



# **Office of the Information and Privacy Commissioner**

**2007 – 2008  
Annual Performance Report**

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September 25, 2008

**Message from the Information and Privacy Commissioner**

In fulfilling its commitment to being accountable to the citizens of Newfoundland and Labrador, Government introduced the Transparency and Accountability Act. This Act provides the legislative framework for strengthening accountability of government entities through multi-year performance-based plans and annual performance reports that are presented to the House of Assembly.

I am pleased to present the Office of the Information and Privacy Commissioner's Annual Performance Report for 2007/08 Activity Plan.

As Commissioner, I am responsible for the results reported herein and variances from the goals outlined in the 2007/08 Activity Plan.

Edward P. Ring  
Information and Privacy Commissioner

## **OVERVIEW**

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

- Investigations
- Public Education
- Oversight
- Advice and Consultation

The Office of the Information and Privacy Commissioner's original budget was \$439,200 and the actual amount spent was \$459,791. The variance was due to unforeseen and unforecasted expenses for legal services.

## **VISION**

Our vision is one where public bodies operate in a fashion that is accountable to the people and transparent, always in consideration of the citizens of Newfoundland and Labrador.

## **LINES OF BUSINESS**

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

### **Investigations**

The Office reviews decisions, acts or failures to act by heads of public bodies with respect to access to information requests, including decisions to extend the timeframe to respond to access requests. We will also investigate the appropriateness of fees charged for access to information. The Office also conducts reviews into the failure or refusal by a head of a public body to correct personal information that is in its control. Additionally, the Office will conduct investigations based on complaints from citizens relating to the collection, use or disclosure of personal information by a public body.

### **Public Education**

The Office ensures that the public is aware of its rights to access information and is aware of how it can exercise those rights. As appropriate, the Office informs the public about these rights through public commentary and education programs aimed at explaining the administration and operation of the *ATIPPA* and our Office. A series of province-wide education/consultation sessions will be conducted in specific locations commencing in the spring of 2008.

### **Oversight**

The Office acts as an oversight body and is entitled to comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs of public bodies.

## MISSION

By 2011, the Office of the Information and Privacy Commissioner will have improved the capacity and effectiveness of the Office such that the citizens of the Province enjoy the full measure of access to information as well as privacy rights which are guaranteed by the laws of the Province.

### **Staff and Expenditures**

The Office has a staff complement of 7, including the Commissioner (38% female and 62% male) and spent \$459, 791 for fiscal year ending March 31, 2008.

The mandate of the Office of the Information and Privacy Commissioner is derived from the provisions of the *Access to Information and Protection of Privacy Act (ATIPPA)* and includes:

- giving the public a right of access to records;
- giving individuals a right of access to and a right to request correction of personal information about themselves;
- preventing the unauthorized collection, use or disclosure of personal information by public bodies;
- providing for an independent review of decisions made by public bodies under the *ATIPPA*.

January 17, 2008 was the third anniversary of the proclamation of the *ATIPPA* (with the exception of the Privacy Provisions). The Privacy Provisions were proclaimed into force on January 16, 2008. The initial priority of this Office was to build an awareness of access to information principles and best practices both within government institutions and within the larger public body sector. Challenges associated with internal capacity building regarding knowledge of the legislation, relevant judicial and Commissioner rulings and precedents have been experienced along with the worldwide expansion in laws and practices covering access to information and privacy issues. Other challenges were experienced due to the requirement to

balance staff resources and demands in maintaining currency with advances in information management and technology as well as our requirement to educate the public regarding the role and mandate of the OIPC and the legislation.

This Office values our role as an independent support and arbitrator for the citizens of the Province. Every effort is taken to ensure our integrity such that we are trusted to represent citizens in their dealings with public bodies. The character of the Office is promoted and represented through the following five core values:

**1. Independence**

Each individual will conduct investigations independent of any influence.

**2. Integrity**

Each individual will ensure the provision of accurate, unbiased advice and recommendations.

**3. Confidentiality**

Each individual will exercise absolute confidentiality in accordance with the *ATIPPA*.

**4. Judgement**

Each individual will use their professional judgement in interpreting policies, practices and procedures to ensure compliance with *ATIPPA*.

**5. Respect**

Each individual listens to and considers the ideas and opinions of others and works collaboratively to achieve results.

## RESULTS OF GOALS

Goal 1) By 2008, the Office of the Information and Privacy Commissioner will have improved its capacity to provide service and support decisions.

**Measure:** *Improved capacity to provide service and support decisions.*

**Indicators:**

**Accomplished 2007/08**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Increase capacity of the Office</li><br/><br/><br/><br/><br/><br/><br/><br/><br/><br/><li>• Processes for monitoring activity with respect to requests for review are enhanced.</li></ul> | <ul style="list-style-type: none"><li>• Prior to April 1, 2007 the OIPC staff complement was (4) permanent staff and a part-time commissioner.</li><br/><br/><br/><br/><br/><br/><br/><br/><br/><br/><li>• During the reporting period the staff complement has increased to (6) permanent staff including the Commissioner and (1) temporary staff member.</li><br/><br/><br/><br/><br/><br/><br/><br/><br/><br/><li>• Internal procedures have been developed and evolved to the extent that this indicator has been accomplished. These include periodic status report briefings by the assigned investigator as well as a multi level review before reports are signed off and published.</li><br/><br/><br/><br/><br/><br/><br/><br/><br/><br/><li>• The current document tracking tool utilized by the OIPC to track timelines and ensure deadlines are met is CCM Mercury.</li><br/><br/><br/><br/><br/><br/><br/><br/><br/><br/><li>• The office is moving forward towards implementing TRIM which is the government wide standard and it is anticipated that we will make significant progress in that regard coincidental with our pending move to new office space</li></ul> |
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outside Confederation Building. TRIM provides an enhanced capability not only to track documents but also improves retrieval capability.

- Increased number of requests for reviews conducted within 90 days compared to the total number of review requests.
- Difficulty was experienced in achieving this indicator, in fact, the number of access files that extended beyond the 90 day statutory time limit increased by 24 files from the previous year. 10 files were carried over from the previous fiscal year. These files included both informal resolution and formal report files. The increase was due to a number of factors including the complexity and size of some files and difficulty in progressing a file due to the workload of a number of ATIPP Public Body Coordinators. Additionally, a number of very serious and complex privacy breach files were received and acted upon in the last quarter of the fiscal year. It should be noted that our two new investigators only began employment with the office in the last two months of FY 2007/08.
- Increased number of requests for review which are resolved by informal processes compared to the total number of review requests.
- 102 requests for review were reviewed in FY 2007/08. 29 files were carried over from the FY 2006/07. Of the 131 files, 17 were concluded by formal investigation and published report, and 58 were concluded by informal resolution or other means. 56 files were carried over into FY 2008/09. The number of files closed without requiring a formal Report is down by a small margin from the previous year.

## **Discussion of Results**

The desired result, increased number of requests for review resolved informally was not achieved during this reporting period. This was due to the size and complexity of a number of these files and to some degree, due to difficulties associated with obtaining timely responses from certain public bodies. Additionally, the demands imposed by the requirements to investigate a number of significant privacy breaches in the last quarter of the fiscal year also had an impact.

Goal 2) By 2008, the Office of the Information and Privacy Commissioner will have in place a comprehensive reporting and tracking process for its requests for review reports.

***Measure: Publish, review reports and recommendations.***

### **Indicators:**

### **Accomplished 2007/08**

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• Post the full text of all formal Reports from this Office to our website<br/><a href="http://www.gov.nl.ca/oipc">www.gov.nl.ca/oipc</a></li><br/><li>• Reports will indicate the name of the public body but for privacy reasons not the applicant's name or other identification.</li><br/><li>• Develop an index by topic and by public body to readily identify those Reports which involve specific sections of the legislation.</li></ul> | <ul style="list-style-type: none"><li>• 17 formal Reports are published to our website.</li><br/><li>• This is done once the OIPC has been notified by both the head of the Public Body and the Applicant that they have received and reviewed their copy of the Report.</li><br/><li>• Reports now include the name of the Public Body. The name of the Applicant or other identifying information is not disclosed for privacy reasons.</li><br/><li>• An indexed table of concordance by topic and public body has been established and will continue to be a work in progress as more Reports are published and reference is</li></ul> |
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made to the various relevant sections of the Act.

### **Discussion of Results**

This goal has been accomplished.

Goal 3) By 2008, the Office of the Information and Privacy Commissioner will have improved processes in place to increase awareness on the part of government departments and agencies, health and education bodies, and municipalities with respect to statutory requirements.

#### **Measure: Increase Awareness**

##### **Indicators:**

- Co-host a major conference in Newfoundland and Labrador focused on *ATIPPA*.
- Maintain a close contact with the Department of Justice with respect to interpretation of the provisions of the *ATIPPA*.
- Regularly addresses any misinterpretation of the *ATIPPA* with the related public bodies.

##### **Accomplished 2007/08**

- This Office co-hosted a major conference with Memorial University and the *ATIPPA* Coordinating Office with the Department of Justice in June 2007 (110 attendees).
- Excellent rapport and liaison exists between the OIPC and Department of Justice resulting in frequent and ongoing consultation.
- Frequent contact by the investigators and other staff of the OIPC with the *ATIPPA* Coordinators of Public Body entities occurs. This is particularly true as the Office deals with active files concerning both Access and Privacy issues. Additionally, all inquiries

from the general public concerning the ATIPPA as well as the role, function and mandate of the OIPC are efficiently and effectively responded to.

## **Discussion of Results**

This goal has been accomplished, however, in the coming year there will be an enhancement to the awareness mandate as the OIPC launches a public education/awareness campaign across Newfoundland and Labrador.

Goal 4) By 2008, the Office of the Information and Privacy Commissioner will have adequate resources and procedures in place to deal with the privacy complaints on a timely basis.

***Measure: Increase ability to deal with privacy complaints.***

### **Indicators:**

### **Accomplished 2007/08**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Hire additional investigator in 2008 to assist with privacy issues and outstanding access requests.</li><br/><li>• Acknowledge privacy complaints within two days of receipt.</li></ul> | <ul style="list-style-type: none"><li>• An additional investigator was also hired on a temporary basis in January 2008.</li><br/><li>• OIPC policy has been established and implemented that requires privacy complaints to be acknowledged within two days of receipt.</li></ul> |
|---|---|

- Conduct investigation of privacy complaints and attempt to resolve the issue and/or issue a Report within 90 days.
- Publish Reports on significant privacy complaints on our website [www.gov.nl.ca/oipc](http://www.gov.nl.ca/oipc)
- Every effort is made to resolve the issue either informally or formally in a timely manner, however, unlike the access provisions, the privacy provisions of the *ATIPPA* do not impose a 90 day statutory timeframe to conclude privacy investigations and publish reports.
- All significant privacy complaint reports are published to our website.

### **Discussion of Results**

This goal has been accomplished, however, although four significant privacy complaint investigations commenced very late in FY 2007-2008. All four investigation reports were concluded and published after March 31, 2008 and will therefore be reported upon in next year's report.

## OPPORTUNITIES AND CHALLENGES

The Office of the Information and Privacy Commissioner looks forward to the next reporting period with optimism and enthusiasm.

It will be a period during which we will be in a better position to realize the full magnitude of the workload and demand on resources of the OIPC as a result of the January 16, 2008 proclamation of the privacy provisions of the *Access to Information and Protection of Privacy Act*.

It will also be a period during which the Office will be grappling with the necessary but lacking internal policy and procedures manual.

Additionally, during this period the Office will undertake a comprehensive public awareness campaign as per our mandate under the *ATIPPA*. This will take the form of a series of town hall meetings for the general public that will serve to educate and inform citizens of the province both on the Island and in Labrador, about the role, mandate and functions of the Office of the Information and Privacy Commissioner and the Legislation. 16 locations have been targeted for presentation delivery.

We look forward to the opportunity to host the Federal/Provincial/Territorial Information and Privacy Commissioners' Annual Conference in St. John's in 2009. The opportunity to engage in meaningful discussions on areas of mutual interest and concern, to share information and pursue opportunities to share best practices should produce results that will be of benefit to our Office and by extension to the citizens of the Province of Newfoundland and Labrador.

Additionally, during the next reporting period the OIPC will, to the extent resources allow, assist the lead department during the education component for custodians concerning the *Personal Health Information Act (PHIA)*. The legislation was introduced in the House of Assembly in May 2008. The education/awareness component is expected to be a huge undertaking that must be completed prior to proclamation and coming into force.

We anticipate challenges associated with the coming into force of the *Personal Health Information Act* regarding internal capacity building concerning knowledge of the legislation, relevant judicial and commissioner rulings and precedents.

Other challenges will be experienced as we attempt to keep pace and remain current with the evolving advances being made in information management and technology.

The challenge to balance staff resources required to keep up with the core mandate of the Office and to conduct other necessary and important administrative, research, policy and planning, media relations and outreach programs is becoming increasingly difficult. This situation is likely to escalate as we move toward the pending proclamation of the *Personal Health Information Act*.

During 2008/09 the Office of the Information and Privacy Commissioner will move into new office accommodations, outside the Confederation Building. This move is long overdue and will serve to underscore the independent nature of the Office.

# FINANCIAL STATEMENTS

*Expenditure and revenue figures included in this document are based on public information provided in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for fiscal year ending March 31, 2008 (un-audited).*

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

		<b>Estimates</b>	
	<u><b>Actual</b></u>	<u><b>Amended</b></u>	<u><b>Original</b></u>
	\$	\$	\$
<b>6.1.01 Office of the Information and Privacy Commissioner</b>			
01. Salaries .....	<b>338,617</b>	340,000	340,000
02. Employee Benefits.....	<b>4,931</b>	5,020	2,200
03. Transportation & Communications.....	<b>22,998</b>	24,280	27,200
04. Supplies .....	<b>4,006</b>	5,100	7,000
05. Professional Services.....	<b>50,402</b>	50,500	20,000
06. Purchased Services.....	<b>33,400</b>	34,700	37,800
07. Property, Furnishings & Equipment...	<u><b>5,437</b></u>	<u>5,500</u>	<u>5,500</u>
<b>Total: Office of the Information and Privacy Commissioner</b>	<u><b>459,791</b></u>	<u>465,100</u>	<u>439,200</u>

**Note:** Audited financial information will be included in the Annual Report of the House of Assembly/Management Commission to be tabled by the Speaker during the next setting of the House. The Office of the Information and Privacy Commissioner does not have a requirement for a separate individual audited statement.