



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

# ANNUAL REPORT **2009 | 2010**

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

## **Access**

By providing a specific right of access and by making that right subject only to limited and specific exceptions, the legislature has imposed a positive obligation on public bodies to release information, unless they are able to demonstrate a clear and legitimate reason for withholding it. Furthermore, the legislation places the burden squarely on the head of a public body that any information that is withheld is done so appropriately and in accordance with the legislation.

NL OIPC Report 2005-002

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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 ]. (Dissenting)



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## Message From The Commissioner

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September 20, 2010

The Honourable Roger Fitzgerald  
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, 2009 to March 31, 2010.

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

Edward P. Ring  
Information and Privacy Commissioner

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## Foreword

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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 records on administration and practices as well as information on legislation and even government policies. 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.

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. But in this Province, such cases are more and more the exception. The rule and spirit of “giving the public a right of access to records” is increasingly the norm.

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.



*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.*

The Office of the Information and Privacy Commissioner (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.

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



## Personal Health Information Act (PHIA)

### HEALTH INFORMATION A PRIVATE MATTER



I wish to take this opportunity to comment on government's plan to enact legislation which is specifically aimed at the protection of personal health information, to be called the *Personal Health Information Act*, or *PHIA*. Personal health information is indeed often the most sensitive form of personal information. Even though the *ATIPPA* currently protects personal health information as it does other types of personal information, the *ATIPPA* only applies to public bodies, whereas the intention with *PHIA* is that it will apply to personal health information held by both public sector and private sector custodians. Therefore, given that the scope of *PHIA* is much broader than the *ATIPPA*, this Office will be tasked with a broader mandate than currently maintained as the Office will not only serve as the oversight body for *ATIPPA* but for *PHIA* as well. Whereas there are approximately 470 public bodies designated under the *ATIPPA* that are subject to the oversight of this Office, there will be thousands of private and public sector custodians of personal health information whose compliance with the *PHIA* will be overseen by this Office. I am confident that the House of Assembly will appreciate the huge undertaking this will be, and that appropriate resources will be allocated to this Office in order to allow my staff to carry out this very important mandate efficiently, effectively and to be able to react and produce results in a timely manner.

This Office continues to take an active role in the preparation for the roll-out of *PHIA*. Specifically, a representative from the OIPC participates on the *PHIA* Implementation Steering Committee as well as both the Education Working Group and Regulations Working Group. I wish to note for the record that not all jurisdictions which have introduced personal health information legislation have invited and welcomed the participation of their respective Commissioners to the same extent that we have experienced. Not only have we been welcomed into the process, but our input has been actively sought and listened to on many



*Personal Health Information Act (PHIA) protects personal health information held by both public sector and private sector custodians.*

important points along the way. In fact, my Office has promoted this process as a model to other jurisdictions across Canada who are or will be developing this type of legislation. It has been largely a stakeholder-driven process from the beginning, with excellent leadership and facilitation from day one. Although government must have the final say on the key issues, it is clear that their ultimate decision-making has been informed by an ongoing participatory and consultative process.

The various working groups associated with the *PHIA* Implementation Steering Committee can count a number of successes along the way. In the end, products such as the Policy and Procedures Manual, the Risk Management Toolkit, and the on-line *PHIA* training (which is being managed by the NL Centre for Health Information), when completed and made available, will all help custodians as they work towards compliance with the *PHIA*. The challenge before us all in the coming months and years is to ensure that all custodians are fully aware of their obligations under the *PHIA*, and that these tools exist to help them meet those obligations. We applaud government for taking that initiative, and we look forward to the proclamation into law of this legislation in the 2010-2011 fiscal year by the House of Assembly.

Resources were provided in the FY 2009-2010 budget for the OIPC staff to undertake targeted and directed training specifically in preparation for the proclamation of *PHIA*.

These resources were well used and I am confident that as a result of the training undertaken, the Office has made significant progress in its ability to provide immediate, effective and efficient oversight of *PHIA* once proclaimed. A summary of the training opportunities, initiatives and events are outlined as follows:

- E-Health Forum - Calgary, October 26 and 27, 2009 (2 analysts);
- Personal Health Information Governance and Oversight - Calgary, October 28, 2009 (2 analysts);
- Meetings/Consultations with Alberta OIPC staff - Edmonton, October 29, 2009 (2 analysts);
- Meetings/Consultations with the Federal Privacy Commissioner's Office - Ottawa, November 23, 2009 (2 analysts);
- Workshop - Conducting Regulatory Investigations - Toronto, November 24, 2009 (6 analysts);
- Personal Health Information Summit - Toronto, November 27, 2009 (6 analysts);

## Accessing Information

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.
- 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 our website at [www.oipc.nl.ca](http://www.oipc.nl.ca).
- 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.
- If access to the record is provided, then the process is completed. If access is denied, or other action has been implemented which you dispute, the applicant may request a review by the Information and Privacy Commissioner, or an appeal may be made to the Supreme Court Trial Division.



### How to File a Request for Review with the Information and Privacy Commissioner

- Submit a Request for Review form to our Office. The form and the contact information are available on our website at [www.oipc.nl.ca](http://www.oipc.nl.ca).
- 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.
- 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.

## Withholding Information



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. The recourse for applicants in such cases is to the Office of the Information and Privacy Commissioner.

Complaints range from:

- being denied the requested 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 concerns falling under the Commissioner's mandate.

While the Commissioner's investigations provide him access to any 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 persuasion 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 listed and 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 but does not include such things as factual material, a final report or final audit, or environmental impact statement.
- *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.

Unsupportable 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 in the Department of Justice 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.

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.



## The Role of The Commissioner

*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.*

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 done 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 public 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 engaged to ensure that information that should not be released is, indeed protected.

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.



## 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, 2009 - March 31, 2010.

April 1, 2009 - Presentation by Newfoundland and Labrador Centre for Health Information Conference (St. John's)

April 7, 2009 - *Personal Health Information Act* - Education Working Group Meeting (St. John's)

April 8, 2009 - *Personal Health Information Act* - Steering Committee Meeting (St. John's)

April 20, 2009 - Atlantic Symposium on Privacy in Health Services and Policy Research (St. John's)

May 12, 2009 - *Personal Health Information Act* - Steering Committee Meeting (St. John's)

May 20, 2009 - National Privacy Sub-Committee Meeting (St. John's)

May 20-21, 2009 - Children's On-line Privacy Working Group (Fredericton, NB)

May 22, 2009 - Meeting/Discussions with National Chair Canadian Association of Professional Access and Privacy Administrators (CAPAPA), (St. John's)

May 25, 2009 - Newfoundland and Labrador Information Management Day - Managing for Today, Preparing for Tomorrow (St. John's)

May 27, 2009 - Newfoundland and Labrador Access and Privacy Workshop (St. John's)

May 28, 2009 - Discussion/Consultation with British Columbia Information and Privacy Commissioner (St. John's)

May 31, 2009 - Presentation by and discussions with officials for Newfoundland and Labrador Centre for Health Information concerning the roll-out of The Pharmacy Network as part of the Electronic Medical Health Records System (St. John's)

June 1, 2009 - Commissioner was guest on Rogers Television - "Out of the Fog" to discuss Access and Privacy issues in the Province as well as issues surrounding the development of the *Personal Health Information Act* (St. John's)

June 3, 2009 - Meeting/Discussion with officials from Workplace Health, Safety and Compensation Commission regarding Video Camera Surveillance and Privacy (St. John's)

June 4, 2009 - Presentation by Mr. Jim MacDonald on the programs offered by "Opening Doors" to facilitate persons with disabilities entering the public service (St. John's)

June 8, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

June 9, 2009 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)





June 18, 2009 - Canadian Bar Association – Mediation Training (St. John's)

June 22-23, 2009 - Canada Infoway Conference (Halifax)

June 23-24, 2009 - Atlantic Region Access and Privacy Conference (Halifax)

July 14, 2009 - Meeting with National Chair Canadian Association of Professional Access and Privacy Administrators (CAPAPA) (St. John's)

July 21, 2009 - Briefing concerning Privacy Issues by House of Assembly Access to Information and Protection of Privacy Coordinator (St. John's)

July 22, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

July 24, 2009 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)

June 28, 2009 - Meeting with Canadian Association of Professional Access and Privacy Administrators, planning meeting for joint "Right to Know Day" events (St. John's)

August 9, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

September 3, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

September 8–10, 2009 - Federal Provincial Territorial Information and Privacy Commissioners/Ombudspersons Summit (St. John's)

September 11, 2009 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)

September 29, 2009 - Right to Know Week Event at Memorial University (St. John's)

September 30, 2009 - Right to Know Week Event (Stephenville)

October 1, 2009 - Right to Know Week Event (Corner Brook)

October 1, 2009 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

October 7, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

October 9, 2009 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)

October 26-28, 2009 - Two investigators attended E-Health Forum in preparation for proclamation of the *Personal Health Information Act* (Calgary)



October 29, 2009 - Two investigators attended a consultation visit with the Information and Privacy Commissioner's Office of Alberta to undertake training in relation to personal health information breach investigations (Edmonton, AB)

November 1-3, 2009 - Canada Infoway Conference and Privacy Forum (Mississauga)

November 3-6, 2009 - 31st International Conference of Health Data Protection Agencies (Madrid)

November 5, 2009 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

November 9, 2009 - Presentation to International Association of Administrative Professionals (St. John's)

November 12, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

November 17-19, 2009 - OIPC sponsored Personal Health Information training seminar with stakeholders in preparation of proclamation of *PHIA*

November 18, 2009 - International Association of Privacy Professionals (IAPP) presentation (St. John's)

November 19, 2009 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

November 23, 2009 - Two OIPC staff met with officials from the Federal Privacy Commissioner's Office in preparation for *Personal Health Information Act*, proclamation (Ottawa, ON)

November 24, 2009 - Six staff attended Conciliation Skills for Investigators Workshop (*PHIA* proclamation preparation) (Toronto)

November 25, 2009 - Presentation to Deputy Ministers (Retired) Group, (St. John's)

November 25-26, 2009 - Six staff attended training course – Conducting Regulatory Investigations (Toronto)  
Two staff attended via web cast (St. John's)

November 27, 2009 - Six staff attended *Personal Health Information Protection Act (PHIPA)* Summit 2009 (Toronto, ON)

December 8, 2009 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

December 11, 2009 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)

December 14, 2009 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

January 5, 2010 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)



January 20, 2010 - *Personal Health Information Act*, Steering Committee Meeting (St. John's)

January 28, 2010 - OIPC participated in joint Data Protection Day Events (St. John's)

- Canadian Association of Professional Access & Privacy Administrators
- Newfoundland and Labrador Centre for Health Information
- Office of the Privacy Commissioner of Canada
- Memorial University
- College of the North Atlantic
- Newfoundland & Labrador Bar Association

January 28, 2010 - OIPC Participation in Data Protection Day Events (Stephenville)

February 2, 2010 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

February 5, 2010 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)

February 16, 2010 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

February 23, 2010 - Presentation/Panel discussion - Technology in Health Care "Knowing Professional Boundaries" to Newfoundland and Labrador Association of Registered Nurses and Professional Social Workers (St. John's)

March 2, 2010 - Eastern Health Education Day Presentation "Privacy is Everyone's Business" (St. John's)

March 4, 2010 - Presentation to OIPC staff by the Health Research Ethics Authority Transition Team (St. John's)

March 5, 2010 - *Personal Health Information Act*, Education Working Group Meeting (St. John's)

March 11, 2010 - Federal/Provincial/Territorial Information and Privacy Commissioners mid-year telephone conference

March 12, 2010 - Presentation to Certified General Accountants Association of Newfoundland & Labrador (St. John's)

March 16, 2010 - International Association of Privacy Professionals, 10th anniversary celebration event (St. John's)

March 16, 2010 - *Personal Health Information Act*, Regulations Working Group Meeting (St. John's)

March 18, 2010 - Presentation and discussions with officials from Newfoundland and Labrador Centre for Health Information regarding Newfoundland and Labrador EHR/Labs Project (St. John's)

March 22, 2010 - Presentation to ATIPPA Coordinators Office, Department of Justice "Community of Practice Group" (St. John's)



**Greg Clarke**  
Access and Privacy Analyst

### OIPC Hosted Seminar

Dr. Deborah Grant, Office of the Information and Privacy Commissioner of Ontario was invited to be the event facilitator and keynote speaker. Dr. Grant is recognized as a leading expert in Canada in the area of personal health information. She has been employed with the Information and Privacy Commissioner of Ontario for 21 years and co-chairs the Canada Infoway Privacy Forum. The series of events undertaken during the three day seminar is as follows:

- November 17: morning session for OIPC staff. The afternoon was attended by the OIPC staff as well as privacy representatives from the four health regions.
- November 18: morning session was attended by the OIPC staff. The afternoon session began with the OIPC group and Dr. Grant attending and participating in an event conducted by the International Association of Privacy Professionals (IAPP), followed again by a closed session for the OIPC staff.
- November 19: this half day session involved multiple stakeholders including:
  - Dr. Deborah Grant - OIPC Ontario;
  - OIPC staff - Newfoundland and Labrador;
  - Regional Health Authority Delegates;
  - *Personal Health Information Act (PHIA)* Steering Committee;
  - Department of Health and Community Services Representatives;
  - Newfoundland and Labrador Centre for Health Information Representatives;
  - Memorial University delegation;
  - Various private sector interest groups;
  - Some members from the various *PHIA* working groups; and
  - Representative from the Office of the Privacy Commissioner of Canada.

We also take this opportunity to acknowledge the hard work, dedication and energy of the responsible officials in the Department of Health and Community Services and the Newfoundland and Labrador Centre for Health Information, and indeed, all stakeholders in advancing this significant and important piece of legislation.



**Janet O'Reilly**  
Access and Privacy Analyst

### Consultation/Advice

This Office continues to receive numerous inquiries and requests for advice and consultation. It routinely provides guidance to individuals, organizations and public bodies.

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.

### OIPC Website

Our website, [www.oipc.nl.ca](http://www.oipc.nl.ca), continues to be a valuable resource for members of the public and public bodies.

In addition to information and resources available on this website, you will find a Table of Concordance.

### Table of Concordance Project Synopsis

The Table of Concordance is a vital tool for those who need to reference the work of the OIPC. It is also helpful for accomplishing an inherent goal of the OIPC, which is to be accountable and transparent to those it serves. Due to the importance of the Table, it was imperative to both update the content and revise its design. These needs were addressed by inputting all Commissioner Reports, detailing the *Act* sections with their respective subsections, and redesigning the Table for web presentation and future database integrity. These needs were met by developing a new Table of Concordance.

The first task involved reading and classifying all Commissioner Reports (2005-2010) to ascertain the *Act* subsections discussed in each. Some references in the Table were unnecessary while others lacked detail, translating into a time consuming process searching for relevant information.

We addressed these concerns in a variety of ways. Section headings of the *Act* are linked between the Table and the *Act*, so one does not have to search the entire *ATIPPA* to find what is sought. Only sections which are discussed in detail are referenced on the first page of the Report and thus in the Table. In addition, Report and *ATIPPA* links open in new windows which make for easier navigation. For example, if someone clicks on section 23 in



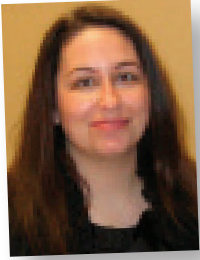
the Table, they are brought directly to that section of the *Act* in a new window. The goal is a user friendly Table that is less cumbersome, making for easy access to the information and providing a better on-line experience and a much enhanced reference tool.

All Commissioner Reports were read and classified by section number(s) and the design of the Table was then determined. Tables were then built – one for the *Access to Information and Protection of Privacy Act (ATIPPA)* and one for the *Personal Health Information Act (PHIA)*. The *PHIA* Table of Concordance was built for future use in the OIPC and on the OIPC Website. The deep level of detail and lengthy Tables are offset by the focused and specific nature of the content. The *ATIPPA* Table of Concordance was distributed to OIPC staff for feedback, and where appropriate, modifications were made.

The web designer has translated the Table of Concordance into a web-friendly version for its various audiences – the public, public bodies, different jurisdictions, and OIPC staff. This Office collaborated with the web designer, to design a Table which asked - how can we make this Table more user friendly, so one can find relevant information for their particular needs? After analyzing a number of designs, we also determined its feasibility for the OIPC website. Our goal was to condense the Table in such a way as to allow a user to navigate to specific sections of the Table without scrolling or reading through parts that were irrelevant to their search.

We accomplished this through the extensive use of links which connect to Reports and specific sections of the *Act*. We also provide drop-down lists for each part of the Table. A dropdown list expands or collapses, as well as shows only those sections of the *Act* which were referenced in Reports. Developing this design has been challenging but worthwhile. The Table will keep its desired functionality in a succinct and user friendly manner as the Table continues to grow with content.

The *ATIPPA* Table of Concordance is available at the following web address at [www.oipc.nl.ca/tableofconcordance.htm](http://www.oipc.nl.ca/tableofconcordance.htm).



**Robynn Arnold**  
Mediation, Communications  
and Policy Analyst

## Staffing

During this reporting period the OIPC was able to fill the Mediation, Communications and Policy Analyst (MCPA) position that was approved in the 2008-2009 fiscal year budget process. The hire was somewhat delayed due to the classification process which had to be approved by the House of Assembly Management Commission. The MCPA began employment on November 2, 2009. Our fifth Access and Privacy Analyst hired on a temporary basis in January 2009 was subsequently made permanent early in the 2009-2010 fiscal year. Additionally, during this fiscal year three temporary full-time Access and Privacy Analysts were hired on July 6, 2009, December 7, 2009 and February 22, 2010. The total staff complement of our Office at this time is nine permanent staff and four temporary full-time positions.

While all staff members work diligently to meet the challenges of increased workload demands, it is obvious that our work volume is quite high and will continue to be high for the foreseeable future. This situation is in part due to the fleshing out of our role to educate the public and react to numerous consultations and inquiries. We have become more and more engaged with public bodies and other organizations - reviewing and commenting on draft privacy impact assessments, privacy policies and procedure development. Additionally, a senior staff member from the Office continues to play a significant role in the preparations for the roll-out of the *Personal Health Information Act (PHIA)*. Specifically, the OIPC representative serves on the *PHIA* Steering Committee, Regulations Working Group, Education Working Group and routinely contributes to the development and screening of the on-line training program designed and developed to support *PHIA* implementation. The OIPC representative also makes a significant contribution to the ongoing work of the Canada Health Infoway Privacy Forum.

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, even with the additional staff, has been challenged to cope with the demands placed on it due to the significant workload resulting from the privacy breach investigations. The backlog of Requests for Review and privacy complaints has grown since the last reporting period. In addition, it is anticipated that *Personal Health Information Act (PHIA)* will be proclaimed into law in the coming year. As with the *ATIPPA*, this Office will be the review mechanism for this new legislation. The

*PHIA* will undoubtedly create even more demand on this Office and, as such, additional staffing increases will be necessary. We will monitor the roll out of this legislation closely and we anticipate government's support in seeking the necessary resource increase as appropriate to deal with the work flowing from *PHIA* requirements.

### 2009-2010 Statistics

As provided by the ATIPP Coordinating Office, Department of Justice, the total number of access requests received by public bodies for the 2009-2010 fiscal year was 579. During the same timeframe, this Office received 82 Requests for Review under section 43 of the *ATIPPA* and 13 complaints under section 44 of the *ATIPPA*, for a total of 95 Requests for Review/complaints. This translates into 16.4% of these access requests being forwarded to this Office for review. 15 privacy investigation requests under Part IV of the *ATIPPA* were also received. In addition, there were 60 Requests for Review, 9 complaints and 11 privacy investigations carried over from the previous year. This reflects a 2% increase for Requests for Review, a 12% decrease for complaints and a 13% increase for privacy investigations for active files during the 2009-2010 fiscal year.

Of the Requests for Review, 62 were resolved through informal resolution and 11 resulted in a Commissioner's Report. The remainder were either closed or carried over to the 2010-2011 fiscal year. In addition to Requests for Review, this Office received 351 access to information related inquiries during the 2009-2010 fiscal year. Of the 22 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 were carried over to the 2010-2011 fiscal year.

Of the 164 Requests for Review and complaints dealt with in the 2009-2010 fiscal year:

153 (or 93%) were initiated by individuals;  
6 (or 4%) were initiated by political parties;  
2 (or 1%) were initiated by the media;  
2 (or 1%) were initiated by law firms;  
1 (or 1%) was initiated by a business.





Forty-five percent of all cases were related to provincial government departments. Thirty-one percent of the cases were related to educational bodies. Sixteen percent of the cases were related to local government bodies. Four percent of the cases were related to agencies of the Crown. Two percent of the cases were related to health care bodies and two percent of the cases were related to the Legislative Assembly.

Of the privacy investigations, 7 were closed and 4 resulted in a Commissioner's Report. 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. The remaining files were carried over to the 2010-2011 fiscal year. In addition to privacy investigation requests, this Office received 298 privacy related inquiries during the 2009-2010 fiscal year.

Of the 26 privacy investigations dealt with in the 2009-2010 fiscal year:

- 23 (or 88%) were initiated by individuals;
- 1 (or 4%) was initiated by an education body;
- 1 (or 4%) was initiated by an agency of the Crown;
- 1 (or 4%) was initiated by the OIPC.



In the case of the privacy investigation initiated by the OIPC, there was no complaint by a complainant or reported incident by the public body involved, however, the matter was of a level of significance that the Commissioner felt it was appropriate to initiate the investigation.

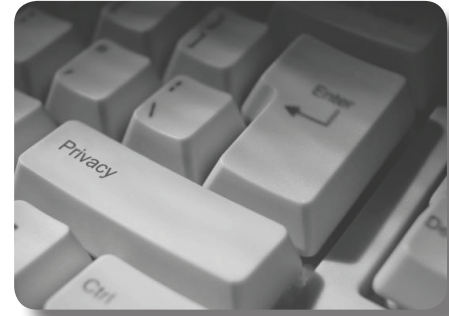
Thirty one percent of all privacy cases were related to provincial government departments. Twenty-three percent of the cases were related to local government bodies. Eight percent of the cases were related to education bodies. Nineteen percent of the cases were related to health care bodies. Nineteen percent of the cases were related to agencies of the Crown.

For more information on the statistics for the year 2009-2010 see the Figures and Tables in Appendix A.

# Privacy

## Balance

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.



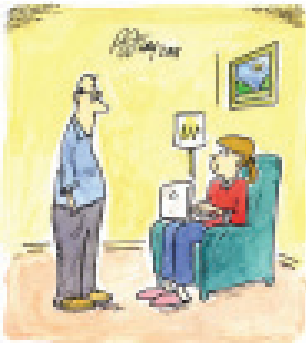
The OIPC is not bound by statute to issue reports on its privacy investigations, although we have done so in some cases because it is something we consider to be a valuable part of our tool-kit as an oversight body. Our Office has developed internal criteria, such as whether a conclusion would set a 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.

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 Department of Justice 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.

*Part IV of the ATIPPA was proclaimed on January 16, 2008, which contains provisions governing the collection, use and disclosure of personal information by public bodies in Newfoundland and Labrador.*

## Privacy in the Coming Year

During the past year we have had the opportunity to gain significant exposure to the issues which are at the forefront for the other privacy oversight bodies in Canada. That experience indicates that health information privacy will be a high priority for our Office. There are many other valid and pressing and interesting issues competing for our attention: developments in case law, the Enhanced Drivers' License, transnational data flows, advances in information security, video surveillance - the list goes on. But the privacy of a person's health information affects every single individual in this country, and the information systems and legislative solutions that are being developed in most jurisdictions are moving ahead at a rapid pace. Privacy oversight bodies such as this Office must be part of the process. My view is that the more engagement from privacy oversight bodies at the beginning and along the way, the better the final product will be. Fortunately, here in Newfoundland and Labrador I can report that this is indeed the case. Work in the development of the Electronic Health Record is being spearheaded here by the Newfoundland and Labrador Centre for Health Information, and supported by the provincial Department of Health and Community Services. To date, this Office has been fully engaged with these parties, and looks forward to continued cooperation. We also have had a significant involvement with the development of the *Personal Health Information Act (PHIA)*, and now we are fully participating in the implementation process. The *Personal Health Information Act* was passed in June 2008, and proclamation is expected in late 2010. To some this might seem like a long time, and perhaps it is a little longer than ideal, but we are quite pleased with the *PHIA* process.



*Of course I value my privacy...  
that's why I only share my  
personal information with  
700 of my closest friends!*

The fact that *PHIA* is intended to cover custodians of health information in the private sector as well as the public sector means that *PHIA* is quite far reaching legislation. Our Office lobbied for a significant effort in training and education to help custodians of personal health information become prepared for the new law. I am quite pleased that the Minister of Health and Community Services has allocated significant funding in last year's budget for *PHIA* implementation, and I look forward to reporting on further advances in the protection of privacy in the upcoming fiscal year.



## Privacy Summaries

Since January 16, 2008 this Office has been engaged in 26 privacy breach or complaint investigations pertaining to Part IV of the *ATIPPA*. A number of these have been completed and two privacy reports, both containing recommendations, were released during the 2009-2010 fiscal year. These reports are summarized below. Most of the incidents under investigation occurred subsequent to the proclamation of the privacy provisions, however, one actually occurred in late 2007, involving the Public Health Laboratory (“PHL”).

The following are summaries of selected Privacy Reports/Investigations during the period of this Annual Report.

### Report P-2009-002 - Town of Steady Brook

In June, 2008 the OIPC received three separate complaints from four separate Complainants regarding the Town of Steady Brook (the “Town”). The Complainants stated that the Town had inadequately protected, improperly used and improperly disclosed their personal information when an Operational Report prepared by the Department of Municipal Affairs (the “Department”) containing the Complainants’ personal information was allegedly disclosed by someone associated with the Town to members of the public and media. As part of our investigation the OIPC asked the Department to provide a response to the complaints, despite the fact that it was not the named public body in this matter, because the Department’s insight and direct involvement in the matter were relevant to a complete investigation.

The Commissioner found that the Operational Report did, in fact, contain the Complainants’ personal information, but that the Town had properly collected that information and also properly disclosed same to the Department for the purposes of preparing the Operational Report. In turn, the personal information of the Complainants was used in the Operational Report, and the creation of the Operational Report was permitted by law. The Commissioner questioned, however, whether the amount of personal information contained in the Operational Report was the minimum amount necessary to achieve the Department’s purpose.

The Commissioner was unable to obtain sufficient evidence and cooperation from some of the parties who were approached during the investigation to make a concrete determination as to how the disclosure occurred. However, the Commissioner was convinced on the balance

of probabilities that the disclosure did occur, but simply could not eliminate the possibility that the disclosure could have been carried out by an individual or entity other than the Town. Consequently the only recommendation to be made to the Town was that the Town avail of and improve its privacy training. No recommendation was made to the Department.

### Report P-2010-001 - Workplace Health, Safety and Compensation Commission



In our 2008-2009 Annual Report, we noted that the first privacy breach reported to this Office subsequent to the proclamation of the *ATIPPA* privacy provisions occurred in late January 2008, when an employee of an external health care service provider, under contract to the Workplace Health Safety and Compensation Commission (“WHSCC”) unwittingly exposed health information over the internet as a result of installing a file-sharing program on a laptop computer that also contained WHSCC client files.

During the first phase of the investigation it became evident that the WHSCC had taken the appropriate measures immediately following notification of the breach to contain it, recover possession of the records and to determine the extent of the exposure. The WHSCC had also properly evaluated the risks of harm to affected individuals resulting from the breach, and had notified all of them within two weeks following the event. By the end of the period covered by our 2008-2009 Annual Report, it was evident that WHSCC had completed its own internal investigation and was reviewing the adequacy of its existing policies and procedures. In particular, WHSCC along with the Department of Justice, was reviewing the terms and conditions governing information security, privacy and confidentiality in the contracts under which external health care service providers work, with a view to strengthening those provisions and their enforcement.

The second phase of our investigation involved a more in-depth review of WHSCC’s information privacy and data security policies and procedures, and of the initiatives taken to augment security following the breach. The Commissioner concluded that the WHSCC, prior to the breach, had already made reasonable security arrangements within the meaning of section 36 of the *ATIPPA* to protect the personal information of its clients against foreseeable risks. We also concluded that following the breach, the WHSCC had taken reasonable measures to review the causes of the breach and to reinforce its policies, procedures and practices so as to diminish the risk of similar incidents in future. In particular, the establishment of a permanent Privacy Steering Committee and an ongoing Privacy Action Plan has resulted in a completely revised Information Protection, Access and Disclosure Policy, and also in a comprehensive risk assessment review.



Our remaining concerns were not with the privacy, confidentiality and security environment within the WHSCC, but with the policies and practices of the external health care service providers. The service providers are private businesses and are therefore under federal jurisdiction. However, the personal information of WHSCC clients that is provisionally in the custody of the contractors is ultimately under the control of the WHSCC and subject to the provisions of the *ATIPPA*. The WHSCC therefore has an ongoing responsibility to take whatever reasonable measures that are available to it to safeguard that information in order to protect the privacy of its clients. The WHSCC has already taken such steps, particularly in the matter of substantially improved contract language. It will remain to be seen whether those contractual obligations will be sufficient to motivate contractors to establish appropriate policies and practices, and to provide adequate training to their own employees.

We therefore recommended that the WHSCC should consider, in light of its own responsibilities to safeguard the personal information of its clients, whether it would be reasonable to conduct an ongoing audit of its contractual service providers, in order to gauge the extent of their compliance with the policies and rules of the Commission, the terms of their contracts and accepted standards of privacy practice, and to take any action that appears to be necessary as a result. Such an audit could perhaps become a term of service provider contracts.

Second, we recommended that the WHSCC should consider whether it would be reasonable to set a concrete contractual standard for privacy training for the employees of contractors, and to assist in the provision of that training.

These recommendations were intended as suggested measures that could potentially further enhance the WHSCC's ability to carry out its responsibilities under the *ATIPPA*. Our Office recognizes that the WHSCC is in the best position to evaluate these recommendations and to take further action as it sees fit.



## Access 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, 62 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.

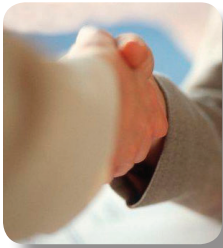
In the event that our attempt at an informal resolution is not successful, the file will be referred to a formal investigation. The results of this investigation, including a detailed description of our findings, are then set out in a Commissioner's Report. The Report will either contain recommendations 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-2010-002 - Department of Business**

The Applicant on May 29, 2008 filed two requests under the *ATIPPA* with the Department of Business (the "Department") for correspondence between the Department and two named companies. The Department refused to disclose any of the requested information, citing section 24 of the *ATIPPA* (disclosure harmful to the financial or economic interests of a public body). The Applicant filed Requests for Review with this Office. During attempts to resolve these matters informally, the Department claimed additional exceptions under section 23 (disclosure harmful to intergovernmental affairs or negotiations), section 27 (disclosure harmful to business interests of a third party) and section 30 (disclosure of personal information).

Pursuant to subsection 64(1) of the *ATIPPA* the public body bears the burden of proving that the Applicant has no right of access to the record. Our Office found that the Department had failed to meet its burden of proof in applying sections 23, 24 and 27.



### *Blanket Exceptions*

The Department had claimed that it was justified in withholding the entire responsive record on the basis of one or another of the statutory exceptions to disclosure. In our view there is generally no justification under either the letter or the spirit of the *ATIPPA* for simply withholding an entire record. It is incumbent on every public body to carry out the required line-by-line, page-by-page analysis and to justify each specific decision to withhold information from disclosure. Our Office therefore agreed with the Applicant that it was not appropriate to apply any section of the *ATIPPA* as a blanket exception.

### *Sections 23 and 24*

Under sections 23 or 24 it is the responsibility of the public body to demonstrate through detailed and convincing evidence that there is a reasonable expectation of probable harm from the disclosure of specific information. There must be a clear and direct causal link between the disclosure of the information specified and the harm alleged. However, the Department provided virtually no evidence linking the disclosure of any of the information in the responsive record to any of the different types of harm alleged. Our Office concluded that this is not an adequate response to a Request for Review, or indeed, to an applicant on an initial access request, and that therefore the Department was not entitled to withhold any information on the basis of sections 23 or 24. However, our Office nevertheless found, on its own independent review, that certain information so clearly met the test for the application of section 24 that we recommended that it be withheld.

### *Section 27*

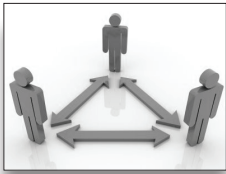
Section 27 (disclosure harmful to business interests of a third party) is an exception to disclosure that is mandatory as opposed to discretionary. There is no room for the exercise of discretion - the public body is simply not permitted to disclose the information if it falls within the ambit of the exception. It contains a three-part harms test, and all three parts of the test must be met in order for a public body to deny access. As with sections 23 and 24, the Department provided no evidence to support its arguments. It neither identified the category of information under section 27 into which any part of the record might arguably fall, nor showed what kind of harm might ensue from the disclosure of any particular item or category of information.



Unfortunately the third parties also adopted, for the most part, a blanket approach. They failed to do the required line-by-line analysis, and therefore failed to distinguish information that might meet the section 27 harm test from information that does not. For the most part, therefore, their submissions also failed to meet burden of proof required by the *ATIPPA*.

However, that was not the end of the matter since, if a mandatory exception applies, the *ATIPPA* simply does not permit the information to be disclosed, nor does it permit the Commissioner to make a recommendation for disclosure. Generally, this Office will not undertake to do the work that is the responsibility of a public body under the *ATIPPA*. However, on rare occasions the circumstances make it appropriate for this Office to independently review the record and make recommendations, and that is what was done in this case. The conclusion was that the Department was required to withhold some information on the basis of section 27.

It was also appropriate to comment in this Report on the process to be followed in cases where section 27 is applicable. In the usual case a public body will notify the third party of the access request, giving the third party the opportunity to either consent to the disclosure or to explain why the information should not be disclosed.



The *ATIPPA* requires notification of a third party only where the public body intends to release the information. In the present case the Department did not intend to disclose the information and chose not to notify the third parties, so no submissions were initially received from the third parties.

However, once the Applicant had filed the Request for Review, the possibility arose that our Office might reach different conclusions from the Department and might recommend the release of third party information. At that point it was clearly necessary that the third parties be notified. After all, it is the interests of third parties that are intended to be protected by section 27. However, third party notification at such a late stage in the proceeding can result in significant delay.

In most cases, it would be to everyone's advantage for the public body to notify third parties at the earliest stage in the proceedings that their information might potentially be disclosed. That way third parties would have an earlier opportunity to express their views and to either consent or object to the release of certain information. That participation will be of assistance to the public body and to this Office, and may result in a speedier process for the Applicant.



### *Refusal to Confirm or Deny*

In this Report the Commissioner also commented on other issues. The Department in its submissions stated that it was Departmental policy to “neither confirm nor deny publicly that it was in negotiations with a company” The Department did not cite any statutory authority for this position or give any further concrete explanation of how the mere confirmation of the existence of a record could, in itself, lead to any harm. The refusal to confirm or deny the existence of a record is dealt with in subsection 12(2) of the *ATIPPA*. However, that subsection applies only in extremely limited circumstances, none of which applied in this case. The fact that the Department had dealings with the companies was already public knowledge. Our Office concluded that the refusal of the Department to confirm or deny the existence of a record in such circumstances, where the existence of the relationship is already in the public domain, was both unworkable and contrary to the spirit and objects of the *ATIPPA*.

### *Department's Response to Report A-2010-002*

As has been stated in numerous Commissioner’s Reports, a public body must be prepared to explain each and every severing decision, to the Applicant and to this Office. The Department failed to do so, and therefore the Commissioner was obliged to recommend disclosure of much of the information. However, in its response to this Report, instead of dealing with the conclusion that the Department had failed to provide any evidence to support its arguments, the Department merely reiterated its previous unsupported allegations of potential harm. To continue to base a refusal to disclose records on assertions for which no evidence has been provided is neither useful nor productive, and in no way reflects the principles of openness, transparency and accountability.

In addition, the Department’s response stated that its policy remains that it will neither confirm nor deny “whether it is in discussions with a client.” It appears that the Department is asserting that its policies take precedence over the clear mandatory provisions of a statute.

When responding to an access request, a public body must properly exercise the discretion entrusted to it, not only to determine whether information falls within a statutory exception, but also to decide whether in any event harm is likely to result from its disclosure. The first step by itself is not sufficient to discharge the statutory obligation. In this case the Department failed to complete either of these steps. The result was an inadequate and incorrect application of the *ATIPPA*.



### Report A-2010-001 – Department of Environment and Conservation

The Applicant applied to the Department of Environment and Conservation (the “Department”) for access to greenhouse gas emissions forecasts. The Department denied access to the records in their entirety citing section 20(1) (policy advice or recommendations) of the *ATIPPA*. The Department was almost one month late in providing the responsive records to this Office claiming that it was considering citing additional exceptions to disclosure. Almost two months after the responsive records were received by this Office, the Department indicated that it intended to claim section 18 (cabinet confidences) as an exception to disclosure in addition to section 20(1). The Applicant was not notified of this decision by the Department for almost one additional month.

There was no meaningful participation in the informal resolution process by the Department for over three months. Toward the end of the informal process, the Department indicated that it was working toward releasing the entire record to the Applicant. However, before this occurred, the Coordinator for the Department took leave and unfortunately no further progress or release of information was forthcoming from the new coordinator. The matter moved to formal investigation because the Applicant was not willing to wait an indefinite period of time to conclude informal resolution efforts, and there did not appear to be any concrete progress in the informal resolution process.

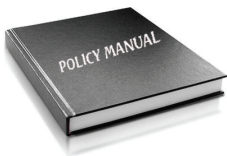
However, based on a request from the Department and the consent of the Applicant, the matter reverted back to informal resolution as there was once more an indication that the Department intended to release a significant portion of the record. The release of information was not carried out in the timeframe proposed by the Department; however, it did occur shortly thereafter. The Department did release a large portion of the records but continued to withhold information. At this time, the Department narrowed its reliance on section 20 to section 20(1)(a); however, the Department also cited section 27 (disclosure harmful to business interests of a third party) of the *ATIPPA* and apparently ceased its reliance on section 18 as no mention was made of this section.

As arguments were made for the release of further information, the matter was once again returned to formal investigation. The Commissioner highlighted the issue of delay in his Report noting the delays and failures to abide by statutory timelines hamper the ability of the OIPC to resolve matters informally and in a timely fashion and are contrary to the purposes of the *ATIPPA*. The Commissioner confirmed his administrative practice of setting a 14 day timeframe from the date on which a public body receives a Request for Review

from this Office during which the public body may claim additional discretionary exceptions. The Commissioner found, however, that after that timeframe, no additional discretionary exceptions will be accepted. The Commissioner further found that mandatory exceptions will always have to be considered by the OIPC, regardless of timeframe. The nature of mandatory exceptions requires the OIPC to consider these exceptions whenever they are raised and to be continually aware of the application of these exceptions even if same are not cited by a public body. The Commissioner was clear, however, that not all late claims of mandatory exceptions will be found applicable. The Commissioner found that the Department had abandoned its claim of section 18 as it had put forward no evidence or argument on the same. For the same reason, the Commissioner found that section 27 did not apply to any information in the record. In respect of section 20(1)(a), the Commissioner found that a large portion of the record was covered by section 20(2)(e) and therefore must be released. The Commissioner held that a very small portion of the record could, however, be withheld pursuant to section 20(1)(a). As a result, the Commissioner recommended that all but that small portion of information be disclosed to the Applicant.

### Report A-2009-011 – College of the North Atlantic

The Applicant applied to the College of the North Atlantic (“CNA” or “the College”) for access to the admissions policy section from an Operational Policy and Procedures Manual referred to in the testimony of a College official at a Public Service Commission hearing. The Applicant provided a transcript of that portion of the testimony as part of his request.



The College provided the Applicant with several documents. The Applicant filed a Request for Review, stating that the documents received were not the records requested. In his view, CNA failed to comply with its duty to assist the Applicant. As a remedy, he asked that CNA supply the records as requested.

Whether the Applicant did or did not get the records that he requested is a question of fact. It was necessary to determine precisely what the Applicant asked for, and then compare what he received to the terms of the request.

The core of what the Applicant requested was what the College official had described in her testimony. That testimony was clear and concrete, describing a policy document from a Policy Manual, in the same form as another exhibit provided at the hearing, and created specifically for the CNA campus in Qatar. CNA policies, as can be seen from its website, are created in a very specific format.



Upon examination it was plain that the records supplied to the Applicant bore no reasonable resemblance either to what was requested or to what was described by the College official in her testimony. It is conceivable that these documents could have been intended to lead eventually to the preparation of a policy. It is also possible that they may have served as discussion documents or as guides to actual administrative practices. It may even be that they served as a makeshift admissions policy at some stage in the operations of the Qatar campus. The issue, however, was whether the records provided to the Applicant could reasonably be accepted as the records which were referred to by the CNA official in her testimony. It was the conclusion of our Office that they were not, and that the requested records probably do not exist.

Our Office further concluded that the College had failed to fulfill its duty to assist the Applicant. The standard against which the duty to assist is measured is reasonableness, not perfection. The duty to assist may be understood as having three separate components. First, the public body must assist an applicant in the early stages of making a request. Second, it must conduct a reasonable search for the requested records. Third, it must respond to the applicant in an open, accurate and complete manner.

CNA did not fail to assist the Applicant in the early stages of the request. It also initially commenced what it considered was a reasonable search. However, it ought to have been apparent to the searchers that the documents found in no way resembled what was referred to in the request. CNA provided the Applicant with the records and continued to insist, during the course of the Review by this Office, that the Applicant got what he asked for. It appears that no further search was conducted.

In addition, the College refused to answer the questions posed by the Applicant. The College argued that the questions or concerns outlined by the Applicant went “well beyond the original request.” However it was the view of this Office that the Applicant’s questions were quite reasonable, and arose directly out of the obvious discrepancies between what he asked for and what he received. The Applicant had legitimate concerns about the records he received, and the College was under a duty to make a reasonable attempt to provide some sort of explanation in order to help the Applicant determine whether or not he had received an accurate response to his request.

In summary, the College failed to respond to the Applicant in an open, accurate and complete manner by refusing to acknowledge that the documents requested by the Applicant could not be found, by insisting that the documents he was given were what he requested, and by failing to answer his reasonable questions.

The Commissioner's Report recommended that:

- the College should acknowledge that it is unable to provide the records requested and return the fee charged to the Applicant;
- the College make a reasonable attempt to provide answers to the questions asked by the Applicant, or alternatively acknowledge to the Applicant that the records it provided are not responsive to the request and that the records requested do not exist; and
- the College in future be mindful of its duty to assist applicants, and review its practices in an attempt to be more open and straightforward with applicants.

### **Report A-2009-010 – Memorial University of Newfoundland**

In January 2008, the Applicant applied to Memorial University ("Memorial") under the *ATIPPA* for access to all correspondence and documentation referring to her, which was sent to or received by a specific professor from the time he assumed his position as professor until January 16, 2008. Memorial provided a number of responsive records but refused to disclose others, arguing that the withheld records were properly excepted from disclosure under sections 20 (policy advice or recommendations), 21 (legal advice) and 30 (disclosure of personal information) of the *ATIPPA*.

During the informal resolution process, Memorial agreed to reconsider its decision to withhold some of the responsive records under section 20. Memorial subsequently released additional records to the Applicant.

After his formal investigation of the Request for Review, the Commissioner determined that Memorial had properly applied sections 20 and 30 to most of the remaining withheld records, although he did recommend release of a few additional records to the Applicant.

The Commissioner also investigated Memorial's decision to withhold records from the Applicant on the basis that they were subject to litigation privilege – a component of the solicitor and client privilege identified in section 21. Here the Commissioner found that Memorial had not properly distinguished records created for the dominant purpose of pending or apprehended litigation (which may be withheld from an Applicant under section 21) from those which are merely gathered or copied for that purpose (which may not be so withheld). As a result, the Commissioner recommended the release of additional records to the Applicant.

Notably, during the course of the investigation Memorial claimed section 21 to withhold some information for which section 20 had originally been claimed. The OIPC clearly communicates to public bodies that they must notify both the Applicant and the Commissioner of a decision to claim additional discretionary exceptions within 14 days of notification of a Request for Review. Any discretionary exceptions received after this period will not be considered by the OIPC. In the present case, the additional claim of section 21 came after the 14 day period and the Commissioner did not consider it.



Finally, the Commissioner commented extensively on his authority to review a public body's exercise of discretion under the *ATIPPA*. In its formal submission, Memorial acknowledged that a public body has the burden of proving to the satisfaction of the Commissioner that a particular discretionary exception to access (policy advice and recommendations, for example) applies to any responsive record withheld from an Applicant. However, Memorial also argued that the Commissioner has no mandate to recommend that a public body release information if it falls clearly within a category of record for which a discretionary exception has been claimed. The Commissioner's function, Memorial argues, is limited to reviewing the record to determine whether any severed information falls within a claimed discretionary exception. If it does, the decision to exercise the discretion to withhold information remains the public body's to make. If it does not, the Commissioner may recommend that the information be released.

The Commissioner disagreed with Memorial's argument and determined that he has the authority both to verify whether a record falls within a category for which a discretionary exemption had been claimed and to determine whether the exercise of discretion has been properly exercised. Therefore, a public body's exercise of discretion under the *ATIPPA*



may be reviewed by the Commissioner to ensure that it is consistent with the purposes and principles of the Act. The Commissioner cited relevant case law and commentary from the Federal Court Trial Division, the Federal Court of Appeal, the Supreme Court of Canada and the Information Commissioner of Canada in explaining that the Commissioner could find that a public body has correctly determined that a record may be withheld from an Applicant, yet still recommend that the record be disclosed. In short, if releasing the record does not undermine the purpose of the discretionary exception and is consistent with the purposes and principles of the *ATIPPA*, then the Commissioner is authorized to recommend its release.

Incidentally, the determination of whether discretion is properly exercised is closely related to the evaluation of a public body's discharge of its burden of proof under section 64 of the *ATIPPA*. This section requires that a public body provide reasons to support its view that a discretionary exception is applicable to a record. These reasons, in turn, may also show whether the head of a public body has relied on relevant or reasonable factors (or proper considerations) consistent with the principles and purposes of the *ATIPPA*. If so, the Commission will find that discretion was properly exercised by the public body.

In this case, the Commissioner determined that Memorial exercised discretion correctly for most of the withheld records.

### **Report A-2009-006 – Atlantic Lottery Corporation**

The Applicant applied to the Atlantic Lottery Corporation ("ALC") for access to Pay Analysis Report ("PAR") sheets from several video lottery games. PAR sheets are created by video lottery game manufacturers and as explained by the ALC, "contain a detailed analysis of the content and configuration of paytables and reel strip listings for video lottery games as well as other information useful in machine setup." ALC denied access to the PAR sheet information, claiming sections 27 (harm to business interests of a third party), section 24 (harm to the financial or economic interests of a public body) and section 30 (personal information). The below summary discusses the application of section 27, and in particular the third part of the three-part test for this section.

After considering the formal submissions of not only the Applicant and the ALC but also of two third parties who were manufacturers of PAR sheets, the Commissioner found that the three-part test for section 27 had been properly applied by the ALC with respect to the PAR sheets for games that were still on the market.





The first part of the test was met as the Commissioner agreed that the information contained in the PAR sheets consisted of technical information. The second part of the test was met as it was agreed that the information contained in the PAR sheets was supplied to the ALC in confidence.

The third part of the section 27 test required a determination of whether or not there was a reasonable expectation that the disclosure of information would cause one of the four injuries set out in section 27(1)(c).

In his analysis of this part of the test, the Commissioner referred to a decision of the Ontario Information and Privacy Commissioner's Office wherein an adjudicator had determined that section 17 of Ontario's *Freedom of Information and Protection of Privacy Act* (which is similar to section 27 of the *ATIPPA*) was not applicable to PAR sheets. In that case, the adjudicator found that the third party "had not adduced the necessary detailed and convincing evidence to show that disclosure of its slot machine game PAR sheets could be expected to 'significantly prejudice' its competitive position...or cause it to experience 'undue loss,' or its competitors to benefit from 'undue gain'..."

The Ontario adjudicator concluded that even if it was accepted that "the percentages and numerical information in the PAR sheets form the basis of the slot machine game," the PAR sheets did not describe anything further related to the actual design or construction of the game and that the sheets lacked the "degree of specificity that would make them useful to a competitor except in a very general sense."

The Ontario adjudicator also noted that one game manufacturer had consented to the disclosure of the PAR sheets to the Applicant and further that PAR sheets are published in trade magazines, casino management textbooks, and slot machine manuals. In the adjudicator's view, these factors diminished the "required reasonableness of the expectation of harm" regarding the release of the documents.

In addition, the PAR sheets in the Ontario case were more than five and a half years old. The adjudicator found that "the risk of competitive harm with disclosure of a record may lessen with the passage of time...[T]he 'shelf-life' of a slot machine is limited to the fast-paced development of new technologies that require new slot platforms, as well as continuous improvements."

The Commissioner disagreed with certain aspects of the Ontario adjudicator's findings. First, he concluded that the "percentages and numerical information in the PAR sheets are the very essence of the game design. It is what makes each game unique and it contributes to a game's popularity, especially when one considers the frequency (or infrequency) of payouts."

The Commissioner next noted that unlike in the Ontario case, both of the third parties in this matter opposed the release of the PAR sheets. He also found that the "fact that PAR sheets are sometimes published in trade magazines does not mean that PAR sheets for games currently on the market and presumably still profitable should be disclosed... PAR sheets are individual to the particular game. Disclosure of one does not reveal anything about another one."

The Commissioner did agree with the Ontario adjudicator's statement that "the nature of the industry is such that the currency of slot machine games is crucial," but found that "the math behind the games must change much less frequently than the graphics or sound components in order for a game to maintain its currency" and that notwithstanding the passage of time, the information in the PAR sheets continued to be valuable.



The Commissioner concluded, contrary to the Ontario adjudicator, "that disclosure of PAR sheet information for those games which are still on the market would harm significantly the competitive position of the third parties and/or result in undue financial loss to the third parties."

The Commissioner also found, however, that several games for which PAR sheets were requested were no longer on the market and that for these games, it had not been demonstrated by the ALC or the third parties that harm would result from the disclosure of the relevant PAR sheets.

It was therefore recommended that the ALC release to the Applicant all PAR sheets for games that were no longer on the market, and that it withhold the other PAR sheets.

## Court Proceedings



As indicated in our previous Annual Reports, this Office has, on occasion, appeared before the Supreme Court of Newfoundland and Labrador. This Office may become involved in an Appeal in one of four ways. In accordance with section 61(2) of the *ATIPPA*, this Office may intervene in a court proceeding where i) the Applicant directly appeals the decision of a public body in relation to his/her access request to the Supreme Court pursuant to section 43(3) of the *ATIPPA*, or ii) the Applicant appeals the decision of a public body in respect of a Report of the Commissioner pursuant to section 60(1). Alternatively, in accordance with section 61(1), with the consent of the Applicant or third party involved, this Office may appeal the decision of a public body in respect of a Report of the Commissioner. As occurred on two separate occasions during this fiscal year, the OIPC found itself in Court as a result of a public body filing for a judicial interpretation dealing with Section 5 and Section 21 of the *Act*.

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

### **2007 04T 0456 - Supreme Court of Newfoundland and Labrador, Trial Division - College of the North Atlantic (CNA)**

A decision in this matter, referenced in our 2008-2009 Annual Report, was rendered on February 12, 2010. This Office intervened primarily on the issue of the interpretation and application of section 55. The Court held that in order to attain the objects of the *Act*, both informal and formal resolution processes must be protected and records produced must be privileged. The Court also held that the College had met its duty to assist, relying on the interpretation applied by this Office in Report 2007-007 – that a public body must make every reasonable effort to assist an applicant by responding openly, accurate and completely, but that the standard to be applied is not perfection. On the issue of legal privilege under section 21, the Court confirmed that solicitor-client privilege can be claimed over communications between in-house counsel and employees. The Court also held that any claim of this privilege must be examined on a case by case basis to determine the subject matter of the advice and the circumstances in which it was sought and rendered. The Court confirmed that both litigation privilege and solicitor-client privilege were covered by section 21 and discussed both privileges in detail. The policy advice or recommendations exception



under section 20(1)(a) was also discussed by the Court. A prior decision of the Office again was given weight by the Court. Report 2009-007 held that the terms advice and recommendations are not limited to a suggested course of action, but must be understood in light of the context and purpose of the Act. Advice, this Office held, and the Court agreed, relates to an expression of opinion on policy-related matters.

#### **2008 04T 0465 - Supreme Court of Newfoundland and Labrador, Trial Division Public Service Commission (PSC)**

Pursuant to section 43(3) of the *ATIPPA*, the Applicant filed a Notice of Appeal in the Supreme Court in relation to her access request to the PSC. This Office became an intervenor in the appeal pursuant to section 61(2) of the *ATIPPA*. The appeal hearing took place in January 2009 and a decision of the Court is pending.

#### **2008 01T 0515 - Supreme Court of Newfoundland and Labrador, Trial Division - Town of Portugal Cove-St. Philip's**

In response to the decision of the Town not to follow all the recommendations of the Commissioner in his Report, the Applicant filed an appeal with the Court. This Office became an Intervenor pursuant to section 61(2). The hearing of the appeal was scheduled for April 17, 2009, however, following discussions at the court house between the parties, the matter was resolved by way of a Consent Order. This Consent Order required the Town to provide the Applicant with information that had been recommended for release by the Commissioner in his Report.

#### **2008 01T 2287 - Supreme Court of Newfoundland and Labrador, Trial Division - Public Service Secretariat (PSS)**

In response to the decision of the PSS not to follow the recommendations of the Commissioner in his Report, this Office, with the consent of the Applicant, filed an appeal with the Court in accordance with section 61(1) of the *ATIPPA*. Upon review of the issues and all the circumstances of the matter, it was decided that this Office would not proceed with the appeal and a Notice of Discontinuance was filed with the Court.



### 2009 OIT 0704 - Supreme Court of Newfoundland and Labrador, Trial Division - Department of Justice

A decision in this matter was rendered by the Honourable Mr. Justice Robert A. Fowler of the Supreme Court of Newfoundland and Labrador, Trial Division on February 3, 2010. The matter arose out of access to information requests made by two journalists to the Royal Newfoundland Constabulary (the “RNC”) and the Department of Justice (the “Department”) for records relating to an Ontario Provincial Police report prepared by that police department in relation to its investigation of a senior officer of the RNC. The investigation led to the commencement of a prosecution of the senior officer. The RNC and the Department both denied the applicants access to the records relying on the exceptions set out in section 22 (disclosure harmful to law enforcement) and section 30 (disclosure of personal information). Pursuant to section 43 of *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”), both journalists asked this Office to review the decisions of the RNC and the Department denying access to the requested records. Under the authority of section 52 of the *ATIPPA* this Office made repeated requests to the RNC and the Department for the records responsive to the access requests but both public bodies refused to provide those records claiming that paragraph (k) of subsection 5(1) of the *ATIPPA* was applicable to the records. Subsection 5(1) provides as follows:

- 5(1) This Act applies to all records in the custody of or under the control of a public body but does not apply to
- ...
- (k) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed

In our efforts to obtain the responsive records, this Office indicated to both the RNC and the Department that we were prepared to commence a court proceeding to enforce our right under section 52 of the *ATIPPA* to production of any record considered by the Commissioner to be relevant to an investigation. As a result, the Attorney General of Newfoundland and Labrador brought an application in the Supreme Court of Newfoundland and Labrador, Trial Division seeking a declaration with respect to the applicability of section 5 of the *ATIPPA*. The Commissioner was named as Respondent in the Attorney General’s application.



In his decision, Mr. Justice Fowler stated that the matter to be decided was whether or not the Commissioner has the power to compel the production of records of a public body where such documents are alleged to be exempt from public access pursuant to section 5 of the *ATIPPA*.

Mr. Justice Fowler summarized the position put forth by Counsel for the respondent Commissioner on the hearing of the application as follows:

*[21] Counsel for the Respondent stresses that under section 3 of the Act, the Office of the Commissioner is an independent review mechanism for achieving the purpose of the Act; that is, to make public bodies more accountable to the public and to protect personal privacy. Further, in order to achieve those purposes the Commissioner must be permitted to exercise his own jurisdiction to decide whether or not a specific request for information falls within an exemption or not. The question reduces as to who has the power to decide whether an item falls within an exempted class or not? Counsel for the Respondent argues that it can only be the independent commissioner and not the government or head of a public body since to confine this to the government or head of a public body offers no assurance of independence or accountability in that the government or head of a public body is deciding for itself when its own information is to be withheld from public access. It is argued that this is the very purpose for which the ATIPPA was intended to overcome.*

...

*[23] Counsel for the Respondent therefore argues that section 52(2) of the Newfoundland and Labrador Act authorizes the Commissioner to demand that any record held by a public body be produced for his determination as to whether or not it falls within an exemption under section 5(1) or Part III of the Act.*

...

*[25] Counsel for the Respondent argues further that if the Applicant's position is accepted it then renders the Act meaningless since the government, or the head of the public body could determine for itself what it wishes to disclose or not, without review by the independent review process as stated in the Act. This, she argues, would revert back to the process whereby any refusal of access would have to find its way through the court process and by implication the ATIPPA fails in its purpose.*

...

[27] *It is the position of the Respondent therefore that the independent review of any record including those under section 5 and in particular section 5(k) of the Act be subject to the independent review by the Commissioner not for disclosure purposes but to verify that these records are indeed subject to Part I, section 5 or Part III exclusions under the Act. This, it is argued, is fundamental to guaranteeing access to information and protection of personal information.*

The issue to be decided in the application was stated by Mr. Justice Fowler as follows:

[44] *This brings into perspective the real issue or question to be decided. If the Commissioner, as the Applicant argues, has no jurisdiction to inquire into the section 5(1) records then how is this determined? How can the Commissioner determine his own jurisdictional boundaries without having the power to examine a section 5(1) record to determine for himself whether or not the record properly falls under section 5(1) over which the Act and jurisdiction don't apply.*

[45] *This is indeed a conundrum and raises the question, does the commissioner simply accept the opinion of the head of a public body that the information being requested does not fall under the authority of the Act. If that were the case, the argument could be made that it could be seen to erode the confidence of the public in the Act by an appearance or perception that the process is not independent, transparent or accountable. For example, it could be argued that the head of a public body could intentionally withhold information from review by the Commissioner by simply stating that it falls under section 5(1) for which the Act does not apply. The question then becomes, how can the Commissioner look behind that to verify the claim and determine his own jurisdiction?*

Mr. Justice Fowler discussed further what he called the “conundrum” created by the current wording in the ATIPPA:

[47] *I accept that in the instant case there are difficulties in determining how the Commissioner can gain access to certain information deemed to be outside the Act as defined by section 5(1). However, as the Act is presently configured, it would require a legislative amendment to rectify this unfortunate circumstance. . . . I am satisfied that for the ATIPPA to achieve its full purpose or objects, the Commissioner should be able to determine his own jurisdiction. This would not require complex measures to safeguard those special areas where access is off limits. However, it is not for this court to rewrite any provision of the Act. . . .*



The finding of Mr. Justice Fowler on the Attorney General's application was that the Commissioner as presently empowered by the *ATIPPA* does not have the authority to determine as a preliminary jurisdictional issue whether or not records alleged to be covered by section 5(1)(k) are outside the jurisdiction of the Commissioner.

In his concluding paragraph, Mr. Justice Fowler proposed a remedy for the problem he identified with respect to the *ATIPPA*:

*[56] The legislature of this province is the author of this Act and if a solution is required it is for that branch of government to create it. It is not within the authority of the court to rewrite any section of the Act.*

...

This Office is in complete agreement with the comments of Mr. Justice Fowler that “for the *ATIPPA* to achieve its full purpose or objects, the Commissioner should be able to determine his own jurisdiction” and “[h]ow can the Commissioner determine his own jurisdictional boundaries without having the power to examine a section 5(1) record to determine for himself whether or not the record properly falls under section 5(1).” These comments by Mr. Justice Fowler address the fundamental question as to whether a public body should have the ability to deny any access to the Commissioner based on section 5. Simply stated, should a public body that is subject to the *Act*, be able to tell the Commissioner charged with oversight that the matter/records in question are not within his/her jurisdiction?

This Office also agrees with Mr. Justice Fowler that any shortcomings in the *ATIPPA* which prevent the Commissioner from being able to determine his own jurisdiction with respect to section 5(1) records should be remedied by the House of Assembly. For this reason, this Office has decided not to appeal the decision of Mr. Justice Fowler but to seek a remedy as part of the legislative review process which is currently being conducted by Mr. John Cummings, Q.C.

The citation for the decision of Mr. Justice Fowler is Newfoundland and Labrador (Attorney General) v. Newfoundland and Labrador (Information and Privacy Commissioner) 2010 NLTD 19 (CanLII).





## 2009 OIT 1345 - Supreme Court of Newfoundland and Labrador, Trial Division - Department of Justice

This matter was discussed in our 2008-2009 Annual Report. Having received a Request for Review from an Applicant, the OIPC requested that the Department of Justice (the “Department”) provide the responsive records to the OIPC in order to conduct a review of the Department’s decision to deny access to the Applicant’s request. The Department delayed and eventually denied the OIPC access to the responsive records. The Department argued that the records were subject to solicitor-client privilege and production of the records for review could not be compelled under sections 52(2) or 52(3) of the *ATIPPA*. The Department brought an Originating Application with the Supreme Court of Newfoundland and Labrador seeking a declaration of the proper interpretation of section 52(3). The matter was heard on October 14, 2009 and the decision was rendered on February 16, 2010 by the Honourable Madam Justice Valerie Marshall. Madam Justice Marshall upheld the position of the Department, citing the development of the law surrounding solicitor-client privilege over the past number of years, and its elevation from a rule of evidence to a rule of substance.

Prior to the decision of Madam Justice Marshall, the normal practice of the OIPC in cases such as this was to simply review the records in order to confirm whether all or part of the records fit the criteria for a section 21 exception. If we found that the records, or a portion thereof, did not fall under section 21, we would complete the review and recommend their release. If, however, we agreed with the claim of section 21, those records would not be recommended for disclosure to the Applicant.

The Commissioner is concerned with the erosion of public confidence in the *ATIPPA* if the Commissioner is required to simply accept the opinion of the head of the public body as to the application of section 21. This could give rise to the appearance or perception that the Review process is not independent, transparent or accountable. It could also be argued that the head of the public body could intentionally withhold information from review by the Commissioner by simply stating that the information falls under section 21. Under this interpretation of section 52(3), there is no ability on the part of the Commissioner to confirm that the exception is properly claimed.

Bearing in mind the relatively large number of previous Requests for Review where section 21 has been claimed (a total of 49), the current situation proves problematic and could significantly impact the Commissioner’s mandate to provide appropriate oversight of the



*ATIPPA*. This is particularly so if section 21 continues to be claimed often, or is perhaps claimed with increasing frequency. Furthermore, the informal resolution process, which has been used successfully by the OIPC in about three-quarters of access reviews, will certainly be seriously hindered. Alternatives to the informal resolution process include more formal Reports being issued by this Office, causing additional delay and greater impact on the time and resources of both public bodies and applicants, and much more frequent recourse to the courts, which would cause even greater impact on the time and financial resources of all concerned. In the Commissioner's view, these scenarios are contrary to one of the explicit purposes of the *ATIPPA*, as well as its spirit and intent.

In consideration of the ramifications of this decision, the Commissioner has provided instruction to legal counsel to proceed with an appeal of Madam Justice Marshall's decision and a Notice of Appeal has been filed. The matter will be further reported on in our next Annual Report.

## Federal/Provincial/Territorial Information and Privacy Commissioners' Summit

During this reporting period the Office of the Information and Privacy Commissioner hosted the national meeting of the Commissioners and other access to information and privacy oversight officials from across the country here in St. John's. The event was scheduled from September 8-10, 2009 and presented an opportunity to engage in high level discussions about issues relating to access to information and protection of privacy. A number of expert presenters participated as well, so that delegates at the meeting had the opportunity to learn about and enhance their knowledge about cutting edge access and privacy issues. The theme of the meeting was Health Information Privacy, although there were selected sessions on other access to information and privacy issues. A highlight of the meeting was the production of two significant joint resolutions concerning important emerging privacy issues, details of which were announced on September 10, 2009. A short synopsis of both these resolutions will be provided later in this Report. It is worthy to note that the Federal/Provincial/Territorial (FPT) Information and Privacy Commissioners have held these meetings for a number of years and traditionally one joint resolution was produced. I am very pleased to report that the FPT meeting held in St. John's was the first where two significant joint resolutions were produced.

While these FPT meetings have been traditionally held once or twice a year, this was the first time that such a meeting was hosted by this Province. The meeting presented a timely opportunity to share and discuss common issues and concerns with other Commissioners. Both access to information and protection of privacy are constantly evolving, so it was a great opportunity to learn, consult and exchange information.

The timing of the meeting in St. John's which was focused on health privacy, couldn't have been better given that the Government of Newfoundland and Labrador, like most other jurisdictions in Canada, had recently passed legislation for the protection of personal health information (which is now awaiting proclamation). Additionally, at the same time, each province and territory was in the process of developing electronic health record systems. One of the clear messages from the Cameron Inquiry is that our health system needs a more accurate way to track test results in order to better assist patients and caregivers in making timely decisions. One way to do that is through electronic health records, however, we also need to make sure privacy is built in along the way.

The entire event went very well with much being accomplished. Additionally, there were several opportunities to introduce our guests to the fine hospitality and culture of this Province with events held at The Rooms, Commissariat House, the Bacalao and a tour of the local area.

Two joint resolutions were produced at the St. John's meeting. One dealt with Personal Health Records (PHRs); the other related to two federal bills raising privacy concerns. The first of these federal bills is Bill C-46, the Investigative Powers for the 21st Century Act (IP21C); the second is Bill C-47, the Technical Assistance for Law Enforcement in the 21st Century Act (TALEA). These two pieces of legislation, tabled by the federal government in June 2009, are aimed at giving law enforcement, national security and other agencies broader powers to acquire digital evidence to support their investigations.

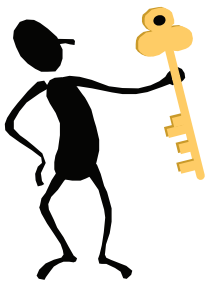
#### First Resolution – Personal Health Records (PHRs)



1. Whether PHRs are developed by the private or public sector, the Commissioners call on all developers to ensure that the applications meet the relevant laws and reflect privacy best practices.
2. The Commissioners encourage the government of Canada and provincial and territorial governments, to accelerate the integration of PHR services that would allow patients to:

- a. access their own health information;
- b. set rules for who should or should not be allowed to see their own personal health records;
- c. express their wishes for how their health information is used by health researchers and others;
- d. receive privacy and security breach notification alerts;
- e. see who has accessed their records;
- f. request that errors in their records be corrected;
- g. gain access to resources and contacts in the health ministries and the privacy oversight offices to better address their privacy concerns; and
- h. the Commissioners call on Ministries of Health to keep Commissioners and the public informed of their progress towards developing and implementing PHRs.

#### Second Resolution - Bills C-46 and C-47



The Federal, Provincial and Territorial Privacy Commissioners of Canada urge Parliament to ensure that the proposed legislation to create an expanded surveillance regime strikes the right balance between privacy and the legitimate needs of the authorities by:

1. approaching IP21C and TALEA with caution because they alter a carefully constructed and workable framework;
2. obliging the government to demonstrate that the expanded surveillance powers they contain are essential and that each of the new investigative powers is justified;
3. exploring the alternative that, should these powers be granted, they be limited to dealing with specific, serious crimes and life-threatening emergencies;
4. ensuring that any legislative proposals on surveillance:
  - a. be minimally intrusive;
  - b. impose limits on the use of the new powers and ensure appropriate legal thresholds remain in place for court authorization;
  - c. require that draft regulations be reviewed publically before coming into force;
  - d. include effective oversight;
  - e. provide for regular public reporting on the use of the powers; and
  - f. include a five-year parliamentary review.

## 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 exist and that they 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 a comprehensive analysis of these issues or make comprehensive recommendations to address and rectify the problems.



1. **Delegation:** Normally it is the *ATIPPA* coordinator appointed by the public body who would engage with the OIPC investigator 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:** Is clearly the single most important determinant of how well public bodies fulfill their obligations under the *Act*. Senior management's commitment to 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 are proportional to the demands placed on them by applicants. Senior managers are also encouraged to become personally engaged with the process and to instill the culture of openness envisaged by the legislation.
3. **Time Extensions:** It is our experience that on a number of cases certain public bodies have used time extensions for inappropriate reasons, for example, they are 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 legitimate matter (under certain circumstances) 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 470 public bodies responsive to *ATIPPA*, only three public bodies have full-time coordinators. The lack of resources, be it funds or staff, can significantly undermine the effectiveness of the *Act* and ultimately result in delays which detrimentally impact requester's right to information.
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 that frequently change their *ATIPPA* 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 particularly as it relates to requests submitted to the OIPC.
8. **Blanket Approach to Claiming Exceptions:** On many occasions public bodies have simply identified the exception(s) which it intends to claim regarding a specific access to information request. Many of the exceptions have a number of very specific items. I urge public bodies in future to be more specific when claiming a specific category of information under one of these exceptions and to provide a detailed explanation in support of the specific exception item claimed. This would, firstly, allow the public body to concentrate on the details 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.

## Public Body Privacy Breach Notification to the OIPC



Since Part IV (privacy provisions) of the *Access to Information and Protection of Privacy Act (ATIPPA)* came into force in January 2008, there have been several privacy breaches involving a number of public bodies. On numerous occasions, the public body notified the OIPC of a privacy breach soon after it occurred. For providing this Office with early notification of a privacy breach I applaud these public bodies, which include Eastern Health, the Department of Education, Western Health and the Workplace Health, Safety and Compensation Commission. Early notification of a privacy breach afforded the OIPC an opportunity to be aware of the breach and discuss containment and notification protocols with the public bodies involved. Early notification also placed the OIPC in a position to appropriately address subsequent inquiries or concerns raised by the public and to be able to respond effectively to inquiries from the media. Early notification also prevents the OIPC from having to respond to inquiries from the public with the rather embarrassing admission that it knows only what appeared in a public body's press release related to a significant privacy breach.

Finally, and most importantly, early notification to the OIPC by a public body of a privacy breach, I believe, significantly contributes to the level of confidence that citizens will have in public bodies, knowing that it has done the right thing by notifying the OIPC. It also confirms to the citizens of the Province that transparency and accountability does exist and that the perception that the public body is attempting to hide something is removed. In conclusion, of all the incidents where the public body has proactively reported a privacy breach to the OIPC, not one required the Office to follow up and produce a published report, unless an investigation and subsequent report resulted at the request of the head of the public body or his/her representative. Public bodies are urged to notify the OIPC as soon as possible after a privacy breach is discovered. Only then can the Office be in a position to offer helpful advice and recommendations and generally be of assistance to the public body to ensure that the public's rights under the *Act* are protected and that any harm done by the breach is mitigated. Open, early and frank dialogue is recommended and encouraged.



## Conclusion

2009-2010 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's resources and capability, along with a significant increase in its workload requirements. The additional work associated with the proclamation into force of Part IV of the *ATIPPA* (the privacy provisions) in January 2008 has further compounded and to some extent frustrated the Office's ability to meet certain legislated timeframes. That being said, 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. We look forward with anticipation and optimism to the proclamation of the *Personal Health Information Act (PHIA)* in the coming months. I do expect that significant demands will be placed on the OIPC. Our research on other jurisdictions that have been working with personal health information for a number of years indicates that approximately 50% of the work of their offices is dealing with personal health information. This matter will be addressed during the 2010-2011 budget process.

Finally, I wish to congratulate the Department of Health and Community Services, and all stakeholders who have been diligently working on the *PHIA* Steering Committee and the many working groups. The result of all this hard work and dedication will pay dividends when the legislation is proclaimed into force.





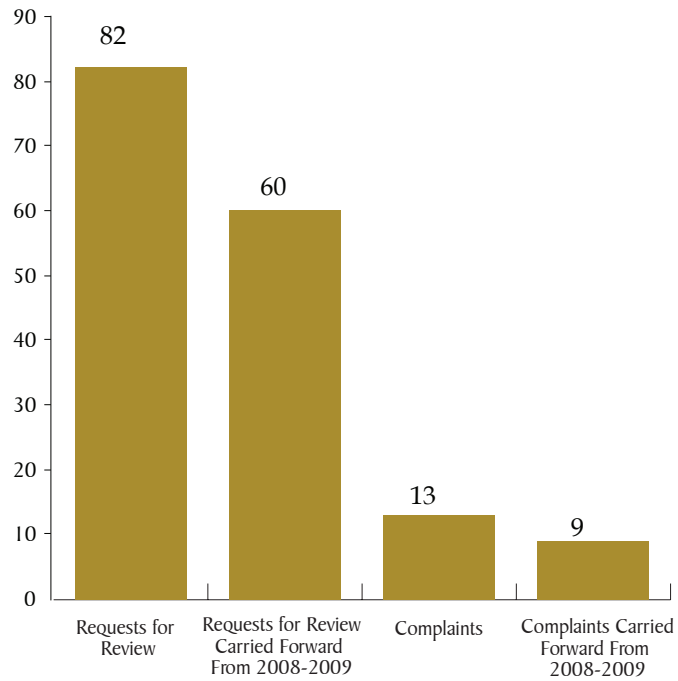


# Appendix "A"

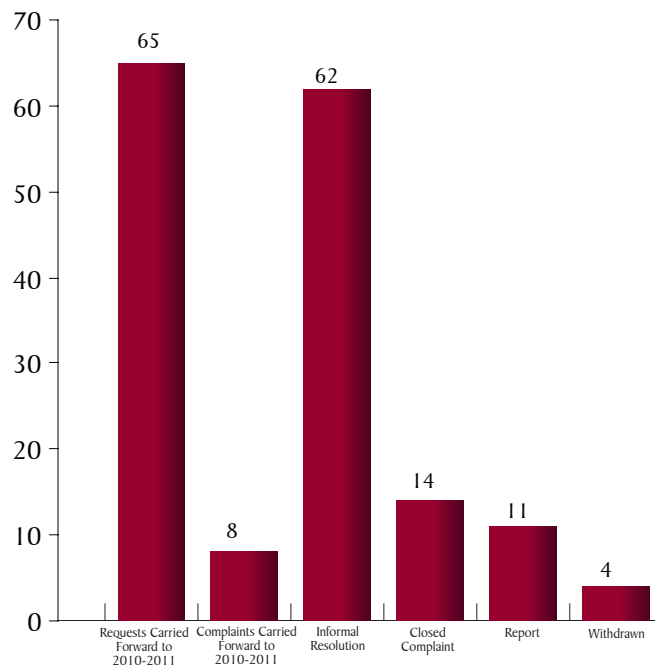
## Statistics

# Statistics

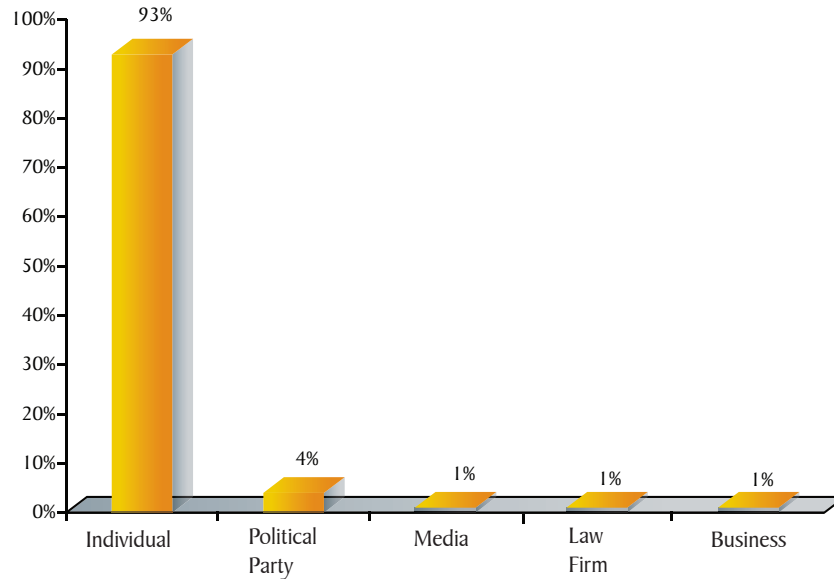
**Figure 1:** Requests for Review/Complaints Received



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



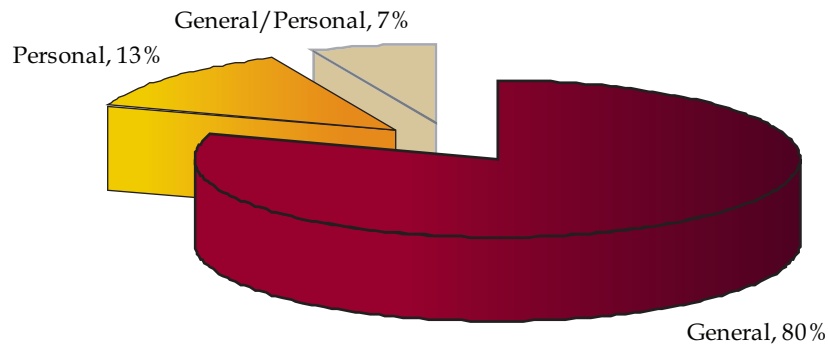
**Figure 3:** Requests for Review/Complaints by Applicant Group



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

Public Body	Number of Reviews	Percentage
Individual	153	93%
Political Party	6	4%
Media	2	1%
Law Firm	2	1%
Business	1	1%

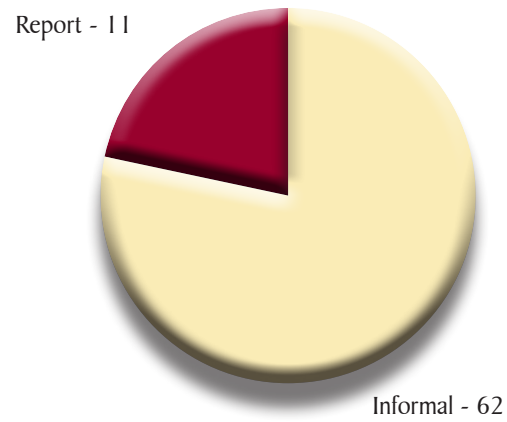
**Figure 4:** Requests for Review/Complaints by Information Requested



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

General	Personal	General/ Personal
131	22	11
80%	13%	7%

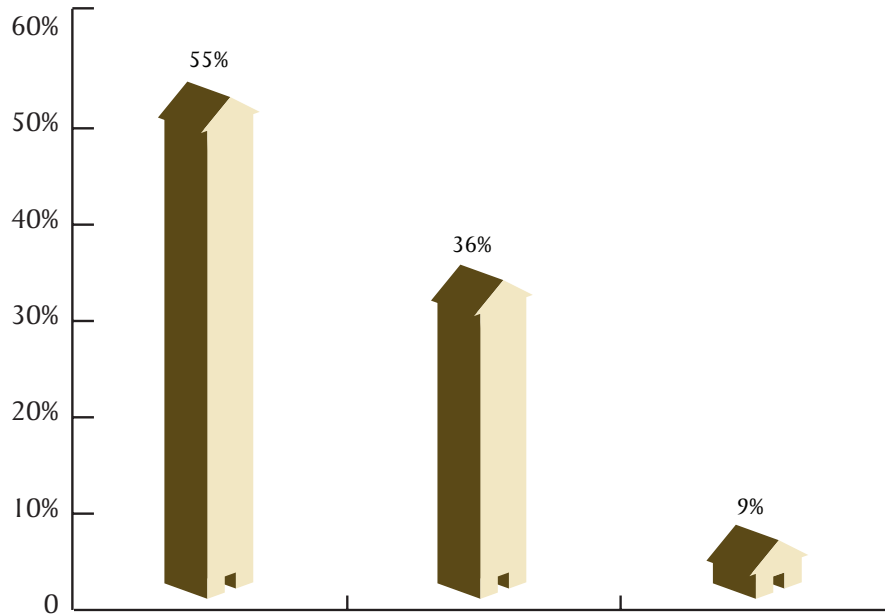
**Figure 5:** Requests for Review - Resolutions



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

Informal	Report
62	11
85%	15%

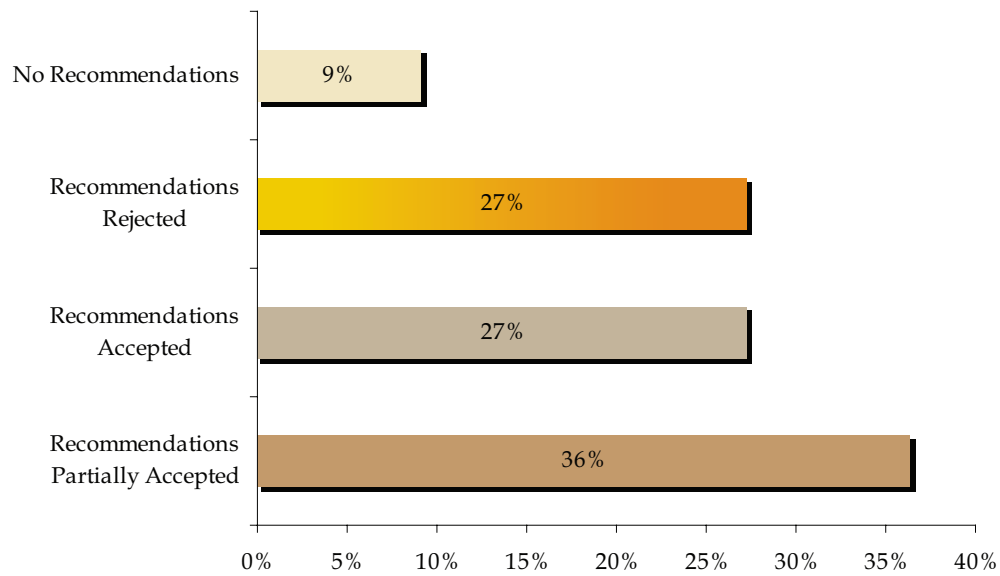
**Figure 6:** Conclusion of Commissioner's Reports



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

Partially Agree with Public Body	Disagree with Public Body	Agree with Public Body
6	4	1
55%	36%	9%

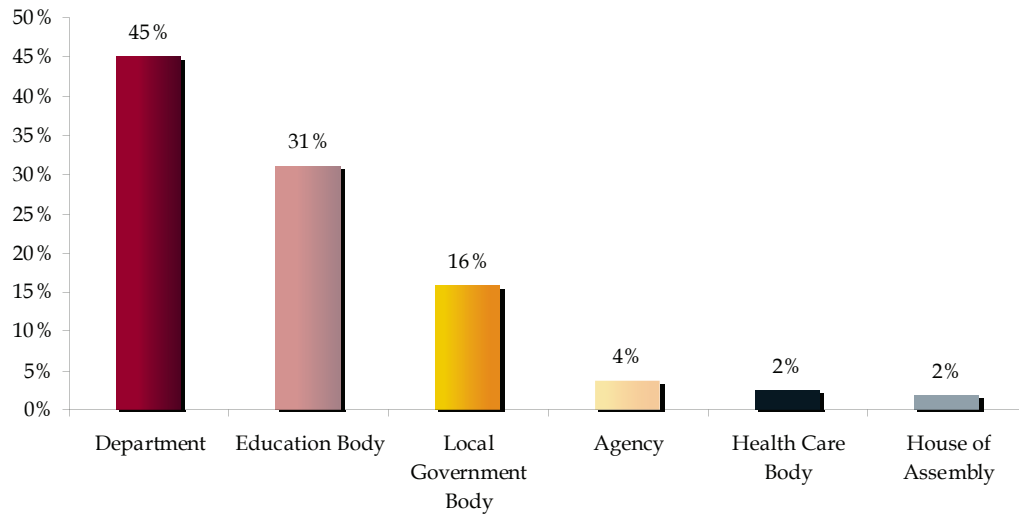
**Figure 7:** Public Body Response to Commissioner's Reports



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

Recommendations Partially Accepted	Recommendations Accepted	Recommendations Rejected	No Recommendations
4	3	3	1
36%	27%	27%	9%

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

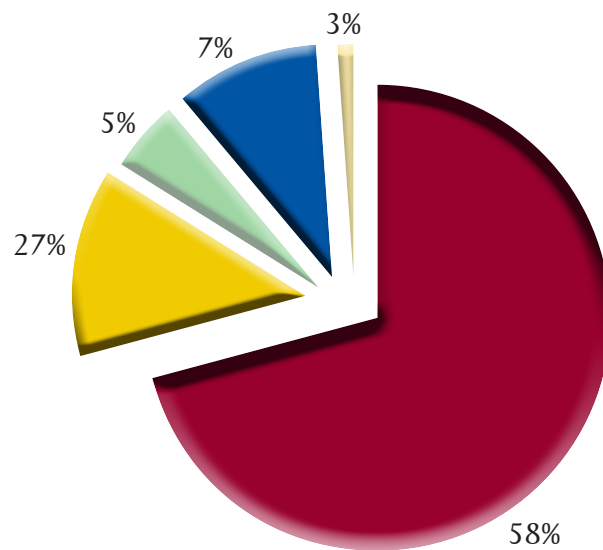


**Table 6:** Requests for Review/Complaints Listed by Public Body Type

Department	74	45%
Education Body	51	31%
Local Government Body	26	16%
Agency	6	4%
Health Care Body	4	2%
House of Assembly	3	2%



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

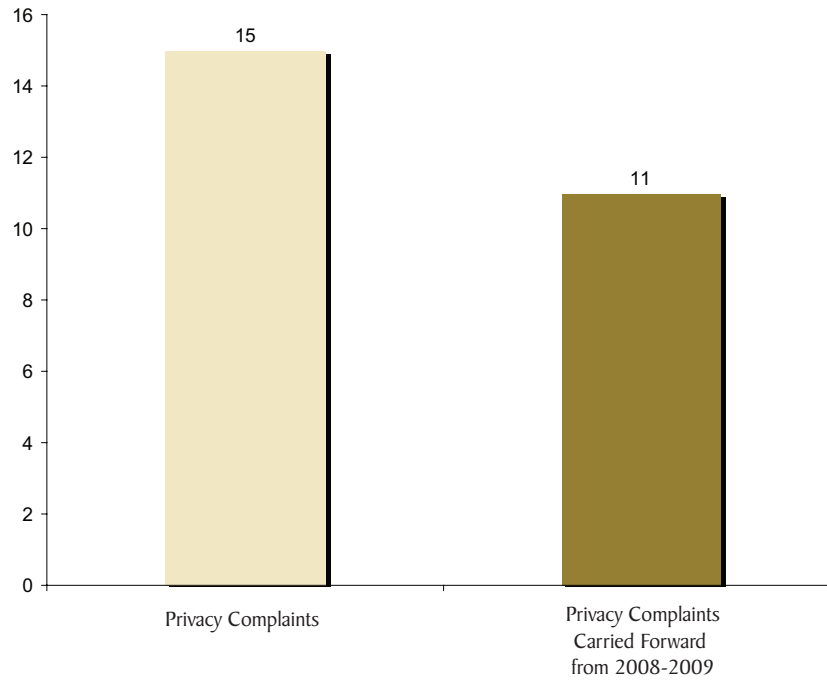


**Table 7:** Requests for Review/Complaints by Issue\*

Applicant Request Review of Decision	142	58%
Failure to Fulfill the Duty to Assist Applicants	65	27%
Time Extension	11	5%
Fee/Waiver	17	7%
3rd Party Requesting Review of Decision	8	3%

\* A Request for Review/Complaint often relates to several issues.

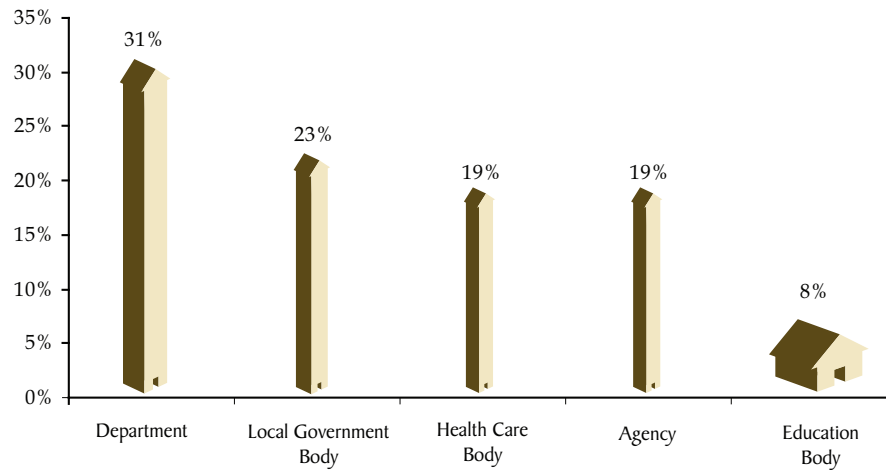
**Figure 10:** Privacy Complaints Received



**Table 8:** Privacy Complaints Received

Privacy Complaints	Privacy Complaints Carried Forward 2008-2009
15	11

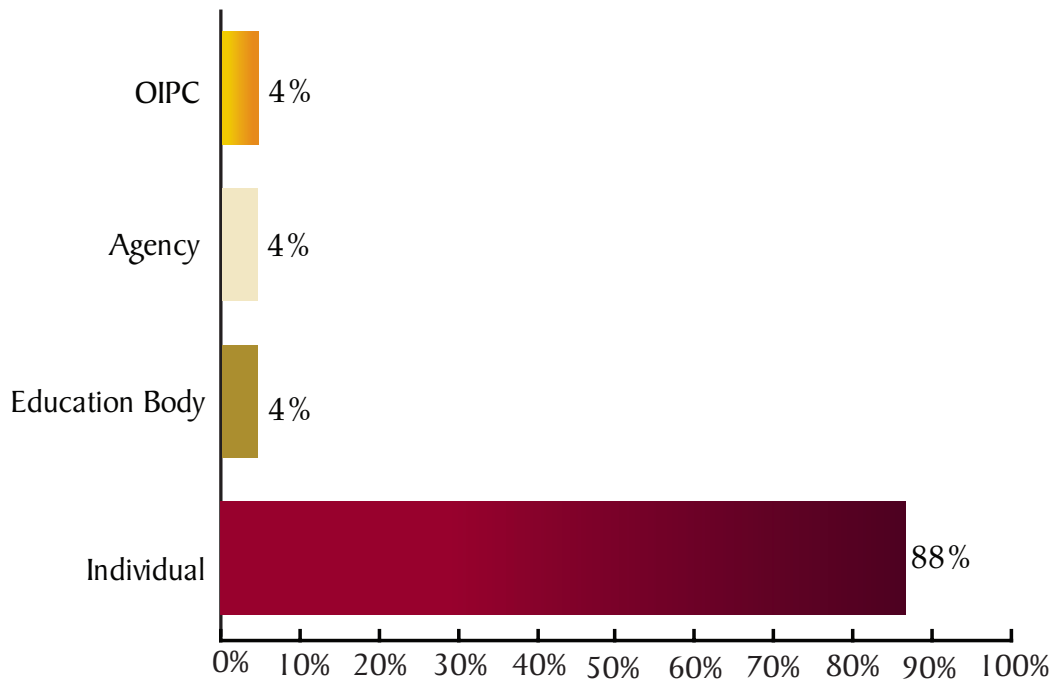
**Figure 11:** Privacy Complaints Listed by Public Body Type



**Table 9:** Privacy Complaints Listed by Public Body Type

Department	8	31%
Local Government Body	6	23%
Health Care Body	5	19%
Agency	5	19%
Education Body	2	8%

**Figure 12:** Privacy Complaints by Source \*

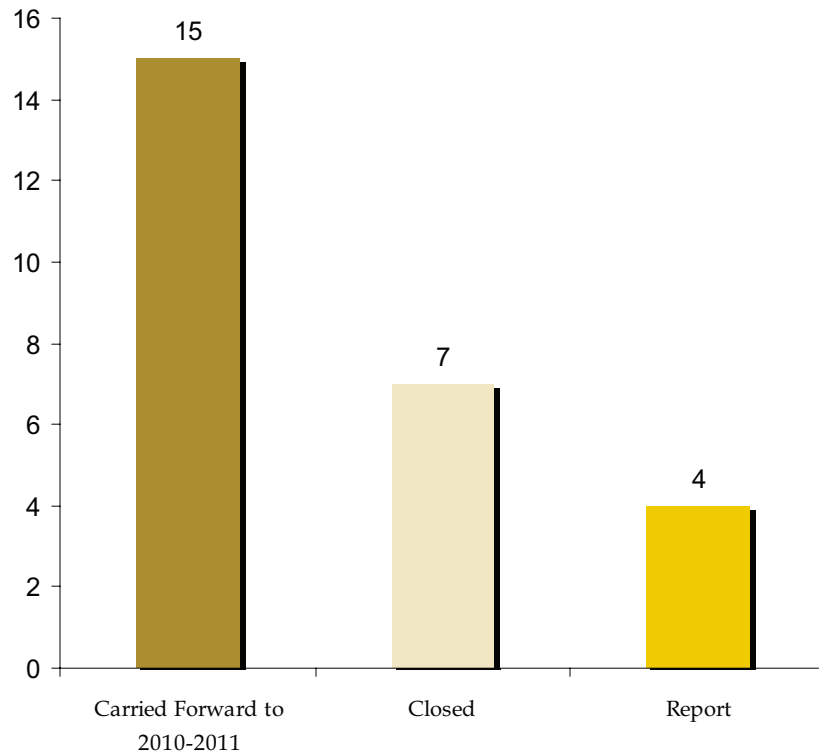


**Table 10:** Privacy Complaints by Source \*

Individual	Education Body	Agency	OIPC
23	1	1	1
88%	4%	4%	4%

\* In cases of the education body, department or agency, these are instances where a privacy issue was reported to the OIPC by the public body itself.

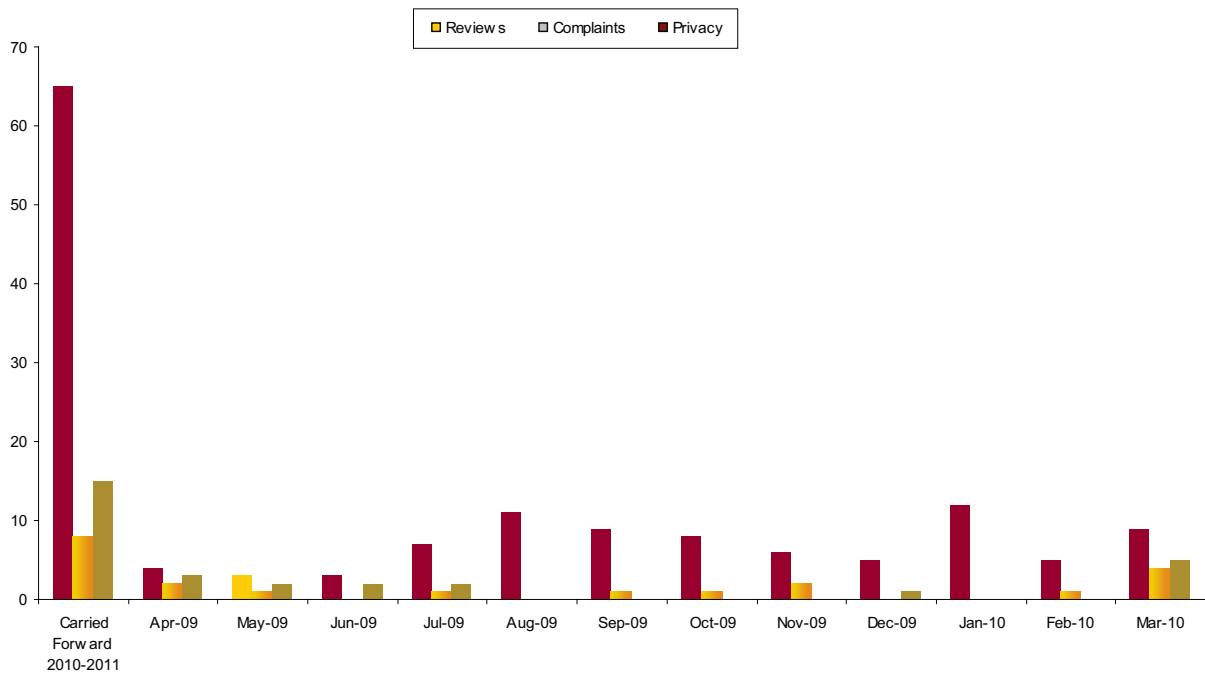
**Figure 13:** Outcome of Privacy Complaints



**Table 11:** Outcome of Privacy Complaints

Carried Forward to 2010-2011	Closed	Report
15	7	4
58%	27%	15%

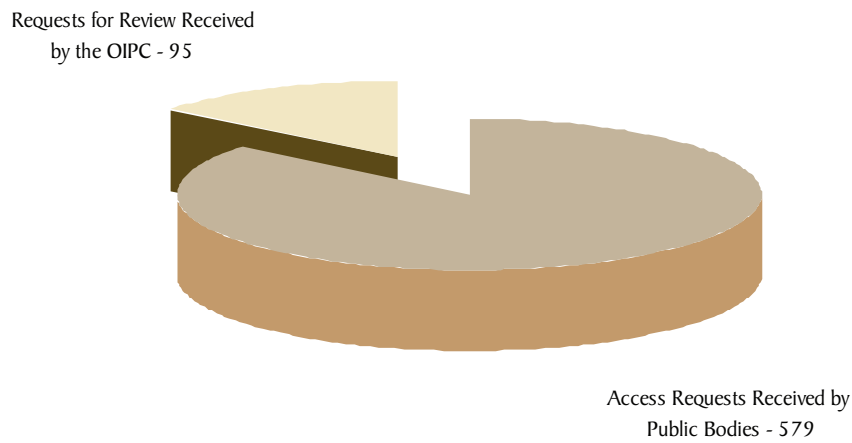
**Figure 14:** Requests for Review/Complaints and Privacy Complaints Received



**Table 12:** Requests for Review/Complaints and Privacy Complaints Received

2009-2010			
	Review	Complaints	Privacy
Carried Forward 2010-2011	65	8	15
Apr-09	4	2	3
May-09	3	1	2
Jun-09	3	0	2
Jul-09	7	1	2
Aug-09	11	0	0
Sep-09	9	1	0
Oct-09	8	1	0
Nov-09	6	2	0
Dec-09	5	0	1
Jan-10	12	0	0
Feb-10	5	1	0
Mar-10	9	4	5

**Figure 15:** Access Requests/Requests for Review Comparison



**Table 13:** Access Requests/Requests for Review Comparison

Access Requests Received by Public Bodies	579	86%
Requests for Review Received by the OIPC	95	14%

**Figure 16:** Access and Privacy Inquiries



**Table 14:** Access and Privacy Inquiries

Access	Privacy
351	298
54%	46%





## **Appendix "B"** **List of Public Bodies**

(provided by ATIPP Coordinating Office, Department of Justice)

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Note: This list will constantly be a work in progress due to the requirement from time-to-time to add new public bodies and possibly remove others.

## Government Departments

Business	Health and Community Services
Child, Youth and Family Services	Human Resources Labour and Employment
Education	Innovation Trade and Rural Development
Environment and Conservation	Justice
Executive Council - Cabinet Secretariat	Labrador and Aboriginal Affairs - Labrador Affairs
Executive Council - Intergovernmental Affairs	Labrador and Aboriginal Affairs - Aboriginal Affairs
Executive Council - Public Service Secretariat	Municipal Affairs
Executive Council - Office of the Chief Information Officer	Natural Resources - Mines and Energy
Executive Council - Rural Secretariat	Natural Resources - Forestry
Executive Council - Women's Policy Office	Natural Resources - Agrifoods
Executive Council - NL Research and Development Council	Premier's Office
Finance	Public Service Commission
Fisheries and Aquaculture	Tourism Culture and Recreation
Government Services	Transportation and Works

## Agencies, Education and Health Boards

Arts and Letters Committee	Chicken Farmers of Newfoundland and Labrador
Board of Commissioners of Public Utilities	Churchill Falls (Labrador) Corporation
Building Accessibility Advisory Board	Classification Appeal Board
Bull Arm Fabrication Site	College of the North Atlantic
Business Investment Corporation	Commissioner of Lobbyists
C.A. Pippy Park Commission	Conseil scolaire francophone provincial de Terre-Neuve-et-Labrador
Central Health Authority	Credit Union Deposit Guarantee Corporation
Central Newfoundland Regional Appeal Board	Criminal Code Mental Order Review Board

## Agencies, Education and Health Boards (cont'd)

Eastern Health Authority	Lower Churchill Development Corporation Limited
Eastern Newfoundland Regional Appeal Board	Management Classification Review Committee
Eastern School District	Marble Mountain Development Corporation
EDGE Evaluation Board	Memorial University of Newfoundland
Embalmers and Funeral Directors Board	Mental Health Review Board
Farm Industry Review Board	Mineral Rights Adjudication Board
Fish Processing Licensing Board	Minister's Advisory Committee for the Child, Youth and <i>Family Services Act</i>
Forest Land Tax Appeal Board	Multi-Materials Stewardship Board
Government Money Purchase Plan Committee	Municipal Assessment Agency
Government Purchasing Agency	Nalcor Energy Corporation of Newfoundland and Labrador
Group Insurance Committee	Newfoundland and Labrador Arts Council
Gull Island Power Company Limited	Newfoundland and Labrador Centre for Health Information
Heritage Foundation of Newfoundland and Labrador	Newfoundland and Labrador Chiropractic Board
Human Rights Commission	Newfoundland and Labrador Crop Insurance Agency
Income and Employment Support Appeal Board	Newfoundland and Labrador Farm Products Corporation
Ireland Business Partnerships Advisory Board	Newfoundland and Labrador Film Development Corporation
Judicial Council of the Provincial Court of Newfoundland and Labrador	Newfoundland and Labrador Geographical Names Board
Labour Relations Board	Newfoundland and Labrador Historic Commemorations Board
Labrador Health Authority	Newfoundland and Labrador Hydro
Labrador Regional Appeal Board	Newfoundland and Labrador Immigrant Investor Fund Limited Board
Labrador School District	Newfoundland and Labrador Industrial Development Fund
Land Consolidation Review Committee	Newfoundland and Labrador Legal Aid Commission
Livestock Owners Compensation Board	Newfoundland and Labrador Liquor Corporation

## Agencies, Education and Health Boards (cont'd)

Newfoundland and Labrador Municipal Financing Corporation	Public Safety Appeal Board
Newfoundland and Labrador Sinking Fund	RNC Public Complaints Commission
Newfoundland and Labrador Sport Centre Inc.	Royal Newfoundland Constabulary
Newfoundland and Labrador Tourism Board	Species Status Advisory Committee
Newfoundland and Labrador Youth Advisory Committee	St. John's Land Development Advisory Authority
Newfoundland Government Fund Limited	St. John's Urban Regional Appeal Board
Newfoundland Hardwoods Limited	Standing Fish Price Setting Panel
Newfoundland Ocean Enterprises Limited (Marystown Shipyard)	Student Financial Assistance Appeal Board
Nova Central School District	Student Loan Corporation of Newfoundland and Labrador
Occupational Health and Safety Advisory Council	Teachers Certification Board of Appeals
Office of the Chief Medical Examiner	Teachers Certification Committee
Office of the High Sheriff	Teachers Certification Review Board
Pension Policy Committee	The Rooms Corporation
Privacy Training Corporation	Western Health Authority
Professional Fish Harvesters	Western Newfoundland Regional Appeal Board
Professional Fish Harvesters License Appeal Board	Western School District
Province of Newfoundland and Labrador Pooled Pension Fund Investment Committee	Wilderness and Ecological Reserves Advisory Council
Provincial Advisory Council of the Status of Women Newfoundland and Labrador	Wooddale Land Development Advisory Authority
Provincial Apprenticeship and Certification Board	Workplace Health, Safety and Compensation Commission
Provincial Information Library Resources Board	Workplace Health, Safety and Compensation Review Division
Public Accountants Licensing Board	

<b>Municipalities</b>		
Admirals Beach	Bonavista	Charlottetown (Labrador)
Anchor Point	Botwood	Clarenville
Appleton	Branch	Clarke's Beach
Aquaforte	Brent's Cove	Coachman's Cove
Arnold's Cove	Brighton	Colinet
Avondale	Brigus	Colliers
Badger	Bryant's Cove	Come By Chance
Baie Verte	Buchans	Comfort Cove-Newstead
Baine Harbour	Burgeo	Conception Bay South
Bauline	Burin	Conception Harbour
Bay Bulls	Burlington	Conche
Bay de Verde	Burnt Islands	Cook's Harbour
Bay L'Argent	Campbellton	Cormack
Bay Roberts	Cape Broyle	Corner Brook
Baytona	Cape St. George	Cottlesville
Beachside	Carbonear	Cow Head
Bellburns	Carmanville	Cox's Cove
Belleoram	Cartwright	Crow Head
Bide Arm	Centreville-Wareham-Trinity	Cupids
Birchy Bay	Chance Cove	Daniel's Harbour
Bird Cove	Change Islands	Deer Lake
Bishop's Cove	Channel-Port aux Basques	Dover
Bishop's Falls	Chapel Arm	Duntara

## Municipalities (cont'd)

Eastport	Gillams	Hopedale
Elliston	Glenburnie-Birchy Head-Shoal Brook	Howley
Embree	Glenwood	Hughes Brook
Englee	Glovertown	Humber Arm South
English Harbour East	Goose Cove East	Indian Bay
Fermeuse	Grand Bank	Irishtown-Summerside
Ferryland	Grand Falls-Windsor	Isle aux Morts
Flatrock	Grand Le Pierre	Jackson's Arm
Fleur de Lys	Greenspond	Joe Batt's Arm-Barr'd Islands-Shoal Bay
Flower's Cove	Hampden	Keels
Fogo	Hant's Harbour	King's Cove
Fogo Island Region	Happy Adventure	King's Point
Forteau	Happy Valley-Goose Bay	Kippens
Fortune	Harbour Breton	La Scie
Fox Cove-Mortier	Harbour Grace	Labrador City
Fox Harbour	Harbour Main-Chapel's Cove-Lakeview	Lamaline
Frenchman's Cove	Hare Bay	L'Anse au Clair
Gallants	Hawke's Bay	L'Anse au Loup
Gambo	Heart's Content	Lark Harbour
Gander	Heart's Delight-Islington	Lawn
Garnish	Heart's Desire	Leading Ticks
Gaskiers-Point La Haye	Hermitage-Sandyville	Lewin's Cove
Gaultois	Holyrood	Lewisporte

## Municipalities (cont'd)

Little Bay	Morrisville	Petty Harbour-Maddox Cove
Little Bay East	Mount Carmel-Mitchells Brook-St. Catherine's	Pilley's Island
Little Bay Islands	Mount Moriah	Pinware
Little Burnt Bay	Mount Pearl	Placentia
Little Catalina	Musgrave Harbour	Point au Gaul
Logy Bay-Middle Cove-Outer Cove	Musgravetown	Point Lance
Long Harbour-Mount Arlington Heights	Nain	Point Leamington
Lord's Cove	New Perlican	Point May
Lourdes	New-Wes-Valley	Point of Bay
Lumsden	Nippers Harbour	Pool's Cove
Lushes Bight-Beaumont-Beaumont North	Norman's Cove-Long Cove	Port Anson
Main Brook	Norris Arm	Port au Choix
Makkovik	Norris Point	Port au Port East
Mary's Harbour	North River	Port au Port West-Aguathuna-Felix Cove
Marystown	North West River	Port Blandford
Massey Drive	Northern Arm	Port Hope Simpson
McIvers	Old Perlican	Port Kirman
Meadows	Pacquet	Port Rexton
Middle Arm	Paradise	Port Saunders
Miles Cove	Parker's Cove	Portugal Cove South
Millertown	Parson's Pond	Portugal Cove-St. Philip's
Milltown-Head of Bay D'Espoir	Pasadena	Postville
Ming's Bight	Peterview	Pouch Cove

## Municipalities (cont'd)

Raleigh	Southern Harbour	Terrenceville
Ramea	Spaniard's Bay	Tilt Cove
Red Bay	Springdale	Tilting
Red Harbour	St. Alban's	Torbay
Reidville	St. Anthony	Traytown
Rencontre East	St. Bernard's-Jacques Fontaine	Trepassey
Renews-Cappahayden	St. Brendan's	Trinity
Rigolet	St. Bride's	Trinity Bay North
River of Ponds	St. George's	Triton
Riverhead	St. Jacques-Coomb's Cove	Trout River
Robert's Arm	St. John's	Twillingate
Rocky Harbour	St. Joseph's	Upper Island Cove
Roddickton	St. Lawrence	Victoria
Rose Blanche-Harbour Le Cou	St. Lewis	Wabana
Rushoon	St. Lunaire-Griquet	Wabush
Salmon Cove	St. Mary's	West St. Modeste
Salvage	St. Pauls	Westport
Sandringham	St. Shott's	Whitbourne
Sandy Cove	St. Vincent's-St. Stephen's - Peter's River	Whiteway
Seal Cove, FB	Steady Brook	Winterland
Seal Cove, W.B	Stephenville	Winterton
Seldom-Little Seldom	Stephenville Crossing	Witless Bay
Small Point-Adam's Cove- Blackhead-Broad Cove	Summerford	Woodstock
South Brook	Sunnyside (T.B)	Woody Point
South River	Terra Nova	York Harbour



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