

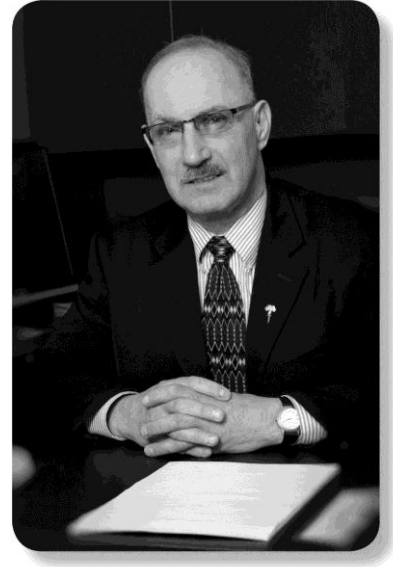


OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Annual Performance Report

2014-2015

www.oipc.nl.ca
1.877.729.6309



September 24, 2015

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.

In accordance with the *Act*'s requirements, I am pleased to present the Office of the Information and Privacy Commissioner's Annual Performance Report for April 1, 2014 to March 31, 2015.

As Commissioner, I am accountable for the results reported in the 2014-2015 Annual Performance Report.

A handwritten signature in cursive script, reading "E. P. Ring". The signature is written in dark ink 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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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 OIPC has the responsibility to protect the rights of all citizens of Newfoundland and Labrador under the *Access to Information and Protection of Privacy Act (ATIPPA)* and the *Personal Health Information Act (PHIA)*.

Number of Employees

The Office has a staff complement of twelve permanent positions and two temporary positions (64.3% female, 35.7% male).

Physical Location

The OIPC is located in the Sir Brian Dunfield Building, 2 Canada Drive, St. John's, Newfoundland.

MANDATE

The mandate of the OIPC is derived from the provisions of the *Access to Information and Protection of Privacy Act (ATIPPA)* and the *Personal Health Information Act (PHIA)*.

Under *ATIPPA* 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; and
- making recommendations to public bodies or the minister responsible for this *Act* about the administration of the *Act*.

Under *PHIA* includes:

- review a decision, act or failure to act of a custodian that relates to an access request for personal health information or a request for correction of personal health information;
- review complaints where an individual believes on reasonable grounds that a custodian has contravened or is about to contravene a provision of this *Act* or the regulations in respect to his or her personal health information or the personal health information of another;
- make recommendations to be in compliance with the *Act*;
- inform the public about the *PHIA*;
- receive comments from the public about matters concerning the confidentiality of personal health information or access to that information;
- comment on the implications for access to or confidentiality of personal health information of proposed legislation schemes or programs or practices of custodians; and
- comment on the implications for the confidentiality of personal health information of using or disclosing personal health information for records linkage or using information technology in the collection, storage, use or transfer of personal health information.

January 17, 2015 was the tenth 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. In the first several years following proclamation, 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. Internal capacity building was also a priority as it related to familiarization and knowledge building associated with the legislation, Commissioners rulings and precedent set in other jurisdictions across the country. Additionally, there was and still is a 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.

PHIA was proclaimed into force on April 1, 2011. It was anticipated that there would be an immediate and significant amount of work for our Office as a result of the proclamation. This was not the case, although *PHIA* has resulted in a significant workload, the increase was gradual and proportionate over the first two years of operation, however, the *PHIA* related workload has increased in this reporting period. Considerable effort has been expended during the past year in developing investigative methodology and internal procedures to address the oversight requirements of *PHIA*. The involvement of our Office from the early stages of *PHIA* development, as a member of the Implementation Steering Committee, several working groups and other advisory functions has been of significant assistance to the Office in addressing many of the issues and concerns since proclamation. Additionally, the very strong and positive working relationships developed between the OIPC, Department of Health and Community Services officials and the four Regional Health Authorities has also contributed to this Office's ability to deal efficiently and effectively with *PHIA* issues, such as complaints and breaches.

This Office values its 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 and custodians. 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* and *PHIA*.

4. Judgment

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

5. Respect

Each individual listens to and consider 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. We also investigate the appropriateness of fees charged for access to information. The Office also reviews the failure or refusal by a head of a public body to correct personal information that is in its control. Additionally, the Office conducts investigations based on complaints from citizens relating to the collection, use or disclosure of personal information by a public body.

The Office also reviews a decision, act or failure to act of a custodian that relates to an access request for personal health information or a request for correction of personal health information. We also investigate complaints where an individual believes that a custodian has contravened or is about to contravene a provision of *PHIA* or the regulation in respect to his or her personal health information or the personal health information of another.

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*, the *PHIA* and our Office. Additionally, all requests for review and complaints under *ATIPPA* and *PHIA* that result in a formal report are published on the OIPC website and available to the public.

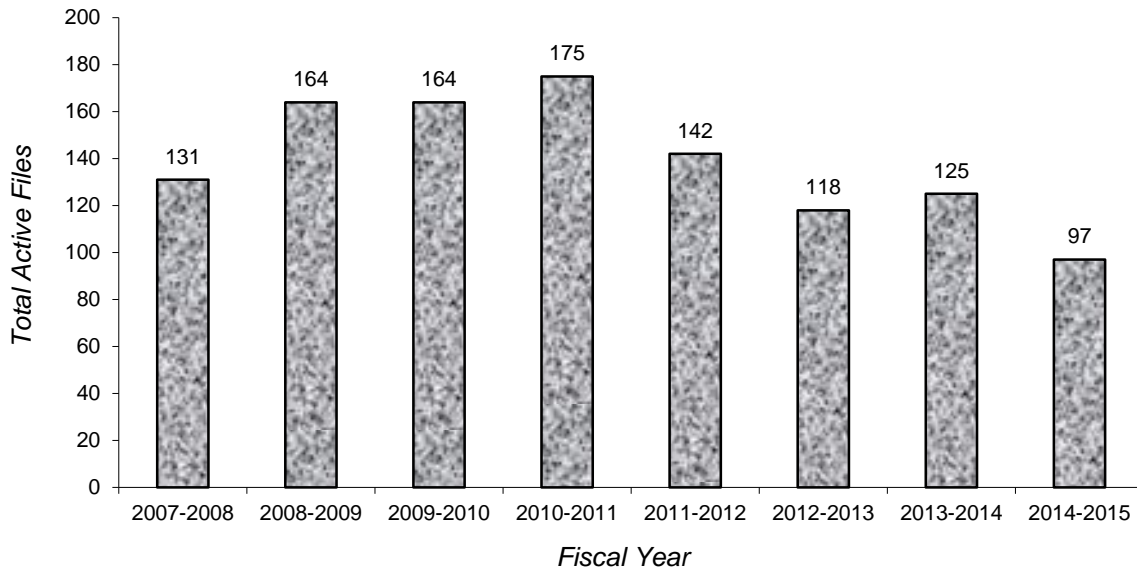
Oversight

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 and custodians.

OTHER KEY STATISTICS

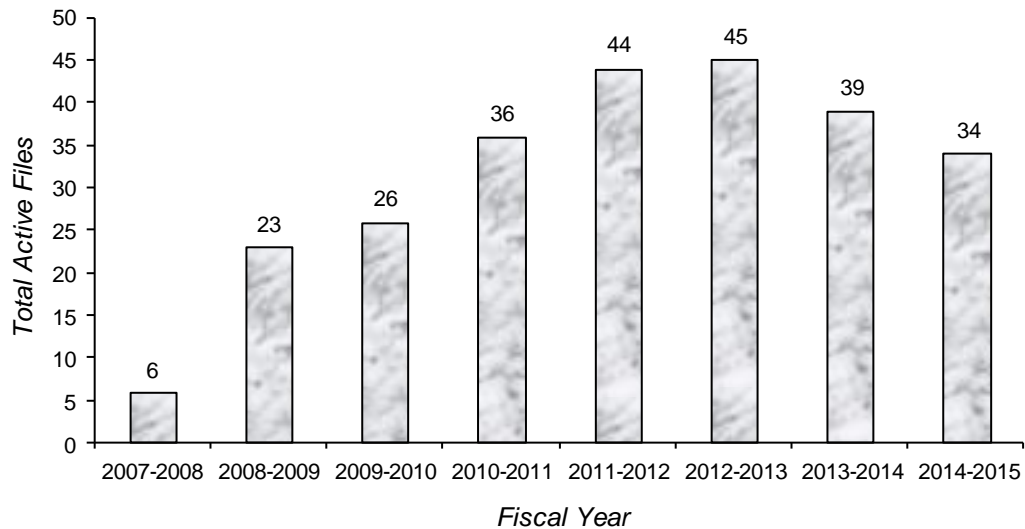
***ATIPPA* Access**

The complexity of access requests for review, time extension and fee complaint reviews seems to be increasing resulting in more investigative time required and longer periods needed to conclude the investigation and produce reports. This situation has occurred due to requesters becoming more familiar with the legislation, along with an increased sophistication in using the *Act* and improved skills in wording requests for information to public bodies.



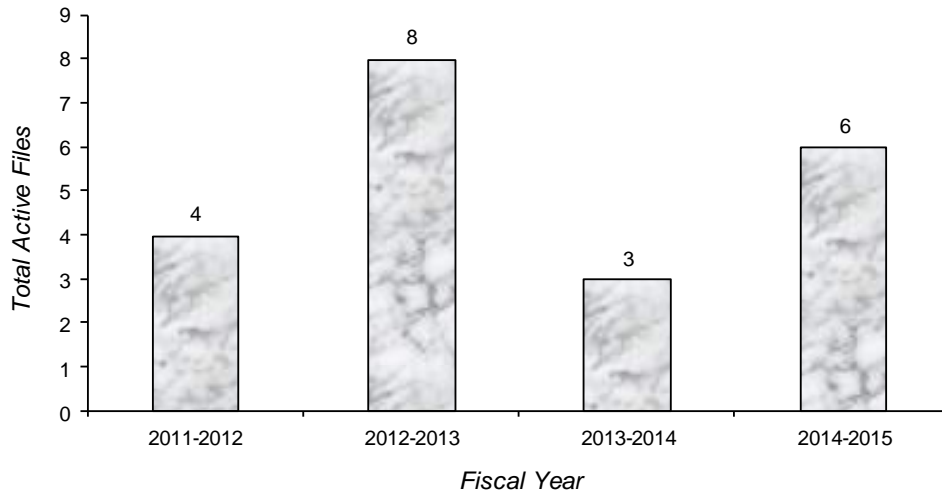
ATIPPA Privacy

Privacy breach complaints have presented a significant challenge for the Office. These investigations tend to be complex and time consuming, requiring significant periods of time to conduct and conclude. These investigations routinely require site visits on a number of occasions and the engagement of technical experts.



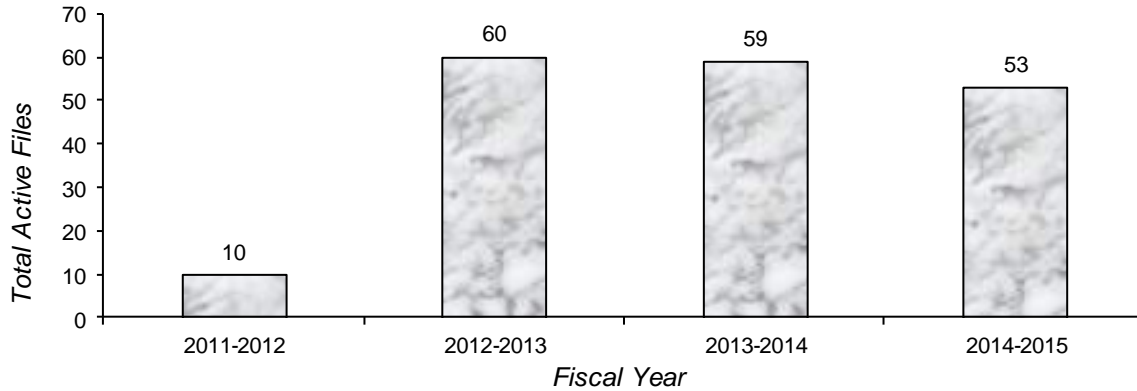
PHIA Access/Corrections Complaints

As stated earlier, the amount of work generated since the proclamation of *PHIA* has been gradual and manageable to date. The Office expects that the demand will increase over time as the legislation matures and public awareness is heightened.



PHIA Privacy Complaints

As indicated earlier in this Report, the amount of work generated since the proclamation of *PHIA* has been gradual and manageable. The Office expects that the demand will increase over time as the legislation matures and public awareness is heightened. It is worthy to note that these kinds of investigations are, on most occasions, very complicated and technical which has resulted in some files being transferred to other staff in the Office in order to facilitate site visits, training and technical expert consultation. This has, on occasion resulted in delay in concluding some investigations and publishing the resulting report.



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 accomplishment of the various mandates of the Office. A selection of these activities follows.

A main highlight for the 2014-15 reporting period was the *ATIPPA* review and the extent of involvement by the OIPC. The Office was notified in January/February 2014 that the second five year mandatory legislative review for *ATIPPA* was to occur in 2014, two years earlier than required. The Office was a major contributor to this process, conducting extensive research over a period of months, resulting in a comprehensive 100 page submission to the Review Committee. The Office was very active over the summer and fall periods attending and monitoring all public presentations made to the Review Committee. Additionally, all written submissions made to the Committee were monitored and reviewed by the Office which resulted in approximately a dozen subsequent comprehensive submissions to the Committee to provide an OIPC perspective on a number of issues raised by other presenters. The OIPC presented for a one half day session on the final day of hearings before the Committee. Throughout the late fall and winter period the Office responded to various requests from the Review Committee for various pieces of research and statistical information covering the period from 2005-2014.

1. April/May 2014 – Annual meeting/teleconference with the four regional health authorities.
2. Attended various court appearances in Corner Brook and St. John's as a result of the first two offence investigations and successful prosecutions under the *Personal Health Information Act (PHIA)*.
3. Conducted training with Workplace, Health and Safety Commission employees in St. John's.
4. Various meetings and consultations sessions with Minister, Deputy Minister and staff from the Office of Public Engagement.
5. Information management training with the Office of the Chief Information Officer, St. John's.
6. OIPC officials met with Information Management/Information Technology officials from the four Regional Health Authorities and Newfoundland Centre for Health Information, St. John's.
7. Consultations with CEO and officials from the English School Board.
8. Preliminary discussions with *ATIPPA* Review Committee and debriefing on the review report and draft legislation and received a copy of the report documentation.
9. Attended and participated in the press conference and release to the public of the *ATIPPA* Review Report.
10. OIPC staff attended the Atlantic E-Government Conference in Halifax.
11. OIPC staff participated in several telephone conferences regarding Canada's Digital Interface Working Group.
12. Meetings with organization and management officials concerning OIPC restructure and options as a result of the OIPC expanded mandate flowing from the *ATIPPA* Review and resulting legislation.
13. Various meetings with officials from the Department of Municipal and Provincial Affairs regarding "On-Line Voting".
14. Conducted Newfoundland and Labrador Access, Privacy, Security and Information Management Conference in St. John's, December 1-3, 2014.
15. Conducted approximately 15-20 school presentations on social media in various schools throughout Newfoundland.

VISION

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

MISSION

The mission statement of the Office of the Information and Privacy Commissioner outlines the priority focus over the next planning cycle. It represents our plan for the future and identifies various measures and indicators which will assist in the monitoring and evaluation process.

Mission: By 2017, 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 the access to information and personal health information as well as the privacy rights which are guaranteed by the *Access to Information and Protection of Privacy Act* and the *Personal Health Information Act*.

Measure: Improved capacity and effectiveness of the Office to provide service and support decisions.

Indicators
Reduced timeframes to conduct access reviews, increased number of informal resolutions and published review reports and recommendations.
Increased awareness initiatives
Developed ability to deal with privacy complaints and personal health information breach complaints.
Improved investigative methodology and continued with the development and production of a comprehensive policy and procedures manual to guide the work of the Office as it relates to <i>ATIPPA</i> and developed investigative methodologies to cater to <i>PHIA</i> issues.
Researched and developed comprehensive policies and procedures to guide the work of the Office as it relates to the <i>PHIA</i> .
Identified all governing bodies, colleges, boards and/or associations for the major custodian groups under <i>PHIA</i> .
Conducted liaison/consultation and education meetings with the governing bodies/associations.
Enhanced and updated the OIPC website as <i>PHIA</i> issues develop and mature.
Enhanced and/or introduced follow-up for 2011 ATIPP public body survey.

REPORT ON PERFORMANCE

Issue 1: 2014 ATIPPA Legislative Review

The Premier announced in February 2014 that a comprehensive review of the *ATIPPA* would be launched by the review committee being named in March 2014. The review was concluded by the end of 2014. The Office of the Information and Privacy Commissioner played a significant role in the review process by researching, preparing and submitting a comprehensive and detailed written submission. Additionally, oral presentation to provide clarification and context was delivered on an as required basis to the Review Committee. The Office was involved in detailed consultations and discussions as the review process unfolded and submissions were made by public bodies, citizens and any other stakeholders or interested party. Depending on the outcome of the review, the Office may not be able to rely on previous decisions to assist in our reports but will have to conduct the appropriate level of research to help identify and solidify the position of the Office on any new section of the *Act*.

Objective 1: By March 31, 2015 the Office of the Information and Privacy Commissioner will have researched, prepared and submitted its work with respect to the *ATIPPA* review.

Measure: Researched, prepared and submitted its work with respect to the *ATIPPA* review.

<i>Planned</i>	<i>Actual Results</i>
Jurisdictional scan conducted and all material compiled and reviewed.	This work was completed in May 2014. All staff were assigned various sections of the <i>ATIPPA</i> and jurisdictional comparisons were completed and reported upon. Best practices and solid legislation were identified and used to formulate the OIPC submission to the Review Committee.
Conducted a number of staff sessions to compile information on various sections of the <i>ATIPPA</i> assigned to each staff member.	Several sessions were conducted and analysts reported on research assignments and made appropriate recommendations for legislative amendment to the <i>ATIPPA</i> .
Commenced compilation of submission.	As a result of the above noted work, the OIPC's major submission to the Review Committee (100 pages) with draft legislation wording, was prepared in April/May in preparation for the scheduled June hearing dates for the Review Committee.
Participated in various consultation processes throughout the review period.	OIPC staff consulted with other jurisdictions across the country as well as a number of in-house discussions to facilitate the OIPC submission to the ATIPP Review Committee.

Posted all OIPC generated material with respect to the legislative review on the OIPC website.	All OIPC generated submission material for the Review Committee was posted on the OIPC website.
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Discussion of Results

The OIPC conducted a number of planning sessions, research and consultations resulting in a 100 page submission to the Review Committee along with a dozen subsequent submissions and one and a half days of presentations to the Review Committee.

Objective 2: By March 31, 2016 the Office of the Information and Privacy Commissioner will have initiated action to progress the work of the Office as required pending the result of the *ATIPPA* legislative review.

Measure: Initiated action to progress the work of the Office as a result of changes to *ATIPPA*, 2015.

Indicators for 2015-2016

Requested House of Assembly Management Commission approval for appropriate resource levels due to additional mandate workload.

Assigned new duties and responsibilities to existing and new staff.

Established guidance documents, guidelines, and policies to enhance the work of the Office.

Issue 2: *Personal Health Information Act (PHIA)*

The *Personal Health Information Act* was proclaimed into force on April 1, 2011. There are thousands of custodians responsive to this legislation, both public and private sector. The OIPC is the oversight body legislated to ensure compliance with this legislation. The Office has been very busy based on the demands placed on it as a result. A number of highly technical investigations presented a significant learning curve for the Office. Additionally, a number of privacy breach investigations and subsequent prosecution proceedings also presented considerable challenges during the past several years resulting in priority changes impacting the work place of the Office.

It was anticipated that by March 31, 2014 the *PHIA* policy and procedures manual would be completed and published. Due to unforeseen events over the past few years and the requirement to change and shift priorities, this work has not been completed. We will continue to pursue the development of the *PHIA* policy and procedures manual.

<p>Objective 1: By March 31, 2015 the Office of the Information and Privacy Commissioner will have continued to develop and define its draft <i>PHIA</i> policy and procedures manual.</p>	
<p>Measure: Continued to develop and define its draft <i>PHIA</i> policy and procedures manual.</p>	
<i>Planned</i>	<i>Actual Results</i>
<p>Conducted periodic staff sessions to discuss trends and evolving procedures to deal with <i>PHIA</i> related issues, requests, breaches and complaints.</p>	<p><i>PHIA</i> issues, trends and developments are routinely discussed as identified and methodologies and procedures are developed to deal with emerging issues. Due to the discussions at investigators meetings regarding policies and procedures concerning <i>PHIA</i> breaches, requests and complaints, periodic staff sessions were not necessary. Single issue focus groups also occurred to discuss process and procedures as a result of a number of privacy breaches related to personal health information.</p>
<p>Conducted a series of staff focus groups to flesh out policy and procedures.</p>	

<p>Discussion of Results</p>
<p>Although <i>PHIA</i> is a complex piece of legislation, there have been minimal problems and issues arising from it. This can be contributed to the balanced and measured approach taken by the stakeholders and implementation team responsible for its research, development and roll-out. <i>PHIA</i> remains to be a challenge for the OIPC due to the very large number of custodians responsive to the Act, this is particularly challenging as it relates to the very small, standalone custodian groups.</p>

<p>Objective 2: By March 31, 2016 the Office of the Information and Privacy Commissioner will have continued work on the draft <i>PHIA</i> policy and procedures manual.</p>
<p>Measure: Continued work on the draft <i>PHIA</i> policy and procedures manual.</p>
<p><i>Indicators for 2015-2016</i></p>
<p>Initiated action to continue work on the <i>PHIA</i> policy and procedures manual.</p>

<p>Issue 3: Public Education</p>
<p>The access provisions of <i>ATIPPA</i> were proclaimed in 2005 and the privacy provisions in January 2008. <i>PHIA</i> was proclaimed into force on April 1, 2011. The Department of Justice was initially responsible for the administration of <i>ATIPPA</i> and in 2013 that function was transferred to the Office of Public Engagement (OPE). The Department of Health and Community Services (HCS) is responsible for the administration of <i>PHIA</i>. As part of the roll-out for both the <i>ATIPPA</i> and <i>PHIA</i> both responsible organizations undertook extensive education and training initiatives. For <i>ATIPPA</i>,</p>

the OPE conducted training programs aimed at public bodies. In addition, a comprehensive policy and procedures manual was prepared and distributed to public bodies responsive to the legislation. Likewise, for *PHLA*, the HCS created a number of tools and resources to assist custodians in becoming *PHLA* compliant, as well as developed resources for custodians to educate themselves and train their staff.

This Office has been very supportive of these education and awareness programs and encourages both responsible organizations to continue their initiatives in this regard and to conduct program reviews and where necessary, upgrade their training programs as well as their policy and procedures manuals and resources.

The OIPC takes its responsibilities to educate the public about the *ATIPPA* and *PHLA* very seriously. Significant resources and effort have been invested by our Office to ensure, to the extent possible, that the Province have received appropriate, necessary and timely information on the *ATIPPA* and *PHLA*.

Objective 1: By March 31, 2015 the Office of the Information and Privacy Commissioner will have completed as many presentations/meetings as possible on both *PHLA* and *ATIPPA* in various locations throughout Newfoundland and Labrador.

Measure: Completed as many presentations/meetings as possible.

<i>Planned</i>	<i>Actual Results</i>
Co-hosted a major conference in Newfoundland and Labrador focusing on access, privacy, personal health information and records management.	The NL Access and Privacy Conference and workshops were held December 1-3, 2014. It was reported to be the best and most successful conference we've run with in excess of 150 participating. Much of the success could be attributed to the creation of both a Steering Committee and an Agenda Committee. Additionally, high level and prominent speakers and presenters were available.
Partnered with NLTA to launch a poster contest in the province to promote online privacy.	This initiative was not achieved due to other priorities and scheduled events of the NLTA. The OIPC underestimated the time commitment and timeframe necessary to complete the initiative.
Initiated the production of a quarterly newsletter to public bodies.	The August 2014 newsletter was sent to all public bodies. This edition reflected on the recent court decision <i>R. v. Spencer</i> , [2014] SCC 43 and its importance to the access and privacy field. Also highlighted the revamped Newfoundland and Labrador Access, Privacy, Security and Information Management (APSIM) conference and the OIPC's new role as hosts for the 2014 conference. Also in this edition, was a summary of Report A-2014-007 and an updated Resource List.

Discussion of Results

The Office is happy with the results achieved in this reporting year. Events such as annual meetings with the four regional health authorities, meetings and consultations with the Office of Public Engagement, consultations with various public bodies and custodians, and attending conferences and training sessions helped improve our Office’s ability to educate the public regarding the legislation. We will strive to enhance our position and performance in this area as circumstances in the Office change.

Objective 2: By March 31, 2016, the Office of the Information and Privacy Commissioner will have continued to conduct briefings/meetings and presentations in various locations throughout Newfoundland and Labrador.

Measure: Continued to conduct briefings/meetings and presentations in various locations throughout Newfoundland and Labrador.

Indicators for 2015-2016

Areas/locations identified and targeted.

Briefings/meetings conducted.

Gathered and analyzed feedback information.

OPPORTUNITIES AND CHALLENGES

The Office of the Information and Privacy Commission is expecting a very busy year during the next reporting period due to the scheduled mandated legislative review of the *Personal Health Information Act*. As well, we expect, based on the advancements in technology, such as surveillance, social media, etc., to be involved in more comprehensive systemic investigations. Additionally, the new mandate allows the OIPC to undertake “own motion” privacy breach investigations which will present a challenge and a large workload.

Other challenges will be to achieve reasonable currency with the relentless pace of advancement in information management technology. These advancements in technology will continue to present challenges as systems and equipment continue to evolve. These challenges are of particular concern to the smaller oversight offices that have limited resources to allocate to technology monitoring.

In conclusion, the OIPC will continue to strive to fulfill the various components of its mandate. We continue to strive to create an environment of open communication and dialogue with public bodies

and custodians and work in a spirit of cooperation. The very positive and productive relationship that was created two years ago with the opening of the Office of Public Engagement (OPE) continues to evolve. It is fair to say at this point that post *ATIPPA* Review and the resulting legislation that was proclaimed into force on June 1, 2015 has substantially increased the role and mandate of the OIPC, and priorities for the Office may change as resources become available and the true scope of the work demands are realized.

A large number of new and expanded functions have been added which will require the Office to be restructured and adequately resource in order to achieve positive results and be successful in delivering the quality services that the citizens of the province demand and deserve. This province now clearly has the strongest access and privacy legislation in the country but the strength of the Act will be largely measured by the OIPC ability to effectively oversee the Act and deliver on the required programs.

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, 2015 (un-audited).

	<u>Actual</u> \$	<u>Estimates 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	910,450	918,700	938,200
02. Employee Benefits	4,435	4,500	4,500
03. Transportation & Communications	28,071	32,600	32,600
04. Supplies	9,757	10,300	10,300
05. Professional Services	62,967	63,000	40,000
06. Purchased Services	101,322	117,100	151,500
07. Property, Furnishings & Equipment.	<u>12,398</u>	<u>12,400</u>	<u>1,000</u>
02. Revenue – Provincial	(37)		
Total: Office of the Information and Privacy Commissioner	<u>1,129,363</u>	<u>1,158,600</u>	<u>1,178,100</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.