



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## ANNUAL REPORT 2011-2012



PROMOTING ACCESS & PROTECTING PRIVACY  
FINDING THE BALANCE



## Access

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

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

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## Privacy

*This Court has recognized that the value of privacy is fundamental to the notions of dignity and autonomy of the person [...] Equally, privacy in relation to personal information and, in particular, the ability to control the purpose and manner of its disclosure, is necessary to ensure the dignity and integrity of the individual. [...] We also recognize that it is often important that privacy interests be respected at the point of disclosure if they are to be protected at all, as they often cannot be vindicated after the intrusion has already occurred [...]*

*R. v. Osolin, [1993] 4 S.C.R. 595  
L'Heureux-Dubé J. (Dissenting)*





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## Message From The Commissioner

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March 22, 2013

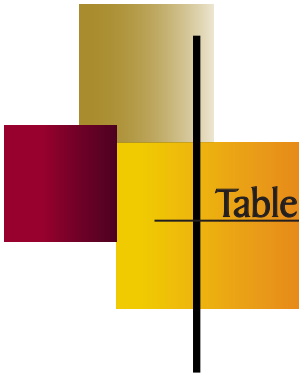
The Honourable Ross Wiseman  
Speaker  
House of Assembly  
Newfoundland and Labrador

I am pleased to submit to you the Annual Report for the Office of the Information and Privacy Commissioner in accordance with Section 59 of the *Access to Information and Protection of Privacy Act*. This Report covers the period from April 1, 2011 to March 31, 2012.

A handwritten signature in black ink, reading "E. P. Ring". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Edward P. Ring  
Information and Privacy Commissioner





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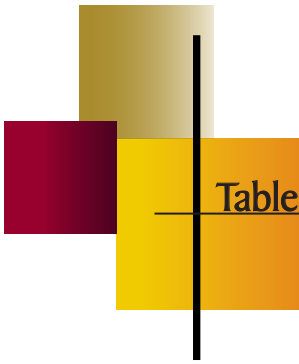
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*“The manner in which public bodies respond to our involvement is a key factor in how the public measures the true commitment of the government and its agencies to the principles and spirit of the legislation.”*

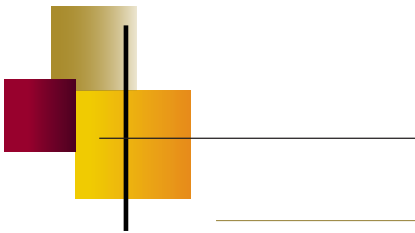
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Under the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”), Newfoundlanders and Labradorians are given legal rights to access government information with limited exceptions. Access to information refers to the public’s right to access records relating to the operations of public bodies in the Province, ranging from general administrative records, financial records, permits, policies, etc. The *ATIPPA* also gives individuals a right of access to their own personal information which is held by a public body. The basic objective is to make government open and transparent, and in doing so to make government officials, politicians, government departments, agencies and municipalities more accountable to the people of the Province.



Over the past three decades, all jurisdictions in Canada have introduced legislation relating to the public’s right to access information and to their right to have their personal privacy protected.

These legislative initiatives represent an evolution from a time when governments in general consistently demonstrated stubborn resistance to providing open access to records. This concept has changed. Today, access to information is a clearly understood right which the public has demanded and which governments have supported through legislation and action. No doubt there are still instances when unnecessary delays and unsubstantiated refusals to release information are encountered by the public, which is why it is important that the Office of the Information and Privacy Commissioner exists as an independent body to review decisions made by public bodies about access to information requests.



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*On January 16, 2008 Part IV of the Act was proclaimed into force. Part IV contains the privacy provisions of the ATIPPA, governing the collection, use and disclosure of personal information by public bodies. These provisions also give individuals a specific right to request the correction of errors involving their own personal information.*

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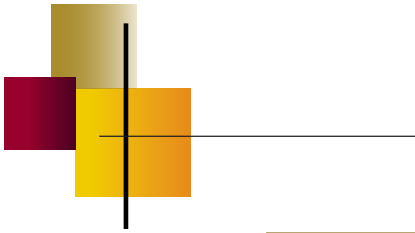
The ATIPPA, like legislation in all other Canadian jurisdictions, established the Information and Privacy Commissioner (the Commissioner) as an Officer of the House of Assembly, with a mandate to provide an independent and impartial review of decisions and practices of public bodies concerning access to information and privacy issues. The Commissioner is appointed under section 42.1 of the ATIPPA and reports to the House of Assembly through the Speaker. The Commissioner is independent of the government in order to ensure impartiality.

The Office of the Information and Privacy Commissioner (the “OIPC”) has been given wide investigative powers, including those provided under the *Public Inquiries Act*, and has full and complete access to all records in the custody or control of public bodies\*.

If the Commissioner considers it relevant to an investigation, he may require any record, including personal information, which is in the custody or control of a public body to be produced for his examination. This authority provides the citizens of the Province with the confidence that their rights are being respected and that the decisions of public bodies are held to a high standard of openness and accountability. While most citizens are prepared to accept that there may be instances of delays by public bodies, and that there may also be mistakes and misunderstandings, they also expect that such problems will be rectified with the help of this Office when they occur.

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\*Subject to two recent court decisions: 1) Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner) 2010 NLTD 19, in which Mr. Justice Fowler determined that the Commissioner was not empowered by the ATIPPA to compel production of records for which there has been a claim of section 5(1)(k); and 2) Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner), 2010 NLTD 31, in which Madame Justice Marshall determined that the Commissioner cannot compel the production of records for which there has been a claim of section 21 (solicitor client privilege). The latter decision has been appealed and on October 26, 2011 the Court of Appeal overturned the previous decision rendered by Justice Marshall and determined that the Commissioner could compel the production of records for which section 21 had been claimed.



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

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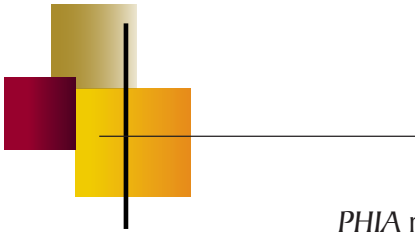
The purposes of *PHIA* are accomplished by:



- establishing rules for the collection, use and disclosure of personal health information to protect the confidentiality of the information as well as to protect individual privacy;
- giving the public a right of access to personal health information about themselves;
- giving the public a right to require correction or amendment of that information;
- establishing measures to ensure accountability by custodians and to safeguard the security and integrity of personal health information;
- providing for independent review of decisions and resolution of complaints respecting personal health information;
- establishing measures to promote compliance with *PHIA* by custodians.

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

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



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



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

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

The Commissioner's Office also investigates privacy breach complaints and other complaints about how personal health information has been improperly collected, used, disclosed or otherwise mishandled by a custodian.

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

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

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

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



## Accessing Information

### *ATIPPA*

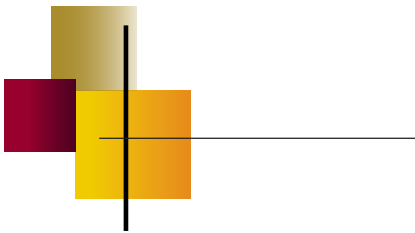
It should not be a difficult process for individuals to exercise their right of access to records in the custody or control of a government department or other public body covered by the *ATIPPA*. Many people are seeking records containing information which may be handled without a formal request under the access legislation. This is referred to as routine disclosure and I am pleased to report that more and more information requests are being dealt with in this timely and efficient manner. Where the records are not of a routine nature, the public has a legislated right of access under the *ATIPPA*. The process is outlined below.



### How to Make An Access to Information Request?

- Determine which public body has custody or control of the record.
- Contact the public body, preferably the Access and Privacy Coordinator, to see if the record exists and whether it can be obtained without going through the process of a formal request. A list of Access and Privacy Coordinators and their contact information can be found at the [ATIPP Office Website](#).
- To formally apply for access to a record under the *Act*, a person must complete an application in the prescribed form, providing enough detail to enable the identification of the record. Application forms are available from the public body or from the [ATIPP Office Website](#).
- Enclose a cheque or money order for the \$5.00 application fee payable to the public body to which the request is submitted (or, if a government department, payable to the Newfoundland Exchequer).
- Within 30 days, the public body is required to either provide access, transfer the request, extend the response time up to a further 30 days or deny access. Additional fees may also be imposed for search, preparation, copying and delivery services.
- If access to the record is provided, then the process is completed. If access is denied or delayed unreasonably, or if you think the fee charged is inappropriate, or if you have experienced other problems with the access to information process, you (the applicant) may request a review by the Information and Privacy Commissioner, or you may appeal directly to the Supreme Court Trial Division.



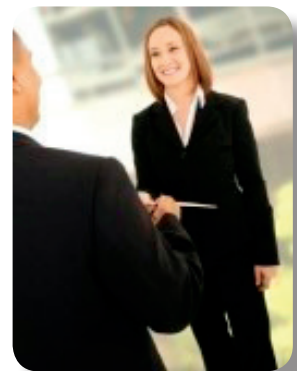


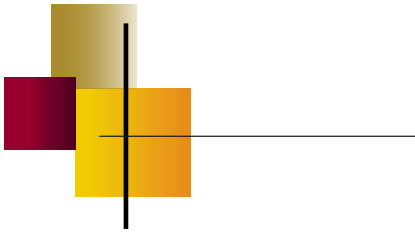
## How to File a Request for Review or Investigation of Complaint?

- Submit a [Request for Review or Investigation of Complaint Form](#) to our Office.
- Upon receipt of a complaint or formal request for review, the Information and Privacy Commissioner will review the circumstances and attempt to resolve the matter informally.
- If informal resolution is unsuccessful, the Information and Privacy Commissioner will prepare a Report and, where necessary, will make recommendations to the public body. A copy of the Report is provided to the applicant and to any third party notified during the course of our investigation, and the Report is also posted on our website.
- Within 15 days after the Report is received, the public body must decide whether or not to follow the recommendations, and the public body must inform the applicant and the Commissioner of this decision.
- Within 30 days after receiving the decision of the public body, the applicant or the Information and Privacy Commissioner may appeal the decision to the Supreme Court Trial Division.

### *PHIA*

*PHIA* also grants individuals a right of access to information, but under *PHIA* this is only a right of access to the individual applicant's own personal health information. Under specific circumstances as outlined in section 7, typically where the individual is not able to exercise their own rights, the right to request access to this information (as well as other rights under *PHIA*) can be exercised by a representative of the individual. The provisions which allow a custodian to refuse access to the requested information are limited, and the situations in which these provisions would apply occur relatively infrequently. Unless one of those provisions apply, any individual who requests access to their own personal health information should expect to get it, although as with *ATIPPA*, a fee may apply. The fee must be a reasonable one, however. Just as with the *ATIPPA*, any individual who is refused access to their own personal health information may file a complaint with the Commissioner.



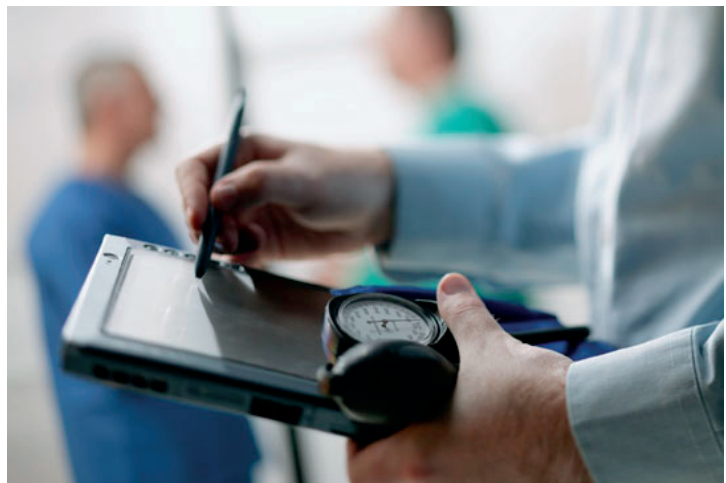


### How to Make an Access Request

An individual who wishes to access his or her own personal health information should make a request directly to the custodian that the individual believes has custody or control of the information. The request should be in writing unless the individual has limited ability to read or write English, or has a disability or condition that makes it difficult to do so in writing. The request should contain sufficient details to permit the custodian to identify and locate the record. A custodian must respond to a request without delay, and in any event, within 60 days of receiving the request. That deadline can be extended for a maximum of an additional 30 days under specific circumstances outlined in *PHIA*. Nothing in *PHIA* prevents a custodian from granting a request for access informally without the need for a written request.

### How to File a Request for Investigation of Complaint

If you have submitted a request to a custodian for access to your personal health information and you are not satisfied with the response, you may ask the Commissioner to review the matter by filing a complaint. If you wish to file a complaint with the Commissioner, we ask that you use the forms which are available from our Office or our web site at <http://www.oipc.nl.ca/forms.htm>.





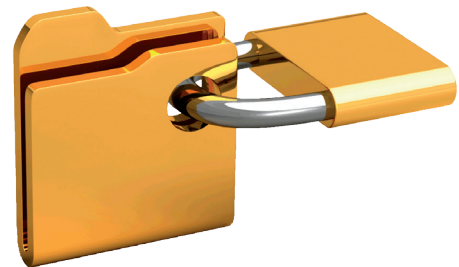
## Withholding Information

### *ATIPPA*

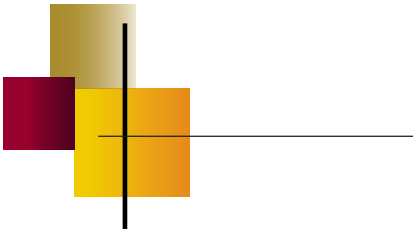
While the *ATIPPA* provides the public with access to government records, such access is not absolute. The *Act* also contains provisions which allow public bodies to withhold certain records from disclosure. The decision to withhold records by governments and their agencies frequently results in disagreements and disputes between applicants and the respective public bodies. Although applicants are empowered to appeal directly to the Supreme Court Trial Division, the most common route for applicants in such cases is to the Office of the Information and Privacy Commissioner.

Complaints range from:

- being denied the requested records;
- being told there are no responsive records;
- being requested to pay too much for the requested records;
- being told by the public body that an extension of more than 30 days is necessary;
- not being assisted in an open, accurate and complete manner by the public body;
- other problems related to the *ATIPPA*.



While the Commissioner's investigations provide him access to records in the custody or control of public bodies, he does not have the power to order that a complaint be settled in a particular way. He and his staff rely on negotiation to resolve most disputes, with his impartial and independent status being a strong incentive for public bodies to abide by the legislation and provide applicants with the full measure of their rights under the *Act*. As mentioned, there are specific but limited exceptions to disclosure under the *ATIPPA*. These are outlined below:

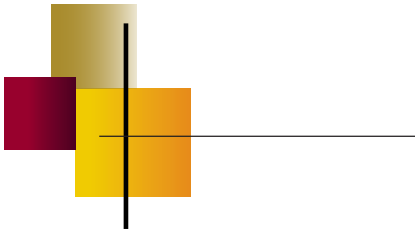


### Mandatory Exceptions

- *Cabinet confidences* - where the release of information would reveal the substance of deliberations of Cabinet.
- *Personal information* - recorded information about an identifiable individual, including name, address or telephone number, race, colour, religious or political beliefs, age, or marital status.
- *Harmful to business interests of a third party* - includes commercial, financial, labour relations, scientific or technical information and trade secrets.
- *House of Assembly service and statutory office records* - protects parliamentary privilege, advice and recommendations to the House of Assembly, and records connected with the investigatory functions of a statutory office.

### Discretionary Exceptions

- *Local public body confidences* - includes a draft of a resolution, by-law, private bill or other legal instrument, provided they were not considered in a public meeting.
- *Policy advice or recommendations* - includes advice or recommendations developed by or for a public body or minister.
- *Legal advice* - includes information that is subject to solicitor-client privilege and legal opinions by a law officer of the Crown.
- *Harmful to law enforcement* - includes investigations, inspections or proceedings that lead or could lead to a penalty or sanction being imposed.
- *Harmful to intergovernmental relations* - includes federal, local, and foreign governments or organizations.
- *Harmful to financial or economic interests of a public body* - includes trade secrets, or information belonging to a public body that may have monetary value, and administrative plans/negotiations not yet implemented.
- *Harmful to individual or public safety* - includes information that could harm the mental or physical well-being of an individual.



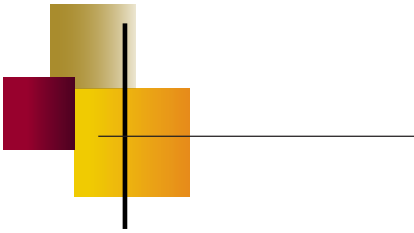
Unsupported refusals to release information and delays in responding to requests for access are particularly frustrating to applicants as well as to this Office. This being said, it is of significant comfort to acknowledge that there is a sustained effort under way by government through the ATIPP Office to train public bodies in their obligations under the *ATIPPA*, especially as it relates to the timeframes for notification and action. The government's *ATIPPA* Policy and Procedures Manual is an integral part of the ongoing training program. This Office has and will continue to work with government in this effort.

It is noted here that public bodies often express resentment that they too often receive requests for information that they would call repetitive, trivial or even vexatious. They argue that knowing how much a minister or a CEO spends on hotel bills and meals doesn't do anything to promote good public policy, or that requesting copies of thousands of e-mails leading up to a dismissal of an employee does nothing to further the mandate or efficiency of an agency or municipality. Whether these assertions are correct or not, the fact is that in the grand scheme of things, requests for records which may seem petty to some, may be a serious issue for certain citizens whose right to make a request is protected by the *ATIPPA*. The legislation does not provide for or allow this Office to pick and choose whether an access request is important, useful, frivolous, vexatious or in bad faith. Referring back to the above examples, politicians who appreciate that their expenses may become public might be a little more conscious of thrift when traveling, while public bodies preparing to dismiss an employee may be a little more sensitive and professional in their human resources practices.

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*The bottom line is that it is inevitable that the public's recourse to access laws will likely grow. Whether they are policy, financial, economic, political or personal, issues are becoming more and more complex and the public is becoming more questioning. The right to demand access to such information, even if it seems trivial or unimportant to all but the requester, is still paramount in that process.*

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## PHIA

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

### Mandatory Exceptions

The mandatory exceptions occur under the following circumstances, where:

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

### Discretionary Exceptions

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



## The Role of the Commissioner



In accordance with the provisions of the *ATIPPA*, when a person makes a request for access to a record and is not satisfied with the resulting action or lack thereof by the public body, he or she may ask the Commissioner to review the decision, act or failure to act relating to the request. The Commissioner and this Office therefore have the key role of being charged by law with protecting and upholding access to information and protection of privacy rights under the *ATIPPA*.

This responsibility is specific and clear, and this Office takes it seriously. However, there are often questions concerning how we see our role, and how we do our job. It has been mentioned earlier that the Office is independent and impartial. There are occasions when the Commissioner has sided with applicants and other occasions when the Commissioner supports the positions taken by public bodies. In every case, having conducted our research carefully and properly, all conflicting issues are appropriately balanced, the law and common sense are applied and considered, and the requirements of the legislation are always met. Applicants, public bodies and third parties must understand that this Office has varied responsibilities, often requiring us to decide between many conflicting claims and statutory interpretations.

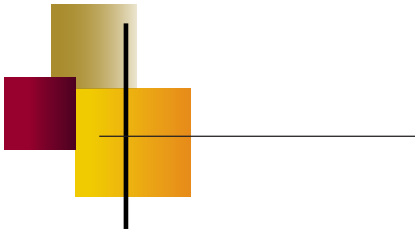
As noted, this Office does not have enforcement or order power. We do not see this as a weakness, rather it is a strength. Order power may be seen as a big stick which could promote an adversarial relationship between this Office and public bodies. We promote and utilize negotiation, persuasion and mediation of disputes and have experienced success with this approach. Good working relationships with government bodies are an important factor and have been the key to this Office's success to date.

Success can be measured by the number of satisfied parties involved in the process, by fewer complaints, and by more and more information being released by public bodies without having to engage the appeal provisions of the *ATIPPA*. We are equally committed to ensuring that information that should not be released is indeed protected.

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*The key tenet of our role is to keep the lines of communication with applicants, public bodies and affected third parties open, positive, and productive.*

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This Office is committed to working cooperatively with all parties. We respect opposing points of view in all our investigations but pursue our investigation of the facts vigorously.

We are always available to discuss requests for review and related exceptions to the fullest extent at all levels without compromising or hindering our ability to investigate thoroughly. We emphasize discussion, negotiation and cooperation. Where appropriate, we are clear in stating which action we feel is necessary to remedy disagreements. In that regard, we will continue to make every effort to be consistent in our settlement negotiations, in our recommendations and in our overall approach.

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

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



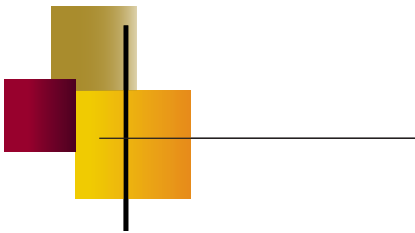


## Activities and Statistics

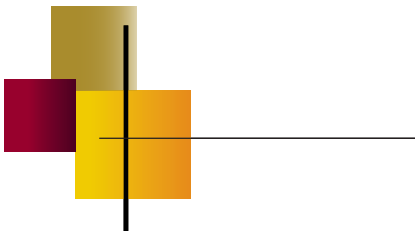
### Education and Awareness

The following is a list of presentations, awareness activities and events conducted or attended by staff of the OIPC between April 1, 2011 – March 31, 2012.

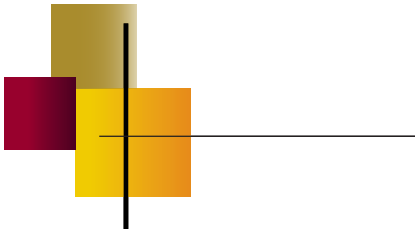
April 4, 2011	Presentation to the Canadian Life and Health Insurance Association (Compliance Section) Conference (St. John's)
April 8, 2011	Consultation/Meeting with the Registrar of Newfoundland and Labrador Chiropractors Association Concerning <i>PHIA</i> (St. John's)
April 11-12, 2011	Fundamentals of Administrative Law and Practice Conference (Toronto)
April 12-15, 2011	Alternative Dispute Resolution Training (St. John's)
April 13, 2011	Presentation to the Chartered Accountants Association of Newfoundland and Labrador (St. John's)
April 15, 2011	Consultation/Discussion with officials from Deloitte (St. John's)
April 18, 2011	Consultation/Meeting with Representative of the College of Licensed Practical Nurses of Newfoundland and Labrador regarding <i>PHIA</i> (St. John's)
May 3-5, 2011	International Association of Privacy Professionals (IAPP) Conference (Toronto)
May 16-17, 2011	Newfoundland and Labrador Access and Privacy Conference/Presentation (St. John's)
May 17, 2011	Discussion/Meeting with Ms. Chantal Bernier, Assistant Privacy Commissioner of Canada (St. John's)
May 18, 2011	Discussion with senior officials from Deloitte, Mr. Glen Bruce, Senior Manager, Computer and Network Security (St. John's)
May 19, 2011	Final <i>PHIA</i> Steering Committee Meeting (St. John's)
May 24, 2011	Consultation/Meeting with representative of the Newfoundland and Labrador College of Dieticians (St. John's)
June 9-10, 2011	Annual Conference of the Association of Registered Nurses of Newfoundland and Labrador (St. John's)



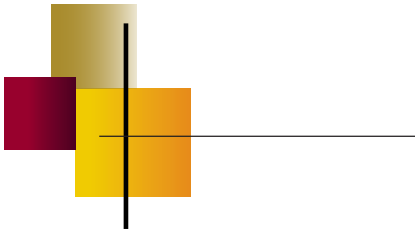
June 10, 2011	Court of Appeal Hearing - Attorney General of Newfoundland and Labrador vs. The Information and Privacy Commissioner (St. John's)
June 13, 2011	Annual meeting of the Licensed Practical Nurses Association of Newfoundland and Labrador (St. John's)
June 20-21, 2011	Workload Management training course (St. John's)
June 20-22, 2011	Newfoundland and Labrador Association for Community Living Conference "Securing Citizenship and Legal Capacity" (St. John's)
June 21, 2011	Attended the "Onboard Orientation Session" for new employees (St. John's)
August 31- Sept. 2, 2011	Federal/Provincial/Territorial Information and Privacy Commissioners Conference (Quebec City)
September 20-21, 2011	Privacy and Compliance Conference (Toronto)
September 23, 2011	Presentation/Public Lecture by Mr. André Picard - "The 21st Century Health Care Challenge" (St. Johns)
September 26, 2011	Networking Event hosted by the OIPC with provincial ATTIP Coordinators and The Right to Know (RTK) Week Committee (St. John's)
September 27, 2011	Presentation to the faculty and staff of the G.C. Rowe Junior High School, Western School District (Corner Brook)
September 27, 2011	Presentation to students, faculty, staff and the general public at Grenfell College (Corner Brook)
September 27, 2011	Presentation to the general public at the College of the North Atlantic (Happy Valley-Goose Bay)
September 27, 2011	Participation in the RTK Week Information Fair, Memorial University Student Centre (St. John's)
September 27, 2011	Presentation to students at Bay St. George Campus, College of the North Atlantic (Stephenville)
September 28, 2011	Presentation to Canadian Bar Association - "The Anatomy of an Access Request" (St. John's)
September 29, 2011	Participated in the Community of Practice World Café Roundtable sponsored by the ATIPP Office (St. John's)



September 30, 2011	Launch of the RTK Week essay competition, OIPC Partnering with Memorial University, College of the North Atlantic and the Law firm Cox & Palmer (St. John's)
October 2, 2011	Canadian Bar Association Annual Privacy Conference (Ottawa)
October 3, 2011	Seventh International Access to Information Conference (Ottawa)
October 6, 2011	Federal/Provincial/Territorial and International Information Commissioners' Conference (Ottawa)
October 7, 2011	Presentation on Social Networking to students of St. Paul's Junior High School (St. John's)
October 12, 2011	Presentation to faculty and parents of St. Paul's Junior High School (St. John's)
October 13, 2011	Presentation to guidance counsellors and educational psychiatrists from the Nova Central School District (Gander)
November 1-4, 2011	33rd International Conference of Heads of Data Protection Agencies and Privacy Commissioners (Mexico)
November 15, 2011	Consultation/Meeting with College of the North Atlantic (Stephenville)
November 17, 2011	Presentation to students of St. Paul's Intermediate School (Lewisporte)
November 22-23, 2011	Privacy Forum - Canada Infoway (Toronto)
December 14, 2011	Consultations/Meetings with Privacy Officials from Eastern Health regarding ATTIPA and PHIA (St. John's)
January 9, 2012	Meeting and Consultations with representative of the College of Massage Therapists of Newfoundland and Labrador (St. John's)
January 13, 2012	OIPC Meeting with Regional Health Authorities IT/IM groups (St. John's)
January 16-17, 2012	Privacy Training with the City of Corner Brook Council and City Employees (Corner Brook)
January 19, 2012	Meeting (teleconference) with privacy officials from Western Health Authority regarding ATIPPA and PHIA (St. John's)



January 27, 2012	Privacy and Security Symposium (Toronto)
January 30, 2012	Information Fair in support of RTK Week (St. John's)
January 31, 2012	OIPC Briefing and Information Seminar for the New Democratic Party Caucus (St. John's)
February 8, 2012	Consultation/Meeting (teleconference) with privacy officials from Labrador Grenfell Health Authority regarding <i>ATIPPA</i> and <i>PHIA</i> (St. John's)
February 8, 2012	Presentation to Gander Collegiate students (four different groups) on social networking risks to privacy (Gander)
February 9, 2012	Presentation to St. Paul's Intermediate School (Gander)
February 10, 2012	OIPC Staff development day (St. John's)
February 10, 2012	Attend Supreme Court - <i>Oleynik vs. The Information and Privacy Commissioner</i> (St. John's)
February 17, 2012	RTK Week essay competition awards presentation attended by representatives from all sponsors - Cox & Palmer, Memorial University, College of the North Atlantic, and OIPC (St. John's)
February 17, 2012	Commissioner Ring - in studio guest of CBC Cross Talk to take calls and answer questions on Bill C-30, Lawful Access (St. John's)
February 20, 2012	Presentation to Executive Assistants, Constituency Assistants and Support Staff of the PC Party on the OIPC, <i>ATTIPA</i> and <i>PHIA</i> (St. John's)
March 12, 2012	Presentations to Grade Seven students, teachers and parents of St. Matthews School on Privacy and Social Media (St. John's)
March 23, 2012	Participated in the Fourth Annual Business Development Program sponsored by Community Business Development Corporation (CBDC) (Privacy Guidelines for the Development of a Small Business - The Basics) (St. John's)
March 27, 2012	OIPC presentation and information session to Government Members (St. John's)



### Consultation/Advice

This Office continues to receive numerous inquiries and requests for advice and consultation. In response, our staff routinely provides guidance to individuals, organizations, public bodies and custodians.

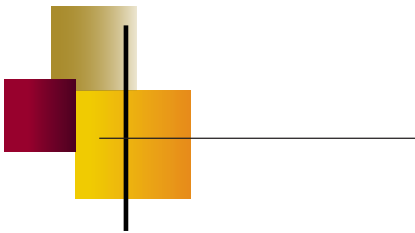
We consider this to be an important aspect of our overall mandate and we encourage individuals and organizations to continue seeking our input on access and privacy matters. There may be times when we are unable to advise on a specific situation if it appears that the matter could subsequently be brought to the OIPC for investigation or review, however if that is the case we can still offer information about the applicable legislation and the complaint or review processes.

### OIPC Website

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

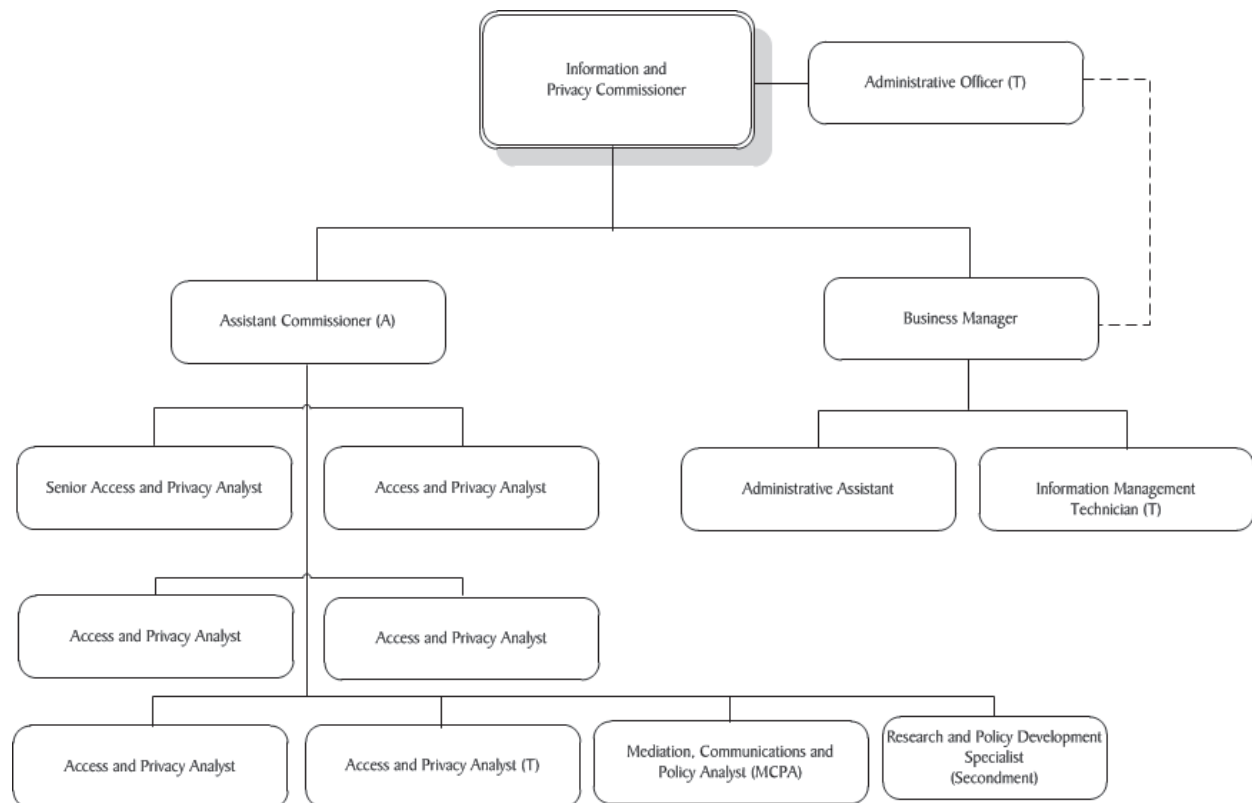
Among the information and resources available on this website, you will find a Table of Concordance for *ATIPPA* access and privacy review decisions, which allows individuals to choose a section of the *ATIPPA* and be quickly presented with links to all of the Commissioner's Reports which are relevant to that section. A similar resource exists for *PHIA* which allows individuals to access the various parts of the *PHIA*, as well as the capability to review Commissioner's Reports relating to the parts/sections chosen.

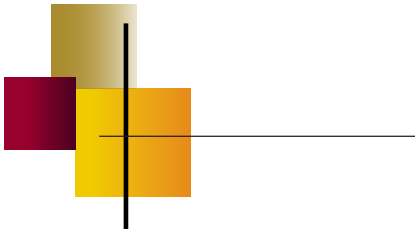




## Staffing

The Office has a total of 14 staff which includes: the Commissioner, Assistant Commissioner, Business Manager, Senior Access and Privacy Analyst, five Access and Privacy Analysts (4 permanent and 1 temporary), Mediation, Communications and Policy Analyst, Research and Policy Development Specialist (secondment), Administrative Officer (temporary), Administrative Assistant, and an Information Management Technician (temporary).





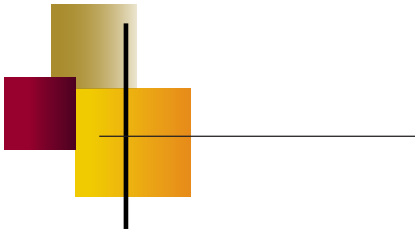
While all staff members work diligently to meet the challenges of increased workload demands, it is obvious that our work volume is very high and will continue to be high for the foreseeable future. This situation is in part due to the continued expansion of our role to educate the public, and the demands of numerous consultations and inquiries. We have become more and more engaged with public bodies, custodians and other organizations - reviewing and commenting on draft privacy impact assessments as well as privacy policies and procedures.



The Assistant Commissioner, representing the OIPC, also makes a significant contribution to the ongoing work of the Canada Health Infoway Privacy Forum, which is a national body working to ensure that appropriate privacy standards are maintained in accordance with *PHIA* and other privacy legislation and best practices in the development of a pan-Canadian interoperable electronic health record (EHR). The Privacy Forum engages officials from Privacy Commissioners' offices across Canada with their counterparts in the lead agencies and departments engaged in developing the EHR in each jurisdiction. Canada Health Infoway is a federal organization created to fund and establish appropriate standards for the development of the EHR in Canada.

Individuals and organizations are now more familiar with this Office and with the *ATIPPA* and, as a result, are exercising their rights under the legislation more often. We are encouraged by this. I should also note that our Office has been challenged to cope with the demands placed on it due to the significant workload resulting from privacy breach investigations. The backlog of requests for review and privacy complaints remains reasonably high during this reporting period.

In addition, the *Personal Health Information Act (PHIA)* was proclaimed into law on April 1, 2011. As with the *ATIPPA*, this Office is the review mechanism for this new legislation. Although the initial impact of this legislation coming into force was less than anticipated as it relates to the workload of the Office, there have been a number of significant breaches of personal health information that has dramatically affected the capacity of the Office. This, coupled with the high demand for consultation, has significantly stretched the available resources.



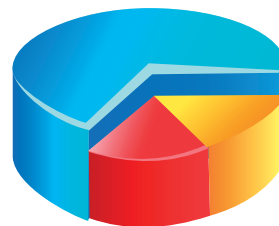
## 2011-2012 Statistics

As provided by the ATIPP Office and the Information Management Division of the House of Assembly, the total number of access requests received by public bodies for the 2011-2012 fiscal year was 564. During the same timeframe, this Office received 58 requests for review under section 43 of the *ATIPPA* and 7 complaints under section 44 of the *ATIPPA*, for a total of 65 requests for review/complaints. This translates into 11.5% of these access requests being forwarded to this Office for review. Twenty-eight privacy investigation requests under Part IV of the *ATIPPA* were also received. In addition, there were 69 requests for review, 8 complaints and 16 privacy investigations carried over from the previous year for a total of 127 requests for review, 15 complaints and 44 privacy investigations for the 2011-2012 fiscal year. This reflects a 14.8% decrease in Requests for Review, no change in the number of Complaints and a 22% increase for privacy investigations for active files during the 2011-2012 fiscal year.

Of the 127 Requests for Review, 54 were resolved through informal resolution and 22 resulted in a Commissioner's Report. The remainder were either closed or carried over to the 2012-2013 fiscal year. In addition to Requests for Review, this Office received 302 access to information related inquiries during the 2011-2012 year. Of the 15 complaints received under section 44, relating either to the fees being charged or to extensions of time by public bodies, 14 were investigated and concluded by this Office and the remainder was carried over to the 2012-2013 fiscal year.

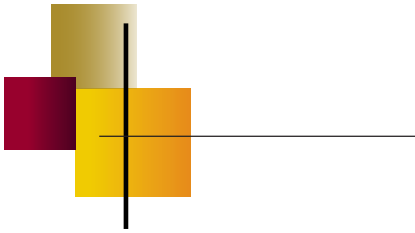
Of the 142 Requests for Review and complaints dealt with in the 2011-2012 year:

- 135 (or 95%) were initiated by individuals;
- 2 (or 1.5%) were initiated by the media;
- 2 (or 1.5%) were initiated by political parties;
- 2 (or 1.5%) were initiated by businesses;
- 1 (or .5%) was initiated by an interest group.



Forty percent of all cases were related to provincial government departments. Thirty-one percent of the cases were related to educational bodies. Eighteen percent of the cases were related to local government bodies. Seven percent of the cases were related to agencies of the Crown. Four percent of the cases were related to health care bodies.





Of the 44 privacy investigations, 13 were closed and 3 resulted in Commissioner Reports and the remaining files were carried over to the 2012-2013 fiscal year. Closed privacy investigations include those which may have been resolved informally, as well as those which were concluded through a letter to the parties from the OIPC outlining our findings in cases where a public report was not warranted. In addition to privacy investigation requests, this Office received 187 privacy related inquiries during the 2011-2012 year.

Of the 44 privacy investigations dealt with in the 2011-2012 year:

- 38 (or 86%) were initiated by individuals;
- 4 (or 9%) were initiated by other public bodies;
- 2 (or 5%) were initiated by businesses.



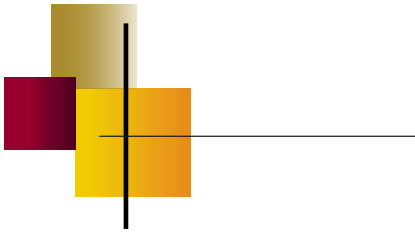
Thirty-nine percent of all privacy cases were related to provincial government departments. Twenty-three percent of the cases were related to agencies of the Crown. Twenty percent of the cases were related to health care bodies. Fourteen percent of the cases were related to educational bodies. Four percent of the cases were related to local government bodies.

The *Personal Health Information Act (PHIA)* was proclaimed on April 1, 2011. This Office received four access/correction complaints and ten privacy complaints under section 66 of this *Act*.

Of the 4 access/correction complaints received, 2 were closed and the remaining files were carried over to the 2012-2013 fiscal year. In addition to *PHIA* access/correction complaints, this Office received 65 *PHIA* access/correction related inquiries during the 2011-2012 year.

One hundred percent of the access/correction complaints dealt with in the 2011-2012 year were initiated by individuals and one hundred percent were related to health care authorities.

Of the 10 privacy complaints received, 6 were closed and the remaining files were carried over to the 2012-2013 fiscal year. In addition to *PHIA* access/correction complaints, this Office received 142 *PHIA* privacy related inquiries during the 2011-2012 year.



One hundred percent of the privacy complaints dealt with in the 2011-2012 year were initiated by individuals. Seventy percent of the privacy complaints dealt with in the 2011-2012 year were related to health care authorities, ten percent were related to massage therapists, ten percent to physicians, and ten percent to pharmacists.

For more information on the statistics for the year 2011-2012 see the Figures and Tables in Appendix A.



### Data Privacy Day

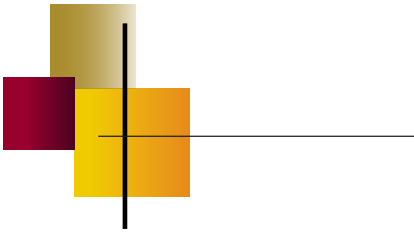
Data Privacy Day (DPD) is recognized by privacy professionals, corporations, government officials, academics and students around the world. It aims to highlight the impact that technology is having on our privacy rights and underline the importance of valuing and protecting personal information.

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

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

### Privacy Awareness Week

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



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

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

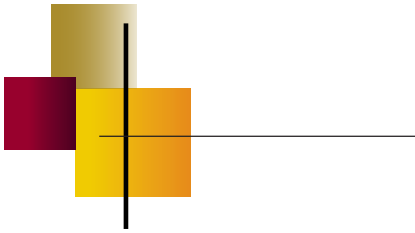
### Right to Know (RTK) Week 2011

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



In 2011, RTK Week took place from September 26 - 30, marking the sixth year that Canadians have celebrated the event.

The OIPC participated in a number of public and private events during the week, including: hosting an Open House for ATIPPA coordinators at the OIPC offices in St. John's; giving seminar presentations on Social Networking and Employee Use of Facebook to both private and public groups in several areas of the Province (Corner Brook and Happy Valley-Goose Bay); hosting an information booth at the Memorial University Campus Student Centre; and launching the 2nd Annual RTK Week Essay Competition.



## Right to Know (RTK) Week 2011 Essay Competition

As part of the celebrations for RTK Week 2011, the OIPC launched the 2nd annual RTK Week Essay Competition, along with sponsoring organizations, Memorial University, College of the North Atlantic and Cox & Palmer.



(From left to right: Co-Sponsors of RTK Week 2011 Essay Competition Ed Ring (OIPC), Montgomery Keough (MUN), Anna Cook (Cox & Palmer), Donna Eldridge (CNA), Alex Templeton (Cox & Palmer) and Mandy Woodland (Cox & Palmer)

Students were asked to write on the topic, “In the era of Wikileaks, where should the line be drawn for access to government records?”

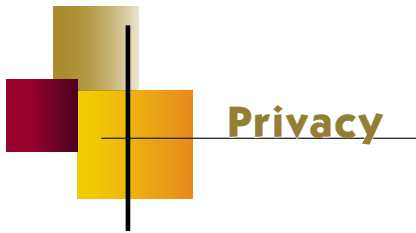
The winning essay in this year’s competition was written by **Amit Negandhi** who was awarded a prize valued at \$500.00. Second place (prize valued at \$200.00) was awarded to **Gina Colbourne**, and third place (prize valued at \$100.00) went to **Dave Jerome**. All three are Memorial University students and were chosen anonymously by a panel of judges representing the organizations involved.

The three winning essays were published on the OIPC website, and prizes were presented to the winners on February 17, 2012 at a reception at the OIPC office in St. John’s. Representatives of all sponsoring organizations, including: Information and Privacy Commissioner Ed Ring; Anna Cook, Mandy Woodland and Alex Templeton of Cox & Palmer; Montgomery Keough of Memorial University; and Donna Eldridge of the College of the North Atlantic, were in attendance. Photographs of the prize presentation have also been published on the OIPC website at [www.oipc.nl.ca/events.htm](http://www.oipc.nl.ca/events.htm).

## Twitter

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

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



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

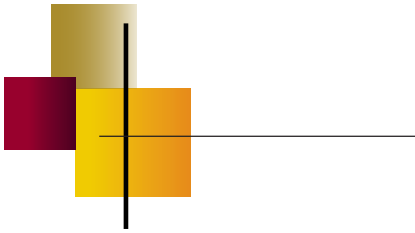
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### *ATIPPA*

The OIPC will react to all formal privacy breach complaints and will conduct an investigation as appropriate. It should be noted that the OIPC reserves the right to initiate an investigation into privacy breach matters when it appears to be in the public interest to do so, without a formal submission from a complainant. The Office may also conduct a privacy investigation at the request of the head of a public body or his or her representative.

The OIPC is not bound by statute to issue reports on its privacy investigations, although we have done so in some cases because it is something we consider to be a valuable part of our tool-kit as an oversight body. Our Office has developed internal criteria, such as whether a conclusion would set a legal precedent, or whether a report might have significant educational value, to help decide whether a report should be issued in any particular case. There have been many cases in which we have opted instead to simply write a letter to the public body and complainant, following the investigation of a privacy complaint, outlining the results, either agreeing with the public body or making recommendations for changes. We have tried to be careful, however, not to place ourselves in a situation where we are issuing a public report every time we have found that a public body has made an error, but only sending a private letter to the parties when we find that there has been no breach, or that the public body has done something correct. In other words, we want to present to the public through our reports not only the failures of compliance, but the successes as well.

It should be re-emphasized that it is access issues, rather than privacy issues, which have constituted the bulk of our work in the past year. A lot of credit for the fact that privacy issues have not been as numerous as might have been expected, goes to the ATIPP Office and to the Office of the Chief Information Officer, for being proactive on privacy, for concentrating on privacy impact assessments, for responding quickly to gaps in policies and procedures when they are identified, and for cooperating fully with our Office. Privacy is all about prevention, and sometimes the preventive work goes unrecognized. I want to take this opportunity to recognize the good work that is being done here in Newfoundland and Labrador.



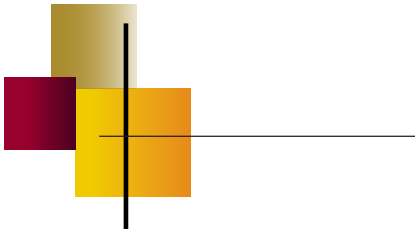
## HEALTH INFORMATION A PRIVATE MATTER

### *PHIA*

*PHIA* was proclaimed into law on April 1, 2011. This was an important step in the evolution of privacy law within our Province. *PHIA* is part of a new generation of privacy laws which are being developed in jurisdictions across Canada. Now, all of the personal health information held by private sector custodians, from dentists to pharmacists, to doctors in private practice, to ambulance services, and many more, is now governed by *PHIA*. The other major effect of *PHIA* is that all of the personal health information held by public sector custodians (including Eastern Health, Western Health, Labrador Grenfell, and Central Health) now falls under *PHIA* rather than *ATIPPA*.

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

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



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

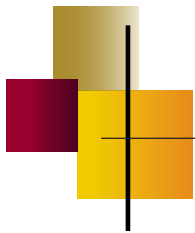
We also continue to work with the Department of Health and Community Services as issues arise. One important venue for this cooperation is through our membership on the Health Information Privacy Advisory Committee (HIPAC) of the Department of Health and Community Services, the goal of which, as stated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

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

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



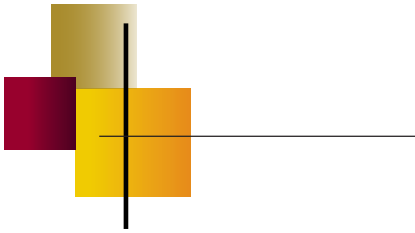
## Privacy Investigation Summaries

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

### Factors To Be Considered Include:

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





The following are two summaries of cases where a decision was made to proceed with a Report:

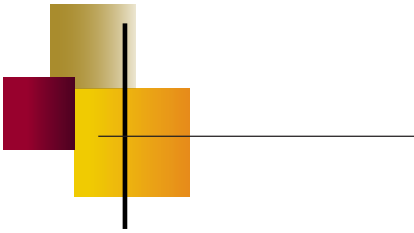
### **Report P-2011-001 – Public Body Name Omitted to Protect Identity of the Complainant**

On March 9, 2010, the Office of the Information and Privacy Commissioner received a Privacy Complaint from an individual (the “Complainant”) who alleged that the Town disclosed his personal information contrary to the protection of privacy provisions contained in Part IV of the *Access to Information and Protection of Privacy Act* (the “ATIPPA” or “Act”).

In particular, the Complainant alleged that the Town improperly disclosed his personal information when he was named in the agenda of a public meeting of Council under the heading “Incoming Correspondence.” The Complainant further alleged that the Town improperly disclosed his personal information when it tabled a letter containing his personal information for discussion at a public meeting of Council. The adopted minutes of the public meeting of Council also stated “4) *Copy of letter written to [Complainant’s name] by the town manager regarding his conduct in the town office.*” This letter was also copied to the town council. At issue in this Report was the handling of the letter by the Town after it was sent to the Complainant. In addition, as the minutes of a public meeting and all documents tabled for discussion at a public meeting must be made available for public viewing in accordance with section 215 of the *Municipalities Act*, the Complainant maintains that his personal information continues to be disclosed, as the letter that was written to him and the minutes of the meeting continue to be available for public viewing.

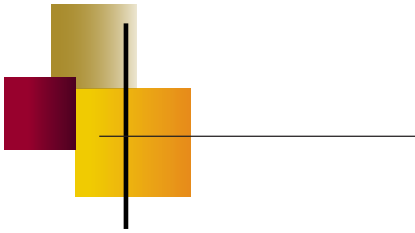
The Commissioner stated that while it might be questioned whether anyone (outside the town councillors) actually saw the Complainant’s personal information, the fact that personal information was placed in the public domain was sufficient to constitute a breach. The number of people who actually see the personal information goes to the seriousness of the breach.

The Commissioner noted that a municipal government in Newfoundland and Labrador is intended to be *transparent* government, as sections 213(1) and 215(1) of the *Municipalities Act*. Section 213(1) requires all meetings of a municipal Council to be open to the public (unless declared a privileged meeting) and section 215(1) of the *Municipalities Act* identifies a number of types of documents (including tabled documents and adopted council minutes) that municipalities are obliged to make



available for public inspection. Further, sections 39(1)(d) and (r) of the *ATIPPA* in fact permit a public body to disclose personal information where the disclosure is permitted or required by another legislative provision, but such disclosure must be “limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.”. Section 215(1) of the *Municipalities Act* does indeed require certain documents to be made publicly available for inspection, and some of these documents will contain personal information. However, the *Municipalities Act* neither specifies which documents should or should not be tabled at a public Council meeting, nor indicates how the adopted minutes of Council or tabled documents are to be prepared prior to being made available for public inspection in a town office. Thus, the *Municipalities Act* is silent on how a municipality is to proceed if a document which it is required to make available for public inspection (in compliance with section 215(1)) contains personal information, which the municipality has a duty *not* to disclose *except in accordance with the privacy provisions of the ATIPPA*.

The Commissioner found that while there are instances where personal information must be made known to Councillors who have to discuss a particular issue and decide how to vote or whether to take action on it or not, the personal information could be made known to the Councillors (and others who reasonably need to know) prior to the meeting, thus negating the need for any personal information to be disclosed in a public meeting. The issue could then be referred to in the agenda and in the minutes in a de-identified manner, either by not using names or identifying details at all (for example, using “a resident” instead of a name) or severing (“blacking out”) all personal information. This is especially true where the document or information is of a sensitive nature. It was the Commissioner’s opinion that the requirements of both the *ATIPPA* and the *Municipalities Act* can be satisfied if this practice is followed, as the required documents can be made available for public inspection but will contain no personal information. The Commissioner also found that minutes and agendas for public meetings could also be prepared in a de-identified manner, unless the disclosure was necessary as per section 39(1)(c) and 40(b). Where this practice was not reasonable in the circumstances of a particular situation, the Commissioner concluded that personal information should be discussed at a privileged meeting of Council. Finally the Commissioner also clarified that sections 39 and 40 of the *ATIPPA* allow a public body to disclose personal information where doing so is necessary for performing its statutory duties or for operating a legally authorized program of the public body. Thus, in some situations, severing of personal information will be unnecessary. For example,



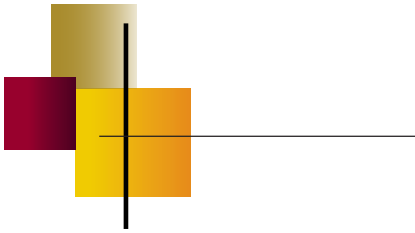
the issuance of building permits and such may, for various reasons, necessitate the disclosure of personal information. However, even in these circumstances, a public body still must only disclose the minimum amount of personal information necessary to achieve its purpose, in accordance with section 39(2).

The Commissioner concluded that any disclosure of personal information by a municipality at a public meeting of Council must be done in accordance with the provisions of section 39(1) of the *ATIPPA*, and even if such a disclosure is authorized by section 39(1), adherence to section 39(2) will ensure that only the minimum amount of personal information necessary for the purpose will be disclosed. When disclosing personal information, public bodies were urged to be cognizant of the reason for doing so. If the particular goal or purpose can be achieved without the disclosure of personal information, then public bodies should refrain from making the disclosure.

The Commissioner found that the Town's disclosure of the Complainant's personal information was not the minimum necessary to achieve its purpose and, therefore, the disclosure was not in accordance with section 39(2) of the *ATIPPA*. While it was reasonable to disclose the Complainant's personal information to the Councillors, it was not necessary to table the unsevered letter at a public meeting of Council, nor to disclose the Complainant's personal information in the agenda or the minutes. The Town could have tabled and discussed the letter in a manner that allowed it to comply with section 215(1) of the *Municipalities Act* and also section 39(2) of the *ATIPPA* by severing the letter to remove personal information prior to it being tabled, the intended result being that personal information would also then not appear in the minutes or the agenda. Alternately, the possibility of entering into a privileged meeting to discuss the letter was available to the Town. Either of these options would have allowed the Town to conduct its necessary business while protecting personal privacy.

### **P-2011-002 Memorial University and Central Regional Health Authority (Baie Verte Miners Registry Project)**

On February 17, 2010 the Workplace Health, Safety and Compensation Commission contacted this Office to report a "low risk" exposure of information (including medical, employment and other personal information) which had occurred at the Baie Verte Peninsula Health Care Centre during the Fall of 2009. This exposure had occurred during a research project sponsored by WHSCC and carried out by researchers from Memorial University.



The project involved the creation of a registry of the health and employment records of former Baie Verte miners. WHSCC sponsored the project, Central Health provided access to the health records and Memorial researchers collected the information and conducted the analysis. WHSCC and Memorial agreed that data could only be collected from medical charts of those miners who had given prior written permission to access their files.

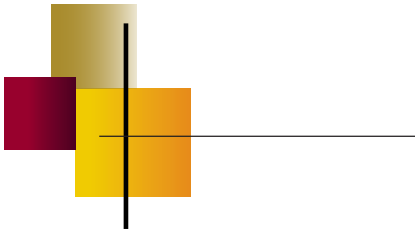
Through on-going quality assurance checks performed in January 2010, WHSCC officials became concerned that the researchers may have gone beyond reviewing charts of consenting miners and may have accessed charts of miners for whom written consent had not been obtained. WHSCC then consulted with Central Health and found that several hundred charts had been accessed without consent.

When WHSCC reported this to the Commissioner, it included a letter signed by both it and Central Health that agreed to cooperate with any investigation the Commissioner wished to conduct.

When contacted by this Office, Memorial indicated that it was conducting its own internal investigation. It was upon request for the results of its internal investigation that concerns were raised by Memorial regarding this Office's jurisdiction to conduct an investigation into this matter.

This Office responded to these concerns by relying on section 51(a) of the *Access to Information and Protection of Privacy Act (ATIPPA or Act)*, under which the Information and Privacy Commissioner has a general power to "make recommendations to ensure compliance with this Act and the regulations." The OIPC put forward the view that in order to make recommendations, it was necessary that this Office be able to investigate privacy breaches, whether they are reported by affected individuals, the public body, or come to the attention of the OIPC via some other method.

The OIPC also noted that the general spirit and intent of the Act is to promote openness and accountability. In that context, the OIPC asserts that Memorial could give its voluntary consent to cooperate with the investigation even if it was Memorial's position that there was no legislative requirement for it to do so.



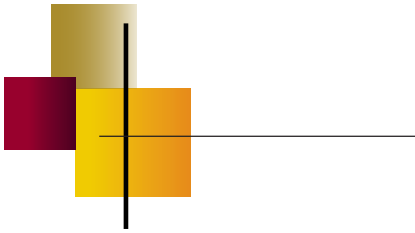
When a formal investigation was initiated, Memorial also raised concerns about releasing its internal investigation report because, according to Memorial, that report was “in relation to a disciplinary proceeding” which they felt should be protected from outside release. This Office offered to receive the report in redacted form so that the privacy of the disciplinary proceedings could be maintained however, Memorial refused to release the report even in redacted form, citing again this Office’s lack of jurisdiction to investigate.

In its formal submission Memorial also argued that the records were subject to section 5(1)(h) and therefore exempt from the *ATIPPA* because the records contained research information of an employee of a post-secondary educational institution. Memorial further argued that approval by the Human Investigations Committee (HIC) was determinative of the privacy issues on this file. As such, once the HIC had approved the research, this Office has no authority to question the process. In the end Memorial refused to fully cooperate with this Office.

On the preliminary issue of jurisdiction, the Commissioner wrote that it was this Office’s view that our authority to conduct privacy investigations stemmed from section 51 of the *Act*. He also noted that this view of section 51 was in keeping with the purposes of the *ATIPPA*, as noted in section 3. The Commissioner took guidance from an Ontario decision in which the Court held that in order to carry out her legislated duty to report on the effectiveness of the legislation, the Commissioner had chosen to accept complaints and conduct investigations. By doing so, she was “acting within the legislative sphere” and as such it was a matter for the Legislature, and not the Courts.

As for this information being excluded under section 5 as “research information”, the Commissioner agreed that the *ATIPPA* did not apply to a record containing research information but it did apply to records of a public body (Central Health) prior to and during the process of collection for research purposes by Memorial.

Central Health, unlike Memorial, provided this Office with all relevant documentation. As such the Commissioner was able to review and assess whether the actions of Central Health were in compliance with the *Act* when they disclosed the information to Memorial.



Section 41 of the *Act* does permit a public body to disclose personal information for a research purpose, but it also requires an agreement between the disclosing and the collecting parties. No such agreement was in place here as Central Health was not even aware that Memorial had moved from collecting consented information to non-consented information. By not complying with section 41, Memorial further compounded its improper collection.

The Commissioner then carried out a four-step analysis of how Central Health dealt with this privacy breach. He found that Central Health had reacted appropriately and has taken steps to avoid such a problem from occurring again. The most significant of these changes has been a new policy which requires the appropriate Central Health employee to see each and every consent form in person before releasing any information.

As for commenting on the actions of Memorial, the Commissioner held that he was not able to fully assess the compliance of Memorial with the *ATIPPA* due to its decision not to cooperate fully with this investigation, however he did find, based on the information available, that Memorial had engaged in an inappropriate collection of personal information in violation of the *ATIPPA*.

The Commissioner also spoke briefly on the impact of the proclamation of the *Personal Health Information Act* ("*PHIA*"), which was not yet in force when the incidents which gave rise to this matter occurred, and therefore was not considered in this case. The Commissioner found that *PHIA* will likely apply to future situations similar to this one. Under section 44 of *PHIA*, disclosure of personal health information without consent is permitted for research purposes where the research project has been approved by a Research Ethics Board under the *Health Research Ethics Authority Act*. Had this issue arisen after *PHIA* proclamation, this Office would have launched an investigation with the goal of assessing whether any personal information was disclosed beyond that which was approved by the REB, in order to assess compliance with section 44.



## Access Report Summaries

As indicated in our previous Annual Report, the majority of Requests for Review received at this Office continue to be resolved through informal resolution. Of the Requests completed within the period of this Annual Report, fifty-four were resolved through the informal resolution process. In these cases, we write the applicant and the public body, as well as any applicable third party, confirming that a resolution has been achieved and advising all parties that the file is closed or will be closed within a specified time period. Where informal resolution is successful, no Commissioner's Report is issued.

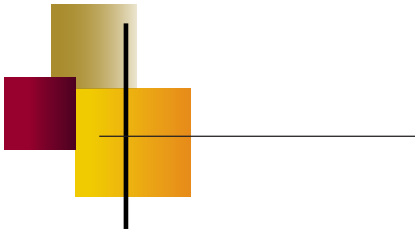
In the event that our attempt at an informal resolution is not successful, the file will be referred to a formal investigation. The results of this investigation, including a detailed description of our findings, are then set out in a Commissioner's Report. The Report will either contain recommendations to the public body to release records and/or to act in a manner consistent with the provisions of the *Act*, or will support the position and actions of the public body. All Commissioner's Reports are public and are available on our website at [www.oipc.nl.ca](http://www.oipc.nl.ca).

The following are summaries of selected Commissioner's Reports.

### **Report A-2011-006 – Town of Brigus**

The Applicant submitted an access to information request to the Town of Brigus for records concerning the Town's contract with their scrap metal removal company. The Town provided a copy of the contract immediately, at the time of the request. This Office received a Request for Review which cited a failure of the duty to assist pursuant to section 9 of the *Access to Information and Protection of Privacy Act*, as the Town had not provided a response in writing.

During the informal resolution process, the Town sent further information to the Applicant which caused a second Request for Review to be filed. In it the Applicant renewed his request for a response in writing including a statement of his right to appeal to Court or to seek a review by this Office. The Town provided a written response, however the Applicant also felt that this was still an incomplete response, and as such was tantamount to a deemed refusal.



The Commissioner determined that there had been non-compliance with section 11 of the *Act* which requires that a public body “make every reasonable effort to respond to a request in writing within 30 days”. In this case, the Town chose to provide the requested records immediately and did not respond in writing. This was tantamount to a routine disclosure that could have been made outside of the *Act*, but because the Town did not waive the \$5 fee they should have replied in writing.

However, the Commissioner found that the Town’s intent was to provide the information requested and to comply with their duty to assist. Further, a response in writing was provided during the attempted informal resolution of this Request for Review, so the Town had rectified its technical failure to comply with the strict requirements of the *Act*.

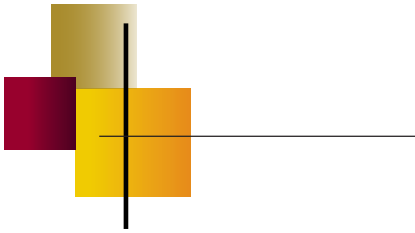
On the issue of the Applicant’s right to be notified of their right to seek review by this Office, the Commissioner noted that this requirement is triggered only when a part or the entire request is denied. The Commissioner also determined that there had been no failure in the duty to assist and that the Town had provided to the Applicant all assistance required under the *Act*.

This Office also received a third Request for Review combined with a section 44 Time Extension Complaint which claimed that the Town had failed to request an extension of time to respond to the Access Request, as required under section 16 of the *Act* and reiterated the original Request for Review. The Commissioner found that no extension of time was necessary as the Town had replied to the Access Request within thirty days of the original Request.

In this Report the Commissioner also confirmed that the *Act* provides a right to “records” and not a right to receive answers to questions. Answers, of course, can be provided in the spirit of open and accountable government but there is no statutory obligation to do so.

The Commissioner had no recommendations to make to the Town.



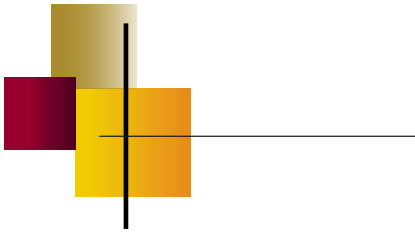


## Report A-2011-007 – Atlantic Lottery Corporation

This case highlights the importance of a public body providing detailed and convincing evidence to the Commissioner's Office when discharging its burden of proof.

The Applicant applied to Atlantic Lottery Corporation ("ALC") under the *ATIPPA* for access to PAR (Pay Analysis Report) sheets from several video lottery games no longer on the market in Newfoundland and Labrador. ALC denied access to the PAR sheet information, claiming section 27 (harm to business interests of a third party), and section 30 (personal information). The Applicant did not take issue with the severing of information pursuant to section 30. This request was similar to the request that gave rise to Report A-2009-006. In that Report, the Commissioner concluded that with respect to those games still on the market in this jurisdiction, all three parts of the test set out in section 27 were met. The information in the PAR sheets consisted of technical information which was supplied in confidence and the harm that would result from the disclosure of this information was adequately demonstrated and also significant. PAR sheets reveal the mathematics or programming of a particular game which is the essence of the game. Development of these games involved considerable investment of both time and monetary resources by each of the third parties and disclosure of PAR sheet information would enable competitors to create and manufacture market-proven successful games on an on-going basis without incurring the same research or development costs, which can be significant. For those games no longer on the market, the Commissioner concluded, in Report A-2009-006, that there was insufficient evidence to show significant harm and thus the test set out in section 27 had not been met. Therefore, the Commissioner recommended release of PAR sheet information for those games no longer on the market.

However, in this case, the Commissioner found that all three parts of the test set out in section 27 were met. A claim of section 27 by a public body requires this Office to consider the technical aspects of the industry in question, including market conditions in that industry. Section 64 of the *ATIPPA* clearly puts the burden of proof on the party asserting an exception. Without evidence to back up an argument, the burden of proof cannot be met, and in order to discharge its burden, the public body or third party must provide convincing and detailed evidence as to the harm that would occur should the information at issue be disclosed. The assertion of harm must be more than speculative, and it should establish a reasonable expectation of probable harm.



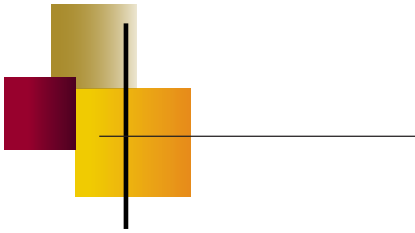
The Commissioner noted that any decision of this Office must be based on the information that is put before it. There is often much research done during the investigation of a Request for Review, however, independent research cannot always uncover information about the inner workings of a particular industry. This Office cannot reasonably be expected to become expert in, or to do significant independent research into, a particular industry every time section 27 is claimed. Public bodies and third parties ultimately bear the burden of proving their right to rely on section 27, which includes not only argument on the specific issue at hand, but where necessary, the relevant context and particulars of a given industry or business so that the Commissioner can make informed decisions based on solid evidence.

In this case, one of the third parties provided this Office with an excellent submission. It was very well considered and detailed and gave several concrete examples to support its arguments against disclosure of PAR sheet information for games no longer on the market in this jurisdiction. The third party argued that because math models from old games are re-used in the development of new games, the harm from disclosure of PAR sheet information is the same whether the game is still on the market or not. This type of high calibre submission is exactly what this Office is looking for when we say that we require detailed and convincing evidence.

As with the previous decision regarding PAR Sheets, the Commissioner found that the information in the PAR sheets consists of technical information which was supplied in confidence. However, because of the detailed and convincing evidence of the harm that would result from the disclosure of PAR sheet information, even for games that were no longer on the market that was provided by the third party, the Commissioner changed his position from the one taken in Report A-2009-006 and found that section 27 was also applicable to relevant PAR sheet information for games no longer on the market. Therefore no recommendations for release were made.

### **Report A-2011-011 – Public Service Commission**

The Applicant made a request on December 15, 2010 to the Public Service Commission (the “PSC”) for access to records relating to a harassment investigation report. Two other Applicants submitted separate information requests for disclosure of the investigation report. These other two requests are the subject of Report A-2011-010 and Report A-2011-012. Although the three requests are not identical, there are



significant commonalities. All three relate to the same investigation report, and in each case, the PSC failed to provide access within the statutory time limits. As such, many of the facts and much of the discussion in each of the Reports is the same.

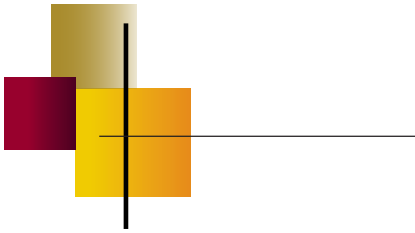
All three Reports were issued by the Assistant Commissioner, rather than the Commissioner. Commissioner Ed Ring delegated authority for the matters to Assistant Commissioner Sean Murray pursuant to section 57 of the *ATIPPA*. The decision to delegate these matters was made because Commissioner Ring was the former Director of Appeals and Investigations for the PSC at the time that the matters which are the subject of the records in question were brought to the PSC, and Mr. Ring had had some very preliminary involvement with the investigations.

In response to the Applicant's access request, the PSC sent the Applicant a letter dated January 10, 2011, providing notification that it intended to extend the time limit for responding to the request based on section 16(1)(b) of the *ATIPPA*, which allows for an extension where a large number of records is requested or must be searched, and to do so would interfere unreasonably with the operations of the public body. The PSC indicated in its letter that it expected to respond to the request by February 14, 2011.

On February 17, 2011, the PSC sent the Applicant an e-mail indicating that because of the amount of material associated with the access request that had to be reviewed and redacted the PSC could not respond to the request by February 14, 2011. The PSC further indicated that it expected to have the review, redaction and release process completed by mid-March.

On February 24, 2011, the Applicant, pursuant to section 43, filed a Request for Review requesting this Office to review a decision, act or failure to act by the head of the PSC and to bring to the attention of the head of the PSC a failure to fulfill the duty to assist applicants as set out in section 9. The Applicant also asked this Office to investigate the extension of time for responding to his request.

On March 11, 2011, the PSC sent the Applicant a letter indicating that despite its earlier indication that it would provide the responsive records by mid-March 2011, it would not be able to provide the records by that time.



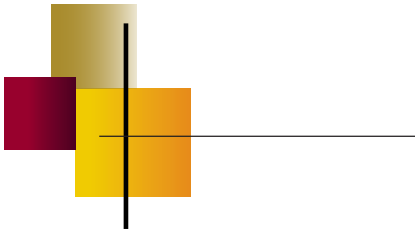
On June 22, 2011, the PSC provided the responsive records to the Applicant.

In his discussion of this matter, the Assistant Commissioner noted there was a deemed refusal in this matter in accordance with section 11(2) of the *ATIPPA*, which provides that where the head of a public body fails to respond within the 30 day period or an extended period, the head is considered to have refused access to the record. The Assistant Commissioner pointed out that it took the PSC 188 days (more than six months) to respond to the Applicant's access request made on December 15, 2010. The Assistant Commissioner stated that the excessive delay beyond the statutory time period was unreasonable and demonstrated a disregard for the statutory timelines.

The Assistant Commissioner further stated that it is clear from the *ATIPPA* and the access legislation in other jurisdictions throughout Canada that the timeliness of a response to an access request is imperative and that unreasonable delay is synonymous with an explicit denial of access.

During the investigation of this matter, the PSC provided this Office with an explanation for its failure to provide the records within the extended timelines. These reasons included the volume and complexity of the records, the need for consistency and strict attention to detail when redacting information, consultations with other departments, and the organizational demands placed on the Coordinator. The Assistant Commissioner discussed each of these reasons put forth by the PSC.

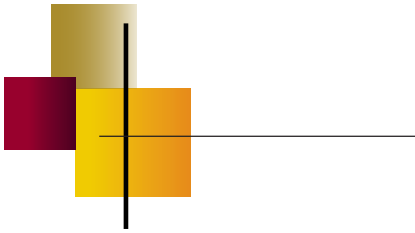
In relation to the organizational demands placed on the Access and Privacy Coordinator, the Assistant Commissioner recognized that the Coordinator held a senior level position with the PSC which no doubt carries numerous responsibilities and places many demands on her work day. However, the Assistant Commissioner pointed out that the head of a public body has a statutory obligation under section 67 of the *ATIPPA* to designate a person on the staff to act as an Access and Privacy Coordinator and to ensure that the Coordinator is properly trained and qualified to perform the duties associated with the access to information process. The Assistant Commissioner noted that it is incumbent on the Coordinator to ensure that time limits are met. In addition, the head of the PSC is under a statutory obligation to ensure that there is an adequate complement of staff to fulfill the duties related to responding to access requests within the time limits set out in the *ATIPPA*.



With respect to the PSC's statement that consultations were necessary with two other departments regarding the release of the responsive records, the Assistant Commissioner noted that the PSC did not provide this Office with any details to substantiate this claim, other than simply identifying the departments. The Assistant Commissioner further noted that this Office needs to understand why the PSC was unable to conclude its consultations within the response deadlines in order to consider this claim. To meet the burden of proof set out in section 64 of the *ATIPPA*, the PSC must provide sufficient evidence as to the nature, complexity and/or number of the consultations undertaken. The Assistant Commissioner stated that the evidence was insufficient to accept this as a satisfactory justification, or even a contributing factor, for the unreasonable delay.

The Assistant Commissioner recognized that the access request involved a large volume of records and that the redaction of information is a process that requires strict attention to detail. Nevertheless, the Assistant Commissioner noted that these factors do nothing to relieve a public body from its obligation to respond to an access request within the statutory timelines. A public body is limited to the reasons set out in section 16 when it comes to extending its response time beyond 30 days. If a public body does not provide the records within the statutory deadline, it will be in default of its statutory responsibility. While the volume of records involved and the strict attention to detail inherent in reviewing information may present challenges, it is not an acceptable justification for a public body to exceed the statutory response deadlines. The Assistant Commissioner stated that the PSC had to accept the fact that its obligations under the *ATIPPA* must be complied with despite the challenges presented by an access request. The Assistant Commissioner outlined certain measures that the PSC could have taken to respond to this access request in a more timely and efficient manner. The Assistant Commissioner indicated that the PSC could have assigned additional staff at an earlier point in time to help process this request in a timely manner. He also noted that the PSC should have had a designated backup coordinator who was trained and ready to assist in situations such as this one.

The Assistant Commissioner also pointed out that the PSC should have worked with the Applicant to narrow the request and should have considered providing interim releases of records to the Applicant as those records were processed.

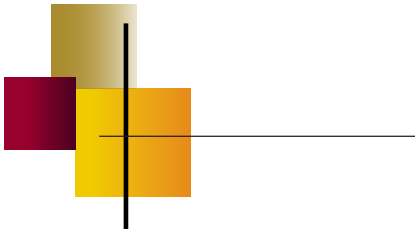


The Assistant Commissioner remarked on the failure of the PSC to give proper consideration to the Applicant's suggestion that he and the other two applicants, who had submitted separate information requests for disclosure of the investigation report, sign consents allowing the PSC to release the personal information of all three applicants to the others as a means of reducing the amount of time required to redact the same investigation report three times. The Assistant Commissioner pointed out that such consents would allow for the operation of section 30(2)(b), which provides that section 30 does not apply where the third party to whom the personal information relates has consented in writing to the disclosure of the personal information. Therefore, in this case, the other two applicants would provide written consents such that if any of their personal information were located within the responsive records requested by this Applicant, it would not have to be severed by the PSC, thus (in theory) saving on the time it takes to redact the record. The Assistant Commissioner stated that had the PSC followed the suggestion of the Applicant then this process may have assisted the Applicants in getting their information sooner than they otherwise would have.

The Assistant Commissioner found that the PSC had not fulfilled its duty to assist the Applicant imposed by section 9. The PSC had failed to respond to the Applicant without delay and had failed to assist the Applicant in an open, accurate and complete manner.

The Assistant Commissioner made the following recommendations to the PSC in relation to future access requests:

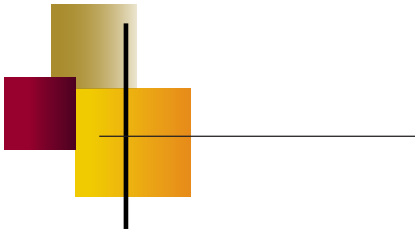
1. implement modifications to its practices to help ensure that it meets statutory time limits in the future, even for large volume requests;
2. perform its duties under the *ATIPPA* in a manner that is consistent with the duty to assist an Applicant;
3. consider interim releases of records in future access requests which involve a large volume of records;
4. ensure that its *ATIPPA* training for employees emphasizes the importance of the 30 day time period for responding to an access request;
5. appoint an Alternate/Backup Access and Privacy Coordinator, who will receive training from the *ATIPP* Office and who can assist the Access and Privacy Coordinator in processing access requests;
6. return the mandatory \$5 application fee to the Applicant, to acknowledge the excessive delay in processing the request.



## Report A-2011-016 – Department of Child, Youth and Family Services

Two Applicants applied to the Department of Child, Youth and Family Services under the *ATIPPA* for access to a report resulting from an independent review of a particular case involving one of the Applicants. The record consisted of a report from an independent reviewer into the manner in which a case involving one of the applicants was handled by the Department and other involved agencies. It looked into the internal policies and procedures of the Department and the interplay between the Department and the other involved agencies for the purpose of evaluating the performance of the Department in handling this particular case, and to provide recommendations for improvements if warranted. The review did not re-open the initial investigation or reconsider the facts of the case. It simply looked at the policies, procedures and other relevant factors that affected the handling of the case.

In both cases, the Department denied access to the entire report citing section 30. The Department also argued that the new *Children and Youth Care and Protection Act* (the “new Act”), which came into force well after the access requests were filed, operated to remove this record from the scope of *ATIPPA*. Therefore, the Department argued that the release of the record at issue should be considered with respect to the provisions of the new *Children and Youth Care and Protection Act*. The Department’s argument surrounding the applicability of the *ATIPPA* was based on a provision in the new Act which states that a “proceeding” commenced under the *Child, Youth and Family Services Act* (the “old Act”) is considered a proceeding under the new Act and the new Act states that all requests for information pertaining to a child in care are governed by the new Act. However, in this case, there was no proceeding ever commenced under either the old Act or the new Act, as an access to information request is initiated under the *ATIPPA*. The *ATIPPA* also provides for a request for review by the Commissioner if an Applicant is unhappy with the decision or response of a public body. To the extent that a Request for Review might be considered a “proceeding”, it is one that is commenced under the *ATIPPA* and not the *Children and Youth Care and Protection Act* or the former *Child, Youth and Family Services Act*.



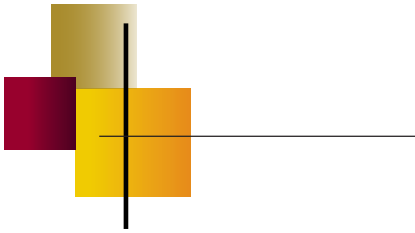
Aside from the *ATIPPA*, the only other legislation which the Department may have been justified in considering with respect to its initial decisions to withhold this information from the Applicants was the old *Child, Youth and Family Services Act*, as this was the law in force at the time that the decisions in response to the access requests were made. The new *Act* could not have been relevant to the decision which was under review in this case, as the Department could not take into consideration legislative provisions which were not in force at the time these decisions were made. The disclosure provisions of the old *Child, Youth and Family Services Act* dealt with requests for certain kinds of personal information and the regulations under the *ATIPPA* stated that the disclosure provision of the *Child, Youth and Family Services Act* prevailed over the provisions of the *ATIPPA*. This means that a request for information as described in the old *Act* would be dealt with according to those provisions and not the *ATIPPA*.

However, the Commissioner stated that as the record at issue did not contain such information, those provisions did not apply and the request should have been dealt with solely under *ATIPPA*. The record at issue contained very little personal information and was primarily concerned with a review of policies and procedures that affected the handing of a particular case. The *ATIPPA* is clear in its definition of personal information, and information about policies and procedures does not constitute personal information. As such, none of this information can be withheld under section 30. Some of the information was one of the Applicant's own personal information and it was recommended that this be released as well. Section 30 was found to be applicable where the record contained the personal information of other individuals.

### **Report A-2012-001 – The City of Corner Brook**

The Applicant applied to the City of Corner Brook (the "City") for access to minutes from Council "in-committee" meetings conducted during a specific timeframe. The City responded by issuing a fee estimate. The City also indicated that if the estimate was paid and records were released, information would, nevertheless, be severed from those records pursuant to section 19(1)(c) and on the basis that the information was "of a land, legal or labour nature". At a later date, the City also claimed sections 26, 27, and 30 of the *ATIPPA*. The Applicant filed both a Fee Complaint and Request for Review with this Office. This Complaint and Review raised numerous issues surrounding the policies and procedures employed by the City in relation to privileged meetings, minutes and the tabling/ratification process. To ensure that a full understanding was had and that any recommendations made by the Commissioner were practical and possible, this Office sought a submission from the Department of Municipal Affairs.



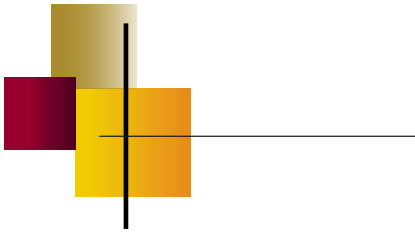


As a result of this Review, it came to light that the City was ratifying complete sets of minutes from every “in-committee” meeting at public Council meetings in order to validate the decisions which were made, rather than simply ratifying the decisions themselves. Consequently, the Commissioner found that it was necessary to consider section 46 of the *City of Corner Brook Act* (CCBA) which mandates that “all [...] documents tabled or adopted by council at a public meeting” must “be made available for public inspection.”

The Commissioner found that in order to ratify the minutes from the “in-committee” meetings, the City must have first tabled those minutes such that they were before the Council for review prior to their ratification. Consequently, the City has brought the Council “in-committee” meeting minutes within the purview of section 46 of the CCBA. As a result the Commissioner found that another procedure for access existed (i.e. the *City of Corner Brook Act*) and subsections 5(2) and 3(2) of the *ATIPPA* applied limiting the application of the *ATIPPA* to the protection of personal information. The Commissioner therefore recommended the release of the records with the exception of any information which properly met the definition of “personal information” as set out in subparagraph 2(o) of the *ATIPPA*.

Finally, based upon the submission of the Department, the Commissioner found that the City’s practices of recording, tabling and adopting of minutes were not in accordance with recommended practices. As a result, the Commissioner recommended that the City review and revise its practices of recording, tabling and adopting council minutes, both for privileged and public meetings, in consultation with the Department.

The Commissioner also offered general commentary to all municipalities: any claims to except information from disclosure must be founded squarely within the scope of the *ATIPPA*; claims to except information on any other basis will not be accepted by this Office. Municipalities should also be careful and cautious when presenting, tabling and adopting information containing personal information or other information protected by mandatory exceptions under the *ATIPPA* and do so only where it is necessary. Even in such instances, the information should include only the minimum amount of personal information necessary to achieve the purpose.



In relation to the Fee Complaint, the Commissioner recommended that the City reduce its fee estimate to reflect only the time spent severing the information which the Commissioner recommended to be withheld and the actual costs of copying. The Commissioner further advised the City to only charge this fee if the Applicant requested copies as opposed to simply viewing the records.

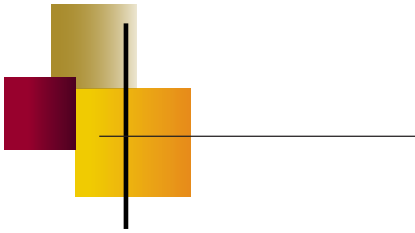
### **Report A-2012-002 – The City of Corner Brook**

The Applicant applied to the City of Corner Brook (the “City”) for access to information related to a development proposal. The City withheld the entire set of responsive records pursuant to section 27 of the *ATIPPA*, but did, however, respond to certain questions posed by the Applicant in his access to information request. The Applicant filed a Request for Review with this Office.

Before commencing any analysis, this Office explained to the City that a blanket claim of section 27 was inappropriate and requested that the City perform a line-by-line review of the records and sever where appropriate for the claimed exception of section 27. The City was also advised to be prepared to provide arguments and evidence in support of those claims, and to notify the seven relevant Third Parties and advise them that either consent to the disclosure or evidence in support of a refusal to consent should be provided. The notification which was sent to the Third Parties only referenced some of the records requested by the Applicant. Fortunately in this matter, the Commissioner was able to determine that the records which were not referenced clearly, on their face, were not records which could be withheld under section 27. The Commissioner, nevertheless, took the opportunity to stress the importance of notifying Third Parties of all records being requested so that a fully informed decision can be made by third parties as to whether to provide consent.

In relation to the records which were referenced in the notification letter, four Third Parties consented to the release of their information, one Third Party refused consent and two Third Parties did not respond.

The City indicated that it maintained its position that it would not disclose the records to the Applicant. The City argued that it was waiting for the recommendation from the Commissioner before doing so. The Commissioner found that this practice was not appropriate and determined that where a third party provides its consent, subsections 27(1) and (2) do not apply and records relating to the consenting Third Parties must be released.



In respect of the unconsenting and unresponsive Third Parties, the Commissioner found that the third element of the three-part test for section 27 was not met as the City failed to provide any evidence that any harm would be likely to result if the records were released. Instead the City placed the burden on the Third Parties to provide such evidence and this evidence was not forthcoming. The Commissioner also determined that the consent provided by the other Third Parties was a good indication that the presumed harms were not as likely as has been suggested by the City. As a result the records were recommended for release with the exception of any non-responsive information which was left at the discretion of the City to disclose or not.

Additionally, the Commissioner took the opportunity to again stress the three-part test necessary for excepting information from disclosure under section 27; outside of this test, no other factors are considered when analyzing section 27 claims.

#### **Report A-2012-005 – Town of Portugal Cove-St. Philip’s**

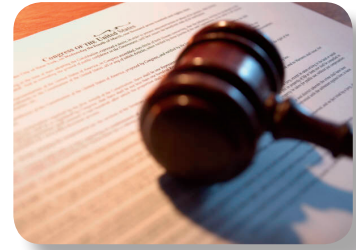
The Applicant submitted an access to information request to the Town of Portugal Cove-St. Philip’s for the name of the individual who had made a previous access request to the Town.

The Town refused the request pursuant to section 30 of the *Access to Information and Protection of Privacy Act*.

The Commissioner determined that the Town’s application of section 30 was appropriate as the name met the definition of “personal information” in section 2(o)(i) of the *Access to Information and Protection of Privacy Act* and did not fall within an exception to disclosure allowed under section 30(2).

The Commissioner noted that the Town had attempted to obtain consent for the disclosure from the individual whose name was sought by the Applicant. Had the individual given such consent, this would have allowed the Town to release the individual’s name under section 30(2)(b). When that consent was not forthcoming, the Town was obliged by the *Act* to withhold this information from the Applicant.

The Commissioner had no recommendations to make to the Town.



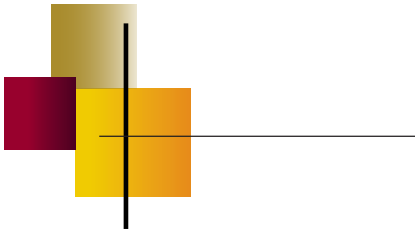
The following are summaries of the proceedings in the Supreme Court of Newfoundland and Labrador Court of Appeal and Trial Division in which this Office has been involved during the period of this Annual Report.

***2011 01H 0039 - Oleynik v. Newfoundland and Labrador Information and Privacy Commissioner, Supreme Court of Newfoundland and Labrador, Court of Appeal***

This matter started out as an access request in 2008 to Memorial University for certain e-mail communications. The Applicant filed a Request for Review of Memorial's decision with our Office in October 2008. That case was described in last year's Annual Report (see *Summary of Report A-2010-005* on page 25 of OIPC Annual Report 2010-2011).

Our Office completed its investigation by April 2009. However, the case was referred to formal investigation and, due to staff shortages and workload, Report A-2010-005 was not issued until April 28, 2010. The Applicant had meanwhile filed an application with the Supreme Court, Trial Division, in which he sought an order of *mandamus* against the Commissioner, to compel the production of the Report. At the hearing, which was held on January 31, 2011, the Applicant also argued for an order of *certiorari* to set aside the Report which, by that time, had been issued. The decision of Justice Fry was issued on March 1, 2011.

The Court held that since the Commissioner had issued his Report on April 28, 2010 he had fulfilled his obligations under the *Act* and therefore *mandamus* was no longer available. The Court also held that an order of *certiorari* was not available, since a Commissioner's Report is only a recommendation and has no binding effect. Justice Fry also held that the 90 day time limit for issuing a Report under the *ATIPPA* is directory rather than mandatory, and that there was no basis to attach any legal consequences to the failure of the Commissioner to issue the Report within 90 days. The decision clarified that the Commissioner has wide latitude to carry out an investigation as he sees fit, and that applicants do not have the right to insist that an investigation be carried out in a particular way. It also confirms that the remedy for an unsatisfied applicant is to appeal the decision of the public body, not to attack the Commissioner's Report. Justice Fry's decision was also summarized in last year's Annual Report (see *Summary of Oleynik v. Newfoundland and Labrador Information and Privacy Commissioner* at page 38 of OIPC Annual Report 2010-2011).



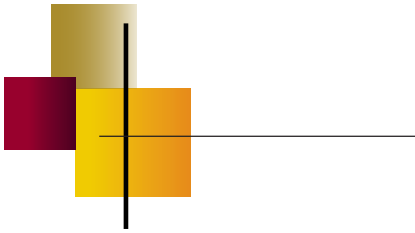
On April 19, 2011, the Applicant filed a Notice of Appeal of the decision of Justice Fry in the Court of Appeal. The appeal was heard on February 10, 2012 before Justices Harrington, Rowe and Mercer. In a judgment released on February 28, 2012 the Court of Appeal unanimously dismissed the Applicant's appeal.

The central issue before the Court of Appeal was whether or not the remedy of *certiorari* was available to the Applicant. The Court of Appeal disagreed with the Trial Division in part, holding that there was previous case authority that would appear to suggest that *certiorari* might be available, even in circumstances where the Report of the Commissioner has no binding effect. However, the Court of Appeal stated that *certiorari* is a discretionary remedy, and a court still has to exercise the discretion whether or not to grant it. The Court of Appeal held that the most important consideration in the present case was the fact that under section 60 of the *ATIPPA* the Appellant had a statutory right of appeal from the decision of the University accepting the Commissioner's Report. That would have given the Applicant a completely new hearing by the Trial Division, which would have investigated the matter and made its own findings of fact. The Court of Appeal ruled that because that right of appeal was available, the Appellant was not entitled to the *certiorari* remedy.

The other issue before the Court of Appeal was whether the failure of the Commissioner to file, with the Trial Division, a record of his investigation was a defect. The Court of Appeal was satisfied that the filing of a record would not have affected the analysis or the ultimate decision of the Trial Division judge. The appeal was therefore dismissed.

***2010 01H 0053 - Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner), Supreme Court of Newfoundland and Labrador, Court of Appeal***

A decision in this matter, referenced in our 2010-2011 Annual Report, was rendered on October 26, 2011. The appeal was from the decision of Madame Justice Valerie Marshall relating to whether the Commissioner is entitled to compel a public body to produce records for review when the public body has claimed section 21 (solicitor-client privilege). Madame Justice Marshall declared that s. 52 of the *ATIPPA* did not oblige the Department of Justice to produce certain records requested by the Commissioner for the purpose of verification of a claim that the requested records are subject to solicitor-client privilege.



The Court of Appeal set aside the decision of Madame Justice Marshall and directed the Department of Justice to deliver the responsive records to this Office.

Justice Harrington, speaking for the panel, stated:

*[32] Section 52 of ATIPPA must, in the first instance, be given a purposive construction in its entire context, and in its grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act and the intention of the Legislature. Where this approach gives rise to two possible interpretations, one abrogating solicitor-client privilege and the other not, the court must favor that respecting solicitor-client privilege. Where the only possible interpretation is that permitting an abrogation of solicitor-client privilege, the specific exercise of the authority must be absolutely necessary to achieve the ends sought by the enabling legislation.*

*[...]*

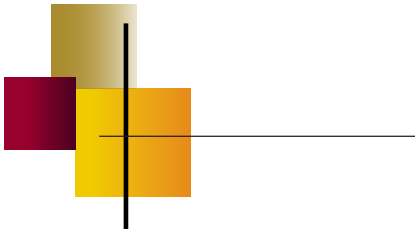
*[34] [...] However, in this case, production of requested records under section 52 of ATIPPA to the Commissioner is expressly required regardless of any privilege under the law of evidence for the discharge of the Commissioner's explicit mandate to verify the privilege claim at the instigation of a requester under subsection 43(1) of ATTIPA.*

Following this position through, the Court went on to distinguish the ATIPPA from the PIPEDA:

*[75] Subsection 52(3) of ATIPPA, in contrast to PIPEDA, does advert to issues raised by privilege. While it does not employ the words "solicitor-client privilege", I am satisfied that the words actually employed are not ambiguous and are sufficiently explicit to include that privilege.*

The Court then went on to examine whether the routine production of section 21 records is absolutely necessary and found that:

*[78] [...] The purpose of the legislation, described above, is to provide for an independent review officer which can undertake a timely and affordable first level review of all information request denials. This access to justice rationale mandates that the*



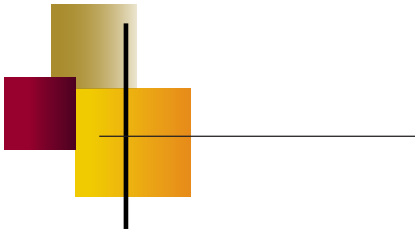
*Commissioner's routine exercise of his authority to review solicitor-client privileged materials is absolutely necessary. The purpose of ATIPPA is to create an alternative to the courts. This goal would be defeated if the Commissioner cannot review denials of access to requested records where solicitor-client privilege is claimed and was forced to resort to applications to court to compel production.*

*[79] [...]From the foregoing I conclude that the Legislature intended subsection 52(3) to enable the Commissioner to compel the production of responsive records that are subject to a claim of solicitor-client privilege.*

The Court then highlighted possible alternative mechanisms for handling claims of section 21 to avoid any possible misuses of authority both on the part of a public body and on the part of this Office. The Court suggested that in certain cases it may be possible for this Office to reasonably conclude, without inspecting the records over which section 21 is claimed, that the solicitor-client privilege attaches. To this end, the Court suggested that these instances might well be taken care of by way of an affidavit from a senior official indicating that the relevant records are protected by solicitor-client privilege and provide reasoning for same.

***2011 OIG 4525 - Information and Privacy Commissioner v. Newfoundland and Labrador (Department of Business), Supreme Court of Newfoundland and Labrador, Trial Division***

Having received a Request for Review from an Applicant, the OIPC requested that the Department of Business (the "Department") provide the responsive records to the OIPC in order to conduct a review of the Department's decision to deny the Applicant access to a majority of the responsive records. The Department denied the OIPC access to the responsive records on the basis of section 5(1)(c) and (c.1). It was the position of the Department, based on the decision of Justice Fowler in *Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner)* 2010 NLTD 19 (CanLII), that records which are claimed to fall under section 5 of the ATIPPA are not compellable by this Office.



This Office highlighted to the Department that the decision of Justice Fowler clearly indicates that where a public body refuses to provide this Office with access to records, this Office must, nevertheless, obtain evidence beyond the word of the public body to verify claims that the requested records fall outside the application of the *ATIPPA*. On this basis, this Office once again requested a copy of the withheld responsive records, or alternatively, to be allowed to view the records at the Department's office. These requests were refused.

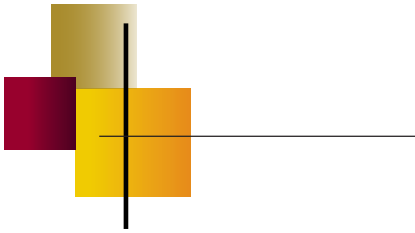
This Office did not appeal Justice Fowler's decision; however, this Office believes that the decision was *per incuriam*, on the basis that it does not reflect a proper interpretation of the *ATIPPA* or a full consideration of appropriate authorities. On this basis, this Office brought an Originating Application with the Supreme Court of Newfoundland and Labrador seeking a declaration that this Office is entitled to review the withheld records for the purpose of determining the appropriateness of the section 5 exemption claimed.

A decision in this matter was rendered by the Honourable Chief Justice David B. Orsborn of the Supreme Court of Newfoundland and Labrador, Trial Division on February 24, 2012. Chief Justice Orsborn dismissed the application finding that the matter is *res judicata*, the same question having been put to the Court and decided by Justice Fowler.

In his decision Chief Justice Orsborn concluded that the fact that the *ATIPPA*, by its terms, did not apply to records of the type requested, meant that this Office has no statutory authority to review the refusal or request production of the responsive records. Despite this conclusion, Chief Justice Orsborn did go on to examine whether the Commissioner could compel production of responsive records which a public body claims to be outside the scope of the *ATIPPA*. Chief Justice Orsborn stated:

*[83] The Act, in its opening sections, clearly sets out that certain classes of records are beyond the operation of and are not subject to the Act. Subsection 5(1) provides that "this Act... does not apply to ..." the enumerated classes of records. The wording could not be clearer. This limitation is one of the operation of the Act as a whole; it is not written in the context of an exception to the statutory right of access as set out in Part II. It is a decision of a public body regarding an exception to access – either mandatory*





or discretionary – that engages the review jurisdiction of the Commissioner. Had the legislature wished to treat, for example, “a record of a question that is to be used on an examination or test” (para. 5(1)(g)) as an exception to access under Part II, it clearly could have done so. But it chose not to; it chose to remove such records entirely from the operation of the Act. They are not statutory exceptions to the statutory right of access; the Act is simply not applicable to the records, and such records are not included in the general right of access in s. 7.

[84] The Act does not give the Commissioner the authority to demand production of or to review records in the hands of public bodies when the public body asserts that the Act does not apply to the records because of s. 5.

Chief Justice Orsborn went on to state:

[86] The Commissioner cannot compel the production of records to which the Act does not apply. But this conclusion does not necessarily mean that the public bodies have free reign to refuse access to information by simply asserting that the Act does not apply to the requested records.

It was the position of Chief Justice Orsborn that to avoid these blanket assertions, a determination by the public body that requested records were beyond the scope of the Act, by virtue of section 5, may be subject to judicial review. To date neither the Commissioner nor an Applicant has made an application for judicial review on this basis.





## Every Day Leaders in Access to Information and Protection of Privacy

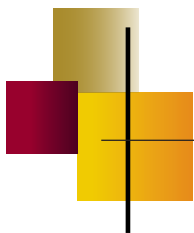
In last year's Annual Report, we wrote:

*At the OIPC, we've had the pleasure of working with a number of access and privacy professionals who are employed by various public bodies and custodians subject to the ATIPPA and/or PHIA. We are continually impressed with their dedication to the essential philosophy behind both access to information and protection of privacy. We at the OIPC tend to work with these folks when an issue has come to our attention, sometimes through a complaint, but more often we talk to them about more routine matters. They might call the Office to have a discussion with one of our Analysts about a situation they are dealing with, or some new policy development initiative they want to discuss, or to get our take on how a certain legislative provision is meant to work.*

*Many organizations struggle with developing both a culture of privacy for the protection of personal information, and a culture of openness for access to information. Part of the solution is to seek out and employ professionals such as these who come to work wanting to do a good job, and who feel like they are doing something worthwhile.*

This year, we want to recognize, not just an individual Coordinator, but a whole Department of the Government of Newfoundland and Labrador: **Environment and Conservation**. Our experience with Environment and Conservation over the years, with three successive Coordinators, an Acting Coordinator/Director and a Deputy Minister, has been that they represent a real culture of transparency within the organization. They have dealt with both ordinary applicants and difficult applicants, and treated them equally courteously and helpfully. They have shown a willingness to respond to access requests in the true spirit of the Act, engaging with applicants to ensure the request is well understood, so that the applicants get the records they really need. These professionals have not only been great at providing responsive records, but have consistently gone to extra lengths to add explanations of records or processes, so that a response will be more complete. They have approached access requests, not with caution and an inclination to withhold information, but with a positive eagerness to disclose as much as possible.

They have been very cooperative with our Office in dealing with requests for review, and in resolving cases informally. In addition, they frequently consult with us for advice on process and on interpretation of the Act. For all of those reasons we would like to recognize, as leaders and role models, former Access and Privacy Coordinators - **Clare Brown and Nicole Rowsell, Director of Policy and Planning, John Drover, current Coordinator - Ellen Haskell, and Deputy Minister - Bill Parrott.**

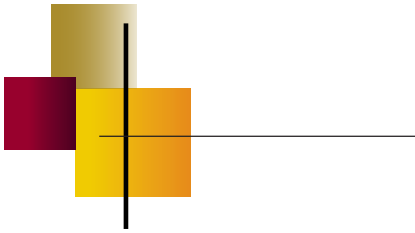


## Systemic Issues

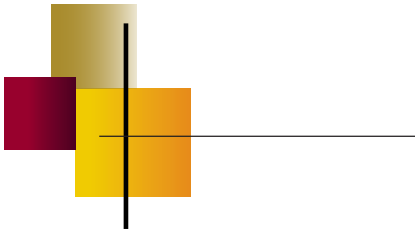
During this reporting period a number of systemic issues have been observed that have contributed significantly to the challenges associated with resolving access requests within the legislated timeframes. These issues are identified at this time to make public bodies aware that they do exist and do contribute to problems during both the informal resolution process and the formal investigation process undertaken by the OIPC. It is not our intention at this time to provide analysis of these issues or make comprehensive recommendations to address and rectify the problems, but rather to identify them in this forum for the benefit of public bodies so that they may have an opportunity to consider and improve in this regard.



1. **Delegation:** Normally it is the ATIPP coordinator appointed by the public body who would engage with the OIPC Analyst during the informal resolution process utilized to attempt to resolve requests for review without engaging the formal investigation process. In order for the informal resolution process to be effective and successful, and to be conducted in a timely manner, coordinators must be provided with the appropriate level of authority to make the decisions necessary to advance the process.
2. **Leadership:** This is clearly the single most important determinant of how well public bodies fulfill their obligations under the *Act*. Senior management's commitment to and engagement with the access regime determines the level of resources allocated to the access program as well as the degree of institutional openness. Public bodies are urged to allocate sufficient resources within the organization that is proportional to the demands placed on them by applicants. Senior managers are also encouraged to become personally involved with the process and to instill the culture of openness envisaged by the legislation.
3. **Time Extensions:** It is our experience that in a number of cases certain public bodies have used time extensions for inappropriate reasons, for example, being under-resourced or simply too busy to deal with the request at the moment. This practice is strongly discouraged as it makes inappropriate use of a very legitimate provision of the *ATIPPA* and seriously contributes to delays in dealing with and bringing closure to the request for information.



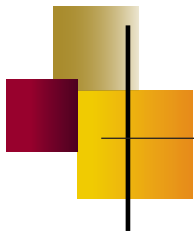
4. **Public Body Consultations:** This issue represents a challenge for the timely delivery of information. Only the public body subject to the request is accountable for meeting the requirements of the *Act*. Although this Office encourages heads of public bodies to consult as required in order to help lead to a more informed decision, it must be stressed that consultation must be conducted in a timely manner to ensure legislative timelines are met.
5. **Resources:** Of the approximately 430 public bodies responsive to *ATIPPA*, only a small number of public bodies have full-time coordinators. The lack of human or financial resources can significantly undermine the effectiveness of the *Act* and ultimately result in delays which detrimentally impacts a requester's right to information. Appropriate resources must be dedicated to this task if the legislation is to work as intended.
6. **Records Management:** Access to information relies heavily on effective records management. Public bodies that are unable to effectively manage information requested under the *Act* face time-consuming retrieval of records, uncertain, incomplete or unsuccessful searches, as well as the risk of substantial delays and complaints. Initiatives have been undertaken to address records management across government and to varying degrees across the full spectrum of public bodies responsive to the *Act* but sustained effort and attention is required to achieve the required results.
7. **ATIPP Coordinator Turnover:** Understandably some turbulence and lack of continuity does exist when dealing with public bodies which frequently change their ATIPP coordinator. In some cases this is unavoidable due to changes in employment, promotion or retirement. Experience has shown that public bodies that have made frequent coordinator changes have experienced considerable difficulty in processing access requests, the evidence of which we see at the OIPC in requests for review and complaints.
8. **Blanket Approach to Claiming Exceptions:** On many occasions public bodies have simply identified the exception(s) which they intend to claim regarding a specific access to information request. Many of the exceptions have a number of very specific subsections. I urge public bodies in future to be more detailed when claiming a specific category of information under one of these exceptions and to provide a comprehensive explanation in support of the specific exception item claimed. This would,



firstly, allow the public body to concentrate on the detailed piece of the exception being claimed and secondly, to take much of the guess work out of the process for the OIPC staff and ultimately contribute to a timely resolution to the request.

9. **Open Communication and Dialogue:** This particular issue is in many ways, the key to early and satisfactory resolution to many access requests. It should be emphasized that fully 75% of all access requests are resolved by informal resolution. It is only when the applicant, public body representative and Analyst from our Office are prepared to enter into early and meaningful dialogue and negotiations can matters be resolved in a timely manner and to the mutual satisfaction to both the applicant and public body. It is through this good will and positive approach that matters can be clarified, refined and the specific information narrowed and identified. I would take this opportunity to congratulate applicants and public body representatives for engaging in the informal resolution process and, for the most part, creating an environment that contributes to bringing closure to the majority of access requests and avoids the time consuming process of moving on to formal investigation and reports.





## Conclusion

2011-2012 has been a busy, productive and gratifying year, filled with challenges and success. This year has seen another phase in both the evolution of the Office resources and capability, along with a significant increase in its workload requirements associated with both Access and Privacy. I am proud of the quality and calibre of the Office of the Information and Privacy Commissioner staff and I continue to be impressed with the dedication, hard work and positive attitude of all staff. We will continue to strive in the coming year to improve the services provided to the citizens of Newfoundland and Labrador, and to achieve greater progress in the ongoing mandate to preserve and promote their rights of access to information and protection of privacy. The *Personal Health Information Act (PHIA)* was proclaimed on April 1, 2011. As a result, greater demands have been placed on the OIPC. Our research with other jurisdictions that have been working with personal health information for a number of years indicate that approximately 40% of the work of their offices is dealing with personal health information.

Finally, I wish once again to congratulate the Department of Health and Community Services, all stakeholders, and the many working groups who contributed as part of the *PHIA* Steering Committee. The result of all this hard work and dedication will continue to pay dividends in the future.





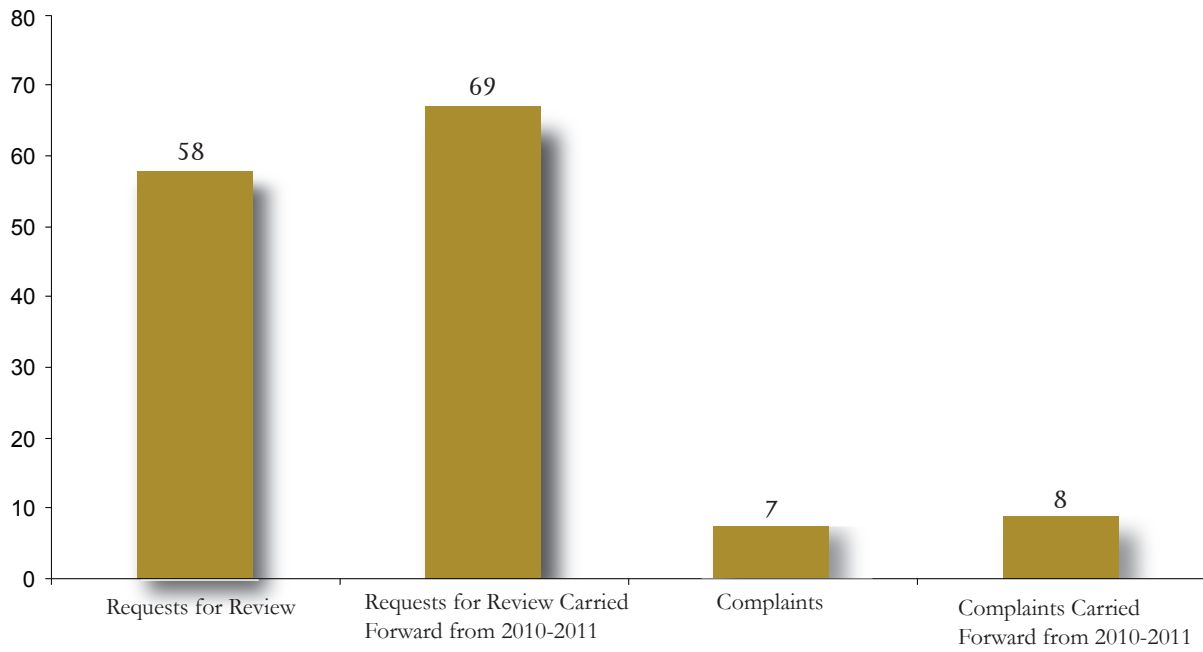


# **Appendix "A"**

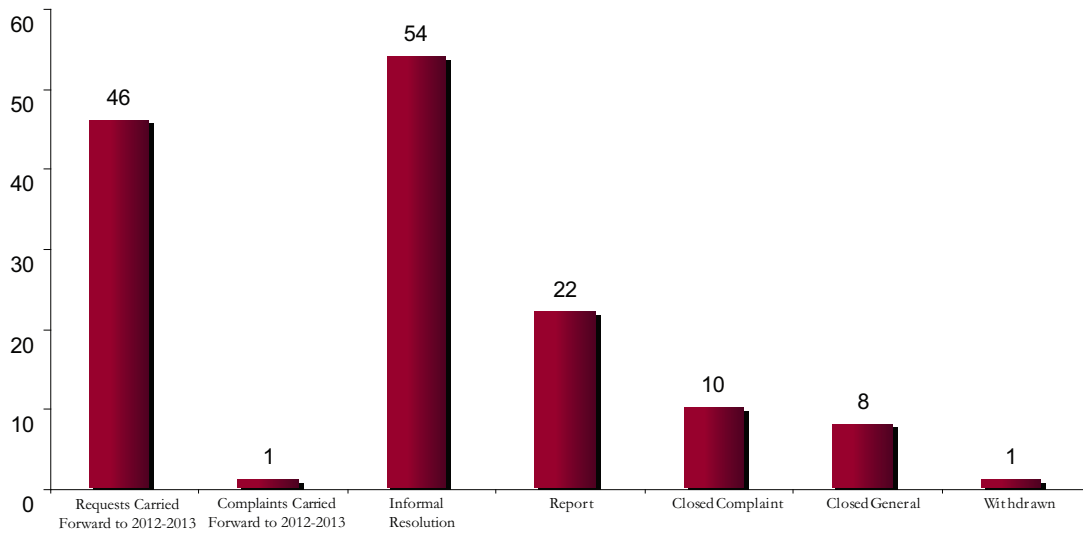
## **Statistics**



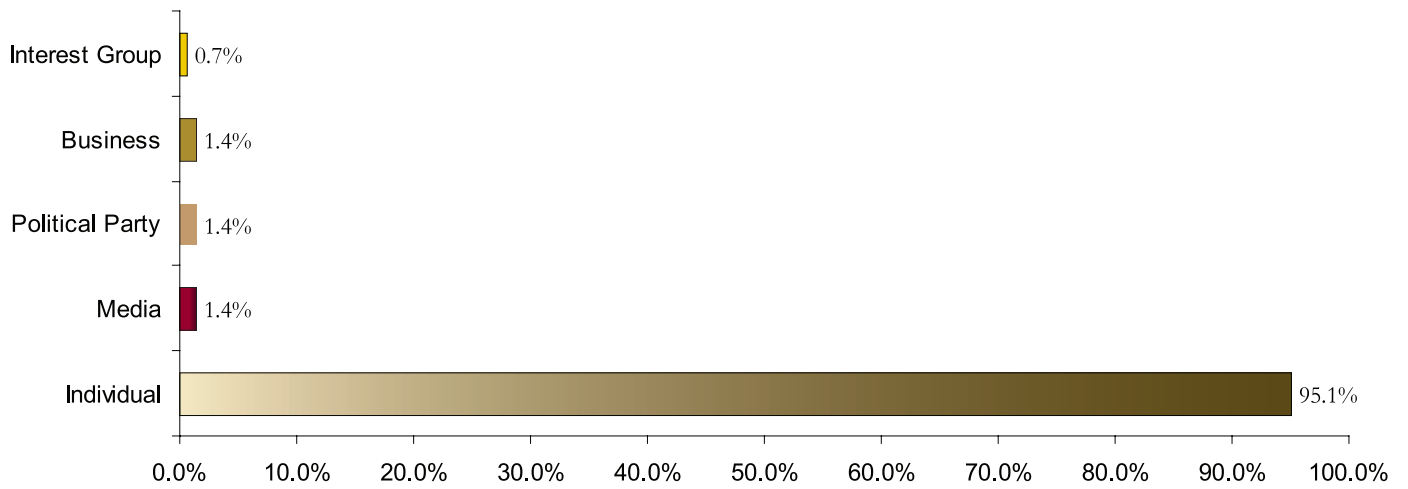
**Figure 1:** Requests for Review/Complaints Received



**Figure 2:** Outcome of Requests for Review/Complaints Received



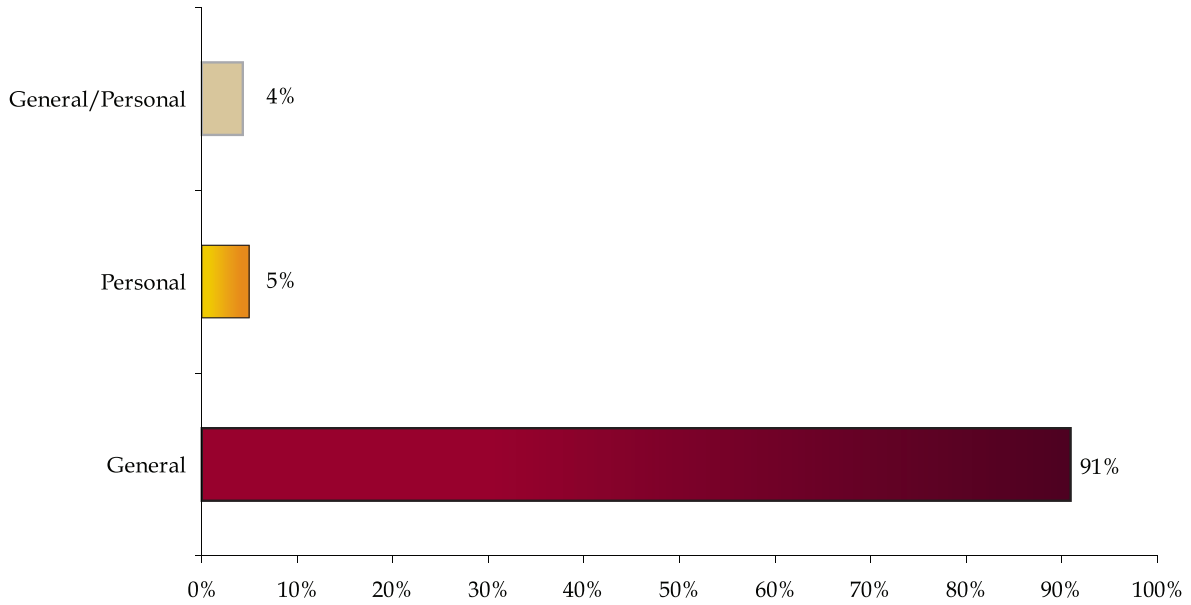
**Figure 3:** Requests for Review/Complaints by Applicant Group



**Table 1:** Requests for Review/Complaints by Applicant Group

Public Body	Number of Reviews	Percentage
Individual	135	95.1%
Media	2	1.4%
Political Party	2	1.4%
Business	2	1.4%
Interest Group	1	0.7%

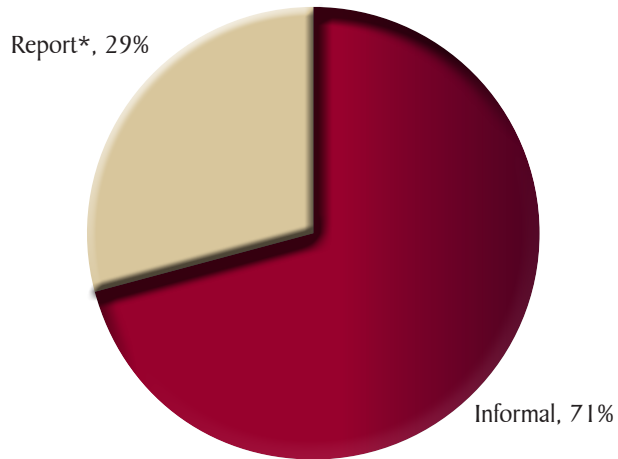
**Figure 4:** Requests for Review/Complaints by Information Requested



**Table 2:** Requests for Review/Complaints by Information Requested

General	Personal	General/ Personal
129	7	6
91%	5%	4%

**Figure 5:** Requests for Review - Resolutions

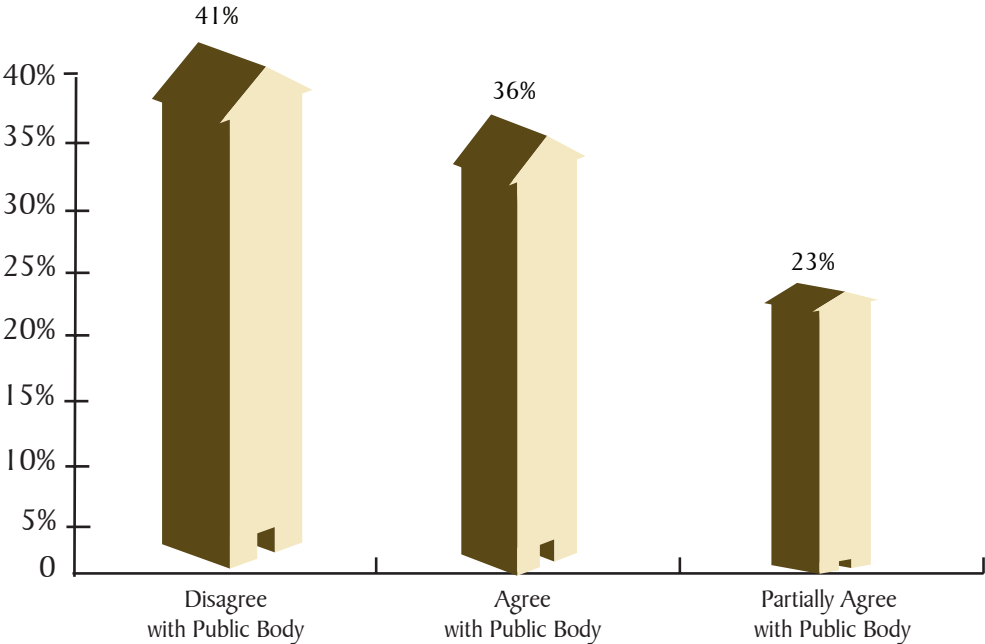


**Table 3:** Requests for Review - Resolutions

Informal	Report
54	22
71%	29%

\*Reports A-2011-006, A-2011-013, A-2011-014, A-2011-016 and A-2012-001 closed ten Request for Review files.

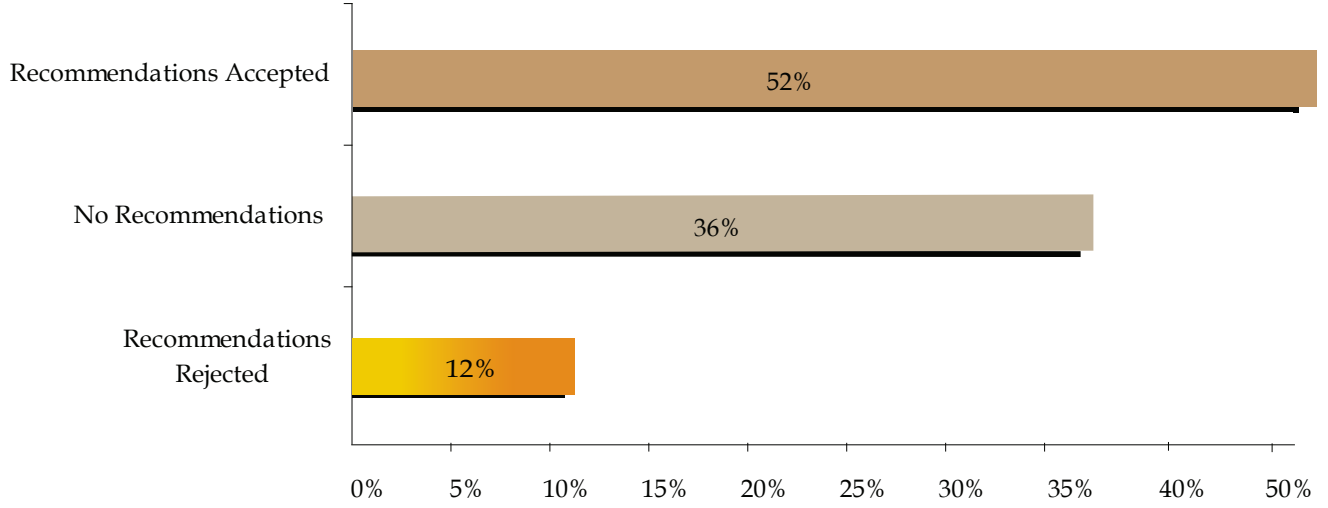
**Figure 6:** Conclusion of Commissioner's Reports



**Table 4:** Conclusion of Commissioner's Reports

Disagree with Public Body	Agree with Public Body	Partially Agree With Public Body
9	8	5
41%	36%	23%

**Figure 7:** Public Body Response to Commissioner's Reports\*



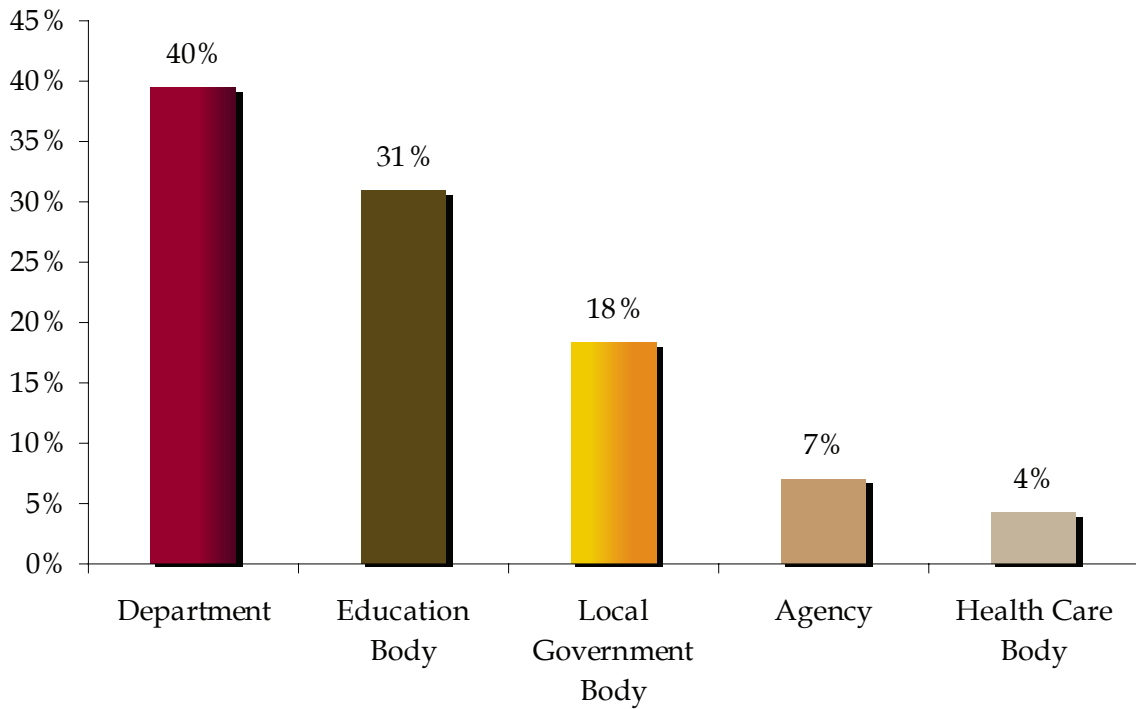
**Table 5:** Public Body Response to Commissioner's Reports\*

Recommendations Accepted	No Recommendations	Recommendations Rejected
13	9	3
52%	36%	12%

\* Four Reports issued March 2011 and the public body responses recorded during the 2011-2012 reporting period. One Report issued March 2012, therefore public body response was not received during this reporting period.



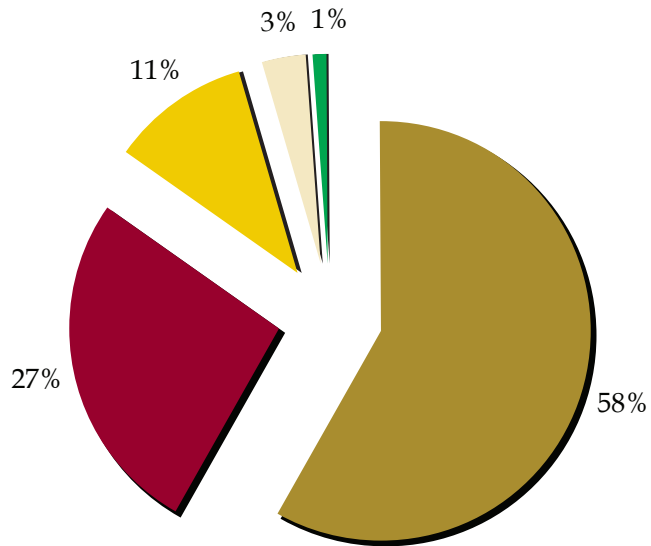
**Figure 8:** Requests for Review/Complaints Listed by Public Body Type



**Table 6:** Requests for Review/Complaints Listed by Public Body Type

Department	56	40%
Education Body	44	31%
Local Government Body	26	18%
Agency	10	7%
Health Care Body	6	4%

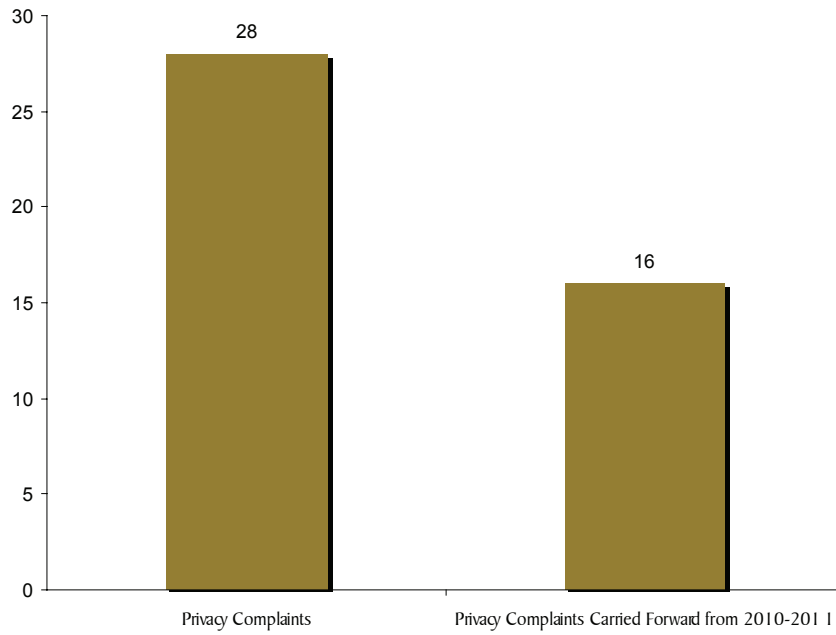
**Figure 9:** Requests for Review/Complaints by Issue



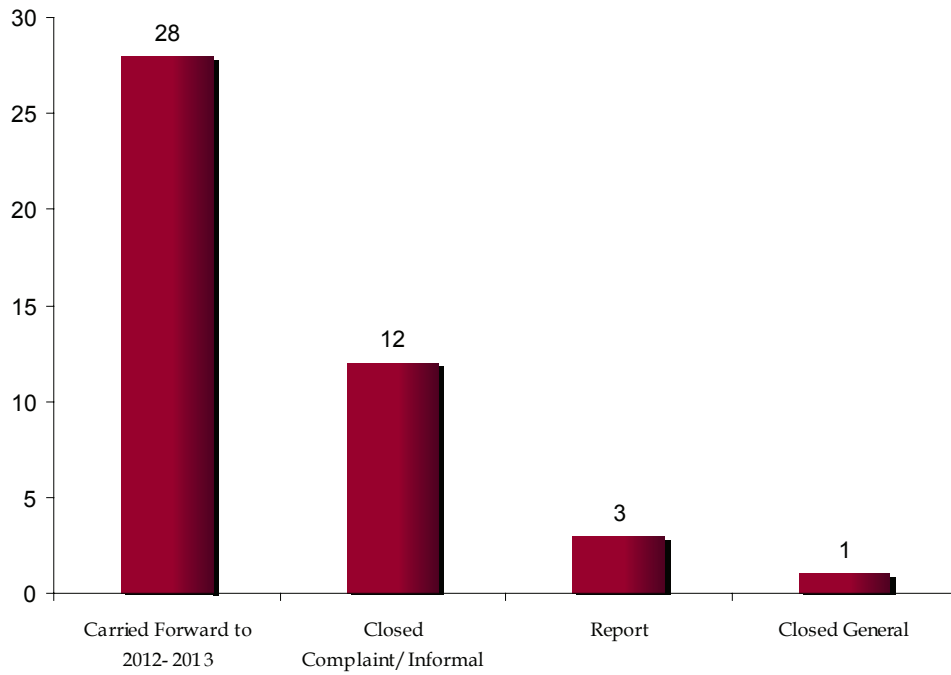
**Table 7:** Requests for Review/Complaints by Issue

Applicant Requesting Review of Decision	102	58%
Failure to Fulfill the Duty to Assist Applicants	47	27%
Time Extension	19	11%
Fee/Waiver	6	3%
3rd Party Requesting Review of Decision	2	1%

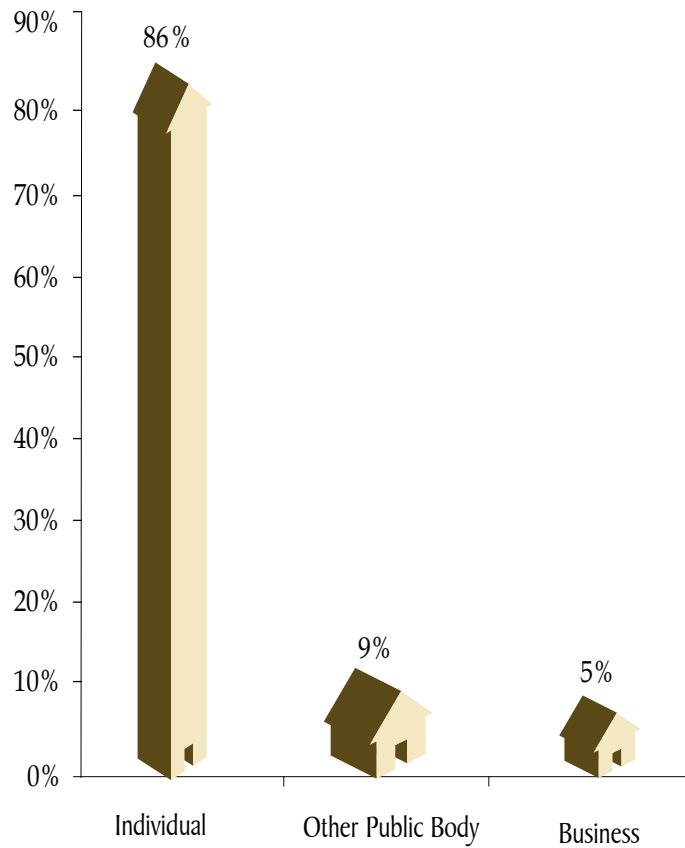
**Figure 10:** Privacy Complaints Received



**Figure 11:** Outcome of Privacy Complaints Received



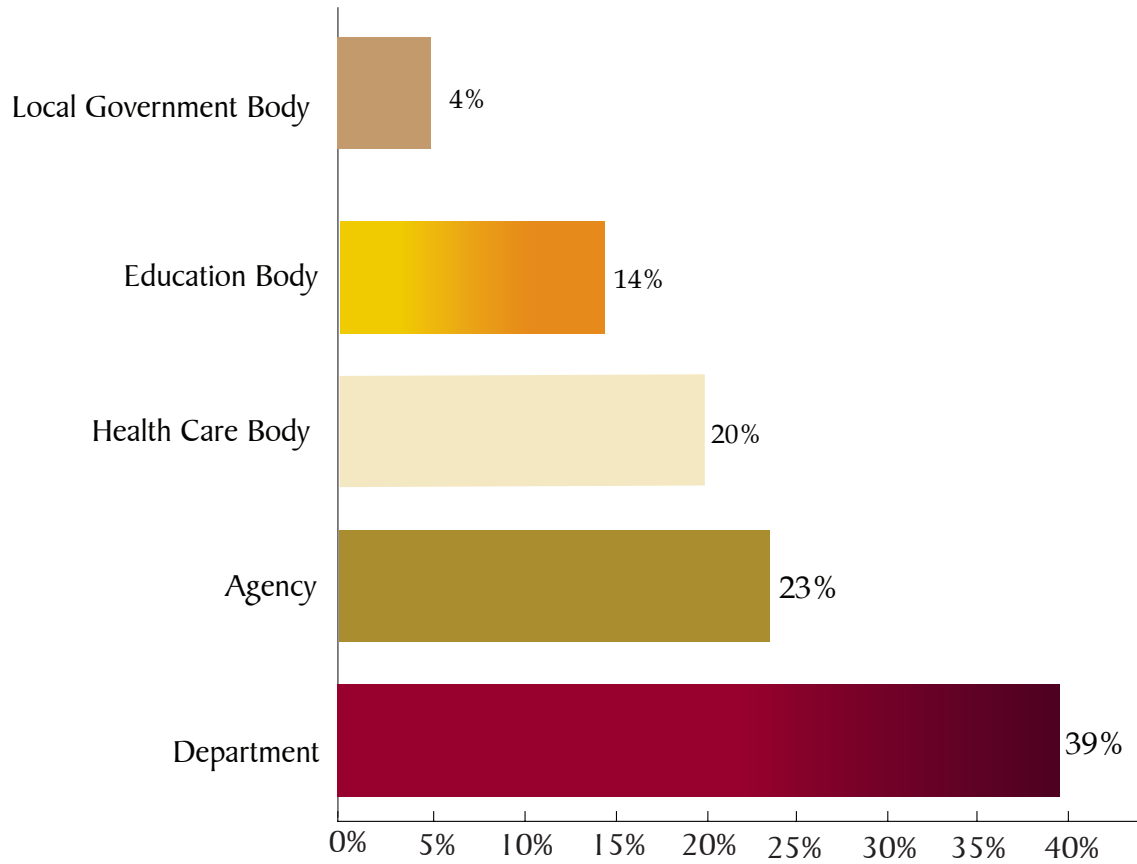
**Figure 12:** Privacy Investigations by Applicant Group



**Table 8:** Privacy Investigations by Applicant Group

Individual	38	86%
Other Public Body	4	9%
Business	2	5%

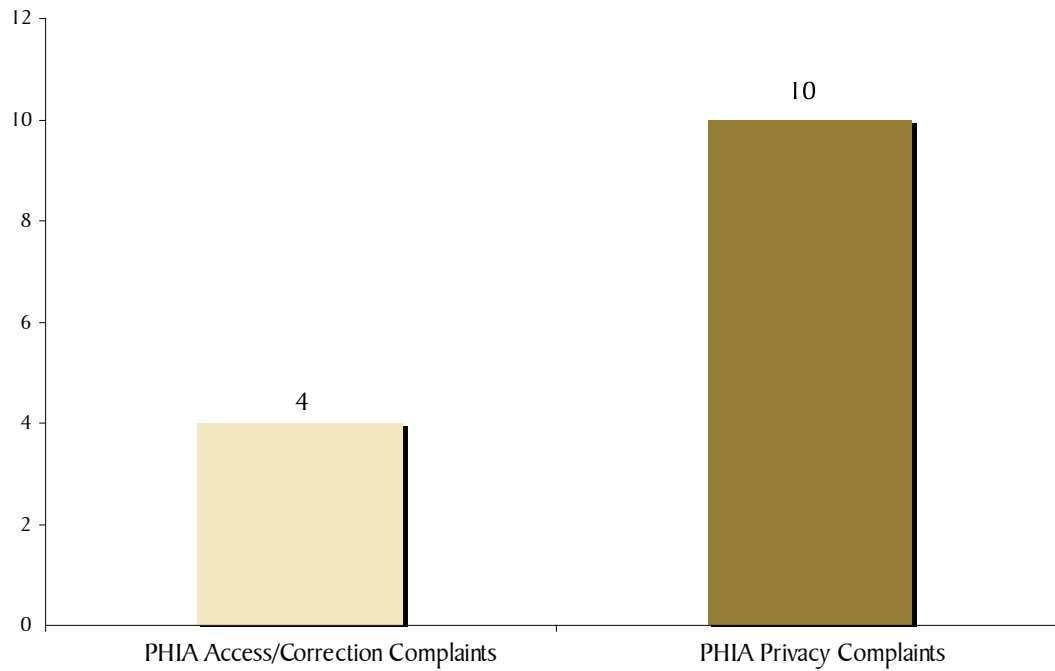
**Figure 13:** Privacy Investigations by Public Body



**Table 9:** Privacy Investigations by Public Body

Department	Agency	Health Care Body	Education Body	Local Government Body
17	10	9	6	2
39%	23%	20%	14%	4%

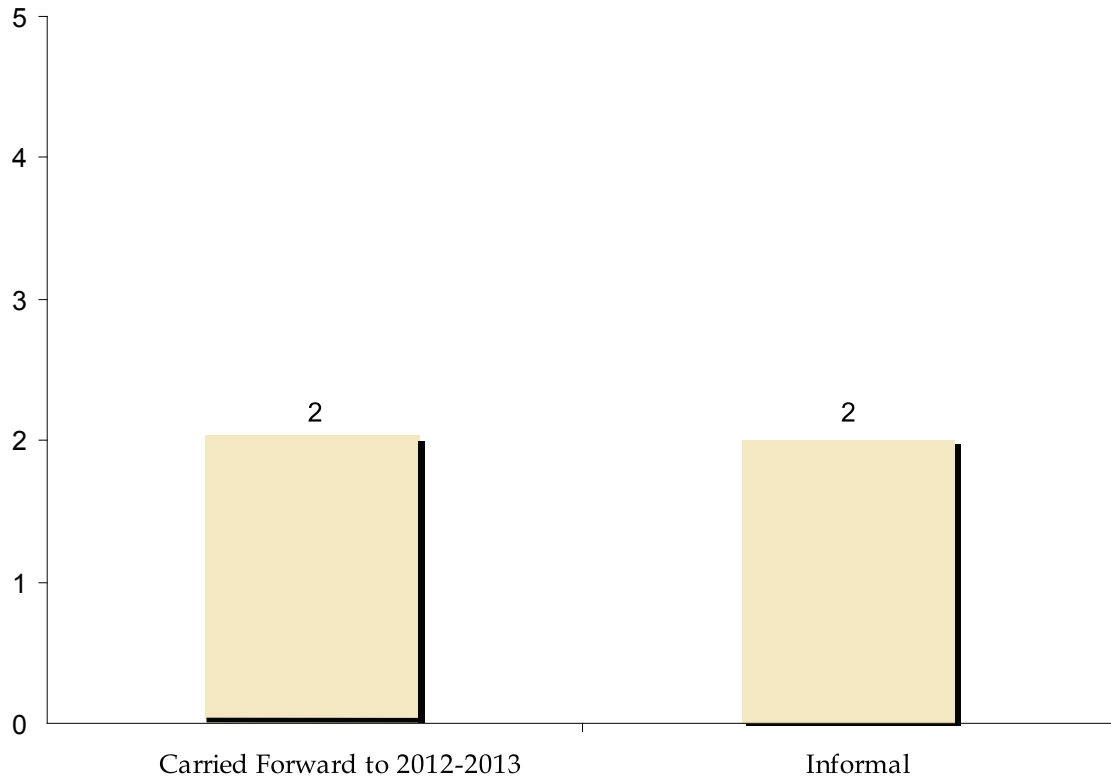
**Figure 14:** PHIA Complaints Received



**Table 10:** PHIA Complaints Received

PHIA Access/Correction Complaints	PHIA Privacy Complaints
4	10

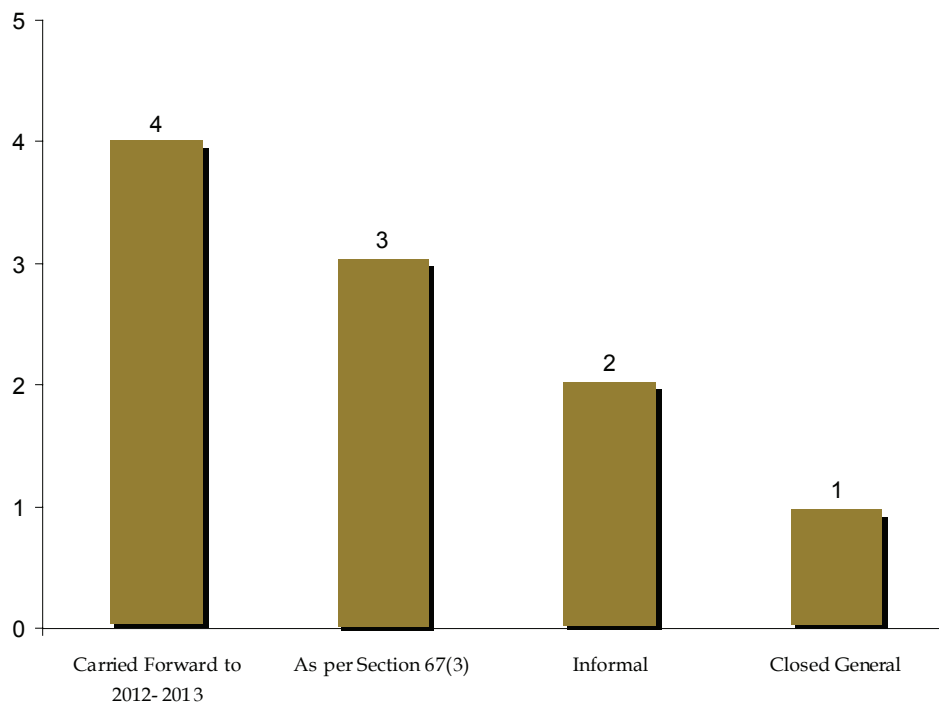
**Figure 15:** Outcome of *PHIA* Access/Corrections Complaints



**Table 11:** Outcome of *PHIA* Access/Corrections Complaints

Carried Forward to 2012-2013	2	50%
Informal	2	50%

**Figure 16:** Outcome of PHIA Privacy Complaints

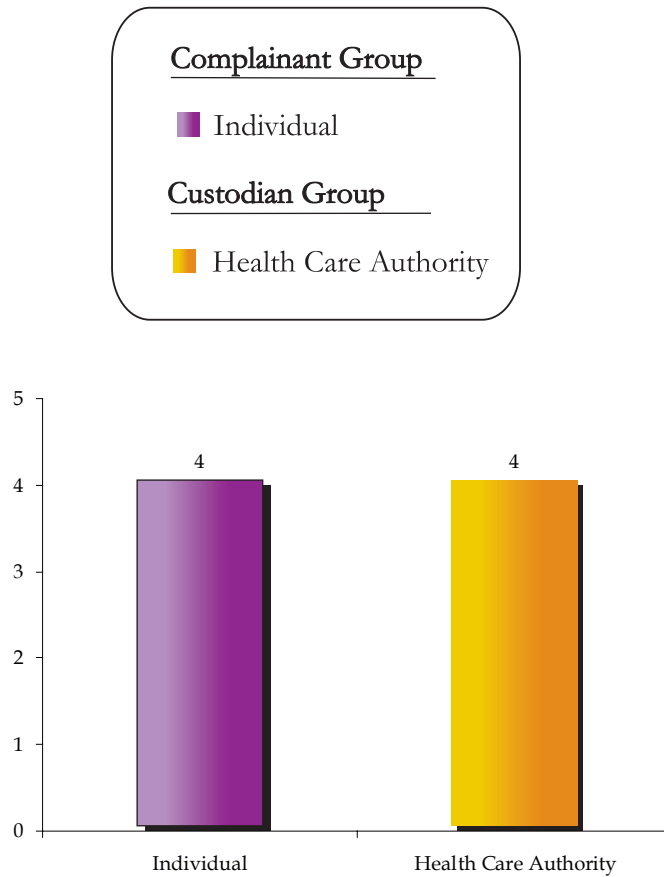


**Table 12:** Outcome of PHIA Privacy Complaints

Carried Forward to 2012-2013	4	40%
As Per Section 67(3)	3	30%
Informal	2	20%
Closed General	1	10%



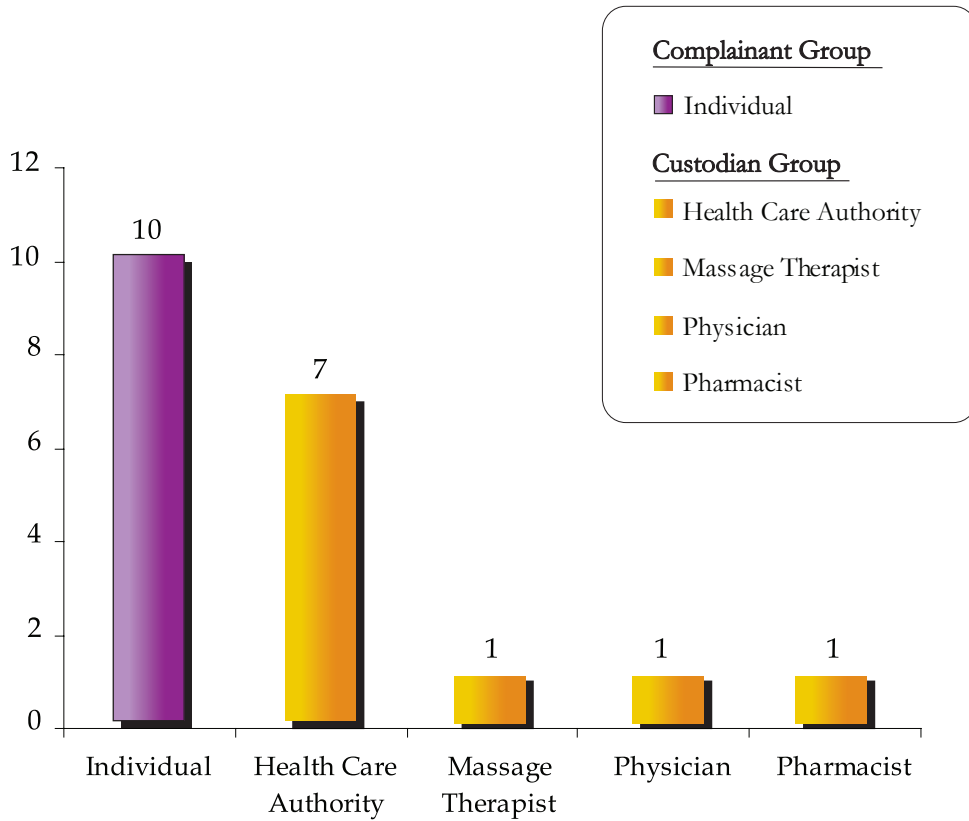
**Figure 17:** PHIA Access/Correction Complaint by Complainant Group and Custodian Group



**Table 13:** PHIA Access/Correction Complaint by Complainant Group and Custodian Group

Individual	4
Health Authority	4

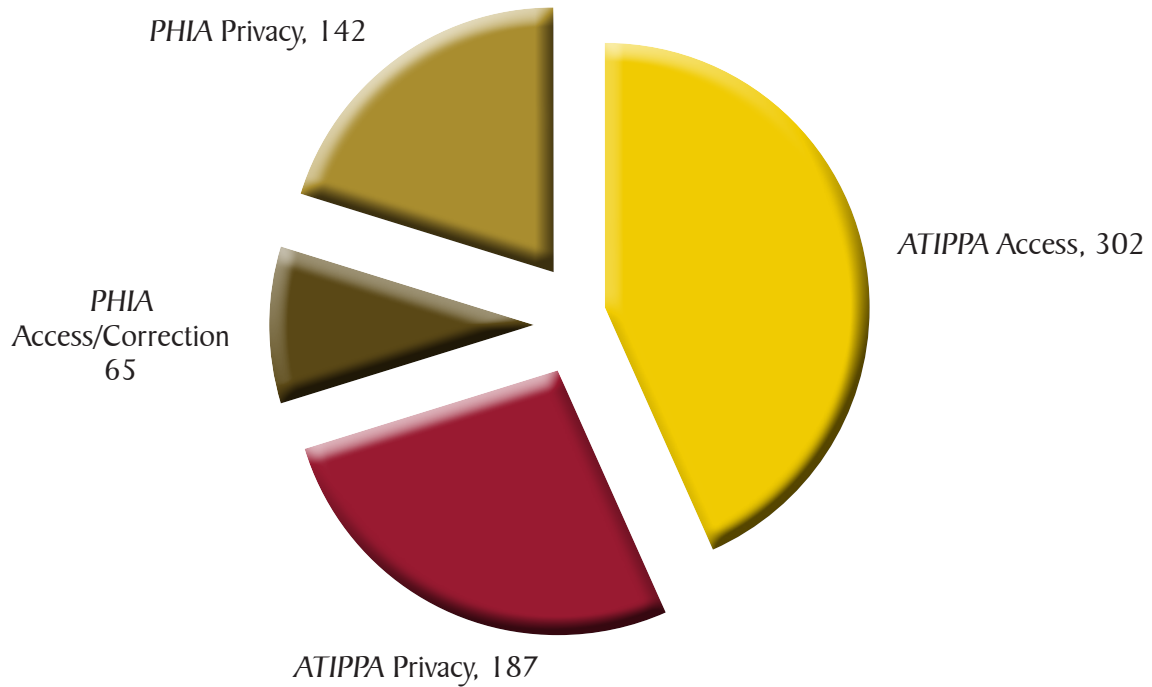
**Figure 18:** PHIA Privacy Complaint by Complainant Group and Custodian Group



**Table 14:** PHIA Privacy Complaint by Complainant Group and Custodian Group

Individual	10
Health Care Authority	7
Massage Therapist	1
Physician	1
Pharmacist	1

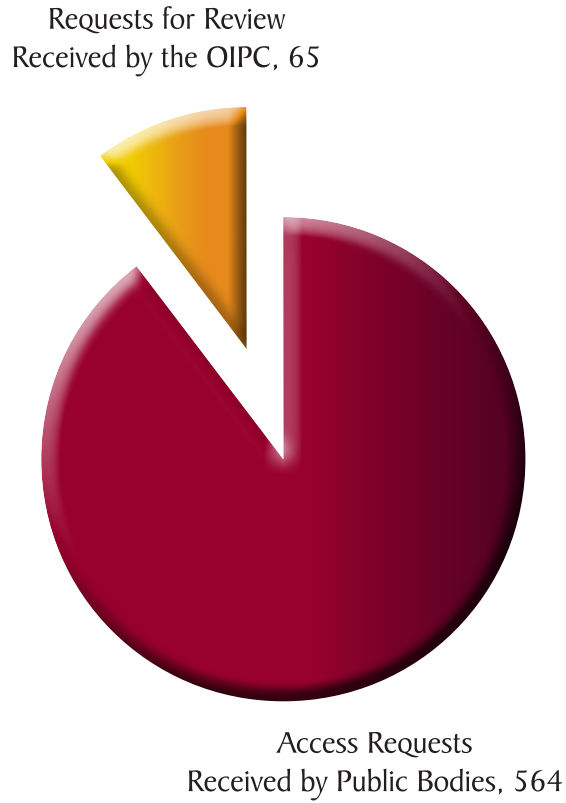
**Figure 19:** Access and Privacy Inquiries



**Table 15:** Access and Privacy Inquiries

ATIPPA Access	ATIPPA Privacy	PHIA Access/Correction	PHIA Privacy
302	187	65	142
44%	27%	9%	20%

**Figure 20:** Access Requests/Requests for Review Comparison



**Table 16:** Access Requests/Requests for Review Comparison

Access Requests Received by Public Bodies	564
Requests for Review Received by the OIPC	65

**Table 17:** Requests for Review/Complaints and Privacy Complaints Received

2011-2012					
	ATIPPA Reviews	ATIPPA Complaints	ATIPPA Privacy	PHIA Access Corrections	PHIA Privacy
Carried From 2010-2011	69	8	16	0	0
Apr-11	2	0	1	0	1
May-11	5	0	2	0	0
Jun-11	2	0	0	0	0
Jul-11	8	0	1	1	1
Aug-11	5	3	0	0	0
Sep-11	3	0	2	2	1
Oct-11	5	0	1	1	3
Nov-11	3	0	2	0	1
Dec-11	3	1	4	0	2
Jan-12	6	1	5	0	1
Feb-12	11	2	1	0	0
Mar-12	5	0	9	0	0
<b>TOTAL</b>	<b>127</b>	<b>15</b>	<b>44</b>	<b>4</b>	<b>10</b>



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