

PROMOTING ACCESS & PROTECTING PRIVACY  
**FINDING THE BALANCE**

**ANNUAL  
REPORT**



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

**2017  
-  
2018**

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OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

December 18, 2018

The Honourable Perry Trimper  
Speaker of the House of Assembly  
Newfoundland and Labrador

I am pleased to submit to you the Annual Report for the Office of the Information and Privacy Commissioner in accordance with section 105 of the *Access to Information and Protection of Privacy Act, 2015*, and section 82 of the *Personal Health Information Act*. This Report covers the period from April 1, 2017 to March 31, 2018.

Regards,

Donovan Molloy, Q.C.  
Information and Privacy Commissioner



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## Commissioner's Message

It has been a busy year for access and privacy in Newfoundland and Labrador as reflected in this Annual Report covering our second full fiscal year of operation since proclamation of the [Access to Information and Protection of Privacy Act, 2015 \(ATIPPA, 2015\)](#). Our involvement in the statutory review of the [Personal Health Information Act \(PHIA\)](#) consumed a great deal of our time and resources and I am pleased to report on this as well.

On December 13, 2017 the House of Assembly Management Commission approved our proposal to reorganize our structure. The proposal drew from *de facto* changes implemented as a pilot in 2016-2017. The significant and consistently high volumes of work associated with access matters, combined with the mandatory timelines in the *ATIPPA, 2015* challenged our ability to fulfill the education and advocacy components of our mandate. In an attempt to balance our focus, we leveraged operational efficiencies to establish an Advocacy and Compliance Division. As reflected in this Report, we achieved success in advancing our education and advocacy activities without compromising our ability to resolve access and other complaints within statutory deadlines. This success would not have been possible without the hard work of our staff and their openness to change. We appreciate the Management Commission's approval of our new structure and anticipate additional achievements in our advocacy and compliance activities moving forward.

We added additional guidance documents to our website and updated others, recognizing that as living documents, our guidance must remain current with legislative and other developments. One of our goals, in terms of prioritizing new guidance, is responding to perceived issues arising from our interactions with public bodies, custodians, members of the public and other stakeholders. As an example, our [Disclosure of Personal Health Information for Research Purposes: Guidance for Researchers and Custodians of Personal Health Information](#) is intended to facilitate common

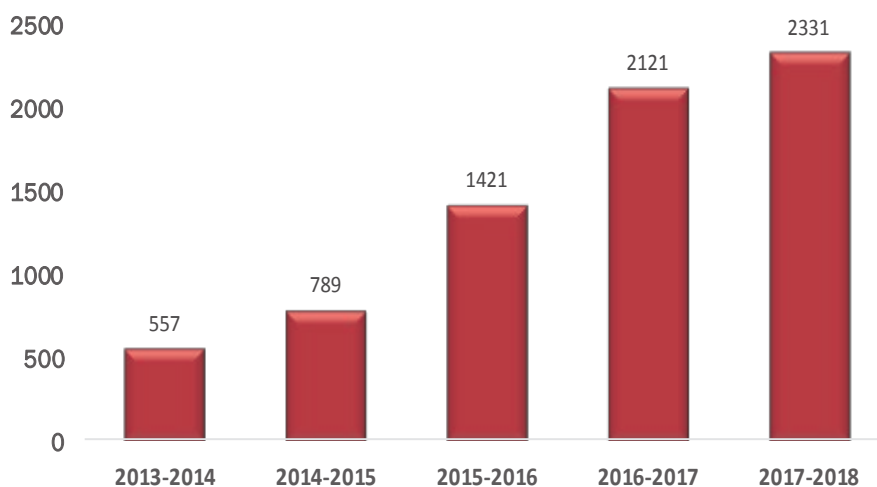
understandings among those involved in health research. It is unfortunate that some view research and privacy as being in conflict. Former Saskatchewan Commissioner Gary Dickson, Q.C., in his investigation of a cervical cancer research study described the appropriate emphasis as follows:

*“I am convinced that the important issues raised in this investigation cannot fairly be presented as some kind of contest between privacy and cancer prevention. No one should have to choose between one or the other — Saskatchewan women deserve both”.*

As a founder population, our collective genetic data is extremely rich. As the associated technology advances, there is significant potential to advance health care and improve patient outcomes. Unfortunately, there is a tendency in some quarters to refer to this data as the new oil. This data is not a commodity in the traditional sense of the word. Treating our genetic data as oil ignores the realities of ownership (individual and community), informed consent, societal impacts, big data, artificial intelligence, privacy and the perspectives and values of our indigenous communities. I fear that the significant income potential associated with genetic research and our government’s own financial investment in this research may lead to decisions that fail to recognize legitimate privacy concerns and other considerations. I am encouraged by commentary describing this data as the new soil. Nurtured appropriately, this soil can yield tremendous benefits to our community and adequately compensate those who wish to invest in and create new business opportunities in our Province.

***Health research is important and necessary but must proceed in a manner that safeguards the privacy of personal health information.***

Access Requests Received by Public Bodies





While this year saw only a 10% increase in access requests from 2,121 to 2,331, the 319% increase in requests since fiscal year 2013-2014 amplifies the significance of that increase.

Public bodies that were successful in meeting statutory response deadlines, while receiving significant numbers of requests include: the City of St. John's, Eastern Health, the Department of Health and Community Services, the Town of St. George's, the Premier's Office, Service NL, the Department of Finance, the Department of Education and Early Childhood Development, Central Health, the Department of Advanced Education, Skills and Labour, the College of the North Atlantic, Western Health, and the Town of Paradise. These public bodies and their ATIPP Coordinators in particular deserve commendation. Some of these successes are due in part to uncompensated overtime worked by ATIPP Coordinators who, by virtue of their work, are not part of a union. Similarly, ATIPP Coordinators employed by public bodies that frequently missed statutory deadlines put in extraordinary efforts to meet the statutory deadlines. In the face of a 319% increase in requests over five years, without anything resembling comparable additional resources, the system in general remains under considerable strain.

Recognizing the competition within government in terms of allocating limited resources, we continue to advocate open government as the solution to reducing the strain on the access to information system. We continue to wait for the Department of Justice and Public Safety to finish adapting a publication template to assist in identifying and locating records in the custody or under the control of public bodies. Implementation of this template is mandatory pursuant to section 111 of the *ATIPPA, 2015* and is long overdue.

Despite the challenges faced by ATIPP Coordinators and those who assist their work, applicants currently receive more records in a timelier manner and with less cost than ever before. Many other jurisdictions view our legislative model as worthy of emulation, and we must ensure that any efforts to address these challenges do not reverse this significant progress, of which we can all be proud.

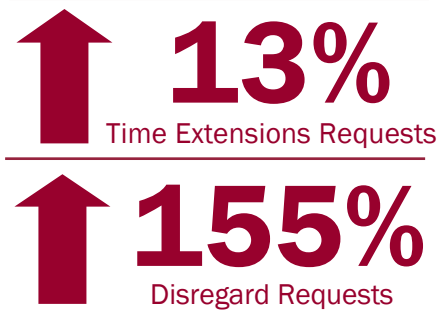
**Annual Report Statistics**  
**Summary of OIPC Activities**

	2017-2018	2016-2017	2015-2016
<b>Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)</b>			
Access Complaints	160	315	96
Privacy Complaints	46	23	61
Time Extension Applications	170	151*	37
Applications to Disregard	79	31*	12
Extraordinary Circumstances	14	24	7
Breach Notifications	201	183*	213*
<b>Personal Health Information Act (PHIA)</b>			
Access Complaints	8	4	0
Privacy Complaints	9	9	8
Breach Notifications	12	38	17
<b>Advocacy and Compliance</b>			
Draft Legislation Review	17	21	5
Guidance Documents**	14	11	9
Speaking Engagements/Presentations	32	11	24
Audit	1	1	n/a

\*Corrected numbers from 2016-2017 Annual Report.

\*\*Includes originals and revisions.

In comparison with fiscal year 2016-2017 we experienced a decrease in access complaints, but that fiscal year included a large number of complaints in regards to what is commonly referred to as the 'sunshine list' case. Comparing the numbers to fiscal year 2015-2016, we experienced a 67% increase in access complaints. Recognizing the fiscal challenges that our Province faces, despite continuing increases on our workload, we are committed to fulfilling our mandate within our previous budget allocations since 2016-2017. A full statistical breakdown for this reporting period can be found on our [website](#).



I trust you will find the contents of this Report informative and interesting, however if readers have any questions or concerns, as always, my Office stands ready and able to assist as best we can.

## HIGHLIGHTS OF THE *PERSONAL HEALTH INFORMATION ACT* REVIEW REPORT

The OIPC maintains communication with officials of the Department of Health and Community Services regarding the Review of *PHIA*. It is a legislative requirement that *PHIA* undergo a Review every five years. The first mandatory Review was launched by the Minister of Health and Community Services on December 20, 2016, and was conducted by a Review Committee chaired by Dr. David Morgan. Although the OIPC provided its formal submission and supplementary submissions during the previous reporting period, the Committee's final Report was issued in May, 2017, and an amended version was published in September, 2017. During this past year there have been ongoing discussions about the Report and its recommendations, as well as next steps towards potential amendments to *PHIA*. The Report and other resources are available [online](#).

The OIPC was pleased to see that the Committee accepted most of our recommendations, and these, in turn, now form part of the Committee's recommendations to government. As it was the first statutory review of *PHIA*, many of the Report's recommendations focused on addressing "nuts and bolts" issues in the Act to make it function more effectively.

There were some larger issues, however, which reflect differing visions for the protection of personal health information in this Province. One relates to custodianship of personal health information in the context of post-secondary institutions. This topic was raised when Memorial University requested that its academic units that are currently prescribed as custodians in *PHIA* be "de-listed" as custodians. Memorial's position received no support from other stakeholders in the Review, and in fact it was opposed by the OIPC and the Newfoundland and Labrador Centre for Health Information. Eastern Health went further and recommended that Memorial's custodianship be expanded to all schools and faculties conducting health research.

The Committee reviewed all of the arguments presented, and concluded that rather than individual schools and faculties of Memorial being named as custodians, as is the case currently, Memorial University as a whole should be designated as a custodian under *PHIA*. The Committee also expressed the view that this responsibility is best shouldered by the institution at large rather than individual researchers employed by the University. To add greater clarity and lighten the administrative burden on Memorial, the Committee also recommended that the mandatory disclosures in *PHIA* not apply to Memorial, except in very limited cases.

Another issue which arose in the *PHIA* Review relates to genetic research. One private research company, Sequence Bio, made a submission to the Committee in which it proposed that private research companies that are not currently custodians under *PHIA* be able to “opt in” to OIPC oversight and “formalize a mechanism to align with *PHIA*.” The OIPC submission focused on the need to strike the right balance in genetic research, particularly when it comes to private companies that are not subject to *PHIA* and therefore not subject to regulatory oversight in this Province. This is important because the founder population of this Province represents an attractive resource to genetic researchers worldwide, and it is important to ensure that we have an appropriate legislative framework in place so we do not risk losing control over our genetic heritage, as has happened in Iceland and elsewhere. We proposed that a version of section 54 of [Alberta’s Health Information Act](#) might be a useful starting point, but offered that a novel legislative solution may be necessary. The Committee did not directly address this suggestion, but instead recommended that all health researchers be designated as custodians subject to *PHIA*, which would ensure that any researchers who were not already employed by or affiliated with an existing custodian would become custodians, and would therefore be subject to the requirements of *PHIA* and oversight by the OIPC.

We appreciated the work of the Committee in delving into the many issues put forward by stakeholders and devising workable solutions in the form of recommendations to government. We now look forward to seeing government action on these recommendations, and we anticipate reporting on amendments to *PHIA* in our next Annual Report.

## **OPEN CONTRACTING (PUBLIC PROCUREMENT ACT)**

In our 2016-2017 Annual Report we reviewed some considerations regarding the right of access to information and the third party business exception set out in section 39 of the *ATIPPA, 2015*.

Each year government purchases hundreds of millions of dollars’ worth of goods and services from the private sector. Businesses engaged in providing these goods and services recognize that there are statutory transparency obligations set out in the *ATIPPA, 2015* and, to a certain extent, in the new *Public Procurement Act*.

*These transparency rules and similar limitations on them as outlined in section 39 are not unique to this Province, but exist in every jurisdiction in Canada, and in many jurisdictions around the world.*

One of the challenges impacting how this transparency obligation is fulfilled is in the fact that the *ATIPPA, 2015* is often the only avenue to request procurement-related information. This comes with certain statutory processes including, in some cases, a requirement that third party businesses be notified that a request has been received which relates to information they provided to public bodies. A formal notification to third parties under section 19 also triggers a right of appeal.

In the 2016-2017 Annual Report we noted that of the 37 *ATIPPA, 2015* access to information Commissioner's Reports issued, 17 related to disclosure of third party business information and section 39. This year, 10 out of 24 Reports dealt, in whole or in part, with requests that involved third party business information, including two involving Nalcor and section 5.4 of the *Energy Corporation Act* rather than section 39 of the *ATIPPA, 2015*. While the numbers are lower this year, the ratio is similar.

We also noted in our 2016-2017 Report that there were 11 cases working their way through the courts where third parties had appealed decisions by public bodies to disclose information following a recommendation to do so in a Commissioner's Report. In 2017-2018, six third party appellants withdrew their appeals, which in some cases had been ongoing for well over a year. Only after the appeals were withdrawn did the requester get the information sought. During the time that these appeals were ongoing, the parties involved expended significant time and resources, including legal costs, in advancing the cases, and significant delay was experienced by the requesters.

In addressing this issue in last year's Report, we discussed some potential means of addressing this ongoing issue, including recommending that government explore the implementation of Open Contracting. We continue to advocate for Open Contracting, realizing that it will likely be achieved on a gradual basis, rather than all at once.

Our optimism is based partly on the new *Public Procurement Act (PPA)* and the *Public Procurement Regulations (PPR)*. As noted in our previous Report, the *PPA* presents an opportunity to implement Open Contracting because of its emphasis on transparency. The *PPR* came into force on March 28, 2018, and there are two provisions included within it which could have a significant positive impact:

8. (1) *An open call for bids shall contain the following:*

...

*(g) a statement that the procurement process is subject to the Access to Information and Protection of Privacy Act, 2015;*

*(2) a bid received in response to an open call for bids shall identify any information in the bid that may qualify for an exemption from disclosure under subsection 39(1) of the Access to Information and Protection of Privacy Act, 2015.*

Sometimes we have found that smaller, local vendors are not aware of transparency obligations under the *ATIPPA, 2015*, and in that respect the requirement in 8(1)(g) of the *PPR* is helpful. This will hopefully help to prevent appeals filed simply on the basis of a failure to understand that the *ATIPPA, 2015* is a law and that you cannot contract out of its requirements for transparency.

Section 8(2) of the *PPR* has the potential to have a more significant impact. It places a requirement on third party bidders to engage with and understand the *ATIPPA, 2015*, and it requires them to state, at the time of submitting a bid, whether they believe any specific information in the bid may be protected against disclosure in accordance with section 39(1) of the *ATIPPA, 2015*. As it is a mandatory requirement, the position of the OIPC is that a third party that fails to do so impairs its ability to establish, should it later wish to object to disclosure of information, that it supplied the information to the public body implicitly or explicitly in confidence. If a third party cannot establish that it supplied the information implicitly or explicitly in confidence, it cannot succeed in discharging its burden of proof under section 43.

If a third party engages with this requirement at the outset and clearly identifies information that it believes qualifies under section 39(1), it potentially enhances the ability to make that argument to the public body and potentially to the Commissioner or Court on appeal. We issued a [guidance piece](#) on the interaction between the *ATIPPA, 2015* and these provisions of the *PPR*. It is our hope that this will result in fewer appeals that are ultimately withdrawn by third parties, as we experienced this year, thus reducing some unnecessary burden on the access to information system and resulting in information being provided to applicants in a more timely manner.

## ADVOCACY AND COMPLIANCE DIVISION

### Audits

On August 4, 2017, the OIPC released an Audit Report involving the Motor Registration Division (MRD) of Service NL entitled, [Information Sharing Agreements: Essential Administrative Safeguards](#). The Audit Report outlines legislative requirements, presents findings from the audit and discusses key observations and recommendations.

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*Information is collected for a specific purpose and individuals provide their information for this reason. When disclosing this information to another entity with different mandates and purposes, it is important to bear in mind the reasons for originally collecting the information.*

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Entities seeking information must ensure that appropriate safeguards are in place. In the event of non-compliance, they must understand that disclosure may no longer occur as access to information, especially information collected from a source other than the individual the information is about, is rarely mandatory.

The Audit Report found that, while the Information Sharing Agreements (ISAs) used by MRD could be strengthened, they provide a solid foundation for the information sharing that is occurring. Challenges include working with a legacy system and resistance by some public bodies to provide the necessary information to MRD.

The Audit Report highlights critical content in ISAs and is recommended reading for any public body that shares or receives information.

During 2017-2018, the Office planned and launched two additional audits, one examining video surveillance and one examining electronic access controls. The Office anticipates finishing and publishing these Audit Reports during the 2018-2019 fiscal year.

### Privacy Impact Assessment Review

Section 72 of the *ATIPPA, 2015* requires privacy impact work, including a privacy impact assessment (PIA) and/or a preliminary privacy impact assessment (PPIA), to be conducted during the development of a program or service by a department or a branch of the executive



government of the Province. If it is a common or integrated program or service, the privacy impact work must be shared with the OIPC for review and comment. The OIPC is willing to review and comment on any PPIA or PIA, even if the legislation does not require same.

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

During the fiscal year 2017-2018, the OIPC made a number of inquiries stemming from news reports of initiatives that resulted in a number of public bodies and custodians sharing privacy assessments with this Office.

This year, the Royal Newfoundland Constabulary and Eastern Health partnered to create a Mental Health Crisis Response Team. This Office was provided with an opportunity to review and comment on Eastern Health's PIA for this program.

We also reviewed: the PPIA for the NL Central Driver Licence Initiative of MRD, Service NL; the PPIA for the artwork submission initiative of the Child and Youth Advocate; and the Newfoundland and Labrador English School District consulted with us regarding its Digital Portfolio initiative.

The Department of Finance consulted with the Office regarding the consolidation of debt collection services within government, an initiative described by the Department as a common or integrated program or service. The Office anticipates reviewing the PIA once it is available.

At year end, a review was underway of PIAs prepared by the Regional Health Authorities in the Province regarding the Therapy Assistance Online program. Also in healthcare, this Office reviewed two PPIAs prepared by the Department of Health and Community Services for the Prescription Monitoring Program (one considers the *ATIPPA, 2015*, the other *PHIA*) and the Centre for Health Information's PIA for their responsibilities under the same program.

The quality of documentation presented to this Office continues to vary and we encourage public bodies to familiarize themselves with our [PIA expectation guidance](#). A common gap involves documenting the reasons why a full PIA is not being recommended after conducting a PPIA.



Further, through a follow-up file with Human Resource Secretariat (HRS) stemming from a privacy complaint, it was discovered that, although the PeopleSoft PPIA recommended a full PIA, no such record can be located. In the absence of changes to the project or other mitigating actions taken, this leaves the public body vulnerable to situations of non-compliance. Public bodies are encouraged to review PPIA/PIAs and ensure recommendations have been actioned. HRS continues to work on this initiative and has committed to providing a copy of the PIA for our review once it is ready.

The OIPC issued [Privacy Management Program Guidelines](#) in March 2018. The document informs public bodies and custodians that the guidelines may be applied in future privacy investigations when looking for indications of accountable privacy management. The OIPC is conducting a review of its own privacy management program and will report on progress in the 2018-2019 Annual Report.

The OIPC participated in the development of Privacy and Access Guidelines for Cloud Computing, along with the Office of the Chief Information Officer, the Department of Health and Community Services and the ATIPP Office.

On May 1, 2017, the provincial government announced that Gemalto had been awarded the contract to produce and mail drivers' licences and photo ID cards to residents of the Province. As this contract stemmed from a joint procurement process with the four Atlantic Provinces, this Office joined with the Commissioners from Nova Scotia and Prince Edward Island to gather further details of the project.

The new cards have a number of new security features that the government maintains will reduce the likelihood of fraud. The initiative also uses facial recognition technology to confirm the photo on the card matches the photos on record for the individual. None of the government's news releases regarding this project mention that facial recognition is being used; further, the OIPC has learned that facial recognition software has been in use as part of the Driver's Licence/Photo Identification Card program in Newfoundland and Labrador since 2006.

The Office continues to work with Service NL to ensure this initiative is in compliance with the *ATIPPA, 2015*.

## Education and Training

The *ATIPPA, 2015* prescribes two specific mandates in relation to education – for public bodies, as well as for the general public. While there is no legislative mandate in respect of education by this Office under *PHIA*, our Office has also developed *PHIA* training and educational resources for custodians.

The OIPC strives to ensure that members of the public are aware of their rights of access to information and to privacy, and how those rights are protected and supported. As appropriate, the Office informs the public about these rights through: public commentary, education and awareness activities, and presentations aimed at explaining the administration and operation of the *ATIPPA, 2015*, *PHIA* and our Office. We have also used our Twitter account to broaden public awareness of privacy and access to information issues.

The OIPC is also very much engaged in education and training for public bodies and custodians. In this regard, we issued our quarterly *ATIPPA, 2015* newsletter, “Above Board”, throughout 2017-2018 and released our inaugural quarterly *PHIA* newsletter, “Safeguard”, in May, 2017. Additionally, we developed a wide variety of guidance documents to assist in interpreting the *ATIPPA, 2015* and *PHIA*. Furthermore, we continue to post all Commissioner’s Reports to the OIPC website.

Through our past educational initiatives and the positive response we have received to our many educational resources, we have been fortunate enough to have been approached by many organizations for training without the need for further outreach. We will continue to create tools and materials as the need arises in response to various challenges and issues which develop in access to information and the protection of privacy fields. It is our intent to create several new virtual tools for the OIPC website which will assist the public in understanding their rights under the *ATIPPA, 2015* and *PHIA*.

PRESENTATIONS		
Date	Audience	Topic
April 5, 2017	Newfoundland and Labrador Housing Corporation	Privacy Overview
April 7, 2017	Internal Auditors Association	Privacy Overview
April 20, 2017	Research & Development IM Week	Privacy Overview
May 6, 2017	Newfoundland and Labrador Pharmacy Board	<i>PHIA</i> Overview
May 30, 2017	Canadian Association for Civilian Oversight of Law Enforcement	Privacy and Open Court Principles
June 15, 2017	Keyin College – Pharmacy Technician Students	<i>PHIA</i> Overview
September 13, 2017	Central Health – Senior Leadership	Overview, Reasonable Search, Social Media
September 13, 2017	Central Health – Risk Managers	<i>PHIA</i> Overview
September 19, 2017	Newfoundland and Labrador English School District	<i>ATIPPA, 2015</i> Overview
September 20, 2017	Newfoundland and Labrador English School District	<i>ATIPPA, 2015</i> Overview
September 26, 2017	Newfoundland and Labrador English School District	<i>ATIPPA, 2015</i> Overview
September 27, 2017	Newfoundland and Labrador English School District	<i>ATIPPA, 2015</i> Overview
September 30, 2017	Newfoundland and Labrador Association of Optometrists	<i>PHIA</i> Overview
October 5, 2017	Professional Municipal Administrators Fall Forum	Interacting with <i>ATIPPA, 2015</i> (Joint Presentation with ATIPP Office.)
October 12, 2017	Human Resource Secretariat – Community of Practice	Section 33 Workplace Investigations
October 21, 2017	Newfoundland and Labrador College of Respiratory Therapists	<i>PHIA</i> Primer
November 2, 2017	Municipalities Newfoundland and Labrador	Interacting with <i>ATIPPA, 2015</i> (Joint Presentation with ATIPP Office.)
November 4, 2017	Newfoundland and Labrador Massage Therapists Association	Inappropriate clients - Privacy Concerns
November 23, 2017	Killick Coast Councils	<i>ATIPPA, 2015</i> Overview
November 24, 2017	City of St. John's	OIPC Complaint Process
November 27, 2017	Personal Care Home Operators	<i>PHIA</i> Overview
November 28, 2017	OIPC Workshop	Providing Reasons for Refusal of Access, Disclosure to Law Enforcement, Minimum Amount Necessary
January 11, 2018	The Gathering Place	<i>PHIA</i> Overview
January 17, 2018	Mary Queen of Peace	<i>ATIPPA, 2015</i> Overview

February 1, 2018	Advocate for Children and Youth Office	Legislative Privacy Provisions
February 13, 2018	Town of Paradise	ATIPPA, 2015 Overview
February 28, 2018	Newfoundland and Labrador Housing Corporation (West Coast)	ATIPPA, 2015 Overview
March 2, 2018	City of St. John's	ATIPPA, 2015 Overview (Privacy focus)
March 2, 2018	Canadian Bar Association Mid-Winter Meeting	Privacy: Breaches of Customer/Employee Data
March 23, 2018	Royal Newfoundland Constabulary – Communications Staff	Privacy Breaches
March 26, 2018	OIPC Workshop	Privacy Management Programs

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

This year we developed our first guidance document relating to personal health information, [Disclosure of Personal Health Information for Research Purposes: Guidance for Researchers and Custodians of Personal Health Information](#). This document was created to provide both researchers and custodians with a common understanding of their legislative obligations under *PHIA* in so far as they relate to the protection of the personal health information of research subjects. All research in the Province involving human subjects must be reviewed and approved by a Research Ethics Board (REB) established under the *Health Research Ethics Authority Act*; however, there was uncertainty amongst custodians and researchers as to the meaning and effect of obtaining this approval. Clarity was required in relation to the interplay between REB approval and the legislative requirements of *PHIA*. This guidance piece was significant as it explained that REB approval does not relieve the parties of their *PHIA* obligations related to the collection, use and disclosure of personal health information. Furthermore, we used the opportunity to outline the necessary elements of consent for collecting, using and disclosing personal health information for research purposes. Of particular significance, the document provided explicit guidance to both researchers and custodians as to their obligations and the parameters for conducting or permitting the conduct of research involving personal health information. For researchers, the document explained what is required of them in seeking REB approval; what requirements will be put forward

GUIDANCE DOCUMENTS	
Title	Date Issued
Disclosure to Law Enforcement	April 25, 2017
Advice and Recommendations	May 1, 2017
Providing Reasons for Refusal of Access	August 29, 2017
Minimum Amount Necessary Requirement	August 29, 2017
Travelling with Mobile Devices	September 1, 2017
Use of Social Media: Quick Tips	September 11, 2017
Disclosure of Personal Health Information for Research Purposes	September 11, 2017
Tips for Accessing Public Body Records	January 4, 2018
Anonymity of Applicants	January 4, 2018
Collecting Information via Social Media (Employee and Background Checks)	January 17, 2018
Quick Tips - Sending Personal Health Information Via Email	February 26, 2018
Use of Email for Communicating Personal Health Information	February 26, 2018
Privacy Management Program Guidelines	March 1, 2018

by custodians following REB approval; and that the custodian retains ownership of the data. For custodians, it explained the need to satisfy themselves, apart from REB approval, that the research was being conducted in accordance with *PHIA*.

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

1. annual meeting/telephone conference with all Regional Health Authorities;
2. staff members attended the International Access and Privacy Professionals (IAPP) Symposium and other privacy and access to information conferences;
3. consultations with the Advocate for Children and Youth;
4. staff members participated in International Access and Privacy Professionals Knowledge Net events;
5. Commissioner attended the annual Federal/Provincial and Territorial Information and Privacy Commissioners' Conference;
6. regular meetings with the Office of the Chief Information Officer about issues of mutual relevance;
7. OIPC staff participated with its oversight counterparts across Canada in meetings and teleconferences related to privacy issues associated with the development of electronic health records, under the auspices of the Canada Health Infoway Privacy Forum;

8. meetings and teleconferences with stakeholders and experts in relation to Open Contracting;
9. meetings involving internal staff and external Steering Committee members to plan an Access, Privacy, Security and Information Management conference slated for spring 2018; and
10. the Office participated in and created activities for Right to Know Week 2017 and Data Privacy Day 2018.

### **Legislative Consultations**

Pursuant to section 112 of the *ATIPPA, 2015*, ministers are required to consult with the OIPC on all proposed legislation that “could have implications for access to information or protection of privacy”. Beyond that requirement, the OIPC will review any draft legislation if requested, as it is sometimes challenging for drafters to identify potential implications for access to information or protection of privacy.

Over the past year a number of Bills were referred for consultation, including the:

- *Prescription Monitoring Act*
- *Highway Traffic Act to Strengthen Road Safety (Amendment No. 2)*
- *Serious Incident Response Team Act*
- *Child and Youth Advocate Act (Amendment)*
- *Centre for Health Information Act, 2018*
- *Public Bodies Sustainability and Reform Act*
- *Public Procurement Regulations*
- *Access to Information and Protection of Privacy (Amendment) Act, 2015*
- *Family Violence Protection Act (Amendment)*
- *Pension Benefits Act, 1997 (Amendment)*
- *Children, Youth and Families Act*

When Bills are referred to the OIPC for comment they are sometimes received just before briefing notes or other materials are due to the Cabinet Secretariat. This creates an urgency that has, at times, limited our ability to conduct detailed research and jurisdictional scans, tasks that result in more fulsome commentary. In other cases we have been consulted with sufficient lead time to engage in a fruitful discussion with the department in question. We do respond to all such referrals within whatever time we are provided as we view this responsibility as a critical part of our mandate.

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*Our review of Bills prior to their being introduced in the House is a critical function to ensure that the important public interests reflected in the ATIPPA, 2015 are fully considered before debate in the legislature.*

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While ministers are obliged to seek our advice, they are not required to act upon it, nor should they be. If we deem it warranted, in accordance with section 112(3) of the *ATIPPA, 2015* the OIPC can publicly comment on draft Bills after they are tabled. We issued comments following the tabling of the *Prescription Monitoring Act*, after the Department of Health and Community Services failed to meet its commitment to reply in writing to concerns identified by this Office in regards to the first draft of the Bill we reviewed. The Department also tabled a version of the Bill that it never submitted for our review. In commenting on our public comments, the Minister unfortunately suggested that the Commissioner was at fault:

*But I think really to highlight some of the points that seem to have been hammered today, the Privacy Commissioner himself was talking to staff in my department less than 12 hours before he went public. Well, after he had seen the draft, both as a confidential exercise and as a public exercise, yet he chose to announce then concerns he had not chosen to express when he saw it in the first place as part of in-house consultation. That is an issue he will have to deal with and the Members opposite will have to deal with also. [Hansard]*

Sometimes when we are asked to review and provide comment on a draft Bill, we find that there are no significant privacy or access to information issues, or we find that the draft Bill already deals with any such issues adequately. Other instances call for more substantive comment.

One such case where we offered substantive comment was in reviewing the draft *Public Procurement Regulations*. It was our view that the new *Public Procurement Act* and accompanying *Public Procurement Regulations* presented a great opportunity to clarify expectations around transparency for bidders as well as public bodies participating in the procurement process. We believe our comments on the draft *Regulations* contributed to changes that clarify transparency expectations in the procurement process and hopefully reduce the need to rely on the access to information process under *ATIPPA, 2015* to obtain information about a particular procurement process. This improvement in transparency could lighten the burden on ATIPP Coordinators by both reducing the need for formal access requests and, in some cases, reducing the necessity of notifying third parties. Third party notifications can trigger lengthy appeal processes that consume the resources of government, third parties, the OIPC, and sometimes the Courts. We thank Service NL for their cooperative engagement with this Office and for making changes to the *Regulations*.



Another Bill which involved significant discussion was the new *Centre for Health Information Act, 2018*. This Bill revised the role and function of the Newfoundland and Labrador Centre for Health Information. It is our view that the Centre has played a leading role in privacy protection in this Province, and in offering comments on the draft Bill we wanted to ensure that the legislation underpinning the Centre did not negatively impact its ability to continue in that role. Our comments were received with thoughtful engagement and it is clear that our views were considered. In the end, some of our recommendations were accepted, while the Department was of the view that some of our other concerns were not justified or were matters for good governance and implementation rather than legislation. We were pleased that sufficient time was allotted to allow an appropriate level of discussion and exchange of views, and we acknowledge that officials of the Department of Health and Community Services recognized issues associated with the consultations on the *Prescription Monitoring Act* and improved upon their participation in the legislative review process.

One Bill which was a matter of significant public discourse was an amendment which added the Commission of Inquiry Respecting the Muskrat Falls Project to Schedule B of the *ATIPPA, 2015*. Adding a public body to Schedule B effectively amends the definition of “public body” to exclude from the Act any listed entity that would ordinarily be subject to the Act. When government indicated its intention to proceed with this, there were comments in the public that this would undermine the value of the Inquiry in terms of public scrutiny of the Muskrat Falls Project. Government indicated at the time that the Inquiry’s mission would be severely hampered if it did not take this step, because the Inquiry’s time and resources would be spent responding to access requests rather than proceeding with its work.

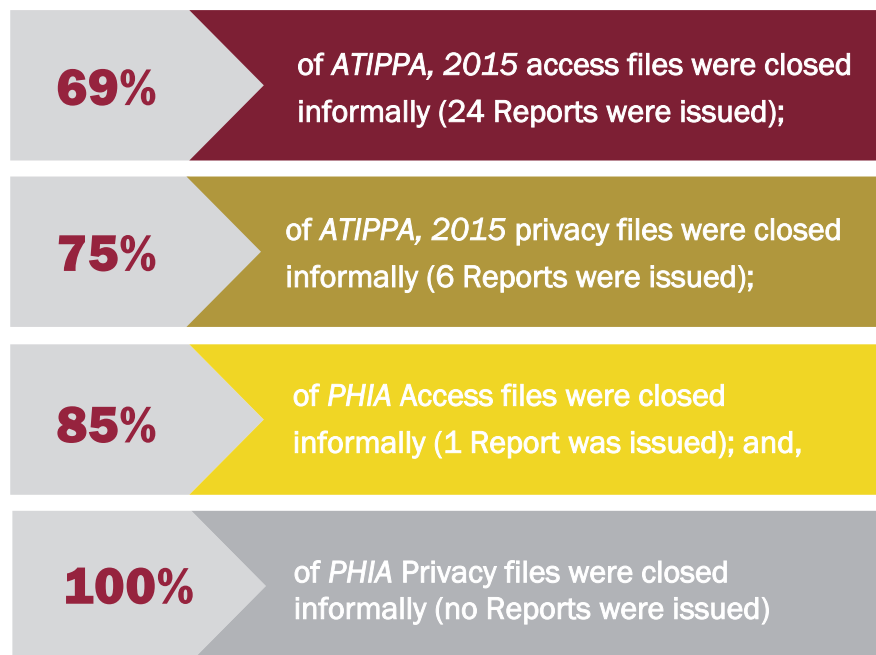
From a practical perspective, the vast majority of records provided to the Inquiry were supplied by public bodies, which still maintain custody and control over those records, and those entities remain subject to the *ATIPPA, 2015*. In that sense, this information remains as available now as it was before the Inquiry was called. In his comment on this draft Bill, the Commissioner noted the real challenge is that even if the Inquiry were a public body, it would be subject to the same limitations as all other public bodies pursuant to section 5.4 of the *Energy Corporation Act*, which is a broad exception to disclosure that takes precedence over the *ATIPPA, 2015*. The Commissioner offered the comment that if government wished to make a more substantive commitment to transparency, this could be done by making a legislative change reversing the current status by ensuring that the *ATIPPA, 2015* take precedence over the *Energy Corporation Act*, thus negating the effect of section 5.4 of that Act.



## INVESTIGATIONS DIVISION

### Investigation Summaries

The majority of complaint files closed by this Office are resolved through our informal resolution process. Of the complaints received in this year:



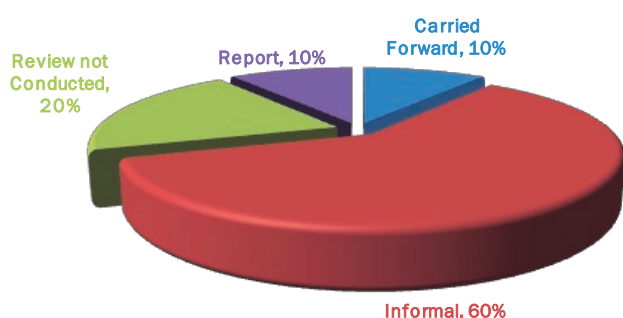
While our Reports are available on our [website](#), most of our informal resolution work is done exclusively between the complainant and the public body or custodian involved. This Report is an opportune time to highlight some of the achievements from this substantial portion of our work.

Examples of achievements associated with our informal resolution process regarding *ATIPPA*, 2015 access complaints include:

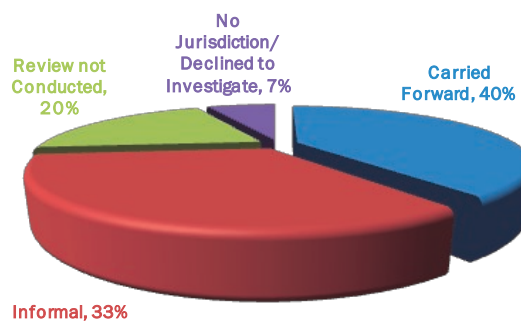
1. The Department of Children, Seniors and Social Development was able to provide the Complainant with additional information and context, including general details of the records in question and the parties to correspondence, even though the records were still withheld under an exception.
2. By involving the original access to information applicant in the process to determine which third party information in particular they were interested in, the Department of Fisheries and Aquaculture (as it then was) and the Department of Business, Culture, Tourism and Rural Development (as it then was) were able to narrow the scope of the request so that records could be provided.

3. The Department of Finance was able to provide historical data and insight into its calculations which aided in the Complainant's understanding of the issue, thus facilitating resolution of the complaint.
4. Memorial University and Service NL reconsidered their positions of relying on certain exceptions claimed when there was flexibility to do so.
5. The Human Resource Secretariat was able to provide additional responsive records which it had previously believed fell outside of the scope of the Complainant's request but were in fact responsive once clarified in the course of our informal investigation.

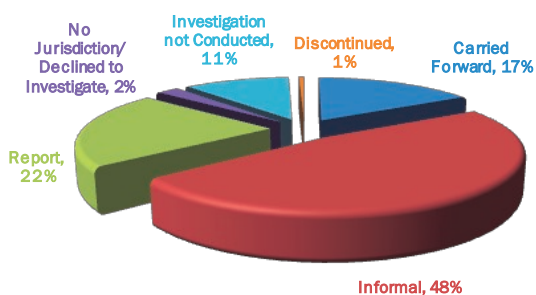
Outcome of PHIA Access Complaints



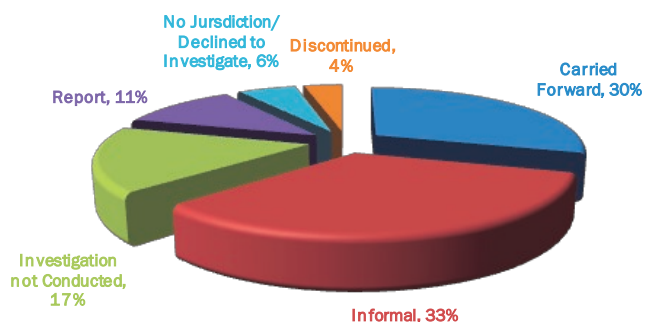
Outcome of PHIA Privacy Complaints



Outcome of ATIPPA, 2015 Access Complaints



Outcome of ATIPPA, 2015 Privacy Complaints



Informal resolution is facilitated by the work of knowledgeable ATIPP Coordinators working with our staff to achieve consensus within the short time frame that the Act permits for the process. Applicants contribute as well by identifying the records or parts of records of most relevance to them. By way of example, portions of records may require extensive consultations outside of a public body. If those contents are regarded as unnecessary by an applicant, more timely disclosure of required records usually occurs.

As for our published Reports in 2017-2018, several themes emerged.

### *Harm to the Business Interests of a Third Party and When to Notify the Third Parties*

In 2017-2018 we again issued many Reports relating to section 39 (Harm to the Business Interests of a Third Party). Twenty-nine percent of all Reports issued addressed this exception, and a summary of the most recent case law on this exception is found in Reports [A-2017-017](#) (regarding requests for proposals) and [A-2017-022](#) (regarding contracts generally and bids specifically).

This year we focused on the notification of third parties under section 19 of the *ATIPPA, 2015*. We updated our guidance document regarding the interpretation of section 39. This guidance document states:

*If, and only if, the Public Body is uncertain as to whether section 39 might apply to the records is the Public Body required by the ATIPPA, 2015 to notify a Third Party in the manner set out in section 19.*

...

*If a Public Body is satisfied that section 39 is not applicable (i.e. one or more parts of the three part test cannot be met) it must release the information and notification to or consultation with the Third Party is not necessary, and in fact inappropriately frustrates timely access to information.*

...

*A Section 19 notification only comes into play when there is an intention to release and the Public Body is uncertain regarding the application of section 39 (those records in the “grey area”).*

This guidance document was referenced in several reports, including [A-2017-014](#), and [A-2017-022](#).

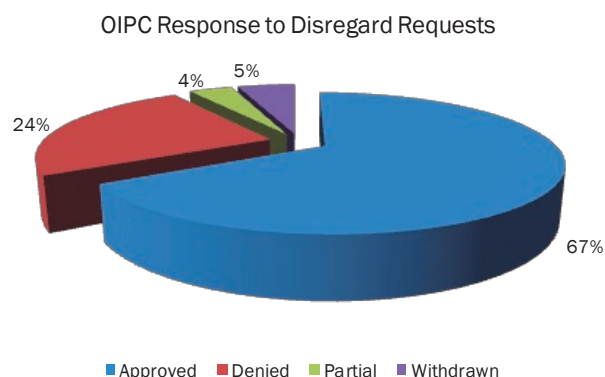
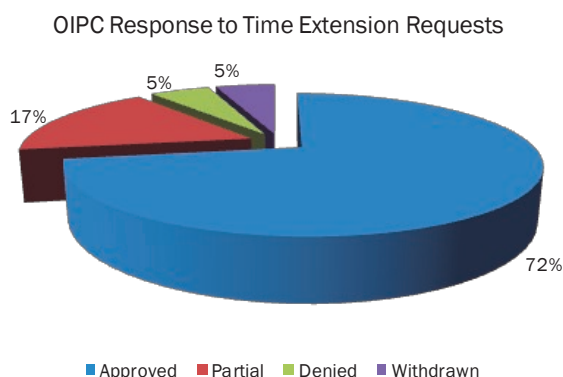
In A-2017-014 we found that:

*[25] As a result of third party notifications and the complaints to this Office that followed, two periods of unnecessary delay were injected into the process. Consequently, the Applicant’s right of timely access to information has been obstructed. Instead of obtaining the records within four weeks or less, the Applicant has already had to wait fourteen weeks.*

In A-2017-022 when the Public Body was asked to defend its decision to notify the Third Party, it replied that it “could not argue with complete certainty that no harm would come to the businesses should the information be released.” We noted however that:

*[18] Complete certainty that harm will not result is not the test. The key words in section 39 that pertain to the harm requirement are: could reasonably be expected, harm significantly, interfere significantly and undue financial loss or gain. From this*

*we know that harm that is less than significant will not suffice. A loss or gain that is not undue will not suffice. Harm that meets the requirements of the section must be shown to be more than merely possible, it must be shown to be a probable result of disclosing the third party's information.*



### *Proper Procedure for Handling Access Requests*

In 2017-2018 this Office also had the opportunity to comment on the process for responding to access requests. These comments included: reminding public bodies of their duty to assist as found in section 13 (including conducting a reasonable search for records); highlighting the requirements to provide reasons for refusal of access as required by section 17; reiterating the obligation to provide records not information; and other general commentary of the requirements of the *ATIPPA, 2015*.

The duty to assist, set out in section 13, states:

*The head of a public body shall make every reasonable effort to assist an Applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.*

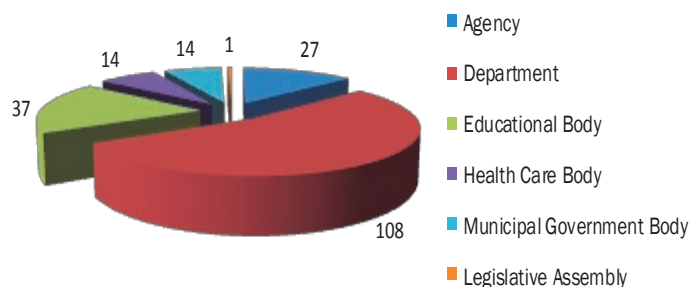
We discussed what constitutes a reasonable search in Reports [A-2017-023](#), [A-2018-001](#), [A-2018-003](#) and in our Practice Bulletin, [“Reasonable Search”](#) which states, searches must be conducted “by knowledgeable staff in locations where the records in question might reasonably be located.” However, as described in [A-2018-003](#) we can find that a reasonable search had been conducted and yet there had still been a failure to meet the duty to assist. In that case a large portion of the responsive records were overlooked and not sent to the Applicant. The Applicant had notified the Public Body that they appeared to have missed some records but it took a complaint to this Office before this oversight was rectified.

In Report [A-2018-006](#) we referenced the ATIPP Office's [Access to Information Policy and Procedure Manual](#) to explain and emphasize what obligations are included in the duty to assist, most significantly:

1. clear communication between the ATIPP Coordinator and an applicant;
2. ensuring that time limits are met;
3. assigning additional staff as early as possible, where necessary, to help process requests; and
4. developing a cooperative working relationship with the applicant (this may include working with an applicant to narrow large requests, prioritizing records or providing interim releases to the applicant).

The *ATIPPA, 2015* grants a right of access to **records** in the custody or control of public bodies, subject only to limited and specific exceptions. Several public bodies in this fiscal year had provided **information** instead of the records responsive to the request. We suggested, while this may have been done in an effort to be more helpful, “the *ATIPPA, 2015* creates an entitlement to the actual records and a Public Body is required to disclose all such records that are responsive to an Applicant’s request,” (Report [A-2018-001](#)). We would certainly support a public body providing: information in conjunction with records; information which helps explain the content of records; or, even information about the records when the records themselves are being withheld under an exception. While not necessarily required under the *ATIPPA, 2015*, it is often helpful to and appreciated by applicants.

ATIPPA, 2015 Privacy Breaches by Public Body



## Court Matters

### *Offence Prosecution*

On August 18, 2017 a civilian employee of the Royal Newfoundland Constabulary (RNC) entered guilty pleas on three offences contrary to section 115 of the *ATIPPA, 2015*. The charges related to inappropriately accessing personal information without lawful authority while in the employ of the RNC. The Court imposed a total fine of \$1000.00 for the three offences.

This is the first conviction entered under the offence provisions of the *ATIPPA, 2015* in Newfoundland and Labrador and appears to be only the third conviction under similar legislation in Canada.

### *Ongoing Court Matters*

[\*Newfoundland and Labrador Teachers' Association v. Newfoundland and Labrador English School District\*](#), Court File No. 2017 01H 0010

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

There are a number of other applications before the Supreme Court, Trial Division in relation to the sunshine list which have been stayed pending a ruling in the above-noted matter before the Court of Appeal on the appeal from Newfoundland and Labrador Teachers' Association v. Newfoundland and Labrador English School

District, 2016 CanLII 89960 (NL SCTD). All of the parties in these applications were intervenors in that case.

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

This matter was initiated by the Applicant in response to a decision by the College of the North Atlantic (CNA) to deny access to the name of an individual found in a record which was responsive to the Applicant's request. The Applicant brought the matter to the Commissioner, resulting in Report [A-2012-011](#) in which the Commissioner recommended disclosure. CNA refused to follow the recommendation and the Applicant appealed to the Supreme Court, Trial Division.

The Court found that the individual in question was in fact an employee of the College and that the person's name should be disclosed to the Applicant (2016 CanLII 51110). That decision is under appeal by CNA.

[\*Bragg Communications, et al v. College of the North Atlantic\* Court File No. 2017 01G 0369](#)  
[\*Bragg Communications v. College of the North Atlantic; Court File No. 2017 01G 1058\*](#)  
[\*Persona Communications v. College of the North Atlantic; Court File No. 2017 01G 1059\*](#)

These three matters are direct appeals by the Third Parties (Bragg Communications and Persona Communications) in relation to Third Party notices sent to them by the College of the North Atlantic. All three have been consolidated and will be heard together.

The OIPC filed Notices of Intervention in these matters on January 19, and February 7, 2017. The Minister of Justice and Public Safety also filed Notices of Intervention in the consolidated matters. An Interlocutory Application opposing the intervention of OIPC and the Minister was filed by Bragg and Persona. That application was heard on February 26, 2018 and a decision was rendered on February 28, 2018 confirming that the Commissioner and the Minister have the right to intervene. No court date has yet been set for the hearing.

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

This is a direct appeal by the Third Party, Bragg Communications, in relation to a Third Party Notice sent by NLESD. This matter was adjourned sine die on March 28, 2017 pending the outcome of the Interlocutory Application opposing our



intervention in the three matters above. Now that a decision has been rendered allowing our intervention, the matter is expected to proceed in due course.

*City of Corner Brook v. Office of the Information and Privacy Commissioner*; Court File No. 2017 04G 0063

This is an Originating Application filed in the Trial Division in Corner Brook seeking a declaration under section 79(1) of the *ATIPPA, 2015* that the City does not have to comply with the recommendations in OIPC Report [P-2017-001](#). The matter was heard by the Court on September 20, 2017 and a decision is pending.

[\*Evelyn Rideout v. Minister of Municipal Affairs\*; Court File No. 2015 04G 0275](#)

This is an appeal by the Applicant of the decision of the Minister to follow our recommendation in Report [A-2015-011](#) that the Department continue to withhold information it severed under sections 29, 30 and 40 of the *ATIPPA, 2015*. A hearing was held on February 8, 2017 in Corner Brook. The Commissioner was an intervenor in the matter. The Court's decision was reserved.

*Bell Canada v. Office of the Chief Information Officer*; Court File No. 2016 01G 1709

This is an appeal by the Third Party, Bell Canada, of the decision of the OCIO to follow our recommendation in Report [A-2016-001](#). The recommendation was to release information related to Bell because it was not excepted from disclosure by section 39 of the *ATIPPA, 2015*. The matter was ongoing at the end of the 2017-2018 fiscal year.

*Newfoundland and Labrador Medical Association v. Minister of Health and Community Services*; Court File No. 2016 01G No. 6110

This is an appeal by the Newfoundland and Labrador Medical Association of a decision of the Minister of Health and Community Services to follow our recommendation for release in Report [A-2016-019](#). The Commissioner filed a Notice of Intervention on October 18, 2016. The matter has been set over pending a decision by the Court of Appeal in Newfoundland and Labrador Teachers' Association v. Newfoundland and Labrador English School District, Court File No. 2017 01H 0010, as noted above.



*Bell Canada v. Minister of Business, Tourism, Culture and Rural Development*; Court file 2017 01G 1296

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

[Atlantic Lottery Corporation v. Her Majesty The Queen \(Minister of Finance\); Court File No. 2017 01G 2004](#)

This is an appeal by the Third Party, Atlantic Lottery, of a decision of the Department of Finance to follow our recommendation in Report [A-2017-004](#) that the Third Party's information be released. The OIPC filed a Notice of Intervention on March 16, 2017. A court date is scheduled for June 4, 2018.

#### *Concluded Court Matters*

*Bell Canada v. Minister of Health and Community Services*; Court File No. 2017 01G 0320

This was an appeal by the Third Party, Bell Canada, of a decision of the Department of Health and Community Services to follow our recommendation in Report [A-2016-030](#) that the Third Party's information be released. Bell Canada withdrew its appeal on February 21, 2018, concluding the matter. The records at issue were then released to the Applicant.

*Bell Canada v. Eastern Health*; Court File No. 2016 01G 1761

This was an appeal by the Third Party, Bell Canada, of the decision of Eastern Health to follow our recommendation in Report [A-2016-002](#) to release information related to Bell because it was not excepted from disclosure by section 39 of the *ATIPPA, 2015*. This matter was resolved by a consent order issued by the Supreme Court, Trial Division on February 2, 2018. The Order was issued on the basis of commitments by Eastern Health to redact information in the responsive record in accordance with section 40 of the *ATIPPA, 2015*, and to consider whether further redactions might be necessary in accordance with section 31 of the *ATIPPA, 2015*. Bell Canada withdrew its appeal as a result of the commitments by Eastern Health.

*Alderon Iron Ore Corporation v. Minister of Natural Resources*; Court File No. 2017 01G 4340

This was an appeal by Alderon as an access to information Applicant against a decision of the Department of Natural Resources to follow the Commissioner's recommendation in Report [A-2017-015](#) that the Department continue to withhold records sought by Alderon. Alderon withdrew its appeal on December 1, 2017.

*Bell Canada v. Office of the Chief Information Officer*; Court File No. 2015 01G 6086

This was an appeal by the Third Party, Bell Canada, filed on November 18, 2015 of a decision by OCIO to follow the Commissioner's recommendation in Report [A-2015-005](#) to disclose information to an access to information Applicant. The matter was concluded when Bell Canada withdrew its appeal on May 25, 2017, following which the relevant records were provided to the requester.

*Bell Canada v. Memorial University of Newfoundland*; Court File No. 2017 01G 4033

This was an appeal by the Third Party, Bell Canada, filed on May 30, 2017 of a decision by Memorial to follow the Commissioner's recommendation in Report [A-2017-014](#) to disclose information to an access to information Applicant. The matter was concluded when Bell Canada withdrew its appeal on February 26, 2018, following which the relevant records were provided to the requester.

*Don Gibbons Ltd. v. Her Majesty The Queen (Minister of Health and Community Services)*;  
Court file 2017 01G 2562

This appeal by the Third Party, Don Gibbons Ltd. was filed on March 31, 2017, appealing a decision of the Department of Health and Community Services to follow our recommendation in Report [A-2017-009](#) that the Third Party's information be released. Don Gibbons Ltd. filed a Notice of Discontinuance on December 15, 2017, bringing the matter to a conclusion.

## **BERMUDA**

From early November 2017 to late January 2018, OIPC Director of Research and Quality Assurance Sean Murray took a leave of absence from the Office to work with Bermuda's Information Commissioner. Bermuda's *Public Access to Information Act* came into effect in April 2015. Approximately two years into her mandate Commissioner Gitanjali Gutierrez identified a need to bring in an experienced senior adviser to assist in progressing some of the work of her Office.

Like Bermuda, Newfoundland and Labrador is a relatively small jurisdiction, so even though it is in many ways quite different (and warmer!), there were some parallels which made it a good fit. Mr. Murray had also had the experience of working with our Office when the original *ATIPPA* first came into force in 2005, so he was able to appreciate the challenges faced by the oversight office as well as public bodies and applicants when access to information legislation is still relatively new.



Mr. Murray brought along his family for part of this time, and it was a very positive experience personally and professionally. He was delighted to be able make a contribution to the work of the Bermuda Information Commissioner's Office, and to work in a new environment with unique challenges and wonderful people.

## CONCLUSION

The fact that the volume of access to information requests continues to increase each fiscal year since the proclamation of the *ATIPPA, 2015* demonstrates that the public continues to be interested in participating in democracy and holding the government accountable. Access requests from individuals have surpassed those from the media and political parties. Citizens are empowered to deal directly with government departments and other public bodies on matters of both general and personal interest.

Jurisdictions considering changes to their access to information systems often reference our legislation and systems as positive models. While our volume of requests has increased, for the most part people are receiving very timely access to information, especially when compared to timelines in other jurisdictions. Further, it is a public body's responsibility to proceed to Court if it does not want to follow recommendations resulting from our formal investigations. In many jurisdictions, public bodies routinely ignore recommendations from their oversight bodies without recourse, unless the person denied access to information is willing and able to proceed with a Court challenge.

Even where access complaints arise, our Office resolves all of them within the 65-day statutory deadline and generally in advance of that deadline (see Appendix A). The majority of complaints are resolved informally and even where a formal report is required, public bodies continue to accept our recommendations in most instances.

Going forward, we hope that the government will more fully embrace open government initiatives such that far more information is generally available to everyone. We commend its enactment of the *Public Procurement Act* as a positive step toward greater transparency. Another solution government might consider would be to identify the categories or types of records most frequently requested via access to information requests and commence routine publication of those records. Identifying problems is only the start; all involved must be willing to contribute to finding solutions and we continue to offer our expertise to government and others interested in improving our system.

In terms of privacy, consistent with other jurisdictions, the breaches reported to us are overwhelmingly inadvertent. In regards to these breaches, we continue to advocate solutions that reduce the potential for human error. Examples include disabling the auto-fill functions of email accounts and regular review and verification of fax numbers. As for intentional breaches, we vigorously investigate allegations of deliberate breaches and pursue prosecutions where viable.

Finally, we intend to advocate for amendments to the *PHIA* as recommended in the May 2017 Report of the Statutory Review Committee. As the review was eight months late in commencing, and the Report itself has been complete for over a year, government should prioritize this item on its legislative agenda. We are concerned about continuing delays arising from the efforts of some stakeholders to have government accept their submissions despite their consideration and rejection by the Review Committee, the independent experts charged with the task of reviewing the legislation and submissions from all stakeholders.

## **Appendix “A”**



**Timelines (business days) for Access Complaints for the 2017-2018 Reporting Period  
under the *Access to Information and Protection of Privacy Act, 2015***

<b>Public Body</b>	<b>Means of Resolution</b>	<b>Review Started</b>	<b>Days for Informal Resolution</b>	<b>Formal Review Started</b>	<b>Days for Formal Review</b>	<b>Date Complaint Resolved</b>	<b>Total Days</b>
City of Mount Pearl	Informal	2017-09-20	3			2017-09-25	3
Town of St. George's	Informal	2018-01-12	3			2018-01-17	3
Department of Transportation and Works	Informal	2017-05-03	4			2017-05-09	4
Department of Fisheries and Land Resources	Informal	2017-11-17	4			2017-11-23	4
Town of Portugal Cove-St. Philip's	Informal	2017-11-15	6			2017-11-23	6
Department of Finance	Informal	2018-02-15	7			2018-02-26	7
Town of Witless Bay	Informal	2017-08-11	9			2017-08-24	9
Government Purchasing Agency	Informal	2017-04-19	10			2017-05-03	10
Town of Brigus	Informal	2018-02-19	11			2018-03-06	11
Department of Service NL	Informal	2018-01-23	13			2018-02-09	13
Town of Portugal Cove-St. Philip's	Informal	2017-05-29	14			2017-06-16	14
Town of Portugal Cove-St. Philip's	Informal	2017-11-24	14			2017-12-14	14
Town of Portugal Cove-St. Philip's	Informal	2017-12-18	14			2018-01-09	14
Provincial Information and Library Resources Board	Informal	2017-12-18	15			2018-01-10	15
Office of the Chief Information Officer	Informal	2018-02-16	15			2018-03-09	15
Town of Portugal Cove-St. Philip's	Informal	2017-12-18	17			2018-01-12	17
Office of the Premier	Informal	2017-10-20	18			2017-11-16	18
Town of Harbour Grace	Informal	2017-10-25	18			2017-11-21	18
Memorial University	Informal	2017-03-13	19			2017-04-07	19
Town of St. George's	Informal	2018-01-12	19			2018-02-08	19

Public Body	Means of Resolution	Review Started	Days for Informal Resolution	Formal Review Started	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Portugal Cove-St. Philip's	Informal	2017-03-30	20			2017-05-01	20
Department of Transportation and Works	Informal	2017-04-11	20			2017-05-11	20
Workplace NL	Informal	2017-08-22	20			2017-09-20	20
Workplace NL	Informal	2017-08-22	20			2017-09-20	20
Workplace NL	Informal	2017-08-21	21			2017-09-20	21
Workplace NL	Informal	2017-08-21	21			2017-09-20	21
Department of Transportation and Works	Informal	2017-03-22	22			2017-04-25	22
Workplace NL	Informal	2017-08-18	22			2017-09-20	22
Workplace NL	Informal	2017-08-18	22			2017-09-20	22
Department of Finance	Informal	2017-04-20	23			2017-05-24	23
Town of Portugal Cove-St. Philip's	Informal	2017-02-28	25			2017-04-04	25
Town of Deer Lake	Informal	2017-06-12	25			2017-07-18	25
City of St. John's	Informal	2017-06-20	25			2017-07-26	25
Town of Portugal Cove-St. Philip's	Informal	2017-06-22	25			2017-07-28	25
Town of Deer Lake	Informal	2017-05-24	26			2017-06-29	26
Town of Portugal Cove-St. Philip's	Informal	2017-06-22	26			2017-07-31	26
Department of Fisheries and Land Resources	Informal	2017-03-28	27			2017-05-08	27
Department of Advanced Education, Skills and Labour	Informal	2018-01-09	27			2018-02-15	27
Department of Finance	Informal	2017-11-02	28			2017-12-13	28
Town of Ramea	Informal	2017-11-10	28			2017-12-21	28
Town of Portugal Cove-St. Philip's	Informal	2017-06-22	29			2017-08-03	29
Town of Portugal Cove-St. Philip's	Informal	2017-09-13	29			2017-10-24	29
Department of Education and Early Childhood Development	Informal	2017-05-17	30			2017-06-29	30
Town of Portugal Cove-St. Philip's	Informal	2017-09-12	30			2017-10-24	30



Public Body	Means of Resolution	Review Started	Days for Informal Resolution	Formal Review Started	Days for Formal Review	Date Complaint Resolved	Total Days
City of St. John's	Informal	2017-09-20	30			2017-11-01	30
Town of Paradise	Informal	2017-10-24	30			2017-12-06	30
Office of the Premier	Informal	2018-01-26	30			2018-03-09	30
Department of Justice and Public Safety	Informal	2018-01-26	30			2018-03-09	30
Department of Justice and Public Safety	Informal	2018-01-26	30			2018-03-09	30
Department of Municipal Affairs and Environment	Informal	2017-04-07	31			2017-05-25	31
Department of Municipal Affairs and Environment	Informal	2017-04-07	31			2017-05-25	31
Newfoundland and Labrador Liquor Corporation	Informal	2018-01-26	31			2018-03-12	31
Memorial University	Informal	2017-04-13	32			2017-06-01	32
Town of Harbour Main-Chapel's Cove-Lakeview	Informal	2017-10-19	33			2017-12-06	33
Memorial University	Informal	2018-01-15	33			2018-03-01	33
Town of Paradise	Informal	2017-02-28	30	2017-04-11	5	2017-04-20	35
Department of Tourism, Culture, Industry and Innovation	Informal	2017-03-16	35			2017-05-08	35
Royal Newfoundland Constabulary	Informal	2017-12-01	35			2018-01-23	35
Human Resource Secretariat	Informal	2017-12-19	36			2018-02-09	36
Department of Children, Seniors and Social Development	Informal	2017-05-23	37			2017-07-14	37
Judicial Council of the Provincial Court of NL	Informal	2017-10-16	37			2017-12-07	37
Town of Placentia	Informal	2017-12-14	28	2018-01-25	9	2018-02-07	37
Royal Newfoundland Constabulary	Informal	2017-04-27	38			2017-06-21	38
Health Research Ethics Authority (HREA)	Informal	2017-10-27	38			2017-12-21	38
Town of Placentia	Informal	2017-12-13	29	2018-01-25	9	2018-02-07	38
Royal Newfoundland Constabulary	Informal	2018-01-31	40			2018-03-28	40

Public Body	Means of Resolution	Review Started	Days for Informal Resolution	Formal Review Started	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Eastport	Informal	2017-06-07	41			2017-08-03	41
Executive Council	Informal	2017-10-20	41			2017-12-19	41
Department of Service NL	Informal	2017-11-22	41			2018-01-22	41
Town of Portugal Cove-St. Philip's	Informal	2017-04-13	43			2017-06-16	43
Department of Service NL	Informal	2017-10-20	43			2017-12-21	43
Human Resource Secretariat	Informal	2017-11-22	43			2018-01-24	43
Department of Transportation and Works	Informal	2017-05-04	44			2017-07-05	44
Public Utilities Board	Informal	2017-06-13	44			2017-08-14	44
Department of Finance	Informal	2017-11-20	44			2018-01-23	44
Town of Portugal Cove-St. Philip's	Informal	2017-12-01	45			2018-02-06	45
WorkplaceNL	Informal	2017-05-02	40	2017-06-28	8	2017-07-11	48
Government Purchasing Agency	Informal	2017-04-20	50			2017-06-30	50
Town of Torbay	Informal	2017-10-26	52			2018-01-11	52
Department of Finance	Informal	2017-01-23	55			2017-04-10	55
Department of Tourism, Culture, Industry and Innovation	Informal	2017-04-10	51	2017-06-23	6	2017-07-04	57
City of St. John's	Informal	2017-12-04	58			2018-02-26	58
Department of Finance	Informal	2017-09-14	31	2017-10-27	32	2017-12-13	63
Memorial University	Informal	2017-11-01	63			2018-02-01	63
Department of Natural Resources	Informal	2017-01-27	65			2017-04-13	65
Memorial University	Report	2017-03-10	30	2017-04-25	10	2017-05-09	40
Town of Paradise	Report	2017-09-08	3	2017-09-13	37	2017-11-03	40
Department of Municipal Affairs and Environment	Report	2017-06-27	18	2017-07-24	30	2017-09-05	48
Department of Justice and Public Safety	Report	2017-01-31	44	2017-04-03	7	2017-04-12	51
Town of Paradise	Report	2017-11-10	37	2018-01-05	17	2018-01-30	54

Public Body	Means of Resolution	Review Started	Days for Informal Resolution	Formal Review Started	Days for Formal Review	Date Complaint Resolved	Total Days
Department of Transportation and Works	Report	2017-02-16	31	2017-03-31	24	2017-05-08	55
Town of Paradise	Report	2017-10-24	32	2017-12-08	23	2018-01-12	55
Royal Newfoundland Constabulary	Report	2017-05-15	41	2017-07-13	15	2017-08-03	56
Government Purchasing Agency	Report	2017-05-23	41	2017-07-20	15	2017-08-10	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
Nalcor	Report	2017-09-15	34	2017-11-02	22	2017-12-05	56
The Rooms	Report	2017-04-07	29	2017-05-23	28	2017-06-30	57
Nalcor	Report	2017-09-12	37	2017-11-02	22	2017-12-05	59
Memorial University	Report	2017-05-18	41	2017-07-18	20	2017-08-15	61
Department of Natural Resources	Report	2017-03-15	37	2017-05-09	25	2017-06-14	62
Government Purchasing Agency	Report	2017-04-18	50	2017-06-28	12	2017-07-17	62
Department of Municipal Affairs and Environment	Report	2017-08-18	31	2017-10-03	31	2017-11-16	62
Memorial University	Report	2017-06-09	40	2017-08-07	23	2017-09-08	63
Town of Paradise	Report	2017-08-07	25	2017-09-12	38	2017-11-03	63
Town of Paradise	Report	2017-09-07	4	2017-09-13	59	2017-12-06	63
Department of Finance	Report	2017-04-21	27	2017-05-31	37	2017-07-24	64
Department of Municipal Affairs and Environment	Report	2017-06-08	31	2017-07-24	33	2017-09-05	64
Town of Paradise	Report	2017-10-27	29	2017-12-08	35	2018-01-30	64

Public Body	Means of Resolution	Review Started	Days for Informal Resolution	Formal Review Started	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Portugal Cove-St. Philip's	Report	2017-11-24	20	2017-12-22	44	2018-02-26	64
Royal Newfoundland Constabulary	Report	2017-01-20	48	2017-03-29	17	2017-04-25	65
Town of Portugal Cove-St. Philip's	Report	2017-10-16	42	2017-12-14	23	2018-01-18	65
City of St. John's	Report	2017-10-23	55	2018-01-11	10	2018-01-25	65
Department of Municipal Affairs and Environment	Discontinued	2017-06-13				2017-06-15	2
Memorial University	Investigation Not Conducted	2017-12-11				2017-12-14	3
Town of Portugal Cove-St. Philip's	Investigation Not Conducted	2018-01-29				2018-02-02	4
Eastern Health	Investigation Not Conducted	2018-03-12				2018-03-23	9
Department of Transportation and Works	Investigation Not Conducted	2017-09-28				2017-10-17	13
Office of the Information and Privacy Commissioner	Investigation Not Conducted	2018-01-16				2018-02-07	16
Memorial University	Investigation Not Conducted	2017-05-15				2017-06-27	22
Office of the Information and Privacy Commissioner	Investigation Not Conducted	2018-01-03				2018-02-07	25
Memorial University	Investigation Not Conducted	2017-10-25				2017-12-11	32
City of Mount Pearl	Investigation Not Conducted	2017-09-18	30	2017-10-30	9	2017-11-10	39
Town of Holyrood	Investigation Not Conducted	2017-09-28				2017-11-29	43
Town of Pouch Cove	Investigation Not Conducted	2017-08-18				2017-10-25	47
Town of Pouch Cove	Investigation Not Conducted	2017-08-18				2017-10-25	47
Town of Pouch Cove	Investigation Not Conducted	2017-08-18				2017-10-25	47
Town of Pouch Cove	Investigation Not Conducted	2017-08-18				2017-10-25	47

Public Body	Means of Resolution	Review Started	Days for Informal Resolution	Formal Review Started	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Pouch Cove	Investigation Not Conducted	2017-08-18				2017-10-25	47
Town of Marystown	Investigation Not Conducted	2017-07-04				2017-09-13	50
Central Newfoundland Waste Management	Investigation Not Conducted	2017-09-19				2017-11-29	50
Department of Justice and Public Safety	Investigation Not Conducted	2017-08-10	63			2017-11-08	63
Human Resource Secretariat	Investigation Not Conducted	2017-08-10	63			2017-11-08	63
Department of Justice and Public Safety	Investigation Not Conducted	2017-08-10	63			2017-11-08	63
Department of Transportation and Works	No Jurisdiction/ Declined to Investigate	2017-09-26				2017-09-28	2
Department of Children, Seniors and Social Development	No Jurisdiction/ Declined to Investigate	2017-08-08				2017-08-10	3
Department of Transportation and Works	No Jurisdiction/ Declined to Investigate	2017-08-25				2017-09-07	8
Department of Justice and Public Safety	No Jurisdiction/ Declined to Investigate	2017-03-17				2017-04-06	14





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