

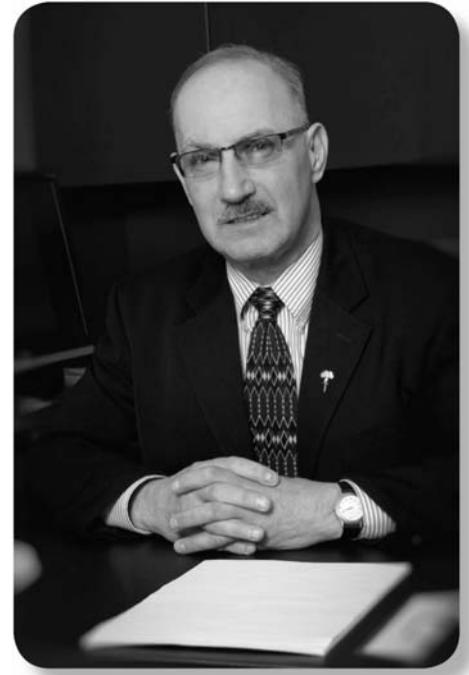


OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Annual Performance
Report
2008 -2009

September 24, 2009



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 2008/09.

As Commissioner, I am accountable for the results reported herein and for any variances from the objectives outlined in the 2008/11 Business Plan.

A handwritten signature in black ink, appearing to read "E. P. Ring". The signature is written in a cursive style and is underlined with a long, horizontal stroke.

Edward P. Ring
Information and Privacy Commissioner

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OVERVIEW

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

- Investigations
- Public Education
- Oversight

The Office of the Information and Privacy Commissioner's original budget was \$810,200. The amended budget was \$854,400 and the actual amount spent was \$762,500, resulting in a variance of approximately \$92,000. The variance occurred due to a number of circumstances that were beyond the control of the OIPC:

1. \$44,500 was not spent in salaries due to the following circumstances. The Assistant Commissioner began a two-year interchange with the federal Privacy Commissioner's Office. His temporary replacement is paid at a lower salary resulting in a savings of approximately \$33,000. Approximately \$11,500 was not spent to hire a co-op student due to the lack of space and the transient mode of the Office due to pending move of the OIPC to new office accommodations outside the Confederation Building.
2. \$21,500 was not spent for rent due to an approximately three month delay in moving into our new office accommodations outside the Confederation Building.
3. \$15,000 was not spent on transportation. Again, this under expenditure resulted from planned travel being cancelled due to the circumstances that existed in the Office related to the three month delay in the move to our new office accommodations.

4. \$7,000 was not spent on professional services. This amount was allocated to cover legal fees for outside services due to a number of then outstanding court cases. The cases in question were subject to court submission schedules, etc. and were not concluded in the 2008/09 fiscal year and subsequently were carried over into the current fiscal year.
5. \$3,000 was not spent on employee benefits. Again, this under expenditure resulted from registration fees not being required due to planned travel to conferences and seminars being cancelled due to the circumstances that existed in the Office related to the three month delay in the move to our new office accommodations.
6. \$1,000 was not spent on property, furnishings and equipment. This under expenditure resulted from actual cost being slightly lower than estimated cost.

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 privacy rights of the citizens of Newfoundland and Labrador.

MISSION

By 2011, the OIPC will have improved the capacity and effectiveness of the Office such that 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.

The mandate of the OIPC 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*;
- reviewing a decision, act or failure to act of a public body that relates to an access request or a request to correct personal information;
- investigating complaints about an extension of time for responding to a request or a fee required under the *Act*;
- making recommendations to ensure compliance with the *Act* and regulations;
- informing the public about the *Act*;
- receiving comments from the public about the administration of the *Act*;
- commenting on the information and privacy implications of proposed legislation and programs;
- commenting on the implications of record linkages and information technology on the protection of privacy;
- informing the head of a public body about a failure to adequately assist an applicant;
- making recommendations to public bodies or the minister responsible for this *Act* about the administration of the *Act*.

January 17, 2009 was the fourth 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 for the 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 and inform the public

regarding the role and mandate of the OIPC as well as the legislation. Additionally, resources were utilized to commence the process of developing the OIPC Policy and Procedures manual.

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 outside 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. Judgment

Each individual will use their professional judgment 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.

LINES OF BUSINESS

In delivering its mandate, the OIPC 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 will also review 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 members of the public are aware of their rights to access information and how they can exercise those rights. As appropriate, the Office informs the public about these rights through public commentary and education/awareness programs aimed at explaining the administration and operation of the *ATIPPA* and our Office. A series of province-wide education/awareness sessions were conducted in specific locations beginning 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 and protection of privacy of proposed legislative schemes or programs of public bodies.

NUMBER OF EMPLOYEES

The Office has a staff complement of 9, including the Commissioner (56% female and 44% male). Of the nine positions, one is currently being filled on a temporary basis.

PHYSICAL LOCATION

The OIPC is located at 34 Pippy Place, St. John's, Newfoundland. The Office relocated from the 5th Floor, East Block, Confederation Building in September 2008. The move of the OIPC to an office location outside the government building was long overdue and serves to underscore the independent nature of the Office. The OIPC, although having responsibility to protect the rights of all citizens of Newfoundland and Labrador under *ATIPPA*, is located in St. John's with no regional offices or representatives.

REVENUES AND EXPENDITURES

The 2008/09 budget for the Office of the Information and Privacy Commissioner was \$810,200. The details are noted below and on page 15 of the report.

01 Salaries	510,800
02. Employee Benefits	6,500
03. Transportation & Communications	49,700
04. Supplies	8,500
05. Professional Services	85,000
06. Purchased Services	124,200
07. Property, Furnishings & Equipment	<u>25,500</u>
Total	<u>810,200</u>

OTHER KEY STATISTICS

Access Requests

Although the Office processed 33 more active files in 2008/09 than it did in 2007/08, the complexity of these seems to be compounding resulting in more investigative time required and longer periods needed to conclude the investigation and report.

2007/2008 – 131 active files in total

2008/2009 – 164 active files in total

Privacy Requests

Privacy complaints have presented a large challenge for the Office since Part IV of the *ATIPPA* (privacy provisions) was proclaimed into force in January 2008. Privacy breach investigations tend to be complex and time consuming, requiring significant periods of time to conclude.

2007/2008 – 6 active files in total

2008/2009 – 23 active files in total

HIGHLIGHTS AND ACCOMPLISHMENTS

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

1. Participation in the Canada Infoway Conference, Victoria, BC.
2. Co-hosted a major Privacy Workshop with Memorial University of Newfoundland, Office of the Chief Information Officer and the Access to Information and the Protection of Privacy Coordinators Office, Department of Justice.
3. Attended the Federal/Provincial/Territorial Commissioners' Conference, Regina, Saskatchewan.
4. Five Access and Privacy Analysts including the Assistant Commissioner attended and the majority presented at the annual Access and Privacy investigation conference in Ottawa.
5. Selected staff attended Access and Privacy conferences in Edmonton, Alberta and Moncton, New Brunswick.
6. Several presentations delivered to Eastern Health staff as part of that organizations ongoing privacy training activities.
7. Presentation to Continental Media Group.
8. Presentation to Corner Brook Town Council.
9. Commissioner attended the 31st International Data Protection Agency Conference, Strasbourg, France.
10. Presentation to the Senior Administrative Advisory Group, Memorial University of Newfoundland.
11. Presentation to the Law Society, Newfoundland and Labrador.
12. Presentation to Deputy Ministers.
13. Presentation to the Canadian Bar Association, Access and Privacy Group.
14. Presentation to the Senior Management Group, Newfoundland and Labrador Housing Corporation.

15. Participated in a number of events at Memorial University as part of Data Privacy Day activities, in partnership with the University and Camouflage Software Inc.
16. Attended Federal/Provincial/Territorial Commissioners' Conference, Ottawa.
17. Several Access and Privacy Analysts attended mediation and negotiation training, Ottawa.
18. Continued participation and consultation with officials in the Department of Health and Community Services and Newfoundland and Labrador Centre for Health Information dealing with various aspects of the preparation and anticipated proclamation of the *Personal Health Information Act (PHIA)* some time in late 2009 or early 2010.
19. OIPC has been involved in a number of court cases throughout this reporting period. Several have concluded but a number have run over into the current fiscal year and will hopefully be concluded in the fall/winter 2009.

OUTCOME OF OBJECTIVES/REPORT ON PERFORMANCE

Objective - By March 31, 2009, the Office of the Information and Privacy Commissioner launched an initiative to develop a policy and procedures manual to guide and enhance the work of the Office.

Measure: *Launched an initiative to develop a policy and procedures manual.*

Indicators	Accomplished 2008/2009
<ul style="list-style-type: none"> ➤ Staff sessions conducted to identify and discuss policy and procedure needs of the Office. ➤ Lead person appointed to undertake this initiative. 	<p>This objective has been accomplished. During this reporting period, action was initiated that saw an appointment, on a temporary basis, to lead the development of a policy and procedures manual to guide the work of the Office. This person had a substantial background and experience in policy development. She very capably led the policy development process which comprised a series of staff sessions to identify and discuss the priority for policy and procedure needs of the</p>

<ul style="list-style-type: none"> ➤ A series of discussions/ decision sessions completed. ➤ Action initiated to assemble and publish the manual. 	<p>Office. Following the drafting of the policies and procedures another series of discussions and decision briefings were held. Finally, a series of discussions were held to fine tune the end product. As a result of this initiative, a policy manual has been developed. Thirteen policies have been drafted and are currently being used by the Office to guide our work. It is anticipated that during the next reporting period these policies and procedures once refined should be ready to be published on the OIPC website and will form the foundation documents for a much more expanded array of policies and procedures.</p>
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Objective: By March 31, 2010, the Office of the Information and Privacy Commissioner will have continued work on the development of the policy and procedures manual including jurisdictional reviews and best practice discussions.

Measure: Will have continued work on the development of a comprehensive policy and procedures manual including jurisdictional reviews and best practice discussions to guide the work of the OIPC.

Indicators:

- Progress made on policies and procedures manual
- Jurisdictional reviews completed
- Discussions held on best practices

Objective: By March 31, 2009, the Office of the Information and Privacy Commissioner conducted a review of the standard and quality of performance by all Public Body ATIPPA Coordinators as it relates to the processing of requests for information. (This will be limited to the public bodies with which the OIPC had interacted during this reporting period).

Measure: Conducted a review of the standard and quality of performance by public body ATIPPA Coordinators.

Indicators	Accomplished 2008/2009
<ul style="list-style-type: none"> ➤ Discussion and feedback sessions conducted. ➤ Follow-up with public body as it relates to performance of duties under the Act. 	<p>This objective has been accomplished. As indicated in the objective, this initiative was limited and did not include the Coordinators for all 467 public bodies subject to the <i>ATIPPA</i>. Considerable debate and discussion during the period occurred between the OIPC and the ATIPP Coordinating Office, Department of Justice as to how best to approach and accomplish this goal. On an individual Coordinator basis, feedback and discussion on process occurred in each and every case there was a request to this Office, with a view to improving processes, streamlining and ultimately reducing the time required to conclude requests. Followed up with public body at the Executive level to help facilitate and streamline the information request process with the ultimate aim of clarifying exactly what is being requested, how to best identify and retrieve the requested information, reduce/avoid duplication of effort, reduce time line-turnaround time and to ultimately provide an improved service to the citizens of the Province. Additionally, significant efforts and progress has been made with regards to opening better lines of communication with the ATIPP Coordinating Office, Department of Justice. A number of meetings were held to facilitate this process with the aim of working collaboratively in developing processes that would enhance the ability of the OIPC to “get the word out” to Coordinators regarding best practices and procedures as viewed by the OIPC.</p>

	<p>It is acknowledged that the best mechanism to achieve these types of communications is through and in collaboration with the ATIPP Coordinating Office. The OIPC attended an ATIPP Coordinators Community of Practice meeting and made a presentation there. It is the intention of the OIPC to host (in partnership with the Coordinators Office) a Coordinators seminar to help enhance information sharing on processes and procedures.</p>
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Objective: By March 31, 2010, the Office of the Information and Privacy Commissioner will have continued liaison with the Department of Justice ATIPP Coordinating Office to identify coordinators for all public bodies.

Measure: Will have continued liaison with the Department of Justice ATIPP Coordinating Office to identify ATIPP Coordinators for all public bodies.

Indicators: Compile a comprehensive list of coordinators in all public bodies subject to ATIPPA.

Objective: By March 31, 2009, the Office of the Information and Privacy Commissioner completed a significant number of the planned 16 location town hall meetings.

Measure: Completed a significant number of meetings.

Indicator	Accomplished 2008/2009
<ul style="list-style-type: none"> ➤ The number of meetings completed. ➤ Feedback information gathered. 	<p>The Office has met and exceeded the objective concerning this goal in that all 16 planned locations were visited prior to March 31, 2009. This initiative was accomplished by utilizing and deploying all Access and Privacy Analysts, the Commissioner and Assistant Commissioner. The effort and resources dedicated to this initiative is</p>

	<p>reflective of the importance that the OIPC places on its mandate to educate and inform the Public concerning <i>ATIPPA</i>. An effort to further enhance the public awareness initiative resulted in a number of exposures in the various media including articles in The Telegram, and local community papers, talk show appearances, CBC Here and Now, Crosstalk on CBC, just to mention a few. Feedback was solicited and received on a one-on-one basis during and following the briefings in the various locations. Additionally, feedback was received as a result of each and every exposure of the Office to the public by way of telephone calls, e-mails, letters, etc.</p>
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Objective: By March 31, 2010, the Office of the Information and Privacy Commissioner will have continued to accomplish its goal of conducting briefings in all selected locations.

Measure: Will have conducted briefings.

Indicators:

- Number of sessions conducted;
- Number of participants attending/reached;
- Feedback received.

OPPORTUNITIES AND CHALLENGES

The Office of the Information and Privacy Commissioner is relatively young, much has happened since the proclamation of the Access Provisions in January 2005 in terms of the evolution of the Office. The volume of work has increased from year to year and continues to do so. Although the OIPC has been fortunate in receiving increased budgets resulting in greater investigative capacity, the backlog of outstanding files continues to grow and significant difficulty still exists in closing files within the legislated time period of 90 days. Additionally, the trend seems to be that a larger number of access requests seem to be very much more complicated requiring extended periods of time to research and conclude. To compound this situation, the demands placed on the Office as a result of the proclamation of Part IV (Privacy Provisions) in January 2008 have significantly increased. Many of the privacy breach investigations are very complicated, detailed and technical requiring a significant learning curve for the OIPC staff.

The OIPC is looking forward to the anticipated proclamation of the *Personal Health Information Act (PHIA)* however, there is some apprehension based on the potential workload that this may represent for this Office. Currently, the OIPC is the oversight office for 467 public bodies that fall under the *ATIPPA*. Under the *PHIA* the OIPC will be the oversight office for what will be literally thousands of custodians who will fall under that piece of legislation. Additionally, under *PHIA* the custodians will include both the public and private sectors. Once proclaimed, we will have to closely monitor the demands and if required identify appropriate levels of resources that will afford the Office a reasonable opportunity to achieve positive results within the legislated timelines.

Also, associated with the anticipated proclamation of *PHIA*, we will, during the coming months, undertake a number of training initiatives that will increase the level of knowledge and expertise of the OIPC staff in order to be adequately prepared when this legislation is proclaimed into force.

FINANCIAL STATEMENT

Expenditure and revenue figures included in this document are based on public information provided in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for fiscal year ending March 31, 2009 (un-audited).

	<u>Actual</u> \$	<u>Estimates</u> <u>Amended</u> \$	<u>Original</u> \$
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER			
Current			
6.1.01. Office of the Information and Privacy Commissioner			
01 Salaries	510,414	555,000	510,800
02. Employee Benefits.....	3,644	6,500	6,500
03. Transportation & Communications	34,790	49,700	49,700
04. Supplies	12,036	12,100	8,500
05. Professional Services.....	78,047	85,000	85,000
06. Purchased Services.....	72,970	94,600	124,200
07. Property, Furnishings & Equipment.	<u>50,584</u>	<u>51,500</u>	<u>25,500</u>
Total: Office of the Information and Privacy Commissioner	<u>762,485</u>	<u>854,400</u>	<u>810,200</u>

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