



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Annual Report 2019-2020



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

April 20, 2021

The Honourable Derek Bennett
Speaker of the House of Assembly
Newfoundland and Labrador

I am pleased to submit to you the Annual Report for the Office of the Information and Privacy Commissioner in accordance with section 105 of the **Access to Information and Protection of Privacy Act, 2015** and section 82 of the **Personal Health Information Act**. This Report covers the period from April 1, 2019 to March 31, 2020.

Yours truly,

Michael Harvey
Information and Privacy Commissioner

Table of Contents

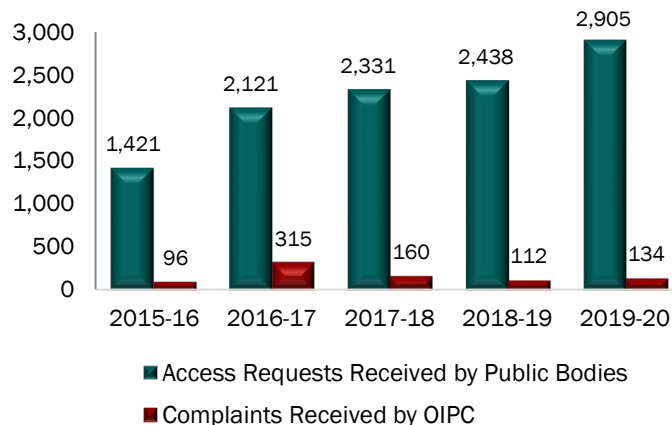
COMMISSIONER'S MESSAGE	1
MANDATE	9
ORGANIZATIONAL STRUCTURE	12
ADVOCACY AND COMPLIANCE DIVISION	13
Audit	13
Privacy Impact Assessment Review	13
Privacy Management Programs	15
Education and Training	15
Guidance Documents	17
Legislative Consultations	19
INVESTIGATIONS DIVISION	27
Reports	27
Court Matters	35
CONCLUSION	43
APPENDIX “A” Timelines (business days) for Access Complaints for the 2019-2020 Reporting Period under the Access to Information and Protection of Privacy Act, 2015	
APPENDIX “B” Timelines (business days) for Privacy Complaints for the 2019-2020 Reporting Period under the Access to Information and Protection of Privacy Act, 2015	



Commissioner's Message

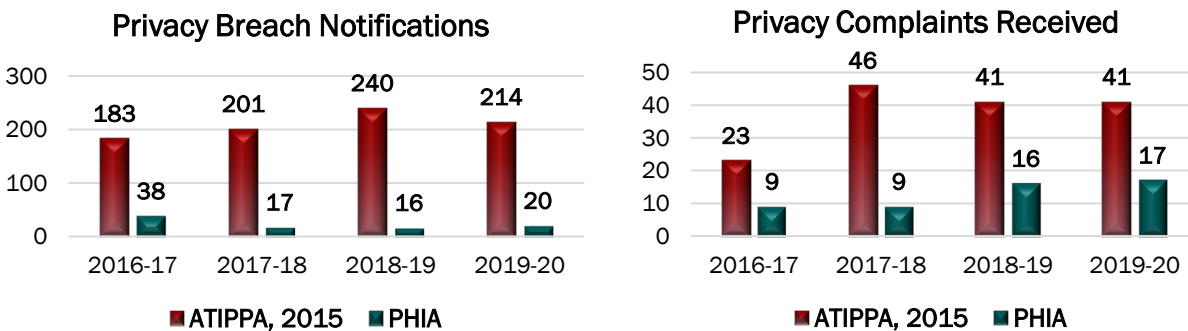
2019-2020 was another year of transition for the Office of the Information and Privacy Commissioner (OIPC) as, after the service of interim Commissioner Victoria Woodworth-Lynas during the first months of the reporting period, I was honoured to be appointed by the House of Assembly as Commissioner, assuming the role on August 5, 2019. While I issued the 2018-2019 Annual Report and was accountable for the results reported therein, this is the first report covering a period for which I was Commissioner. It therefore reflects a period of learning for me, a process that continues into my second year in the role.

2019-2020 was a year in which the access to information system under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) achieved a high point of maturity. The number of access requests received by public bodies increased again, by 467 or approximately 19 percent.



While this has been the largest increase in some years, it is consistent with the pattern in that there have been increases each year. However, access complaints were relatively stable, with the OIPC having received 134 complaints – just 22 more than the previous year. This is not as many as in 2017-2018 (160) and far from the peak of 315 in the first full year after the coming-into-force of ATIPPA, 2015. The fact that the growth in the number of requests, a healthy metric demonstrating that Newfoundlanders and Labradorians are using their access to information system, is outpacing the growth in the number of complaints, suggests that public bodies are increasingly satisfying access clients. This is further reflected in the low number of complaints, as a percentage of access requests, which is under five percent.

The situation was also relatively stable from a privacy perspective as well. The number of breaches reported to the OIPC fell from 240 in 2018-2019 to 214 in 2019-2020, with the number of complaints received remaining stable at 41. Things are relatively steady on the **Personal Health Information Act (PHIA)** front as well as it relates to breaches and complaints.



This said, and as discussed in greater detail below, there are a number of access issues that continue to be the subject of numerous complaints. One theme worthy of comment at this juncture, as in previous years, is that a number of reports arose from complaints by third parties objecting to release of information that they view as confidential, proprietary information subject to the mandatory exception to access under section 39. Without exception, in this reporting period, the reports found that the information did not pass the three-part harms test established in that section of the Act.

These tended to fail for one of two reasons. A number of them failed the second test – that the information must be “supplied in confidence”. That phrase exists in similar provisions in

access to information statutes across Canada, and there is well-established case law as to its meaning. Third parties tended to claim some purported implicit understanding that it was all confidential, or else pointed to general boilerplate text claiming confidentiality over the entire record(s), neither of which meets the well-established threshold for a third party to discharge its burden of proof. And while most matters did not require assessment of the third test – that there must be a reasonable expectation of harm arising from disclosure – those that did failed on that test. Third parties tended to claim that such things as the prices of the goods or services sold to a public body or the manner in which they wrote their tenders were inherently proprietary. Again, reports and courts in this jurisdiction and elsewhere have found that this is not sufficient to demonstrate harm.

The net effect of these complaints by third parties is a delay in access for the applicants. Indeed, third parties also sometimes appeal these Commissioner recommendations to the Court, creating further delays. As cited further below, there are numerous examples of ongoing court actions brought by third parties related to Reports issued in years past. Moreover, there are a number of examples of concluded Court actions where, on the eve of the matter being heard in Court, the third party abandoned the matter. At this point, the applicant has likely lost interest, perhaps because the information that they were looking for some years previous is no longer of interest to them. There is one example of a case which is stuck at Court because the applicant cannot be reached to determine their interest or lack thereof.

The problem here is not in the statute but rather in the actions taken by the public body. The third party's right to appeal is triggered by its notification by the public body, per section 19, that it intends to release information that *might* be subject to section 39. Public bodies should only be providing such notification if they truly have some uncertainty. At this point in the maturity of ATIPPA, 2015, public bodies should more often be quite comfortable in conducting this assessment and releasing the information without third party notification. We certainly understand that this can be uncomfortable for public bodies who want to maintain good relations with vendors and stakeholders; however, the price of doing business with public bodies is compliance with ATIPPA, 2015, which provides transparency and accountability for Newfoundlanders and Labradorians about how their public bodies are doing business and spending money from the public purse.

2019-2020 was also a year in which there was an increased attention to privacy considerations of provincial government approaches to enhance the use of technology, whether directly by public bodies or by commercial third parties.

Two examples, discussed in greater detail below, relate to motor vehicles. First, the government introduced new Automobile Insurance Regulations, following OIPC consultations. One element of these regulations is to permit “usage based statistics” or “telematics” by insurance companies as part of discounted insurance programs. Such programs would involve the insurance company collecting a potentially broad range of personal information from the insured person in exchange for a potential discount on insurance rates. Discounts would, in principle, be tied to the extent to which this data demonstrated safe driving and, therefore, the intent is to promote safe driving habits. We are concerned that this is tantamount to provincial regulatory encouragement of people selling their personal information, discrimination in favour of people who are willing to sacrifice their privacy, and against those who are unwilling to do so. We recognize that encouraging safe driving is a legitimate public policy imperative, but expressed concern about introducing such a program without evidence that these discounts do actually lead to safer driving. We recommended introducing the use of telematics as a pilot program just in the commercial driving sector, but the government declined to accept this recommendation.

Another example may be seen in the new amendments to the **Highway Traffic Act** that would provide automobile dealerships with the ability to conduct transactions that previously were the responsibility of the Motor Registration Division of the Department of Service NL. Our concern is that these transactions involve the collection, use and disclosure of personal information and that while the provincial government department is subject to ATIPPA, 2015 in that regard, private automobile dealerships are not. They are instead governed by federal regulation, which is a different and lower standard enforced by a regulator with less of a presence here in Newfoundland and Labrador.

The theme here is that the provincial government, as it quite validly seeks to improve services for Newfoundlanders and Labradorians by increasing the extent to which they are available online, often collects more personal information or increases the extent to which the public sector can collect more personal information when they are collaborating with the private sector. We encourage the government and other public bodies to consider the privacy implications of these decisions at the beginning of the policy process, before key decisions are already made.

In terms of the broader legislative landscape, 2019-2020 was a year of looking forward to review of the core Acts for this Office. The review of the PHIA, though launched in 2016 and which gave rise to a report issued to the Department of Health and Community Services in 2017, did not result in any amendments during the reporting period. The OIPC very much looks forward to further progress on this statute in 2020-2021.

The PHIA Review is only one element of a shifting landscape for health information.

The Department of Health and Community Services has also launched a review of the **Health Research Ethics Authority Act (HREA Act)**, the legislation unique to this province that establishes that all research projects involving human subjects be subject to review by the Health Research Ethics Board (HREB) or another research ethics board authorized by the Health Research Ethics Authority (HREA).

Even though this Office has no oversight authority under the **Health Research Ethics Authority Act (HREA Act)**, it is an important statute for us because it is linked to PHIA. Custodians have authorities related to the disclosure of personal health information for the purposes of research, even in circumstances that do not involve consent by the owner of that information, so long as the research project has received research ethics approval under the HREA Act. This Office has an interest in a smooth and effective regulatory path for approval of the use

of personal health information for research, but one that also respects the privacy of research subjects. The fundamental principle underpinning the HREA Act and Regulations, to which this Office also subscribes, is that research projects involving Newfoundlanders and Labradorians should be reviewed here by Newfoundlanders and Labradorians. We appreciate that the ethics review process currently involves an ethics review with a privacy lens as a complement

to, rather than as a substitute for, the privacy review that the custodian of the health information must separately undertake. We support measures that may improve the performance of this regulatory process, but strongly believe that these core principles should be maintained in any realignment through legislative or regulatory amendment.

Another topic for legislative reform that received some attention this year and may be the focus of legislative reform in the near future is the potential to provide a statutory basis for the Duty to Document (D2D), i.e. a requirement that decisions and actions taken by public bodies be adequately documented.

This concept most recently re-emerged in this province during the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project in 2019 in the context of a sense at the Inquiry that there was inadequate documentation by Nalcor and the provincial government. The principle of a statutory D2D is not a novel one in this jurisdiction, as it was a recommendation of the 2014 Statutory Review of the **Access to Information and Protection of Privacy Act**. The Review Committee recommended that the **Management of Information Act** (MOIA) be amended to include a statutory D2D and that the OIPC be provided oversight authority. This recommendation was not implemented. In my view, a proper statutory D2D is a necessary corollary to sound access to information legislation so that the public can ensure that transparency and accountability can be fully realized, whether through access to information or processes such as the Muskrat Falls Inquiry. The absence of such a requirement has meant that it is possible to evade the spirit of ATIPPA, 2015 if public bodies find ways to avoid the creation of records in the first place. Moreover, access applicants and public officials alike are often frustrated by the opposite problem: inadequate approaches to records management have led to the proliferation of documents that do not need to be kept and can obscure the records that do – leading to what we might think of as a bad signal-to-noise ratio. This is not only bad for access and democratic accountability, but also for efficient and effective public administration. The Office of the Chief Information Officer (OCIO) has made excellent progress in recent years in developing policies, training and supports to improve records management. A statutory duty to document would increase the imperative for further investment by OCIO in these supports and uptake of them by public bodies.

2020 STATUTORY REVIEW OF ATIPPA, 2015

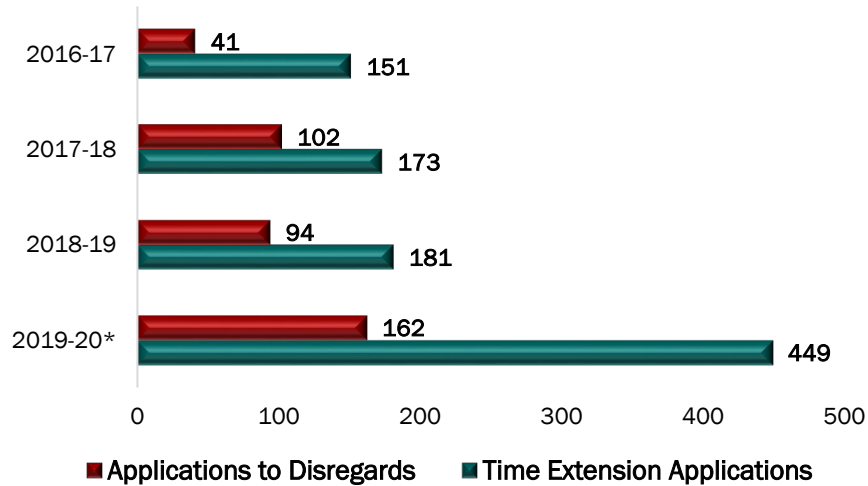
A final major topic to highlight for the coming months is the scheduled statutory review of ATIPPA, 2015. This review was not scheduled to commence in the reporting period, but during 2019-2020 the OIPC conducted an internal seminar series to stimulate discussion among our staff in advance of preparing our submission for the review in 2020-2021.

We believe that ATIPPA, 2015 is perhaps the best access and privacy statute among the Canadian provinces and territories. Since coming into force, applicants in this province have been receiving more information from public bodies, faster, and at less cost, than in other jurisdictions.

Moreover, under ATIPPA, 2015, the Commissioner's powers are a hybrid model: the Commissioner plays a role comparable to an ombudsperson in carrying out the majority of his oversight function; however, for certain types of recommendations, and under certain circumstances the Commissioner has the ability to file an order with the Supreme Court of Newfoundland and Labrador that is enforceable as if it were a judgement or order made by the court. In our view, this hybrid model strikes an excellent balance for an office of this size in a jurisdiction like Newfoundland and Labrador. While we, and others, will have a number of recommendations about how to improve ATIPPA, 2015, fundamentally it is sound and we encourage government to maintain its core principles.

DISRUPTION

2019-2020 was also marked by two disruptions. The first occurred in January, when St. John's and much of the rest of the province received an extraordinarily large snowfall and many municipalities declared states of emergency. There were implications for the OIPC because many public bodies were unable to continue to process access requests, and statutory deadlines were still in force. Moreover, as many of them did not have access to their offices, many were unaware of any new access requests that they were receiving. The OIPC announced that, given these extraordinary circumstances, we would be using our authority to provide time extensions to public bodies, based on requests submitted as batches, including retroactively if required. We also applied for an extension from the Court for the statutory timelines on our ongoing access investigations.



***2019-20 Time Extension Applications - 110 during State of Emergency; 100 during COVID-19 shutdown; and 239 Normal Requests.**

The process that was used in the aftermath of the snowstorm unfortunately was a practice run for the much more significant disruption that was to come at the end of the reporting period. As the COVID-19 pandemic hit Canada in March, Newfoundland and Labrador public bodies and custodians, like everyone in Canada, were faced with a significant disruption. The OIPC responded first by issuing a document on its website that highlighted how public bodies and custodians should consider privacy in an emergency. Then, a matter of hours before the Courts suspended their operations, the OIPC obtained an open-ended extension from the Court for its ongoing investigations. As before, it was announced to public bodies that we would be taking an approach to extension requests on access applications similar to that which we took in January. Obviously, the response to the pandemic created substantial logistical challenges for access requests, as well as novel privacy questions, that continued beyond the reporting period and will be reported upon in detail in the 2020-2021 Annual Report.

2020-2021 will be new territory for the OIPC. We will be dealing with a world transformed by a pandemic, on top of ongoing and accelerating changes in technology. We believe that we are well positioned to face these challenges and continue with excellence in access and privacy oversight for the citizens of Newfoundland and Labrador.

The legislative landscape for access and, in particular, privacy, will change nationally, internationally and, most importantly for the OIPC, at home as the provincial government will be obliged to launch its statutory review of ATIPPA, 2015 and, hopefully, will proceed with PHIA amendments.

MANDATE

The Information and Privacy Commissioner of Newfoundland and Labrador is an independent officer of the House of Assembly.

The OIPC is responsible for oversight of the province's two access and privacy laws.

ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT, 2015

ATIPPA, 2015 applies to more than 400 public bodies, including government departments, agencies, boards, commissions, crown corporations, public educational bodies, regional health authorities and municipalities.

ATIPPA, 2015 gives people the right to access records in the custody or under the control of a public body, subject to specific and limited exceptions. The Act also gives people a right to access their own personal information held by public bodies and to request corrections to their personal information. ATIPPA, 2015 protects individuals' privacy by setting out requirements for public bodies around their collection, use, storage and disclosure of personal information.

PERSONAL HEALTH INFORMATION ACT

PHIA applies to thousands of custodians, including all health care authorities in the province, all health care providers, health care professionals, and other custodians of personal health information. PHIA applies to public and private custodians.

PHIA establishes rules regarding how personal health information may be collected, used and disclosed by custodians. PHIA protects individuals' privacy, as well as giving individuals a right to access their own personal health information and to request corrections to their health information.

COMMISSIONER'S POWERS AND DUTIES

Under ATIPPA, 2015, the Commissioner has significant powers and duties, including:

- investigating a decision, act or failure to act of a public body that relates to an access request or a request to correct personal information;
- investigating privacy complaints and initiating privacy investigations;
- making recommendations to ensure compliance with the Act and Regulations;
- informing the public about and facilitating public understanding of ATIPPA, 2015;
- receiving comments from the public about the administration of ATIPPA, 2015;
- commenting on the information and privacy implications of proposed legislation and programs;
- commenting on the implications of record linkages and information technology on the protection of privacy;
- informing the head of a public body about a failure to adequately assist an applicant;
- making recommendations to public bodies or the minister responsible for ATIPPA, 2015 about the administration of the Act;
- conducting audits and reporting findings of public bodies' performance of duties and obligations under ATIPPA, 2015;
- reviewing and commenting on Privacy Impact Assessments (PIAs), as required to be completed by government departments developing new programs and services;
- researching access and privacy developments and advancements in technology related to access and privacy;
- making Special Reports to the House of Assembly related to subjects within the scope of function and duties of the OIPC; and
- filing an order with the Court to compel compliance by public bodies with the Commissioner's recommendations, as provided for under ATIPPA, 2015.

The Commissioner's powers and duties under PHIA differ somewhat. The powers and duties of the Commissioner under PHIA include:

- 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 PHIA;
- informing the public about PHIA;
- 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 PHIA.

Summary of OIPC Activities

	2019-2020	2018-2019	2017-2018	2016-2017
Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)				
Access Complaints Received	134	112	160	315
Privacy Complaints Received	41	41	46	23
Special Investigations*	2			
Time Extension Applications Received	449**	181	173	151
Applications to Disregard Received	162	94	102	41
Breach Notifications Received	214	240	201	183
Personal Health Information Act (PHIA)				
Access Complaints Received	8	7	8	4
Privacy Complaints Received	17	16	9	9
Breach Notifications Received	20	16	17	38
Advocacy and Compliance				
Guidance Documents***	3	8	14	11
Speaking Engagements/Presentations	19	38	32	11
Audit	0	1	1	1

*These investigations are conducted under section 95(1)(a) to ensure compliance with ATIPPA, 2015 and the Regulations.

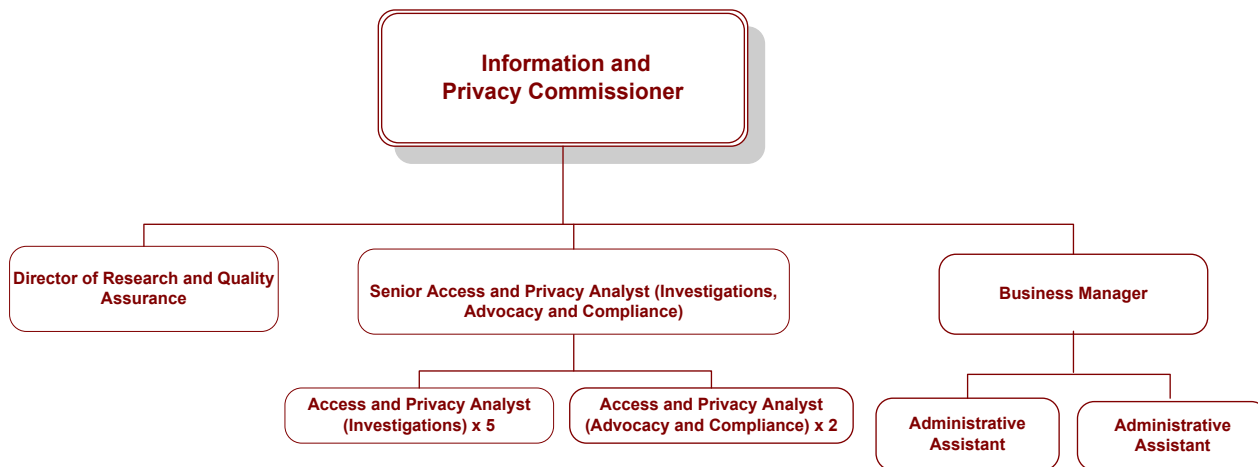
**110 during State of Emergency; 100 during COVID-19 shutdown; and 239 Normal Requests.

***Includes originals and revisions.

ORGANIZATIONAL STRUCTURE

The Office has a staff complement of 13 permanent positions (61.5% female, 38.5% male).

Following is an organization chart for the OIPC.



ADVOCACY AND COMPLIANCE DIVISION

AUDIT

On December 6, 2018, this Office released an [audit](#) involving Newfoundland and Labrador English School District's (NLESD) "Use of Video Surveillance in Schools and on School Buses". The OIPC recommends any public body or custodian using or contemplating using video surveillance to review this audit to familiarize themselves with this Office's expectations and how the legislation applies to the collection of personal information using video surveillance. During this fiscal year, follow-up has continued on the recommendations made as part of that audit. The OIPC is pleased to note that progress on recommendations continues to be made and thanks the NLESD for its efforts to date.

Work continues on two additional audits. One audit was launched in 2017-2018 and involves electronic access controls, the other was launched in 2018-2019 and examines the timeliness of responses to access requests in one public body after noticing a number of deemed refusals. Progress on both audits has been delayed by a number of factors, including the complexity of the audit material and competing priorities, including other work that is subject to legislated timelines.

PRIVACY IMPACT ASSESSMENT REVIEW

Section 72 of ATIPPA, 2015 requires a privacy impact assessment (PIA) and/or a preliminary privacy impact assessment (PPIA) to be conducted during the development of a program or service by a department or a branch of the executive government of the province. If it is a common or integrated program or service, the privacy assessment must be shared with the OIPC for review and comment.

The OIPC is willing to review and comment on any PPIA or PIA, even if the legislation does not require it. The OIPC welcomes consultations from public bodies and custodians and finds the process to be beneficial for all parties.

This is especially true when there are limited privacy resources within an organization, as it is valuable to obtain a second opinion from an independent, external subject matter expert.

While legislation does not require all public bodies and custodians to conduct a PIA, the OIPC recommends that such assessments be conducted for all new and existing programs and services to better ensure legislative compliance. The OIPC frequently asks for PIAs during privacy investigations and in response to breach reports; when one is not available, one may be recommended as part of the resolution process.

During 2019-2020, custodians and public bodies contacted the OIPC to consult on the privacy impacts of various initiatives, including facial recognition and video surveillance, a number of different software systems, and devices equipped with smart technology. Perhaps the largest PIA shared with our Office to date involved the PeopleSoft system; the PIA was developed as part of recommendations stemming from breaches and associated complaint files from 2015. Other assessments reviewed included the Newfoundland and Labrador Centre for Health Information's Data Lab, the City of St. John's End Homelessness initiative and Eastern Health's pilot project involving fingerprint scanners.

Also during this fiscal year, OIPC representatives met with a representative from the OCIO to hear details of their Digital by Design initiative. Both OIPC and OCIO agreed that this initiative meets the definition of a common or integrated program or service and thus an assessment must be shared with the OIPC under section 72. The OIPC anticipates receiving a draft of the privacy assessment in fiscal 2020-2021.

The assessments shared with the OIPC represent a very small portion of the privacy assessments conducted in the province, so it is difficult to speak of trends. Common issues include PPIAs that do not recommend a full PIA, yet do not document how this conclusion was reached; assessments that have no review schedule and have not been updated in five plus years; contradictory documentation and responses in assessments; and assessments with gaps (not all information is included).

The OIPC is available to discuss privacy assessments and can even offer education sessions on this topic.

PRIVACY MANAGEMENT PROGRAMS

The OIPC issued [Privacy Management Program \(PMP\) Guidelines](#) in March 2018. During 2019-2020, the OIPC organized two training workshops to assist public bodies in the development of their own PMPs. In April 2019, an education session was offered on Policies and Procedures. In August 2019, a gap analysis checklist was released to assist public bodies and custodians in identifying priority areas for their Privacy Management Programs and a training session was held on the gap analysis in October 2019.

As each public body and custodian will have a unique PMP, OIPC is available to meet one-on-one to discuss their specific requirements.

EDUCATION AND TRAINING

The OIPC's education mandate under ATIPPA, 2015 includes developing and delivering education programs to the public to inform them of their rights under ATIPPA, 2015, and also to public bodies to inform them of their duties and obligations. In addition to carrying out this work under ATIPPA, 2015, the OIPC has developed training and education resources with respect to PHIA for the public and for custodians of personal health information, though there is no specific education mandate under that legislation.

The OIPC strives to ensure that members of the public are aware of their rights of access to information and to privacy, and how those rights are protected and supported.

As appropriate, the Office informs the public about these rights through public commentary; education and awareness activities; and presentations aimed at explaining the administration and operation of ATIPPA, 2015, PHIA and our Office.

We have also used our Twitter account to broaden public awareness of privacy and access to information issues.

The OIPC is very much engaged in education and training for public bodies and custodians. In this regard, we continued to issue our quarterly ATIPPA, 2015 newsletter, “Above Board”, and our quarterly PHIA newsletter, “Safeguard”, throughout 2019-2020. Additionally, we developed new guidance documents and revised existing guidance documents to assist in interpreting ATIPPA, 2015 and PHIA. We also continue to post all Commissioner’s reports to our website and issue a news release to provide the public with convenient access to our decisions.

During much of 2019-2020, the OIPC worked with stakeholders in access to information and protection of privacy to plan for the 2020 Access, Privacy, Security, and Information Management Conference, which we have presented biennially and which had tentatively been scheduled for spring 2020. However, the COVID-19 pandemic has necessitated the postponing of this event.

Through our past educational initiatives and the positive response we have received to our many educational resources, we have been fortunate to have been approached by many organizations for training. We will continue to create tools and materials as the need arises in response to various challenges and developing issues in access to information and protection of privacy. With the ongoing pandemic, in-person training and education is difficult to carry out and the OIPC is exploring options for virtual presentations in the future.

Presentations		
Date	Audience	Topic
1-Apr-19	OIPC Workshop	PMP Policies and Procedures
3-Apr-19	Royal Newfoundland Constabulary	Privacy Overview
16-Apr-19	Royal Newfoundland Constabulary	Privacy Overview
17-Apr-19	NL Association of Social Workers	PHIA Overview
8-May-19	Office of Public Engagement	ATIPPA, 2015 Overview

30-May-19	Institute of Internal Auditors of Newfoundland	ATIPPA, 2015 and PIPEDA Overview
22-Jul-19	OIPC Workshop	Time Extensions
20-Sep-19	Professional Municipal Administrators	ATIPPA, 2015 Overview
18-Oct-19	Nalcor	Privacy Overview
21-Oct-19	OIPC Workshop	PMP GAP Analysis Tool
4-Nov-19	Memorial University Political Science 3620	OIPC Overview by Commissioner
14-Nov-19	Municipalities Newfoundland and Labrador	Privacy Breaches
15-Nov-19	Municipalities Newfoundland and Labrador	ATIPPA, 2015 Overview
19-Nov-19	Members of the House of Assembly	OIPC Overview by Commissioner
20-Nov-19	Nalcor	ATIPPA, 2015 Overview
4-Dec-19	Eastern Health Regional Protection Services	PHIA Overview
4-Dec-19	Council of Health Professionals	PHIA Overview
5-Dec-19	Town of Gander	Privacy Overview
10-Feb-20	Office of the Chief Information Officer	Section 39

GUIDANCE DOCUMENTS

Our guidance documents are designed to provide public bodies, custodians and the general public, where appropriate, with a comprehensive yet straightforward analysis of issues and topics that are of interest or concern. These tools assist coordinators and custodians as they make decisions, and hopefully avoid complaints about either the process or the outcome. The guidance documents also aid citizens in understanding their right of access to information and the protection of their personal information.

At the tail-end of the 2019-2020 year, the OIPC developed guidance for public bodies and custodians balancing privacy interests during the COVID-19 pandemic. “Don't Blame Privacy – What To Do and How to Communicate in an Emergency” was released on March 13, 2020 to assist public bodies and custodians with balancing the need to exchange complete and accurate information during a crisis with ATIPPA, 2015 and PHIA compliance obligations.

Guidance Documents	
Title	Date Issued
Privacy Impact Assessments – Revision	May 2, 2019
Requesting a Time Extension – Revision	July 23, 2019
Don't Blame Privacy – What To Do and How To Communicate in an Emergency	March 13, 2020

Beyond those projects mentioned above, the OIPC has participated in a number of other activities and events designed to provide education, awareness and insight relating to ATIPPA, 2015 and PHIA. These include the following:

1. annual meeting/telephone conference with all regional health authorities;
2. staff attendance at a number of privacy and access to information conferences including the 2019 PHIPA (**Personal Health Information Protection Act**) Connections Summit in Mississauga; a Data Privacy Design Jam hosted by BC's Freedom of Information and Privacy Association in Ottawa; and the 2020 Reboot Privacy Conference in Victoria;
3. consultations with the Office of the Child and Youth Advocate;
4. attendance at the annual Federal/Provincial/Territorial Information and Privacy Commissioners' Conference;
5. Commissioner Harvey spoke on a regulator's panel as a part of the Canadian Bar Association's annual Privacy Conference;
6. regular meetings with the Office of the Chief Information Officer about issues of mutual relevance;

7. meetings and teleconferences related to privacy issues associated with the development of electronic health records, under the auspices of the Canada Health Infoway Privacy Forum;
8. Commissioner Harvey spoke on a panel at the Infoway Partnership Conference, entitled the Canadian Health Data Debate;
9. review of current access and privacy curricula offerings of private training institutions and the College of the North Atlantic with a view to assisting in enhancing those programs;
10. participated in and created activities for Right to Know Week 2019 and Data Privacy Day 2020; and
11. initiated organization, with assistance of OIPC staff and members of external Steering Committee, planning for the 2020 Access, Privacy, Security and Information Management Conference, originally scheduled for April 22 – 24, 2020. However, the impact of the COVID-19 pandemic has necessitated the postponement of that event.

LEGISLATIVE CONSULTATIONS

Pursuant to section 112 of ATIPPA, 2015, ministers are required to consult with the OIPC on all proposed legislation that “could have implications for access to information or protection of privacy”. Beyond that requirement, the OIPC will review any draft legislation if requested, as it can be difficult to identify potential implications for access to information or protection of privacy. When in doubt, we encourage consultation.

In the run up to and during the fall 2019 sitting of the House of Assembly, the OIPC received a number of bills for review from government departments with requests that the review be completed within 24 to 48 hours. OIPC consultation is required of any bills that have implications for access and privacy, and section 112(1) says that such consultation should occur “as soon as possible before, and not later than, the date on which notice to introduce the Bill in the House of Assembly is given.” In this regard, the departments were compliant with the legislative requirement, but timeframes of less than a week do not permit the

development of considered feedback, nor do they allow time for the Department to consider and potentially incorporate any feedback provided.

On December 11, 2019, therefore, the Commissioner wrote to all Deputy Ministers expressing the importance of meaningful consultation and explaining that our standard to review bills and provide meaningful feedback was one week. He also expressed how beneficial it would be for the OIPC's review if supporting materials could also be provided to explain the policy rationale of the proposed legislation and any relevant research that the Department has undertaken or gathered that may assist in our review. We have been pleased that since that time, departments have been more timely in providing bills and cooperative in providing supporting material for our review. We look forward to this trend continuing.

Over the past year a significant number of bills were referred to us for consultation, including:

Opioid Damages and Health Care Costs Recovery Act
Highway Traffic Act Amendment (Bill 5)
Highway Traffic Act Amendment (Bill 21)
Forestry Act Amendment
Automobile Insurance Act Amendment and Regulations
Correctional Services Act Amendment
Public Health Protection and Promotion Regulations
Interpersonal Violence Disclosure Protocol Act

Some bills that were reviewed by this Office did not warrant detailed comment, either because the privacy or access to information issues were not significant or because the department readily agreed to make small changes which addressed any such issues. Several bills did however result in detailed commentary by this Office, including the following:

Highway Traffic Act Amendment (Bill 5)

Among other things, Bill 5 amends the **Highway Traffic Act** to allow the use of image capturing enforcement systems. The technologies that are typically deployed for this purpose are referred to as Automatic Licence Plate Readers, although the bill does not explicitly limit the image capture to licence plates.

The bill as presented to the OIPC for consultation, and as tabled in the House, had listed, in section 177.1, the various purposes for which this image capture enforcement system could be used:

- red light cameras at intersections;
- speed limit enforcement;
- speed limit enforcement in a construction zone;
- speed limit enforcement in a school zone;
- enforcement of the law against passing a school bus;
- other sections of the Act prescribed in the regulations (177.1(f)).

We provided our detailed comments to the department within one week of receiving the bill, including the following:

- A significant portion of the privacy issues pertaining to the bill are expected to be addressed in regulations, rather than in the bill before the House. We expressed concern that by the time regulations are being formulated, the Minister of the day may indicate that fundamental policy decisions have already been made by Cabinet and the House, limiting the appetite for (or willingness to consider) important policy questions.
- We cited Commissioner's decisions from Ontario and one from this province indicating that licence plate numbers likely meet the definition of personal information in privacy laws, and that privacy is a Charter right that continues to apply even in public places.
- The department referenced the fact that similar legislation is in force in other Canadian jurisdictions, however we cited a number of media articles, reports and other sources to demonstrate that the implementation of these technologies has been the subject of significant controversy regarding privacy risks.

We provided a number of recommendations to the department, including the following:

- Public consultation should be conducted on this and other significant new contemplated collections of personal information. Such consultation should not

be for marketing purposes, but a genuine effort to explain the pros and cons of such initiatives from a public policy and privacy perspective, and to inform the final decision-making process. In our view, public engagement was substantially lacking prior to introduction of this bill. In response to this issue, the department indicated that the suggestion for use of this technology came from public consultation during the recent auto insurance review. We pointed out, however, that while there are three or four brief references to the use of traffic cameras or intersection cameras in the Public Utilities Review of Automobile Insurance, it does not appear to have been dealt with in any detail, nor did the report include analysis of the privacy considerations. Furthermore, while the Terms of Reference for the report was quite detailed on what was intended to be covered, it did not reference anything related to the subject matter of this bill, therefore in our view, the Review could not be said to constitute genuine consultation on the subject of this bill. Regarding the department's own consultation, in the What We Heard document, on Issue 5: Improved Road Safety, 132 people provided input on this topic, but only 15 respondents supported photo radar and 13 supported red light cameras.

- We recommended against the inclusion of section 177.1(f) in the bill, which would have allowed the Minister to prescribe other uses for the technology beyond what is currently specified. One of the greatest risks of this technology that has been identified in other jurisdictions is the risk of function creep, i.e., the technology is introduced for a specific reason, but it is soon being used for other surveillance activities not initially contemplated, which may be unnecessary and unjustified. The same issue was subsequently raised in the House on November 7 by MHA Paul Lane, who suggested that the regulation-making authority in section 177.1(f) be removed because it broadened the scope of the bill unnecessarily. In Committee of the Whole on November 14, Minister Sherry Gambin-Walsh moved an amendment to the bill to remove that section, and that amended version of the bill ultimately passed and became law.

- We recommended that privacy requirements be built into the procurement of this technology through completion of a conceptual PIA, and that the department consult with the OIPC on the development of this PIA. The department agreed.
- We further recommended that a PIA be completed on any purchased system, again consulting with the OIPC during the development of the PIA. The Department agreed.
- We also recommended that the Department consult with the OIPC from an early stage in the development of the regulations in support of this bill. The Department agreed.

Comments from Minister Gambin-Walsh on introducing the bill in the House on November 7, 2019, one week after receipt of our comments:

I would like to highlight, Mr. Speaker, that the technology we propose involves only an image capture of the licence plate of a vehicle. This, of course, is linked to the system that the provincial government already has in place, namely that of our Motor Registration Division, which is designed to enable us to manage the motorized vehicles and the people who drive them on our roadways. However, as the details of this initiative are developed, a significant part of our due dialogue will involve working closely with the Information and Privacy Commissioner as we develop regulations. We have given the commissioner our commitment that we will do so.

We will complete privacy impact assessments as the commissioner recommended and will take all necessary measures to inform the public as the process unfolds. We did such assessments in the pilots that were conducted in the construction zones. This demonstrates that the protection of personal information is always at the forefront of our decision-making process.

The OIPC looks forward to further engagement from the department on the PIA process and the development of regulations.

Highway Traffic Act Amendment (Bill 21)

Under this bill, which is now law, automobile dealers are authorized to perform vehicle registration and transfer transactions on behalf of Service NL's (SNL) Motor Registration

Division (MRD), and in doing so, necessarily collect, retain, use and disclose personal information. MRD, as a division of SNL, is governed by ATIPPA, 2015 for these purposes. It also has mandatory reporting provisions in the case of privacy breaches and oversight by the OIPC.

The NL OIPC does not have jurisdiction over private enterprises like automobile dealerships, and the effect of this bill is that duties formerly performed by MRD will now be done by automobile dealers. With this change of responsibility from MRD to the dealers, our concern is that the level of privacy protection and accountability is not the same.

With respect to privacy, automobile dealerships are subject to the federal **Personal Information Protection and Electronic Documents Act (PIPEDA)**, however PIPEDA awareness among small business is low; the capacity of the federal Office of the Privacy Commissioner to ensure PIPEDA compliance among small businesses is limited; and the standard for reporting a privacy breach is lower in PIPEDA. Moreover, where these small businesses are essentially performing a provincial public body's service on its behalf, the view we expressed to government is that, when outsourcing a service, the public body must ensure the same level of privacy compliance that it would be bound by if it were performing that service itself.

We made several recommendations to the department to improve privacy protection in this bill. Service NL thanked us for our input but decided not to proceed with any of the changes we proposed.

Automobile Insurance Act Amendment

A number of amendments were proposed to this Act, and we offered comment on several of them, however our primary concern related to the introduction, through this bill, of the use of telematics in the automobile insurance industry. Telematics, also called usage based technology, refers to the creation of a record of a driver's use of their vehicle, such as braking, speed, distance and location, etc. This information can then be used, with the consent of the driver, to lower insurance premiums if the data demonstrates that the driver has good driving

habits. Because that information is tied to the individual who typically drives the vehicle, it constitutes personal information.

During government's review of the auto insurance regime in this province, there had been passing reference to the use of telematics, and in particular it was discussed with reference to the taxi industry, however there were no substantial public consultations on the issue of telematics specifically.

Even though telematics will only be offered with the consent of the driver, any time there is an incentive to trade one's personal information for a short-term benefit, it creates an unfairness for members of the public who would not willingly make that trade. The impacts of privacy loss are not immediate, they may be subtle, or they may not be apparent at all at the initial stage. They could, however, be quite significant in the longer term if the information is subject to a data breach, or is used in another way that impacts the individual negatively.

We expressed our concern that the insurance industry may come forward with other programs offering incentives to insurers in exchange for other types of surveillance or personal data collection which could pose increased privacy risks. As surveillance of people and their behaviour increases through the collection of personal information, this can serve to further erode personal privacy. Meaningful consent must be free and fair – when financial pressures faced by consumers are significant, the question arises whether an individual's consent to this collection of personal information is freely and fairly given. This may become more pronounced as more drivers opt in. At a certain point it becomes a question as to whether this would force consumers to pay a premium for not opting into the collection in order to maintain their current level of privacy and whether such a choice is fair to consumers.

Government promised to, and did, consult with us when regulations were being developed in relation to this bill. We proposed at that time that the telematics provision only apply to drivers in a professional context, such as taxi drivers, which we understand was the source of the initial suggestion for the introduction of a telematics provision. Government did make some small amendments to the bill and regulations at our suggestion, but ultimately proceeded as planned. We remain very much concerned about the slippery slope posed by any statutory or

regulatory approach that means citizens are faced with the choice of trading their privacy for financial or other benefits.

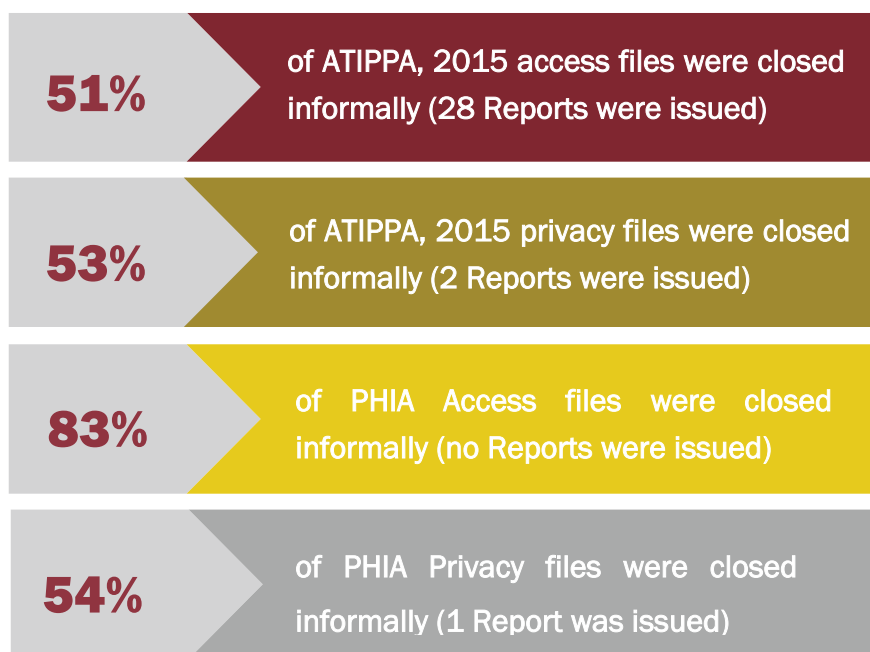
Interpersonal Violence Disclosure Protocol Act

This bill would provide authority for a police force to disclose information regarding interpersonal violence to a person deemed to be at risk or to another applicant in accordance with an Interpersonal Violence Disclosure Protocol. It is based on a UK law called Clare's Law. The bill itself is quite brief, and as a result it effectively leaves much to regulations and the development of a protocol, which remained to be completed at the time of our review of this bill. Therefore, one of the issues with this bill is that, having now passed through the legislature, a number of significant choices still remain to be made about how this law will work, and the Commissioner posed a number of questions for which the ultimate answer was that we will be consulted on the development of the protocol and regulations.

We do, however, wish to acknowledge the very early engagement with our Office by the Department of Justice and Public Safety. This allowed us time to research the UK experience with this bill. In addition to our comments, we provided to the department for consideration a copy of a study into the efficacy of Clare's Law in England and Wales available on line at <https://livrepository.liverpool.ac.uk/3003730/1/clare%27s%20law%20fitz-gibbon%20walklate.pdf>.

INVESTIGATIONS DIVISION

The OIPC is an advocate for access to information and protection of privacy, but when it comes to investigations, we are an advocate for the Acts, not for one side of the dispute or the other. Investigations are therefore conducted impartially, based on submissions received from both parties. Complaints are typically resolved either through dialogue with complainants, public bodies or custodians. This can involve explaining to the complainant that the public body or custodian was correct in its application of the relevant Act, or persuading the public body that records or information withheld do not qualify for a particular exception to access, and that additional information should be disclosed. It can also involve explaining to a custodian why access to or correction of a record is required. Sometimes other creative solutions are found through our negotiation with both parties, as long as the outcome is in accordance with ATIPPA, 2015 or PHIA. We are proud to report again this year that the majority of complaint files were resolved informally:



REPORTS

The Office of the Information and Privacy Commissioner published 31 reports under ATIPPA, 2015 and PHIA in 2019-2020. In these reports, several themes emerged and, among other issues, we commented on delays in providing access; duty to assist and reasonable search;

and the application of sections 30 (Legal advice) and 39 (Disclosure harmful to business interests of a third party) of ATIPPA, 2015.

Delays

Both ATIPPA, 2015 and PHIA impose deadlines for public bodies and custodians of personal health information to provide requested records to an applicant. These deadlines can be extended if circumstances merit and, in the case of ATIPPA, 2015 deadlines, only if the OIPC approves an extension in advance. In 2019-2020, our Office investigated several complaints concerning the failure of a public body to adhere to the legislated timelines. In some cases, the delays in providing records were extreme (11 months in A-2019-016) or a public body simply failed to respond to an applicant (A-2019-031).

Report A-2019-016

The Department of Children, Seniors and Social Development received a request for records relating to the department's progress in responding to the Calls to Action of the Truth and Reconciliation Commission. Our Office approved two applications by the department for an extension of the time limit to respond to the request, and denied a third. The department delivered the final response to the complainant 14 months after the request was made, and 11 months after the extended deadline. The department withheld almost all of the responsive records on the basis of section 27 (Cabinet confidences). We found that the section 27 exception had been properly applied, and therefore did not recommend further disclosures. We also found that the extraordinary delay in responding to the request was unacceptable, and that the delay resulted from a number of factors, including workload issues, consultations with other departments, and the application of a policy on consultations that resulted in conflict with the mandatory provisions of the Act. We recommended that the department review its processes to reduce or eliminate such delays.

Report A-2019-021

Intergovernmental and Indigenous Affairs Secretariat received a request for records relating to its progress in responding to the Calls to Action of the Truth and Reconciliation Commission. Our Office approved two applications by the secretariat for extensions of the time limit to

respond to the request, and denied a third. The secretariat delivered the final response to the complainant 14 months after the request was made, and seven months after the extended deadline. The secretariat withheld almost all of the responsive records on the basis of section 27 (Cabinet confidences) and a few pages withheld on the basis of section 30 (Legal advice). We found that the section 27 and 30 exceptions had been properly applied, and therefore did not recommend further disclosures. We also found that the extraordinary delay in responding to the request was unacceptable, and that the delay resulted from a number of factors, including workload issues, consultations with other departments, and the application of a policy on consultations that resulted in conflict with the mandatory provisions of the Act. We recommended that the secretariat review its processes to reduce or eliminate such delays.

Report A-2019-015

The Department of Municipal Affairs and Environment received an access request seeking disclosure of complaints about the complainant and town councillors, and the responses to these complaints. The Commissioner found that the department did not comply with the mandatory deadline to respond to the request within the timeframe as set out in section 16(1) (Time limit for final response), nor its duty to assist the complainant by failing to respond to the request in a timely manner as set out in section 13 (Duty to assist applicant). After being contacted by this Office, the department provided a final response to the complainant, withholding some of the information, including the signatures on a petition, under section 40 (Disclosure harmful to personal privacy). The Commissioner found that the department properly applied the exceptions and recommended the department continue to withhold the information.

Report A-2019-031

The complainant wrote to the Town of Happy Valley–Goose Bay in 2016 requesting approval for a business. Over three years the complainant had meetings and other conversations about the application with the mayor, councillors and town manager, with no response to the application. The complainant made an access request for records related to the application, and filed a complaint with our Office when, again, the town did not respond. The town did not initially respond to the complaint notification from our Office, but after several weeks began a

search for responsive records. Ultimately the town stated that no records could be found. We found that the town failed in its duty to assist the complainant under section 13, failed to comply with the time limits for responding to an access request under section 16, and failed to respond adequately to the complaint under section 44. We recommended that the Town review its access to information policies and practices and implement measures to reduce or eliminate future delays; review its information management and documentation policies and practices; and comply in future with statutory duties and requirements, including the requirement to cooperate in a timely manner with our Office.

Section 30 (Legal Advice)

Section 30 allows a public body to withhold solicitor-client privileged information. Solicitor-client privileged information has been afforded a great deal of protection in Canada and the maintenance of its confidentiality is considered essential for the proper functioning of the legal system. However, ATIPPA, 2015 provides the OIPC with the authority to review information over which solicitor-client privilege has been claimed, in order to discharge its duties as an independent review body and to protect the rights of applicants by ensuring that public bodies are properly applying this exception to access. In recent years, public bodies have become reticent to comply with requests from this Office to produce records for our review over which they claim to contain solicitor-client privilege. In one case (A-2019-019) this has forced the OIPC to conclude that the public body failed to meet its burden of proving that the exception had been properly applied, and to recommend disclosure to the applicant.

Report A-2019-009

The complainant made a request to Eastern Health for records relating to an issue between himself and Eastern Health. Some of the information was redacted on the basis of section 30 of the Act (Legal advice). Eastern Health provided our Office with a copy of the record, and a copy of the letter, containing a legal opinion, referred to in the record. We found that the evidence provided by Eastern Health was sufficient to show that solicitor-client privilege applied to the redacted information and recommended that Eastern Health continue to withhold it.

Report A-2019-019

The Department of Justice and Public Safety received a request for information relating to the disposition of an environmental complaint. The department withheld some information on the basis of section 30 (Legal advice). Our Office requested copies of the responsive records for review, but the department refused to provide records that it claimed were subject to solicitor-client privilege, and also refused to provide a sufficient description of those records. We concluded, in the absence of evidence to support the claim of privilege, that the department had not met the statutory burden of proving that the exception applied, and therefore recommended that the records be disclosed. The department refused to disclose the records and filed an application in the Supreme Court of Newfoundland and Labrador for a declaration that it did not have to comply with the recommendation. This application has not yet been heard.

Reasonable Search

Section 13 of ATIPPA, 2015 imposes on public bodies a duty to assist applicants. This duty has been interpreted to include the duty to assist an applicant in the early stages of making a request, to conduct a reasonable search for the requested records, and respond to the applicant in an open, accurate and complete manner. In 2019-2020, the OIPC considered several complaints alleging that the public body had failed to meet the duty to assist by conducting a reasonable search and released six reports which focused on the public body's search for records (A-2019-011, A-2019-014, A-2019-022, A-2019-023, A-2019-032 and A-2020-002). These reports provide further guidance to public bodies as to what is expected of them when searching for responsive records. In most cases, the public body has discharged its duty, though in A-2019-011 we found that the Town of Gander failed to include email attachments when searching for responsive records and providing them to the applicant.

Report A-2019-011

The Town of Gander received an access request for all emails sent and received by a town councillor. The town completed a search for these records that led to a large number of records being located; however, many of those records were later found to be duplicates or not responsive to the request. The town therefore released a significantly smaller number of

records than what was originally located, with some of the information withheld under section 40 (Disclosure harmful to personal privacy). The Commissioner concluded that the town appropriately withheld information in accordance with section 40; however, the town failed to process the attachments to emails that were responsive to the request, and as a result no attachments were initially provided to the complainant. The Commissioner recommended that the town review the attachments to the emails, consider any exceptions that may apply and release them to the complainant as appropriate. The Commissioner also recommended that the town draft and implement policies regarding record searches and email use and provide training to all employees with access to email, including council, regarding best practices for the use of business email accounts, records management, and records retention.

Section 39 (Disclosure Harmful to Business Interests of a Third Party)

Section 39 requires public bodies to withhold from disclosure the business information of third parties if the information meets the three-part test established in ATIPPA, 2015. Where a public body intends to release information about a third party to which a third party believes section 39 applies, that third party has a right to complain to this Office. In such a complaint, the third party bears the burden of establishing that its information qualifies for the exception. In 2019-2020, as in past years, the OIPC continued to field numerous complaints from third parties and released five reports on this topic.

Report A-2020-004

The Department of Health and Community Services received a request for information about rebates provided to the province by a number of drug manufacturers between 2014 and 2019. The department notified the manufactures of its intention to release the responsive records to the Applicant. Eight of the manufacturers objected to the disclosure of records and filed complaints with this Office. These manufacturers argued that the information proposed for release meets the three-part test under section 39, and therefore, should not be disclosed. The Commissioner determined that the manufacturers did not meet the burden of proof and recommended release of the records.

Report A-2019-030

Eastern Health received a request for access to a copy of a contract awarded to a supplier through a Group Purchasing Organization (GPO); a complete list of contract items with pricing; correspondence and meeting notes between six individuals regarding the awarding of the contract; and the pricing analysis. Eastern Health granted access to the information, but failed to provide all the records responsive to the request. The complainant went back to Eastern Health to inquire about the responsive records that were not disclosed. Eastern Health found the responsive records, but determined that section 39 may be applicable to the records. Eastern Health also questioned whether it had custody or control of the records at the time of the request. Eastern Health provided third party notification under section 19 to the GPO. Eastern Health advised the complainant it would disclose the records if the GPO did not object. The GPO did not file a complaint with the OIPC; however, Eastern Health continued to engage the GPO in discussions about the application of section 39. Three months after the “final” response to the complainant, Eastern Health informed him that it had determined that the records would not be disclosed. The complainant filed a complaint with this Office. The Commissioner determined that the records were in the custody or control of Eastern Health when the complainant requested the information and that Eastern Health inappropriately applied the section 39 test to the responsive records. The Commissioner also determined that Eastern Health inappropriately provided the GPO with third party notification, that it failed in its duty to assist the complainant, and that it failed to protect the anonymity of the complainant. The Commissioner recommended the release of the records at issue. The Commissioner also recommended Eastern Health review guidance on sections 19 and 39, that it improve its searches for responsive records, ensure the protection of an applicants’ identity, and adhere to legislated timelines.

Report A-2019-012

Service NL received a request for amounts paid out by a lottery licence holder to another organization for a specific time period. This information was included in the financial reports submitted by the third party to Service NL. Service NL decided to issue a notification about the request to the third party under section 19. Service NL was prepared to release the records but the third party objected to the disclosure and filed a complaint with this Office. The third

party argued that it is a private organization and ATIPPA, 2015 does not apply to the private sector; therefore, its records should not be disclosed by Service NL. The third party did not provide any arguments relating to section 39 to support its position that the records should be withheld. The Commissioner found that the third party did not meet the burden of proof and recommended release of the records.

Report A-2019-027

The Town of Stephenville received two requests from two different applicants for all correspondence between the town and a third party regarding a particular legal action and its outcome for the period between January 2017 and present. In accordance with section 19 of ATIPPA, 2015, the town notified the third party of its decision to release the records to the Applicants. The third party objected to the disclosure of records and filed two complaints with this Office. The third party argued that certain portions of the records met the three-part test under section 39 of ATIPPA, 2015 and therefore the records should not be disclosed by the town. The Commissioner found that the third party did not meet the burden of proof and therefore the records may not be withheld under section 39, with the exception of bank account information on the cheque reproductions, which may be withheld.

Report A-2019-029

Western Health received a request for copies of all contracts between itself and a supplier. In accordance with section 19 of ATIPPA, 2015, Western Health notified the third party supplier of its decision to release the records to the applicant. The third party objected to the disclosure of records and filed a complaint with this Office. The third party argued that the records met the three-part test under section 39 and therefore the records should not be disclosed by Western Health. The Commissioner found that the third party did not meet the burden of proof and the records may not be withheld under section 39. Additionally, the Commissioner noted that public bodies must only notify third parties in accordance with ATIPPA, 2015, and only when there is genuine uncertainty whether section 39 applies to the information.

COURT MATTERS

Offence Prosecution

On January 18, 2019, two civilian employees of the Royal Newfoundland Constabulary (RNC) were charged with offences contrary to section 115 of ATIPPA, 2015. The charges related to inappropriately accessing personal information without lawful authority while in the employ of the RNC.

One employee pleaded guilty and received an absolute discharge. The case involving the other employee went to trial, and that individual was found not guilty of the charge. As of the date of this Report, we are advised that the Crown is considering an appeal of that verdict.

Ongoing Court Matters

Kirby v. Chaulk, Court File No. 2019 01G 1380

This is an appeal by the Applicant of the decision by Bruce Chaulk, Commissioner for Legislative Standards, to follow the recommendations of the Commissioner in Report A-2019-004 to continue to withhold information from the Applicant under section 41(c) and that this was not a workplace investigation, as defined in section 33. The OIPC is an intervenor in the matter, which is set for a hearing on July 7, 2020.

Beverage Industry Association v. Her Majesty in Right of Newfoundland and Labrador as represented by the Minister of Finance, Court File No. 2018 01G 6000

This began as an originating application for an injunction pursuant to Rule 22 and/or section 105 of the **Judicature Act**. It relates to an otherwise concluded court matter (*Atlantic Lottery Corporation v. Her Majesty The Queen (Minister of Finance)*, Court File No. 2017 01G 2004). The Beverage Industry Association (BIA) was not notified as a Third Party in that case and sought standing to oppose the release of records as ordered by the Court in that matter.

A decision on the BIA's application was rendered on December 11, 2019, in which the Court ordered that the matter be remitted back to the Commissioner to allow the BIA

to make representations and for the Commissioner to prepare a new report. The decision also contained other rulings and interpretations impacting matters such as the role of the OIPC in notification of third parties, the availability of judicial review, and the interpretation of section 39 which cause concern for the Commissioner, and as a result the Commissioner has filed an appeal of this ruling.

Oleynik v. Memorial University, Court File Nos. 2017 01G 8543; 2019 01G 5833; 2019 01G 0136; 2020 01G 1408

The Applicant has filed appeals of several decisions by Memorial University relating to his access to information requests. The Applicant, Memorial University and the OIPC were participating in a Court-mandated case management process at the conclusion of this reporting period.

McBreairty v. College of the North Atlantic, Court File No. 2016 01H 0095

This matter was initiated by the Applicant in response to a decision by the College of the North Atlantic (CNA) to deny access to the name of an individual found in a record which was responsive to the Applicant's request. The Applicant brought the matter to the Commissioner, resulting in Report A-2012-011 in which the Commissioner recommended disclosure. CNA refused to follow the recommendation and the Applicant appealed to the Supreme Court, Trial Division. [The onus was on the Applicant to appeal, as this matter was heard under the old version of ATIPPA which was in force at the time the request was received].

The Court found that the individual in question was in fact an employee of the College and that the person's name should be disclosed to the Applicant (2016 CanLII 51110). That decision was appealed by CNA. The Court of Appeal heard the matter on June 13, 2018 and a decision is pending as of the conclusion of this reporting period.

Bragg Communications v. NLESD, Court File No. 2017 01G 1221

This is a direct appeal by the Third Party, Bragg Communications, in relation to a Third Party Notice sent by NLESD. This matter was adjourned *sine die* on March 28, 2017 pending the outcome of the Interlocutory Application opposing our intervention in the three other matters involving this appellant, which have since closed. Now that a decision has been rendered allowing our intervention, the matter is expected to proceed in due course.

Bell Canada v. Minister of Business, Tourism, Culture and Rural Development, Court File No. 2017 01G 1296

This is an appeal by Bell Canada (Third Party) of a decision of the Department of Business, Tourism, Culture and Rural Development to follow our recommendation in Report A-2017-005 that the Third Party's information be released. Our Notice of Intervention was filed March 8, 2017. No court date has yet been set.

Department of Justice and Public Safety application for a declaration, Court File No. 2018 04G 0170

This is an application seeking a declaration by the Court pursuant to section 50 of ATIPPA, 2015 that the Department does not have to comply with the recommendations in OIPC Report A-2019-019. The complaint which resulted in that Report involved a request by an access to information applicant which was refused by the Department on the basis of a claim of solicitor-client privilege. During the course of the OIPC investigation, the Department refused to provide a copy of the unredacted records to the Commissioner for review, and did not provide any other evidence to discharge its burden of proof. The Commissioner therefore recommended disclosure of the responsive records. No court date has yet been set.

Bell Canada v. David Heffernan, in his capacity as Chief Information Officer, Court File No. 2019 01G 6549

This is an appeal by Bell Canada (Third Party) of a decision of the Office of the Chief Information Officer to follow our recommendation in Report A-2019-026 that records

be disclosed to the access to information applicant. Our Notice of Intervention was filed October 25, 2019. No court date has yet been set.

College of the North Atlantic Application for a Declaration, Court File No. 2020 01G 0627

This is an application seeking a declaration by the Court pursuant to section 50 of ATIPPA, 2015 that the College does not have to comply with the recommendations in OIPC Report A-2020-001. Our Notice of Intervention was filed October 25, 2019. No court date has yet been set.

Concluded Court Matters

Newfoundland and Labrador v. Newfoundland and Labrador Teachers' Association, Court File No. 2018 NLCA 54

This matter arose as a result of a journalist's request to access information from a number of public bodies for the names, job titles and salaries of employees whose taxable income exceeded \$100,000. Some public bodies disclosed the information in full, while others, including the Newfoundland and Labrador English School District (NLESD), notified all affected individuals, giving them the option to file a complaint with the Commissioner or appeal directly to the Supreme Court, Trial Division. The Newfoundland and Labrador Teachers' Association (NLTA) filed an appeal on behalf of a number of affected individuals, and the Court was tasked with determining whether the salaries of individuals identified by name were required to be released in accordance with ATIPPA, 2015. A number of other public bodies and unions were intervenors in the matter. In *Newfoundland and Labrador Teachers' Association v. Newfoundland and Labrador English School District*, the Trial Division determined that disclosure of names and salaries of employees was an unreasonable invasion of privacy and ruled that the names of employees should not be disclosed in conjunction with salaries. That decision was appealed by government, and the OIPC and a number of other parties intervened in the appeal.

That appeal was heard by the Court of Appeal in February 2018 and a decision was issued on September 17, 2018. In a majority decision, the Court overturned the lower

court ruling. The Court of Appeal concluded that section 40(2)(f) of ATIPPA, 2015 "... is meant to ensure that members of the public can know who is on the public payroll, what their duties are, and how much they are being paid."

An application was filed by the NLTA for leave to appeal to the Supreme Court of Canada, however this application was dismissed on April 11, 2019. A number of other applications before the Supreme Court, Trial Division in relation to salary/compensation disclosure had been stayed pending a ruling in the above-noted matter by the Court of Appeal. All of the parties in these applications were intervenors in that case. Those matters were all resolved in accordance with the Court of Appeal ruling subsequent to the decision by the Supreme Court of Canada to deny leave to appeal.

City of Corner Brook application for a declaration, Court File No. 2017 04G 0063

This is an application filed in the Trial Division in Corner Brook seeking a declaration under section 79(1) of ATIPPA, 2015 that the City does not have to comply with the recommendations in OIPC Report P-2017-001. The matter was heard on September 20, 2017 and an oral decision was delivered by the Court on November 26, 2019. A transcript of the decision is available upon request from the OIPC.

The Court determined that an application for a declaration that a public body need not comply with a recommendation in a Commissioner's Report is not available with respect to recommendations made in accordance with section 76(2), as was the case with Report P-2017-001. A recommendation made in a Commissioner's Report under 76(1) is potentially subject to either an application for a declaration by a public body or an order filed by the Commissioner, however recommendations made under 76(2) are not subject to either of these actions, and are therefore purely ombuds-type recommendations.

City of Corner Brook application for a declaration, Court File No. 2018 04G 0170

The City of Corner Brook filed an application for a declaration under section 50(2) of ATIPPA, 2015 that the City does not have to comply with the recommendations in Report A-2018-017, which found an investigation conducted by the City Solicitor to be a workplace investigation as defined in section 33, requiring release of some of the records.

A decision on the matter was released on March 3, 2020. The Court concluded that the dominant purpose of the investigation was to prepare for legal proceedings and was not a workplace investigation. On that basis the Court agreed that information the City had withheld under the solicitor-client privilege exception (which was the majority of the information at issue) need not be disclosed. However, information that had been withheld as being litigation privileged must be disclosed to the Applicant because any basis for litigation privilege has now lapsed and the exception therefore no longer applies.

Newfoundland and Labrador Medical Association v. Minister of Health, Court File No. 2016 01G 6110

This was an appeal by the NLMA of a decision of the Minister of Health and Community Services to follow our recommendation for release in Report A-2016-019, in which the Commissioner recommended disclosure of Medical Care Plan (MCP) billings by physician name. The Commissioner filed a Notice of Intervention on October 18, 2016. The matter was set over pending a decision by the Court of Appeal in *Newfoundland and Labrador v. Newfoundland and Labrador Teachers' Association*, 2018 NLCA 54. That decision found that disclosure of names and salaries of employees of public bodies was not an unreasonable invasion of privacy. The Newfoundland and Labrador Teachers' Association sought leave to appeal to the Supreme Court of Canada, which was denied. The NLMA subsequently decided to withdraw its appeal relating to Report A-2016-019 and the information was disclosed to the access to information applicant.

McKesson Specialized Distribution Inc. v. Her Majesty in Right of Newfoundland and Labrador as represented by the Minister of Health and Community Services, Court File No. 2019 01G 0529

This was a direct appeal filed on January 16, 2019 by McKesson, which was notified as a Third Party of the Department's intention to release records. The OIPC became an intervenor in the matter. McKesson withdrew its appeal by filing a Notice of Discontinuance with the Supreme Court on November 25, 2019.

Persona Communications O/A Eastlink v. Her Majesty in Right of Newfoundland and Labrador (Minister of Education and Early Childhood Development), Court File No. 2018 01G 8625

This was a direct appeal filed on December 4, 2018 by Persona, which was notified as a Third Party of the Department's intention to release records. The OIPC became an intervenor in the matter which had been set to be heard in September 2019, however Persona filed a Notice of Discontinuance with the Supreme Court on July 23, 2019.

Ireland v. Town of Gander, Court File No. 2018 05G 0199

The Applicant filed an access request with the Town. The Town had requested an extension of time from the Commissioner to respond to the request (which was approved), but the Applicant did not receive the responsive records by the expiry of the extended deadline. The Applicant filed his appeal on November 20, 2018, and the OIPC became an intervenor in the matter. While the matter was before the Court, the Town released records to the Applicant. Although the Applicant remained dissatisfied with how the Town handled his request, he decided not to proceed further with the appeal, filing a Notice of Discontinuance on December 2, 2019.

NL Legal Aid Commission application for a declaration, Court File No. 2018 01G 6062

The Newfoundland and Labrador Legal Aid Commission filed an application for a declaration under section 50(2) of ATIPPA, 2015 that it does not have to comply with the recommendations in Report A-2018-019, in which the OIPC had recommended the release of details of payments made to members of the private bar who represented clients on behalf of Legal Aid. Legal Aid had applied for a declaration that the

information was subject to solicitor-client privilege and was in any event personal information of the persons represented.

The application for a declaration was dismissed subject to the removal of any amounts paid in respect of representation not yet completed. While the information was presumptively privileged, the presumption was rebutted, the Court concluding that there was no reasonable possibility of the information leading directly or indirectly to the revelation of confidential communication.

The information in question was personal information in the sense of disclosing information about the financial status of an accused – assuming that an accused could be identified from other information available. But in the circumstances, disclosure of the fact of legal aid representation was not considered to be an unreasonable invasion of privacy.

Bragg Communications, et al v. College of the North Atlantic, Court File No. 2017 01G 0369
Bragg Communications v. College of the North Atlantic, Court File No. 2017 01G 1058
Persona Communications v. College of the North Atlantic, Court File No. 2017 01G 1059

These three matters are direct appeals by the Third Parties (Bragg Communications and Persona Communications) in relation to Third Party notices sent to them by the College of the North Atlantic.

The OIPC filed Notices of Intervention in these matters on January 19 and February 7, 2017. The Minister of Justice and Public Safety also filed Notices of Intervention in the consolidated matters. An Interlocutory Application opposing the intervention of OIPC and the Minister was filed by Bragg and Persona. That application was heard on February 26, 2018 and a decision was rendered on February 28, 2018 confirming that the Commissioner and the Minister have the right to intervene.

Regarding the first matter noted above, the appellant ultimately decided to discontinue the appeal and the other two appeals were dismissed by the Court.

Persona Communications O/A Eastlink v. Her Majesty in Right of Newfoundland and Labrador (Minister of Tourism, Culture, Industry and Innovation), Court File No. 2017 01G 6658.

This is a direct appeal by the Third Party, Persona Communications (operating as Eastlink), in relation to a notice it received from the Department of Tourism, Culture, Industry and Innovation. The Appellant filed a notice of discontinuance on December 2, 2019, concluding the matter.

CONCLUSION

As indicated in the Introduction, access to information complaints to this Office are less than five percent of the total number of requests filed with public bodies. For any system of this kind, covering a broad spectrum of public bodies with so many different mandates and types of records, being administered by individuals ranging from part-time town clerks to lawyers to full-time professional access and privacy coordinators, a 95 percent plus success rate is a real accomplishment. It should also be remembered that, of the small proportion of requests that come to this Office as complaints, one-half of those are resolved informally. Of the remainder, Commissioner's Reports issued by this Office fully agreed with the public body 70 percent of the time, and partially agreed a further 18 percent of the time.

What does all of that mean? It means we have an Act that works extremely well, but laws don't implement themselves. Above all, it means the people who do the heavy lifting, day in and day out, to make access to information and protection of privacy a reality, are doing an incredible job. While we at the OIPC could write a book about the hard work done by these dedicated public servants, a couple of examples are warranted for illustration purposes.

Rod Hynes is the ATIPP Coordinator for the Department of Natural Resources. For the past several years, this department has received a steadily increasing numbers of access requests, including 223 in 2018-2019 – the most of any department that year. Despite his significant workload, Mr. Hynes has made the access to information process at Natural Resources work smoothly and efficiently. The Department's compliance with ATIPPA, 2015's deadlines is exemplary: 204 of 223 requests in 2018-2019 were completed within 20 business days; of the remainder, extensions were provided by this Office on all but one file.

Not only are access to information requests completed on time, but applicants are generally satisfied – it is rare for this Office to receive an access complaint involving Natural Resources.

Working with Mr. Hynes from time to time, our Office has learned that he, and the department, are able to effectively process access to information requests due to Mr. Hynes' considerable knowledge of the Department and its lines of business and the development of strong working relationships with subject-matter experts, which helps facilitate timely location, retrieval and analysis of the information. This effectiveness is also only possibly because Mr. Hynes has the confidence of management when he makes decisions on disclosing, or withholding, information.

ATIPP Coordinator is only one of the many hats Central Health's **Tracey Steele** wears as Director of Information, Privacy and Regulatory Oversight. Ms. Steele continues to be consistent and proactive in her efforts to ensure staff and stakeholders are respecting best practices for the handling of personal information and personal health information. She has made a positive impression on OIPC staff who have worked with her, whether it be an inquiry call or a response on an investigation, with her thorough research and well-considered actions. She reflects in-depth understanding and commitment to the principles of privacy protection and access to information. She seeks to interpret access provisions according to their purpose – to facilitate access to information.

We believe that her attention to detail and her commitment to legislative compliance, all while considering the clients being served by Central Health and the importance of protecting their information, merits recognition.

Mr. Hynes and Ms. Steele are hardly alone in their dedication. As 2019-2020 concluded with a major snowstorm, and then the initial shock of the pandemic, we saw many instances of public body officials going above and beyond to serve the public, and for that we applaud you and we look forward to working with you in the year ahead to further the purposes of ATIPPA, 2015 and PHIA.

Appendix A

**Timelines (business days) for Access Complaints for the
2019-2020 Reporting Period under the
Access to Information and Protection of Privacy Act, 2015**

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Department of Transportation and Works	Informal	2019-11-22	14			2019-12-12	14
Nalcor Energy	Informal	2019-11-14	15			2019-12-05	15
Department of Justice and Public Safety	Informal	2019-09-26	16			2019-10-21	16
Town of Bay Roberts	Informal	2019-08-06	17			2019-08-30	17
City of Mount Pearl	Informal	2019-03-26	18			2019-04-22	18
Department of Fisheries and Land Resources	Informal	2019-04-10	21			2019-05-10	21
Public Procurement Agency	Informal	2019-03-06	22			2019-04-05	22
City of Mount Pearl	Informal	2019-11-15	22			2019-12-17	22
Town of Gander	Informal	2019-06-11	23			2019-07-15	23
Town of Gander	Informal	2019-07-31	25			2019-09-06	25
Town of Gander	Informal	2019-07-31	25			2019-09-06	25
Central Health	Informal	2019-11-01	27			2019-12-11	27
Newfoundland and Labrador English School District	Informal	2019-12-20	27			2020-02-10	27
Newfoundland and Labrador Liquor Corporation	Informal	2019-03-25	28			2019-05-03	28
Department of Finance	Informal	2019-04-29	28			2019-06-07	28
Department of Transportation and Works	Informal	2019-07-19	28			2019-08-29	28
Town of Grand Falls-Windsor	Informal	2019-06-06	29			2019-07-18	29
Workplace NL	Informal	2019-07-03	29			2019-08-14	29
Department of Justice and Public Safety	Informal	2019-02-20	30			2019-04-03	30
Office of the Premier	Informal	2019-04-29	30			2019-06-11	30
Eastern Health	Informal	2019-05-03	30			2019-06-17	30
Department of Justice and Public Safety	Informal	2019-03-05	31			2019-04-17	31
Department of Service NL	Informal	2019-04-11	31			2019-05-28	31
Department of Service NL	Informal	2019-05-31	31			2019-07-16	31
Department of Fisheries and Land Resources	Informal	2019-11-29	33			2020-01-28	33
Nalcor Energy	Informal	2019-04-11	34			2019-05-31	34
Department of Tourism, Culture, Industry, and Innovation	Informal	2019-08-14	34			2019-10-02	34
Town of Brighton	Informal	2019-05-29	35			2019-07-18	35
Department of Municipal Affairs and Environment	Informal	2019-03-29	38			2019-05-24	38
City of St. John's	Informal	2019-10-25	38			2019-12-19	38
Memorial University	Informal	2019-03-25	39			2019-05-21	39

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Harbour Main-Chapel's Cove-Lakeview	Informal	2019-06-04	39			2019-07-30	39
Department of Fisheries and Land Resources	Informal	2019-10-28	39			2019-12-23	39
Department of Transportation and Works	Informal	2019-10-04	41			2019-12-04	41
Department of Transportation and Works	Informal	2019-07-24	42			2019-09-24	42
Town of Paradise	Informal	2019-03-25	43			2019-05-27	43
Eastern Health	Informal	2019-07-09	44			2019-09-11	44
Department of Finance	Informal	2019-07-25	44			2019-09-27	44
Municipal Assessment Agency	Informal	2019-03-14	45			2019-05-17	45
Department of Transportation and Works	Informal	2019-07-30	45			2019-10-03	45
Town of Marystown	Informal	2019-08-30	46			2019-11-06	46
Office of the Chief Information Officer	Informal	2019-06-28	47			2019-09-06	47
Town of Portugal Cove-St. Philip's	Informal	2019-09-09	47			2019-11-15	47
Eastern Health	Informal	2019-10-07	48			2019-12-16	48
Memorial University	Informal	2019-11-19	50			2020-02-10	50
Memorial University	Informal	2019-11-19	50			2020-02-10	50
Town of Portugal Cove-St. Philip's	Informal	2019-07-25	51			2019-10-08	51
City of St. John's	Informal	2019-08-21	51			2019-11-04	51
Department of Transportation and Works	Informal	2019-11-25	51			2020-02-17	51
City of St. John's	Informal	2019-12-09	54			2020-03-05	54
Department of Tourism, Culture, Industry, and Innovation	Informal	2019-04-18	52	2019-06-21	8	2019-07-04	60
Nalcor Energy	Informal	2019-06-06	60			2019-09-03	60
Nalcor Energy	Informal	2019-04-11	49	2019-06-21	12	2019-07-10	61
Nalcor Energy	Informal	2019-04-11	49	2019-06-21	12	2019-07-10	61
Newfoundland and Labrador English School District	Informal	2019-04-30	62			2019-07-29	62
Public Procurement Agency	Informal	2019-10-16	64	2019-10-24		2020-01-28	64
Town of Roddickton-Bide Arm	Informal	2019-04-05	43	2019-06-07	22	2019-07-10	65
Town of Brighton	Informal	2019-08-14	65			2019-11-18	65
Eastern Health	Report	2019-03-11	15	2019-04-01	20	2019-04-30	35
Department of Service NL	Report	2019-02-25	33	2019-04-11	25	2019-05-17	58
Professional Fish Harvester's Certification Board	Report	2019-04-10	29	2019-05-23	30	2019-07-05	59

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Department of Municipal Affairs and Environment	Report	2019-04-17	44	2019-06-20	15	2019-07-12	59
Memorial University	Report	2019-09-24	45	2019-11-28	16	2019-12-20	61
Memorial University	Report	2019-10-17	55	2020-01-08	6	2020-01-20	61
Office of the Premier	Report	2019-02-06	32	2019-03-22	30	2019-05-06	62
Department of Justice and Public Safety	Report	2019-06-21	38	2019-08-16	25	2019-09-23	63
Department of Health and Community Services	Report	2019-10-23	33	2019-12-10	30	2020-02-03	63
Memorial University	Report	2019-05-14	39	2019-07-10	25	2019-08-15	64
Town of Stephenville	Report	2019-06-12	48	2019-08-21	16	2019-09-13	64
Office of the Chief Information Officer	Report	2019-06-25	46	2019-08-30	18	2019-09-26	64
Memorial University	Report	2019-07-31	34	2019-09-19	30	2019-11-01	64
Town of Happy Valley-Goose Bay	Report	2019-08-30	56	2019-11-21	8	2019-12-03	64
Department of Health and Community Services	Report	2019-10-22	34	2019-12-10	30	2020-02-03	64
Department of Health and Community Services	Report	2019-10-22	34	2019-12-10	30	2020-02-03	64
Town of Gander	Report	2019-02-11	42	2019-04-10	23	2019-05-14	65
Department of Tourism, Culture, Industry, and Innovation	Report	2019-04-04	51	2019-06-18	14	2019-07-09	65
Department of Children, Seniors and Social Development	Report	2019-04-23	45	2019-06-26	20	2019-07-25	65
Department of Justice and Public Safety	Report	2019-05-03	30	2019-06-17	35	2019-08-06	65
Department of Justice and Public Safety	Report	2019-05-17	31	2019-07-03	34	2019-08-21	65
Central Newfoundland Waste Management	Report	2019-05-22	51	2019-08-02	14	2019-08-23	65
Intergovernmental and Indigenous Affairs Secretariat	Report	2019-05-23	30	2019-07-05	35	2019-08-26	65
Department of Health and Community Services	Report	2019-05-24	63	2019-08-23	2	2019-08-27	65
Memorial University	Report	2019-05-28	50	2019-08-08	15	2019-08-29	65
Town of Stephenville	Report	2019-07-05	48	2019-09-13	17	2019-10-08	65
Town of Stephenville	Report	2019-07-05	48	2019-09-13	17	2019-10-08	65
Western Health	Report	2019-08-14	44	2019-10-17	21	2019-11-18	65
Eastern Health	Report	2019-08-22	28	2019-10-02	37	2019-11-26	65
College of the North Atlantic	Report	2019-10-08	51	2019-12-20	14	2020-01-14	65

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Memorial University	Report	2019-10-18	45	2019-12-23	20	2020-01-31	65
Department of Health and Community Services	Report	2019-10-21	35	2019-12-10	30	2020-02-03	65
Department of Health and Community Services	Report	2019-10-21	35	2019-12-10	30	2020-02-03	65
Department of Justice and Public Safety	Declined to Investigate	2019-09-10	1			2019-09-11	1
Office of the Chief Information Officer	Declined to Investigate	2019-09-17	2			2019-09-19	2
Department of Fisheries and Land Resources	Declined to Investigate	2019-04-05	9			2019-04-18	9
Department of Fisheries and Land Resources	Declined to Investigate	2019-04-05	9			2019-04-18	9
Professional Fish Harvester's Certification Board	Declined to Investigate	2019-08-06	9			2019-08-20	9
City of St. John's	Determination on Costs	2019-10-29	37			2019-12-20	37
Workplace NL	Formal Investigation not Conducted	2019-08-15	33			2019-10-02	33
Memorial University	Formal Investigation not Conducted	2019-11-21	41			2020-01-30	41
Town of Carbonear	Formal Investigation not Conducted	2019-10-18	45			2019-12-23	45
Department of Transportation and Works	Formal Investigation not Conducted	2019-11-05	58			2020-02-07	58
Department of Fisheries and Land Resources	Formal Investigation not Conducted	2019-10-21	63			2020-01-30	63
Department of Municipal Affairs and Environment	Withdrawn	2019-11-29	2			2019-12-03	2
Memorial University	Withdrawn	2020-03-11	5			2020-03-18	5
Town of Lourdes	Withdrawn	2019-10-07	7			2019-10-17	7
Department of Municipal Affairs and Environment	Withdrawn	2019-08-02	10			2019-08-19	10
Department of Finance	Withdrawn	2019-09-06	13			2019-09-25	13
Department of Health and Community Services	Withdrawn	2019-11-13	25	2019-12-10	6	2019-12-18	31
Department of Municipal Affairs and Environment	Withdrawn	2019-11-27	37			2020-01-30	37
Executive Council	Withdrawn	2019-04-03	34	2019-05-16	4	2019-05-23	38
Department of Health and Community Services	Withdrawn	2019-10-07	44	2019-12-10	6	2019-12-18	50

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Department of Health and Community Services	Withdrawn	2019-10-03	46	2019-12-10	6	2019-12-18	52
Department of Municipal Affairs and Environment	Withdrawn	2019-05-15	53			2019-07-31	53
Department of Fisheries and Land Resources	Withdrawn	2019-12-03	56			2020-03-03	56

Appendix B

**Timelines (business days) for Privacy Complaints for the
2019-2020 Reporting Period under the
Access to Information and Protection of Privacy Act, 2015**

<i>Public Body Name</i>	<i>Means of Resolution</i>	<i>Review Started</i>	<i>Date Complaint Resolved</i>	<i>Total Days</i>
Newfoundland and Labrador English School District	Informal	2019-05-06	2019-05-29	16
Department of Justice and Public Safety	Informal	2019-04-29	2019-05-24	18
Royal Newfoundland Constabulary	Informal	2019-04-29	2019-05-24	18
Newfoundland and Labrador English School District	Informal	2019-03-20	2019-05-03	31
Human Resource Secretariat	Informal	2019-08-22	2019-10-18	39
Department of Justice and Public Safety	Informal	2019-08-08	2019-10-08	42
Royal Newfoundland Constabulary	Informal	2019-06-07	2019-08-21	51
Town of Aquaforte	Informal	2019-02-28	2019-05-17	55
College of the North Atlantic	Informal	2019-03-29	2019-06-20	57
Department of Municipal Affairs and Environment	Informal	2019-01-11	2019-04-03	58
Office of the Premier	Informal	2019-01-11	2019-04-03	58
Memorial University	Informal	2019-04-01	2019-06-25	59
Human Resource Secretariat	Informal	2019-01-21	2019-04-17	62
Royal Newfoundland Constabulary	Informal	2019-02-06	2019-05-06	62
Nalcor Energy	Informal	2019-07-02	2019-10-07	67
Department of Municipal Affairs and Environment	Informal	2019-02-11	2019-05-23	71
Newfoundland and Labrador Housing Corporation	Informal	2019-07-23	2019-11-05	72
Newfoundland and Labrador English School District	Informal	2019-02-15	2019-06-17	84
Town of Brigus	Informal	2019-06-26	2019-10-31	87
St. John's Transportation Commission	Informal	2019-07-17	2019-11-25	89
Royal Newfoundland Constabulary	Report	2018-12-11	2019-04-16	89
Town of Aquaforte	Report	2019-06-25	2019-11-04	91
Department of Service NL	Declined to Investigate	2019-12-06	2019-12-23	11
Eastern Health	Formal Investigation not Conducted	2019-07-24	2019-07-30	4

<i>Public Body Name</i>	<i>Means of Resolution</i>	<i>Review Started</i>	<i>Date Complaint Resolved</i>	<i>Total Days</i>
Memorial University	Formal Investigation not Conducted	2019-05-24	2019-06-07	10
City of Mount Pearl	Formal Investigation not Conducted	2020-01-09	2020-03-18	41
Department of Service NL	Formal Investigation not Conducted	2019-09-24	2019-12-17	58
Town of Kippens	Formal Investigation not Conducted	2019-11-05	2020-02-27	72
Human Resource Secretariat	Formal Investigation not Conducted	2019-01-22	2019-05-06	73
Department of Children, Seniors and Social Development	Formal Investigation not Conducted	2019-01-22	2019-05-16	81
Department of Children, Seniors and Social Development	Formal Investigation not Conducted	2019-10-21	2020-03-11	92
Newfoundland and Labrador Housing Corporation	Formal Investigation not Conducted	2019-10-16	2020-03-09	93
Newfoundland and Labrador English School District	Formal Investigation not Conducted	2019-05-14	2019-10-16	106
City of St. John's	No Jurisdiction	2019-07-29	2019-07-30	1
Department of Children, Seniors and Social Development	No Jurisdiction	2020-02-26	2020-03-03	4
Department of Justice and Public Safety	No Jurisdiction	2019-07-22	2019-09-03	29
Royal Newfoundland Constabulary	Withdrawn	2019-06-20	2019-06-20	0
Royal Newfoundland Constabulary	Withdrawn	2019-06-10	2019-06-13	3

Office of the Information and Privacy Commissioner
Sir Brian Dunfield Building, 3rd Floor, 2 Canada Drive
P.O. Box 13004, Station "A", St. John's, NL A1B 3V8
t (709) 729-6309 f (709) 729-6500 e commissioner@oipc.nl.ca



www.oipc.nl.ca

