



**ANNUAL REPORT
2012-2013**



**OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER**

NEWFOUNDLAND AND LABRADOR

Access

“... the overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”

Justice Laforest, Supreme Court of Canada,
Dagg v. Canada



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 J. (Dissenting)*



PHIA

“I say, Mr. Speaker, this piece of legislation is intended to be a comprehensive piece of legislation to protect the integrity of your personal health information, protect the privacy and the sensitivity of the information through laying out, in a step-by-step mechanism, the whole process of storing and releasing and how personal health information gets used. It has been constructed on the basis of a wide consultation process. I say, Mr. Speaker, it reflects the principles as outlined in both the federal legislation that currently exists, as well as provincial legislation that currently exists with respect to this.”

Hon. Ross Wiseman, Minister of Health and Community Services
House of Assembly Hansard, May 26, 2008



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AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

February 13, 2014

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 the provisions of section 59 of the *Access to Information and Protection of Privacy Act* and section 82 of the *Personal Health Information Act*. This Report covers the period from April 1, 2012 to March 31, 2013.

Edward P. Ring
Information and Privacy Commissioner

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Commissioner's Message

"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 ATIPPA also gives individuals a right of access to their own personal information which is held by a public body. 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 passed 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, which is why it is important that the OIPC exists as an independent body to review decisions made by public bodies about access to information requests.

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.

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 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 in relation to matters which the Commissioner is empowered to review. The government amended the *ATIPPA* through Bill 29 to remove the Commissioner’s authority to review a refusal of access to information based on a claim of solicitor and client privilege (section 21) and a claim that a record is an official cabinet record (section 18(2)(a)). The Commissioner therefore has no right to conduct a review into such a refusal nor to demand that such records be produced in the course of a review. The applicant, however, retains the right to ask the Supreme Court Trial Division to review a decision to refuse access on the basis of either of those two provisions, or the applicant may ask the Commissioner to initiate such an appeal.

Aside from those provisions, 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. One area which currently requires clarification is regarding situations where a public body asserts, by citing section 5, that certain records responsive to an access to information request are outside the scope of the *ATIPPA*.*

*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 (Information and Privacy Commissioner) v. Newfoundland and Labrador (Attorney General), 2011 NLCA 69 in which the Court of Appeal determined that the Commissioner had the authority to review claims of solicitor and client privilege. It was several months after this decision that Bill 29 effectively overturned the decision with respect to solicitor and client privilege, however the Court provided extensive commentary on the importance of the Commissioner being able to conduct a review in all cases where there has been a denial of access by a public body. The position of the Court of Appeal has not yet been reconciled with the decision of Mr. Justice Fowler, however we anticipate that eventually an opportunity will arise for the courts to provide clarification on this issue.

On April 1, 2011 the Personal Health Information Act (PHIA) was proclaimed into force. Newfoundland and Labrador's PHIA is a law which establishes rules regarding how your personal health information is to be handled.



The Purposes of PHIA are accomplished by:

- 1 Establishing rules for the collection, use and disclosure of personal health information to protect the confidentiality of the information as well as to protect individual privacy.
- 2 Giving the public a right of access to personal health information about themselves.
- 3 Giving the public a right to require correction or amendment of that information.
- 4 Establishing measures to ensure accountability by custodians and to safeguard the security and integrity of personal health information.
- 5 Providing for independent review of decisions and resolution of complaints respecting personal health information.
- 6 Establishing measures to promote compliance with PHIA by custodians.

PHIA governs information held by custodians of your personal health information, whether in the public sector or the private sector. Most personal health information is considered to be in the control or custody of a custodian and is therefore covered by PHIA. Examples of some major custodians include:

- Eastern Health, Central Health, Labrador Grenfell Health and Western Health; Newfoundland and Labrador Centre for Health Information;
- regulated health professionals in private practice, such as doctors, dentists, pharmacists, physiotherapists, chiropractors and registered massage therapists, just to mention a few;
- Faculty of Medicine and the Schools of Nursing, Pharmacy, and Human Kinetics and Recreation at Memorial University.

PHIA recognizes that you expect your health information to remain confidential and that it should only be collected, used or disclosed for purposes related to your care and treatment. However, *PHIA* also acknowledges that personal health information is sometimes needed to manage the health care system, for health research and for other similar purposes. Furthermore, law enforcement officials, health officials and others may also have a legitimate need to access personal health information, under limited and specific circumstances.

If you wish to access your personal health information, or if you have an inquiry about how your personal health information is being collected, used or disclosed, you may contact your health care provider. For more information about *PHIA*, visit the *PHIA* web page of the Department of Health and Community Services at www.health.gov.nl.ca/health/PHIA.

The Commissioner's Office investigates privacy breach complaints and other complaints about how personal health information has been improperly collected, used, disclosed or otherwise mishandled by a custodian. The Commissioner also investigates complaints on the basis that a custodian has refused to provide a copy of an individual's personal health information to the individual, or refused to correct.

If you believe on reasonable grounds that a custodian has contravened or is about to contravene a provision of the *PHIA* in relation to your own personal health information or that of another individual, you may file a complaint with the Commissioner.

If you wish to file a complaint with the Commissioner, we ask that you use the forms which are available from our Office or our website at www.oipc.nl.ca/forms.htm.

Complaints may be mailed, dropped off, or sent by fax or email. Those sent by e-mail must contain a scanned copy of a signed and dated complaint form, otherwise they will not be accepted.

Upon receipt of a complaint, the Commissioner will attempt to resolve the matter informally. If this is not successful, a formal review may be conducted. There is no cost to file a complaint with the OIPC.

PHIA balances your right to privacy with the legitimate needs of persons and organizations providing health care services to collect, use and disclose such information.



Accessing Information

ATIPPA

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

- 01** Determine which public body has custody or control of the record.
- 02** 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 [ATIPP Office Website](#).
- 03** 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 [ATIPP Office Website](#).
- 04** 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).
- 05** 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 will likely also be imposed for providing a copy of the records.
- 06** 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 Commissioner, or you may appeal directly to the Supreme Court Trial Division.

How to File a Request for Review or Investigation of Complaint

01

Submit a [Request for Review or Investigation of Complaint Form](#) to our Office.

02

Upon receipt of a complaint or formal request for review, the Commissioner will review the circumstances and attempt to resolve the matter informally.

03

If informal resolution is unsuccessful, the Commissioner may 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.

04

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.

05

Within 30 days after receiving the decision of the public body, the applicant or the Commissioner may appeal the decision to the Supreme Court Trial Division.

PHIA

PHIA also grants individuals a right of access to information, but under PHIA this is only a right of access to the individual applicant's own personal health information. Under specific circumstances as outlined in section 7, typically where the individual is not able to exercise their own rights, the right to request access to this information (as well as other rights under PHIA) can be exercised by a representative of the individual.

The provisions which allow a custodian to refuse access to the requested information are limited, and the situations in which these provisions would apply occur relatively infrequently. Unless one of those provisions apply, any individual who requests access to their own personal health information should expect to get it, although as with ATIPPA, a fee may apply. The fee must be a reasonable one, however. Just as with the ATIPPA, any individual who is refused access to their own personal health information may file a complaint with the Commissioner.



How to Make an Access Request?

01

An individual who wishes to access his or her own personal health information should make a request directly to the custodian that the individual believes has custody or control of the information.

02

The request should be in writing unless the individual has limited ability to read or write English, or has a disability or condition that makes it difficult to do so in writing.

03

The request should contain sufficient details to permit the custodian to identify and locate the record.

04

A custodian must respond to a request without delay, and in any event, within 60 days of receiving the request. That deadline can be extended for a maximum of an additional 30 days under specific circumstances outlined in *PHIA*. Nothing in *PHIA* prevents a custodian from granting a request for access informally without the need for a written request.

How to File a Request for Investigation of Complaint?

01

If you have submitted a request to a custodian for access to your personal health information and you are not satisfied with the response, you may ask the Commissioner to review the matter by filing a complaint.

02

If you wish to file a complaint with the Commissioner, we ask that you use the forms which are available from our Office or our website at www.oipc.nl.ca/forms.htm.

Withholding Information

ATIPPA

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 OIPC.



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* process.

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* - the head of a public body shall refuse to disclose to an applicant a Cabinet record including: (a) an official Cabinet record; (b) a discontinued Cabinet record; and (c) a supporting Cabinet record.
- *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 and 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.
- *Confidential evaluations* – protects from disclosure evaluative or opinion material, provided explicitly or implicitly in confidence, which was compiled for specific purposes outlined in the exception.
- *Information from a workplace investigation* – limits the amount of information available to applicants regarding a workplace investigation, but specifies that certain information about the investigation must be made available to specific parties as defined in the exception.

- *Disclosure harmful to conservation* – allows information about conservation to be withheld if disclosure could reasonably be expected to damage or interfere with conservation as outlined in the exception.
- *Disclosure harmful to labour relations interests of public body as employer* – allows certain labour relations information to be withheld in the circumstances outlined in the exception.

Unsupported refusals to release information and delays in responding to requests for access are particularly frustrating to applicants as well as to this Office. That being said, it is of significant comfort to acknowledge that there is a sustained effort under way by government through the ATIPP Office 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.

Since the *ATIPPA* first became law, public bodies have often expressed resentment that they sometimes receive requests for information that they would call frivolous or vexatious. Whether these concerns have been justified 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*. Since this Office was established in 2005, there have been very few cases involving access requests which could have been considered frivolous or vexatious, for example. That being said, those few we have seen were indeed problematic for the public bodies involved, and there was no remedy under the law as it existed prior to Bill 29 to refuse such requests. Since the Bill 29 amendments, the *ATIPPA* provides an opportunity for public bodies to disregard a request if the circumstances set out in section 43.1(1) apply:

- 43.1 (1) The head of a public body may disregard one or more requests under subsection 8(1) or 35(1) where:
- (a) because of their repetitive or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to the abuse of the right to make those requests;
 - (b) one or more of the requests is frivolous or vexatious; or
 - (c) one or more of the requests is made in bad faith or is trivial.
- (2) Where the head of a public body so requests, the commissioner may authorize the head of a public body to disregard a request where, notwithstanding paragraph (1)(a), that the request is not systematic or repetitive if, in the opinion of the commissioner, the request is excessively broad.

As set out above, section 43.1(2) provides for an additional circumstance where an applicant's request may be disregarded, but only with the authorization of the Commissioner. When the Bill 29 amendments became law, we were concerned at first that we might see many public bodies attempt to disregard requests on the basis of one of the provisions in section 43.1. On the contrary, we have only seen a couple of inquiries of this nature. It could be that public bodies are aware that there is substantial case law on the meaning of these provisions in similar legislation in other Canadian jurisdictions, and that there is a high threshold to make a case that an applicant's request may be disregarded. Furthermore, knowing that our Office is here to review any applicant's claim that their request has been unjustly disregarded would no doubt serve as a deterrent to any such move by a public body which was not well founded.

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.



PHIA

PHIA contains very limited provisions allowing a custodian to refuse access to a record of an applicant's personal health information. As with *ATIPPA*, the basis for a decision to refuse access to a record may be either mandatory or discretionary, as described in section 58 of *PHIA*.



Mandatory Exceptions

The mandatory exceptions occur under the following circumstances, where:

- another Act, an Act of Canada or a court order prohibits disclosure to the individual of the record or the information contained in the record in the circumstances;
- granting access would reveal personal health information about an individual who has not consented to disclosure;
- the information was created or compiled for the purpose of:
 - a committee referred to in subsection 8.1(2) of the *Evidence Act*;
 - review by a standards or quality assurance committee established to study or evaluate health care practice; or
 - a body with statutory responsibility for the discipline of health care professionals or for the quality or standards of professional services provided by health care professionals.

Discretionary Exceptions

The discretionary exceptions to the right of access under *PHIA* are set out in section 58, subsections 2 and 3. One example is section 58(2)(d)(i) which says that a custodian may refuse access to a record of personal health information where “granting access could reasonably be expected to result in a serious risk of harm to the mental or physical health or safety of the individual who is the subject of the information or another individual.”

The Role of the Commissioner

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.

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.

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.

In accordance with the provisions of the *PHIA*, the Commissioner has broad authority to oversee this important law. The Commissioner may exercise his powers and duties under *PHIA* by:

- reviewing a complaint regarding a custodian's refusal of a request for access to or correction of personal health information;
- reviewing a complaint regarding a custodian's contravention or potential contravention of the *Act* or regulations with respect to personal health information;
- making recommendations to ensure compliance with the *Act*;
- informing the public about the *Act*;
- receiving comments from the public about matters concerning the confidentiality of personal health information or access to that information;
- commenting on the implications for access to or confidentiality of personal health information of proposed legislative schemes or programs or practices of custodians;
- commenting on the implications for the confidentiality of personal health information of using or disclosing personal health information for record linkage, or using information technology in the collection, storage, use or transfer of personal health information; and
- consulting with any person with experience or expertise in any matter related to the purposes of this *Act*.



Legislative Review - Bill 29

The first review occurred between January 2011 and January 2012. Rather than appointing a committee to conduct the review, a review commissioner, Mr. John Cummings, was appointed to lead this initiative.



Between January 2012 - June 2012, further consultation was conducted with certain stakeholders/public bodies resulting in the preparation of Bill 29, an Act to amend the *Access to Information and Protection of Privacy Act*. Thirty-three sections of the Act were amended and a transitional section was provided. Bill 29 was debated in the House of Assembly from June 11-14, 2012. The filibuster lasted approximately 70 hours and the Bill was passed into force on June 27, 2012.

Section 74 of the ATIPPA states, "after the expiration of not more than 5 years after the coming into force of this Act or part of it and every 5 years thereafter, the Minister responsible for this Act shall refer it to a committee for the purpose of undertaking a comprehensive review of the provisions and operation of this Act or part of it."



Sections of ATIPPA Amended

Section 2	Definitions
Section 5	Application
Section 7	Right to Access
Section 14	Published Material
Section 16	Extension of Time Limit
Section 18	Cabinet Confidences
Section 19	Local Public Body Confidences
Section 20	Policy Advice or Recommendations
Section 21	Legal Advice (claims by public bodies relying on this exception was removed from the Commissioner's power to review)
Section 22	Disclosure Harmful to Law Enforcement
Section 22.1	Added Confidential Evaluations
Section 22.2	Added Information from a Workplace Investigation
Section 24	Disclosure Harmful to the Financial or Economic Interest of a Public Body
Section 26.1	Added Disclosure Harmful to Labor Relations Interest of Public Body as Employer
Section 27	Disclosure Harmful to Business Interests of a Third Party
Section 28	Notifying the Third Party
Section 30	Disclosure Harmful to Personal Information
Section 33	How Personal Information is to be Collected
Section 35	Right to Request Correction of Personal Information
Section 38.1	Added Use of Personal Information by Post-Secondary Education Bodies
Section 39	Disclosure of Personal Information
Section 43	Review and Appeal
Section 43.1	Added Power of a Public Body to Disregard Requests
Section 44	Complaints
Section 46	Informal Resolution
Section 47	Representation on Review
Section 48	Time Limit for Review
Section 49	Report
Section 50	Response of Public Body
Section 52	Production of Documents
Section 53	Right of Entry
Section 60	Appeal to Trial Division
Section 66	Designation of Head by Local Public Body
Section 73	Regulations

Transitional:

1. Where, on the coming into force of this Act, a public body, the Commissioner or a judge has begun to consider, review or decide on a matter but has not completed the consideration or review or make a decision on it, the *Access to Information and Protection of Privacy Act* as it existed before the coming into force of this Act shall apply to that consideration, review or decision.
2. Where, before the coming into force of this Act, an application has been made to a head of a public body, the Commissioner or a judge but the head of the public body, the Commissioner or judge had not yet begun to consider, review or decide upon the matter, the application shall be considered, reviewed or decided upon in accordance with the *Access to Information and Protection of Privacy Act* as amended by this Act.

OIPC Initial Expectations

Based on the many changes to the legislation, there was a high expectation by the OIPC that a significant amount of workload would result due to an increase in requests for review as well as requests for the Office to proceed to court in order to have claims of solicitor and client privilege reviewed by a judge. Our expectations were based on changes relating specifically to Section 18 - Cabinet Confidences, Section 16 - Time Extensions, Section 20 - Policy Advice and Recommendations, Section 21 - Legal Advice, Section 24 - Disclosure harmful to financial or economic interest of public body, Section 26(1) - Disclosure harmful to labour relations interest of a public body as employers, Section 27 - Disclosure harmful to business interest of third party and section 43.1 - Powers of a public body to disregard requests.

The Reality

I will begin by stating that during the nine months of this reporting period, post Bill 29 coming into force, the expectations of the OIPC were not realized. Very little, if any increase in the number of requests for review and complaints were received, especially as they relate to the sections mentioned above. I will now recap these briefly.



Section 16 - Time Extensions

A number of time extensions by various public bodies have been requested of the Commissioner. In most cases, where circumstances have warranted, further extensions beyond the 30 days already available to the head have been granted by the Commissioner. Each request for extension is considered based on its own merits and appropriate time granted accordingly. Not all requests for time extensions to the Commissioner have been granted.

Section 18 - Cabinet Confidences

The OIPC has not, during this reporting period received a request for review or complaint concerning this section. Several consultations were conducted with individuals seeking clarification on the section and requesting under what circumstances would the Commissioner proceed to court on behalf of an applicant.

Section 20 - Policy Advice and Recommendations

This section has expanded and contains more detail than before, generally the language is very broad, however, there has been no marked increase in requests for review to the OIPC.

Section 21 - Legal Advice

Bill 29 removed this section from the Commissioner's power of review through amendments to sections 43 and 52. Either the applicant or the OIPC can appeal a decision citing this exception to the Trial Division in order for a judge to review the records in question and determine if the claim by the head of the public body is correct. The Commissioner has exercised this option on two occasions during this reporting period.

Section 24 - Disclosure Harmful to Financial or Economic Interest of Public Body

This amendment essentially removed the harms test "reasonable expectation of probable harm". Information can now be withheld even if there was no harm in disclosing it. The Office has received several requests for review concerning this exception.

Section 26 (1) - Disclosure Harmful to Labour Relations Interest of Public Body as Employer

This exception has not been the issue of a review by the Office post Bill 29.

Section 27 - Disclosure Harmful to Business Interest of Third Party

The language in this section is very broad and the three-part harms tests has been removed. Post Bill 29, the Office has reviewed several matters concerning claims of this exception.

Section 43.1 - Powers of the Public Body to Disregard Requests

The head of a public body may disregard a request which is deemed to be repetitive or systemic which would unreasonably interfere with operations of the public body or is frivolous or vexatious in nature. Additionally, this section grants the head of the public body the right to ask the Commissioner to authorize the head to disregard a request that is not systematic or repetitional, but is “excessively broad”. The OIPC has not received a request for review concerning this section.

In conclusion, at the time of writing this Report, the Office is still working through the requests for review and complaints involving the amendments resulting from Bill 29 as they arise. Significant change to the legislation occurred and as the Office continues to deal with these amendments we will be in a better position to comment on their impact, track trends and establish OIPC’s position on a case by case basis. Based on our experience to date and on the broadening of the language in a number of sections, there is potential for less information being released. As a result, the OIPC strongly encourages public bodies to use discretion where possible and release information even if a discretionary provision applies but no identifiable harm will occur.



Investigative Outcomes

The OIPC has revised its investigative outcomes under the *Access to Information and Protection of Privacy Act (ATIPPA)* and the *Personal Health Information Act (PHIA)*.

ATIPPA

The new investigative outcomes indicate a change in the OIPC's method for identifying an investigative file as resolved. This revision of investigative outcomes under the *ATIPPA* is as a result of changes made to the legislation (Bill 29) which came into force in June of 2012. Below is a table with explanations of each outcome.

ATIPPA Access

Explanation

No Jurisdiction/Declined to Investigate (formerly Closed General)	Based on the preliminary information gathered, it was determined that <i>ATIPPA</i> did not apply to the organization or activity that was the subject of the Request for Review, or is otherwise without merit, or the Commissioner declined to commence an investigation in respect of a Request for Review because it was not filed within a reasonable period after the day on which a decision which led to the Request for Review arose, as set out in section 45 of the <i>ATIPPA</i> .
Discontinued (formerly Withdrawn)	The matter ended before a full investigation. A Review may be discontinued for any number of reasons. For instance, the applicant may no longer wish to pursue the matter, cannot be located to provide information necessary to making a finding or is no longer actively participating in the process.
Informal Resolution	The OIPC helped negotiate a solution that satisfied all involved parties either without a formal investigation being undertaken or completed. The Commissioner does not issue a Report in this case.
Review not Conducted	The Commissioner has determined there are no reasonable grounds to proceed to a Review as per section 46(2) or the Commissioner decided not to conduct a Review because the Public Body has responded adequately; the matter can be more appropriately dealt with by another procedure; too much time has elapsed since the subject matter of the Review arose; or trivial, frivolous, vexatious, bad faith, as set out in section 46(3) of the <i>ATIPPA</i> .

Report	On completing a Review, the Commissioner shall issue a report pursuant to section 49 of the <i>ATIPPA</i> .
Closed Complaint	All complaints of fee or time extension are assessed upon receipt. The Commissioner may decline to investigate a trivial complaint and the file will be closed. All other complaints will be resolved informally to the satisfaction of the parties or a letter will be issued outlining the findings of the investigating Analyst, or if the matter was accompanied by a Request for Review then it may be addressed within a Commissioner's Report.

**ATIPPA
Privacy**

Explanation

No Jurisdiction/Declined to Investigate (formerly Closed General)	Based on the preliminary information gathered, it was determined that <i>ATIPPA</i> did not apply to the organization or activity that was the subject of the complaint, or is otherwise without merit, or the Commissioner declined to commence an investigation in respect of a complaint because the complaint was not filed within a reasonable period after the day on which the subject matter of the complaint arose, or is otherwise without merit.
Discontinued (formerly Withdrawn)	The matter ended before a full investigation. A complaint may be discontinued for any number of reasons. For instance, the applicant may no longer wish to pursue the matter, cannot be located to provide information necessary to making a finding or is no longer actively participating in the process.
Informal Resolution	The OIPC helped negotiate a solution that satisfied all involved parties either without a formal investigation being undertaken or completed. The Commissioner does not issue a Report in this case.
Report	A Commissioner's Report on a privacy complaint may be issued upon the discretion of the Commissioner based on the considerations outlined in OIPC Policy 8.

PHIA

The new investigative outcomes indicate a change in the OIPC's method for identifying an investigative file as resolved. Below is a table with explanations of each outcome.

PHIA Access/ Corrections

Explanation

No Jurisdiction/Declined to Investigate (formerly Closed General)	Based on the preliminary information gathered, it was determined that <i>PHIA</i> did not apply to the organization or activity that was the subject of the complaint, or is otherwise without merit, or the Commissioner declined to commence an investigation in respect of a complaint because it was not filed within a reasonable period after the day on which a decision which led to the complaint arose, as set out in section 66(2) of the <i>PHIA</i> .
Discontinued (formerly Withdrawn)	The matter ended before a full investigation. A complaint may be discontinued for any number of reasons. For instance, the applicant may no longer wish to pursue the matter, cannot be located to provide information necessary to making a finding or is no longer actively participating in the process.
Informal Resolution	The OIPC helped negotiate a solution that satisfied all involved parties either without a formal investigation being undertaken or completed. The Commissioner does not issue a Report in this case.
Review Not Conducted	The Commissioner has determined there are no reasonable grounds to proceed to a Review as per section 67(2) or the Commissioner decided not to conduct a Review because the Custodian has responded adequately; the matter can be more appropriately dealt with by another procedure; too much time has elapsed since the subject matter of the complaint arose; or trivial, frivolous, vexatious, bad faith, as set out in section 67(3) of the <i>PHIA</i> .
Report	On completing a Review, the Commissioner shall issue a Report pursuant to section 73 of the <i>PHIA</i> .

**PHIA
Privacy**

Explanation

<p>No Jurisdiction/Declined to Investigate (formerly Closed General)</p>	<p>Based on the preliminary information gathered, it was determined that <i>PHIA</i> did not apply to the organization or activity that was the subject of the complaint, or is otherwise without merit, or the Commissioner declined to commence an investigation in respect of a complaint because the complaint was not filed within a reasonable period after the day on which the subject matter of the complaint arose, as set out in section 66(4) of the <i>PHIA</i>.</p>
<p>Discontinued (formerly Withdrawn)</p>	<p>The matter ended before a full investigation. A complaint may be discontinued for any number of reasons. For instance, the applicant may no longer wish to pursue the matter, cannot be located to provide information necessary to making a finding or is no longer actively participating in the process.</p>
<p>Informal Resolution</p>	<p>The OIPC helped negotiate a solution that satisfied all involved parties either without a formal investigation being undertaken or completed. The Commissioner does not issue a Report in this case.</p>
<p>Review Not Conducted</p>	<p>The Commissioner has determined there are no reasonable grounds to proceed to a Review as per section 67(2) or the Commissioner decided not to conduct a review because the Custodian has responded adequately; the matter can be more appropriately dealt with by another procedure; too much time has elapsed since the subject matter of the complaint arose; or trivial, frivolous, vexatious, bad faith, as set out in section 67(3) of the <i>PHIA</i>.</p>
<p>Report</p>	<p>On completing a Review, the Commissioner shall issue a Report pursuant to section 73 of the <i>PHIA</i>.</p>

Guidelines for the Use of Video Surveillance in Schools

On February 19, 2013, Commissioner Ed Ring announced the release of a publication entitled “Guidelines for the Use of Video Surveillance in Schools”.

Commissioner Ring commented that “the continued proliferation of closed circuit television cameras (CCTV) is a concern for many privacy advocates and other Privacy Commissioners in Canada. The increasing presence of these cameras in schools has raised privacy concerns about how the personal information gathered by these CCTV systems is collected, used and disclosed, and more fundamentally, whether CCTV cameras are always the right answer to the concerns of parents and teachers.”

Commissioner Ring expressed the view that “these guidelines will help schools to assess whether or not video surveillance is necessary, what locations and times cameras should be in operation, who should be able to view the recordings, how the recordings are stored, how long they are kept, and other considerations necessary to ensure that the use of this technology is compliant with privacy law.”

Guidelines for all public bodies in the use of CCTV (also known as video surveillance) have been in place on the OIPC website since 2005, however these will be updated in the near future as well.

Currently CCTV systems are in place in over 25 per cent of all Kindergarten to Grade 12 schools in Newfoundland and Labrador, and all new schools are pre-wired for the installation of CCTV systems. In addition, more than 30 school busses in Newfoundland and Labrador currently employ CCTV systems. After extensive study of national and international trends and usage of CCTV systems, the OIPC began the process of preparing a set of guidelines that it encourages all primary and secondary educational facilities in Newfoundland and Labrador to follow in order to ensure that any use of CCTV is compliant with the *ATIPPA*.

The OIPC would like to express its gratitude to the Department of Education, all five school districts, the Newfoundland and Labrador Teachers’ Association (NLTA) and the Newfoundland and Labrador Federation of School Councils for their valuable input in the preparation of these comprehensive guidelines

For a copy of the OIPC’s
“Guidelines for the Use of
Video Surveillance in Schools,”
please go to:
www.oipc.nl.ca/resources.htm.



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, 2012 – March 31, 2013.

April 5, 2012	Attended Supreme Court (St. John's)
April 10, 2012	Meeting with Director Public Prosecution (discuss procedures for OIPC to apply offence section of <i>ATIPPA/PHIA</i>), (St. John's)
April 23, 2012	Health Information Privacy Advisory Committee Meeting (St. John's)
April 23, 2012	Meeting/ongoing discussion with Office of the Chief Information Officer (St. John's)
April 26, 2012	Meeting/consultation with representatives from Newfoundland and Labrador Teachers' Association concerning School Video Surveillance Guidelines (St. John's)
April 27 - May 5, 2012	Privacy Awareness Week Activities (St. John's)
April 30 - May 1, 2012	Western Canadian Health Information Privacy Forum (Calgary)
May 1-3, 2012	"Pathways to Privacy" Research Symposium hosted by the Office of the Privacy Commissioner of Canada (Ottawa)
May 16, 2012	Presentation to Irish Loop Municipalities Symposium (Renews)
May 25, 2012	Two analysts from OIPC graduated from the University of Alberta IAPP Program (St. John's)
May 28, 2012	Participated in the International Association of Privacy Professionals (IAPP) – "Knowledge Net" Event at Memorial University (St. John's)
May 30 - June 1, 2012	Training with Stitt Feld Handy Group – Dealing with Difficult People (St. John's)
June 6-7, 2012	Maritime Access and Privacy Conference (Halifax)
June 11-14, 2012	Bill 29 (Amendments to <i>ATIPPA</i>) debated in House of Assembly (St. John's)

June 14, 2012	Meeting/consultation with representatives from the Federation of School Councils regarding School Video Surveillance Project (St. John's)
June 15, 2012	OIPC Staff participated as a member of a Steering Committee for the Newfoundland Annual Access and Privacy Conference (St. John's)
June 18-19, 2012	Newfoundland and Labrador Access and Privacy Conference (St. John's)
July 9-13, 2012	Participated in various Public Service Week Events (St. John's)
July 12, 2012	IAPP "Knowledge Net" Event – Memorial University (St. John's)
July 17, 2012	Attended PHIA Stakeholder Liaison Committee Meeting (St. John's)
Sept. 5-7, 2012	Federal/Provincial/Territorial Information and Privacy Commissioners' Annual Conference (Halifax)
Sept. 10-12, 2012	Conference on Conducting Regulatory Investigations (2 staff – Ottawa)
Sept. 14-15, 2012	Presentation to the Canadian Bar Association Information and Privacy Law Symposium (Ottawa)
Sept. 24, 2012	Right to Know Week (RTK) Networking Event hosted by OIPC for ATIPP Coordinators (St. John's)
Sept. 25, 2012	OIPC Presentation to Canadian Bar Association (St. John's)
Sept. 26, 2012	RTK Information Booth, Memorial University (St. John's)
Sept. 28, 2012	ATIPPA Presentation to the Association of Professional Municipal Administrators (Clareville)
Sept. 28, 2012	RTK - Launch of Right to Know Week Essay Competition 2012 (St. John's)
Oct. 3, 2012	Presentation to St. Paul's School - Students and Teachers on Social Media (St. John's)
Oct. 3-5, 2012	Access, Privacy and Security Conference (Ottawa)

Oct. 4, 2012	Presentation to Parents of St. Paul's School Students on Social Media (St. John's)
Oct. 5, 2012	Expanded IM/IT Regional Health Authorities Directors Consultations (St. John's)
Oct. 9, 2012	Health Information/Privacy Committee Meeting (St. John's)
Oct. 9-10, 2012	Staff First Aid Training (St. John's)
Oct. 16, 2012	Advanced Skills for Administrative Assistants (St. John's)
Oct. 24, 2012	Prima HP TRIM Conference (St. John's)
Oct. 24-25, 2012	Staff First Aid Training (St. John's)
Oct. 25-27, 2012	International Conference – Heads of Data Protection Agencies (Punta del Este – Uruguay)
Nov. 4, 2012	Presentation to the Newfoundland Guild of Dispensing Opticians Professional Development Meeting on <i>PHIA</i> (St. John's)
Nov. 6, 2012	ARMA – Records Management Training (St. John's)
Nov. 13-15, 2012	Personal Health Information & Privacy Conference (Toronto)
Nov. 19, 2012	Consultation with Chief Electoral Officer regarding Electronic Voting (St. John's)
Nov. 20, 2012	Presentation/panel member at Privacy Forum, Memorial University (St. John's)
Nov. 22, 2012	Presentation to Parents of Lewisporte Junior High School (Lewisporte)
Nov. 23, 2012	Lewisporte Junior High School Presentation (Lewisporte)
Nov. 27, 2012	Canada Infoway Fall Partnerships Conference (Privacy Forum) (Vancouver)
Nov. 30, 2012	Presentation to CBDC Semi Annual Conference (St. John's)

Dec. 4, 2012	Health Information Privacy Advisory Committee (St. John's)
Dec. 6, 2012	Consultation with ATIPP Director, Office of Public Engagement (St. John's)
Dec. 13, 2012	Meeting/consultation with the Registrar of Newfoundland College of Dietitians (St. John's)
Dec. 18, 2012	Annual meeting and consultation with privacy officials from Eastern Health regarding ATIPPA and PHIA (St. John's)
Jan. 18, 2013	Meeting/discussion with Representatives from the Newfoundland and Labrador Association of Occupational Therapists (St. John's)
Jan. 24, 2013	OIPC officials met with officials from Department of Education, Eastern, Western and Nova Central School districts and a representative from the Office of Public Engagement to discuss issues surrounding the production of policies to guide the use of video surveillance in schools (St. John's)
Feb. 5, 2013	Commissioner Ring was in-studio guest on CBC Crosstalk (regarding online/business security and privacy) (St. John's)
Feb. 5, 2013	Meeting of the Health Information Consultation Groups (St. John's)
Feb. 12, 2013	Presentation to The Institute of Internal Auditors – Newfoundland and Labrador Chapter (St. John's)
Feb. 20, 2013	Annual consultation with senior staff of the Labrador/Grenfell Health Authority (teleconference) (St. John's)
Feb. 20, 2013	Discussions/consultations with the Chair and CEO, Newfoundland and Labrador Housing Corporation (St. John's)
Feb. 26, 2013	Consultation with officials from Health Research Ethics Authority Concerning Registries in Newfoundland (St. John's)
Feb. 27, 2013	Presentations to students and parents of St. Kevin's School (Goulds)
March 14, 2013	Discussions with Executive Council on "Orders in Council" (St. John's)
March 22, 2013	OIPC Presentation to the Angel Business Development Program in conjunction with the Newfoundland Association of CBDC's (St. John's)
March 26, 2013	Presentation to parents and students of St. Kevin's School on Social Media (Bell Island)
March 26, 2013	Consultation/training session and collaboration with the OIPC and Newfoundland and Labrador Centre for Health Information (St. John's)

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

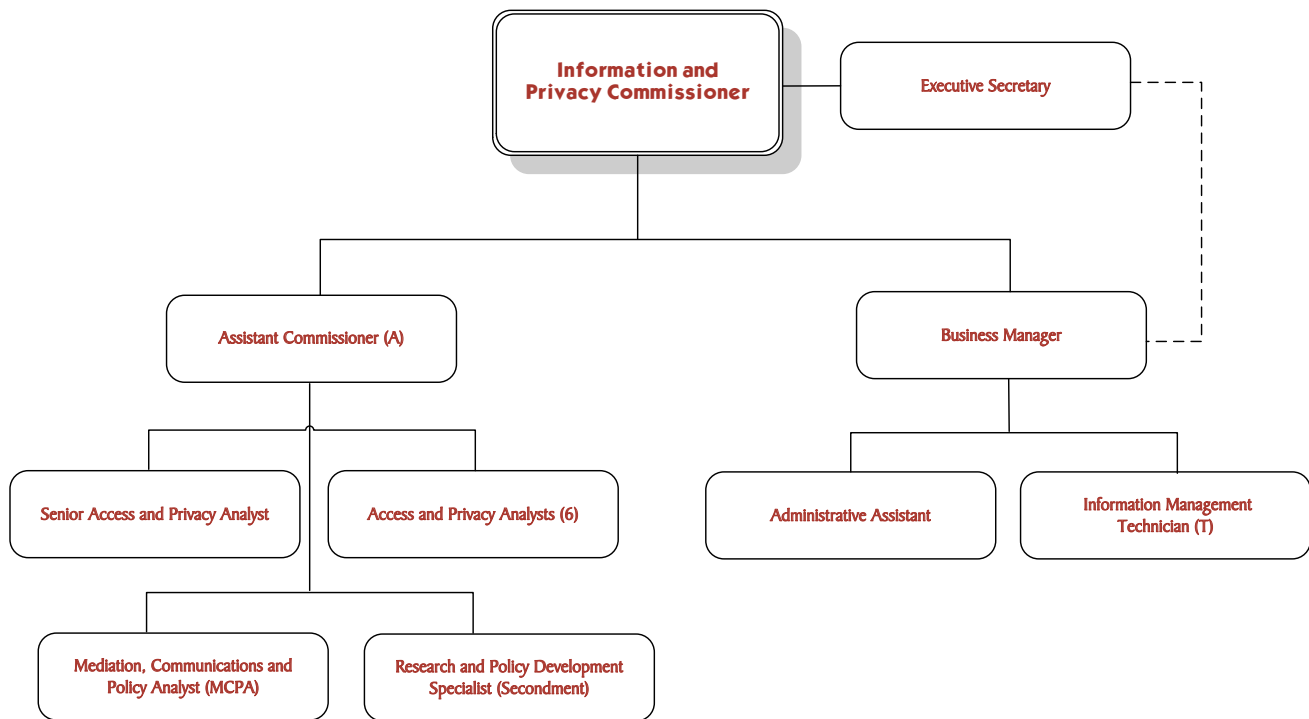
Our website, www.oipc.nl.ca, continues to be a useful tool for members of the public and public bodies. There are a number of valuable resources there, with significant updates and additions planned in the coming year.

Among the information and resources available on this website, you will find Tables of Concordance for *ATIPPA* and *PHIA* access and privacy review decisions, which allows anyone to choose a section of the *ATIPPA* or *PHIA* 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 15 staff including: the Commissioner; Assistant Commissioner; Business Manager; Senior Access and Privacy Analyst; six Access and Privacy Analysts; Mediation; Communications and Policy Analyst; Research and Policy Development Specialist (secondment); Executive Secretary, an Administrative Assistant; and an Information Management Technician (temporary).





While all staff members work diligently to meet the challenges of increased workload demands, our work volume is quite high and will continue to be high for the foreseeable future. This situation is in part due to the fulfillment 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. 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 *PHIA* 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.

2012-2013 Statistics

As provided by the ATIPP Office of the Office of Public Engagement and the Information Management Office of the House of Assembly, the total number of access requests received by public bodies for the 2012-2013 fiscal year was 696. During the same timeframe, this Office received 64 requests for review under section 43 of the *ATIPPA* and 7 complaints under section 44 of the *ATIPPA*, for a total of 71 requests for review/complaints. This translates into 10% of these access requests being forwarded to this Office for review. Seventeen privacy investigation requests under Part IV of the *ATIPPA* were also received. In addition, there were 46 requests for review, 1 complaint and 28 privacy investigations carried over from the previous year for a total of 110 requests for review, 8 complaints and 45 privacy investigations for the 2012-2013 fiscal year. This reflects a 13.4% decrease in Requests for Review, 46.7% decrease in Complaints and a 2.3% increase for privacy investigations for active files during the 2012-2013 fiscal year.

Of the 110 Requests for Review, 27 were resolved through informal resolution and 14 resulted in a Commissioner's Report. The remainder were either closed or carried over to the 2013-2014 fiscal year. In addition to Requests for Review, this Office received 331 access to information related inquiries during the 2012-2013 year. Of the 8 complaints received under section 44, relating either to the fees being charged or to extensions of time by public bodies, 5 were investigated and concluded by this Office and the remaining files were carried over to the 2013-2014 fiscal year.

Requests for Review/Complaints

Of the **118** Requests for Review and complaints dealt with in the **2012-2013** year:

- **103** (or **87%**) were initiated by individuals
- **6** (or **5%**) were initiated by businesses
- **5** (or **4%**) were initiated by political parties
- **3** (or **3%**) were initiated by the media
- **1** (or **1%**) were initiated by a legal firm

42% of all cases were related to provincial government departments. **36%** of the cases were related to educational bodies. **10%** of the cases were related to agencies of the Crown. **6%** of the cases were related to local government bodies. **6%** of the cases were related to health care bodies.

Of the 45 privacy investigations, 17 were closed and 3 resulted in Commissioner's Reports and the remaining files were carried over to the 2013-2014 fiscal year. Closed privacy investigations include those which may have been resolved through Informal Resolution, Discontinued or No Jurisdiction/ Declined to Investigate. In addition to privacy investigation requests, this Office received 212 privacy related inquiries during the 2012-2013 year.

Privacy Investigations

Of the **45** privacy investigations dealt with in the **2012-2013** year:

- **41** (or **91%**) were initiated by individuals
- **2** (or **4.5%**) were initiated by public bodies
- **2** (or **4.5%**) were initiated by businesses

44% of **all** privacy cases were related to provincial government departments. **18%** of the cases were related to agencies of the Crown. **16%** of the cases were related to educational bodies. **13%** of the cases were related to health care bodies. **7%** of the cases were related to local government bodies. **2%** of the cases were related to the House of Assembly.



The *Personal Health Information Act (PHIA)* was proclaimed on April 1, 2011. This Office received six access/correction complaints and fifty-six privacy complaints under section 66 of this Act. In addition, there were two access/correction complaints and four privacy complaints carried over from the previous year for a total of 68 active access/correction and privacy complaints for the 2012-2013 fiscal year. This reflects a 386% increase in access/correction and privacy complaint active files during the 2012-2013 fiscal year. This increase can be attributed mainly to complaints pertaining to two significant privacy breaches.



Of the 8 access/correction complaints, 5 were closed, 1 resulted in a Commissioner's Report and two were carried over to the 2013-2014 fiscal year. In addition to *PHIA* access/correction complaints, this Office received 79 *PHIA* access/correction related inquiries during the

PHIA Access/ Correction Complaints

Of the **60** privacy complaints dealt with in the **2012-2013** year:

- **98%** were initiated by individuals
- **2%** were initiated by interest group
- **97%** were related to health care authorities
- **1.5%** were related to massage therapists
- **1.5%** were related to psychologists

100% of the access/correction complaints dealt with in the 2012-2013 year were initiated by individuals and **100%** were related to health care authorities.

Of the 60 privacy complaints received, 6 were closed, 1 resulted in a Commissioner's Report and 53 were carried over to the 2013-2014 fiscal year. In addition to *PHIA* access/correction complaints, this Office received 184 *PHIA* privacy related inquiries during the 2012-2013 year.

For more information on the statistics for the year 2012-2013 see the Figures and Tables in Appendices A, B and C.

Data Privacy Day

Data Privacy Day (DPD) is recognized by privacy professionals, corporations, government officials, academics and students around the world. It aims to highlight the impact that technology is having on our privacy rights and underline the importance of valuing and protecting personal information.



The 6th International DPD was celebrated on January 28, 2012 with events held in major centers across Canada in an effort to raise awareness and generate discussion about data privacy and access rights and responsibilities. This year's overall theme highlights the importance of limiting the amount of personal information shared online with the slogan, "Less is more. Some things are better left unshared."

In Newfoundland and Labrador, the OIPC hosted an Information Fair at the Avalon Mall, and conducted an educational campaign via poster distribution to all public bodies of the three posters produced by the federal Office of the Privacy Commissioner highlighting the 2012 theme.

Privacy Awareness Week

Privacy Awareness Week (PAW) is an event to highlight and promote awareness about privacy rights and responsibilities in the community. This year's PAW took place from April 30 - May 4, 2012.

The OIPC focused awareness efforts on five distinct areas of concern, one for each day of the work week: Youth Privacy, Mobile Devices Privacy, Video Surveillance Privacy, Internet Privacy and Health Privacy.

For each day/topic the OIPC posted facts, tips, videos, quizzes, and links to information addressing each area of concern on both the OIPC website (www.oipc.nl.ca), and the OIPC Twitter account (www.twitter.com/OIPCNL), as well as to all government employees through the Public Service Network (PSN), and all ATIPP Coordinators via e-mail. This information was meant to make people more aware of the various concerns associated with these specific privacy areas, as well as to open a dialogue about these issues and offer tips and advice on how to better secure your personal information.

Right to Know (RTK) Week 2012

The purpose of RTK Week is to raise global awareness about the right to access government information, while promoting access to information as essential to both democracy and good governance, as well as a fundamental human right.



In 2012, RTK Week took place from September 24 - 28, marking the 7th year that Canadians have celebrated the event.

The OIPC participated in a number of public and private events during the week, including hosting a RTK Week Open House for provincial ATIPP Coordinators and individuals in the access to information field, presenting on the changes to the *ATIPPA* to the Canadian Bar Association, and hosting an information booth on the Memorial University campus.

Right to Know (RTK) Week 2012 Essay Competition

As part of the celebrations for RTK Week 2012, the OIPC launched the 3rd annual RTK Week Essay Competition, along with sponsoring organizations Memorial University and the College of the North Atlantic. Total prizes awarded valued more than \$800.00.

The competition was open to secondary and post-secondary students, and entrants were asked to write on the timely topic of amendments to provincial access to information legislation. In reflecting upon these developments, students were asked to address the following: "How have changes to the *ATIPPA* impacted the right of access to information, either positively or negatively, in this province? Have those changes helped to achieve a balance between: 1) protecting the right to access to information; and 2) ensuring the provincial government and other public bodies are able to keep certain information confidential in order to operate effectively? Why or Why not?"

The winning essay in this year's competition was written by Memorial University student Dmitry Kosarev, and was published on the OIPC website at www.oipc.nl.ca/righttoknowweekessaycomp2012.htm.



Twitter

The OIPC joined Twitter in January 2012, as part of our broader communications practices. Twitter allows the OIPC to communicate clearly and quickly to the public, who are interested in access to information and protection of privacy issues.

The OIPC's Twitter account is www.twitter.com/OIPCNL. Through it, the OIPC links to news releases, reports, speeches, presentations and other publicly available OIPC material; relevant information produced and published elsewhere; interesting facts, quotes, videos or observations related to access and privacy; as well as topical questions related to access and privacy meant to provoke discussion.

Privacy

ATIPPA

The OIPC will react to all formal privacy breach complaints and will conduct an investigation as appropriate. It should be noted that the OIPC reserves 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 complaint 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 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 as well.

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 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.

Part IV of the ATIPPA was proclaimed on January 16, 2008. Part IV contains provisions governing the collection, use and disclosure of personal information by public bodies in Newfoundland and Labrador. These are the rules that public bodies must follow in order to protect the privacy of all citizens.

In contrast to the access to information provisions of the *ATIPPA*, there is no requirement to issue a report resulting from a complaint about a breach of the privacy provisions. If a privacy complaint is not resolved informally, the Commissioner must decide in the context of his role in overseeing the *ATIPPA* whether to publish a report or to allow the file to be concluded through a letter of findings and recommendations from the investigating OIPC Analyst to the public body and complainant. To this end, the OIPC has developed some guidelines to help the Commissioner in this decision. No individual factor is to be determinative, as these considerations are advisory in nature only. Ultimately, the decision of how to conclude a privacy breach complaint is one which requires the consideration of all relevant factors at the discretion of the Commissioner, including some which may be relevant only to the particular case under consideration.

Factors to be Considered Include:

- **Educative value for the public:** are there issues in the Privacy Complaint which are of broad public interest and should be discussed in a published Report in order to help educate the public about the applicable privacy considerations?
- **Educative value for Public Bodies:** are there issues in the complaint which, if addressed in a Report, would be of value or of interest to other public bodies as they incorporate privacy considerations into their policies and procedures?
- **Precedent:** are there issues in the Privacy Complaint which would give rise to the consideration of significant legal issues from a privacy standpoint such that there would be value in highlighting them in a Report?
- **Recommendations:** are there one or more recommendations to the Public Body as a result of the Privacy Complaint?
- **Significance:** is the Privacy Complaint a trivial matter or one where the allegation of a privacy breach is minor in nature, or one involving unique circumstances that would affect only a small number of people?
- **Complainant Agreement:** has the Complainant agreed that:
 - upon investigation, his or her complaint is unfounded and therefore accepts that no formal report or other action by the OIPC is required or expected; or
 - upon investigation, the Public Body has agreed to take steps acceptable to the Complainant to resolve the complaint so that no formal report or other action by the OIPC is required or expected?

PHIA

PHIA is part of a new generation of privacy laws which are being developed in jurisdictions across Canada. Now, all of the personal health information held by private sector custodians, from dentists to pharmacists, to doctors in private practice, to ambulance services, and many more, is now governed by *PHIA*. The other major effect of *PHIA* is that all of the personal health information held by public sector custodians (including Eastern Health, Western Health, Labrador Grenfell, and Central Health) now falls under *PHIA* rather than *ATIPPA*.



In the time leading up to the proclamation of *PHIA*, this Office was involved in extensive discussions and committee work with the Department of Health and Community Services and many other stakeholders to ensure that all of the ingredients were in place to help custodians comply with *PHIA*. That work has continued since the proclamation of *PHIA*. We continue to meet with the professional colleges, boards and associations representing the many registered health professionals in the Province in order to educate these organizations about the new law which now applies to their members. Each time we issue a Report under *PHIA*, we send a copy by e-mail to all of these boards and associations. We have had the opportunity to address issues of mutual concern cooperatively with the Pharmacy Board and College of Physicians, and we continue to provide presentations about *PHIA* and the role of the OIPC at the request of boards and associations at Annual General Meetings and professional development sessions.

PHIA was proclaimed into law on April 1, 2011. This was an important step in the evolution of personal health information privacy law within our Province.

Since *PHIA* proclamation, we have developed an excellent rapport with some of the largest custodians of personal health information, namely the four Regional Health Authorities, listed above. *PHIA* requires that they notify the Commissioner's Office in the event of a "material" or serious breach as defined in the *PHIA* regulations. Our experience has been that while these custodians have been notifying us of material breaches, they have also been informing us of less serious breaches on occasion, and also engaging our expertise to discuss policy development, breach response, and to consult with us on the decision of whether and how to notify individuals who have been affected by a breach. We believe this process is working well so far, and we look forward to continued cooperation with these custodians.

We are also engaged with the Regional Health Authorities in other ways. In addition to our regular interactions relating to breach notification, we also look for their cooperation in the event of a complaint which requires investigation. Usually in such cases, there has been a breach or alleged breach of *PHIA*, and an individual has filed a complaint with the OIPC asking that we investigate. Our experience to date is that the Regional Health Authorities have been cooperative and helpful during our investigations, and are fully engaged in trying to improve their policies and procedures in order to prevent future breaches and to meet the expectations set out by *PHIA*.

We also continue to work with the Department of Health and Community Services as issues arise. One important venue for this cooperation is through our membership on the Health Information Privacy Advisory Committee (HIPAC) of the Department of Health and Community Services, the goal of which, as stated in the Terms of Reference, is to be:

... a forum for collaboration between and among provincial stakeholders from both the public and private sectors to facilitate compliance with privacy and access requirements arising from the Personal Health Information Act. The Committee will enable subject-matter experts from different areas of operational responsibility within the health and community services sector to develop and share resources and knowledge related to privacy and access.

Membership of the HIPAC is made up of the largest custodians as well as organizations which represent some of the larger health professions. To date, the HIPAC has proven to be a useful opportunity to discuss issues and concerns faced by custodians in achieving compliance with *PHIA*. The OIPC continues to be mindful of its unique role in this regard, and will abstain from discussions when necessary to ensure that its role as oversight body is not compromised.



Privacy Investigation Summaries

The following are three summaries of cases where a decision was made to proceed with a Report.

Report P-2012-001 – Town of La Scie

On January 19, 2012 the OIPC received a Privacy Complaint filed collectively by two individuals who alleged that an employee of the Town of LaScie used her personal Facebook account to send personal information relating to Town business via a private message to the Complainant's Facebook account. The message related to one of the Complainant's interaction with the Town as a taxpayer. The Complainants alleged that their personal information had been inadequately protected, improperly used and improperly disclosed.

The disclosure of the personal information in and of itself was not a violation of the *ATIPPA* as the message was sent only to the Complainants and contained only the personal information of the Complainants. The Town was obviously unclear as to its obligations under the *ATIPPA* as indicated by its belief that a group account for the Town as opposed to personal account would rectify any issues.

The Commissioner found that the use of Facebook to send the private message was a use of the Complainant's personal information and because other, more secure means of sending the information were available, that this particular use was improper. The Commissioner discussed security issues with social media websites, for example, the possibility that the wrong individual with the same or similar name might receive the message. In this case, the Complainants had not given their consent to receive correspondence from the Town via Facebook, and were surprised to be contacted in this way. The Commissioner found that the Town had inadequately protected the Complainants' personal information.

The Commissioner also provided commentary regarding the use of social media by public bodies and directed public bodies to only use such media for community matters, announcements and notices. The Commissioner stressed the need for public bodies to create and implement social media policies and to provide education and training to employees in this regard. The Town agreed to follow the Commissioner's recommendations.

Report PH-2012-001 - Custodian Not Named

On July 15, 2011 this Office received a Privacy Complaint under the *PHIA* with respect to an independent massage therapist, who is a custodian as defined in *PHIA*. The Complainant alleged that her personal health information had not been adequately protected, as a file containing her personal health information had been lost by the massage therapist (the "Custodian"). The Commissioner chose

not to name the Custodian in this case (contrary to usual practice) as this was the first complaint we had received under *PHIA* and at the time the complaint was made, the legislation, which imposed new privacy obligations on individual custodians had been in force for less than three months. The Commissioner reserved the right to name the Custodian in the future in the event his recommendations were not appropriately addressed by the Custodian.

The purpose of *PHIA* is set out in Section 3 as follows:

3. *The purposes of this Act are:*
 - (a) *to establish rules for the collection, use and disclosure of personal health information that protect the confidentiality of that information and the privacy of individuals with respect to that information;*
 - (b) *to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;*
 - (c) *to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;*
 - (d) *to establish mechanisms to ensure the accountability of persons having custody or control of personal health information and to safeguard the security and integrity of the personal health information in their custody or control;*
 - (e) *to provide for an independent review of decisions and resolution of complaints with respect to personal health information in the custody or control of custodians; and*
 - (f) *to establish measures to promote the compliance with this Act by persons having the custody or control of personal health information.*

The mechanisms referred to in section 3(d) are set out in sections 13 to 22 and also in sections 37 and 48 of *PHIA* and can be briefly summarized as follows (please note that this list is neither exclusive nor exhaustive):

- Where the Custodian is not a natural person, a contact person must be designated to respond to requests from the public and facilitate the organizations' compliance with *PHIA*. A Custodian that is a natural person can either perform these functions him/herself or may designate another person as the contact person (s. 18).
- Oaths of confidentiality must be taken by all employees, agents, contractors and volunteers, and they must be made aware of and comply with the obligations set out in *PHIA* as well as the Custodian's policies and procedures (s. 14).

- Information managers (as defined in s. 2(1)(l) of *PHIA*) must enter into written agreements with Custodians and must be compliant with *PHIA*. Employees of Information Managers must also agree in writing to comply with *PHIA* and the agreement entered into by the Custodian and Information Manager (s. 22).
- Detailed privacy and security policies and procedures must be developed and implemented by the Custodian to protect the confidentiality of the information, restrict access to personal health information to only those who have a need to know, and ensure reasonable steps are taken to protect the information against theft, loss and unauthorized access, use or disclosure (s.13, s.15).
- The Custodian must ensure employees, agents, contractors and volunteers are aware of their obligations under *PHIA* and the policies and procedures of the Custodian (s.14).
- The Custodian must make available to the public a written statement regarding its information handling practices, including how to access one's own personal health information and how to make a complaint to this Office (s.19).
- The Custodian must provide to clients or post in a conspicuous area notice of the purposes for which personal health information is collected, used and disclosed (this ensures that consent is knowledgeable) (s. 20).
- The Custodian must keep records/logs of disclosures (s. 48).
- The Custodian must implement a process for managing limited consent requests (s. 37).
- The Custodian must have a plan in place to deal with privacy breaches (s. 13 and 15).

The Custodian informed us that she had no privacy and security policies as required by section 13. Similarly, the Custodian had no notice materials posted as per sections 19 and 20 of *PHIA*. Notice materials are meant to inform the public about the Custodian's reasons for collecting, using and disclosing personal health information. Further, the Custodian had inadequate security arrangements in place to protect the personal health information in her possession against theft, loss or unauthorized disclosure. While the files stored at her home were kept in a locked filing cabinet, this was not the case at her place of work. The Custodian's place of work was comprised of a shared office space and a private treatment room. Records containing personal health information were not stored at her workplace but were carried back and forth from her home to her place of work in a simple zippered messenger bag. Records brought to her place of work were stored, for the day, in a wall folder or in an unlocked desk drawer.

In terms of safeguarding personal health information in this particular case, the best case scenario would be to keep all the personal health information at the place of work, in a locked filing cabinet. That way, information would not need to be continuously transported back and forth, thus minimizing the chance of loss. However, when or if paper records must be carried back and forth, a briefcase with a lock is a better option, as this offers some extra protection at a very low cost, and is in keeping with the "reasonable" security measures required by the legislation. Records must also never be left unattended in public places.

Many instances of stolen patient records have occurred through a vehicle break-in. If electronic records are to be transported by custodians, the device used to do so must be encrypted.

At the workplace, the Commissioner stated that a locked filing cabinet is essential as a reasonable security measure. Recognizing that many small or independent custodians will share office space, having a locked filing cabinet for each custodian in which they can place their own files offers much better protection than a wall folder or an unlocked drawer, and again, this measure is inexpensive and easy to avail of.

The Commissioner found that the Custodian had clearly failed to meet the obligations set out in *PHIA* and there was a breach of sections 13, 15, 19 and 20 of *PHIA*. The Commissioner noted that *PHIA* compliance need not be costly or complicated. Independent and smaller custodians, with the help of the materials on the Department of Health and Community Services website (www.health.gov.nl.ca/health/phia/index.html#policy), can largely accomplish this alone, with little or no outside assistance. Colleges, boards, and associations representing health professionals may also choose to assist their members in developing resources. Larger custodians with more complicated business lines may require legal assistance to draft agreements and contracts with third parties or to develop specialized policies and procedures.

The Custodian accepted the Commissioner's recommendations, however, we have not been successful in obtaining a response from the Custodian to determine whether they have actually been implemented. The Custodian has been notified that failure to respond to these inquiries will result in her name being published in our next Annual Report.

Report PH-2013-001 – Western Regional Health Authority

On July 7, 2009 this Office received two Privacy Complaints under the *Access to Information and Protection of Privacy Act* in relation to the Western Regional Health Authority. Due to the nature of the Complaints, and with the consent of the Complainants, the Complaints were handled collectively and resulted in one Commissioner's Report.

Despite being received under the *ATIPPA*, the Complaints were handled under the *Personal Health Information Act* as it was proclaimed into law during the investigation of this Complaint and any recommendations to be made as a result would have to be *PHIA* compliant. This Report also served as one of the Commissioner's first, in-depth analyses of *PHIA* in practice.

Each of the Complainants alleged that their personal health information was not adequately protected, was improperly used and was improperly disclosed and expressed concern over the number of people who had access to patients' personal health information, what personal health information could be accessed, and for what reasons that access could occur. Specifically, the complaints were directed at concerns about the electronic records system in use by Western Health, known as Meditech.

As a result of the investigation conducted by the OIPC, the Commissioner found that the current electronic system being used by Western Health for employee access to personal health information did not meet the requirements and standards of *PHIA*. The Commissioner found that individuals in many roles within Western Health have greater access than is always necessary, even though it is possible to further limit access.

The Commissioner determined that by permitting such open access, Western Health was improperly using personal health information. Western Health justified its framework at the time on the basis that there are practical limitations for controlling access based on each individual user. However, Western Health acknowledged that further and better role-based controls could be implemented.

To this end Western Health commenced the process for investigating and implementing these controls, and also informed the Commissioner that a move to a newer version of Meditech across the Province has been discussed, however its introduction was not yet certain as it has not yet received approval from the Department of Health and Community Services. Western Health explained that once approval is granted the system would take approximately 3-5 years to implement and the new system would allow for better access controls and would be based to a greater extent on a role-based access model. In the interim, Western Health continues to take steps to fine tune role-based access to the extent practicable.

The Commissioner found that Western Health had developed and continues to develop policies and procedures with respect to the collection, use, disclosure and security of personal health information which help to mitigate its failure to appropriately limit employee access to personal health information. Additionally, Western Health has upgraded its auditing system to track employee access to personal health information and to identify inappropriate instances of access continuously and in real time.

The Commissioner made numerous, detailed recommendations to better ensure Western Health's compliance with *PHIA*, which were accepted by Western Health and which Western Health is currently in the process of implementing.

Access Investigation 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, fifty-four 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 investigation files.

Informal Resolution - File 0005-064-12-037 - Department of Environment and Conservation

This was a Request for Review by a Third Party.

An Applicant had applied to the Department of Environment and Conservation (the "Department") for the list of pesticides that each licensed pesticide operator in the Province is authorized to use. In accordance with section 28 of the *ATIPPA*, the Department notified the Third Party and all other licensed operators in the Province that it had received an access request for records which may contain information that if disclosed may affect the operator's business interest as described in section 27. The Department indicated in its correspondence that the Third Party could consent to the release of the requested information or it could provide a written submission as to why the information should not be released.

In response to the notification from the Department, the Third Party indicated that it did not consent to the release of the information and requested to know the name of the Applicant. The Department advised the Third Party that it could not provide the name of the Applicant as it was protected from disclosure.

The Department subsequently notified the Third Party that it had made a decision to release the requested information to the Applicant. The Department further advised the Third Party, in accordance with section 29(3), that the information in relation to its operator's license would be released to the Applicant unless the Third Party filed a Request for Review with our Office within 20 days of receiving the notification.

The Third Party filed a Request for Review with this Office indicating a concern as to who was requesting the information. The Third Party subsequently explained to this Office that the concern was that the requested information was being disclosed to a business competitor of the Third Party.

An Analyst from this Office discussed with the Third Party the three-part test that was applicable at that time in relation to section 27 and explained how in the Analyst's opinion the test had not been met in the circumstances of this case. The Analyst also indicated to the Third Party that the name of the Applicant could not be released as it is protected from disclosure as personal information under *ATIPPA*.

In addition, the Analyst contacted the Applicant to ask whether he would be prepared to have his name disclosed to the Third Party. The Applicant indicated that he was not prepared to have his name disclosed to the Third Party but he was prepared to have revealed that he is not involved in the pesticide business, had no intention of becoming so involved and was not a competitor of the Third Party. This information regarding the Applicant was then provided to the Third Party.

Once the situation regarding the Applicant was explained by the Analyst, the Third Party agreed that the information could be released to the Applicant. The Third Party provided written consent to the disclosure of the requested information and this consent was forwarded to the Department. The Department then released the information regarding the Third Party's license, thus resolving the file informally without a Commissioner's Report.

Report A-2012-008 – Memorial University of Newfoundland

The Applicant applied to Memorial University of Newfoundland ("Memorial") for access to records relating to the organization of a visit and corresponding meetings between a named individual and Memorial University. Following a time extension and a paid fee estimate, Memorial released the records in part with portions severed pursuant to section 30.

The Applicant's Request for Review to this Office hinged on the absence of responsive records prior to a specific date. The Applicant asserted that such records would have to exist in relation to a certain meeting. Throughout the informal resolution process this Office facilitated communications between

the Applicant and Memorial regarding the lack of records. Memorial made several statements and confirmations regarding the non-responsiveness and non-existence of records but the Applicant was not convinced.

The Commissioner examined section 9 of the *ATIPPA* in his Report and found that Memorial conducted reasonable and thorough searches for all records that could reasonably be deemed responsive to the Applicant's access request. The Commissioner pointed out the additional lengths which Memorial went to in an attempt to resolve this matter and to act within the spirit and intent of the *ATIPPA*. The Commissioner highlighted that Memorial agreed to consider and respond to additional aspects of the access request which were added long after any public body would be required to do so. The Commissioner made no recommendations.

Report A-2012-009 – Memorial University of Newfoundland

The Applicant requested records from Memorial University pertaining to the observational study of MS patients announced on September 13, 2012 by the Minister of Health and Community Services. Memorial denied access to all the records under section 5, which exempts "research information of an employee of a post-secondary educational institution" from the *ATIPPA*. During the course of the Review, Memorial took issue with the fact that records were requested from them by this Office while, in its opinion, the records were outside the jurisdiction of the Commissioner. This Request for Review was processed as per this Office's standard operating procedure: a request comes in, it is reviewed by the Senior Access and Privacy Analyst who determines whether there is a reviewable issue and if the issue falls under the mandate of this Office. If so, it is then assigned to an Access and Privacy Analyst who writes to the Public Body and requests all records responsive to the request. Through analysis of the records, the legislation and the case law, in addition to consultation with the Public Body and Applicant, the Analyst forms an opinion as to whether the decision of the Public Body is in accordance with the *ATIPPA* and attempts to resolve the matter informally.

In this case, the request was quite broad and in our view encompassed much more than what one might traditionally think of as "research information". Other than the description provided by an applicant in his or her request for information, this Office has no way of knowing exactly what the responsive record comprises. In this case, Memorial provided all responsive records to this Office for Review. The Commissioner found that some of the records were indeed research information and exempt from the *ATIPPA* while others were not, and should therefore be disclosed. Other records which were also found not to be research information were excepted from disclosure under section 30.

Memorial declined to accept our recommendations. Memorial is of the view that the OIPC should not have sought access to the records nor completed a review because the responsive records were prima facie research information, and they assert that we exceeded our jurisdiction in this regard contrary to recent court decisions relating to section 5 of the *ATIPPA* by Justices Fowler and Orsborn. On August 12, 2012 this Office filed a Notice of Appeal with the Supreme Court of Newfoundland and Labrador seeking an order that Memorial disclose information as recommended in Report A-2012-009 and also asking for a declaration as to what constitutes “research information” as per section 5(1)(h) of the *ATIPPA*. On February 7, 2013, Memorial filed an Interlocutory Application to strike the Notice of Appeal. The results of this hearing and any further developments in this case will be reported in our Annual Report for 2013-2014.

Report A-2012-010 - Department of Environment and Conservation

The Applicant applied to the Department of Environment and Conservation for access to certain information about Crown lands, about the reversion of former railway lands to the Crown, and other property issues near the community of Brigus Junction.

The Department granted the request and provided responsive records and explanations to the Applicant. The Applicant filed a Request for Review with this Office, claiming that the Department had failed to fulfill its duty to assist the Applicant under section 9 of the *ATIPPA*, and arguing that the Department had failed to answer the questions asked in his access request.

The Commissioner concluded that the Department had conducted a reasonable search for the records requested by the Applicant. First, the Department had provided straightforward factual responses to each of the Applicant’s questions, and attached what records it had in its custody that related to those factual responses.

The Applicant, however, wanted to know why a certain right of way is closed by a cabin built on it. Viewed in the overall context of the remainder of the request, this part was not really a request for factual information. Rather, it was a request for an explanation of a particular state of affairs which the Applicant views as illegal or improper.

This was an argument that related to what the Applicant considered illegal occupation of property by certain persons in the community. It was not an argument that related in any way to the “decision, act or failure to act” of the Department in response to his access request. The Department was correct when it said that the Applicant’s Request for Review was really a request for a legal interpretation of the information that the Applicant already had in his possession.

The Commissioner observed that the *ATIPPA* imposes no duty on a Public Body to provide an Applicant with explanations or legal interpretations of the information in the records. Under some circumstances a public body, or government generally, may have an obligation to provide an explanation, or even a legal interpretation, of information to a citizen. Indeed, it might be viewed as good policy to do so even in the absence of some positive obligation. This is in fact what the Department had offered to do in the present case, by proposing a meeting in which the Applicant could ask questions about the Department's land management practices, and the legislation, policies and processes related to that. However, this was not part of the access to information process under the *ATIPPA*, but a separate process outside the *Act*.

A-2012-012 Department of Health and Community Services

The Applicant requested records from the Department of Health and Community Services comprising what is commonly referred to as the Minister's "briefing book." The Department acknowledged the Applicant's access request with a letter a week later, and a week after that, the Department's Coordinator e-mailed the Applicant to inform her that the responsive record consisted of approximately 270 pages.

Having received no further correspondence from the Department for the next two and half months, the Applicant e-mailed the Coordinator to express her concerns about the significant delay in receiving the records. The next day the Coordinator e-mailed the Applicant to let her know that the delay was due to the large number of responsive records and the time required to review the record to ensure compliance with the *ATIPPA*.

The Applicant filed a Request for Review with this Office and shortly thereafter the records were received by the Applicant. This was more than three months after the original Access Request had been submitted to the Department.

In their Formal Submission to this Office, the Department acknowledged that the statutory timeline was not met and apologized for the delay in responding to the Applicant's access request. The Department also stated that it was not their intention to deny access to the requested information. In the September 27, 2012 correspondence the Department explained that:

...a lot of consultation and consideration went into this file and the materials were voluminous. The response contained 259 pages of responsive materials. Preparing and reviewing the responsive information was a detailed process that required a great deal of time. As with all ATIPP requests the Department conducted a detailed, thorough review which included consultations with the authors of the notes as well as senior management to ensure compliance with ATIPPA.

The Commissioner wrote that with respect to the duty to assist, a public body's execution of its duty to assist an applicant is measured against a standard of reasonableness, not perfection. It was his opinion that in the present case, the time it took the Department to respond was not reasonable.

Section 11(1) of the *ATIPPA* clearly sets out the circumstances in which the 30-day time limit may be extended, none of which had been claimed by the Department. The record was reviewed by this Office and while the redactions contained therein are not numerous, the Commissioner could certainly appreciate that reviewing responsive records to determine what can and should be released in response to an access to information request can be time consuming. However, the entire record consisted of just 259 pages and a thorough review could have been done in far less than the three months it took the Department to complete this task.

The Commissioner went on to note that if the Department felt the volume of records was sufficient to warrant an extension of time, it should have applied section 16 and notified the Applicant accordingly.

As noted in Report A-2010-013, whatever the reason for the delay, the Department should have at least communicated with the Applicant and kept her updated as to the status of her request. All communications with respect to the status of the request were initiated by the Applicant. This does not help to foster a cooperative and respectful relationship between an applicant and a public body.

The Commissioner found that the delay was a breach of section 11(1) of the *ATIPPA* (requirement to reply within 30 days) and also a breach of section 9 of the *ATIPPA* (duty to assist).

The Commissioner also felt it was important to remark that one of the main purposes of access to information is to make public bodies more accountable to the public. This purpose would certainly be undermined if disclosure of records was intentionally delayed so that government could not be legitimately questioned on issues of public importance in the House of Assembly, as alleged (but not proven) by the Applicant.

In many cases information requested by applicants is needed for a specific purpose which is often time sensitive. The timelines for responding to an access request as set out in the *ATIPPA* are there for this very reason - to ensure timely access to records. Thus, applicants have a right to expect public bodies to abide by these timelines and receive requested records while the information is still relevant and useful to them.

The Commissioner recommended that the Department be mindful of the statutory duty imposed on it by sections 9 and 11 of the *ATIPPA*. He further recommended that the Department review its policies and procedures for handling access to information requests for the purpose of ensuring that it complies with its duty to assist in section 9 and meets the time limit for responding to access requests under section 11(1) of the *ATIPPA*.

The Department accepted the recommendations and advised that it has been proactive in reviewing its policies and procedures and further, that changes have been implemented which will enable the Department to respond in a more timely and efficient manner. The Department noted that it makes every reasonable effort to assist applicants and to adhere to statutory requirements, including timelines.

Report A-2013-004 – Department of Justice

This matter relates to Court of Appeal proceeding 2010 01H 0053 as referenced in our 2011-2012 Annual Report.

In 2008 the Applicant submitted an access to information request to the Department of Justice for the contents of a solicitor's file relating to the Applicant. The Department refused access to all responsive records pursuant to section 21 of the *Access to Information and Protection of Privacy Act* and, also, refused to provide a copy of the responsive records to this Office. Following the above-noted Court of Appeal proceeding and a court-ordered production of the records, the Department also claimed section 30 of the *ATIPPA*.

The informal resolution process then began in October, 2011, almost three years after the initial access request and over two years after the Request for Review was made to this Office. During the informal resolution process the Analyst assigned to this matter determined that a majority of the records were publicly available, or had been sent to or created by the Applicant, and therefore should be released immediately. Despite this recommendation the records were not released to the Applicant for over two months. The Department explained that it delayed in releasing the agreed upon records as it felt that the release of records prior to a final decision from this Office would lead to confusion and may potentially have an effect on the Department's final decision regarding any release of the remaining records. It was explained to the Department that once it is clear that the *ATIPPA* does not apply to records, there is no basis for the information to be withheld. The initial release by the Department amounted to over half of the responsive records.

A further recommendation for release relating to more than 100 pages of records was made by the Analyst in July 2012. Over three months later the Department responded by releasing three pages of records. After an additional two month period, the commencement of the formal investigation process and the assignment of a new coordinator for the Department, the Department reconsidered its position and released 109 pages to the Applicant. This left only 68 pages of records from the initial 656 pages to be discussed by the Commissioner in his Report.

The Commissioner found that additional information was improperly withheld under section 21 and should be released to the Applicant. The Commissioner also took the opportunity to express his disappointment in the process employed by the Department in this matter especially given the role which the Department plays in the access to information process. The Commissioner commented on the clear lack of a document-by-document review by the Department which would have resulted in the release of a great deal of information to the Applicant prior to her filing her Review and, perhaps, sped up what ended up amounting to a 4 year access request.

After some delay, the Department responded to the Commissioner's Report and accepted the recommendations which had been made.

Report AH-2012-001 – Eastern Health

The Complainant sought access to a copy of a diagnostic test he had undergone at a local hospital, consisting of a single page. Eastern Health, in accordance with its fee schedule, informed the Complainant that a copy of the record would cost \$50.00 plus tax. The Complainant felt that this fee was unreasonable and complained to this Office. Under section 57 of the *Personal Health Information Act*, a custodian is permitted to charge a "reasonable fee". The Commissioner found that the \$50.00 fee to provide individuals with their own personal health information was unreasonable. The flat fee was designed to keep things simple. However, in cases like the one at hand where the request is for one page, a flat fee will often seem disproportionate to the magnitude of the request, and could also act as a barrier to accessing one's own personal health information. Similarly, as Ontario's Assistant Commissioner said in Order HO-009, "[a]n unfairly high fee in one case is not counterbalanced by a lower fee in another, albeit more complicated, request." While it may all "come out in the wash" as far as a custodian is concerned, this is not reasonable from the perspective of the individual requester. The Commissioner was very persuaded by Ontario Order HO-009 wherein the Assistant Commissioner for Ontario made the following statements:

The right of an individual to access his or her records of personal health information is essential to the exercise of other statutory and common law rights, including the right of an individual to determine for himself or herself what shall or shall not be done with his or her own body; the right of an individual to "informational self-determination," that is, the right of an individual to control the collection, use or disclosure of his or her personal health information; and the right of an individual to require the correction or amendment of personal health information about themselves.

The right of access to one's records of personal health information is also vital in ensuring the continuity of care, for example, where an individual has decided to seek health care from another health care provider, and in ensuring the proper functioning of the relationship with his or her health care provider, including ensuring that the health care provider is fulfilling his or her fiduciary duty to act with utmost good faith and loyalty to the individual. The Supreme Court of Canada has acknowledged the vital interest that individuals have in the information contained in their records of personal health information. In *McInerney v. MacDonald*, [1992] 2 S.C.R. 138, Justice La Forest, writing for the court, stated:

[A]t least in part, medical records contain information about the patient revealed by the patient, and information that is acquired and recorded on behalf of the patient. Of primary significance is the fact that the records consist of information that is highly private and personal to the individual. It is information that goes to the personal integrity and autonomy of the patient.

...

In sum, an individual may decide to make personal information available to others to obtain certain benefits such as medical advice and treatment. Nevertheless, as stated in the report of the Task Force on Privacy and Computers (1972), at p. 14, he or she has a "basic and continuing interest in what happens to this information, and in controlling access to it".

As a result, the Supreme Court of Canada concluded that individuals have the right to access their records of personal health information and health care providers have a corresponding duty, arising from the fiduciary relationship of trust and confidence between the health care provider and his or her patient, to grant such access. Justice La Forest explained:

The fiduciary duty to provide access to medical records is ultimately grounded in the nature of the patient's interest in his or her records. As discussed earlier, information about oneself revealed to a doctor acting in a professional capacity remains, in a fundamental sense, one's own. The doctor's position is one of trust and confidence. The information conveyed is held in a fashion somewhat akin to a trust. While the doctor is the owner of the actual record, the information is to be used by the physician for the benefit of the patient. The confiding of the information to the physician for medical purposes gives rise to an expectation that the patient's interest in and control of the information will continue.

...

The trust-like “beneficial interest” of the patient in the information indicates that, as a general rule, he or she should have a right of access to the information and that the physician should have a corresponding obligation to provide it.

In recognizing this right, the Supreme Court of Canada identified several reasons why the ability of individuals to access their records of personal health information is of such importance in modern society. In particular, La Forest J. stated:

Medical records are also used for an increasing number of purposes. This point is well made by A. F. Westin, *Computers, Health Records, and Citizen Rights* (1976), at p. 27:

As to medical records, when these were in fact used only by the physician or the hospital, it may have been only curiosity when patients asked to know their contents. But now that medical records are widely shared with health insurance companies, government payers, law enforcement agencies, welfare departments, schools, researchers, credit grantors, and employers, it is often crucial for the patient to know what is being recorded, and to correct inaccuracies that may affect education, career advancement or government benefits.

He further stated:

[O]ne of the duties arising from the doctor-patient relationship is the duty of the doctor to act with utmost good faith and loyalty. If the patient is denied access to his or her records, it may not be possible for the patient to establish that this duty has been fulfilled. As I see it, it is important that the patient have access to the records for the very purposes for which it is sought to withhold the documents, namely, to ensure the proper functioning of the doctor-patient relationship and to protect the well-being of the patient.

...

Disclosure is all the more important in our day when individuals are seeking more information about themselves. It serves to reinforce the faith of the individual in his or her treatment. The ability of a doctor to provide effective treatment is closely related to the level of trust in the relationship.

Having regard to the importance of an individual's right of access to his or her records of personal health information, once again it is my opinion that any interpretation of the term "reasonable cost recovery" in section 54(11) of the Act that has the effect of imposing a financial barrier or has the effect of acting as a deterrent to an individual exercising his or her right of access to records of personal health information must be avoided.

The Commissioner recommended that individuals be charged a maximum fee of \$25.00 for requests of up to 50 pages, which fee would include various tasks associated with searching for and providing access to the requested information. After the first 50 pages, the Commissioner recommended a photocopy fee of no more than \$0.25 per page. The Commissioner also strongly recommended that personal health information be provided to individuals free of charge at the point of care, except where the requested information is not easily located or voluminous in nature. Further, the Commissioner recommended that the fee be waived or substantially reduced in all cases where it truly represents a barrier to access.

Eastern Health accepted the recommendations in part, lowering the fee to \$25.00 for requests of up to 50 pages, however, after 50 pages, the photocopy fee remains at \$0.50 per page (as opposed to \$0.25 per page as recommended). With respect to providing personal health information to individuals free of charge at the point of care, Eastern Health noted that operational efficiencies at individual clinics may affect the ability to respond to such requests, but that individuals continue to be able to access personal health information relevant to a current episode at point of care free of charge. Finally, Eastern Health stated that fee waiver requests will be assessed on a case by case basis.



Court Proceedings



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

Oleynik v. Newfoundland and Labrador Information and Privacy Commissioner, Supreme Court of Canada (Docket 34791)

This matter started out as an access request in 2008 to Memorial University for certain e-mail communications. The Applicant filed a Request for Review of Memorial's decision with our Office in October 2008. Our Office had completed its investigation by April 2009, but due to staff shortages and workload, Report A-2010-005 was not issued until April 28, 2010. (See case summary in OIPC Annual Report 2010-2011).

The Applicant had meanwhile filed an application with the Supreme Court, Trial Division, in which he sought an order of mandamus against the Commissioner, to compel the production of the Report. The case was heard in 2010-2011, and Justice Fry issued a decision on March 1, 2011, dismissing the application. (That decision was summarized in OIPC Annual Report 2010-2011).

The Applicant then filed a Notice of Appeal of the decision of Justice Fry in the Court of Appeal. The appeal was heard on February 10, 2012 before Justices Harrington, Rowe and Mercer. In a judgment released on February 28, 2012 the Court of Appeal unanimously dismissed the Applicant's appeal. (That decision was summarized in OIPC Annual Report 2011-2012.)

On April 24, 2012 the Applicant took the unusual step of filing with the Supreme Court of Canada an application for Leave to Appeal against the judgment of the Court of Appeal. Under the Supreme Court's rules, most civil litigants do not have an absolute right to appeal decisions of provincial courts of appeal. Rather, an application must first be made seeking leave to appeal, and the Supreme Court of Canada chooses which cases are of sufficient importance for it to hear. In the present case the Court issued a decision on September 27, 2012 dismissing the application for leave to appeal, with costs. As is its usual practice, the Court gave no reasons for its decision.

Newfoundland and Labrador (Information and Privacy Commissioner), v. College of North Atlantic, Supreme Court of Newfoundland and Labrador, Court of Appeal (Docket 2012 01G 5928)

This proceeding is an appeal by this Office under section 60(1.1) of the *ATIPPA*, which allows the Commissioner to appeal a decision of a public body who refuses to disclose a record on the basis of solicitor and client privilege under section 21.

It was necessary to proceed with this matter by way of an appeal to the Trial Division because amendments to the *ATIPPA* in Bill 29 removed the Commissioner's power to do a review of a public body's decision to deny access on the basis of the solicitor and client exception to disclosure. The only remedy now for an access to information applicant who has been refused access on the basis of a claim of solicitor and client privilege is for the applicant to appeal the decision of the public body directly to the Trial Division under section 60(1.1) or request this Office to launch such an appeal.

In this case, after being denied access to copies of invoices from law firms submitted to the College of the North Atlantic (the College), the Applicant requested this Office to file an appeal of the decision of the College to refuse access.

This Office filed a Notice of Appeal on November 22, 2012 appealing the decision of the College dated October 25, 2012 in which the College refused to provide the legal invoices based on a claim of solicitor and client privilege under section 21 of the *ATIPPA*.

At present, the Respondent has filed the Appeal Book. The parties will be filing factums and a date will be set for the hearing of the appeal.

Information and Privacy Commissioner v. Newfoundland and Labrador (Department of Environment and Conservation), Supreme Court of Newfoundland and Labrador, Trial Division (Docket 2012 01G 6594)

This proceeding is an appeal by this Office under section 60(1.1) of the *ATIPPA*, which allows the Commissioner to appeal a decision of a public body who refuses to disclose a record on the basis of solicitor and client privilege under section 21.

It was necessary to proceed with this matter by way of an appeal to the Trial Division because amendments to the *ATIPPA* in Bill 29 removed the Commissioner's power to do a review of a public body's decision to deny access on the basis of the solicitor and client exception to disclosure. The only remedy now for an access to information applicant who has been refused access on the basis of a claim of

solicitor and client privilege is for the applicant to appeal the decision of the public body directly to the Trial Division under section 60(1.1) or request this Office to launch such an appeal.

In this case, after being denied access to the requested records on the basis of solicitor and client privilege under section 21, the Applicant requested this Office to file an appeal of the decision of the Department of Environment and Conservation to refuse access.

This Office filed a Notice of Appeal on December 21, 2012 appealing the decision of the Department dated October 26, 2012 in which it refused to provide the requested records based on a claim of solicitor and client privilege under section 21 of the *ATIPPA*.

At present, no date has been set for the hearing of this appeal.

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 time frames. 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 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 consider and improve in this regard.

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.

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 and engagement with 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 involved with the process and to instill the culture of openness envisaged by the legislation.

Time Extensions

It is our experience that in 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.

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.

Resources

Of the approximately 430 public bodies responsive to *ATIPPA*, only a small number of 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.

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.

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.

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 detailed when claiming a specific category of information under one of these exceptions and to provide a comprehensive 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.

Open Communication & Dialogue

This particular issue is in many ways, the key to early and satisfactory resolution to many Requests for Review. It should be emphasized that fully 75% of all Requests for Review 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.

Deemed Refusals

The *Access to Information and Protection of Privacy Act* requires public bodies to respond to access to information requests in a timely manner. Section 11(2) of the Act provides:

(2) Where the head of a public body fails to respond within the 30 day period or an extended period, the head is considered to have refused access to the record.

Therefore, if a public body does not respond to an access request within the required time, the public body is deemed to have denied access to the requested information. Once there has been a deemed refusal, the access to information applicant is entitled to request our Office to conduct a review in accordance with section 43 of the *ATIPPA*.

During the previous years that this Office has been in operation such complaints regarding deemed refusals were a rare occurrence. However, during this year the number of Requests for Review dealing with deemed refusals has increased dramatically. So much so that on January 8, 2013, I commented on the fact that this Office had 12 files involving deemed refusals under review. In the press release I described the increase in the number of deemed refusals as a “worrying trend” that our Office would be monitoring. I was compelled to make the following statement regarding the number of deemed refusals:

I feel it is necessary for me to publicly call on all public bodies and remind them of their responsibilities under the ATIPPA. If they cannot do their work within the time frames set out in the ATIPPA, they are undermining the very purpose of the law.

**Public Body
Response to
Commissioner's
Report**

During this year there have been a total of 18 Requests for Review complaining about deemed refusals. Several of these have been resolved through our informal resolution process. However, I have issued 4 reports outlining in detail the lengthy delays which Applicants had to endure before eventually receiving from the public bodies the information that had been requested.

I will here once again remind public bodies of their statutory duty to respond to access to information requests within the legislated time limits.

Section 50 of the *ATIPPA* sets out the time period for a public body to respond to a Commissioner's Report and the consequences of not responding within that period, as follows:

50. (1) Within 15 days after receiving a report of the commissioner, the head of a public body shall

- (a) make a decision to follow the recommendation of the commissioner or a decision that the head of the public body considers appropriate; and*
- (b) give written notice of the decision to the commissioner and a person who was sent a copy of the report.*

...

(3) Where the head of the public body does not give notice within the time required by subsection (1), the head of the public body is considered to have refused to follow the recommendation of the commissioner.

This year there were 4 instances where a public body did not respond to the Commissioner's Report within the prescribed time period. Not only is this a violation of a mandatory provision of *ATIPPA*, it creates problems on a practical level.

Section 60 of the *ATIPPA* allows for an appeal of the decision of a public body made under section 50 as follows:

60. (1) Within 30 days after receiving a decision of the head of a public body under section 50, an applicant or a third party may appeal that decision to the Trial Division.

It is clearly stated in section 50(3) that when a public body fails to respond to the Commissioner's Report within 15 days, the public body is deemed to have refused to follow the recommendations made by the Commissioner in the report and the 30 days for filing the appeal in relation to the deemed refusal commences with the expiry of the 15-day period set out in section 50. Therefore, public bodies are reminded of their statutory duty to respond to a Commissioner's Report within the legislated time limit of 15 days.

Conclusion

2012-2013 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 associated with both Access and Privacy. I am proud of the quality and calibre of the OIPC 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)* was proclaimed on April 1, 2011. As a result, greater demands have been 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.

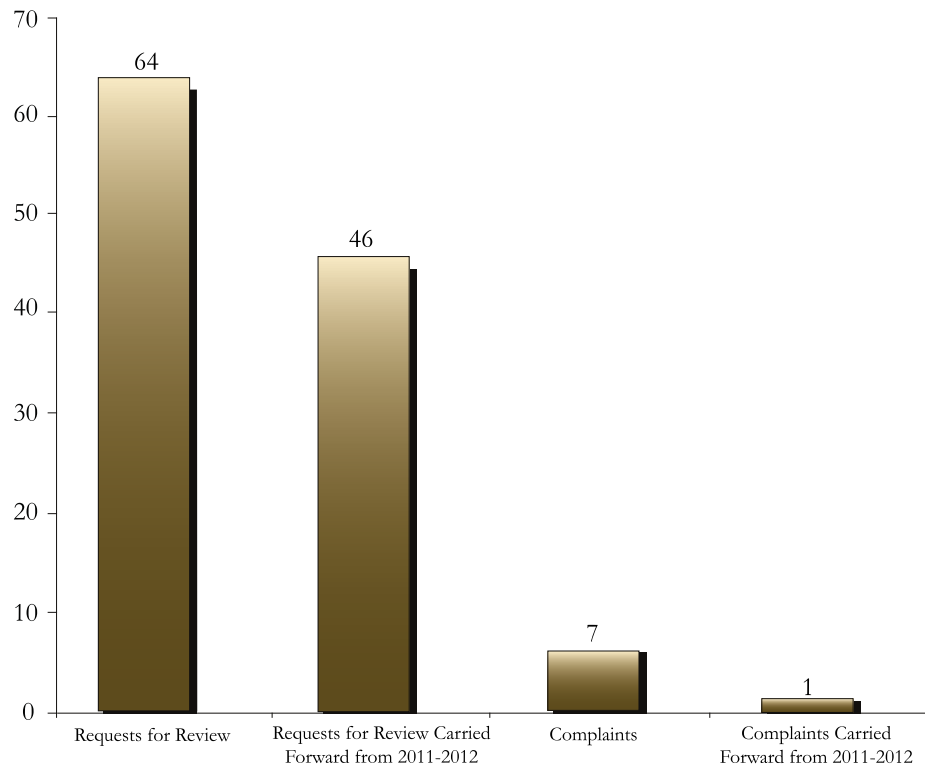
Significant time, effort and research has been invested by the Office as a result of the significant legislative amendments resulting from Bill 29. A number of the amendments have broadened the scope and interpretation of particular sections of the *Act* requiring a steep learning curve as the Office conducts the appropriate level of analysis of decisions by other Commissioners across the country dealing with similar issues, as well as decisions from the courts. Additionally, the removal of the Commissioner's authority to review claims of section 21 (solicitor and client privilege) by public bodies has resulted in the referral of cases to the Supreme Court to ensure that section 21 is being appropriately claimed. The *ATIPPA* is still relatively young but as we move forward and encounter challenges, clarity in interpretation will continue to be achieved.



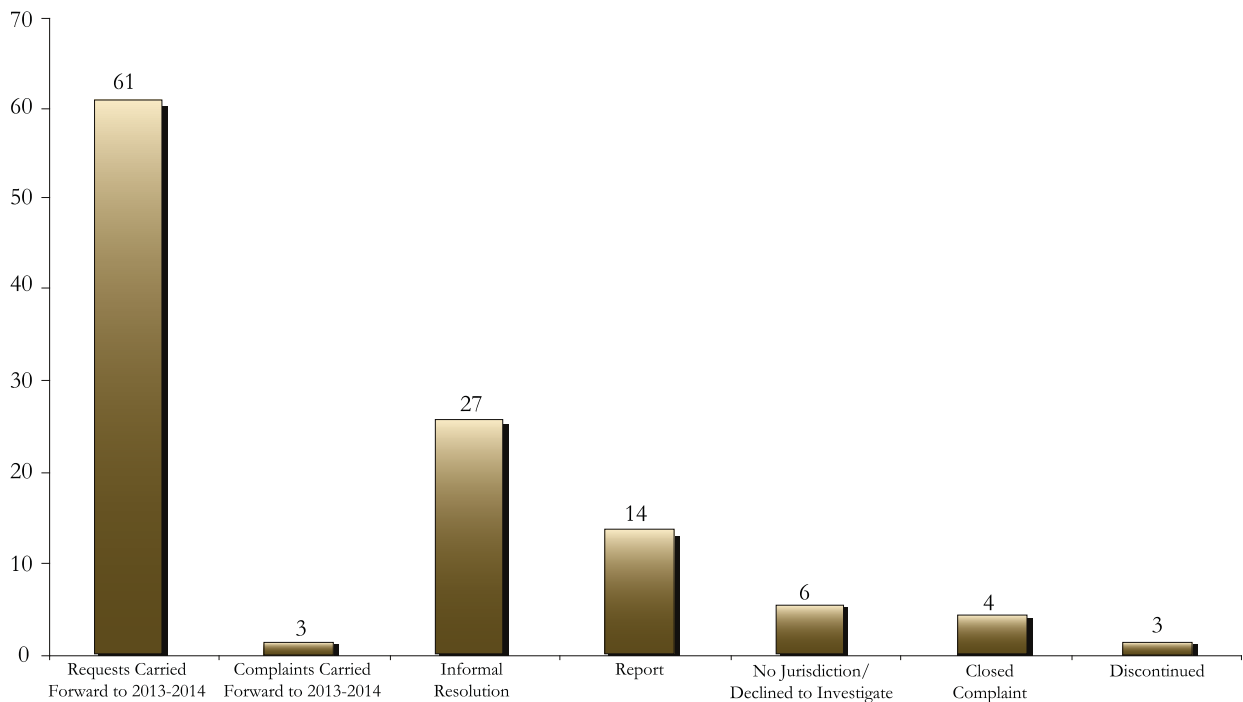
Appendix "A"

ATIPPA Statistics

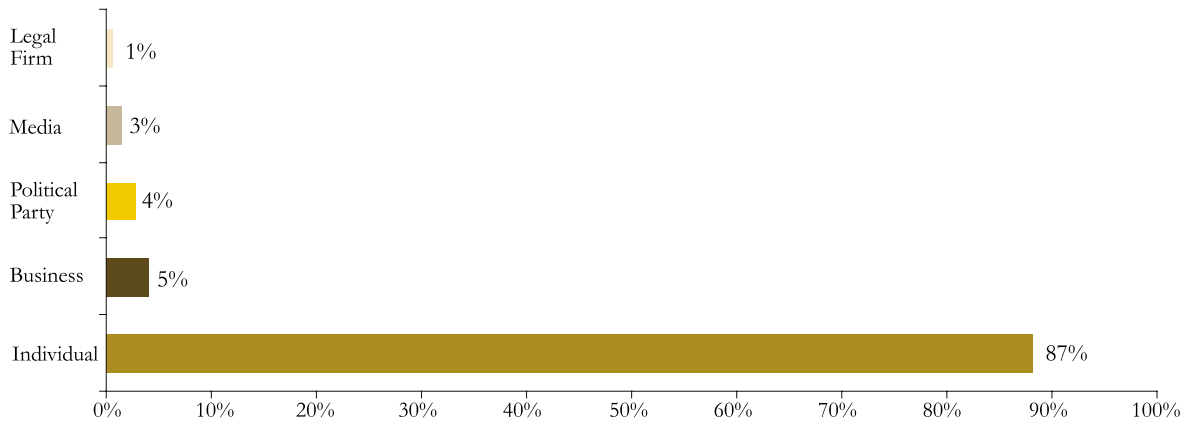
Requests for Review/Complaints Received



Outcome of Requests for Review/Complaints Received

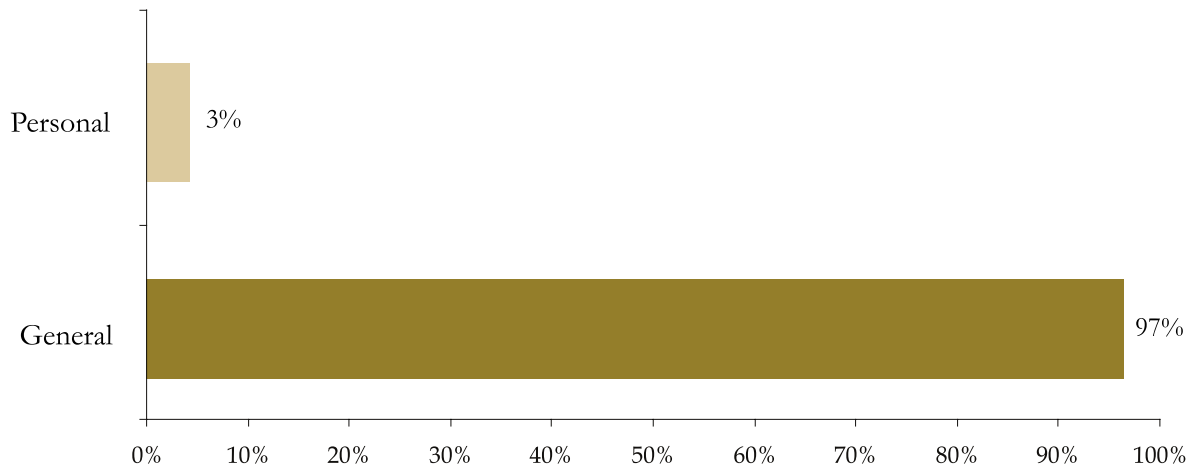


Requests for Review/Complaints by Applicant Group



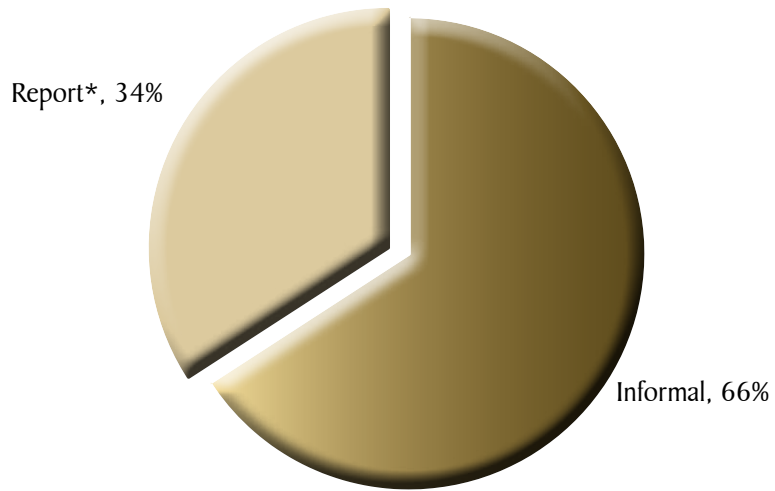
Requests for Review/Complaints by Applicant Group		
Applicant Group	# of Reviews	%
Individual	103	87%
Business	6	5%
Political Party	5	4%
Media	3	3%
Legal Firm	1	1%

Requests for Review/Complaints by Information Requested



Requests for Review/Complaints by Information Requested	
General	Personal
115	3
97%	3%

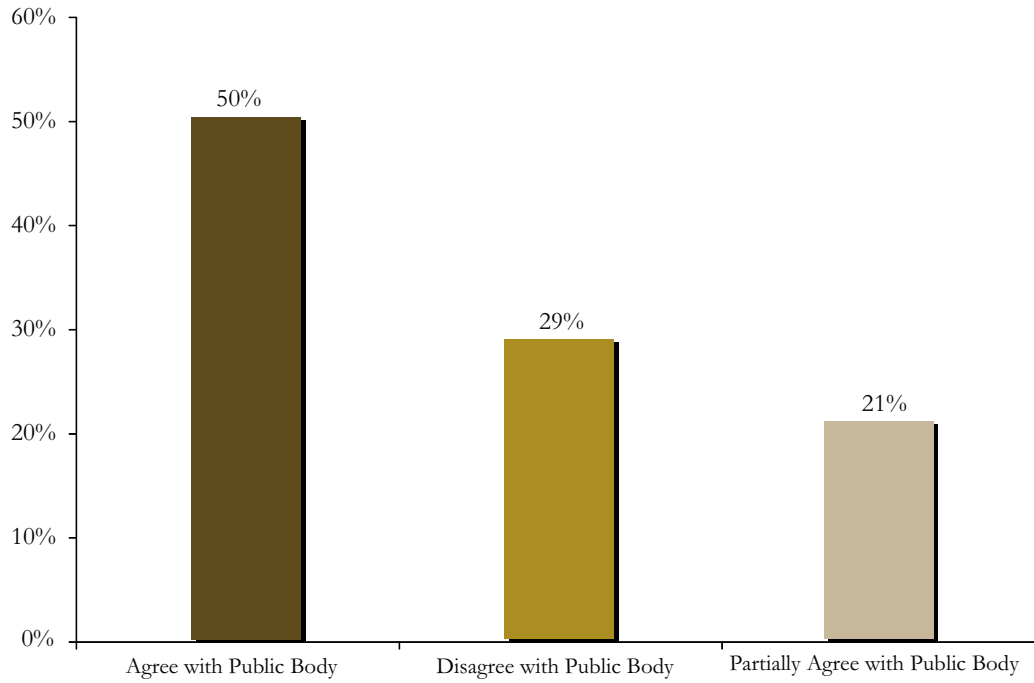
Requests for Review - Resolutions



Requests for Review - Resolutions	
Informal	Report
27	14
66%	34%

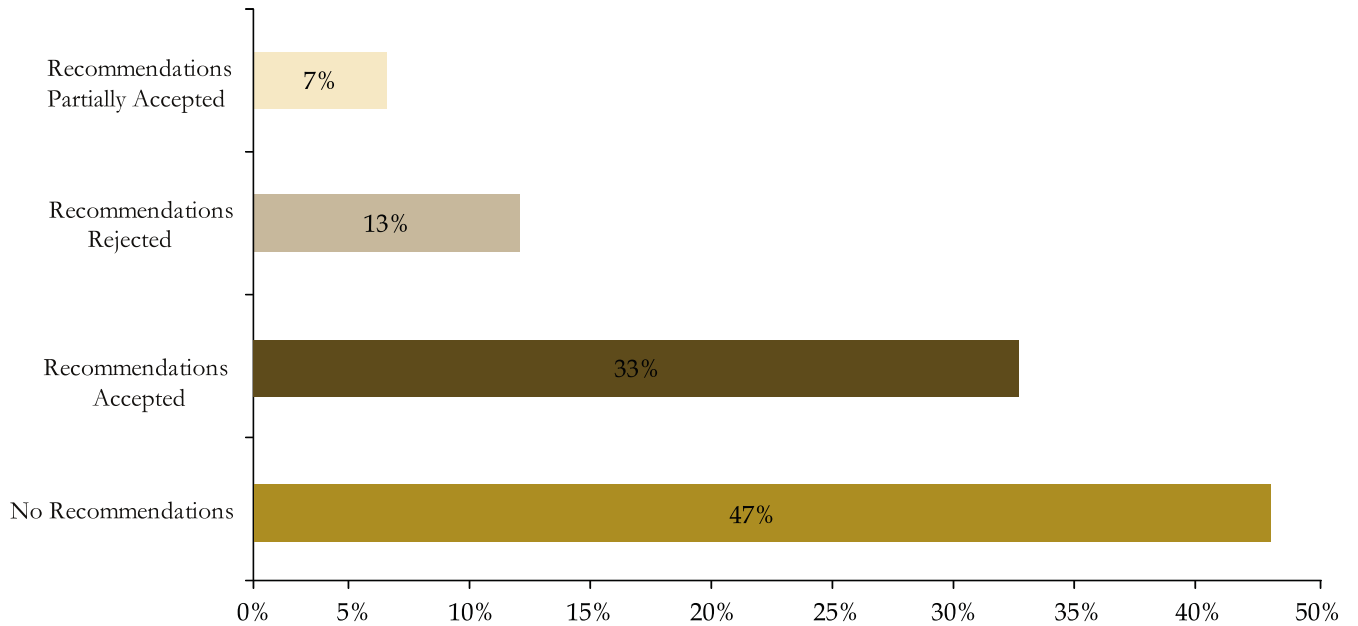
*Reports A-2012-008, and A-2013-003 closed four Request for Review files.

Conclusion of Commissioner's Reports



Conclusion of Commissioner's Reports		
Agree With Public Body	Disagree with Public Body	Partially Agree with Public Body
7	4	3
50%	29%	21%

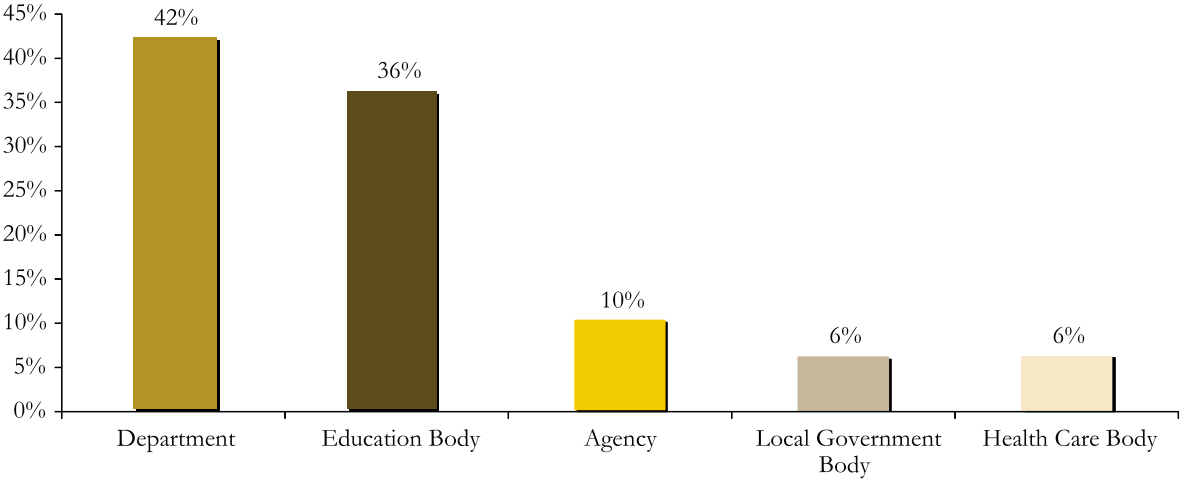
Public Body Response to Commissioner's Reports*



Public Body Response to Commissioner's Reports			
No Recommendations	Recommendations Accepted	Recommendations Rejected	Recommendations Partially Accepted
7	5	2	1
47%	33%	13%	7%

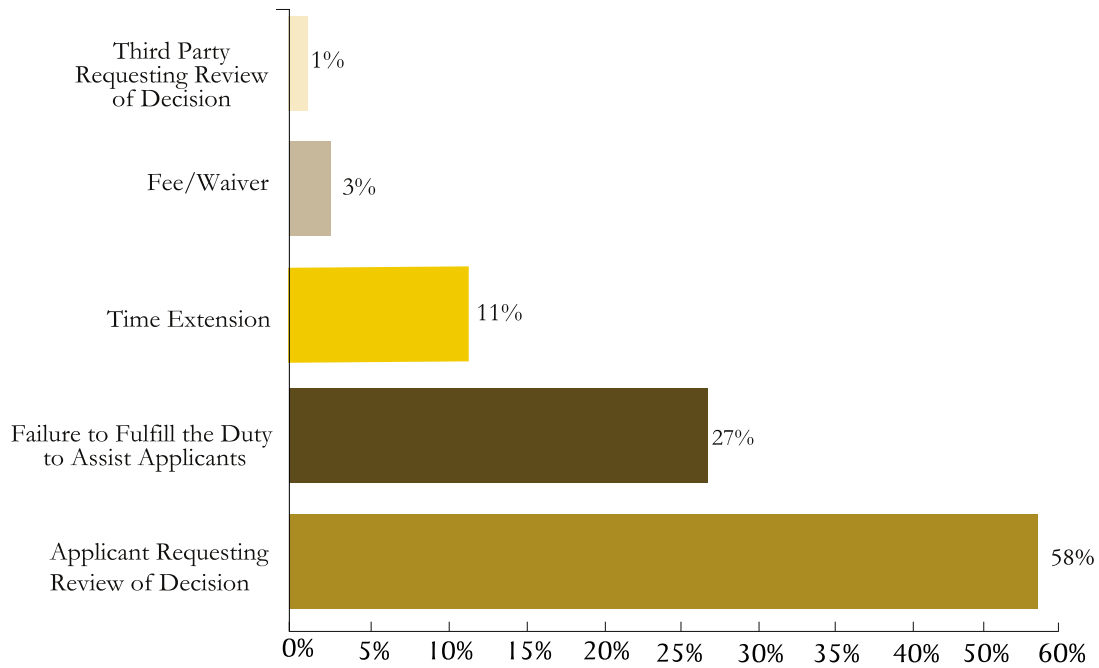
* One Report issued March 2012 and public body response received during 2012-2013 reporting period.

Requests for Review/Complaints Listed by Public Body Type



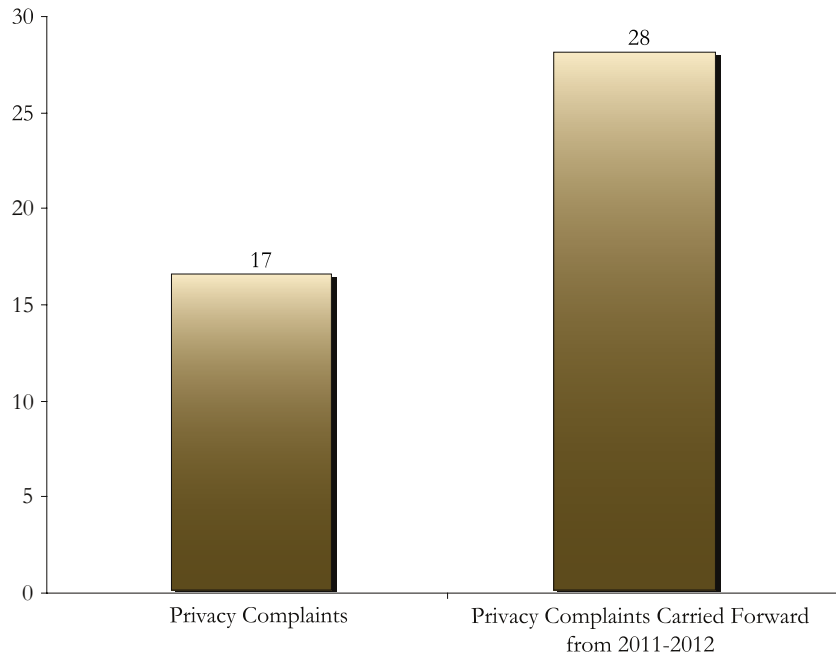
Requests for Review/Complaints Listed by Public Body Type		
Public Body	# of Reviews	%
Department	49	42%
Education Body	43	36%
Agency	12	10%
Local Government Body	7	6%
Health Care Body	7	6%

Requests for Review/Complaints by Issue

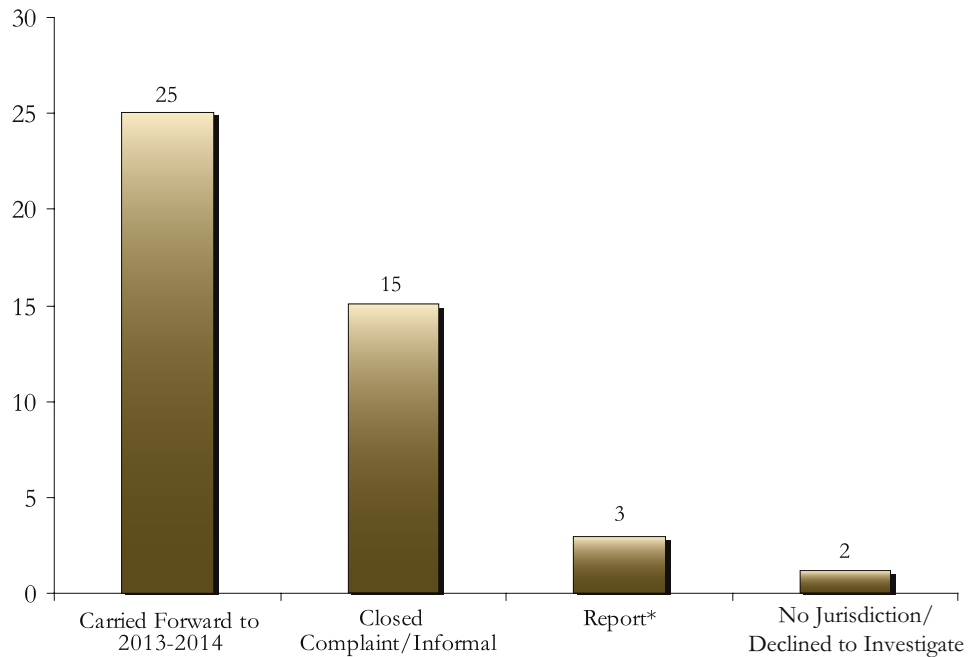


Requests for Review/Complaints by Issue		
Issue	# of Reviews	%
Applicant Requesting Review of Decision	102	58%
Failure to Fulfill the Duty to Assist Applicants	47	27%
Time Extension	19	11%
Fee/Waiver	6	3%
Third Party Requesting Review of Decision	2	1%

Privacy Complaints Received

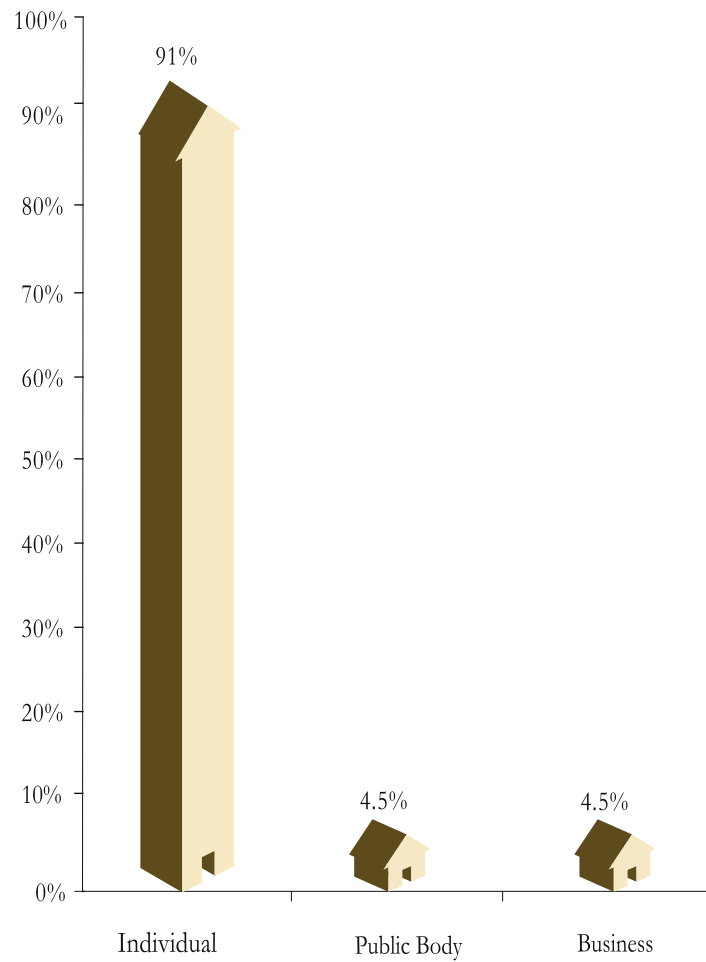


Outcome of Privacy Complaints Received



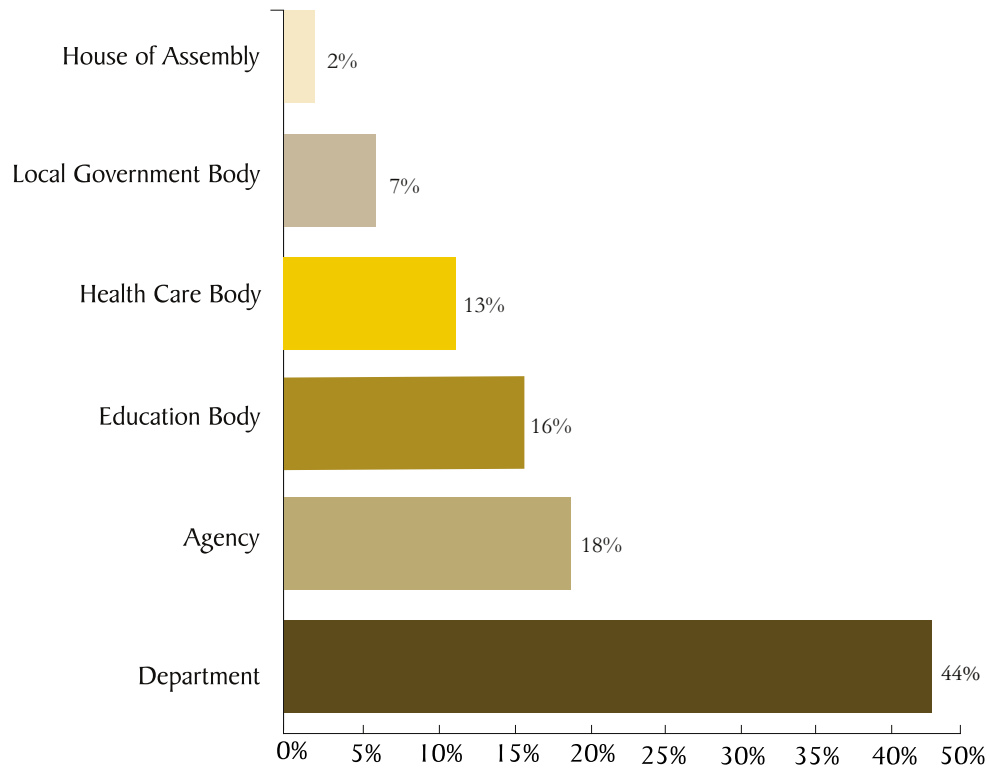
* Two complaints were received under the *ATIPPA* but subsequent to receipt of these complaints the *PHIA* was proclaimed into law. The Commissioner found that these complaints were more appropriately dealt with under *PHIA*. Therefore one Report (PH-2013-001) was issued that addressed both complaints.

Privacy Investigations by Applicant Group



Privacy Investigations by Applicant Group		
Applicant Group	# of Reviews	%
Individual	41	91%
Public Body	2	4.5%
Business	2	4.5%

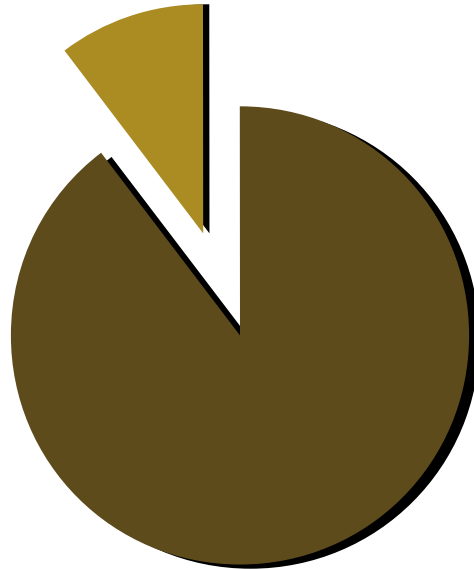
Privacy Investigations by Public Body



Privacy Investigations by Public Body		
Public Body	# of Reviews	%
Department	20	44%
Agency	8	18%
Education Body	7	16%
Health Care Body	6	13%
Local Government Body	3	7%
House of Assembly	1	2%

ATIPPA Access Requests/Requests for Review Comparison

Requests for Review
Received by the OIPC, 71



Access Requests
Received by Public Bodies, 696

<i>ATIPPA Access Requests/ Requests for Review Comparison</i>	
	# of Reviews
Access Requests Received by Public Bodies	696
Requests for Review Received by the OIPC	71

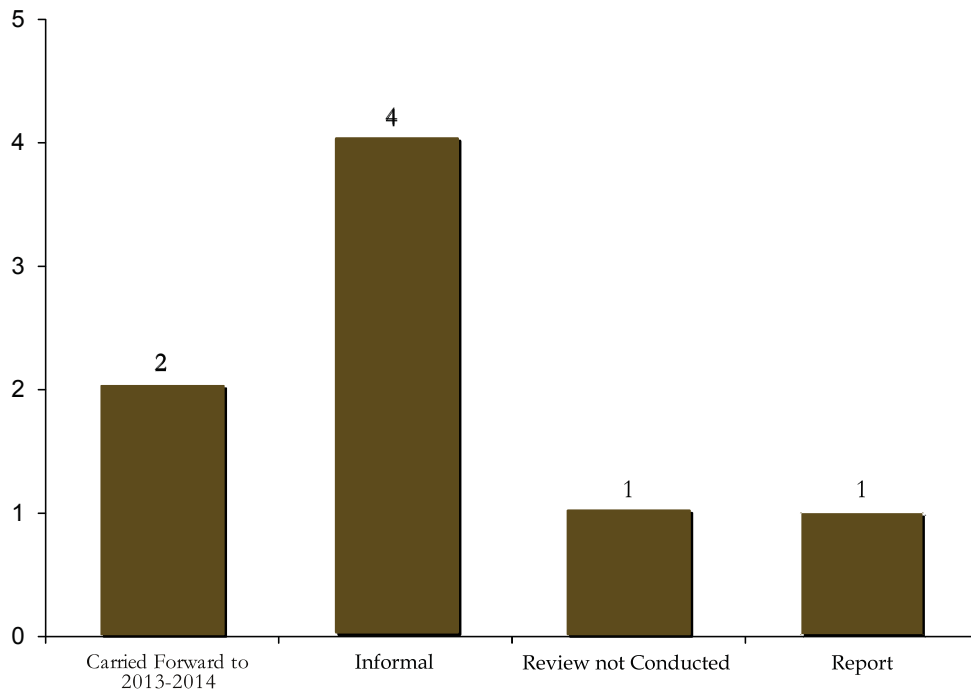
Appendix "B"

PHIA Statistics

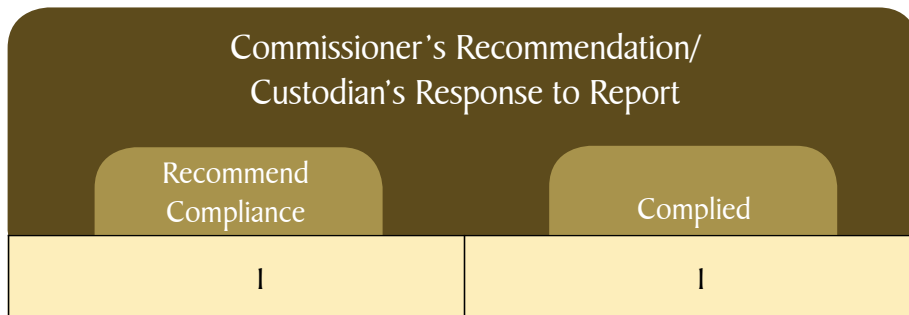
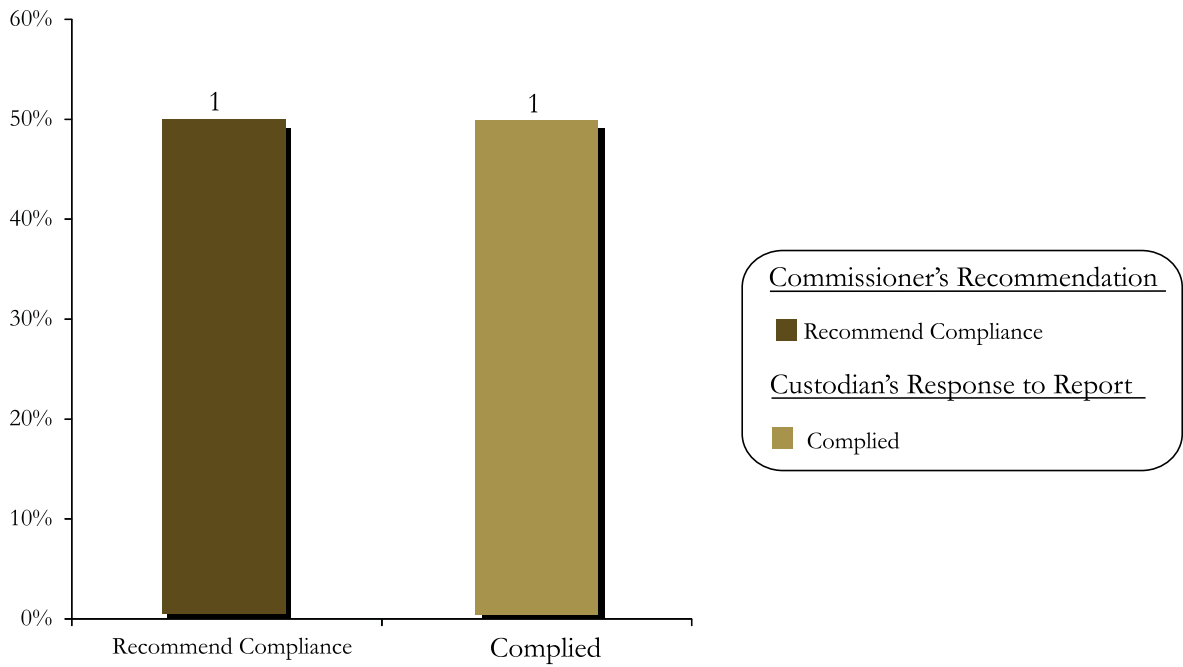
PHIA Access/Correction Complaints Received



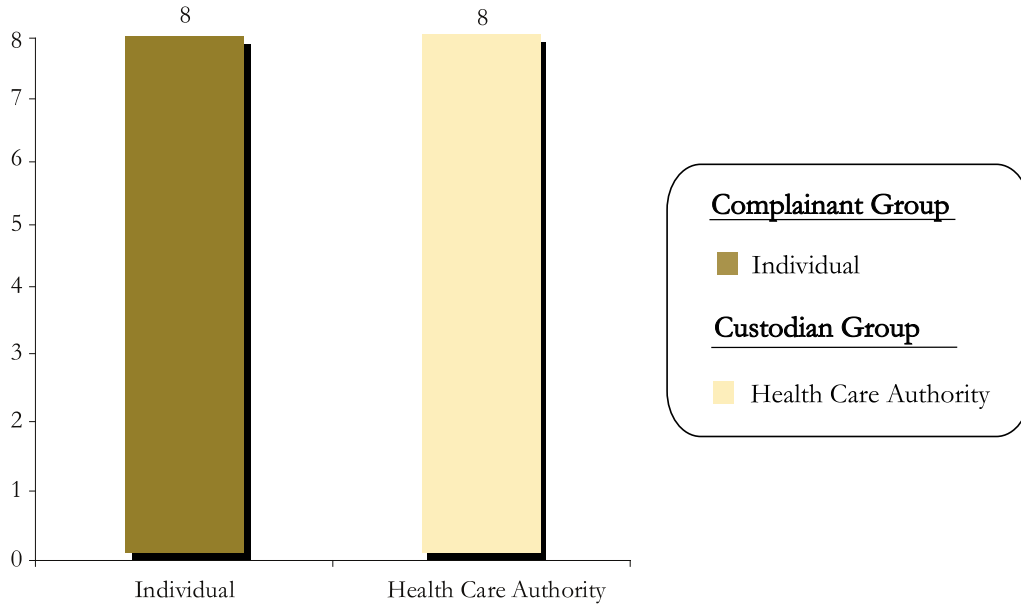
Outcome of PHIA Access/Correction Complaints Received



Commissioner's Recommendation/Custodian's Response to Report

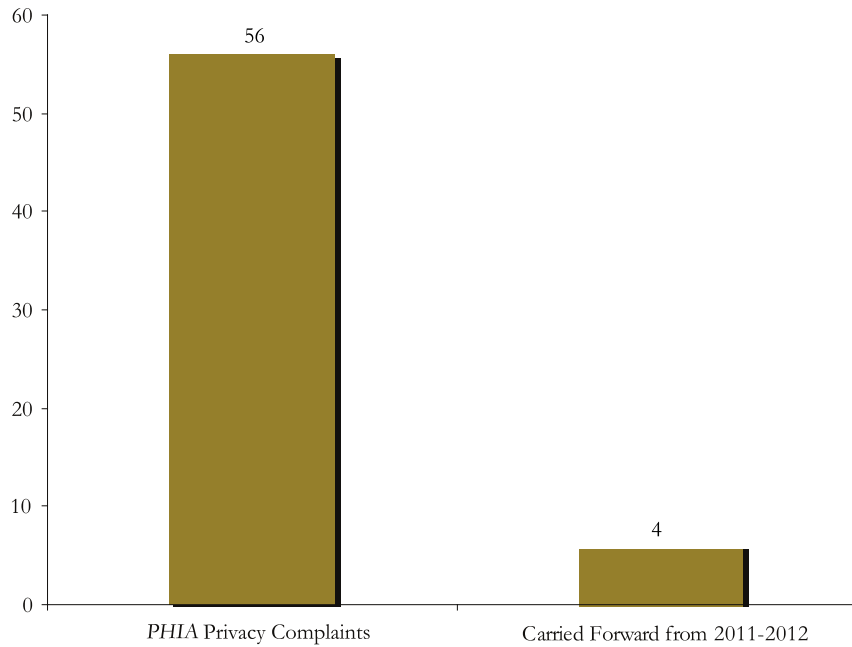


PHIA Access/Correction Complaints by Complainant Group and Custodian Group

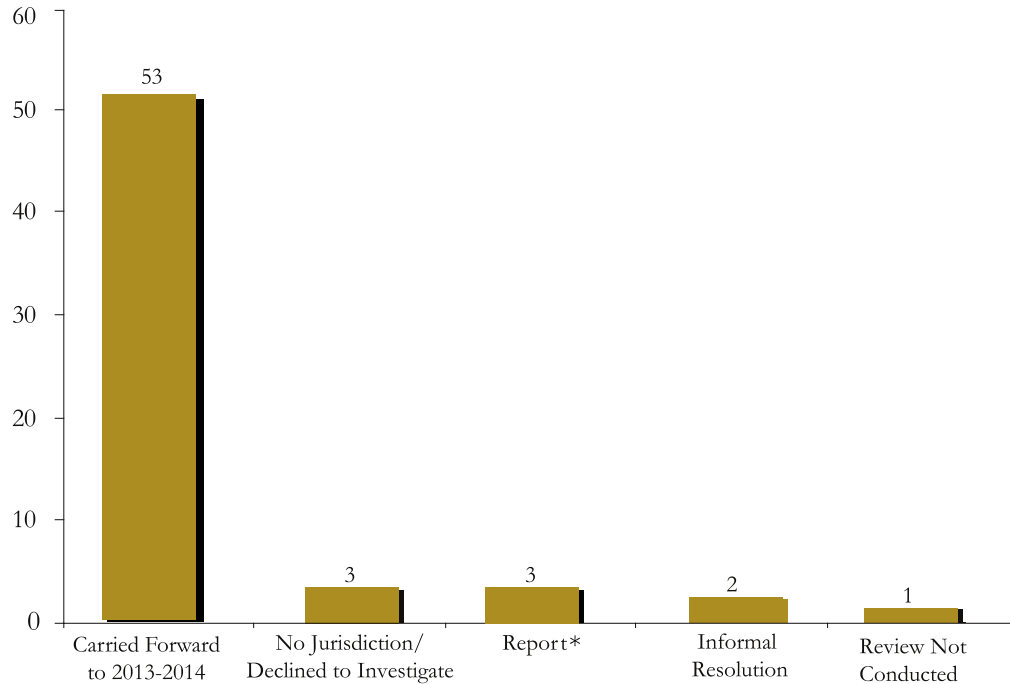


<i>PHIA Access/Correction Complaints by Complainant Group and Custodian Group</i>	
Individual	8
Health Care Authority	8

PHIA Privacy Complaints Received

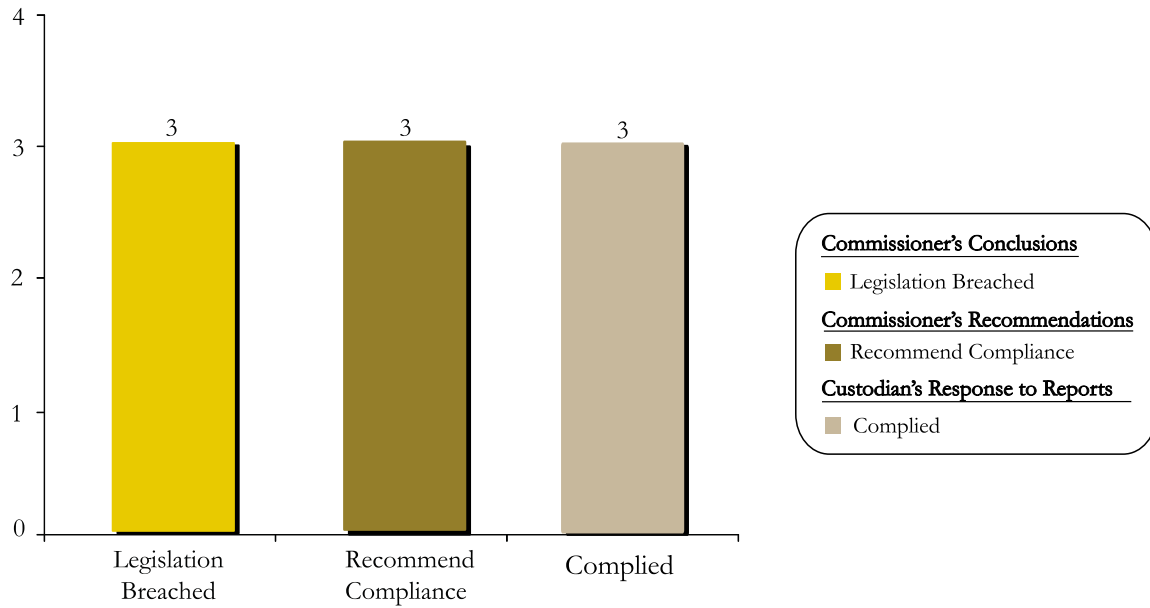


Outcome of PHIA Privacy Complaints Received



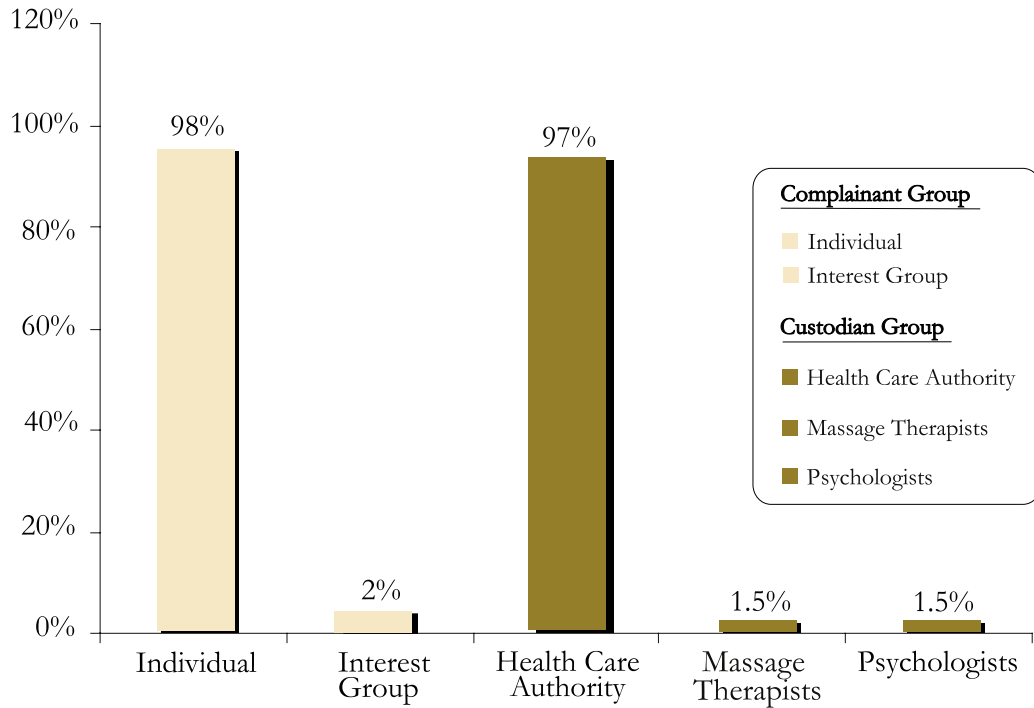
* Two complaints were received under the ATIPPA but subsequent to receipt of these complaints the PHIA was proclaimed into law. The Commissioner found that these complaints were more appropriately dealt with under PHIA. Therefore one Report (PH-2013-001) was issued that addressed both complaints.

Commissioner's Conclusions/Recommendations and Custodian's Response to Reports



Commissioner's Conclusions/Recommendations and Custodian's Response to Reports	
Legislation Breached	3
Recommended Compliance	3
Complied	3

PHIA Privacy Complaints by Complainant Group and Custodian Group

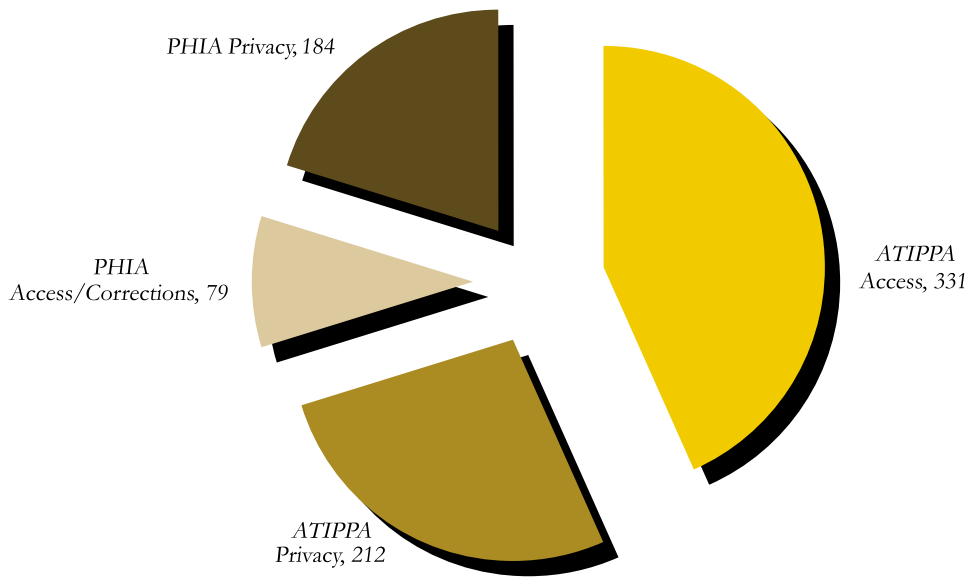


PHIA Privacy Complaints by Complainant Group and Custodian Group		
Complainant/ Custodian	# of Complaints	%
Individual	59	98%
Interest Group	1	2%
Health Care Authority	58	97%
Massage Therapists	1	1.5%
Psychologists	1	1.5%

Appendix "C"

General Statistics

Access and Privacy Inquiries



Access and Privacy Inquiries		
Type of Inquiry	# of Inquiries	%
ATIPPA Access	331	44%
ATIPPA Privacy	212	27%
PHIA Privacy	184	20%
PHIA Access/Correction	79	9%

**Active Requests for Review/Complaints and Privacy Complaints
for 2012-2013**

	<i>ATIPPA</i> Reviews	<i>ATIPPA</i> Complaints	<i>ATIPPA</i> Privacy	<i>PHIA</i> Access/ Corrections	<i>PHIA</i> Privacy
Carried Forward From 2011-2012	46	1	28	2	4
Apr. 12	3	1	2	2	0
May 12	3	0	2	1	1
June 12	4	1	2	0	0
July 12	8	2	0	1	0
Aug. 12	3	0	1	2	30
Sep. 12	2	0	2	0	13
Oct. 12	9	0	2	0	4
Nov. 12	11	1	0	0	1
Dec. 12	6	0	2	0	5
Jan. 13	6	0	0	0	2
Feb. 13	8	1	1	0	0
Mar. 13	1	1	3	0	0
TOTAL	110	8	45	8	60

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