means that *PHIA* is quite far reaching legislation. Our Office lobbied for a significant effort in training and education to help custodians of personal health information become prepared for the new law. I am quite pleased that the Minister of Health and Community Services has allocated significant funding in last year's budget for *PHIA* implementation, and I look forward to reporting on further advances in the protection of privacy in the upcoming fiscal year.

Privacy Investigation Summaries

As of March 31, 2011, the OIPC has issued seven privacy reports since the privacy provisions of the *ATIPPA* were proclaimed in January 2008. During the past year, we began 21 new privacy investigations, in addition to 15 carried over from the previous year, for a total of 36. Of those 36 privacy files, 19 were closed and the remaining files carried over to the next year. No formal privacy Reports were published in relation to those 19 files. Some of them were resolved informally, but others were closed based on the criteria developed and outlined in our OIPC Policy and Procedures Manual, available on our website, www.oipc.nl.ca. Policy number 8 outlines the criteria to be considered by the Commissioner and OIPC staff when determining whether to conclude a privacy complaint with a letter to the parties or with a public Commissioner's Report. Even though no public reports were issued, we have included below a number of case summaries for privacy files which were closed during the period of this Annual Report.

Complaint About a Complaint

In this matter the Complainant filed two separate Complaints with this Office alleging that two government departments had breached sections 36 (protection of personal information) and 39 (disclosure of personal information) of the *Access to Information and Protection of Privacy Act* (the "ATIPPA").

The Complaint alleged that following contact, discussions and correspondence between the Complainant and the departments regarding certain issues and complaints of the Complainant, the Complainant came to understand that details of these interactions and communications had been disclosed to third parties.

In carrying out our investigation, this Office did note that the Complainant was aware of the possibility that information surrounding her interactions and communications with the departments may have to be discussed with third parties in order to have meaningful dialogue and at no time did the Complainant raise any issue with this. Furthermore, the matters concerned a rather specific area and set of facts and it may have been possible to ascertain the details of the Complainant's interactions with the departments without any actual disclosure.

Following a careful review, this Office determined that both departments did act in contravention of section 39 of the *ATIPPA* (i.e. did disclose the Complainant's personal information); however, the actions of the departments were unintentional and the result of oversight and inadvertence and were limited to a single occurrence.

It was recommended that: i) the departments be more diligent in their actions as they relate to personal information and complaints submitted by members of the public; and ii) the departments should provide further training and education regarding personal information and privacy to employees.

No Breach Found

In this matter the Complainant filed a Complaint with this Office alleging that a regional health authority had breached the privacy of a third party by inadequately protecting and improperly disclosing the third party's personal information contrary to sections 36 (protection of personal information) and 39 (disclosure of personal information) of the *Access to Information and Protection of Privacy Act* (the "ATIPPA").



The Complaint alleged that forms containing the patient's personal information were presented to a nurse who then communicated to a third party, or allowed a third party to view, the details of those forms. The Complainant also alleged that a meeting between the health authority and the third party took place in which the relevant forms and information about same were discussed.

Following a careful review, this Office determined that section 36 of the *ATIPPA* had not been breached as reasonable security arrangements were in place to adequately protect the personal information of patients. Furthermore, it was determined that there was insufficient evidence to conclude that the personal information of the patient was disclosed.

The health authority did admit that in certain settings within its health care facilities it is difficult to protect certain information from disclosure given that the relevant individual may be visible to anyone in that general area, thereby revealing that the individual was receiving care. The health authority explained that this was likely the case in this instance.

This Office was satisfied with the various policies in place within the health authority which are designed to protect personal information and to ensure that disclosure occurs only in very limited circumstances. This Office also noted that employees of the health authority receive privacy education and training that guides them to use best practices in these regards and the health authority recognized that it must adapt these policies and continue to educate its staff in preparation for the implementation of the *Personal Health Information Act*. Consequently, no recommendations were made.

Personal Information Lost, Policies not Followed

In this matter the Complainant filed a Complaint with this Office alleging that a health authority had breached the privacy of a family member by inadequately protecting her personal information contrary to section 36 (protection of personal information) of the *Access to Information and Protection of Privacy Act* (the "ATIPPA").



The Complaint alleged that documentation containing both medical and personal information was lost during the transfer of the family member to a healthcare facility. The documentation was found in the nearby driveway of a member of the public and returned to the health authority within three days.

In carrying out our investigation, this Office noted the creation of the documentation was not sanctioned by the management of the health authority and the health authority was unable to determine which staff person actually lost the documentation.

Following a careful review, this Office determined that section 36 of the *ATIPPA* had been breached as no reasonable security arrangements were in place to protect the personal information of patients. While there were policies in place, they clearly were not being adhered to by staff as the documentation was created in violation of those policies. However, following this incident all staff members were immediately instructed to discontinue use of the documentation and privacy policies were reinforced with all staff.

This Office further concluded that the risks involved in this event were low as the information was only exposed for a short time and to only one individual.

Based on the actions of the health authority following the breach, it was decided that no recommendations would be issued.

Mailing Error Leads to Disclosure of Personal Information

In this matter the Complainant filed a Complaint with this Office alleging that that a public body improperly disclosed her personal information contrary to section 39 (disclosure of personal information) of the *Access to Information and Protection of Privacy Act* (the "ATIPPA").

Based on the events leading up to the Complaint, this Office concluded that it was necessary to investigate whether the public body failed to protect the Complainant's personal information contrary to section 36 (protection of personal information) of the *ATIPPA* and also the disclosure to the Complainant of a third party's personal information.

Initially, the Complainant alerted the public body that she had not received an expected letter. Again at a later date the Complainant informed the public body that she still had not received the letter and advised of a change of address. Another copy of the letter was sent, unfortunately to the Complainant's old address; however, the Complainant was able to retrieve same. Along with the Complainant's letter, the Complainant was also provided with a second letter, containing the personal information of another individual. The Complainant informed the public body of the error and couriered the document back to the public body immediately.

Having herself received a third party's personal information in the mail, the Complainant became concerned about the whereabouts of her original letter which she never received.

In carrying out our investigation, this Office noted that the employee tasked with preparing the Complainant's correspondence for delivery by mail was also responsible for preparing the letter to the third party. Inadvertently the documents were clipped together and mailed to the Complainant resulting in a breach of subsection 39(1) of the *ATIPPA*; however, the breach was not intentional, was quickly contained and the risk to the third party was low.

This Office further concluded that the actions taken by the public body once it was informed of the disclosure of the third party's personal information to the Complainant were adequate; that the public body has security and privacy arrangements; and that the public body provided for privacy training for all staff. Additionally, the public body re-examined and revised its mailing/correspondence policies.

In respect of the potential disclosure of the Complainant's personal information, this Office found no evidence that this occurred.

Based on the actions of the public body following the breach, it was decided that no recommendations would be issued.

Access Report Summaries

As indicated in our previous Annual Report, the majority of Requests for Review received at this Office continue to be resolved through informal resolution. Of the Requests completed within the period of this Annual Report, sixty-two were resolved through the informal resolution process. In these cases, we write the applicant and the public body, as well as any applicable third party, confirming that a resolution has been achieved and advising all parties that the file is closed or will be closed within a specified time period. Where informal resolution is successful, no Commissioner's Report is issued.

In the event that our attempt at an informal resolution is not successful, the file will be referred to a formal investigation. The results of this investigation, including a detailed description of our findings, are then set out in a Commissioner's Report. The Report will either contain recommendations to the public body to release records and/or to act in a manner consistent with the provisions of the *Act*, or will support the position and actions of the public body. All Commissioner's Reports are public and are available on our website at www.oipc.nl.ca.

The following are summaries of selected Commissioner's Reports.

Report A-2010-005 - Memorial University of Newfoundland

The Applicant made a request on April 25, 2008 to Memorial University of Newfoundland ("Memorial") for e-mail messages in which the Applicant's name was mentioned (including deleted messages saved on Memorial's back-up e-mail server) sent and received by a named individual during a specified period. However, he asked that Memorial hold the request in abeyance and not process it pending the outcome of another request. On July 30, 2008 the Applicant asked that his request be processed. On October 3, 2008 Memorial wrote to the Applicant granting his request and enclosing some responsive records.

On October 6, 2008 the Applicant sent a Request for Review to this Office asking that the search be repeated. It was his view that the original search, for deleted messages in particular, was incomplete. The Applicant stated that if it were found to be technically impossible to retrieve these messages, he would at least like to know whether any messages were deleted during that time period.



There were two main issues to be decided in this matter: first, whether the original search was adequate and reasonable, and second, whether the Applicant's request to have the search repeated was reasonable.

Section 9 of the *ATIPPA* requires the head of a public body to make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner. Our Office interprets this requirement as including the duty to complete a reasonably thorough search for records, carried out by an experienced person who is familiar with the records system and storage practices.

In order to determine how the search had been done in this case, an Analyst from this Office met with a number of people at Memorial, including the Computing and Communications Department employee who had conducted the electronic search. That search had turned up 1,876 items, which were individually opened and reviewed. Only 14 records were determined to be responsive to the Applicant's request, mainly e-mailed departmental memos that had been sent to the Applicant's e-mail address.



Memorial had also asked the individual named in the request for copies of any responsive e-mails. That individual reported that he found no e-mails on his computer that were responsive to the request.

All of the documents that were responsive to the request were provided to the Applicant. During the course of the review, those records were also provided to our Office. There was no evidence that there were any other responsive records that had been withheld from the Applicant.

Memorial's initial understanding had been that e-mail messages deleted from individual accounts would still remain on the back-up server and thus be retrievable. That understanding had been communicated to the Applicant. However, in fact the system removes deleted messages from the back-up server after twenty-four hours. From that moment on there is no way to retrieve such messages.

The Commissioner concluded that Memorial had conducted a search for the requested e-mails which appears to have been professional, competent and thorough. Any responsive records found were provided to the Applicant. The search had also focused on deleted messages. However, none were found.

It is unfortunate that the Applicant had been misinformed about whether a back-up search for deleted e-mails was technically feasible. However, there was no evidence that this was anything other than a genuine misunderstanding on the part of individuals who responded to the Applicant and who were not themselves experts in the functioning of the e-mail system.

Given that any deleted messages that might have existed were already purged from the system, there would have been absolutely no purpose in repeating that search.

In addition, the Commissioner found that it was not possible to determine, from Memorial's server records, whether or not messages were deleted from a particular account. While some server and backup logs are kept, deletions are not logged at all.

The Commissioner therefore concluded that Memorial had conducted a reasonable and thorough search for the records requested by the Applicant, and had given him all responsive records found.

The Commissioner also noted that there was no evidence in this case that the e-mails sought by the Applicant had ever actually existed. In addition, even if such e-mails had previously existed, there was no evidence that they had been deleted other than in accordance with Memorial's records management policy. If there had been such evidence, the investigation and the Commissioner's Report would have encompassed such issues.



Given the Commissioner's conclusions, it was not necessary to make any recommendation. However, as required by the *ATIPPA* the head of Memorial University of Newfoundland wrote to this Office and to the Applicant, after receiving the Report, confirming its original decision.

[Note: Report A-2010-005 was released on April 28, 2010. On May 25, 2010 our Office received an Application filed in the Supreme Court by the Applicant in the above matter. See the court summary found on page 38 in this Report entitled *Oleynik v. (Newfoundland and Labrador) Information and Privacy Commissioner, Supreme Court Trial Division, 2011 NLTD 34.*]

Report A-2010-006 - Town of Logy Bay-Middle Cove-Outer Cove

The Applicant applied to the Town of Logy Bay-Middle Cove-Outer Cove (the "Town) for access to all records pertaining to the development of O'Leary Estates located off Snow's Lane and to the transfer of a public right-of-way known as Vincent's Lane. The Town provided a number of records but the Applicant complained to this Office that further records were missing, that an index should have been provided with the records, that the fee assessed for the initial search was too high and that a series of engineering drawings originally withheld from the Applicant should have been disclosed to him without charge.

After an inquiry by this Office into the adequacy of the initial search for responsive records, the Commissioner was satisfied that a thorough effort had been undertaken by the Town.

The Commissioner determined that the Town was not required by section 9 (duty to assist applicant) of the *ATTIPA* to provide an index to or explanation of all the records disclosed to the Applicant. However, the Commissioner further concluded that the Town did fail to fulfill its duty to assist the Applicant during efforts at informal resolution when it agreed to, but then did not provide the Applicant with some form of index or explanation that would allow him to make sense of the Town's response to queries raised by the Applicant during efforts at informal resolution. The Commissioner also found a public body must chronologically number a copy of all responsive records. To facilitate the proper conduct of a Request for Review, this Office must receive all responsive records from the public body in the same order and form they were received by the Applicant. The best way for this Office to be satisfied that we have received all responsive records disclosed to an applicant is for both the applicant and this Office to receive responsive records from the same chronologically numbered set.

The Commissioner also determined that the Town should not have charged a fee for the time taken to photocopy records for disclosure in addition to the per page fee photocopy charge because the fee per page includes the time taken to make the photocopy itself. With respect to the engineering drawings initially withheld from the Applicant, the Commissioner determined that the Applicant should pay a fee for obtaining these drawings from the Town in accordance with the Fee Schedule.

Report A-2010-007 – Office of the Citizens' Representative

The Applicant applied to the Office of the Citizens' Representative (the "OCR") for access to records pertaining to previous access to information requests made by the same Applicant to two government departments which were acquired by the OCR in the course of an investigation. The OCR refused access to all records claiming section 30.1(c) (Disclosure of House of Assembly service and statutory office records) of the *ATIPPA*. The OCR advised that the information requested by the Applicant was collected in the course of an investigation under the *Citizens' Representative Act* and was connected with the investigatory functions of the OCR. The OCR directed the Applicant to the two relevant departments as an alternative source of the requested information.



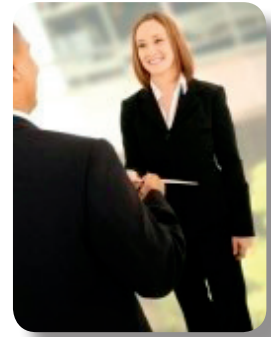
Notably, this was the first time that section 30.1(c) was considered by this Office and no relevant jurisprudence or report in relation to any comparable provision could be found from any other jurisprudence in Canada. The Commissioner held that the wording of section 30.1(c) was broad and encompasses more than actual investigation documents or information. The Commissioner determined that the records requested by the Applicant were clearly connected with the investigatory functions of the OCR and were therefore protected from disclosure pursuant to section 30.1(c). The Commissioner made no recommendations to the OCR.

Report A-2010-008 – College of the North Atlantic

The Applicant applied to the College of the North Atlantic (the "College") for access to records relating to amendments to an agreement between the College and the State of Qatar involving the establishment of a campus of the College in Qatar (the "*Comprehensive Agreement*").

The College granted the Applicant's request in part but denied access to certain records on the basis of section 20 (policy advice or recommendations), section 21 (legal advice), section 22 (disclosure harmful to law enforcement), section 24 (disclosure harmful to the financial or economic interests of a public body) and section 30 (disclosure of personal information).

The Applicant asked for a review of the decision of the College with respect to the access request and asked the Commissioner to bring to the attention of the College a failure to fulfill the duty to assist the Applicant.



In discussing whether the College had met its duty to assist in accordance with section 9 of the *ATIPPA*, the Commissioner pointed out that the Applicant received commitments from the College that she could have all the records responsive to her request upon the completion by the College of a compliance exercise. The Applicant was subsequently told by the College that the compliance exercise would not be completed and that any records produced during the exercise were subject to solicitor and client privilege, and therefore would not be provided to the Applicant.

The Commissioner found that the College had not dealt with the Applicant using the required “due care and diligence” and had failed to honour commitments made to the Applicant. Consequently, the College had not responded to the Applicant in the open, accurate and complete manner required by section 9 and had, therefore, failed to fulfill its duty to assist.

The Commissioner recommended that in future access requests the College be mindful of its duty to assistant applicants by responding to applicants in an open, accurate and complete manner, in particular that the College should honour its commitments to release information to applicants.

The Commissioner noted that the College had claimed the section 20 exception to disclosure but had not provided any argument or evidence in its submission to support its reliance on this exception. The Commissioner pointed out that in such circumstances he could only find that the section 20 exception was applicable in the “clearest circumstances” where it was clear on its face that the information revealed advice or recommendations. In those circumstances where the application of section 20 is not clear, absent any submission or explanation from the College, there had to be a finding that the exception was not applicable.

The Commissioner found in relation to the section 20 exception that there was information that met the “clearest circumstances” test and the College was entitled to refuse access to this information because its disclosure would reveal advice or recommendations.

In discussing the College's claim for the section 21 exception, the Commissioner indicated that the record for which the solicitor and client privilege exception had been claimed was a clause by clause analysis of the *Comprehensive Agreement* conducted by the College's external legal counsel with comments on the various clauses in the agreement.

The Commissioner found that the comments made by the College's legal counsel were subject to solicitor and client privilege. However, the Commissioner noted that the solicitor and client privilege exception set out in section 21 is a discretionary one. Therefore, it was also necessary for the College to have considered more than merely whether the information was technically covered by the exception. The College was obligated when considering whether to rely on the section 21 exception to determine first of all whether the information was subject to solicitor and client privilege. Once it was determined by the College that it was, the College should then have proceeded to the next stage in the process and determined what, if any, harm would result from releasing all or some of the information to the Applicant.

The Commissioner recommended that the College reconsider its decision and exercise its discretion by deciding whether to waive solicitor and client privilege in relation to the information contained in the analysis conducted on the *Comprehensive Agreement* by its external legal counsel. In this reconsideration, the College should bear in mind any compelling reasons for releasing the information, including the commitments made by the College to release that information. The College should also be mindful of increasing public confidence in the operation of the College, of ensuring fairness in the College's decision-making process, and of whether the benefits of disclosure outweigh any potential harm caused by the disclosure.

The Commissioner discussed the College's reliance on the exception to disclosure set out in section 22 (disclosure harmful to law enforcement). The College relied on paragraph (l) of section 22(1) claiming that disclosure of the information would "reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system." The Commissioner found that the information severed pursuant to section 22(1)(l) did deal with a "computer system" or a "communication system" but the information did not deal with security arrangements of property or a system. As a result, the Commissioner recommended release of the information.

The Commissioner then addressed the College's refusal of access to records containing budgetary information on the basis of section 24 (disclosure harmful to the financial or economic interests of a public body). In its formal submission the College simply stated that some records were severed pursuant to that section without further comment or elaboration. Therefore, the Commissioner had to review the information for which section 24 had been claimed and decide whether this was one of the "clearest circumstances" in which the disclosure of the information could reasonably be expected to harm the financial or economic interests of the College.

The Commissioner stated that, having reviewed the information for which section 24 had been claimed and being cognizant of the fact that the College operated in a competitive environment in relation to its operations in the State of Qatar, he had concluded that this was one of the "clearest circumstances" in which it was evident that the discretionary exception found in section 24 would in fact apply to some of the information in the responsive record. It was apparent to the Commissioner that the disclosure of that information could reasonably be expected to harm the financial or economic interests of the College. However, the Commissioner found that there was a small amount of information for which section 24 had been claimed that did not meet the "clearest circumstances" test. The Commissioner recommended release of that information.

The Commissioner commented on the College's denial of access on the basis of section 30 (disclosure of personal information). The Commissioner determined that the College was required in accordance with section 30 to withhold the names of a number of individuals that the College has referred to as "local hires" who are individuals hired directly by the State of Qatar and paid by the State of Qatar. These "local hires" are support and clerical staff at the Qatar Campus but are not employees of the College.

In addition, the Commissioner noted that the College in responding to the Applicant's various access requests for records relating to amendments to the *Comprehensive Agreement* had provided different estimates as to the time needed to complete the search, the scope of the search and the cost of the search. The Commissioner recommended that the College provide the Applicant with a new fee estimate outlining the cost to the College of conducting a reasonable search for any remaining records that would be responsive to the Applicant's access request.

Report A-2010-012 - Town of St. George's

The Applicant applied to the Town of St. George's for access to recordings of two Town Council meetings. The Town refused access to these records, relying on section 13 of the *ATIPPA* (repetitive or incomprehensible request). The Town offered no evidence of any previous requests and we were left to speculate in our Report that the claim of repetitiveness was related to the Applicant making similar requests in the past and/or receiving the minutes of previous meetings. The Commissioner determined that the minutes for each meeting are separate and unique records and that the Town was incorrect in its application of section 13.



In the usual course of the Town's business and in accordance with their own motion from 2002, these recordings were used as the basis for the minutes and then erased. The Commissioner did not accept the Town's argument that these recordings need not be disclosed because of their transitory nature. He instead concluded that because the request was made while the records were still in existence, the Town should release them to the Applicant.

Although it was not addressed in the Report, it should be noted that during the course of our review of this matter, the Town discontinued recording their Council meetings by a resolution passed in May 2010. Public meetings of a municipal council are generally open to the public, but citizens with busy home and work lives can rarely afford the time to check up on how their elected representatives are conducting their business. On the other end of the spectrum from the Town of St. George's, some larger municipal councils in this Province choose to broadcast their regular council meetings on the local cable channel. Given how technology has evolved, I expect that some councils will soon be recording their meetings and posting them to the internet, if they haven't begun to do so already. Although the minutes of a meeting are the "official" record of a council's decisions, recording and even broadcasting public council meetings are a legitimate means for a municipality to demonstrate that it is open and accountable to the public.

Report A-2010-016 – Memorial University of Newfoundland

The Applicant requested a copy of an internal investigation report from Memorial University of Newfoundland where she had been the originating complainant. Memorial provided the Applicant with a copy of the report but withheld under section 30 the personal information of the person who was the subject of the investigation, as well as the personal information of witnesses and other individuals named in the report. This Office received a request to review Memorial's decision to withhold those portions of the report. The Applicant was especially concerned that some of her own words had been severed.



The Commissioner determined that only just over half of the instances of severing were done properly and that the others, while meeting the definition of “personal information,” were not actually being disclosed to the Applicant as there was objective, concrete and clear evidence that these facts were known to the Applicant already. For example, some of the severed information was comprised of direct quotes from the Applicant. The Commissioner therefore determined that these pieces of information should not be withheld from the Applicant under section 30. The Commissioner recommended the release of these items to the Applicant, however, Memorial rejected the Commissioner's recommendations, and refused to release any additional information. The Applicant did not appeal Memorial's decision to the Supreme Court.

Court Proceedings

As indicated in our previous Annual Reports, this Office has, on occasion, appeared before the Supreme Court of Newfoundland and Labrador. This Office may become involved in an Appeal in one of four ways. In accordance with section 61(2) of the *ATIPPA*, this Office may intervene in a court proceeding where i) the Applicant directly appeals the decision of a public body in relation to his/her access request to the Supreme Court pursuant to section 43(3) of the *ATIPPA*, or ii) the Applicant appeals the decision of a public body in respect of a Report of the Commissioner pursuant to section 60(1). Alternatively, in accordance with section 61(1), (iii) with the consent of the Applicant or Third Party involved, this Office may appeal the decision of a public body in respect of a Report of the Commissioner. As occurred on two separate occasions during this fiscal year, (iv) the OIPC found itself in Court as a result of a public body filing for a judicial interpretation dealing with section 5 and section 21 of the *Act*.



The following are summaries of the proceedings in the Supreme Court of Newfoundland and Labrador Trial Division in which this Office has been involved during the period of this Annual Report.

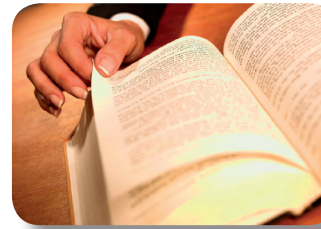
2008 04T 0465 Supreme Court of Newfoundland and Labrador, Trial Division – Public Service Commission (PSC)

A decision in this matter, referenced in our 2009-2010 Annual Report, was rendered on January 27, 2011.

Pursuant to section 43(3) of the *ATIPPA*, the Appellant filed a Notice of Appeal in the Supreme Court in relation to her access request to the Public Service Commission (the “PSC”). The Commissioner became an Intervenor in the appeal pursuant to section 61(2) of the *ATIPPA*.

The Court stated that the Appellant had requested the PSC to provide access to records related to her employment. The Appellant was dissatisfied with the timeliness and content of the response to her request and asked for a judicial review.

The Court indicated that Counsel for the Intervenor had made it clear that she was not taking any position respecting the disclosure or non-disclosure of the disputed information. Rather, the purpose of the Intervenor was to avail of the opportunity to provide its views on the interpretation and application of several sections of the *ATIPPA* which were relevant to the matter before the court.



The Court commented on the burden of proof set out in section 64 of the *ATIPPA* and agreed with a previous court ruling which determined that the head of a public body has the burden of establishing on a balance of probabilities that they were entitled to withhold the portions of the record that they did.

The Court discussed the purpose of the *ATIPPA* by stating:

[26] The core purpose of section 3(1) of ATIPPA is to make public bodies more accountable to the public by giving a right of access to records, with specific exceptions. In addition to creating a right of access, the Act obligates the head of the public body to respond in an open, accurate, complete and timely manner. The Act also requires that the head of the public body make every reasonable effort to assist the applicant and, in the case of refusal, provide reasons and the provision of the Act on which the refusal is based. These obligations are prescribed in sections 9, 11 and 12 of the Act.

The Court then proceeded to determine whether the PSC had been in compliance with sections 9, 11 and 12 of the *ATIPPA*. In relation to the duty to assist set out in section 9 the Court stated:

[27] Section 9 of the Act requires the head of a public body “to make every reasonable effort” to assist an applicant and respond in an open, accurate and complete manner. Whether the effort is reasonable will depend on the circumstances of each case. The PSC acknowledged the Appellant’s request the same day on which it was received. A redacted copy of the record was forwarded to the Appellant on the thirty-first day following receipt of her request. The one day delay was not explained. . . .

[28] The reason for prescribing a time limit for a response is understandable. Without it, the head of a public body could take as long as he or she wanted to respond. If a requester does not have a response by 12:01 a.m. on the thirty-first day, the head of the public body is deemed to have refused the request and the requester can invoke section 43 and ask for a review by the Information and Privacy Commission or file an appeal in the Supreme Court.

[29] In this case, the response was provided before any action would have occurred in relation to a review or an appeal. The response was a day outside the prescribed time period. However, it was inconsequential and not unreasonable.

The Court then stated its conclusion on whether the PSC was in compliance with section 9, 11 and 12 as follows:

[31] I also conclude that the Respondent made a “reasonable effort” to respond to the Appellant’s request of October 8, 2008 in an open, accurate and complete manner as required by section 9 of the Act. . . . The Appellant’s assertion that the Respondent fails to meet its obligations under the legislation are without merit. Based on the evidence, with the exception of the one day delay in the response, the Respondent did everything required of them under sections 9, 11 and 12 of the Act.

The Court then proceeded to review the correctness of the PSC’s reliance on section 20 (advice or recommendations) and section 30 (disclosure of personal information) to withhold information. The Court stated the approach to be used when conducting such a review:

[40] Determination of the correctness of the interpretation and application of the exceptions to access requires a line by line review of the redacted portions of the record.

The Court then outlined the results of its line by line review in a 16 page table. The Court summarized the results of the review by stating:

[42] . . . In most instances the redactions were a correct application of the exception provisions relied upon. In the remainder, improperly withheld information was the result of misinterpretation and is ordered to be disclosed.

The Commissioner was pleased with the decision of the Court, rendered by Justice Alan Seaborn. As stated earlier, the actual outcome in terms of what records were to be released or not was not at issue for the Commissioner in his decision to intervene in this matter, but rather the Commissioner hoped to have input into how certain provisions of the *ATIPPA* were to be interpreted or applied. In this instance, the Court appeared to adopt the position presented by the Commissioner as Intervenor in relation to the interpretation of both sections 20 and 55, which will help to guide not only the Commissioner but also public bodies and applicants in the future.

Oleynik v. (Newfoundland and Labrador) Information and Privacy Commissioner, Supreme Court of Newfoundland and Labrador, 2011 NLTD 34

The Applicant in this matter made an access request in 2008 to Memorial University for e-mail communications, including deleted ones, over a particular period of time. The Applicant then filed a Request for Review of Memorial's decision with our Office in October 2008. That case has been described elsewhere in this Annual Report (see *Summary of Report A-2010-005* on page 25).

Our Office essentially completed its investigation into the matter by April 2009. However, it proved impossible to resolve it informally, so the production of a formal Commissioner's Report was required. Due to staff shortages and the heavy workload experienced by our Office at that time, Report A-2010-005 was not completed and issued until April 28, 2010. The Applicant had meanwhile filed an application with the Court, in which he sought orders of mandamus and certiorari against the Commissioner. Before that application was served on the Commissioner, the Report was issued. Nevertheless, the Applicant proceeded with his Court application. After a number of preliminary steps, the hearing was held on January 31, 2011 before Justice Deborah Fry. Justice Fry's decision was issued on March 1, 2011.

An application for mandamus is a request to the Court to issue an order, to a decision-maker who is under some legal duty to act, compelling the decision-maker to perform the duty in question. It appeared that the Applicant was, first of all, asking the Court to order the Commissioner to complete his review and file his Report.

The Court held that ordinarily, once a decision-maker exercises its jurisdiction, mandamus is no longer available, regardless of whether or not the applicant is satisfied with the result. The Court concluded that based on this rationale, once the Commissioner filed his Report on April 28, 2010 he had fulfilled his

obligations under the *Act* and mandamus was no longer available. However, the Applicant argued that because the Report was issued beyond the statutory time limit, mandamus should still be available.

The *ATIPPA* provides, in section 48, that the Commissioner is to issue his Report within 90 days of receiving the Request for Review. Courts have held that there are some situations where a failure to comply with a statutory time limit could legally invalidate any further action. In the present case, however, Justice Fry held that given the non-binding nature of the Commissioner's review and Report, the lack of any prescribed consequences for failure to meet the deadline and the general purpose of the legislation, the 90 day time limit is directory rather than mandatory. Accordingly, the Court concluded that there was no basis to attach any legal consequences, such as invalidating the Report, to the failure of the Commissioner to issue the Report within 90 days.

The Applicant was also unsatisfied with the way in which the Commissioner had carried out his investigation and the conclusions he had reached. The Applicant argued that the Commissioner could have overcome the staff shortage by engaging an external law firm to conduct the review, that the Commissioner should have demanded a more detailed report from Memorial, and that the Commissioner could have held a hearing or taken sworn evidence from the named individual whose e-mails were the subject of the access request.

The Court found that the Commissioner conducted his review and prepared his Report, despite not meeting the statutory time requirements, in the manner contemplated by the *Act*. The Court found that while the *Act* provides citizens with an opportunity to access records, it does not provide an applicant with the right to demand that the Commissioner conduct his review in a particular way. The *Act* required the Commissioner to ensure that the public body had conducted an appropriate search for records and had provided them to the requester in accordance with the provisions of the *Act*. Once the Commissioner had done so he had fulfilled his statutory duty.

An application for certiorari is a request to the Court for review of the decision of an administrative tribunal and for an order overturning the decision if it is found defective. The Court found that this remedy can be granted when a tribunal's decision is being reviewed. However, the Court agreed with the Commissioner that the Report of the Commissioner was not a decision with legal consequences. The Commissioner has only the power to make recommendations, and does not have the legal decision-making authority to affect the rights of an applicant. Therefore certiorari is not available to quash or set aside a Report.

Under the *ATIPPA*, the remedy for an unsatisfied applicant is to appeal the actions of the public body (rather than the Commissioner) to the Supreme Court, once the public body has made a decision to accept or reject the Report of the Commissioner. However, the Applicant in the present case chose not to do that. The Court denied the application, with costs to the Commissioner.

The *Oleynik* case is important for several reasons. First, it clarifies that the Commissioner has wide latitude to carry out an investigation as he sees fit, and that applicants do not have the right to insist that an investigation be carried out in a particular way. Second, it confirms that because the Commissioner has no legal power to compel the disclosure or non-disclosure of records to an applicant, the remedy for an unsatisfied applicant is to appeal the decision of the public body, not to attack the Commissioner's Report. Finally, the Court has, for the first time in Newfoundland and Labrador, addressed the question of the statutory time limit of 90 days for the issuance of a Report, and has held that that time limit is not mandatory but directory. In other words, the Court held that while it is important that the Office of the Information and Privacy Commissioner meet the statutory timelines outlined for the performance of their duties under the Act, failure to issue a Report within the 90-day period does not invalidate the process or the result.

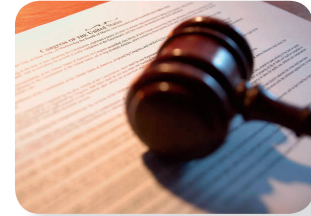
2010 01 H 0053 – Supreme Court of Newfoundland and Labrador, Court of Appeal - Department of Justice

This matter was discussed in our 2009-2010 Annual Report and is an appeal of the decision of Madame Justice Valerie Marshall relating to whether the Commissioner is entitled to compel a public body to produce records for review when the public body has claimed section 21 (solicitor-client privilege). Prior to Madame Justice Marshall's decision, the OIPC was able to compel public bodies to produce any and all records to the Commissioner which had been withheld from an applicant where the public body was relying on an exception in the *ATIPPA*, including records for which there was a claim of solicitor-client privilege. Since her decision, the OIPC has been unable to do so for records where a public body has claimed section 21, and as a result we continue to hold a number of files in abeyance.

A date for the hearing of this appeal has been set and the matter will be further reported on in our next Annual Report.

Summons Issued to the Town of St. George's

There was an ongoing issue regarding the Town of St. George's lack of cooperation with this Office throughout 2010-2011. This culminated in the decision to use our powers under section 9(b) of the *Public Inquiries Act, 2006* to issue a Summons to Produce to the Town in January 2011.



Under section 52(2) of the *Access to Information and Protection of Privacy Act* "the commissioner may require any record in the custody or under the control of a public body that the commissioner considers relevant to an investigation to be produced to the commissioner."

In spite of this authority, which was referenced by this Office in its requests, the Town of St. George's failed to respond to multiple requests for records from various Analysts within this Office. It was then that the Commissioner decided a Summons to Produce was the only option remaining. Failure to comply with a Summons to Produce can lead to a charge of contempt under the *Public Inquiries Act*.

The Commissioner was disappointed to have to resort to this particular approach, but the non-compliance and general attitude towards the *ATIPPA* and towards the OIPC of the designated head of the public body for the Town of St. George's made it clear that this step was necessary. The Town did comply with the Summons in accordance with the 14-day timeline. As well, the Town provided information and responses to questions regarding several other outstanding requests that had accompanied the Summons. This Office would prefer not to have to exercise this option again in the future but we have chosen to include information about this issue in our Annual Report so that public bodies are aware that this procedure exists and will be utilized if necessary. In the hundreds of requests for review and complaints processed by this Office since its inception, this has been the first and only time that it was necessary for the OIPC to use a Summons to require a public body to comply with its basic obligations under the *ATIPPA*. The fact that it has only been used once is a testament to the good cooperation and positive working relationship which has been experienced over the years between this Office and the other public bodies with whom we have worked.

Everyday Leaders in Access to Information and Protection of Privacy

At the OIPC, we've had the pleasure of working with a number of access and privacy professionals who are employed by various public bodies and custodians subject to the *ATIPPA* and/or *PHIA*. We are continually impressed with their dedication to the essential philosophy behind both access to information and protection of privacy. We at the OIPC tend to work with these folks when an issue has come to our attention, sometimes through a complaint, but more often we talk to them about more routine matters. They might call the Office to have a discussion with one of our Analysts about a situation they are dealing with, or some new policy development initiative they want to discuss, or to get our take on how a certain legislative provision is meant to work.



Many organizations struggle with developing both a culture of privacy for the protection of personal information, and a culture of openness for access to information. Part of the solution is to seek out and employ professionals such as these who come to work wanting to do a good job, and who feel like they are doing something worthwhile.

This year, we decided to start naming some names (with their permission, of course!), and out of the many who could be singled out (and hopefully will be featured in future Annual Reports), we've chosen three.

As the House of Assembly ATIPP Coordinator and Privacy Analyst, Don Hynes has been proactive on several fronts. He continues to lead training seminars to Members of the House of Assembly and their Assistants respecting best practices for the collection, use and disclosure of their constituents' personal information. He has also been working with OCIO, the Department of Justice ATIPP Office, the Commissioner's Office and other stakeholders to tailor and streamline the Annual Privacy Checklist which is a key part of the House of Assembly privacy toolkit. Don also spearheaded the development of a new form, at the recommendation of the Commissioner's Office, for use by public bodies reporting to the House of Assembly.

Staff at the OIPC have enjoyed working with Don since he arrived in his current position from the Office of the Citizens' Representative several years ago. Behind his cheerful, self deprecating attitude is a professional troubleshooter with a can-do attitude, which is why Don Hynes earns a "kudos" from the OIPC in this year's Annual Report.

There are several staff and management employed by Regional Health Authorities who are well deserving of praise, but we've decided to start this year with Sherri Tiller-Park. As Regional Manager for Information Access and Privacy for Western Health, Sherri has made a positive impression on OIPC staff who have worked with her. Whether she is reporting a privacy breach to our Office and discussing the "ins and outs" of notifying affected individuals, or simply calling up to discuss one of the finer points of privacy law, she is recognized as being committed to the principles of privacy protection as well as access to information. Her emphasis on staff training and education in access and privacy matters and her consistent promotion of those values has earned her high marks with us.

Our other person of note this year from the wealth of impressive choices is another Regional Health Authority employee - Kim Warford, Access to Information Coordinator for Eastern Health. As her job title indicates, Kim works primarily on the access to information side of things, rather than privacy. OIPC staff who have worked with Kim note that she has an in-depth knowledge of the *ATIPPA*, and she always seeks to interpret the *ATIPPA* provisions according to their purpose – to facilitate access to information.

We also understand that Kim really does her homework when she's tackling a tough problem. She uses the Table of Concordance on our website to look up past Commissioner's decisions, she researches decisions from other jurisdictions, and she contacts other coordinators to compare notes.

She even noticed that there was a problem with one of the commonly used template letters which coordinators use to prepare letters to third parties. She drafted a new letter, and we reviewed and approved of her new draft. She then passed it on to the Department of Justice ATIPP Office so they could share it with other public bodies.

Kim Warford has demonstrated a helpful attitude towards applicants, and a positive approach towards working with this Office, which is why we say: "Hooray for Kim!"

ATIPPA Public Body Survey

The OIPC's 2008-2011 Business Plan included the following commitment:

By March 31, 2011, the Office of the Information and Privacy Commissioner will have completed a survey with all 467 public body ATIPPA Coordinators to determine the coordinator continuity and/or turn-over rate and make appropriate recommendations to the head of the public body.

As a result of this commitment, the OIPC contacted all public bodies within the Province between November 2010 and March 2011, through mail out, telephone calls, fax and/or e-mails. Accompanying this correspondence was an eight question survey that was developed to meet the business plan objective as well as determine training and resource concerns of ATIPP coordinators.



While 467 public bodies were referenced in the 2008-2011 business plan based on the estimate at the time, we have determined that there are now a total of 429 identified public bodies. This decline is a result of municipal amalgamations and other moves which combined or eliminated some public bodies. Through perseverance on the part of OIPC staff, and great cooperation from all public bodies, a survey response was received from each and every one of them.

The survey results gave the OIPC information about the length of terms for coordinators, the training received by coordinators, and the time and resources spent on ATIPPA issues. The survey results revealed a need for more awareness and training in relation to the ATIPPA, with the greatest need among municipal public bodies. The OIPC plans to work on initiatives to improve on education and communication between ATIPP coordinators and the Office. One planned initiative is a quarterly newsletter which is expected to be launched later in 2011. Further information about our survey may be found on the OIPC website, www.oipc.nl.ca.

Systemic Issues

During this reporting period a number of systemic issues have been observed that have contributed significantly to the challenges associated with resolving access requests within the legislated timeframes. These issues are identified at this time to make public bodies aware that they do exist and do contribute to problems during both the informal resolution process and the formal investigation process undertaken by the OIPC. It is not our intention at this time to provide a comprehensive analysis of these issues or make comprehensive recommendations to address and rectify the problems, but rather to identify them in this forum for the benefit of public bodies so that they may have an opportunity to improve their performance in this regard.

1. **Delegation:** Normally it is the ATIPP coordinator appointed by the public body who would engage with the OIPC Analyst during the informal resolution process utilized to attempt to resolve requests for review without engaging the formal investigation process. In order for the informal resolution process to be effective and successful, and to be conducted in a timely manner, coordinators must be provided with the appropriate level of authority to make the decisions necessary to advance the process.
2. **Leadership:** This is clearly the single most important determinant of how well public bodies fulfill their obligations under the *Act*. Senior management's commitment to the access regime determines the level of resources allocated to the access program as well as the degree of institutional openness. Public bodies are urged to allocate sufficient resources within the organization that is proportional to the demands placed on them by applicants. Senior managers are also encouraged to become personally engaged with the process and to instill the culture of openness envisaged by the legislation.
3. **Time Extensions:** It is our experience that on a number of cases certain public bodies have used time extensions for inappropriate reasons, for example, being under-resourced or simply too busy to deal with the request at the moment. This practice is strongly discouraged as it makes inappropriate use of a very legitimate provision of the *ATIPPA* and seriously contributes to delays in dealing with and bringing closure to the request for information.
4. **Public Body Consultations:** This issue represents a challenge for the timely delivery of information. Only the public body subject to the request is accountable for meeting the requirements of the *Act*. Although this Office encourages heads of public bodies to consult as required in order to help lead to a more informed decision, it must be stressed that consultation must be conducted in a timely manner to ensure legislative timelines are met.

5. **Resources:** Of the 429 public bodies responsive to *ATIPPA*, only three public bodies have full-time coordinators. The lack of human or financial resources can significantly undermine the effectiveness of the *Act* and ultimately result in delays which detrimentally impacts a requester's right to information. Appropriate resources must be dedicated to this task if the legislation is to work as intended.
6. **Records Management:** Access to information relies heavily on effective records management. Public bodies that are unable to effectively manage information requested under the *Act* face time-consuming retrieval of records, uncertain, incomplete or unsuccessful searches, as well as the risk of substantial delays and complaints. Initiatives have been undertaken to address records management across government and to varying degrees across the full spectrum of public bodies responsive to the *Act* but sustained effort and attention is required to achieve the required results.
7. **ATIPP Coordinator Turnover:** Understandably some turbulence and lack of continuity does exist when dealing with public bodies which frequently change their ATIPP coordinator. In some cases this is unavoidable due to changes in employment, promotion or retirement. Experience has shown that public bodies that have made frequent coordinator changes have experienced considerable difficulty in processing access requests, the evidence of which we see at the OIPC in requests for review and complaints.
8. **Blanket Approach to Claiming Exceptions:** On many occasions public bodies have simply identified the exception(s) which they intend to claim regarding a specific access to information request. Many of the exceptions have a number of very specific subsections. I urge public bodies in future to be more specific when claiming a specific category of information under one of these exceptions and to provide a detailed explanation in support of the specific exception item claimed. This would, firstly, allow the public body to concentrate on the detailed piece of the exception being claimed and secondly, to take much of the guess work out of the process for the OIPC staff and ultimately contribute to a timely resolution to the request.

9. **Open Communication and Dialogue:** This particular issue is in many ways, the key to early and satisfactory resolution to many access requests. It should be emphasized that fully 75% of all access requests are resolved by informal resolution. It is only when the applicant, public body representative and Analyst from our Office are prepared to enter into early and meaningful dialogue and negotiations can matters be resolved in a timely manner and to the mutual satisfaction to both the applicant and public body. It is through this good will and positive approach that matters can be clarified, refined and the specific information narrowed and identified. I would take this opportunity to congratulate applicants and public body representatives for engaging in the informal resolution process and, for the most part, creating an environment that contributes to bringing closure to the majority of access requests and avoids the time consuming process of moving on to formal investigation and reports.

Public Body Privacy Breach Notification to the OIPC

Since the proclaiming into force on January 16, 2008, Part IV, Privacy Provisions of the *Access to Information and Protection of Privacy Act (ATIPPA)*, there has been a number of privacy breaches involving a variety of public bodies. On a number of occasions following a privacy breach, the public bodies have very promptly and appropriately notified the OIPC early in the process. I applaud these public bodies, such as Eastern Health, Department of Education, Western Health and Workplace Health Safety and Compensation Commission. In these cases, it very much casts a positive light on the public body. Their early notification action did give the Commissioner's Office an opportunity to become aware of the breach and discuss containment and notification protocols with officials of the public body concerned. Early notification also placed the Commissioner's Office to be in an informed position in order to appropriately address any subsequent inquiries or concerns with complaints and to be able to respond in some detail to inquiries from the media, when appropriate. Also, early notification removes the OIPC from the precarious and embarrassing position of having to say that, regrettably, the Office has not been advised of the breach and in some cases the only knowledge we have is the information that was disclosed in a press release by the public body.



Finally, and most importantly, early notification of the OIPC by a public body of a privacy breach, I believe, significantly contributes to the level of confidence that citizens will have in public bodies, knowing that it has done the right thing by notifying the OIPC. It also confirms to the citizens of the Province that transparency and accountability does exist and that the perception that the public body is attempting to hide something is removed. In conclusion, of all the incidents where the public body has proactively reported a privacy breach to the OIPC, not one required the Office to follow-up and produce a published report, unless an investigation and subsequent report resulted at the request of the head of the public body or his/her representative. Public bodies are urged to notify the OIPC, as soon as possible, after a privacy breach is discovered. Only then can the Office be in a position to offer helpful advice and recommendations and generally be of assistance to the public body to ensure that the public's rights under the *Act* are protected and that any harm done by the breach is mitigated. Open, early and frank dialogue is recommended and encouraged.



Conclusion

2010-2011 has been a busy, productive and gratifying year, filled with challenges and success. This year has seen another phase in both the evolution of the Office resources and capability, along with a significant increase in its workload requirements. The additional work associated with the proclamation into force of Part IV of the *ATIPPA* (the privacy provisions) in January 2008 has further compounded and to some extent frustrated the Office's ability to meet certain legislated timeframes. That being said, I am proud of the quality and calibre of the Office of the Information and Privacy Commissioner staff and I continue to be impressed with the dedication, hard work and positive attitude of all staff. We will continue to strive in the coming year to improve the services provided to the citizens of Newfoundland and Labrador, and to achieve greater progress in the ongoing mandate to preserve and promote their rights of access to information and protection of privacy. The *Personal Health Information Act (PHIA)* is expected to be proclaimed early in the next fiscal year. As a result, I do expect that significant demands will be placed on the OIPC. Our research with other jurisdictions that have been working with personal health information for a number of years indicate that approximately 40% of the work of their offices is dealing with personal health information. This matter will be addressed during the next budget process.

Finally, I wish to congratulate the Department of Health and Community Services, and all stakeholders who have been diligently working on the *PHIA* Steering Committee and the many working groups. The result of all this hard work and dedication will pay dividends in the future.



Appendix "A"

Statistics

Figure 1: Requests for Review/Complaints Received

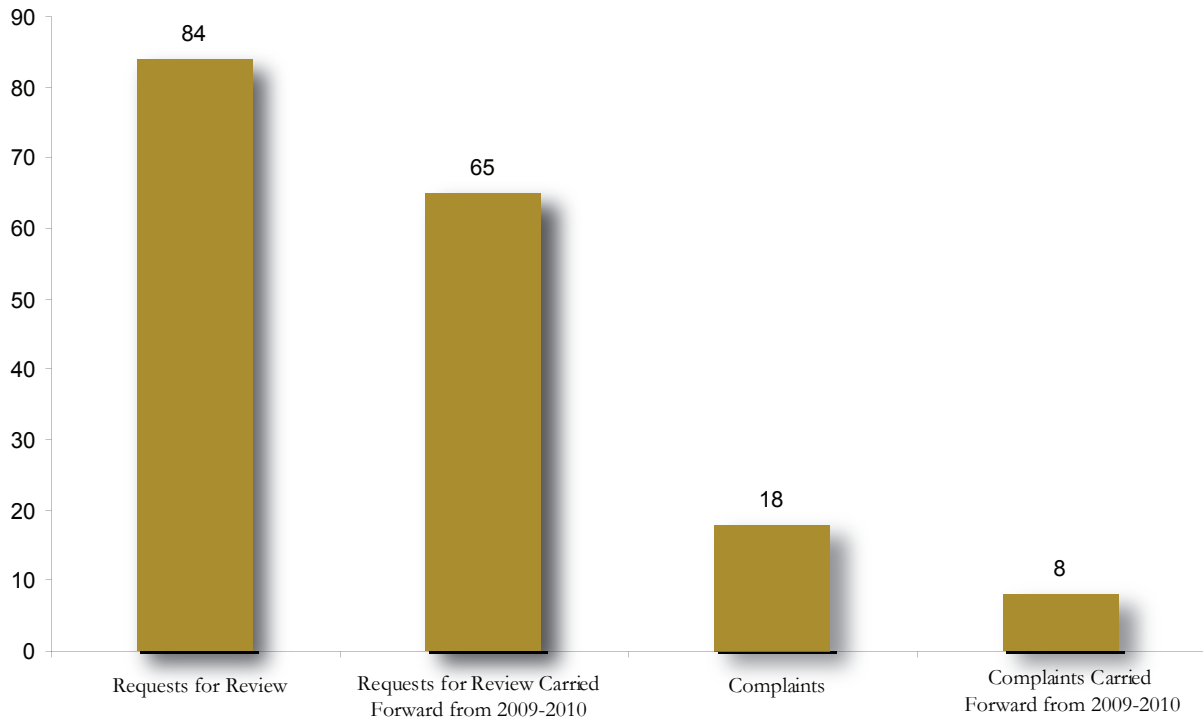


Figure 2: Outcome of Requests for Review/Complaints Received

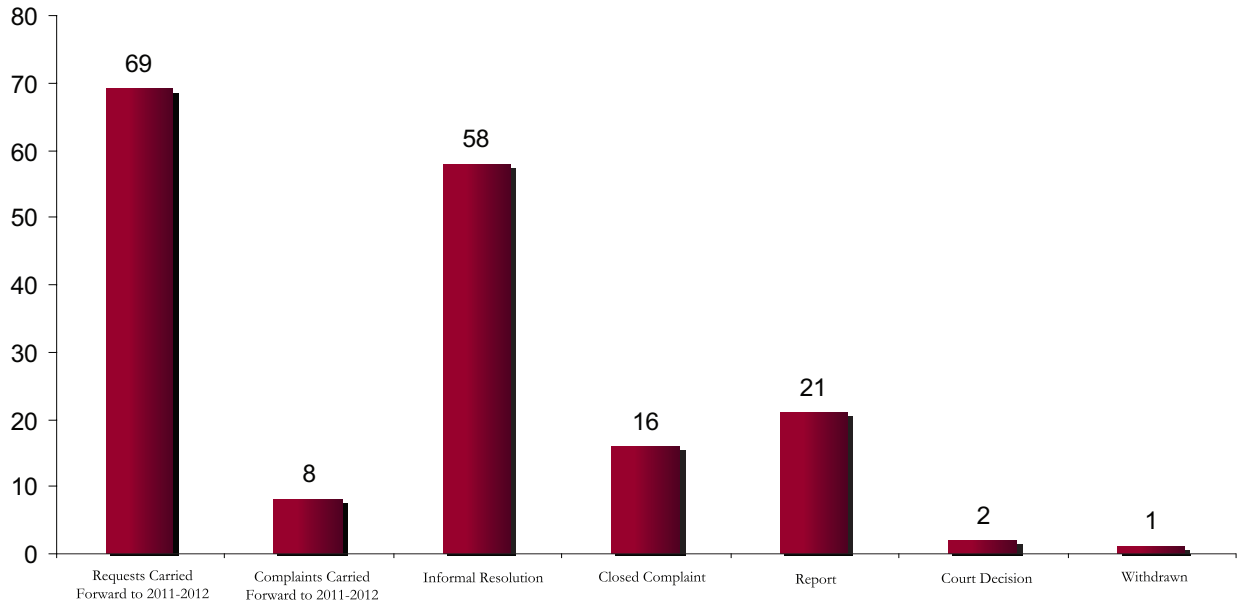


Figure 3: Requests for Review/Complaints by Applicant Group

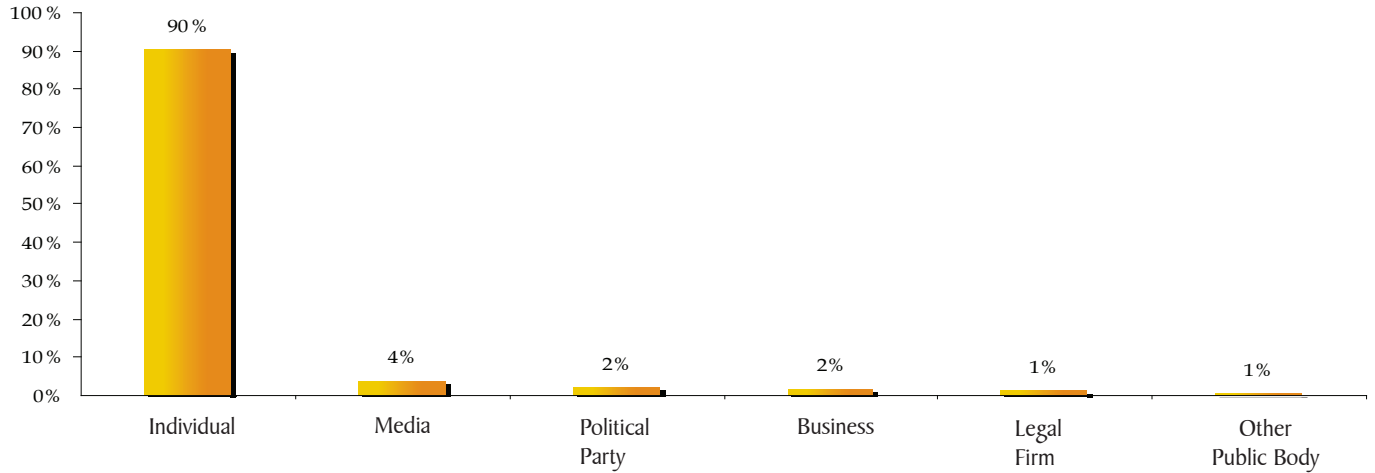


Table 1: Requests for Review/Complaints by Applicant Group

| Public Body | Number of Reviews | Percentage |
|-------------------|-------------------|------------|
| Individual | 158 | 90% |
| Media | 7 | 4% |
| Political Party | 4 | 2% |
| Business | 3 | 2% |
| Legal Firm | 2 | 1% |
| Other Public Body | 1 | 1% |

Figure 4: Requests for Review/Complaints by Information Requested

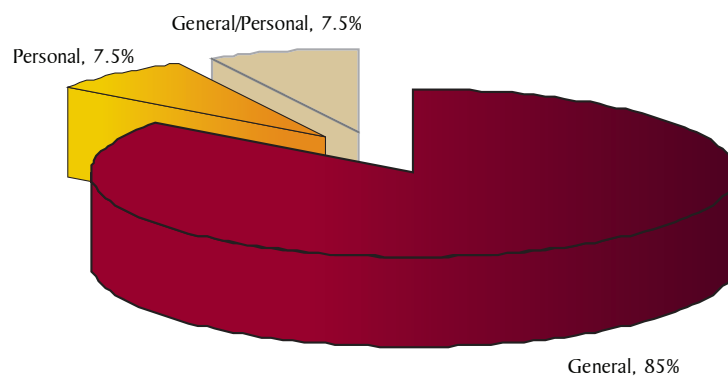


Table 2: Requests for Review/Complaints by Information Requested

| General | Personal | General/ Personal |
|---------|----------|----------------------|
| 149 | 13 | 13 |
| 85% | 7.5% | 7.5% |

Figure 5: Requests for Review - Resolutions

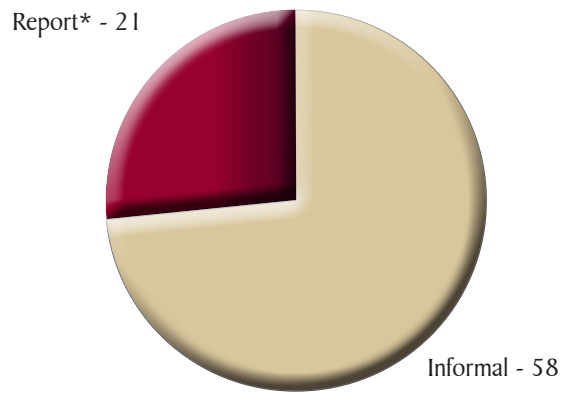


Table 3: Requests for Review - Resolutions

| Informal | Report |
|----------|--------|
| 58 | 21 |
| 73% | 27% |

* Reports A-2010-005, A-2010-012 and A-2010-013 closed six Request for Review files.

Figure 6: Conclusion of Commissioner's Reports

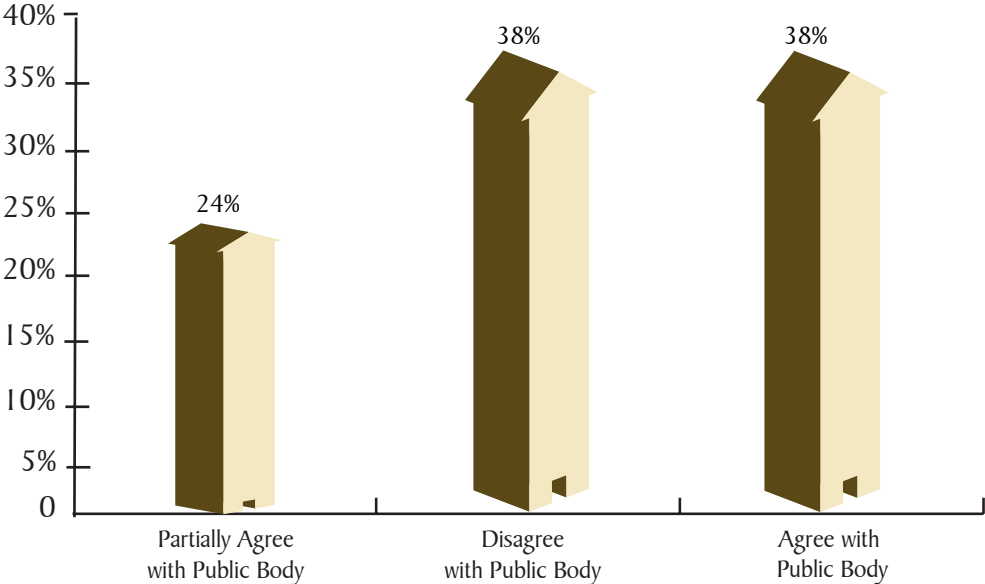


Table 4: Conclusion of Commissioner's Reports

| Partially Agree with Public Body | Disagree with Public Body | Agree with Public Body |
|----------------------------------|---------------------------|------------------------|
| 5 | 8 | 8 |
| 24% | 38% | 38% |

Figure 7: Public Body Response to Commissioner's Reports*

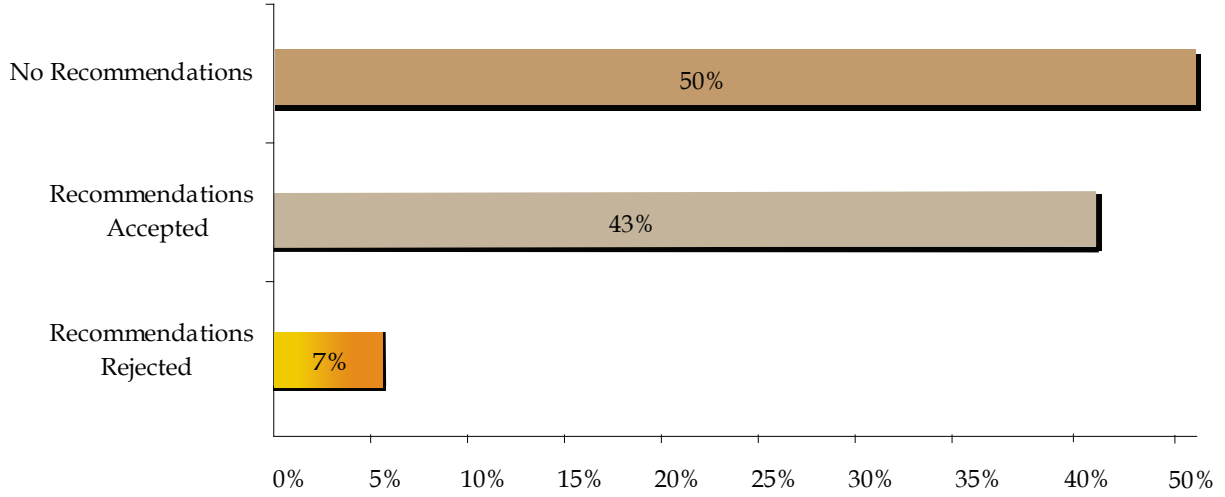


Table 5: Public Body Response to Commissioner's Reports*

| No Recommendations | Recommendations Accepted | Recommendations Rejected |
|--------------------|--------------------------|--------------------------|
| 7 | 6 | 1 |
| 50% | 43% | 7% |

* Four Reports issued March 2011, therefore public body responses were not received during this reporting period.

Figure 8: Requests for Review/Complaints Listed by Public Body Type

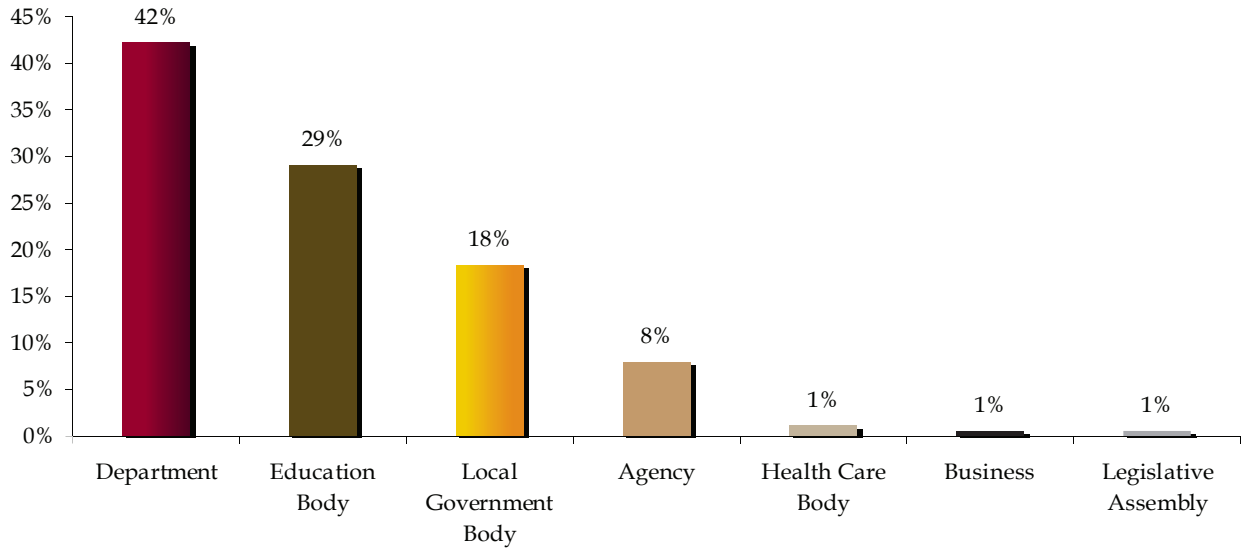


Table 6: Requests for Review/Complaints Listed by Public Body Type

| | | |
|-----------------------|----|-----|
| Department | 74 | 42% |
| Education Body | 51 | 29% |
| Local Government Body | 32 | 18% |
| Agency | 14 | 8% |
| Health Care Body | 2 | 1% |
| Business | 1 | 1% |
| Legislative Assembly | 1 | 1% |

Figure 9: Requests for Review/Complaints by Issue

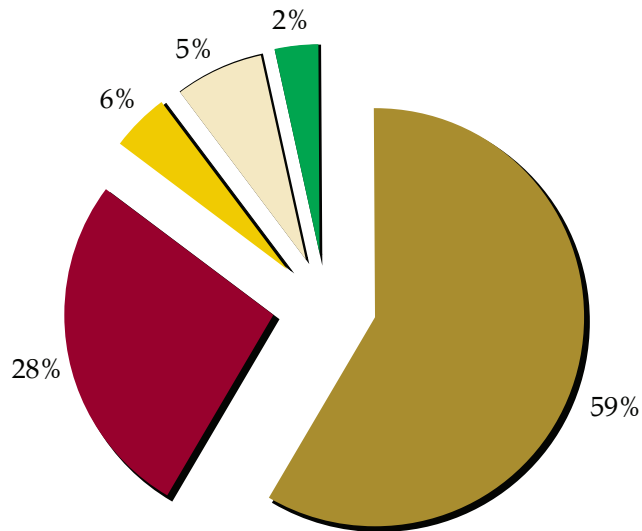


Table 7: Requests for Review/Complaints by Issue

| | | |
|--|-----|-----|
| Applicant Request Review of Decision | 158 | 59% |
| Failure to Fulfill the Duty to Assist Applicants | 75 | 28% |
| Time Extension | 17 | 6% |
| Fee/Waiver | 12 | 5% |
| 3rd Party Requesting Review of Decision | 4 | 2% |

Figure 10: Privacy Complaints Received

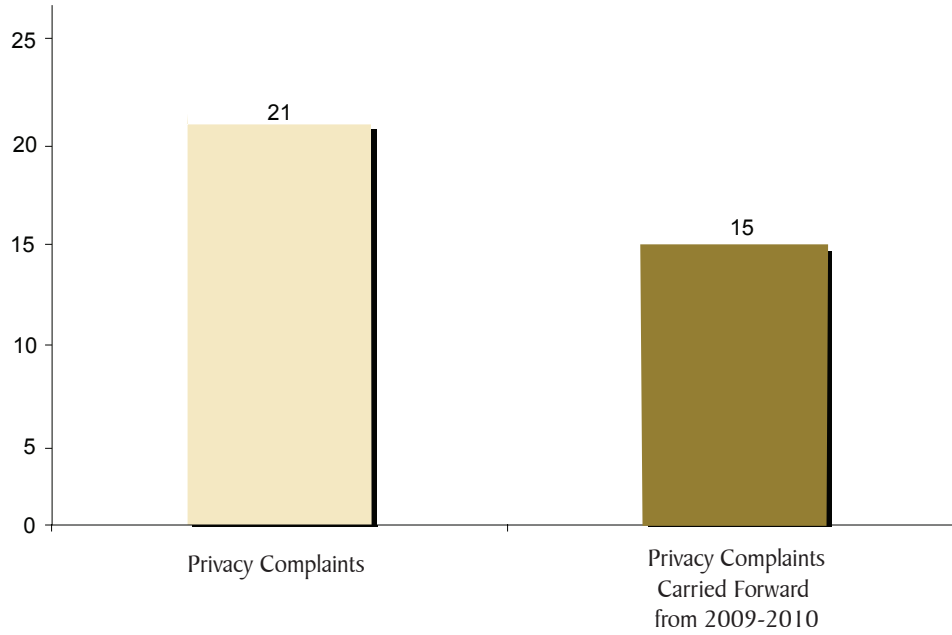


Figure 11: Outcome of Privacy Complaints

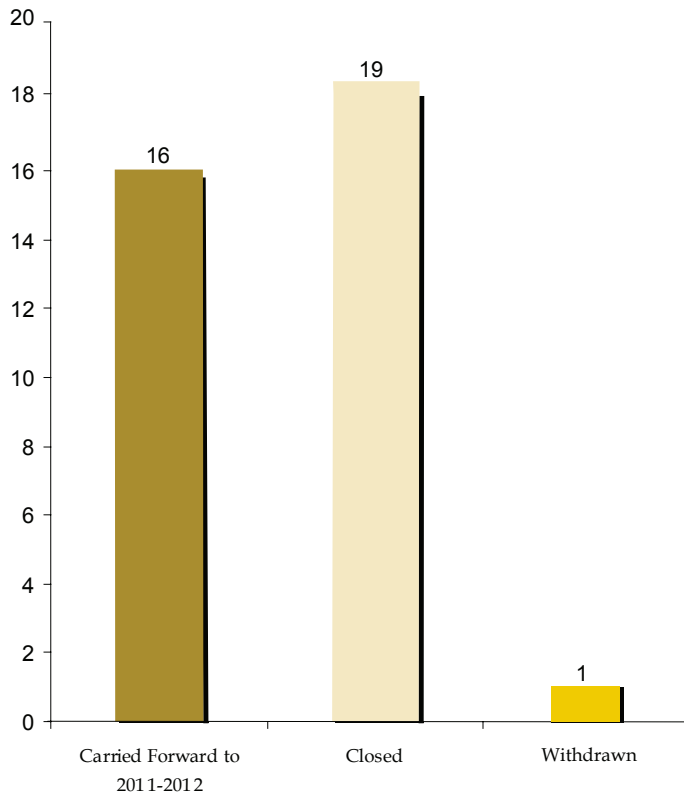


Figure 12: Privacy Investigations by Applicant Group

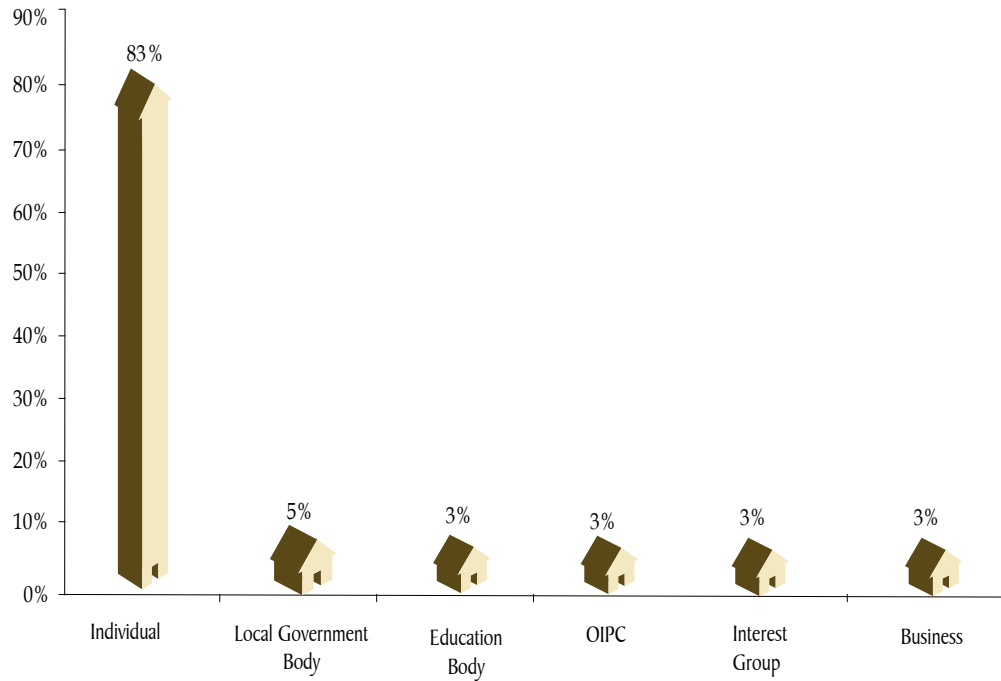


Table 8: Privacy Investigations by Applicant Group

| | | |
|-----------------------|----|-----|
| Individual | 30 | 83% |
| Local Government Body | 2 | 5% |
| Education Body | 1 | 3% |
| OIPC | 1 | 3% |
| Interest Group | 1 | 3% |
| Business | 1 | 3% |

Figure 13: Privacy Investigations by Public Body

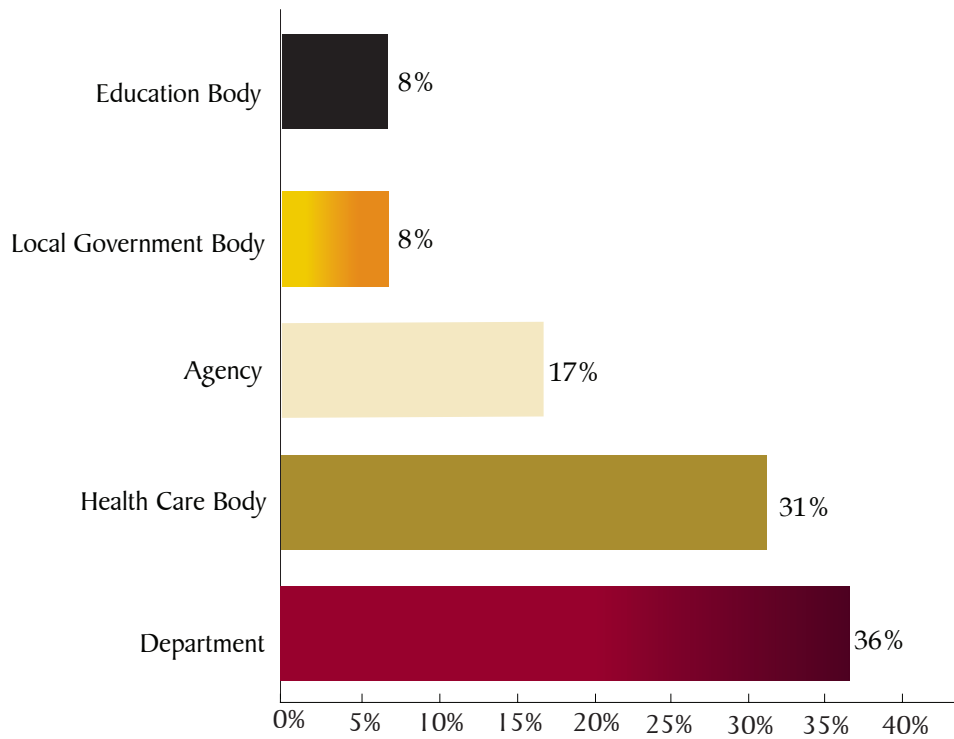


Table 9: Privacy Investigations by Public Body

| Department | Health Care Body | Agency | Local Government Body | Education Body |
|------------|------------------|--------|-----------------------|----------------|
| 13 | 11 | 6 | 3 | 3 |
| 36% | 31% | 17% | 8% | 8% |

Figure 14: Requests for Review/Complaints and Privacy Complaints Received

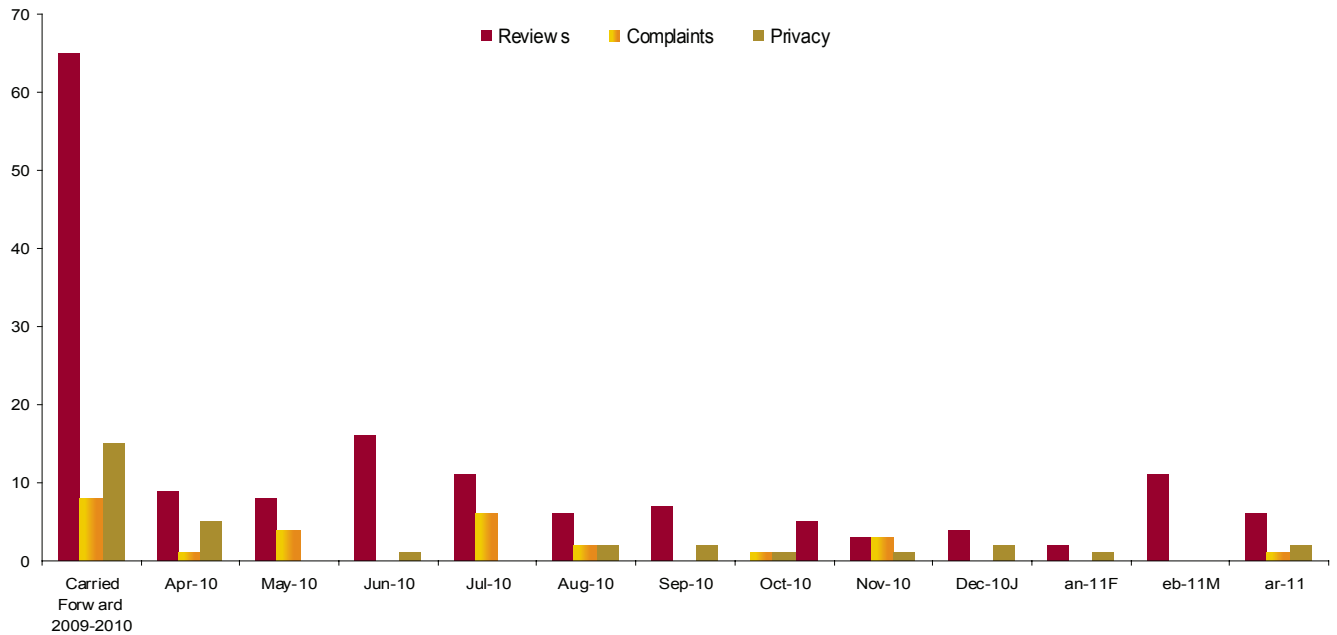


Table 10: Requests for Review/Complaints and Privacy Complaints Received

| 2010-2011 | | | |
|---------------------------|--------|------------|---------|
| | Review | Complaints | Privacy |
| Carried Forward 2009-2010 | 65 | 8 | 15 |
| Apr-10 | 9 | 1 | 5 |
| May-10 | 8 | 4 | 0 |
| Jun-10 | 16 | 0 | 1 |
| Jul-10 | 11 | 6 | 0 |
| Aug-10 | 6 | 2 | 2 |
| Sep-10 | 7 | 0 | 2 |
| Oct-10 | 1 | 1 | 5 |
| Nov-10 | 3 | 3 | 1 |
| Dec-10 | 4 | 0 | 2 |
| Jan-11 | 2 | 0 | 1 |
| Feb-11 | 11 | 0 | 0 |
| Mar-11 | 6 | 1 | 2 |

Figure 15: Access and Privacy Inquiries

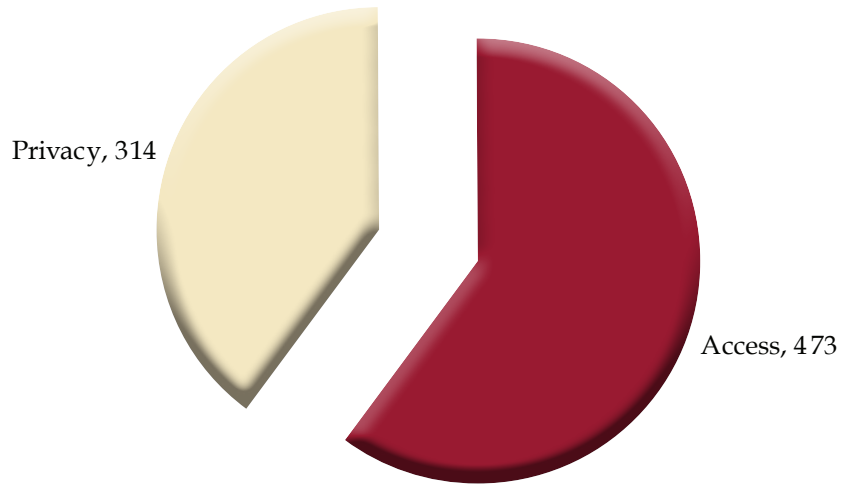


Table 11: Access and Privacy Inquiries

| Access | Privacy |
|--------|---------|
| 473 | 314 |
| 60% | 40% |

Figure 16: Access Requests/Requests for Review Comparison



Table 12: Access Requests/Requests for Review Comparison

| | | |
|---|-----|-----|
| Access Requests Received by Public Bodies | 581 | 86% |
| Requests for Review Received by the OIPC | 102 | 14% |

Appendix "B"

List of Public Bodies

Note: This list will constantly be a work in progress due to the requirement from time-to-time to add new public bodies and possibly remove others.

Government Departments

| | |
|---|--|
| Business | Government Services |
| Child, Youth and Family Services | Health and Community Services |
| Education | Human Resources Labour and Employment |
| Environment and Conservation | Innovation, Trade and Rural Development |
| Executive Council - Cabinet Secretariat | Justice |
| Executive Council - Intergovernmental Affairs Secretariat | Labrador and Aboriginal Affairs - Labrador Affairs |
| Executive Council - Public Service Secretariat | Labrador and Aboriginal Affairs - Aboriginal Affairs |
| Executive Council - Office of the Chief Information Officer | Municipal Affairs |
| Executive Council - Rural Secretariat | Natural Resources - Mines and Energy |
| Executive Council - Women's Policy Office | Natural Resources - Forestry |
| Executive Council - NL Research and Development Corporation | Natural Resources - Agrifoods |
| Executive Council - Climate Change, Energy Efficiency & Emissions Trading | Premier's Office |
| Executive Council - Voluntary and Non-Profit Secretariat | Public Service Commission |
| Finance | Tourism, Culture and Recreation |
| Fisheries and Aquaculture | Transportation and Works |

Agencies

| | |
|--|---|
| Arts and Letters Committee | Chief Medical Examiner |
| Boiler/Pressure Vessel Advisory Board | Child, Youth and Family Services Advisory Council |
| Boiler/Pressure Vessel Appeal Tribunal | Churchill Falls (Labrador) Corporation |
| Building Accessibility Advisory Board | Classification Appeal Board |
| Building Accessibility Appeal Tribunal | Commemorations Board |
| Bull Arm Fabrication Site | Credit Union Deposit Guarantee Corporation |
| Business Investment Corporation | Criminal Code Mental Disorder Review Board |
| C.A. Pippy Park Commission | Departmental Board of Corrections |
| Central Newfoundland Regional Appeal Board | Driver's Licence Suspension Review Board |
| Chicken Farmers of Newfoundland and Labrador | Driver's Licence Suspension Advisory Board |

Agencies (cont'd)

| | |
|---|---|
| Eastern Newfoundland Regional Appeal Board | Livestock Owners Compensation Board |
| EDGE Evaluation Board | Lower Churchill Development Corporation Limited |
| Embalmers and Funeral Directors Board | Management Classification Review Committee |
| Farm Industry Review Board | Marble Mountain Development Corporation |
| Financial Services Appeal Board | Marystown Shipyard Limited |
| Fire and Emergency Services | Mineral Rights Adjudication Board |
| Forest Land Tax Appeal Board | Multi-Materials Stewardship Board |
| Forestry and Agrifoods Agency | Municipal Assessment Agency |
| Government Purchasing Agency | NALCOR |
| Government Records Committee | Newfoundland and Labrador Arts Council |
| Group Insurance Committee | Newfoundland and Labrador Chiropractic Board |
| Gull Island Power Company Limited | Newfoundland and Labrador Crop Insurance Agency |
| Heritage Foundation of Newfoundland and Labrador | Newfoundland and Labrador Electoral Districts Boundaries |
| Human Rights Commission of Newfoundland and Labrador | Newfoundland and Labrador Farm Products Corporation |
| Income and Employment Support Appeal Board | Newfoundland and Labrador Film Development Corporation |
| Insurance Adjusters, Agents and Brokers Appeal Board | Newfoundland and Labrador Geographical Names Board |
| Judicial Council of the Provincial Court of Newfoundland and Labrador | Newfoundland and Labrador Housing Corporation |
| Labour Relations Agency | Newfoundland and Labrador Industrial Development Fund |
| Labour Relations Board | Newfoundland and Labrador Law Reform Commission |
| Labrador Regional Appeal Board | Newfoundland and Labrador Legal Aid Commission |
| Labrador Transportation Initiative Fund | Newfoundland and Labrador Liquor Corporation |
| Land Consolidation Review Committee | Newfoundland and Labrador Municipal Financing Corporation |
| Land Development Advisory Board | Newfoundland and Labrador Sinking Fund |
| Legal Appointments Board | Newfoundland and Labrador Youth Advisory Council |

Agencies (cont'd)

| | |
|--|--|
| Newfoundland Government Fund Limited | Royal Newfoundland Constabulary |
| Newfoundland Hardwoods Limited | Royal Newfoundland Constabulary Public Complaints Commission |
| Newfoundland Ocean Enterprises Limited | Species Status Advisory Committee |
| Occupational Health and Safety Advisory Council | St. John's Appeal Board |
| Office of the High Sheriff | Standing Fish Price Setting Panel |
| Order of Newfoundland and Labrador Advisory Council | Student Financial Assistance Appeal Board |
| Pension Policy Committee | Student Loan Corporation of Newfoundland and Labrador |
| Privacy Training Corporation | Teachers Certification Board of Appeals |
| Professional Fish Harvesters Certification Board | Teachers Certification Committee |
| Province of Newfoundland and Labrador Pooled Pension Fund Investment Committee | Teachers Certification Review Board |
| Provincial Advisory Council of the Status of Women Newfoundland and Labrador | The Rooms Corporation |
| Provincial Apprenticeship Board | Thomas Development (1989) Corporation |
| Provincial Bravery Award Review Panel | Volunteer Service Medal Selection Committee |
| Provincial Information Library Resources Board | Western Newfoundland Regional Appeal Board |
| Public Accountants Licensing Board | Wilderness and Ecological Reserves Advisory Council |
| Public Utilities Board | Workplace Health, Safety and Compensation Commission |
| Radiation Health and Safety Advisory Committee | Workplace Health, Safety and Compensation Review Division |
| Real Estate Foundation of Newfoundland | |

Education Boards

| | |
|--|-------------------------------------|
| College of the North Atlantic | Memorial University of Newfoundland |
| Conseil scolaire francophone provincial de Terre-Neuve-et-Labrador | Nova Central School District |
| Eastern School District | Western School District |
| Labrador School District | |

Health Boards

| | |
|----------------------------|---|
| Central Health Authority | Newfoundland and Labrador Centre for Health Information |
| Eastern Health Authority | Western Health Authority |
| Mental Health Review Board | |

House of Assembly/Statutory Offices

| | |
|--|--|
| Commissioner for Legislative Standards | Office of the Citizens' Representative |
| House of Assembly | Office of the Child and Youth Advocate |
| Office of the Chief Electoral Officer | Office of the Information and Privacy Commissioner |

Municipalities

| | | |
|----------------|-----------------------------|-----------------------|
| Admirals Beach | Botwood | Clarenville |
| Anchor Point | Branch | Clarke's Beach |
| Appleton | Brent's Cove | Coachman's Cove |
| Aquaforte | Brighton | Colinet |
| Arnold's Cove | Brigus | Colliers |
| Avondale | Bryant's Cove | Come By Chance |
| Badger | Buchans | Comfort Cove-Newstead |
| Baie Verte | Burgeo | Conception Bay South |
| Baine Harbour | Burin | Conception Harbour |
| Bauline | Burlington | Conche |
| Bay Bulls | Burnt Islands | Cook's Harbour |
| Bay de Verde | Campbellton | Cormack |
| Bay L'Argent | Cape Broyle | Corner Brook |
| Bay Roberts | Cape St. George | Cottlesville |
| Baytona | Carbonear | Cow Head |
| Beachside | Carmanville | Cox's Cove |
| Bellburns | Cartwright | Crow Head |
| Belleoram | Centreville-Wareham-Trinity | Cupids |
| Birchy Bay | Chance Cove | Daniel's Harbour |
| Bird Cove | Change Islands | Deer Lake |
| Bishop's Cove | Channel-Port aux Basques | Dover |
| Bishop's Falls | Chapel Arm | Duntara |
| Bonavista | Charlottetown (Labrador) | |

Municipalities (cont'd)

| | | |
|------------------------|-------------------------------------|---|
| Eastport | Gillams | Hopedale |
| Elliston | Glenburnie-Birchy Head-Shoal Brook | Howley |
| Embree | Glenwood | Hughes Brook |
| Englee | Glovertown | Humber Arm South |
| English Harbour East | Goose Cove East | Indian Bay |
| Fermeuse | Grand Bank | Irishtown-Summerside |
| Ferryland | Grand Falls-Windsor | Isle aux Morts |
| Flatrock | Grand Le Pierre | Jackson's Arm |
| Fleur de Lys | Greenspond | Joe Batt's Arm-Barr'd Islands-Shoal Bay |
| Flower's Cove | Hampden | Keels |
| Fogo | Hant's Harbour | King's Cove |
| Fogo Island Region | Happy Adventure | King's Point |
| Forteau | Happy Valley-Goose Bay | Kippens |
| Fortune | Harbour Breton | La Scie |
| Fox Cove-Mortier | Harbour Grace | Labrador City |
| Fox Harbour | Harbour Main-Chapel's Cove-Lakeview | Lamaline |
| Frenchman's Cove | Hare Bay | L'Anse au Clair |
| Gallants | Hawke's Bay | L'Anse au Loup |
| Gambo | Heart's Content | Lark Harbour |
| Gander | Heart's Delight-Islington | Lawn |
| Garnish | Heart's Desire | Leading Ticks |
| Gaskiers-Point La Haye | Hermitage-Sandyville | Lewin's Cove |
| Gaultois | Holyrood | Lewisporte |

Municipalities (cont'd)

| | | |
|--------------------------------------|--|--|
| Little Bay | Morrisville | Petty Harbour-Maddox Cove |
| Little Bay East | Mount Carmel-Mitchells Brook-St. Catherine's | Pilley's Island |
| Little Bay Islands | Mount Moriah | Pinware |
| Little Burnt Bay | Mount Pearl | Placentia |
| Little Catalina | Musgrave Harbour | Point au Gaul |
| Logy Bay-Middle Cove-Outer Cove | Musgravetown | Point Lance |
| Long Harbour-Mount Arlington Heights | Nain | Point Leamington |
| Lord's Cove | New Perlican | Point May |
| Lourdes | New-Wes-Valley | Point of Bay |
| Lumsden | Nippers Harbour | Pool's Cove |
| Lushes Bight-Beaumont-Beaumont North | Norman's Cove-Long Cove | Port Anson |
| Main Brook | Norris Arm | Port au Choix |
| Makkovik | Norris Point | Port au Port East |
| Mary's Harbour | North River | Port au Port West-Aguathuna-Felix Cove |
| Marystown | North West River | Port Blandford |
| Massey Drive | Northern Arm | Port Hope Simpson |
| McIvers | Old Perlican | Port Kirman |
| Meadows | Pacquet | Port Rexton |
| Middle Arm | Paradise | Port Saunders |
| Miles Cove | Parker's Cove | Portugal Cove South |
| Millertown | Parson's Pond | Portugal Cove-St. Philip's |
| Milltown-Head of Bay D'Espoir | Pasadena | Postville |
| Ming's Bight | Peterview | Pouch Cove |

Municipalities

| | | |
|--|---|-------------------|
| Raleigh | Southern Harbour | Terrenceville |
| Ramea | Spaniard's Bay | Tilt Cove |
| Red Bay | Springdale | Tilting |
| Red Harbour | St. Alban's | Torbay |
| Reidville | St. Anthony | Traytown |
| Rencontre East | St. Bernard's-Jacques Fontaine | Trepassey |
| Renews-Cappahayden | St. Brendan's | Trinity |
| Rigolet | St. Bride's | Trinity Bay North |
| River of Ponds | St. George's | Triton |
| Riverhead | St. Jacques-Coomb's Cove | Trout River |
| Robert's Arm | St. John's | Twillingate |
| Rocky Harbour | St. Joseph's | Upper Island Cove |
| Roddickton | St. Lawrence | Victoria |
| Rose Blanche-Harbour Le Cou | St. Lewis | Wabana |
| Rushoon | St. Lunaire-Griquet | Wabush |
| Salmon Cove | St. Mary's | West St. Modeste |
| Salvage | St. Pauls | Westport |
| Sandringham | St. Shott's | Whitbourne |
| Sandy Cove | St. Vincent's-St. Stephen's-Peter's River | Whiteway |
| Seal Cove, Fortune Bay | Steady Brook | Winterland |
| Seal Cove, White Bay | Stephenville | Winterton |
| Seldom-Little Seldom | Stephenville Crossing | Witless Bay |
| Small Point-Adam's Cove-Blackhead-Broad Cove | Summerford | Woodstock |
| South Brook | Sunnyside, Trinity Bay | Woody Point |
| South River | Terra Nova | York Harbour |

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