



ABOVE BOARD

A QUARTERLY NEWSLETTER BY THE OFFICE OF
THE INFORMATION AND PRIVACY COMMISSIONER

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

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

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FREE Conference Fall 2016

We Are Connected—Building One Community for Information Management, Security, Privacy and Access

In these times of fiscal restraint we are pleased to announce a FREE Fall Conference for Privacy, Access, Security and Information Management professionals. We are removing any financial barriers to attendance in an effort to grow our common communities. This conference is being built by some key stakeholders working collaboratively, pooling resources and ensuring the quality of content that you have come to expect.

Potential Topics Include:

- ATIPPA, 2015: One Year Review
- Compliance/Efficiency Balance
- The Cloud (What You Need to Know)
- Privacy/Confidentiality vs. Public Interest
- Accountability—What’s it Mean to You?
- Decoding Information Governance
- Health Research and Privacy
- Operationalizing Policies

Do you have a topic idea, or would you like to be a presenter? Let us know! We will be producing a website soon and providing a way to register for the conference (which will be required). Save the date—November 28-30!



OIPC'S FIRST AUDIT REPORT

Citizens expect the Office of the Information and Privacy Commissioner ("OIPC"), as the oversight body, to assess the level of public body compliance with the *Access to Information and Protection of Privacy Act, 2015* (the "ATIPPA, 2015"). One tool used to assess compliance is a privacy audit under the authority of section 95(1)(b) and section 95(3) of the *ATIPPA, 2015*.

In June, the OIPC released its first audit Report, which examined the reasonableness of the physical safeguards in place within the Human Resource Secretariat's ("HRS") Pensions Administration and Group Insurance Division (the "Division"). It is important to note that being the subject of an audit does not mean that a public body has done something wrong; it is a formal opportunity to assess compliance and identify areas for improvement so as to better avoid privacy risks in the future. While this Office has to select a public body as the focus for the audit, these reports provide guidance and expectations that can be applied to other public bodies. As such, public bodies should review audit reports to better understand our expectations and identify their own areas for improvement.

Under section 64 of the *ATIPPA, 2015*, each public body is required to have reasonable physical, administrative and technical safeguards in place to protect the information in its custody or control. Since there is never a 100% guarantee that safeguards are sufficient and consistently applied, most public bodies choose to take a layered approach, using the three types of safeguards in an overlapping and complementary fashion.

This audit started with background research, including the physical safeguard standards established by the Government of Newfoundland and Labrador and Commissioner's Reports from this Province, as well as other Canadian jurisdictions. In addition to formal submissions, a site tour and staff survey were also conducted. Our Report outlines legislative requirements, presents findings from the audit, and discusses key observations and recommendations.

Two tools introduced by HRS should be considered for adoption by all public bodies: the Divisional Checklist for Monitoring Protection of Personal Information (Divisional Checklist) and the concept of teachable moments. The Divisional Checklist was designed to identify areas where breaches could occur and to try to mitigate the risk by making it a teachable moment for employees, where possible. The checklist process involved random checks of garbage, shredding and recycle bins; checking to see if items were left behind on printers and fax machines; ensuring the office and Registry were locked at the end of the day; overall workspace checks; and filing cabinet checks. The concept of teachable moments highlights lessons learned from past breaches. These moments would discuss the breach and offer suggestions to avoid similar situations in the future.

This Office encourages every public body to review the standards discussed in this Report and conduct a review to determine its own level of compliance. Our Report is available [online](#).

RECENT OIPC PRACTICE BULLETINS

Redacting Non-Responsive Information in a Responsive Document

While there is no section in the *ATIPPA, 2015* that specifically authorizes the redaction of non-responsive information in an otherwise responsive record, this practice has been long-standing here and in other jurisdictions. The OIPC offered this “best practice” advice by way of a Practice Bulletin on May 11, 2016:

1. use the “non-responsive” redaction sparingly and only where necessary and appropriate, giving the *ATIPPA, 2015* a liberal and purposive interpretation;
2. if it is just as easy to release the information as to claim “non-responsive”, the information should be released (i.e. releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exceptions);
3. avoid breaking up the flow of information (i.e. if possible, do not claim “non-responsive” within sentences or paragraphs); and
4. in your final response to the Applicant, it is necessary to explain what “non-responsive” means and that some information has been redacted on this basis.

Use of Personal Email Accounts for Public Business

Officers and employees of public bodies should be aware of two important points – the *ATIPPA, 2015* applies to any records they create or receive in the course of their duties which relate to the business of the public body, including those created or received on personal email accounts. Secondly, public bodies should NOT allow the use of personal email accounts for work.

As to the issue of custody and control, the Supreme Court of Canada has said that where a record is not in the physical possession of a government institution, it will still be under its control if two questions are answered in the affirmative:

1. Do the contents of the document relate to a departmental matter?
2. Could the government institution reasonably expect to obtain a copy of the document upon request?

As a general rule, any email that an officer or employee sends or receives as part of his or her work-related duties will be a record under the public body’s control, even if a personal account is used.

The use of personal email not only raises concerns regarding a potential access request, but also raises concerns around the public body’s obligation to protect personal information.

— Both Practice Bulletins can be found in full on our [website](#). —

OCIO ATIPP TOOLKIT

With the support of the ATIPP Office, the OCIO is in the final stages of rolling out its 'ATIPP Toolkit' to ATIPP Coordinators across departments (and agencies, board and commissions that use the Government Network).

The ATIPP Toolkit is a collection of IT tools and informational guides meant to streamline, improve and simplify how ATIPP Coordinators respond to ATIPP Requests. Some key features of the ATIPP Toolkit include:

1. the use of Microsoft's 'Multi-Mailbox Search' tool that allows Coordinators to search multiple active email accounts simultaneously;
2. an online 'Request for e-Records' form for ATIPP Requests that removes the pre-requisite for Deputy-level 'approval' when Coordinators request access to active VIP email accounts;
3. an informational guide to help ATIPP Coordinators locate active and/or inactive email accounts; and
4. an option to set up a 'Managed File Transfer' account to securely send large files electronically.

The ATIPP Toolkit has been reviewed by the ATIPP Office and in January, the OCIO began offering sessions to departmental ATIPP Coordinators (Primary and Back-Up) and Coordinators of agencies, board and commissions that use the Government Network. The purpose of these sessions is to provide an overview of the ATIPP Toolkit and its key features. Additional sessions will be offered in the near future for those that have yet to attend a session. Since ATIPP Coordinators often engage IM Directors and other IM staff within departments as they prepare their ATIPP responses, the OCIO will also inform IM Directors of the ATIPP Toolkit and its value to the ATIPP community as part of its rollout activities.

INTRODUCING OUR NEW WEBSITE

We have been doing a lot of work in this quarter overhauling our website. Many thanks to the OCIO who did all the technical and design work for us. As a result of their professional work we were able to completely revise the website using existing resources and completed the project with a net zero cost.

Some features of the new site include a searchable keyword index for Commissioner's Reports, more user friendly interface, three clear paths to enter the site (Public, Public Bodies, and Custodians). Check it out at www.oipc.nl.ca and let us know if you have any feedback by emailing commissioner@oipc.nl.ca.

PRIVACY BREACH STATISTICS March 1–June 30

In our most recent reporting period (March 1 – June, 30, 2016), the OIPC received 66 privacy breach reports from 19 public bodies.

This is up from the 51 reports from 19 public bodies received in the [third quarter](#) of mandatory breach reporting.

Privacy breach reports to the Commissioner are used primarily to allow the OIPC to advise public bodies about the breach response process, to discuss ways to avoid similar breaches and also to target specific issues or public bodies for privacy training.

If you want the OIPC to deliver training regarding privacy breaches, or any other topic relating to access or privacy, contact our Office to arrange a time.

Summary by Public Body	
Advanced Education and Skills	7
Arts NL	1
City of Corner Brook	1
College of the North Atlantic	4
Department of Child, Youth and Family	4
Department of Health and Community	1
Department of Justice and Public	1
Eastern Health	6
Human Resource Secretariat	7
Memorial University of Newfoundland	3
NALCOR	1
Newfoundland and Labrador English	8
Newfoundland and Labrador Housing	5
Office of the Chief Information Officer	1
Service NL	10
Town of Torbay	1
Western Health	1
Workplace Health, Safety and	2
Workplace Health, Safety and	2
Summary by Breach Type	
Email	20
Fax	1
In Person	7
Intentional (i.e. willful breach)	2
Mail Out	23
Other	10
Technical Malfunction	3

Farewell to Commissioner Ring

The Office of the Information and Privacy Commissioner for Newfoundland and Labrador wishes to announce the retirement of Commissioner Ed Ring, effective June 23, 2016.

Commissioner Ring has been at the helm and led the Office through its formative years, having been appointed to the first of several two-year terms in December 2007. When the *ATIPPA* first came into force in 2005, only the access to information provisions had been proclaimed into law. Shortly after Mr. Ring's appointment, the privacy provisions came into force, in January 2008. This was the first of several steps in the evolution of the Office during his tenure, each with its own challenges that Mr. Ring was required to meet as Commissioner. In 2011, the *Personal Health Information Act* came into force, and also in that year the *ATIPPA* underwent a mandatory five-year statutory review. This resulted in the infamous Bill 29 in 2012, which increased the scope of exceptions and rolled back some of the Commissioner's powers. After an unprecedented wave of public and political outrage, this was soon followed by another full review of the legislation which ultimately resulted in the *ATIPPA, 2015*, an entirely new statute which has been hailed by the Centre for Law and Democracy as being the best of its kind in Canada and one of the best in the world. Commissioner Ring's advocacy for access and privacy during the review process helped to secure this important achievement.



In addition to leading the Office through these many legislative additions and changes, there were many other notable achievements during Commissioner Ring's tenure, including overcoming a legal challenge to the Commissioner's jurisdiction to review claims of solicitor-client privilege, which we fought to the NL Court of Appeal and won. Another achievement which cannot go unmentioned is that under Commissioner Ring's leadership, this Office was only the second jurisdiction in Canada to investigate and lay charges which ultimately led to two convictions under the offence provisions of the *Personal Health Information Act*.

In all of this time, Commissioner Ring has been unflappable and constant in pursuing his mandate to protect and support the public's right of access to information, and ensuring that public bodies and custodians take appropriate action to protect the privacy rights of individuals. He has also been a strong advocate in pursuit of appropriate resources for the Office, and he is very well liked by his staff. Our congratulations and best wishes go out to Commissioner Ring and his wife Ann as they look forward to spending more time enjoying life with their children and grandchildren.