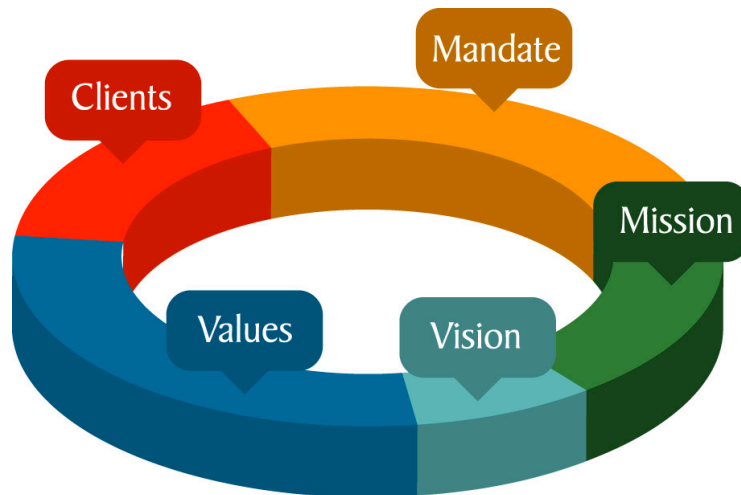




OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR



ACTIVITY PLAN 2020-2023



Message from the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner of Newfoundland and Labrador (OIPC) is accountable to the House of Assembly of the province and to the people of Newfoundland and Labrador.

This Activity Plan has been prepared in accordance with Government's commitment to accountability as outlined in the **Transparency and Accountability Act** (the "Act"). The Act provides the legislative framework for strengthening accountability of government entities through multi-year performance-based plans and annual performance reports that are presented to the House of Assembly.

It allows us to shape and measure our performance for the current year and will serve as a foundation for the future.

OIPC is designated as a Category 3 Government Entity under the **Transparency and Accountability Act**. As such, OIPC is required to prepare an Activity Plan that sets a clear direction for activities for the next three years, taking into account its legislative framework and mandate. All planned activity will of course be impacted by the availability, or lack thereof, of future resources.

In the year preceding this planning period, workload in regard to most duties saw significant growth, including a 148% increase in applications for time extensions, a 72% increase in applications for disregards, a 14% increase in the number of **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) complaints received, and a 9% increase in

the number of **Personal Health Information Act (PHIA)** complaints received. The second five-year statutory review of ATIPPA, 2015 is underway and it is anticipated that either amendments stemming from the first five-year statutory review of PHIA and/or the launch of the second five-year review will occur during the time covered by this activity plan.

OIPC, its organization and resources, will continue to reflect and respond to the changing access and privacy environment as well as emerging issues related to personal health information and will monitor related issues moving forward.

As the Information and Privacy Commissioner, I recognize my obligation under the **Transparency and Accountability Act** and I am accountable for the preparation of this Plan and for the achievement of the objectives contained therein.

A handwritten signature in blue ink, appearing to read 'Michael Harvey', with a long horizontal flourish extending to the right.

Michael Harvey
Information and Privacy Commissioner

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OVERVIEW

The Office of the Information and Privacy Commissioner (OIPC) was created by statute, the **Access to Information and Protection of Privacy Act (ATIPPA)**, which was proclaimed on January 17, 2005. The privacy provisions of the Act were not initially in force, but were proclaimed on January 16, 2008. The **Personal Health Information Act (PHIA)** was proclaimed on April 1, 2011. The original ATIPPA was repealed and replaced by ATIPPA, 2015, which came into force on June 1, 2015.

Commissioner Michael Harvey was appointed in August 2019 for a six-year term. The Commissioner is an independent Officer of the House of Assembly and reports directly to the Legislature through the Speaker of the House. Staff members of the Office of the Information and Privacy Commissioner are part of the Public Service, Government of Newfoundland and Labrador. OIPC has oversight responsibilities under ATIPPA, 2015 and PHIA.

Under ATIPPA, 2015, OIPC is responsible for protecting and upholding access to information and protection of privacy rights. ATIPPA, 2015 provides individuals with the right of access to information in the custody or control of public bodies, including provincial government departments, Crown corporations, municipalities, and health care and education bodies. There is also a right of correction of personal information held by public bodies. The privacy provisions (Part III) establish rules for the collection, use and disclosure of personal information by public bodies. ATIPPA, 2015 established significant new education and advocacy roles for the Office. There are over 400 public bodies that are subject to ATIPPA, 2015.

The second five-year statutory review of ATIPPA, 2015 has been announced and it is possible that amendments will be made during the time period covered by this activity plan.

Under PHIA, the Office is responsible for upholding and protecting rights relating to personal health information in the control or custody of custodians. These include the rights of access to and correction of personal health information and the requirement that personal health

information must be protected appropriately by custodians. PHIA also establishes rules which must be followed by custodians relating to the collection, use and disclosure of personal health information. There are thousands of custodians of personal health information that are subject to PHIA, including health professionals in private practice such as physicians, pharmacists and dentists, the Regional Health Authorities, the Newfoundland and Labrador Centre for Health Information, and many others.

The first statutory legislative review of PHIA was announced by the Minister of Health and Community Services in December 2016 and was conducted by a Review Committee chaired by Dr. David Morgan. It is a legislative requirement that PHIA undergo a review every five years. Many stakeholders expended significant time and effort in contributing to the review process, as did the Review Committee. The PHIA Statutory Review Committee's final report was published in May 2017. No legislative changes have yet been announced as a result of this comprehensive review, however OIPC looks forward to this important item being actioned by government in the near future. The 2017 PHIA Review Report is available at <http://www.PHIAreviewnl.ca>.

During the time-period covered by this activity report, it is possible that amendments stemming from the first five-year review will be proclaimed and/or that the second five-year review will be announced.

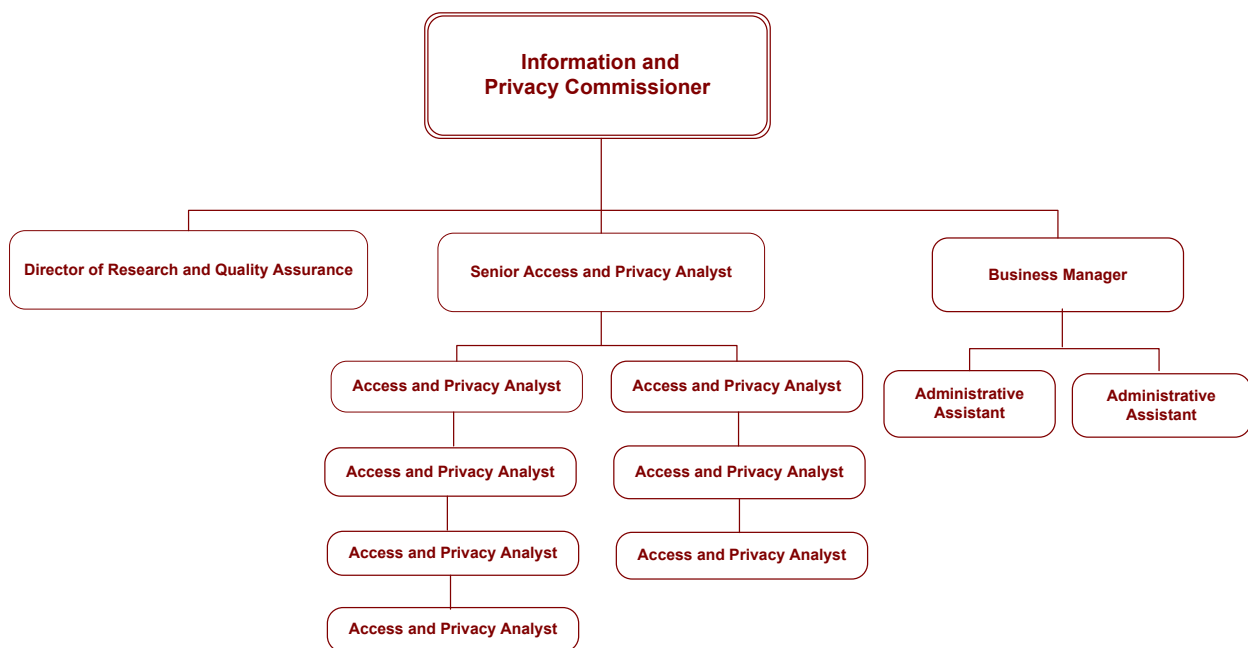
Based on experience with past statutory reviews, it is expected that there will be significant demands on the resources of OIPC to work collaboratively with lead Departments as well as other major stakeholders to ensure that the necessary resources are updated or developed to reflect any changes. This will include developing and updating guidance materials, manuals, online training, etc.

Despite any changes which may ultimately be made to ATIPPA, 2015 or to PHIA, it is necessary for OIPC to continue with its oversight activities as currently prescribed. In particular, one need identified is to provide further guidance and outreach to custodians, especially those operating in the private sector with whom OIPC's relationship is not as well

established as it is for the regional health authorities and some of the other large public sector custodians.

Additionally, carrying over into this planning cycle are an increasing number of court cases relating to ATIPPA, 2015 that have been initiated during the past few years which expend significant time and resources. The outcome of these cases could also have a substantial impact on the operation of OIPC.

For the year ending March 31, 2019, the annual budget for the Office is \$1,337,200. OIPC's website, www.oipc.nl.ca provides general information about the Office, information about the complaint process, and copies of Reports in pdf format. In addition, the website contains links to various forms for making a complaint, filing an access request, or reporting a privacy breach. The website also contains a number of resources and guidance documents, newsletters, information about promotional and education events presented or supported by the Office, the Twitter feed, links to relevant Court decisions, information about past legislative reviews, as well as links to other provincial and federal oversight offices, and more.



The Office has a total of 13 staff (61.5% female, 38.5% male). These include: the Commissioner, Director of Research and Quality Assurance, Senior Access and Privacy Analyst, seven Access and Privacy Analysts, Business Manager, and two Administrative Assistants.

The House of Assembly Management Commission approved the budget of \$1,375,600 for the Office of the Information and Privacy Commissioner for fiscal year 2020-2021. The details are noted below:

Salaries	\$1,157,200
Employee Benefits	\$4,500
Transportation and Communications	\$32,800
Supplies	\$6,700
Professional Services	\$50,000
Purchased Services	\$122,400
Property, Furnishings and Equipment	\$2,000
TOTAL	\$1,375,600

Contact Information:

P. O. Box 13004, Station "A"
 St. John's, NL
 A1B 3V8

Telephone: (709) 729-6309
 Facsimile: (709) 729-6500
 Email: commissioner@oipc.nl.ca

MANDATE

OIPC's mandate is derived from the provisions of ATIPPA, 2015 and PHIA.

Under ATIPPA, 2015 OIPC's mandate includes:

- being an advocate for the public right of access to information;
- being an advocate for protection of privacy;
- receiving privacy breach reports which public bodies must forward to OIPC on a mandatory basis and providing feedback and consultation to public bodies in their breach responses;
- educating public bodies about compliance with the access provisions of the Act, including the duty to assist, in order to facilitate timely and user friendly application of the Act;
- investigating complaints in relation to a decision, act, or failure to act of a public body that relates to an access to information request;
- conducting privacy investigations in response to complaints or at the Commissioner's own motion;
- receiving, investigating and making a final determination in relation to time extension requests from public bodies;
- receiving, investigating and making a determination in relation to a request from a public body that it be allowed to disregard an access to information request from an applicant;
- receiving an application from a person who has filed an access request to revise costs associated with the request and to make a final determination regarding the costs which may be charged by the public body;
- receiving an application from a person who has filed an access request to review a decision by the head of a public body not to waive the payment of costs associated with the request and to make a final determination in the matter;

- making recommendations to public bodies to ensure compliance with the Act and regulations and to better achieve the objectives of the Act;
- informing and educating the public about the Act;
- monitoring and auditing the practices and procedures employed by public bodies in carrying out their responsibilities and duties under the Act;
- reviewing and authorizing the collection of personal information from sources other than the individual the information is about;
- reviewing privacy impact assessments prepared by public bodies;
- receiving comments from the public about the administration of the Act and about matters concerning access to information and the confidentiality, protection, and correction of personal information;
- commenting on the implications for access to information and protection of privacy of proposed legislation, programs, and practices of public bodies;
- 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; and
- making recommendations to public bodies or the Minister responsible for this Act about the administration of the Act.

Under PHIA, OIPC's mandate includes:

- investigating a decision, act or failure to act of a custodian that relates to an access request for personal health information or a request for correction of personal health information;
- investigating complaints where an individual believes on reasonable grounds that a custodian has contravened or is about to contravene a provision of PHIA or the

regulations with respect to his or her personal health information or the personal health information of another, including privacy breaches;

- making recommendations to support 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; and
- commenting on the implications for the confidentiality of personal health information of using or disclosing personal health information for records linkage or using information technology in the collection, storage, use or transfer of personal health information.

LINES OF BUSINESS

In delivering its mandate, OIPC provides the following lines of business:

Investigations

OIPC conducts investigations under both ATIPPA, 2015 and PHIA. Under ATIPPA, 2015, OIPC receives and investigates complaints from applicants and third parties with respect to access to information requests; complaints from individuals about a failure to correct personal information; and complaints about an improper collection, use or disclosure of personal information. Under PHIA, OIPC receives and investigates complaints respecting the failure of a custodian to grant access to an applicant's own personal health information or to correct an applicant's personal health information. OIPC also investigates complaints under PHIA, including privacy breach complaints, from an individual who believes on reasonable grounds that any provision of PHIA or its regulations has been or is about to be contravened. OIPC also investigates

complaints about a fee charged for access to information under ATIPPA, 2015 and PHIA. Additionally the Commissioner may initiate an investigation on his or her own motion.

Advocacy and Compliance

In addition to conducting investigations stemming from complaints, ATIPPA, 2015 and PHIA establish many additional powers and duties for OIPC. The Commissioner uses the tools provided under the legislation to ensure that public bodies and custodians comply with their legislative requirements. These tools include conducting audits; receiving breach reports; initiating a special report to the legislature; commenting on the implications for access or privacy of proposed legislative schemes or programs; educating public bodies and custodians; and offering outreach to public bodies, custodians and other stakeholders such as groups and organizations representing the interests of custodians and public bodies. Public bodies and custodians also contact OIPC to seek advice, guidance and information about their responsibilities under the law. As part of the oversight function, OIPC also receives requests from public bodies under ATIPPA, 2015 for approval of an extension of time to respond to an access request or permission to disregard a request for access.

The Office also ensures that the public is aware of its rights in accordance with ATIPPA, 2015 and PHIA, including the rights of access to information, correction of personal information, and protection of privacy, including the right to file a complaint or appeal. Further, ATIPPA, 2015 gave OIPC a clear mandate to educate public bodies about the Act and to become an advocate for access and privacy.

OIPC makes information available through resources developed and posted on the website, as well as through public presentations to interested groups, media interviews by the Commissioner, and the OIPC twitter account @OIPCNL. Members of the public, public bodies and custodians are invited to contact OIPC

to seek information about any aspect of the operation of ATIPPA, 2015, PHIA and our Office.

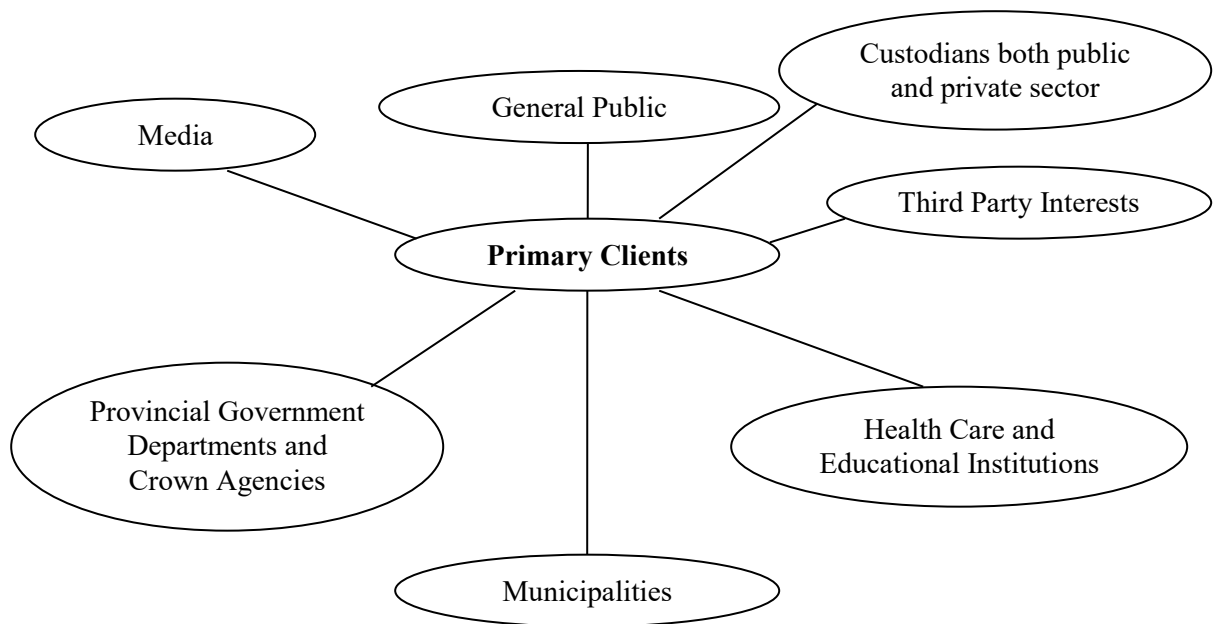
VALUES

OIPC values its role as an independent supporter and advocate for the access to information and protection of privacy rights of the citizens of the province. Every effort is taken to ensure integrity such that we are trusted by those served, as well as by public bodies and custodians who are bound by the laws OIPC oversees. The following actions flow from these value statements and will guide OIPC moving forward.

Value	Action Statements
Independence	The conduct of investigations shall be independent of any conflict of interest or other inappropriate influences.
Integrity	Every effort will be made to provide timely, accurate, impartial and unbiased advice and recommendations and to treat information in our trust with the proper level of confidentiality.
Judgment	Professional knowledge and judgment will be exercised in interpreting policies, practices and procedures to ensure compliance with ATIPPA, 2015 and PHIA.
Respect	The ideas and opinions of others will be listened to and considered and staff of OIPC will work collaboratively with one another to achieve results.

PRIMARY CLIENTS

The Office of the Information and Privacy Commissioner defines its primary clients as the people of the province and the entities whose activities OIPC oversees, as well as any others who are granted rights or bear responsibilities under ATIPPA, 2015 and PHIA. These clients are made up of several groups, including:



VISION

Our vision is one where the explicit requirements as well as the values and philosophy underpinning ATIPPA, 2015 and PHIA are upheld through the legislative oversight efforts of this Office, with the goal that all public bodies and custodians subject to these laws operate at the highest level of compliance reasonably possible.

ISSUES

Issue 1 – Oversight

OIPC is accountable for a number of oversight activities, including requests for extensions and disregards, informal resolution of complaints, formal resolution of complaints, own motion investigations and audits.

OIPC conducts investigations under both ATIPPA, 2015 and PHIA. Individuals are able to file a complaint with OIPC if they are not satisfied with the response to an access or correction request, if they have been the victim of a privacy breach or if they have concerns regarding compliance with the privacy provisions of either Act. Investigations are also conducted when the Commissioner is considering using the offense provision of the Act or launches an own motion investigation or audit into a specific matter.

When ATIPPA, 2015 came into force on June 1, 2015, following a comprehensive review process, legislated timelines were identified for a number of activities, including OIPC investigations. The Act provides three days for the Commissioner to decide to approve or reject an application to disregard a request (section 21) or an application for an extension (section 23). Investigations involving an access or correction request must be completed within 65 business days (section 46) and privacy complaints must be completed in a time that is as expeditious as possible (section 74). To assist in meeting these timelines, OIPC developed and published guidelines for public bodies to better ensure the timelines and expectations are documented.

The second five-year statutory review of ATIPPA, 2015 is currently underway and it is possible that any amendments will be passed and proclaimed into force during the period covered by this Activity Plan.

PHIA also contains timelines for investigations. The Commissioner's review of complaints involving access or correction requests, or complaints involving allegations of breaches of the Act or Regulations, must be completed within 120 days of receipt (section 72). As PHIA

has already been subject to its first five-year statutory review, it is possible that amendments resulting from that review could impact timelines. While the [final report](#) was presented to the Department of Health and Community Services by the Chair of the Review Committee, Dr. David Morgan, in 2017, proposed amendments have yet to be announced. It is possible that any amendments will be passed and proclaimed into force during the period covered by this Activity Plan.

If amendments are proclaimed, it is expected that there will be significant demands on the resources of OIPC to work collaboratively with the Department as well as other major stakeholders to ensure that the necessary resources are updated or developed to reflect the changes. This will include developing and updating guidance materials, manuals, online training, etc. Any such activities flowing from the legislative review will be in addition to normal legislative oversight activities, which currently place significant demands on the Office.

Objective 1: By March 31, 2021 the Office of the Information and Privacy Commissioner will have provided oversight activities to support compliance with ATIPPA, 2015 and PHIA.

Indicators:

- Monitored oversight activities
- Identified opportunities to improve oversight activities
- Implemented improvements to oversight activities

Objective 2: By March 31, 2022 the Office of the Information and Privacy Commissioner will have begun work to improve oversight activities to support compliance with ATIPPA, 2015 and PHIA, including prioritizing initiatives.

Objective 3: By March 31, 2023 the Office of the Information and Privacy Commissioner will have continued work to improve oversight activities to support compliance with ATIPPA, 2015 and PHIA.

Issue 2 – Outreach

Both ATIPPA, 2015 and PHIA contain an explicit mandate to inform the public about each statute. It is important for residents to understand their rights under both Acts and OIPC takes its responsibilities to educate the public about ATIPPA, 2015 and PHIA very seriously. Significant resources and effort have been invested by OIPC to ensure, to the extent possible, that the people of the province receive appropriate, necessary and timely information on ATIPPA, 2015 and PHIA, and these efforts will be built upon during the period of this Activity Plan. While efforts to date have been solid, it is clear that these efforts need greater coordination and emphasis in order to fulfil the mandate of developing and delivering an educational program.

ATIPPA, 2015 also gives OIPC a clear mandate to educate public bodies about the Act and to become an advocate for access and privacy. Since proclamation of ATIPPA, 2015, significant efforts have been made to engage with public bodies and to make every effort to try to ensure that they have the knowledge and skills necessary to comply with the law. As the second five-year statutory review of ATIPPA, 2015 is currently underway, it is possible that amendments will be made during this three-year activity plan. OIPC will be ready to modify any existing resources and, if necessary, develop new resources to ensure public bodies are aware of any new or modified obligations.

PHIA was proclaimed into force on April 1, 2011 and has undergone its first five-year statutory review. There are thousands of custodians subject to this legislation, in both the public and private sectors. It is possible that the Department of Health and Community Services will act on recommendations stemming from the review and make amendments to PHIA during this three-year activity plan. OIPC will be ready to modify any existing resources and, if necessary, develop new resources to ensure custodians are aware of any new or modified obligations.

Objective 1: By March 31, 2021 the Office of the Information and Privacy Commissioner will have assessed existing resources and communication tools for both ATIPPA, 2015 and PHIA and identified areas for improvement.

Indicators:

- Reviewed existing resources and communication tools.
- Reviewed resources and communication tools from other jurisdictions.
- Developed plan to ensure effective communications.

Objective 2: By March 31, 2022 the Office of the Information and Privacy Commissioner will have researched communication tools and identified new options for delivery.

Objective 3: By March 31, 2023 the Office of the Information and Privacy Commissioner will have enhanced the resources available under both the ATIPPA, 2015 and PHIA.

Issue 3 – Modernizing the Work

The calendar year 2020 has presented challenges; the City of St. John’s and other municipalities across the province declared States of Emergency in January after an exceptional snowstorm. In March the Minister of Health and Community Services declared COVID-19 a public health emergency under the **Public Health Protection and Promotion Act**. Both events affected custodians and public bodies, as well as the usual operations of OIPC. As the public health emergency continues, many public bodies and custodians have adjusted to alternate service delivery solutions, including virtual.

This new reality has changed how OIPC engages with stakeholders, from public bodies and custodians to the public. It has also necessitated change in internal processes, as OIPC has tried to ensure continuity of service through remote working when needed. These events emphasize the need for OIPC to be flexible and to be able to quickly adapt to a changing operating environment. With this in mind, OIPC intends to examine its service delivery and internal processes to ensure that oversight activities and stakeholder engagement continue as required under ATIPPA, 2015 and PHIA.

Objective 1: By March 31, 2021 the Office of the Information and Privacy Commissioner will have examined existing business processes and identified areas that could benefit from alternate delivery methods during the public health emergency.

Indicators:

- Reviewed existing business processes and identified areas that could benefit from alternate delivery methods.
- Modified business processes as appropriate.
- Updated existing policies or develop new policies to address the modified processes.

Objective 2: By March 31, 2022 the Office of the Information and Privacy Commissioner will have begun work to modify business processes and identify options for remote service delivery.

Objective 3: By March 31, 2023 the Office of the Information and Privacy Commissioner will have completed priority work to modernize the workplace to allow service delivery remotely.