



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Annual Performance Report

2019-2020

www.oipc.nl.ca
1.877.729.6309



December 1, 2020

Message from the Information and Privacy Commissioner

This Annual Performance Report has been prepared in accordance with Government's commitment to accountability as outlined in the **Transparency and Accountability Act**. This Act provides a legislative framework for strengthening accountability of government entities through multi-year performance-based plans and annual performance reports presented to the House of Assembly.

I am pleased to present the Office of the Information and Privacy Commissioner's Annual Performance Report for April 1, 2019 to March 31, 2020.

As Commissioner, I am accountable for the results reported herein and for any variances from the objectives outlined in the 2017-2020 Activity Plan.

A handwritten signature in blue ink, appearing to read 'Michael Harvey', written over a faint, illegible background.

Michael Harvey
Information and Privacy Commissioner

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OVERVIEW

In delivering its mandate, the Office of the Information and Privacy Commissioner (OIPC) provides the following lines of business:

- Investigations
- Advocacy and Compliance
- Oversight

OIPC oversees compliance with and protects and promotes rights and obligations established under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) and the **Personal Health Information Act** (PHIA).

Number of Employees

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

Physical Location

OIPC is located in the Sir Brian Dunfield Building, 2 Canada Drive, St. John's, NL.

Budget

The 2019-2020 budget for OIPC was \$1,337,200. Details of revenues and expenditures are on page 24 of this Report.

An annual listing of all employees who receive total compensation of more than \$100,000 a year can be found on OIPC's website at <http://www.oipc.nl.ca/compensation>. This listing is published in accordance with the **Public Sector Compensation Transparency Act**.

MANDATE

The mandate of OIPC is derived from the provisions of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) and the **Personal Health Information Act** (PHIA).

OIPC's ATIPPA, 2015 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 on their breach responses;
- educating public bodies about compliance in order to help prevent the unauthorized collection, use or disclosure of personal information by public bodies;
- educating public bodies about compliance with the access provisions of ATIPPA, 2015, including the duty to assist, in order to facilitate timely and user-friendly application of ATIPPA, 2015;
- 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 making 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 making a final determination in the matter;
- making recommendations to public bodies to ensure compliance with ATIPPA, 2015 and to better achieve the objectives of ATIPPA, 2015;

- informing and educating the public about ATIPPA, 2015;
- monitoring and auditing the practices and procedures employed by public bodies in carrying out their responsibilities and duties under ATIPPA, 2015;
- 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 ATIPPA, 2015 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 ATIPPA, 2015 about the administration of ATIPPA, 2015.

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 in respect of 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

Under ATIPPA, 2015, the investigative mandate of OIPC expanded considerably. OIPC is specifically mandated to conduct the following types of investigations:

- complaints from access to information applicants relating to a decision, act or failure to act by the head of a public body in response to an access to information request;
- complaints from access to information applicants about a cost estimate for an access request or a refusal to grant a waiver of costs to be charged for access to information;
- complaints about a failure or refusal by a head of a public body to correct personal information; and
- complaints from members of the public relating to the collection, use or disclosure of personal information by a public body.

The Commissioner may also initiate, on his or her own motion, an investigation relating to the collection, use or disclosure of personal information by a public body.

Under PHIA, OIPC investigates complaints from individuals that a custodian has denied a request for access to personal health information or a request for correction of personal health information. OIPC also investigates complaints where an individual believes that a custodian has contravened or is about to contravene a provision of PHIA or the Regulations in respect to his or her personal health information or the personal health information of another.

Advocacy and Compliance

Under ATIPPA, 2015, a number of new or expanded roles were prescribed for OIPC. In order to fulfil this new and expanded mandate as efficiently and effectively as possible, it was determined that this role be made a separate and distinct line of business. This line of business incorporates the following parts of OIPC's mandate:

1) Education (for the general public; public bodies under ATIPPA, 2015; and custodians under PHIA)

ATIPPA, 2015 prescribes two specific mandates in relation to education – for public bodies, as well as for the general public. PHIA also mandates that the Commissioner inform the public about the Act. New guidance material is continually under development, with priority being given to issues that appear to be the most challenging for the public as well as public bodies and custodians.

OIPC strives to ensure that members of the public are aware of their rights of access to information and protection of privacy, and how those rights are protected and supported. As appropriate, OIPC informs the public about these rights through public commentary and education and awareness presentations aimed at explaining the administration and operation of ATIPPA, 2015, PHIA and the Office. Additionally, all Reports issued by the Commissioner under ATIPPA, 2015 and PHIA are published on the OIPC website. OIPC also uses its Twitter account to broaden public awareness of privacy and access to information issues.

OIPC is very much engaged in education and training for public bodies. In this regard, OIPC continues to issue newsletters and to offer presentations to various audiences, including groups of Access and Privacy Coordinators and senior leadership within public bodies. OIPC has also developed a wide variety of guidance documents to assist public bodies in interpreting ATIPPA, 2015. These are sent to Access and Privacy Coordinators by email, discussed in presentations, summarized in the newsletter and posted on OIPC's website.

During much of 2019-2020, 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 has been presented biennially. However, the COVID-19 pandemic has necessitated the postponing of this event.

2) Audit

An important feature of ATIPPA, 2015 is OIPC's audit function, which provides the broad mandate to audit the practices and procedures of public bodies related to any aspect of how they carry out their role and functions regarding ATIPPA, 2015. To accomplish this, in-house expertise has been developed based largely on intensive study of experiences from other jurisdictions, in particular, British Columbia. While there were two active audits in 2019-20, progress has been delayed by a number of factors, including the complexity of the audit material and competing priorities, and other work that is subject to legislated timelines. The audit is an important oversight tool because it allows us to identify compliance risks in such a way as to help public bodies avoid privacy breaches or other non-compliance incidents in the future, and to encourage and support best practices. Information about OIPC's audit program is available on the website.

3) Privacy Impact Assessment (PIA) Review

This is another important feature of ATIPPA, 2015. Specific circumstances are prescribed in ATIPPA, 2015 for when OIPC is required to review a PIA. Ministers of all departments or branches of executive government are now required to complete a PIA, or preliminary PIA indicating that a full PIA is not required, in conjunction with the development of programs or services. If the PIA involves a common or integrated program or service, the privacy assessment must be shared with OIPC for review and comment. Public bodies sometimes request that OIPC review a PIA or preliminary PIA even if not required by law, to assist in satisfying themselves that the program or service is in compliance with ATIPPA, 2015. Information about PIA expectations is available on OIPC's website.

4) Privacy Breach Reporting

Yet another role prescribed by ATIPPA, 2015 is a requirement for public bodies to report all privacy breaches to OIPC. This requirement provides important information to OIPC about privacy compliance issues and it helps OIPC to identify emerging or repeating patterns in privacy breach incidents. OIPC is thus able to ensure timely topics for presentations, newsletters and new guidance documents. If a concerning pattern is noticed in such reports, direct follow-up with the public body occurs to offer assistance, targeted training and to learn more about root causes.

Oversight

OIPC oversees compliance by public bodies with ATIPPA, 2015 and custodians with PHIA. OIPC has a wide variety of general oversight functions and mandates, outlined above under the “Mandate” section. These range from receiving and deciding on requests from public bodies for time extensions to reviewing and commenting on draft legislation where there may be implications for access to information or protection of privacy.

OTHER KEY STATISTICS

ATIPPA, 2015 Access

In this past year OIPC experienced an increase in the number of access to information complaints pursuant to ATIPPA, 2015 compared to numbers from 2018-2019. This is not surprising, as the number of access requests received by public bodies has also increased. OIPC has a legislated time limit of 65 business days from the date a complaint is received to resolve the matter informally or produce a Commissioner’s Report, a requirement that continues to be met. In most cases where Reports are issued, this is done prior to day 65, however complaints are typically resolved informally even sooner than that.

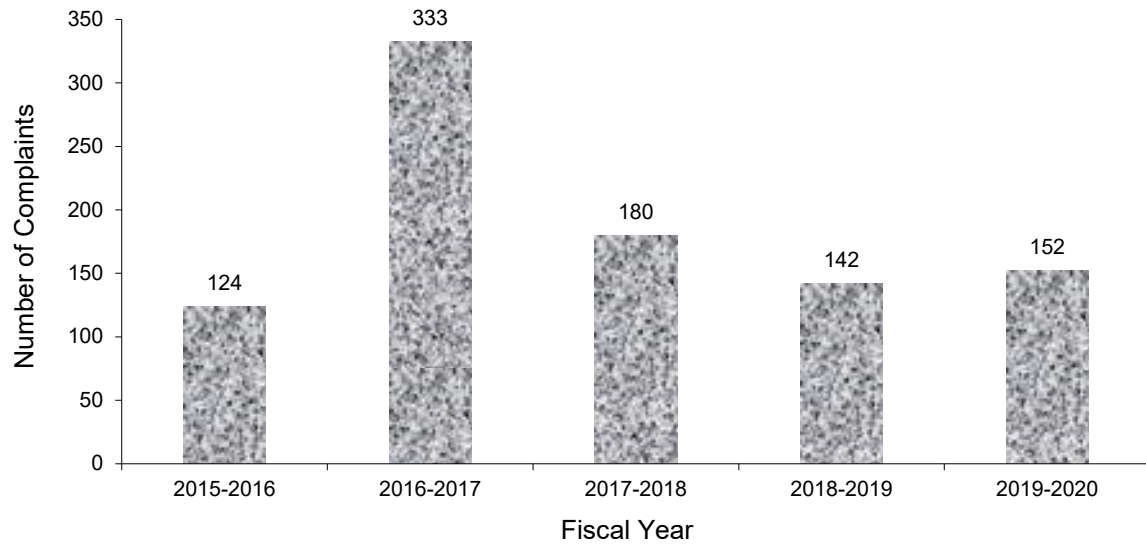


Figure 1: Total Active ATIPPA, 2015 Access Complaints

ATIPPA, 2015 Privacy

Privacy breach complaints continue to present a significant challenge for OIPC, and the current number of active privacy complaint files represents little movement over a three-year period. These investigations are often complex and time consuming. They can involve site visits and on rare occasions the engagement of technical experts. OIPC staff continue to build their expertise in privacy investigations in order to meet this challenge, through professional development opportunities and knowledge sharing.

Privacy complaints can also lead to offence prosecutions and 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, OIPC has been advised that the Crown is considering an appeal of that verdict.

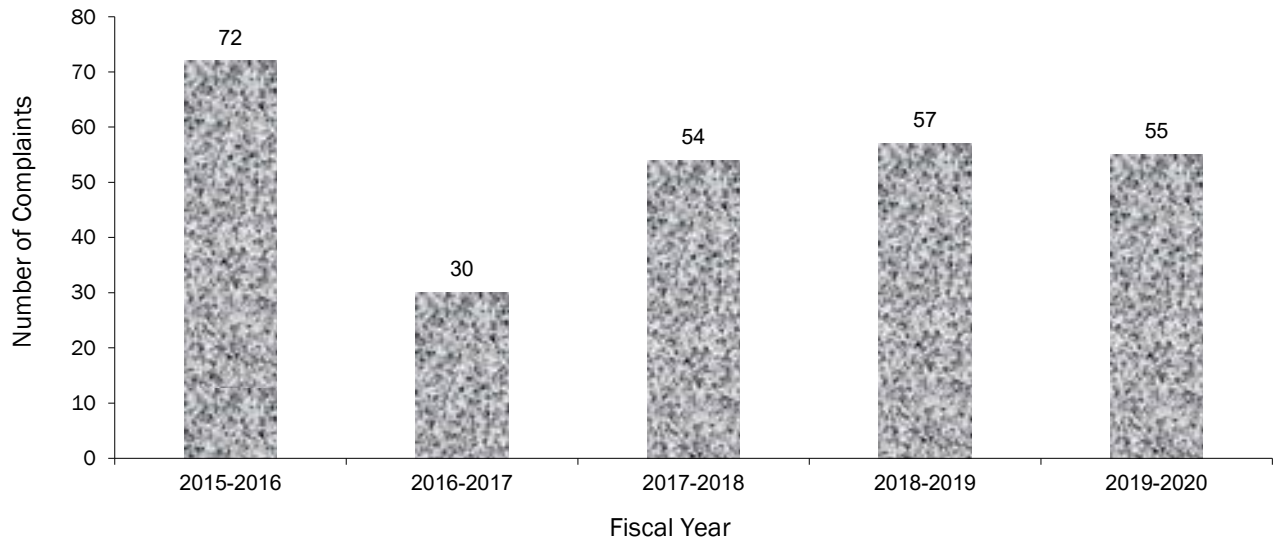


Figure 2: Total Active ATIPPA, 2015 Privacy Complaints

PHIA Access/Corrections

Complaints under PHIA related to access or corrections amount to a relatively small part of the investigative workload of OIPC. In 2019-2020, as in 2018-2019, there were eight active files. In addition to the complaints received this year, OIPC continues to receive a number of inquiries from custodians and members of the public about access to personal health information or correction of personal health information. The information and advice provided typically results in the correct application of PHIA, thereby reducing the likelihood of complaints.

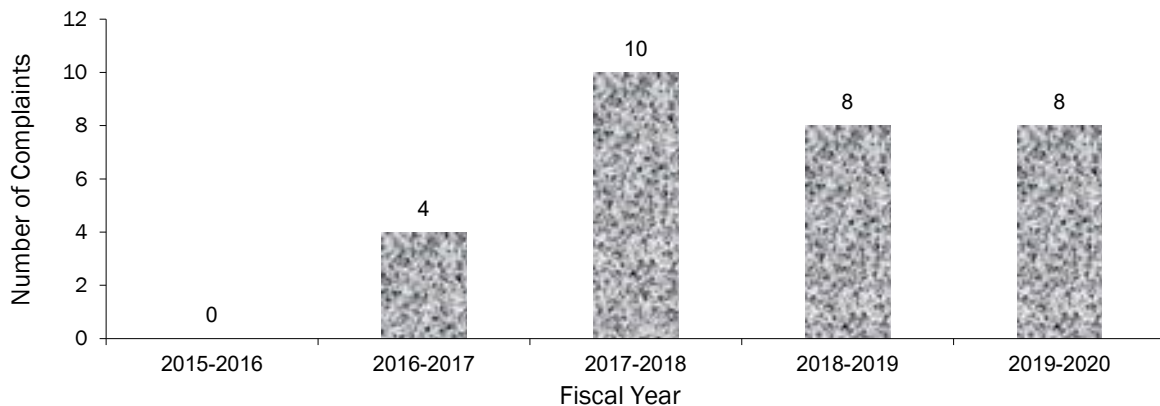


Figure 3: Total Active PHIA Access/Corrections Complaints

PHIA Privacy

As with ATIPPA, 2015 privacy investigations, PHIA privacy investigations are often very complex and technical. Many investigations require an understanding of electronic health records systems. The number of complaints received in 2019-2020 remained steady with the year prior.

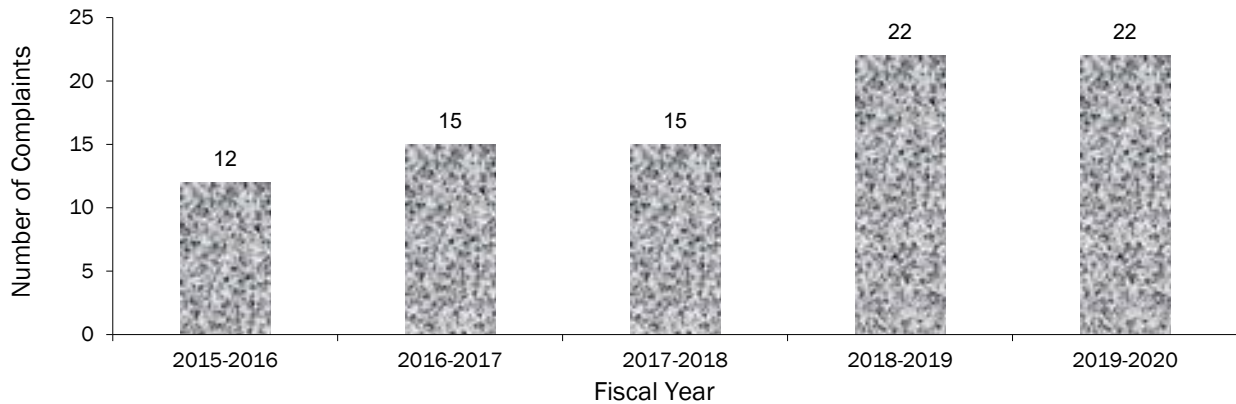


Figure 4: Total Active PHIA Privacy Complaints

HIGHLIGHTS AND ACCOMPLISHMENTS

During the reporting period, OIPC was engaged in a number of activities and events that directly and indirectly contributed to the accomplishment of its various mandates. A selection of these activities follows.

Through past educational initiatives and the positive response received to the many educational resources that have been produced, many organizations have approached OIPC for training. OIPC 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 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 & 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

Other examples of activities and events include the following:

1. annual meeting/telephone conference with all Regional Health Authorities, the Newfoundland and Labrador Centre for Health Information and the Office of the Chief Information Officer;
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; as well as the 2020 Reboot Privacy Conference in Victoria;
3. participated in International Association of Privacy Professionals Knowledge Net events;
 4. attended the annual Federal/Provincial and 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. OIPC staff participated with privacy oversight counterparts across Canada in 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;
 7. Commissioner Harvey spoke on a panel at the Infoway Partnership Conference, entitled the Canadian Health Data Debate;
 8. reviewed 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;
 9. participated in and created activities for Right to Know Week 2019 and Data Privacy Day 2020; and
 10. initiated organization, with assistance of OIPC staff and members of external Steering Committee, planning for 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.

One of the major changes in how OIPC's oversight function operates since ATIPPA, 2015 came into force is that Commissioner's Reports are only one source of guidance regarding the interpretation of ATIPPA, 2015 and PHIA for public bodies, custodians and the general public. Some of the detailed research and analysis which was once found in a typical Commissioner's Report is now found in the ever-broadening selection of [guidance documents](#).

Building on the work begun following proclamation of ATIPPA, 2015, in this past year OIPC has continued to develop a number of new guidance documents and to revise older ones:

- [Privacy Impact Assessments](#) (Revised)
- [Requesting a Time Extension](#) (Revised)

At the tail-end of the 2019-2020 year, 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 ensuring the exchange of complete and accurate information during a crisis while also complying with obligations under ATIPPA, 2015 and PHIA and protecting privacy.

These guidance documents are very important because of the many challenges faced by custodians in complying with PHIA and public bodies in complying with ATIPPA, 2015. Because of deadlines in ATIPPA, 2015, Access and Privacy Coordinators need to be able to quickly refer to such resources as they make decisions, and hopefully avoid complaints about either the process or the outcome. The guidance documents also aid citizens in understanding their rights of access to information and protection of their personal information. Some of these guidelines have been through a second or third revision because they are living documents that evolve in response to case law, legislative changes and other developments. OIPC looks forward to adding new guidance documents next year.

An important part of OIPC’s oversight mandate was fulfilled in commenting on a number of Draft Bills. In accordance with section 112 of ATIPPA, 2015, it is a requirement that the Commissioner be consulted on draft legislation before it is tabled in the House of Assembly where the Bill could have implications for access to information or protection of privacy. This important provision ensures that privacy and access to information are considered by an independent body with expertise in this area when new laws are being drafted. Over the past year a significant number of Bills were referred 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 and Promotion Regulations**
- **Interpersonal Violence Disclosure Protocol Act**

OIPC also welcomes consultations from public bodies and custodians regarding Privacy Impact Assessments (PIAs) and the experience is beneficial for all parties. During 2019-2020, custodians and public bodies contacted OIPC to consult on the privacy impacts of various initiatives, including facial recognition and closed-circuit television (CCTV), a number of different software systems, and devices equipped with smart technology. Perhaps the largest PIA shared 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. That initiative involves making an increasing number of public services available online. 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 OIPC under section 72. OIPC anticipates receiving a draft of the privacy assessment in fiscal 2020-2021.

Another important oversight tool available to the Commissioner is audit. Work continues on two 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.

OIPC issued [Privacy Management Program \(PMP\) Guidelines](#) in March 2018. During 2019-2020, 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 PMP and 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 unique requirements.

OIPC has continued to maintain communication with officials of the Department of Health and Community Services regarding the PHIA review, which resulted in the [2017 PHIA Review Report](#). 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.

REPORT ON PERFORMANCE

Issue 1: ATIPPA, 2015

ATIPPA, 2015 came into force on June 1, 2015, following a comprehensive review process. Since that time, OIPC has made a number of changes to adapt to the expanded mandate it was given under the new regime. Among a great many other changes, the Review Committee, chaired by former Premier Clyde Wells, made recommendations (which were ultimately accepted) to ensure that OIPC had a clear mandate to educate public bodies about ATIPPA, 2015 and to become an advocate for access and privacy.

Many efforts have been under way since June of 2015 to fulfil that mandate, and further work continues.

Objective 3: By March 31, 2020 the Office of the Information and Privacy Commissioner will have developed a plain-language guidance document for use by access to information applicants in order to carry out one of the purposes of the ATIPPA, 2015 which is to ensure that the access to information process is user-friendly.

Planned for 2019-2020	Actual Performance for 2019-2020
Review existing materials and similar guides from other jurisdictions to develop content.	OIPC has reviewed existing materials and conducted a jurisdictional scan; the results of both have contributed to content development.
Ensure visual appeal through layout, pictures, etc. so that it is more user friendly.	In anticipation of new resources, OIPC examined its existing templates, including its website, guidance documents and newsletter, to better ensure they are user friendly.
Promote guidance piece for public benefit through available channels.	<p>All guidance pieces for public benefit are promoted through existing channels. Generally, when new guidance is issued, it is posted on the OIPC website (under both guidance and in the “what’s new” section on the landing page), discussed in the OIPC newsletters and, where appropriate, presentations are offered.</p> <p>OIPC has continued efforts to expand distribution lists and ensure their accuracy, as these are key distribution points for communicating new resources. OIPC also continues to work on expanding the number of Twitter followers.</p> <p>Four new tools were introduced to assist applicants with the access to information process:</p> <ul style="list-style-type: none"> • Tips for Accessing Public Body Records • Complaint Checker • Time Calculator • How to Make an Access Complaint
<p>Discussion of Results</p> <p>Although a plain-language guidance document was not developed as planned, new tools were developed over the three years of this activity plan to better ensure that the access to information process is user friendly. The four tools listed above comprise a suite of tools aimed at assisting the general public in using the access to information process, while also being helpful to Access and Privacy Coordinators in explaining the process to Applicants, and for new Coordinators to assist in their own training and orientation. OIPC has noticed that many inquiries stem from individuals that are confused about the process, specifically when their response should be provided by public bodies and if they can file a complaint</p>	

with OIPC. The complaint checker and time calculator were designed to be easy tools to assist in understanding these issues better. OIPC determined that a video would be a beneficial support to individuals who were unsure about the access process. This, coupled with the “Tips for Accessing Public Body Records” guidance piece, allows individuals to access information about the process using multiple mediums, better ensuring accessibility.

Much was accomplished on this objective over the three years of this activity plan. OIPC hosted a conference April 30 through May 2, 2018 at Memorial University School of Medicine; the conference featured over 200 registrants and 25 speakers. While a conference was planned for 2020, the public health emergency impacted plans. Although it is challenging to organize a conference that requires no registration fees from attendees on a limited budget, OIPC has determined that it is important to continue with this model as fiscal restraint continues to impact public bodies and custodians. Developing guidance documents and other resources will be an ongoing mission, as legislative interpretation continues to evolve as new case law is written in this and other jurisdictions and as gaps in resources are identified.

Issue 2: Personal Health Information Act (PHIA)

The **Personal Health Information Act** was proclaimed into force on April 1, 2011. There are thousands of custodians subject to this legislation, in both the public and private sectors. On December 20, 2016 the Honourable John Haggie, Minister of Health and Community Services, announced the first legislative review of PHIA. The review process involved appointment of a Review Committee which invited submissions from various stakeholders (including OIPC) and the general public, and it is expected to result in a report with recommendations to the Minister for amendments to PHIA. It is anticipated that any amendments will be passed and proclaimed into force during the period covered by this Activity Plan.

Based on OIPC’s experience with past reviews of ATIPPA as well as preparations for the initial proclamation of PHIA, 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 in the health care field 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 OIPC. This has involved a number of investigations resulting from privacy breaches, including investigations which have led to the prosecution of offences. One such prosecution is currently before the courts.

Despite any changes which may ultimately be made to PHIA, it is necessary for OIPC to continue with its oversight activities as currently prescribed. In particular, OIPC has identified the need 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.

Objective 3: By March 31, 2020 the Office of the Information and Privacy Commissioner will have developed new guidance materials for custodians subject to PHIA.	
Planned for 2019-2020	Actual Results for 2019-2020
Review anticipated legislative amendments flowing from 2017 PHIA Review Committee recommendations.	OIPC reviewed the final report of the 2017 Review Committee and contemplated potential amendments that might be made.
Update existing and, where required, create new guidance documents to reflect legislative amendments.	OIPC reviewed existing guidance documents, however with no legislative amendments, it was determined that none required updating at this time.
Disseminated guidance materials to custodians through online and in-person education sessions.	OIPC published its PHIA newsletter three times during this reporting period. In addition, a number of in-person presentations were held with various custodians during the timeframe of this activity plan, including the NL Pharmacy Board, Pharmacy Technician students, Senior Leadership and Risk Managers at Central Health, NL Association of Optometrists, College of Respiratory Therapists, private dental clinic, medical practice associates, Support services of NLESD, Association of Social Workers, Eastern Health Regional Protection Services and Council of Health Professionals.
<p>Discussion of Results</p> <p>This objective did not require the time commitment initially anticipated, as the Department of Health and Community Services has not brought forward any changes to PHIA based on the recommendations contained in the final report of the Review Committee. OIPC was one of many stakeholders that expended significant time and effort in contributing to the review process, as did the review committee. OIPC looks forward to this important item being actioned by government in the near future.</p> <p>While OIPC reviewed existing guidance documents, it was determined that none required updating. During the three years covered by this activity plan, OIPC did issue two new guidance pieces related to PHIA: “Disclosure of Personal Health Information for Research Purposes” and “Use of Email for Communicating Personal Health Information”. Further, a PHIA compliance checklist for custodians was created. OIPC continues to build relationships with custodians and ensures that distribution lists for such tools as the newsletter remains accurate and comprehensive.</p> <p>Much progress has been made in this objective during the three years covered by the Activity Plan. With the vast number of custodians and employees of custodians, awareness of statutory obligations under PHIA is an ongoing challenge. The PHIA newsletter, which had</p>	

been intended to be a twice per year publication, has seen at least three issues per year. All associations, boards/colleges operating in the health care field have been contacted and now receive the newsletter for distribution to members; the newsletter promotes OIPC availability to speak at conferences, AGMs, etc. A number of such sessions have occurred and OIPC will continue to present these outreach opportunities in the future.

Issue 3: Public Education

Both ATIPPA, 2015 and PHIA contain an explicit mandate to inform the public about each Act. ATIPPA, 2015 carried forward a strong message about public education from the Review Committee which conducted a comprehensive review of the law in 2014. The report of the Committee placed a strong emphasis on the important role which must be played by OIPC in relation to public education. This resulted in a new provision being placed in ATIPPA, 2015 in section 95(2) which says the Commissioner “shall ... develop and deliver an educational program to inform people of their rights and the reasonable limits on those rights under this Act...”.

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, and in particular that they understand the many new requirements of the revamped law. A number of efforts have also been made to reach out to the public as well, however it is clear that these efforts need greater coordination and emphasis in order to fulfil the mandate of developing and delivering an educational program. OIPC takes its responsibilities to educate the public about ATIPPA, 2015 and PHIA very seriously. Significant resources and effort have been invested to ensure, to the extent possible, that the people of the Province receive appropriate, necessary and timely information on ATIPPA, 2015 and PHIA, and OIPC intends to build on these efforts during the period of this Activity Plan.

Objective 3: By March 31, 2020, the Office of the Information and Privacy Commissioner will have developed a plain-language user guide for the general public about ATIPPA, 2015 and PHIA, including explaining the complaint and appeal processes.

Planned for 2019-2020	Actual Results for 2019-2020
Review existing materials and similar guides from other jurisdictions to develop content.	OIPC has reviewed existing materials and conducted a jurisdictional scan; the results of both have contributed to content development.
Ensure visual appeal through layout, pictures, etc. so that it is more user friendly.	In anticipation of new resources, OIPC examined its existing templates, including its website, guidance documents and newsletter, to better ensure they are user friendly.

<p>Promote guidance piece for public benefit through available channels.</p>	<p>OIPC has continued efforts to expand distribution lists and ensure their accuracy, as these are key distribution points for communicating new resources. OIPC also continues to work on expanding the number of Twitter followers. During 2019-2020, three PHIA newsletters and three ATIPPA, 2015 newsletters were published.</p>
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Discussion of Results

Although a plain-language user guide on ATIPPA, 2015 and PHIA was not developed as planned in year one of this three-year planning cycle, new tools were developed to better ensure that the access to information process is user friendly.

OIPC issued new resources for ATIPPA, 2015 designed to assist the general public in better understanding the Act, and specifically the complaint and appeal process. Access and Privacy Analysts tasked with working complaint files find that, for many applicants, one-on-one discussions of the complaint and appeals process is the most effective way to communicate. Complainants are able to ask questions specific to their own files and Analysts are able to respond with details specific to their circumstances.

OIPC did not issue new resources for PHIA, as legislative amendments have yet to be announced; OIPC was waiting to ensure the most up-to-date information was included in any new resource. With the extended delay in amending the legislation, OIPC will re-visit this decision. As with ATIPPA, 2015, all PHIA complaints are assigned to an analyst who has one-on-one discussion with complainants, providing an opportunity to personalize discussions on the legislation.

During the three years covered by this activity plan, OIPC continued to add to the suite of tools aimed at assisting the general public, public bodies and custodians with access to information processes and privacy rights and responsibilities. OIPC has successfully reached out to an incredibly diverse audience, from the Canadian Bar Association to staff at individual schools and from Newfoundland and Labrador Massage Therapist Association to the Professional Municipal Administrators. OIPC continues to strive to identify gaps in resources and enhance efforts regarding proactive outreach to a broad spectrum of audiences.

OPPORTUNITIES AND CHALLENGES

OIPC continues to encounter increasingly novel and complex issues in access and privacy, and as a result, must constantly reinvent and reinvigorate processes. Although many new policies and procedures were developed following the enactment of ATIPPA, 2015 regular updates continue to be required.

OIPC experience with ATIPPA, 2015 is that the combination of tools available has meant that oversight activities involve far more than simply investigating complaints. The outreach and education efforts described above, such as producing and disseminating detailed guidance documents, publishing newsletters, conducting presentations, organizing conferences, using the audit and PIA review mandate, and continuing advocacy for proactive disclosure, means that the oversight role is balanced into a roughly equal measure of investigations and advocacy/compliance. This serves the public better, and is a better use of public resources. OIPC looks forward to continuing to meet new challenges in the coming year while striving to protect and uphold the access to information and protection of privacy rights set out in the laws OIPC oversees.

	2019–2020	2018-2019	2017-2018
ATIPPA, 2015 Access Complaints Received	134	112	160
ATIPPA, 2015 Privacy Complaints Received	41	41	46
PHIA Access Complaints Received	8	7	8
PHIA Privacy Complaints Received	17	16	9
Time Extension Requests Received	449*	181	173
Disregard Applications Received	162*	94	102
ATIPPA, 2015 Breach Notifications Received	214	240	201
PHIA Breach Notifications	20	16	17

*Discussed below.

Figure 5: Summary of OIPC Statistics

The number of time extensions increased dramatically and it is important to examine them in the context of unique events that occurred in 2019-2020. In January 2020, the City of St. John's and other municipalities across the province declared a State of Emergency after an exceptional snowstorm. Many public bodies were impacted by this closure and, as a result,

OIPC approved 110 extensions during this time. On March 18, 2020, the Minister of Health and Community Services declared COVID-19 a public health emergency under the **Public Health Protection and Promotion Act**. As a result, many public bodies had to adjust to providing services virtually. In recognition of the challenges during this transition, OIPC approved 100 extension requests because of the public health emergency. While the remaining 239 time extensions still represents an increase over previous years, it should be noted that public bodies continue to see an increase in the number of access requests received. OIPC approved the full extension requested in 354 cases and partially approved 49 others. Extensions granted at the outset of the pandemic were accepted at face value as having sufficient rationale, given the closure of many public bodies and the initial struggle to find alternative means of service delivery. For extensions prior to the pandemic period, public bodies have generally provided enough detail to satisfy of the rationale for the extension. Experienced public body Coordinators have developed a good understanding of expectations when requesting time extensions, and therefore the extension applications received, more often than not, reflect the time necessary to complete the work, and no more.

While OIPC received 162 applications to disregard requests, a much lower number was approved. Thirty-eight were approved in full, while 16 partial disregards were approved. For more information on what is required when disregards are requested, please see [OIPC guidance](#) on same.

In conclusion, OIPC continues to strive to fulfill the various components of its mandate. OIPC continues to encourage and support an environment of open communication and dialogue with public bodies and custodians and to work in a spirit of cooperation. OIPC is pleased with the role played in the legislative review of PHIA, and congratulate the Department of Health and Community Services in ensuring a transparent and detailed review process. OIPC encourages the Department to implement recommendations and make positive legislative enhancements to PHIA in the coming year.

With ATIPPA, 2015 acknowledged as being on the cutting edge of access to information law, and PHIA amendments anticipated, OIPC is hopeful that Newfoundland and Labrador will continue to boast some of the strongest access and privacy legislation in the country, and

look forward to and are excited to be a key part of this very important legislative regime. ATIPPA, 2015 includes a requirement for a statutory review to be commenced in 2020. OIPC conducted research and analysis throughout 2019-2020 so that submissions to that statutory review can contribute to keeping this statute at the forefront of progressive access to information and protection of privacy legislation in Canada. OIPC also looks forward to continued cooperation and consultation with all stakeholders, with the aim of providing the best possible service to the citizens of the province as they exercise their rights under ATIPPA, 2015 and PHIA.

FINANCIAL STATEMENT

Expenditure and revenue figures included in this document are based on public information provided in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for fiscal year ending March 31, 2020 (unaudited).

	<u>Actual</u> \$	<u>Estimates</u> <u>Amended</u> \$	<u>Original</u> \$
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER			
Current			
6.1.01. Office of the Information and Privacy Commissioner			
01 Salaries	992,156	1,093,300	1,116,800
02. Employee Benefits	4,745	6,500	6,500
03. Transportation & Communications	26,132	31,400	32,800
04. Supplies	5,757	7,600	7,700
05. Professional Services	72,367	72,400	50,000
06. Purchased Services	121,036	122,400	122,400
07. Property, Furnishings & Equipment	<u>3,580</u>	<u>3,600</u>	<u>1,000</u>
	<u>1,225,773</u>	<u>1,337,200</u>	<u>1,337,200</u>
02. Revenue - Provincial			
Total: Office of the Information and Privacy Commissioner	<u>1,225,773</u>	<u>1,337,200</u>	<u>1,337,200</u>

Note: Audited financial information will be included in the Annual Report to be tabled by the Speaker during an upcoming sitting of the House. The Office of the Information and Privacy Commissioner does not have a requirement for a separate individual audited statement.