



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

# Annual Report 2021-2022





OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

September 27, 2022

The Honourable Derek Bennett  
Speaker of the House of Assembly  
Newfoundland and Labrador

I am pleased to submit to you the Annual Report for the Office of the Information and Privacy Commissioner in accordance with section 9 of the *Transparency and Accountability Act*, section 105 of the *Access to Information and Protection of Privacy Act, 2015*, and section 82 of the *Personal Health Information Act*. This Report covers the period from April 1, 2021 to March 31, 2022.

As Commissioner, I am accountable for the results reported herein and for any variances from the objectives outlined in the 2020-2023 Activity Plan.

Yours truly,

Michael Harvey  
Information and Privacy Commissioner



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## COMMISSIONER'S MESSAGE

While for the most part 2021-2022 was a year of stability and resiliency for access and privacy among public bodies and custodians in Newfoundland and Labrador, there were some significant challenges and some evidence of strain after a difficult period.

The most notable challenge in the provincial access and privacy world was the cyber attack on Newfoundland and Labrador's health system which occurred in October 2021. This attack, which caused system wide disruption throughout the province involved a breach of personal information and personal health information of a broad swath of the population –affecting anyone who had registered with Eastern, Central or Labrador-Grenfell Regional Health Authorities as a patient, going back for years, as well as certain patients of the Western Regional Health Authority and anyone who had been an employee of Eastern, Central or Labrador-Grenfell Health, going back as far as 28 years. The number of people affected is thus certainly in the hundreds of thousands of people. The attack was one of the largest such breaches in Canadian history. The investigation that was launched and continued into the 2022-2023 period will be the largest investigation that the OIPC has conducted.

As it relates to access to information, in many respects there was stability. The overall number of complaints about access to information under *ATIPPA, 2015* was broadly consistent with previous years. The number of reports released was particularly high, matching the record high of just the previous year – 42 in each reporting period. As it happens, it seems that there was a particularly high concentration of reports during the 2021 calendar year, overlapping the reporting period in question and the previous one. The first three quarters of 2021-2022

(April – December 2021) saw 34 access reports issued, continuing a trend from the previous reporting period when the final quarter (January - March 2021) saw 15 reports issued. However, as the calendar turned over into 2022 the rate of report issuance declined: only four *ATIPPA, 2015* access reports were issued in the final quarter of this reporting period (January – March 2022). OIPC staff have discussed and studied this at some length to determine an explanation for the high rate of complaints that proceeded to report as a proportion of overall complaints, the number of which was relatively stable year-to-year. Little in the way of an explanation could be found and ultimately we accepted that this high rate of reports was likely a statistical anomaly.

There were, however, some trends in the types of access complaints that we received during 2021-2022 that are noteworthy and concerning. First, *ATIPPA, 2015* establishes that if a public body does not respond to an access request within the legislated timeframe, and has not received approval from this Office for an extension, it is deemed to have refused access to the requested information. We do not have complete data on how often this happens because we only know about cases of deemed refusals if the applicant complains to this Office about it; for example, there may be instances in which a public body provides a late response to an applicant and the applicant does not complain because they ultimately have the records. However, we do track deemed refusal complaints. For each year since the new *Act* came into force, the number of deemed refusal complaints had been in the low single digits – the previous high point having been five in 2020-2021. In previous Annual Reports we have remarked upon how this low rate of deemed refusal complaints is evidence of a system that was mature, staffed by experienced ATIPP coordinators, and operating properly. However, in 2021-2022 there was a significant spike in such complaints, increasing to 16. We are concerned that this is an indication that the access system is under considerable strain.

We expect that this strain comes in part from increased demand, with a higher number of requests and, in part, from the stretched resources available to respond to that demand. We understand anecdotally that the number of access requests has increased substantially since the start of the COVID-19 pandemic. We do not, unfortunately, have comprehensive data on the overall number of requests. The Department of Justice and Public Safety's ATIPP Office has recently released the overall number of requests for the first year of the pandemic (2020-



2021), and at a total of 2,773 it is actually marginally lower than the year that preceded it. Data on 2021-2022 – the reporting year for this Annual Report – is not yet available. However, when receiving extension requests from public bodies, we often receive an account of how many active requests they have, and in some instances they seem remarkably high. The number of extension requests received from public bodies in 2021-2022, at 604, was significantly higher than the previous two years (467 and 479 respectively), even considering that those two years included extensions that were given to most or all public bodies during three broad disruptions – the January 2020 winter storm and two COVID-19-related disruptions. Pre-pandemic norms for extension requests were less than a third of the 2021-2022 level.

Moreover, many public bodies, like much of the rest of the economy, are facing considerable staff turnover and vacancies driven by the number of people leaving the workforce due to retirement and other factors. Turnover itself is a challenge, but we hear anecdotally, and experience ourselves, that recruitment is very challenging in today's labour market.

This combination of high turnover and vacancies in certain public bodies alongside a surge in access requests has, we expect, contributed to some public bodies simply missing deadlines. This is a significant concern. We are less concerned about the trends themselves – we expect that much of the surge in access requests is likely driven by the pandemic itself and as the threat faced by the province recedes, we expect that the number of requests will abate and return to the norm. Our concern has to do with the fact that these deemed refusals are unnecessary. If a public body cannot meet its statutory deadline under *ATIPPA, 2015* then it can apply to this Office to approve an extension. As reported below, and as is normally the case, we approved almost all of the extension requests we received in 2021-2022 in whole (79%) or part (15%). For the most part, when public bodies come to us for extensions they come with good reasons for them. The mere fact that public bodies need to ask for OIPC approval of an extension has, until now, been an effective incentive for public bodies to respond to access requests on time and historically this has been the case for the vast majority – in the order of 90 percent – of requests. However, the increasing rate of deemed refusals raises with us the concern that, among certain public bodies, the diligence in compliance with the Act that had developed in the first five years of it coming into force may

be slipping. It is important to note that I am not implying that the hard working ATIPP Coordinators in each public body are not doing their absolute best. My concern is that public bodies are not giving sufficient priority to the system in a number of ways, such as taking steps to recruit and retain ATIPP Coordinators, ensuring that they have the supports they need, and giving appropriate attention to the function at the executive and senior management levels so that it operates smoothly.

The OIPC understands that the past two years have been extremely difficult for all public bodies as they have struggled to meet their core mandates in the face of fiscal, public health, human resource and demographic challenges. However, excellence in the delivery of public services is promoted by a strong and healthy democracy that, in turn, is promoted by transparency and accountability. Compliance with *ATIPPA, 2015* is not something that can be considered a luxury for when things are going well. A lack of compliance will erode public trust and only exacerbate the challenges faced by public bodies. The OIPC encourages public bodies to consider that being accountable and transparent to the public, including through compliance with the access provisions of *ATIPPA, 2015*, is *part* of their core mandate as democratic public institutions. We understand that it is a challenge to devote the time and resources to this function in light of everything else that needs to be managed, but it is a challenge that must be met. At the OIPC we are appreciative of the challenges of public administration and committed to work with public bodies to help meet them; however, it must be within the legal requirements by which we are all bound.

### *Summary of OIPC Activities*

	2021-2022	2020-2021	2019-2020	2018-2019
<b><i>Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)</i></b>				
Access Complaints Received	131	124	134	112
Privacy Complaints Received	42	39	41	41
Special Investigation Complaints Received	0	0	2	
Time Extension Applications Received	604	479*	449**	181
Applications to Disregard Received	70	45	162	94
Breach Notifications Received	207	215	214	240
<b><i>Personal Health Information Act (PHIA)</i></b>				
Access Complaints Received	3	1	8	7
Privacy Complaints Received	21	14	17	16
Breach Notifications Received	33	35	20	16
<b><i>Advocacy and Compliance</i></b>				
Guidance Documents***	7	2	3	8
Speaking Engagements/Presentations	10	3	19	38
Audit	0	1	0	1

\*218 during COVID-19 Shutdown and 261 Normal Requests.

\*\*110 during the State of Emergency; 100 during COVID-19 shutdown; and 239 Normal Requests.

\*\*\*Includes originals and revisions.

## ABOUT THE OFFICE

### OVERVIEW

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

- Advocacy and Compliance; and
- Investigations.

OIPC oversees compliance with and protects and promotes rights and obligations established under *ATIPPA, 2015* and *PHIA*.

### Number of Employees

OIPC has a staff complement of 13 permanent positions (69% female, 31% male).

### Physical Location

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

### Budget

The 2021-2022 budget for OIPC was \$1,335,757. Details of revenues and expenditures can be found on page 14 of this Report.

An annual listing of all employees who receive total compensation of more than \$100,000 a year can be found on OIPC's website at <http://www.oipc.nl.ca/compensation>. This listing is published in accordance with the *Public Sector Compensation Transparency Act*.

## MANDATE

The Information and Privacy Commissioner of Newfoundland and Labrador is an independent officer of the House of Assembly (HOA).

OIPC is responsible for oversight of the province's two access and privacy laws.

### ***Access to Information and Protection of Privacy Act, 2015***

*ATIPPA, 2015* applies to more than 400 public bodies, including government departments, agencies, boards, commissions, crown corporations, public educational bodies, regional health authorities, and municipalities.

*ATIPPA, 2015* gives people the right to access records in the custody or under the control of a public body, subject to specific and limited exceptions. The Act also gives people a right to access their own personal information held by public bodies and to request correction of their personal information. *ATIPPA, 2015* protects individuals' privacy by setting out requirements for public bodies regarding the collection, use, storage, and disclosure of personal information.

### ***Personal Health Information Act***

*PHIA* applies to thousands of custodians, including all health care authorities in the province, all health care providers, health care professionals, and other custodians of personal health information. *PHIA* applies to public and private custodians.

*PHIA* establishes rules regarding how personal health information may be collected, used and disclosed by custodians. *PHIA* protects individuals' privacy, as well as giving individuals a right to access their own personal health information and to request correction of their health information.

### **Commissioner's Powers and Duties**

Under *ATIPPA, 2015*, the Commissioner has significant powers and duties, including:

- investigating 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 privacy complaints and initiating privacy investigations;
- making recommendations to ensure compliance with the Act and Regulations;
- informing the public about and facilitating public understanding of *ATIPPA, 2015*;
- receiving comments from the public about the administration of *ATIPPA, 2015*;
- 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 fulfil the duty to assist applicants;
- making recommendations to public bodies or the minister responsible for *ATIPPA, 2015* about the administration of the Act;
- conducting audits and reporting findings of public bodies' performance of duties and obligations under *ATIPPA, 2015*;
- reviewing and commenting on Privacy Impact Assessments (PIAs), as required to be completed by government departments developing new programs and services;
- researching access and privacy developments and advancements in technology related to access and privacy;
- making special reports to the House of Assembly related to subjects within the scope of function and duties of the OIPC; and
- filing orders with the Court to compel compliance by public bodies with the Commissioner's recommendations, as provided for under *ATIPPA, 2015*.

The Commissioner's powers and duties under *PHIA* differ somewhat. The powers and duties of the Commissioner under *PHIA* include:

- reviewing a complaint regarding a custodian's refusal of a request for access to or correction of personal health information;
- reviewing a complaint regarding a custodian's contravention or potential contravention of the Act or Regulations with respect to personal health information;
- making recommendations to ensure compliance with *PHIA*;
- informing the public about *PHIA*;
- receiving comments from the public about matters concerning the confidentiality of personal health information or access to that information;
- commenting on the implications for access to or confidentiality of personal health information of proposed legislative schemes or programs or practices of custodians;
- commenting on the implications for the confidentiality of personal health information, of using or disclosing personal health information for record linkage, or using

information technology in the collection, storage, use or transfer of personal health information; and

- consulting with any person with experience or expertise in any matter related to the purposes of *PHIA*.

## LINES OF BUSINESS

In delivering its mandate, OIPC provides the following lines of business.

### **Advocacy and Compliance**

Under *ATIPPA, 2015*, a number of new or expanded roles were prescribed for OIPC. In order to fulfil this new and expanded mandate as efficiently and effectively as possible, it was determined that this role be made a separate and distinct line of business. This line of business incorporates the following parts of OIPC's mandate.

- 1) Education (for the general public; public bodies under *ATIPPA, 2015*; and custodians under *PHIA*)

*ATIPPA, 2015* prescribes two specific mandates in relation to education – for public bodies, as well as for the general public. *PHIA* also mandates that the Commissioner inform the public about the *Act*. New guidance material is continually under development, with priority being given to issues that appear to be the most challenging for the public as well as public bodies and custodians.

OIPC strives to ensure that members of the public are aware of their rights of access to information and protection of privacy, and how those rights are protected and supported. As appropriate, OIPC informs the public about these rights through public commentary and education and awareness presentations aimed at explaining the administration and operation of *ATIPPA, 2015*, *PHIA* and the Office. Additionally, all reports issued by the Commissioner under *ATIPPA, 2015* and *PHIA* are published on OIPC's website. OIPC also uses its Twitter account to broaden public awareness of privacy and access to information issues.

OIPC is very much engaged in education and training for public bodies. In this regard, OIPC continues to issue newsletters and to offer presentations to various audiences, including

groups of Access and Privacy Coordinators and senior leadership within public bodies. OIPC has also developed a wide variety of guidance documents to assist public bodies in interpreting *ATIPPA, 2015*. These are sent to Access and Privacy Coordinators by email, discussed in presentations, summarized in the newsletter, and posted on OIPC's website.

OIPC, in cooperation with several stakeholders, also produces a biennial Access, Privacy, Security, and Information Management Conference. Originally scheduled for April 2020 but postponed due to the pandemic, the most recent conference was presented entirely online in March 2021.

## 2) Audit

An important feature of *ATIPPA, 2015* is OIPC's audit function, which provides the broad mandate to audit the practices and procedures of public bodies related to any aspect of how they carry out their role and functions regarding *ATIPPA, 2015*. To accomplish this, in-house expertise has been developed based largely on intensive study of experiences from other jurisdictions, in particular, British Columbia.

## 3) Privacy Impact Assessment (PIA) Review

This is another important feature of *ATIPPA, 2015*. Specific circumstances are prescribed in *ATIPPA, 2015* for when OIPC is required to review a PIA. Ministers of all departments or branches of executive government are now required to complete a PIA, or preliminary PIA indicating that a full PIA is not required, in conjunction with the development of programs or services. If the PIA involves a common or integrated program or service, the privacy assessment must be shared with OIPC for review and comment. Public bodies sometimes request that OIPC review a PIA or preliminary PIA even if not required by law, to assist in satisfying themselves that the program or service is in compliance with *ATIPPA, 2015*. Information about PIA expectations is available on OIPC's website.

## 4) Privacy Breach Reporting

Yet another role prescribed by *ATIPPA, 2015* is a requirement for public bodies to report all privacy breaches to OIPC. This requirement provides important information to OIPC about privacy compliance issues and it helps OIPC to identify emerging or repeating patterns in privacy breach incidents. OIPC is thus able to ensure timely topics for



presentations, newsletters, and new guidance documents. If a concerning pattern is noticed in such reports, direct follow-up with the public body occurs to offer assistance, targeted training, and to learn more about root causes.

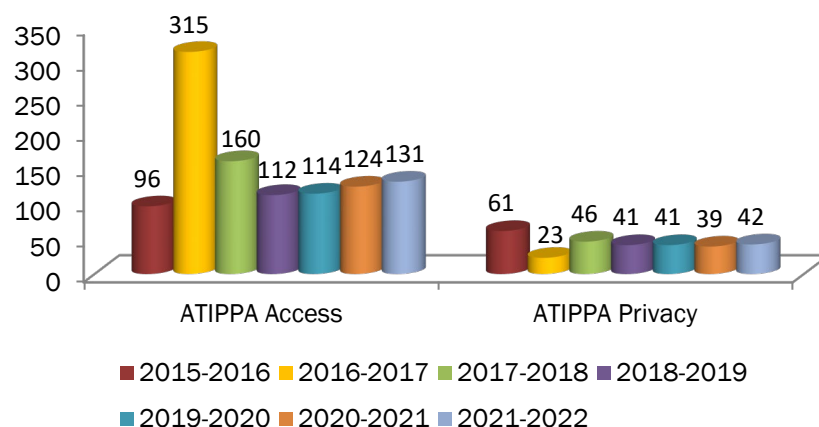
## Investigations

Under *ATIPPA, 2015*, the investigative mandate of OIPC expanded considerably. OIPC is specifically mandated to conduct the following types of investigations:

- complaints from access to information applicants relating to a decision, act or failure to act by the head of a public body in response to an access to information request;
- complaints from access to information applicants about a cost estimate for an access request or a refusal to grant a waiver of costs to be charged for access to information;
- complaints about a failure or refusal by a head of a public body to correct personal information; and
- complaints from members of the public relating to the collection, use or disclosure of personal information by a public body.

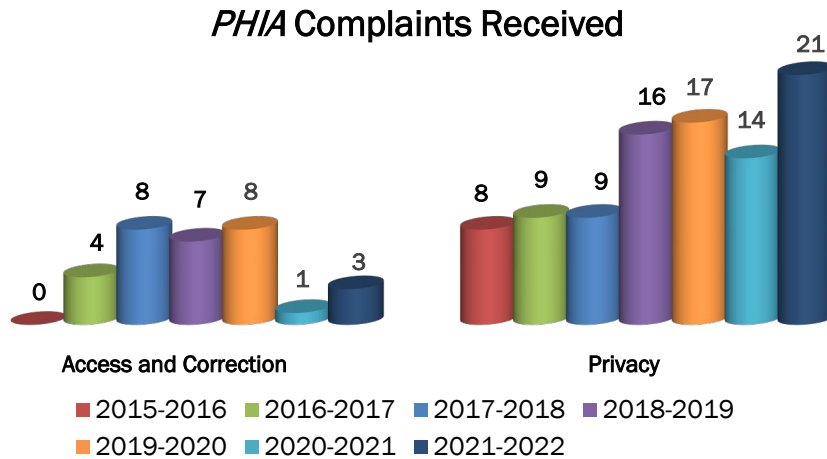
The Commissioner may also initiate, on his or her own motion, an investigation relating to the collection, use or disclosure of personal information by a public body.

### *ATIPPA, 2015* Complaints Received



Under *PHIA*, OIPC investigates complaints from individuals that a custodian has denied a request for access to personal health information or a request for correction of personal

health information. OIPC also investigates complaints where an individual believes that a custodian has contravened or is about to contravene a provision of *PHIA* or the Regulations in respect to his or her personal health information or the personal health information of another.



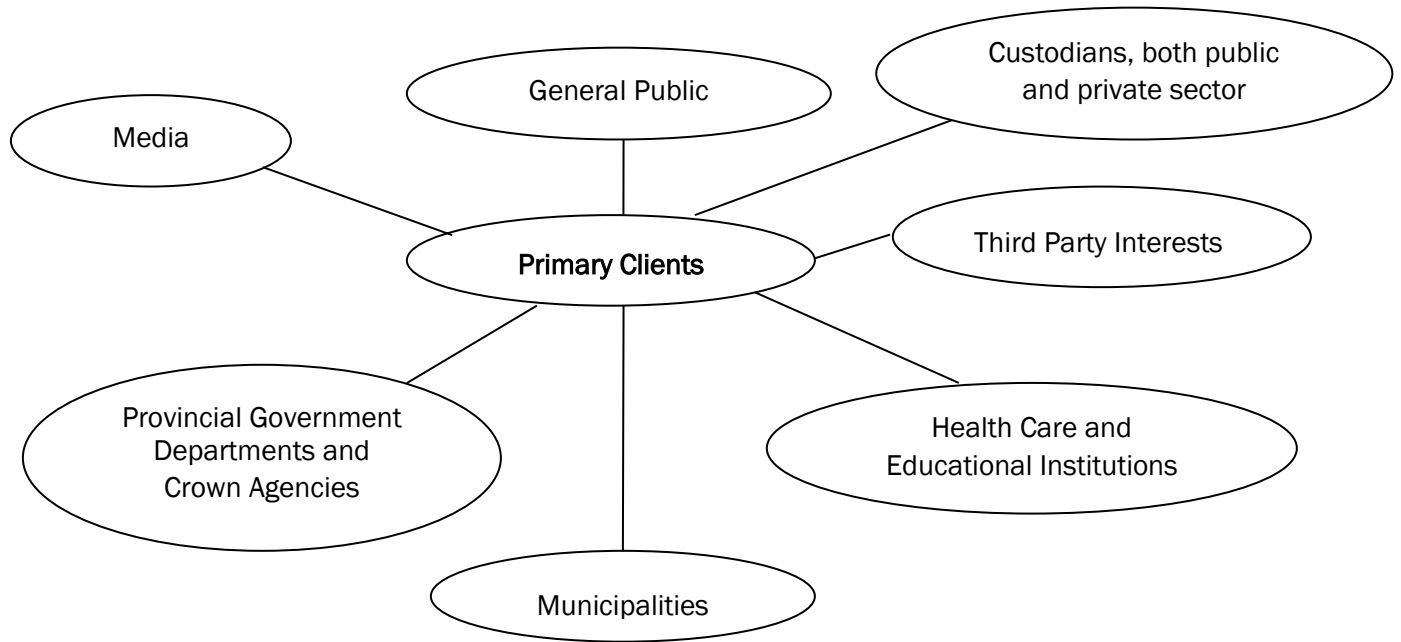
## VALUES

OIPC safeguards its role as an independent supporter and advocate for the access to information and protection of privacy rights of the citizens of the province. Every effort is taken to ensure integrity so that we are trusted by those we serve, as well as by public bodies and custodians who are bound by the laws we oversee. The following actions flow from these values and they continue to guide OIPC moving forward.

Value	Action Statements
Independence	The conduct of investigations shall be independent of any conflict of interest or other inappropriate influences.
Integrity	Every effort will be made to provide timely, accurate, impartial, and unbiased advice and recommendations and to treat information in our trust with the proper level of confidentiality.
Judgment	Professional knowledge and judgment will be exercised in interpreting policies, practices, and procedures to ensure compliance with <i>ATIPPA, 2015</i> and <i>PHIA</i> .
Respect	The ideas and opinions of others will be listened to and considered and staff of OIPC will work collaboratively with one another to achieve results.

## PRIMARY CLIENTS

OIPC defines its primary clients as the people of the province and the entities whose activities we oversee, as well as any others who are granted rights or bear responsibilities under *ATIPPA, 2015* and *PHIA*. These clients are made up of several groups, including:



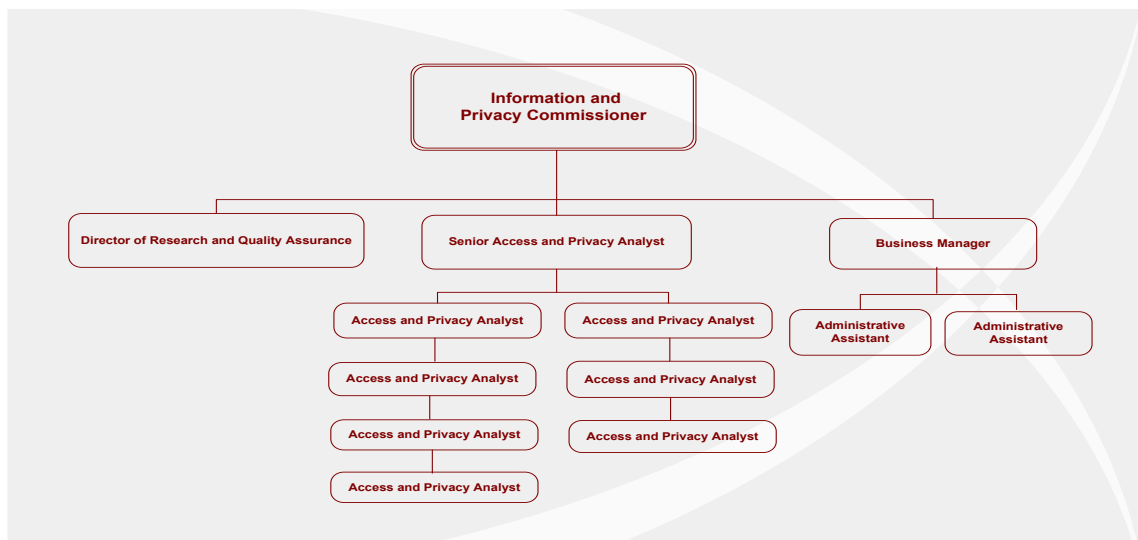
### VISION

Our vision is one where the explicit requirements as well as the values and philosophy underpinning *ATIPPA, 2015* and *PHIA* are upheld through the legislative oversight efforts of this Office, with the goal that all public bodies and custodians subject to these laws operate at the highest level of compliance reasonably possible.

## ORGANIZATIONAL STRUCTURE

The Office has a staff complement of 13 permanent positions (69% female, 31% male).

Following is an organizational chart for OIPC.



## 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, 2022 (unaudited).

	Actual \$	Estimates Amended \$	Original \$
<b>6.1.01. Office of the Information and Privacy Commissioner</b>			
01 Salaries	<b>1,087,882</b>	1,122,400	1,161,800
02. Employee Benefits	<b>3,147</b>	4,500	4,500
03. Transportation & Communications	<b>13,169</b>	20,600	32,800
04. Supplies	<b>5,747</b>	6,700	6,700
05. Professional Services	<b>65,585</b>	65,600	50,000
06. Purchased Services	<b>137,866</b>	138,000	122,400
07. Property, Furnishings & Equipment	<b><u>22,361</u></b>	<u>22,400</u>	<u>2,000</u>
	<b><u>1,335,757</u></b>	<u>1,380,200</u>	<u>1,380,200</u>
02. Revenue - Provincial			
<b>Total: Office of the Information and Privacy Commissioner</b>	<b><u>1,335,757</u></b>	<u>1,380,200</u>	<u>1,380,200</u>

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

## STATISTICS

Statistical breakdown for the 2021-2022 reporting period can be found on our website, [www.oipc.nl.ca/statistics](http://www.oipc.nl.ca/statistics). Highlights are provided below.

### *ATIPPA, 2015*

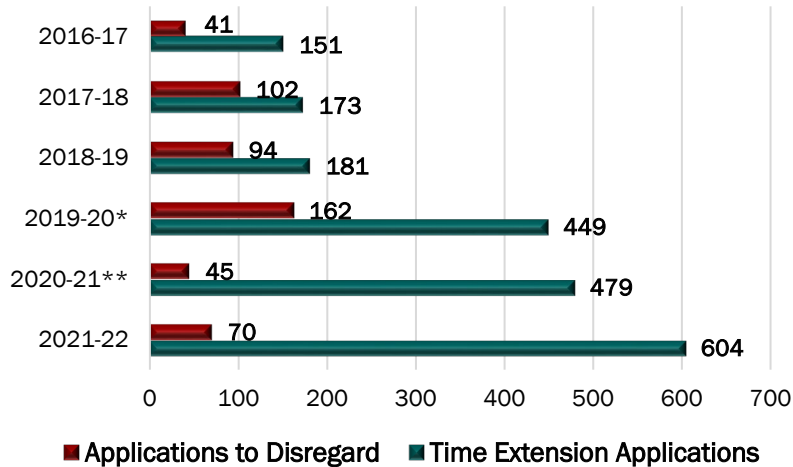
Of the 161 active access complaints (131 new complaints and 30 carried forward from the previous reporting period), 76 were resolved through informal resolution and 42 were concluded with a Commissioner's report. The remaining 43 files were either resolved by other means or carried over to the 2022-2023 fiscal year.

Of the 62 active privacy investigations (42 new complaints and 20 carried forward from the previous reporting period), 15 were resolved through informal resolution and two were concluded with a Commissioner's report. The remaining 45 files were either resolved by other means or carried over to the 2022-2023 fiscal year.

### **Requests for Time Extensions and Applications to Disregard a Request**

During 2021-2022, OIPC received 604 requests for time extension under *ATIPPA, 2015*. OIPC approved the extensions requested in 480 (79%) of the cases, partially approved 92 (15%), denied 26 (4%), and six (1%) were withdrawn by the public body.

OIPC received 70 applications to disregard an access to information request and of these 29 (41%) were approved, eight (11%) were partially approved, 14 (20%) were denied, and 19 (27%) were withdrawn by the public body.



\*2019-20 Time Extension Applications -110 during the State of Emergency; 100 during COVID-19 lockdown; and 239 Normal Requests

\*\*2020-21 Time Extension Applications - 218 during COVID-19 lockdown and 261 Normal Requests.

### ***PHIA***

This Office received three access/correction complaints and 21 privacy complaints under *PHIA*. In addition, there was one access/correction complaint and 11 privacy complaints carried over from the previous year for a total of four active access/correction complaints and 32 active privacy complaints for this reporting period.

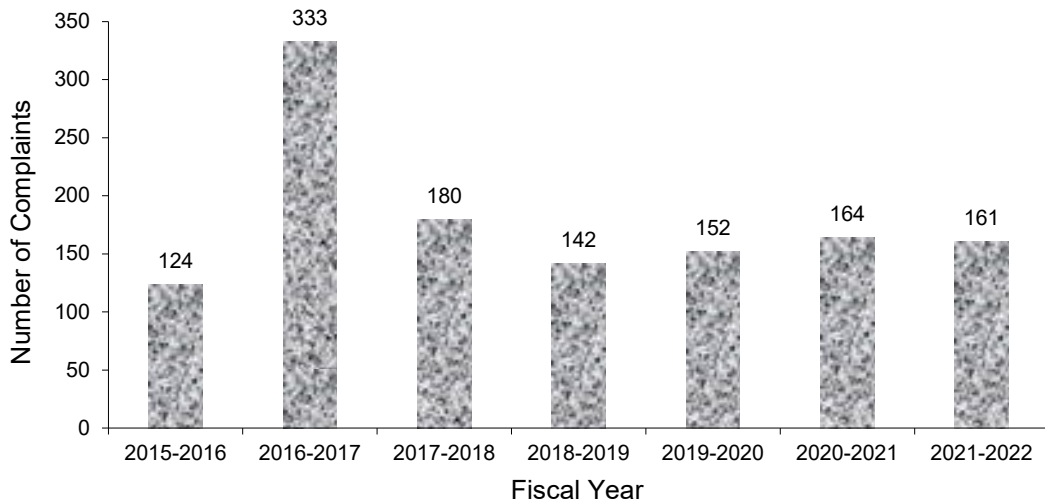
Of the four access/correction complaints, three were closed and one was carried over to the 2022-2023 fiscal year. Of the 32 active privacy complaints, 19 were closed and 13 were carried over to the 2022-2023 fiscal year.

### ***ATIPPA, 2015 Access***

In this past year OIPC experienced a slight decrease in the number of active access to information complaints<sup>1</sup> pursuant to *ATIPPA, 2015* compared to numbers from 2020-2021. OIPC has a legislated time limit of 65 business days from the date a complaint is received to resolve the matter informally or produce a Commissioner’s Report, a requirement that continues to be met. In most cases where Reports are issued, this is done prior to day 65, however complaints are typically resolved informally even sooner than that.

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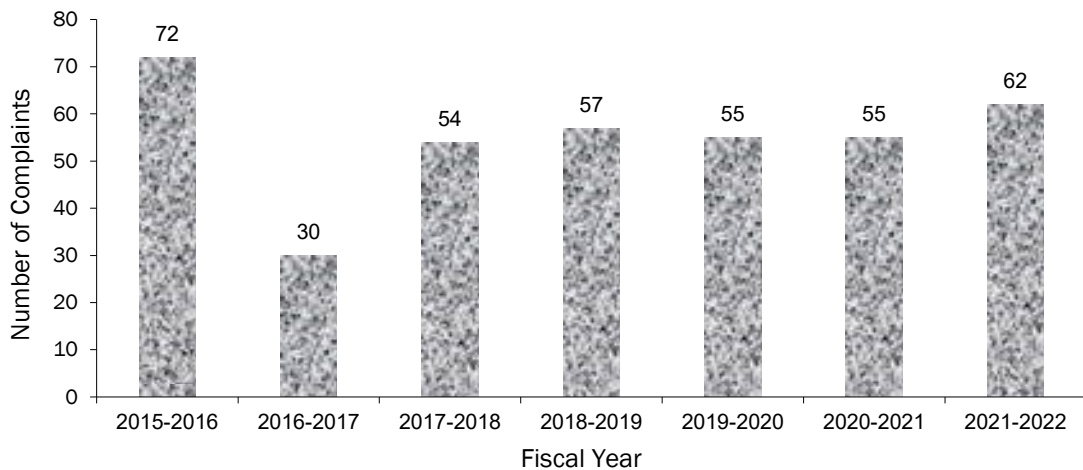
<sup>1</sup> Includes complaints received this year as well as carried over from last year.



**Figure 1: Total Active ATIPPA, 2015 Access Complaints**

**ATIPPA, 2015 Privacy**

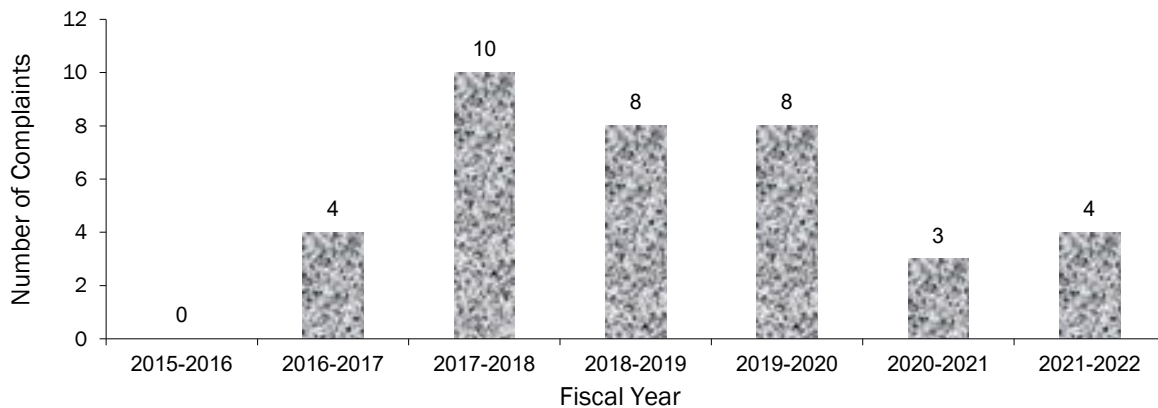
Privacy breach complaints continue to present a significant challenge for OIPC, and the current number of active privacy complaint files represents little movement over a five-year period. These investigations are often complex and time consuming. They can involve site visits and on rare occasions the engagement of technical experts. OIPC staff continue to build their expertise in privacy investigations in order to meet this challenge through professional development opportunities and knowledge sharing. Privacy complaints can also lead to offence prosecutions, in which case the files are held open while the matter is before the Courts, a process which can take years in some cases.



**Figure 2: Total Active ATIPPA, 2015 Privacy Complaints**

### ***PHIA* Access/Corrections**

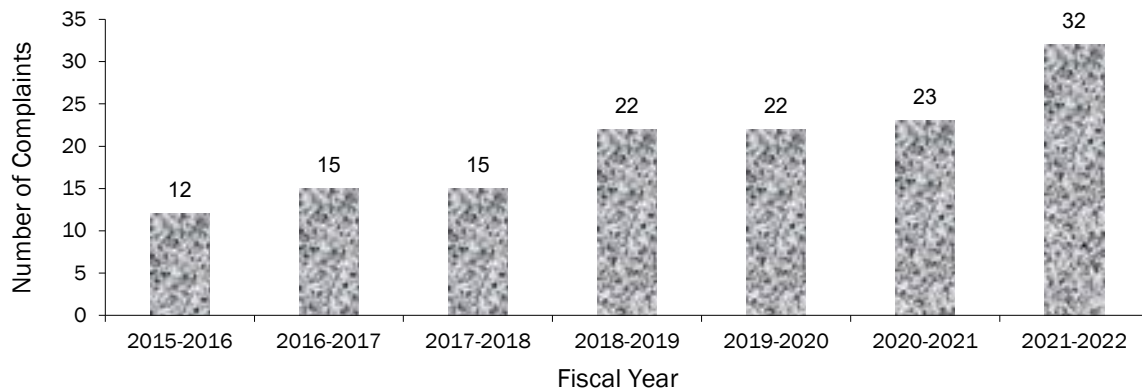
Complaints under *PHIA* related to access or corrections amount to a relatively small part of the investigative workload of OIPC. In 2021-2022 there were four active files. In addition to the complaints received this year, OIPC continues to receive a number of inquiries from custodians and members of the public about access to personal health information or correction of personal health information. The information and advice provided typically results in the correct application of *PHIA*, thereby reducing the likelihood of complaints.



**Figure 3: Total Active *PHIA* Access/Corrections Complaints**

### ***PHIA* Privacy**

As with *ATIPPA*, 2015 privacy investigations, *PHIA* privacy investigations are often very complex and technical. Many investigations require an understanding of electronic health records systems. The number of active complaints in 2021-2022 has seen an increase.



**Figure 4: Total Active *PHIA* Privacy Complaints**



## HIGHLIGHTS OF THE YEAR

### ADVISORY GROUP ON HEALTH DATA STRATEGY

Towards the end of the 2019-2020 reporting period, Commissioner Harvey was appointed to be a member of a federal [Expert Advisory Group \(EAG\) on a pan-Canadian Health Data Strategy](#). The EAG had been convened by the federal government, with secretariat support by the Public Health Agency of Canada, and was mandated to report back to the federal, provincial and territorial Ministers of Health through their established intergovernmental structures. The EAG is chaired by Dr. Vivek Goel, public health physician and President of the University of Waterloo and includes a variety of clinicians, researchers, health care administrators, representatives of Indigenous organizations, patients, and health human resources organizations. Commissioner Harvey participated in the work of the EAG throughout the 2021-2022 reporting period during which the first two of three reports were issued.

As detailed in its [first report](#), the EAG was established because, during the pandemic, it became clear that public health data in Canada is highly fragmented, with numerous gaps. Public health physicians and researchers reported that they did not have the data to do analysis to manage the pandemic at the national or provincial level.

Comparisons were drawn to other countries that had less fragmented sources of data and thus were able to respond more effectively. This drew attention to long-standing and broader concerns with health data in Canada: patients do not have timely and meaningful access to their own data and often their clinicians do not either. Indigenous people in the country face inequities perpetuated by these fragmented systems. Public Health

systems do not have good national surveillance data, and often inadequacies at provincial/territorial level. There are gaps in access to data by health sector administrators. Researchers are regularly frustrated by slow access to data and have lost faith in the privacy regime which has been delegitimized.

Privacy is a central concern when it comes to the management of personal health information most obviously because those who hold it in trust on behalf of patients must do so in a manner that ensures its security, preventing access to it by unauthorized parties. There are voices that contend that privacy legislation in Canadian jurisdictions, such as Newfoundland and

Labrador's *Personal Health Information Act* and comparable legislation in other provinces and territories, are barriers to data sharing and use of data by authorized people for legitimate purposes, such as clinicians, researchers and health care administrators. While there is little doubt that some progress can be made by bringing Canada's personal health information into greater harmonization so that differences in the statutes are not held up as barriers to data sharing, the reality is that these statutes each contain the provisions for the use of personal health information for those legitimate purposes. It is important that, in conversations about how to improve Canada's health data systems and their governance, we do not make the mistake of de-legitimizing the statutory protections by perpetuating common misinterpretations that they are barriers to data sharing.

But privacy is about more than security and protection. Privacy relates to our ability to access and control information about ourselves, and thus is central to our autonomy as individuals. Therefore, in this context, maximizing privacy is about maximizing that access and control.

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In its first report, the EAG stated its ambition that all persons in Canada deserve to achieve the best health outcomes with appropriate protection for their data. Those who hold health data hold it in trust.

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Holding something in trust means to protect it *and* to optimize its value. Canadians expect their health data to be used to improve their own care while protecting their privacy. This same data may be used for better decision making to aid in the health and safety of others, support public health and improve health systems. These are compatible goals and inseparable components of trust.

The EAG's [second report](#) was released in November 2021 and recommended the principles of a health data foundation. These were: person-centricity; equity; stewardship; accessibility; sustainability; and collaboration.

Certain of these principles resonate strongly with privacy principles, in particular the person-centric approach of "putting people at the centre of health care governance, policy and architecture and empowering them to be active participants". The implication is that our

health information system to date has been structured with the needs of the institutions or the providers in mind, rather than with the people who are the owners of the information.

The report also introduces the principle of stewardship as an alternative to custodianship, the current central principle for health information laws across Canada. The EAG believes that custodianship is an outdated principle for our modern health care system. It was developed based on analog health information systems, where information whether in hospitals or clinics was primarily stored in paper records that needed to be properly catalogued and secured. The imperative of making this information accessible to individuals, sharing it among clinicians, or making it available in safe ways to researchers or decision support analysts, did not receive as much emphasis. While all personal health information statutes contain frameworks for the disclosure of personal health information for these purposes, they are not front and centre as purposes of the legislation. Institutions and practitioners instead appear to face incentives to be unduly risk averse when it comes to disclosure – or worse still, some would argue, treat personal health information as if they themselves were its owners. In the digital age, people expect to have access to their own health information in a timely and meaningful way. They expect that all health care practitioners in their circle of care will have timely access to the personal health information held by each other, for the purposes of high quality clinical care. And the EAG believes that Canadians expect that, subject to security protections, reasonable privacy considerations, and their reasonable ability to control it, personal health information will be used for the common good through decision support, quality improvement and research. The principle of stewardship, therefore, is conceived as the evolution in the principle of custodianship: “towards a moral imperative to share data for the public good while ensuring effective privacy measures are in place”.

The EAG’s third and final report will be published and delivered to federal, provincial and territorial health officials in the 2022-2023 reporting period. Commissioner Harvey will continue to serve on the group until it concludes its work.

## STATUTORY REVIEW OF ATIPPA, 2015

As noted in last year's Annual Report, former Chief Justice David Orsborn chaired a review of *ATIPPA, 2015* with a view to assessing how the statute has functioned since it became law, and what improvements, if any, may be warranted. In his Report, issued June 8, 2021, Chair Orsborn considered 61 written submissions and 21 oral submissions, from a variety of public bodies, third parties, and private citizens, including submissions by this Office. Over 400 recommendations were put forward in those submissions.

Chair Orsborn recommended 102 statutory amendments as a result of his review, but also proposed 23 administrative measures and added 13 suggestions. As of the conclusion of this reporting period, his Report remains with the Minister of Justice and Public Safety where we understand his officials are studying the recommendations.

## CYBER ATTACK

During 2021-2022, six entities reported privacy breaches under both *PHIA* and *ATIPPA, 2015* stemming from a cyber attack. The Commissioner publicly stated that he would launch a privacy investigation into the incident involving these six entities (Department of Health and Community Services, Newfoundland and Labrador Centre for Health Information, Eastern Health, Central Health, Western Health and Labrador-Grenfell Health). A draft investigation plan was presented to them for feedback in March and OIPC anticipates launching the investigation in spring 2022.

## ACTIVITIES RELATED TO COVID-19

OIPC continued to receive inquiries, consultations and privacy assessments stemming from the public health emergency. OIPC developed COVID-19 content for our [website](#), ensuring all resources were available on a single page, including which entities may be able to assist citizens with COVID-19 related concerns.

The Department of Health and Community Services and the Newfoundland and Labrador Centre for Health Information consulted with OIPC on several initiatives. A meeting was held

in September 2021 to discuss the VaxVerify and VaxPass initiative. A PIA for the Travel Vaccination Form was provided by the Centre and OIPC provided feedback.

Treasury Board Secretariat consulted and provided a PIA on the mandatory vaccine policy for staff. OIPC was also consulted on a portal that the Centre was asked to develop for the Regional Health Authorities (RHAs) to collect the vaccination status of staff, discussing the initiative with the Centre and a number of RHAs.

As vaccine passports were being announced, OIPC was contacted about a municipality that had announced a program to collect vaccine passport information that would be in conflict with *ATIPPA, 2015*. The Town was intending to require copies of proof of vaccination that would be collected and kept on file, rather than scanning the QR code. OIPC contacted Service NL, who tasked their environmental health officers, who were responsible for compliance with the Special Measures Orders. They worked with the Town to ensure that its program was in compliance with the Orders, and consequently with *ATIPPA, 2015* as well. No formal enforcement action was necessary. OIPC always has an Analyst available to answer inquiries and we invite public bodies and custodians considering initiatives and programs to contact the Office to discuss statutory compliance considerations.

While not directly related to COVID-19, OIPC was approached about a number of issues stemming from virtual and remote work. The Newfoundland and Labrador Teachers' Association (NLTA) and the Department of Education consulted with OIPC on virtual learning. The NLTA brought forward privacy concerns involving both teachers and students stemming from the hybrid model involving students in class and online at the same time.

### Issue 1: Oversight

OIPC is accountable for a number of oversight activities, including requests for extensions and disregards, informal resolution of complaints, formal resolution of complaints, own motion investigations and audits.

OIPC conducts investigations under both *ATIPPA, 2015* and *PHIA*. Individuals are able to file a complaint with OIPC if they are not satisfied with the response to an access or correction request, if they have been the victim of a privacy breach or if they have concerns regarding compliance with the privacy provisions of either *Act*. Investigations are also conducted when the Commissioner is considering using the offense provision of the *Act* or launches an own motion investigation or audit into a specific matter.

When *ATIPPA, 2015* came into force on June 1, 2015, following a comprehensive review process, legislated timelines were identified for a number of activities, including OIPC investigations. The *Act* provides three days for the Commissioner to decide to approve or reject an application to disregard a request (section 21) or an application for an extension (section 23). Investigations involving an access or correction request must be completed within 65 business days (section 46) and privacy complaints must be completed in a time that is as expeditious as possible (section 74). To assist in meeting these timelines, OIPC developed and published guidelines for public bodies to better ensure the timelines and expectations are documented.

The second five-year statutory review of *ATIPPA, 2015* is currently underway and it is possible that any amendments will be passed and proclaimed into force during the period covered by this Activity Plan.

*PHIA* also contains timelines for investigations. The Commissioner's review of complaints involving access or correction requests, or complaints involving allegations of breaches of the *Act* or Regulations, must be completed within 120 days of receipt (section 72). As *PHIA* has already been subject to its first five-year statutory review, it is possible that amendments resulting from that review could impact timelines. While the [final report](#) was presented to the Department of Health and Community Services by the Chair of the Review Committee, Dr. David Morgan, in 2017, proposed amendments have yet to be announced. It is possible that any amendments will be passed and proclaimed into force during the period covered by this Activity Plan.

If amendments are proclaimed, it is expected that there will be significant demands on the resources of OIPC to work collaboratively with the Department as well as other major stakeholders to ensure that the necessary resources are updated or developed to reflect the changes. This will include developing and updating guidance materials, manuals, online training, etc. Any such activities flowing from the legislative review will be in addition to normal legislative oversight activities, which currently place significant demands on the Office.

**Objective 2:** By March 31, 2022 the Office of the Information and Privacy Commissioner will have begun work to improve oversight activities to support compliance with *ATIPPA, 2015* and *PHIA*, including prioritizing initiatives.

Planned for 2021-2022	Actual Performance for 2021-2022
<p>Review guidance documents to ensure they remain current.</p>	<p>The Office dates all guidance documents to track both the initial release date and any updated versions. During this fiscal year, OIPC reviewed all existing guidance documents to ensure they were current. A Court decision impacted OIPC’s interpretation of section 33 (Information from a Workplace Investigation) and our <a href="#">guidance document</a> was updated to reflect this change.</p> <p>PHIA guidance documents have remained the same as OIPC continues to wait for changes stemming from the initial <i>PHIA</i> review; the Department of Health and Community Services notified OIPC of its intention to proceed with the second statutorily mandated <i>PHIA</i> review in January 2022.</p>
<p>Determine if details of our decisions on time extension requests or applications to disregard a request should be summarized and published in OIPC annual report.</p>	<p>Several other jurisdictions, including Saskatchewan, publish reports providing reasons in response to applications from public bodies to disregard access requests. The OIPC undertook to explore whether to adopt this practice. However, due to tight timelines (section 21(2) of <i>ATIPPA, 2015</i> requires a decision from this Office within 3 days of receiving an application), and high volume of disregard and extension applications (604 extension and 70 disregard applications were received in 2021-2022), the OIPC determined that this was not practicable. The OIPC responds to all extension and disregard requests in writing with reasons for the Office’s decisions. During 2021-2022, the OIPC held several meetings with ATIPP Coordinators to further explain the extension and disregard process, and the OIPC’s expectations. The OIPC also has three guidance documents covering the extension, disregard, and extraordinary circumstances provisions of <i>ATIPPA, 2015</i>.</p>
<p>Examine breach reporting forms and identify areas for improvement or education.</p>	<p>OIPC surveyed public bodies about our breach reporting form and sought suggestions for improvement to the process which will inform how we deliver this aspect of our mandate.</p> <p>OIPC ran breach statistic reports dating back to 2016-2017, the first full fiscal year that breach reports were mandatory. Between April 1, 2016 and March 31, 2022, 1,260 breaches were reported under <i>ATIPPA, 2015</i>;</p>

	nearly half the breaches involved emails. This is part of pre-audit work for a larger initiative that will examine the breach reporting forms in detail.
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<p><b>Discussion of Results</b></p> <p>Both <i>ATIPPA, 2015</i> and <i>PHIA</i> establish oversight powers for OIPC and many of these powers have associated timelines that must be achieved. OIPC continues to examine its oversight activities and identify areas for improvement, including assessing the tools and resources available for Coordinators to assist with legislative timeline compliance. OIPC reviewed existing guidance documents to ensure they remain current; in addition to updating one guidance piece based on a Court decision, OIPC also identified topics for new guidance pieces. Further, OIPC remains poised to develop new guidance and update existing guidance if the government acts on the current or previous <i>PHIA</i> review. After a review of extension and disregard requests, as well as available resources, OIPC concluded that it is not practical to publish reports for extensions and disregards. Work commenced on examining the breach reporting forms, with areas identified for additional resources to assist with breach reporting and management.</p>
<p><b>Objective 3:</b> By March 31, 2023 the Office of the Information and Privacy Commissioner will have continued work to improve oversight activities to support compliance with <i>ATIPPA, 2015</i> and <i>PHIA</i>.</p>
<p><b>Indicators for 2022-2023</b></p>
<p>Will have developed resources to address gaps stemming from examination of breach reporting forms.</p>
<p>Will have developed new guidance on specific sections of both <i>ATIPPA, 2015</i> and <i>PHIA</i>.</p>
<p>Will have developed guidance and training for small custodians.</p>
<p>Will have developed privacy guidance and training aimed at youth in schools.</p>

<p><b>Issue 2: Outreach</b></p>
<p>Both <i>ATIPPA, 2015</i> and <i>PHIA</i> contain an explicit mandate to inform the public about each statute. It is important for residents to understand their rights under both <i>Acts</i> and OIPC takes its responsibilities to educate the public about <i>ATIPPA, 2015</i> and <i>PHIA</i> very seriously. Significant resources and effort have been invested by OIPC to ensure, to the extent possible, that the people of the province receive appropriate, necessary and timely information on <i>ATIPPA, 2015</i> and <i>PHIA</i>, and these efforts will be built upon during the period of this Activity Plan. While efforts to date have been solid, it is clear that these efforts need greater coordination and emphasis in order to fulfil the mandate of developing and delivering an educational program.</p> <p><i>ATIPPA, 2015</i> also gives OIPC a clear mandate to educate public bodies about the <i>Act</i> and to become an advocate for access and privacy. Since proclamation of <i>ATIPPA, 2015</i>, significant efforts have been made to engage with public bodies and to make every effort</p>



to try to ensure that they have the knowledge and skills necessary to comply with the law. As the second five-year statutory review of *ATIPPA, 2015* is currently underway, it is possible that amendments will be made during this three-year Activity Plan. OIPC will be ready to modify any existing resources and, if necessary, develop new resources to ensure public bodies are aware of any new or modified obligations.

*PHIA* was proclaimed into force on April 1, 2011 and has undergone its first five-year statutory review. There are thousands of custodians subject to this legislation, in both the public and private sectors. It is possible that the Department of Health and Community Services will act on recommendations stemming from the review and make amendments to *PHIA* during this three-year Activity Plan. OIPC will be ready to modify any existing resources and, if necessary, develop new resources to ensure custodians are aware of any new or modified obligations.

**Objective 2:** By March 31, 2022 the Office of the Information and Privacy Commissioner will have researched communication tools and identified new options for delivery.

Planned for 2021-2022	Actual Results for 2021-2022
Determine what, if any, new communication tools should be adopted by the Office.	<p>During this fiscal year, OIPC started to use Zoom to allow more interactive online interactions and training opportunities. This platform enables users to share slide decks and screens, as well as the option to record the session if all participants agree.</p> <p>Focus continues on the Podcast, Duty to Discuss, with four new episodes produced on a variety of pertinent topics. OIPC also started work on enhancing its Twitter presence, with a staff member examining the addition of graphics for use on the platform.</p> <p>A novel form of communication this year was the publication of an article in a scholarly journal. Commissioner Harvey published “Research Data Centres – a Regulator’s Perspective” in the <i>Journal of Privacy and Confidentiality</i> in September 2021.</p>
Determine if any existing communication tools should be discontinued.	OIPC examined all tools used to communicate with stakeholders and determined that the Blog should be discontinued.
Identify resources for updating or development.	<p>While OIPC had placed <i>PHIA</i> resource development on hold, changes to the legislation stemming from the initial review do not appear imminent. As such, OIPC started work on the development of a Guidance for Small Custodians.</p> <p>OIPC reached out to NLESD to discuss potentially working privacy guidance and training into the</p>

	curriculum for junior/senior high aged youth as part of our Outreach efforts.
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**Discussion of Results**

OIPC continues to work on identifying and prioritizing resources and guidance that would benefit the public, as well as public bodies and custodians. The availability of Zoom has improved OIPC’s presentation capabilities, as slide decks can be easily shared during presentations. It has also facilitated hybrid meetings, with all parties feeling more connected thanks to a visual component. After a review of communications tools, OIPC decided to discontinue the blog and focus energy on building the podcast and Twitter presence. It is important to ensure that all tools are used to their full potential. OIPC has Guidance for Small Custodians in the final stages of development and intends to focus on privacy and training opportunities for youth in the coming year. OIPC will continue efforts to ensure accessibility of our Office and resource material.

<b>Objective 3:</b> By March 31, 2023 the Office of the Information and Privacy Commissioner will have enhanced the resources available under both the <i>ATIPPA, 2015</i> and <i>PHIA</i> .
<b>Indicators for 2022-2023</b>
Will have started planning for the next Access, Privacy, Security and Information Management (APSIM) conference to be held in 2023.
Will have reviewed and updated OIPC’s website.
Will have conducted outreach with a focus on small custodians and citizens’ privacy rights.

**Issue 3: Modernizing the Work**

The calendar year 2020 presented challenges that continued into 2021; the City of St. John’s and other municipalities across the province declared States of Emergency in January after an exceptional snowstorm. In March the Minister of Health and Community Services declared COVID-19 a public health emergency under the *Public Health Protection and Promotion Act*. Both events affected custodians and public bodies, as well as the usual operations of OIPC. As the public health emergency continues, many public bodies and custodians have adjusted to alternate service delivery solutions, including virtual.

This new reality has changed how OIPC engages with stakeholders, from public bodies and custodians to the public. It has also necessitated change in internal processes, as OIPC has tried to ensure continuity of service through remote working when needed. These events emphasize the need for OIPC to be flexible and to be able to quickly adapt to a changing operating environment. With this in mind, OIPC intends to examine its service delivery and internal processes to ensure that oversight activities and stakeholder engagement continue as required under *ATIPPA, 2015* and *PHIA*.

<b>Objective 2:</b> By March 31, 2022 the Office of the Information and Privacy Commissioner will have begun work to modify business processes and identify options for remote service delivery.	
<b>Planned for 2021–2022</b>	<b>Actual Results for 2021-2022</b>
Continue to work on virtual delivery options for training and presentations.	Like many entities, OIPC moved all operations to virtual several times during this reporting period. Staff made every effort to offer the same level of service to individuals, even as the delivery method changed. OIPC identified the need to continue to deliver training and presentation opportunities virtually and have used both Zoom and Skype for Business for virtual delivery. While held bi-annually in the past, OIPC planned a virtual conference to be held in April 2022, one year after the last event.
Review new processes and policies to ensure compliance and accuracy.	Since the beginning of the public health emergency, OIPC has made positive changes that better ensure continuity of service offerings. When taking inquiry calls, OIPC staff continue to have a heightened awareness that callers may not have access to computers, the internet, or printers and consistently offer to print resources and complaint forms. During fiscal year 2020-2021, OIPC updated and developed a number of policies, including, but not limited to, the Working from Home Policy; the In-Person Meeting Request Procedure; and the Return to Work Protocol. As the work situation evolved in response to the changing operating environment, staff were reminded of these policies as appropriate.
Work to ensure the Office is flexible and responsive to changing operating environment.	<p>The following procedures were created/updated during 2021-2022:</p> <ol style="list-style-type: none"> <li>1) Breach Report Review Procedure (New)</li> <li>2) Document Review Procedure (New)</li> <li>3) Purchasing and Accounts Payable Procedure (New)</li> <li>4) Creating 3-Day Deadline Files Procedure (Revised)</li> <li>5) General OIPC Email Account Procedure (Revised)</li> <li>6) OIPC Staff Training Tracker Procedure (Revised)</li> <li>7) ATIPPA Complaint Investigation File Procedure (Under review - started late 2021/early 2022)</li> <li>8) PHIA Complaint Investigation File Procedure (Under review - started late 2021/early 2022).</li> </ol> <p>We also provided instructions for dealing with Inquiries through email during this reporting period and provided instructions for setting up voicemail to email for staff office phone lines.</p>

### Discussion of Results

OIPC continues to work on adapting and improving service delivery, while keeping the challenges being faced by target audiences in mind. During this fiscal year, OIPC staff settled into a hybrid working model, with a mix of remote and in-office work. Thanks to past experience, staff are able to almost seamlessly start work in a new location with limited notice and OIPC developed a Working from Home Policy and a Return to Work Protocol to better ensure consistency. The Office has adopted new tools, including Zoom and voicemail to e-mail functions, that ensure staff remain connected with co-workers and our clients, be they custodians, public bodies or members of the public. Work continues to ensure that the Office is flexible and responsive to the changing operating environment, with a focus this past year on ensuring the appropriate policies and procedures are in place.

**Objective 3:** By March 31, 2023 the Office of the Information and Privacy Commissioner will have completed priority work to modernize the workplace to allow service delivery remotely.

#### Indicators for 2022-2023

Will have determined options for increasing video content on the website.

Will have reviewed policies and resources to ensure they are adequate to support a hybrid work environment.

Will have examined virtual training opportunities.

## ADVOCACY AND COMPLIANCE DIVISION

### AUDIT

OIPC continued work on an audit initially launched in 2018 and delayed by a number of factors. While not required as part of our normal audit process, factual material was provided to the public body to review in March 2022. In the past, OIPC has provided an embargoed copy of the audit to the public body subject to the audit for review and response. However, this audit is examining access controls and publishing specific details of safeguards could create risks for the public body. As such, OIPC has instead provided a copy of factual information to them for review and feedback; the final report to be published in the next reporting period will contain recommendations based on the confirmed factual information, while the information published will reflect best practice. We are of the view that this compromise allows other public bodies to learn about best practices and it allows the public body to respond to specific recommendations without creating any risks.

An audit on breach reporting under *ATIPPA, 2015* is also being planned. OIPC ran statistics on all breaches reported between April 1, 2016 and March 31, 2022. Over half of the breaches reported were e-mail breaches, with mail-outs the second highest cause of breaches. OIPC also surveyed public bodies about our breach reporting form and sought suggestions for improvement to the process which will inform how we deliver this aspect of our mandate.

During 2022-23, OIPC will explore developing new resources to assist public bodies in responding to such breaches, as well as how to prevent them. During the time period being examined, there were 32 intentional breaches. OIPC will be examining these breach reports in detail as part of the audit. It is unknown at this time if any additional information will be sought from public bodies; this audit topic is currently on breach reporting in general, not on a specific public body.

### OIPC PRIVACY MANAGEMENT PROGRAM

This fiscal year saw solid progress in the OIPC's Privacy Management Program (PMP). In August 2021, a draft Gap Analysis and supporting documentation was completed. In

September 2021, OIPC launched its internal training series in support of its PMP. Sessions are generally held every six weeks and address a variety of pertinent topics. The first session presented the internal PMP and solicited feedback from staff. There have been two policy sessions, one specific to policies mentioned in the PMP and the other more general policies and procedures. A panel was organized on “A Day in the Life of an ATIPP Coordinator,” with three public body coordinators speaking about their day-to-day challenges and their enjoyment of the role. A session was held on Identity Management and Safeguarding Personal Information, developed in anticipation of Identity Management Day and leveraging a presentation developed at the request of a stakeholder group. One session updated staff on a number of developments in access and privacy, including Quebec’s Bill 64, new resources developed for vaccine passports and other COVID-19 matters and providing a summary of the recent training survey distributed to all staff.

### PRIVACY IMPACT ASSESSMENT REVIEW

While provincial government departments are required to submit PIAs under section 72 of *ATIPPA, 2015*, OIPC is also happy to receive courtesy copies of PIAs for feedback. The majority of PIAs received for OIPC review were courtesy copies.

Treasury Board Secretariat consulted with OIPC and presented a draft PIA for its employee vaccination mandate; OIPC reviewed the draft and provided feedback. The PIA indicated that the policy was put in place as part of efforts to ensure the health and safety of staff, with a strong focus on safeguards to ensure the minimum information necessary is collected, used and disclosed as part of this initiative.

The implementation of the VIVVO platform by the Office of the Chief Information Officer as part of the MyGovNL initiative is part of an ongoing common or integrated program or initiative which OIPC will continue to monitor closely.. An early draft of a PIA for a system change involving the implementation of the VIVVO platform was provided to OIPC in June 2021 and feedback was promptly provided. The PIA leveraged the MyGovNL PIA but did not include much new content; further, it continued to reflect gaps that OIPC had already identified in the original PIA. The VIVVO platform went live in winter 2022. While a meeting was held with senior staff of both OCIO and OIPC in February to discuss expectations, and commitments were made

to promptly provide OIPC updated documentation, nothing had been received as of March 31, 2022.

In April 2021, the Department of Education notified OIPC of the Coordinating Supports for Children and Youth (CSCY) initiative. This is a new interdepartmental process for coordinating and integrating support for children, youth and their families. Its goal is to ensure enhanced and ongoing information sharing, evidence-based practices, problem solving and successful transitions, from birth to age 21. CSCY will replace the Model of Coordination for Services to Children and Youth (ISSP), which has been in place since 1997. This modified process involves multiple partners including the Departments of Health and Community Services; Children, Seniors, and Social Development; and Justice and Public Safety; Regional Health Authorities; Newfoundland and Labrador English School District; and Conseil scolaire francophone provincial. OIPC looks forward to further engagement on this initiative.

While not a common or integrated program or service as defined by *ATIPPA, 2015*, the Newfoundland and Labrador Centre for Health Information had established regular meetings with OIPC representatives to provide progress updates on the Workforce Management System/Integrated Capacity Management initiative. This is a large system that will hold both personal information of staff and personal health information of patients. The last meeting was held in September 2021, at which time OIPC's contact indicated that they were leaving that position. Work on the PIA has since been contracted to a private firm.

OIPC also reviewed a Tourism Hospitality Support Program (THSP) PPIA. It was provided for our review by the Department of Tourism, Culture, Arts and Recreation, in conjunction with the Department of Industry, Energy and Technology. This service had formerly been offered by one Department, however due to restructuring it is effectively split between the two Departments, which resulted in it becoming a common or integrated program, thus requiring consultation with the OIPC. Our review of the PPIA did not raise any significant concerns, however we did indicate some concern about the fact that we received notice of this program only two days before it was to go live. Had we had concerns, this time frame would have presented a problem, so we did indicate that much earlier engagement would be expected in the future.

Courtesy copies of a number of PIAs were also received and a number of public bodies and custodians consulted with OIPC. Even when not required by legislation, we find it is beneficial to both parties, as OIPC becomes familiar with the work of the entity and the entity receives additional feedback on its PIA.

OIPC was also approached by two private companies seeking to offer virtual healthcare services in Newfoundland and Labrador. OIPC was able to provide general guidance and considerations to both and reviewed a PIA that was shared by one company. OIPC also reviewed a draft of virtual care standards developed by a private company and provided feedback.

### EDUCATION, OUTREACH AND TRAINING

*ATIPPA, 2015* specifically empowers the OIPC to inform Public Bodies of their responsibilities and duties under the legislation. Access and Privacy Analysts for the OIPC also make presentations to interested groups within the province about *ATIPPA, 2015*, *PHIA*, the Commissioner's Office, and other matters related to access and privacy.

The OIPC has taken the opportunity during COVID-19 to expand on ways that presentations can be offered to public bodies and other community groups. This includes investment in equipment and services to provide a better virtual experience to groups for the purposes of presenting.

Presentations		
Date	Audience	Topic
23-March-22	ATIPP Coordinators	OIPC Investigation Process
23-Feb-22	ATIPP Coordinators	Extensions and Disregards under <i>ATIPPA, 2015</i>
23-Feb-22	All-Party Committee	Modernize the <i>Elections Act</i>
1-Feb-22	IM Community	The role of the OIPC
6-Jan-22	FPT Commissioners	Internet Voting



20-Jan-22	Provincial IM Community	Protecting PI at Home
24-Nov-21	ATIPP Coordinators	Meet and Greet with ATIPP Office: What We Do
18-Nov-21	ATIPP Office	<i>PHIA</i> Training
17-Nov-21	Privacy Oversight Community	Vaccine Passports
5-Nov-21	Municipal Elected Officials and Administrators	Internet Voting
28-Sep-22	CNLOPB's Town Hall Meeting	General Privacy Discussion
1-Jun-22	Identity North's Virtual Symposium	Panel Discussion on Privacy
16-Apr-21	Town of Brent's Cove	ATIPPA, 2015 Overview
15-Apr-21	Town of Brent's Cove	ATIPPA, 2015 Overview

### **Yes, You Can!**

The OIPC and the Office of the Child and Youth Advocate worked together on a document entitled “Yes You Can!” to help individuals who interact with at-risk youth and youth in care. The goal of this collaborative project was to empower teachers and education workers, social workers, law enforcement, legal representatives, and others to be able to confidently advocate for these children where personal information or personal health information is concerned. “Yes, You Can!” provides these individuals with the legal authorities to share information between public bodies and health information custodians when required. The project, which consists of a background document and a desktop reference guide, officially launched in December 2021.

### **Access, Privacy, Security, and Information Management Conference (APSIM) Planning**

One of our most significant endeavours in 2021-2022 was the planning and preparation for the APSIM Conference to be held in April 2022. APSIM is a biennial conference that brings together members of the Newfoundland and Labrador access, privacy, information security, and information management communities to promote collaboration and build awareness of the overlap and interplay between these various disciplines. Our goal is to facilitate our ability to assist each other in managing, protecting, and securing information.

Due to the COVID-19 public health emergency, APSIM 2020 was postponed from its original April 2020 date to March 2021. In an effort to keep the community involved during the ongoing pandemic, the OIPC chose to host another conference in 2022, with a large focus on information security. The steering committee decided that another free virtual conference, with particular outreach to smaller public bodies and municipalities would be ideal, as many of these public bodies cannot afford to send staff to a conference, due to financial and time constraints.

### **Outreach Initiatives**

Episodes of the OIPC podcast, “Duty to Discuss” were posted in the reporting period. Commissioner Harvey spoke with digital rights campaigner Bryan Short of OpenMedia.org; former journalist and avid access applicant James McLeod; Memorial University Associate Professor of Engineering, Dr. Jonathan Anderson; and cybersecurity expert Jake van der Laan. These episodes were hosted quarterly, reaching audiences across the country and world.

We also continued with our newsletters. Four editions each of Safeguard (our *PHIA* newsletter) and Above Board (our *ATIPPA, 2015* newsletter) were issued. These were a valuable means of communicating with stakeholders, particularly about issues related to adapting statutory processes to the circumstances of the pandemic.

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

1. ongoing ad hoc communications with all regional health authorities about access and privacy matters;
2. staff attendance at a number of privacy and access to information conferences including the Identity North Fall 2021 Symposium; 2<sup>nd</sup> Annual Vancouver International Privacy & Security Summit; the 21<sup>st</sup> Annual Healthcare Summit in October 2021; the FPT National Investigator’s Conference in Fall 2021; and IAPP sessions.
3. continuing education for analysts in alternative dispute resolution;

4. regular meetings with Federal/Provincial/Territorial Information and Privacy Commissioners about matters of joint interest;
5. presentations to various organizations on Internet Voting, following local municipal elections in 2021 and in light of the ongoing review and consultations on the *Elections Act*;
6. continued development of a *PHIA* Toolkit for small custodians, such as physician officers, dentists, etc. who do not have access to the same support as larger custodians;
7. planning and collaborating with other shareholders for the upcoming 2022 APSIM Conference;
8. participated in and developed activities for Right to Know Week 2021 and Data Privacy Day 2022;
9. continued website update project; additional projects relating to online presence, including graphic creation and video development; and
10. development and drafting of guidance pieces to assist with interpretation of certain sections of *ATIPPA, 2015*.
11. publication of “Research Data Centres – a Regulator’s Perspective” in the *Journal of Privacy and Confidentiality* written by Commissioner Harvey, September 2021.

During this fiscal year, beginning in May 2022, Commissioner Harvey assumed the Chair of the federal, provincial and territorial Commissioners/Ombudspersons. This role includes chairing monthly meetings of Commissioners/Ombudspersons and arranging guest speakers on topics of mutual interest. This role continues into the next reporting period during which time Newfoundland and Labrador will host the annual Federal, Provincial and Territorial Commissioners/Ombudspersons conference, following which the Chair will pass to the next host of the annual conference.

Also during this reporting period, the Newfoundland and Labrador Information and Privacy Commissioner assumed the role of Co-Chair of Canada Health Infoway’s Privacy Forum. This is an initiative to bring together representatives of Federal, Provincial and Territorial Information and Privacy Commissioners/Ombudspersons offices, e-Health agencies, health

departments, and regional health authorities to discuss privacy matters related to Canada Health Infoway's virtual health initiatives as well as other issues that are related.

The Information and Privacy Commissioner participated in the Global Privacy Assembly's Working Group on Data Protection and Other Rights, which developed a narrative about privacy as a universal human right and presented it to the 43<sup>rd</sup> Global Privacy Assembly hosted virtually by Mexico. This group continues its work to develop promotional materials to advance that principle, and the Commissioner will continue participating in the work of this group in the next reporting period.

The OIPC also met with those leading the NL Health Accord as well as consultants engaged to consider the future of the Newfoundland and Labrador Centre for Health Information. Both processes allowed Commissioner Harvey to ensure that considerations related to the protection of and also appropriate access to personal health information were considered as our health system continues to evolve and change.

## LEGISLATIVE CONSULTATIONS

Pursuant to section 112 of *ATIPPA, 2015*, ministers are required to consult with the OIPC on all proposed legislation that "could have implications for access to information or protection of privacy". Beyond that requirement, the OIPC will review any draft legislation if requested, as it can be difficult to identify potential implications for access to information or protection of privacy. When in doubt, we encourage consultation.

This reporting year saw a significant increase in the number of bills received for consultation, perhaps due to the fact that last year government's attention was focused on pandemic response and adapting service delivery in a time of pandemic restrictions, resulting in some of the legislative agenda being pushed ahead to this year.

The following is a list of bills and regulations that were received by the OIPC for consultation this year:

<i>Access to Information and Protection of Privacy Act, 2015 Amendment</i>
<i>Children, Youth and Families Act Amendment</i>
<i>Energy Corporation Act and Hydro Corporation Act Amendment</i>
<i>Highway Traffic Act Dealer Regulations</i>
<i>Vital Statistics Act Amendment</i>
<i>Securities Act Amendment</i>
<i>Image Capturing Enforcement Regulations (Highway Traffic Act)</i>
<i>Accessibility Act</i>
<i>Adoption Act Amendment</i>
<i>Adult Protection Act, 2021</i>
<i>Municipal Conduct Act</i>
<i>Corporations Act Amendment</i>
<i>Licensed Practical Nurses Act Amendment</i>
<i>Auditor General Act, 2021</i>
<i>Covid-19 Vaccine Regulations</i>
<i>Emergency 911 Act, 2021</i>
<i>Law Society Act Amendment</i>
<i>Publication of Adjudication Tribunal Decisions Act, 2021</i>
<i>Credit Union Regulations Amendments</i>
<i>Income Tax Savings Plans Act and The Pension Plans Designation of Beneficiaries Act Amendment</i>
<i>Urban and Rural Planning Act Amendment</i>

Of these bills, we determined that several warranted commentary.

***Access to Information and Protection of Privacy Act, 2015 Amendment***

The purpose of this bill was to amend ATIPPA, 2015 by adding the Inquiry Respecting Ground Search and Rescue for Lost and Missing Persons to Schedule B of ATIPPA, 2015. Similar to records of the Muskrat Falls Inquiry, the Commissioner had no objection with the inclusion of the Inquiry in Schedule B while it is doing its work. The Commissioner was able to confirm that after the conclusion of the Inquiry, the records would be forwarded to the Department of Justice and Public Safety, where they would be subject to ATIPPA, 2015 as any other records in the Department’s control or custody.

***Highway Traffic Act Dealer Regulations***

These Regulations relate to automobile dealers, and they pertain to information such as vehicle registration, which contains personal information. Even though automobile dealers are not public bodies subject to ATIPPA, 2015, we were of the view that any regulations should be as privacy protective as reasonably possible. Government was very receptive to our

suggestions in this regard, and made a number of improvements to the regulations to limit access to the records as well as ensure appropriate retention and destruction of personal information.

### ***Image Capturing Enforcement Regulations (Highway Traffic Act)***

When our comments were sought in 2019 on the related *Highway Traffic Act* amendments, we expressed concern generally that on initiatives of this kind, we felt that there is a conversation that Government needed to have with the public about the increasing number of instances in which the province or provincially-regulated private companies are collecting and using personal information of residents of the province. We noted that these matters are currently being dealt with on a case by case basis in which the balance between the social value and the invasion of privacy is being considered individually with each separate initiative (usually very minimally). We expressed concern that the invasion of privacy is not being considered in the aggregate sense and that a creeping erosion of privacy is occurring without an appropriate degree of social license (ie, genuine public engagement on whether or not to proceed with certain policy initiatives, rather than a communications plan after the fact).

In terms of this particular set of Regulations, they did not contain some of the elements that we believed should be present, which we communicated to the Department when the *Highway Traffic Act* amendments were made in 2019. For example, there is nothing in the Regulations which ensures that systems are procured that will only capture license plate images, and not capture other images in or around cars or in the surrounding areas. We also provided the department with other recommendations around implementation with the goal of minimizing the privacy impact of this technology, as well as a link to a [guidance document](#) by the Privacy Commissioner of Ontario on this subject. We hope to engage further with the department as it prepares for implementation.

### ***Adult Protection Act***

Our review of the draft *Adult Protection Act* noted some significant improvements from the prior statute, including improved access to information as well as privacy provisions. In particular, the provisions providing for access to information scope out reasonable limits on that right, and the exceptions to the right of access are limited to those that are necessary to

protect individuals from harm. Furthermore, there is an internal review process referenced in the bill that is available for anyone who is denied access. The specific process for that appeal is to be set out in Regulations. Finally, if that appeal process is unsatisfactory, the statute provides that a person may appeal the matter to Court.

### ***Municipal Conduct Act***

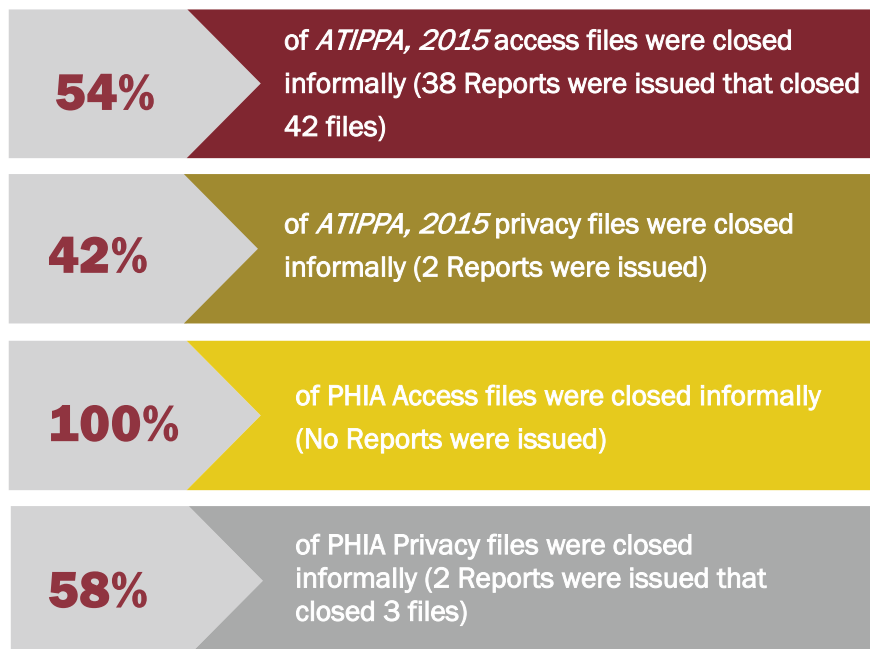
Section 14(6) of the bill says that a complaint filed against a current or former member of a municipal council is not a workplace investigation for the purpose of section 33 of *ATIPPA, 2015*. This is consistent with the finding in the recent court decision, *Kirby v. Chaulk*, that a member of the legislature is not an employee for the purposes of section 33. Both the department and the OIPC agreed that we would need to monitor changes that may result from Justice Orsborn's review of *ATIPPA, 2015* and potentially reassess any provisions that rely on or refer to section 33 as it currently exists.

## INVESTIGATIONS DIVISION

### INFORMAL RESOLUTIONS

When possible to do so, this Office will attempt to resolve complaints made under *ATIPPA, 2015* and *PHIA* informally. Informal resolutions to access complaints may take many forms:

A public body provides additional context and a high-level description of the redacted information that explains the reasons for applying an exception to access.



With respect to privacy complaints under both *ATIPPA, 2015* and *PHIA*, informal resolution is also an objective in the course of this Office's investigations. Privacy complaints are more likely to be resolved informally where a public body or custodian is willing to acknowledge the privacy breach and can demonstrate to this Office as well as to the complainant that it has established appropriate policies and practices to avoid similar privacy breaches in the future. Where *ATIPPA, 2015*, *PHIA*, or another statute authorizes the collection, use, or disclosure of personal information or personal health information, an explanation from the public body or custodian of its authorization, and the necessity for the collection, use or disclosure, of personal information or personal health information can help resolve a complaint informally.



## REPORTS

In 2021-2022, this Office issued 38 reports regarding access and two regarding privacy under *ATIPPA, 2015*; and two regarding privacy and no reports regarding access under *PHIA*.

### Section 31 – Disclosure Harmful to Law Enforcement

Section 31 of *ATIPPA, 2015* provides for a variety of exceptions to access for matters relating to law enforcement, security, and legal proceedings. One particular exception addressed in several Reports by this Office in 2021-2022 was section 31(1)(l):

- (l) Reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;

In its review of several complaints regarding this exception, the OIPC determined that this is not a harms-based exception, as the provisions simply speaks to information that would “reveal” security arrangements. In all cases, this Office was assessing the disclosure of information about computer and communication systems. In A-2021-025, A-2021-034, and A-2021-039, at issue were links and passwords for security video conferencing meetings, all of which were found to qualify to be withheld pursuant to section 31(1)(l). In A-2021-049 this Office found that information which is standard across all computer systems with a Windows operating system did not qualify as information which would reveal security arrangements of the public body.

#### A-2021-025 - Memorial University

The redacted information consisted of secure video conferencing information (web links, meeting identifiers, and password) contained within emails. In many cases – but not all – these links and passwords had expired. However, the Commissioner was satisfied that the information could be reasonably expected to disclose security arrangements for the University’s video conferencing systems.

#### A-2021-034 - Memorial University

The redacted information was similar to that in A-2021-025. However, in this case the Complainant provided statements from the vendor of the software in question indicating that the vendor did not consider the disclosure of the information as posing a risk of harm.

However, the Commissioner concluded that section 31(1)(l) does not require a risk of harm but merely that the information could be reasonably be expected to reveal arrangements for the security of a computer system. While it was helpful to receive information from the software vendor, the Commissioner determined that we can only rely on the public body's own assessment of the security of its systems.

#### A-2021-041 Royal Newfoundland Constabulary

The Complainant made an access to information request to the RNC for records relating to specific firearms used by the organization. The RNC responded to the request by withholding all responsive records under sections 31(1)(a), (f), (m) and 37(1)(b) (disclosure harmful to personal or public safety). The Commissioner found that section 31(1)(m) did not require a harms test as it merely referenced information that would “reveal technical information about weapons used or that may be used in law enforcement”. The exception applied to the records and that no further analysis on the other claimed exceptions was necessary. The Commissioner therefore recommended that the RNC continue to withhold the records.

#### A-2021-049 - Treasury Board Secretariat

The Secretariat made a number of redactions to withhold information which it believed would reveal security arrangements of a computer system. While most of the applications of section 31(1)(l) were either resolved informally, or upheld by the Commissioner, the Commissioner found that in several cases, the information which had been redacted was information common to all computers with a Windows operating system. As such, the Commissioner concluded that releasing that information would not reveal anything about the security arrangements of a public body and section 33(1)(l) could not apply.

### Section 30 – Legal Advice

Section 30 is a discretionary exception to access which allows a public body to withhold from disclosure information subject to solicitor-client privilege.

On March 31, 2022, the Supreme Court of Newfoundland and Labrador, in *Newfoundland and Labrador (Justice and Public Safety) v. Newfoundland and Labrador (Information and Privacy Commissioner)*, held that the language at section 97(1)(d) of *ATIPPA, 2015* was not

sufficiently clear to require public bodies to disclose to this Office records over which they have claimed solicitor-client privilege. Prior to the court's decision, our Office addressed several complaints in 2021-2022 regarding the application of section 30 and the decision of public bodies to refuse to disclose records for our review.

#### A-2021-025 – Memorial University

Among other exceptions to access applied by the University, some information was withheld by the University pursuant to section 30. During our investigation, the public body refused to provide this Office with unredacted copies of records containing solicitor-client privileged information. However, the University did agree to provide this Office with a detailed description of the records and an explanation for why it believed section 30 applied. As the information provided was sufficiently detailed, the Commissioner was able to conclude that the University had met the burden of proof and that the redacted information constituted legal advice.

#### A-2021-037 - Department of Transportation and Infrastructure

The Complainant made a request to the Department for information that it had shared with the Transportation Safety Board of Canada. In its response to the Complainant, the Department withheld records pursuant to section 31. During our investigation, the Department additionally claimed that section 30 applied to some of the information previously withheld pursuant to section 31, and refused to disclose to this Office records to which it had applied section 30. As an alternative to disclosing these records to this Office, the OIPC requested that the Department provide the subject line, sender, and recipient of emails, as well as a description of their contents. The Department did provide the names and titles of the parties to the emails, but no further information about their contents. The Commissioner concluded that the Department had not provided sufficient detail to discharge its burden of proof and recommended that the Department release the records to the Complainant.

#### A-2021-023 – Town of St. George's

The Complainant made an access to information request to the Town for copies of legal invoices from the Town's solicitor. The Town released the invoices to the Complainant, subject to redactions pursuant to section 30. The Complainant filed a complaint with this Office alleging that solicitor-client privilege had been waived by the Town and that section 30 could no longer apply to the records. The Town disclosed the records to this Office in full for our

review and the Commissioner was able to confirm that solicitor-client privilege – and therefore section 30 – did apply to the information the Town had withheld and recommended that the Town continue to withhold the information.

#### **A-2021-026 – Town of Lewisporte**

The Complainant requested records from the Town relating to a workplace investigation. The Town denied access based on section 30. The Town provided responsive records to this Office for review, including the workplace investigation report that had been completed by a lawyer hired by the Town's legal counsel. The Town provided all records to this Office for our review. The Commissioner found that the Town had properly applied section 30 to withhold the majority of the communications between the Town and its legal counsel. However, the Commissioner determined that section 30 could not apply to the workplace investigation report as its author, though they are a lawyer, had been retained to conduct a workplace investigation, and the report did not contain legal advice. The Commissioner recommended that the Town disclose the workplace investigation report to the Complainant.

#### **Record-level and Information-level Exceptions**

The majority of the exceptions to access provided for in *ATIPPA, 2015* are information-level exceptions. This means that a public body reviewing records which contain information subject to those exceptions must conduct a line-by-line review and only redact those passages or sentences to which the exception applies. Subject to section 8(2) (right of access), a public body is expected to then release the remainder of the record. However, sections 27 (cabinet confidences) and section 41(c) (statutory office records) require that a public body withhold records in their entirety if they contain information subject to the exception. Occasionally, complaints will be made to this Office alleging that a public body has improperly withheld entire records rather than conducting a line-by-line review.

#### **A-2021-041 – Royal Newfoundland Constabulary**

The exception applied by the RNC – section 31(1)(m) – is an information-level exception and, normally, the remainder of a record should be released to an applicant once it has been applied. However, in this instance the Commissioner was satisfied that the release of any of the information contained in the responsive records would confirm the use, or non-use, of the

various weapons identified by the Complainant in their request and that the records should be withheld in their entirety.

#### A-2021-026 – Department of Environment and Climate Change

The Complainant had made a request to the Department for records relating to submissions by two third parties to the province's Standing Fish Price Setting Panel. The Department withheld the records in their entirety pursuant to sections 35 (disclosure harmful to the financial or economic interests of a public body) and 39 (disclosure harmful to business interests of a third party). These are information-level exceptions and the Commissioner found that the Department had not conducted a line-by-line review as was required. The Commissioner further found that neither section 35 nor section 39 applied to the information and recommended the full release of the records to the Complainant.

#### A-2021-040 – Treasury Board Secretariat

The Complainant had made an access request for records relating to the proposed merger of the Department of Health and Community Services and the Newfoundland and Labrador Centre for Health Information. The Secretariat withheld records pursuant to section 29 (policy advice and recommendations), section 30 (legal advice), and section 38 (disclosure harmful to labour relations of public body as employer). All exceptions to access claimed by the Secretariat were information-level exceptions, but had been applied to withhold the entirety of all responsive records, applying them at a record level. The Commissioner recommended that the Secretariat re-review the records, conducting a line-by-line analysis, and provide the Complainant with a new response.

#### A-2021-048 – City of St. John's

The Complainant had made an access to information request to the City for a copy of the minutes of a special meeting of council. The City claimed that section 28 (local public body confidences) applied and withheld all responsive records. Section 28 is an information-level exception; however, the Commissioner determined that as the vast majority of the information in the records qualified for section 28, it would not be reasonable to redact the records on a line-by-line basis as the information remaining would be very limited and of no value.

## Section 33 – Workplace Investigations

Section 33 is a mandatory exception to access for information related to a workplace investigation. At the same time, it also provides a mandatory right of access to that same information for parties to the workplace investigation. An individual who is a witness in a workplace investigation is entitled to receive information related to their witness statements; and the subject of a workplace investigation is entitled to receive all relevant information created or gathered for the purpose of the investigation. This mandatory right of access has been tempered by several decisions of the Supreme Court of Newfoundland and Labrador in 2021-2022. First, per the court in *Oleynik v. Memorial University of Newfoundland and Labrador*, 2021 NLSC 51, the right of access created by section 33 does not override the exception for legal advice at section 30. Pursuant to *College of the North Atlantic (Re)*, 2021 NLSC 120, the right of access is also subject to the reasonable protection of personal information under section 40.

### A-2021-019 – City of Mount Pearl

The City provided notice under section 19 to several individuals whose personal information was contained in records relating to a workplace investigation. Those individuals complained to this Office, objecting to the disclosure of their personal information to the Applicant (the subject of the workplace investigation). In a decision issued prior to the Supreme Court of Newfoundland and Labrador's decision in *College of the North Atlantic (Re)*, the Commissioner determined that only personal information which was not relevant to the workplace investigation could be withheld. The Complainants were unable to establish that their personal information was not relevant to the workplace investigation and the Commissioner recommended that the City release the information to the Applicant.

### A-2021-025 - Memorial University

The Complainant made an access request to the University, which granted partial access to the responsive records. The Complainant objected to the application of any exceptions to access, submitting that the records part of a workplace investigation and that, pursuant to section 33, the Complainant had a mandatory right of access to the information. The Commissioner found that the University had not conducted a workplace investigation. A workplace investigation, as contemplated by section 33, involves an investigative process

leading to a finding of whether or not there was misconduct on the part of an employee. The act of imposing discipline for any misconduct is a separate process and subsequent to a workplace investigation. As the records were not connected to a workplace investigation, section 33 – and its mandatory right of access – did not apply.

## COURT MATTERS

### Offence Prosecutions

On April 9, 2020, the Commissioner laid an information charging an employee of Central Health with an offence under section 88 of *PHIA* for unlawfully accessing the personal health information of another person. The accused entered a guilty plea and the matter concluded February 2, 2022 with a sentencing decision from the Provincial Court of Newfoundland and Labrador ordering an absolute discharge of the accused. That decision can be found at [R. v. Elliott, 2022 NLPC 1020A00116](#).

In a separate proceeding, on June 10, 2021, the Commissioner laid an information charging another employee of Central Health with an offence under section 88 of *PHIA*, for allegedly accessing the personal health information of several individuals. This matter is ongoing as of March 31, 2022.

### Ongoing Court Matters

#### *Department of Transportation and Infrastructure application for a declaration, Court File No. 2020 01G 6069*

This is an application seeking a declaration by the Court pursuant to section 50 of *ATIPPA, 2015* that the Department does not have to comply with the recommendations in OIPC Report A-2020-028. The complaint which resulted in that Report involved a request by an access to information applicant which was refused by the Department on the basis of a claim of solicitor-client privilege. During the course of the OIPC investigation, the Department refused to provide a copy of the unredacted records to the Commissioner for review, and did not provide any other evidence to discharge its burden of proof. The Commissioner therefore recommended disclosure of the responsive records. No court date has yet been set, in light of the fact that the Commissioner has filed an appeal of the above-noted decision regarding the

Department of Justice and Public Safety which involves the same issue about the right of the Commissioner to compel production of records where there is a claim of solicitor-client privilege.

*Department of Fisheries, Forestry and Agriculture application for a declaration, Court File No. 2021 01G 0966*

This is an application seeking a declaration by the Court pursuant to section 50 of *ATIPPA, 2015* that the Department does not have to comply with the recommendations in OIPC Report A-2021-007. The complaint which resulted in that Report involved a request by an access to information applicant which was refused by the Department on the basis of a claim of solicitor-client privilege. During the course of the OIPC investigation, the Department refused to provide a copy of the unredacted records to the Commissioner for review, and did not provide any other evidence to discharge its burden of proof. The Commissioner therefore recommended disclosure of the responsive records. No court date has yet been set, in light of the fact that the Commissioner has filed an appeal of the above-noted decision regarding the Department of Justice and Public Safety which involves the same issue about the right of the Commissioner to compel production of records where there is a claim of solicitor-client privilege.

*Beverage Industry Association v. Her Majesty in Right of Newfoundland and Labrador as represented by the Minister of Finance, Court File No. 2018 01G 6000*

This began as an originating application for an injunction pursuant to Rule 22 and/or section 105 of the *Judicature Act*. It relates to an otherwise concluded court matter (*Atlantic Lottery Corporation v. Her Majesty The Queen (Minister of Finance)*, Court File No. 2017 01G 2004). The Beverage Industry Association (BIA) was not notified as a Third Party in that case and sought standing to oppose the release of records as ordered by the Court in that matter.

A decision on the BIA's application was rendered on December 11, 2019, in which the Court ordered that the matter be remitted back to the Commissioner to allow the BIA to make representations and for the Commissioner to prepare a new report. The decision also contained other rulings and interpretations impacting matters such as the role of the OIPC in notification of third parties, the availability of judicial review, and



the interpretation of section 39 which cause concern for the Commissioner, and as a result the Commissioner has filed an appeal of this ruling. No date has yet been set for the hearing.

*Oleynik v. Memorial University, Various Court Files*

The Applicant and Memorial University currently have a number of matters before the court relating to decisions by Memorial in response to his access to information requests. The Applicant, Memorial University and the OIPC were participating in a Court-mandated case management process at the conclusion of this reporting period, and these matters were on hold pending the outcome of a matter at the Court of Appeal.

*Asphalt Product Industries Inc. v. Town of Come By Chance, Court File No. 2021 01G 3621*

Asphalt Product Industries Inc. applied to the Town for access to records, including municipal tax agreements. The Town refused to provide access, and the requester subsequently filed an appeal directly to the Court in accordance with section 52 of *ATIPPA, 2015*. The Commissioner filed to become an intervenor in the matter on June 16, 2021, and the matter was set down for a hearing on May 19, 2022.

*Town of Lewisporte application for a declaration, Court File No. 2021 01G 3155*

An access to information applicant requested records held by the Town relating to a workplace investigation. The Town denied access to many of the records, including an Investigation Report, citing section 30 (solicitor-client privilege). The Commissioner concluded in Report A-2021-026 that the Investigation Report was not protected by section 30. The Commissioner found that some other records responsive to the request could be withheld while others should be disclosed. The Town complied with the majority of the recommendations but disagreed with the Commissioner regarding disclosure of the Investigation Report, and it therefore filed an application for a declaration in accordance with section 50 of *ATIPPA, 2015* that it need not follow the Commissioner's recommendation to disclose the Investigation Report. The matter was set down for a hearing on May 16, 2022.

*Department of Transportation and Infrastructure application for a declaration, Court File No. 2021 01G 5446*

This is an application seeking a declaration by the Court pursuant to section 50 of *ATIPPA, 2015* that the Department does not have to comply with the recommendations in OIPC Report A-2021-037. The complaint which resulted in that Report involved a request by an access to information applicant which was refused by the Department on the basis of a claim of solicitor-client privilege. During the course of the OIPC investigation, the Department refused to provide a copy of the unredacted records to the Commissioner for review, and did not provide any other evidence to discharge its burden of proof. The Commissioner therefore recommended disclosure of the responsive records. No court date has yet been set, in light of the fact that the Commissioner has filed an appeal of the above-noted decision regarding the Department of Justice and Public Safety which involves the same issue about the right of the Commissioner to compel production of records where there is a claim of solicitor-client privilege.

## **Court Decisions**

*Kirby v. Chaulk, Court File No. 2019 01G 1380*

This was an appeal by the Applicant of the decision by Bruce Chaulk, Commissioner for Legislative Standards, to follow the recommendations of the Commissioner in Report A-2019-004 to continue to withhold information from the Applicant under section 41(c) and that this was not a workplace investigation, as defined in section 33. The OIPC was an intervenor in the matter, which was heard on July 7, 2020. The Court's decision, issued on June 10, 2021 upheld the decision of the Public Body to continue to withhold the requested information from the Applicant.

*Department of Justice and Public Safety application for a declaration, Court File No. 2018 04G 0170*

This was an application seeking a declaration by the Court pursuant to section 50 of *ATIPPA, 2015* that the Department does not have to comply with the recommendations in OIPC Report A-2019-019. The complaint which resulted in that Report involved a request by an access to information applicant which was refused by the Department on the basis of a claim of solicitor-client privilege. During the course of the OIPC

investigation, the Department refused to provide a copy of the unredacted records to the Commissioner for review, and did not provide any other evidence to discharge its burden of proof. The Commissioner therefore recommended disclosure of the responsive records. The Court issued a decision on March 31, 2022 in which it indicated that the Commissioner does not have the right under *ATIPPA, 2015* to compel the production of records for which there is a claim of solicitor-client privilege when carrying out an investigation of a complaint by a requester about a refusal to provide access to information. The Court also found that the Department had met the burden of proof in this particular case, and declared that the Department need not follow the Commissioner's recommendations from his Report. The Commissioner has filed an appeal of the Court's decision.

*Department of Indigenous Affairs and Reconciliation application for a declaration, Court File No. 2020 01G 4584*

This was an application seeking a declaration by the Court pursuant to section 50 of *ATIPPA, 2015* that the Department does not have to comply with the recommendations in OIPC Report A-2020-020. The Court issued its decision on December 1, 2021, making a number of findings regarding sections 34 and 35 of *ATIPPA, 2015* that certain records could be withheld and others could not. The Court also concluded that social science records could be withheld under section 39 of *ATIPPA, 2015*.

*College of the North Atlantic Application for a Declaration; Court file 2020 01G 0627*

This was an application seeking a declaration by the Court pursuant to section 50 of *ATIPPA, 2015* that the College does not have to comply with the recommendations in OIPC Report A-2020-001. Our Notice of Intervention was filed October 25, 2019. A decision was rendered by the Court on September 24, 2021, in which the Court determined that section 33(3) of *ATIPPA, 2015*, which provides that certain information is to be provided to applicants who are parties to a workplace investigation, does not override the privacy protections set out in section 40.

## Other Concluded Matters

### *Fonemed North America Inc v. Department of Health and Community Services, Court File No. 2021 01G 0388*

An appeal was launched by Fonemed North America Inc (Third Party) of a decision of the Department of Health and Community Services to follow our recommendation in Report A-2020-029 that records be disclosed to the access to information applicant. The OIPC became an intervenor in the matter. In February 2022 Fonemed's counsel notified the parties that it intended to discontinue the appeal.

### *Bell Canada v. City of Mount Pearl, Court File No. 2020 01G 4899*

This is an appeal by Bell Canada (Third Party) of a decision of the City of Mount Pearl to follow our recommendation in Report A-2020-018 that records be disclosed to the access to information applicant. The OIPC is an intervenor in the matter. A hearing date had been set for September, 2021, however Bell withdrew its appeal just days before the hearing was to proceed.

### *Bell Canada v. David Heffernan, in his capacity as Chief Information Officer; Court file 2019 01G 6549*

This is an appeal by Bell Canada (Third Party) of a decision of the Office of the Chief Information Officer to follow our recommendation in Report A-2019-026 that records be disclosed to the access to information applicant. Our Notice of Intervention was filed October 25, 2019. The matter was set to be heard in October 2021, however Bell withdrew its appeal in September 2021.

## TIME EXTENSIONS AND APPLICATIONS TO DISREGARD

ATIPPA, 2015 provides for public bodies to apply to this Office for approval of an extension of time to respond to an access to information request or approval to disregard an access to information request.

In 2021-2022, public bodies made 604 applications for extensions of time for 444 unique access to information requests (where appropriate, this Office will consider multiple applications for the same access to information request). Also in this year, public bodies made 70 applications for approval to disregard access to information requests.

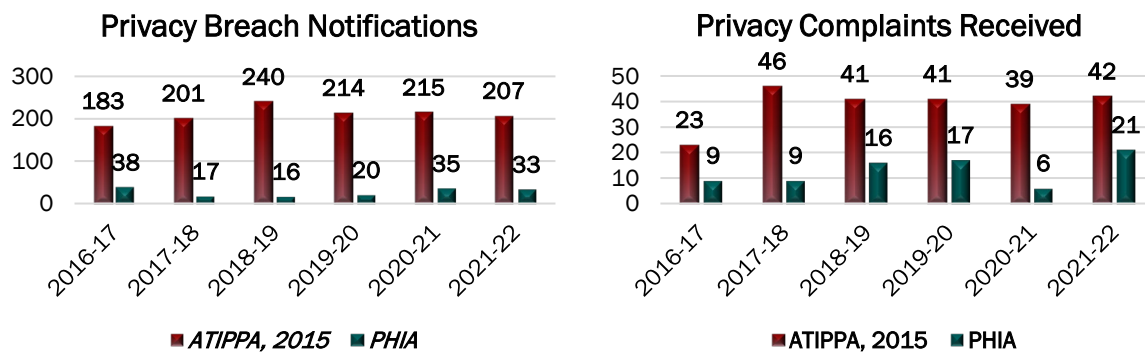
Of the 604 time extension applications, 480 (79%) were approved, 92 (15%) partially approved, 26 (4%) denied, and the remaining six (1%) were withdrawn by the public body. In total, across 593 applications (discounting those that were withdrawn, as well as five which did not specify the number of days requested), this Office approved 84.4% of additional time requested by public bodies (11,104 days out of 13,151).

As noted earlier in this Report, one of this Office’s objectives for 2021-2022 was to determine whether details of our decisions on time extension and disregard applications should be published. The OIPC is satisfied that its written responses to public bodies already provide sufficient reasons for its decisions.

### BREACH REPORTING

Under both *ATIPPA, 2015* and *PHIA*, public bodies and custodians are required to maintain the security of personal information and personal health information in their custody or control. Further, public bodies and custodians are required by legislation to notify this Office in the event that personal information or personal health information has been improperly accessed, disclosed, stolen, lost, or disclosed of.

In 2021-2022, public bodies reported a total of 207 breaches to this Office by public bodies under *ATIPPA, 2015*. In the same period, custodians reported 33 breaches under *PHIA*.



Of the 207 breaches reported by public bodies under *ATIPPA, 2015* and 33 breaches reported by custodians under *PHIA*, 51% were related to personal information being sent to the wrong person through email. While rare, intentional privacy breaches – where an individual (often

an employee of the public body) has willfully collected, used, or disclosed personal information without authorization – are of particular concern to OIPC. Over the past year, public bodies and custodians reported nine such intentional breaches.

The breach reporting provisions of *ATIPPA, 2015* and *PHIA* provide OIPC with an opportunity to engage with public bodies and custodians to provide guidance on containing and mitigating privacy breaches. In addition to reporting privacy breaches to OIPC, both *ATIPPA, 2015* and *PHIA* also provide for public bodies and custodians to notify those individuals affected by a privacy breach.

Under *ATIPPA, 2015* and *PHIA*, the OIPC may respond to a privacy breach with its own investigation. The OIPC publishes aggregate data regarding breaches reported by public bodies in our quarterly *ATIPPA, 2015* newsletter, *Above Board*.

### **TIP OF THE HAT**

Don Hynes has worked as the ATIPP Coordinator/Privacy Analyst for the House of Assembly, as well as the ATIPP facilitator for the Statutory Offices, since October 1, 2007. This role involves administering access to information requests; addressing privacy breaches, concerns, and projects; consulting and assisting in email searches for other public bodies depending on the nature of the request; advising ATIPP Coordinators in the Statutory Offices; and submitting annual statistics on behalf of the HOA and Statutory Offices to the Department of Justice and Public Safety's ATIPP Office. Additionally, Don is responsible for providing privacy training within the House of Assembly to newly elected Members of the House of Assembly; new Constituency Assistants; government, official opposition and third party caucus staff; as well as House of Assembly and Statutory Office employees. In recent years Don has helped to promote and organize cyber security sessions for House of Assembly members and staff, which is offered by the Office of the Chief Information Officer.

Don has been an active member of the Board of Directors for the Canadian Access and Privacy Association (CAPA) since 2013, and assists in organizing the annual CAPA conference held in Ottawa. He has also been a member of the National Certification Working Group for the

Canadian Institute of Access and Privacy Professionals (CIAPP) since 2011. In addition, Don has assisted by contributing his time and talent to the APSIM Conference here in this province.

Don is at the forefront of a group of talented and dedicated professionals in this province who help to promote access, privacy, security, and information management.

With the constantly changing world and its challenges for protecting personal information, Don has been a leading example of the commitment to the principles of his profession that we are happy to recognize through this Annual Report. Our hats are off to you Don!

## **CONCLUSION**

2021-2022 was a busy and productive year for the Office of the Information and Privacy Commissioner.

During the fiscal year, though faced with a standard number of incoming complaints related to both access to information and privacy, we produced a large number of Commissioner's Reports, matching the record set the previous fiscal year. If this was a trend rather than a statistical anomaly it appears to have abated, with the number of reports tailing off during the end of the reporting period. Nevertheless, it generated a significant amount of work for the staff of the Office. These reports resolved many issues, led to recommendations for improvement by custodians and public bodies, and provided interpretation about how *ATIPPA, 2015* and *PHIA* operate.

2021-2022 was also a busy year on other fronts as well, often involving innovation in getting out messages about access and privacy, including such activities as holding a fully virtual APSIM conference, chairing the FPT table of Information and Privacy Commissioners, continuing our podcast initiative, participating in the national Expert Advisory Group on a Health Data Strategy, and other initiatives.

We are proud of this work towards meeting our access to information and protection of privacy mandates for Newfoundlanders and Labradorians. We look forward to continuing this work in

the coming year. However, 2021-2022 also saw rising challenges and concerns that we will face in the coming year.

As noted above, we are concerned about the increasing number of deemed refusal complaints that we are receiving and other indicators that at least some public bodies are not meeting their statutory obligations to respond to access to information requests in a timely manner. While we do not yet fully understand the extent or cause of this problem, we are concerned that certain public bodies are not giving the appropriate priority to staffing and implementing the access to information function.

We are also concerned that access to information and protection of privacy does not seem to be a legislative or policy priority for the provincial government.

- In successive prior Annual Reports, we have remarked that the 2016 *PHIA* Statutory Review, which produced a report to the Minister of Health and Community Services in 2017, had not resulted in amendments being brought before the House. This was true again this year. Enough time had passed that the Minister was legislatively obliged to launch another statutory review, which he did on the very last day to comply with the *Act* – December 31, 2021. By the end of the reporting period, three months later, we had still not learned who would be conducting that statutory review, when it would proceed, or anything else about it.
- In June 2021, the Department of Justice and Public Safety received the report of the 2020 Statutory Review of *ATIPPA, 2015*. By the end of the reporting period, almost 10 months later, with the exception of official-level inquiries about minor matters, the Department had still not announced its intentions for acting on this report or engaged OIPC on the most significant recommendations.
- In March 2020, the report of the Commission of Inquiry Respecting the Muskrat Falls Project recommended that the government introduce amendments to the *Management of Information Act* respecting a duty to document within six months. But while there was some consultation on this matter in the 2020-2021 reporting period, there was no contact at all during 2021-2022.



We are concerned that this lack of movement on multiple matters, in combination with an increase in compliance with *ATIPPA, 2015* timelines, indicates that the provincial government does not place a priority on the values of access to information and privacy that is required for excellence in democratic governance and public administration.

We of course understand that 2021-2022 was a very challenging year for the provincial government and the entire public sector. Not only was this the second year of a pandemic, but the province continued to face substantial fiscal and economic pressures. The cyber attack on our provincial health system had a very significant impact on a number of government departments and health care organizations. Many public bodies and custodians also experienced significant capacity issues brought on by the productivity impacts of the pandemic and the demographic realities of a changing workforce. We do understand how, faced with capacity issues and significant operational demands that the temptation may arise to de-prioritize access to information and privacy; however, it is our view that this is shortsighted. Ultimately the erosion of priority given to these values will only further erode capacity as well as, critically, public trust. If the provincial government is to meet the ambitious goals that it has set for itself, such as the transition of our energy sector and the transformation of our health system, then many critical policy decisions will come before it. It will be essential that these decisions be made by public bodies operating at high levels of transparency so that they are soundly made and the public can trust in them.

As we look forward to the coming year we reiterate our commitment from years past: we look forward to the challenges which will come with the investigations that we will face in 2022-2023, such as that into the cyber attack. While it will be the largest and most complex single investigation we have undertaken, we are optimistic that our report will produce recommendations that will ultimately contribute to the improved privacy and security of the personal health information of the people of the province. We also look forward to the opportunity to engage the provincial government on legislative reforms or new policies and programs. We are optimistic that there are opportunities to improve both the transparency of our public bodies as well as the protection of our citizens' privacy.



## Appendix A

Timelines (business days) for Access Complaints for the  
2021-2022 Reporting Period under the  
*Access to Information and Protection of Privacy Act, 2015*



Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Bay Bulls	Informal Resolution	2022-03-22	2			2022-03-24	2
Department of Municipal and Provincial Affairs	Informal Resolution	2021-12-31	9			2022-01-13	9
Eastern Health	Informal Resolution	2022-01-26	12			2022-02-11	12
Department of Immigration, Population Growth and Skills	Informal Resolution	2021-10-12	13			2021-10-29	13
Department of Health and Community Services	Informal Resolution	2022-01-21	13			2022-02-09	13
Department of Finance	Informal Resolution	2022-03-02	14			2022-03-22	14
Department of Education	Informal Resolution	2021-03-25	15			2021-04-16	15
Town of Witless Bay	Informal Resolution	2021-11-22	17			2021-12-15	17
Department of Health and Community Services	Informal Resolution	2021-03-16	18			2021-04-12	18
Memorial University	Informal Resolution	2021-03-22	20			2021-04-20	20
City of Mount Pearl	Informal Resolution	2021-05-10	22			2021-06-10	22
Department of Fisheries, Forestry and Agriculture	Informal Resolution	2021-03-19	22			2021-04-21	22
Town of West St. Modeste	Informal Resolution	2021-11-08	23			2021-12-10	23
City of Mount Pearl	Informal Resolution	2021-02-26	25			2021-04-05	25
Department of Finance	Informal Resolution	2022-01-21	28			2022-03-02	28
Department of Municipal and Provincial Affairs	Informal Resolution	2022-01-04	29			2022-02-14	29
Town of Bauline	Informal Resolution	2021-06-18	29			2021-07-30	29
Department of Health and Community Services	Informal Resolution	2021-12-14	29			2022-01-25	29
Department of Justice and Public Safety	Informal Resolution	2021-04-16	29			2021-05-28	29
Department of Justice and Public Safety	Informal Resolution	2022-01-27	29			2022-03-09	29
Newfoundland and Labrador Liquor Corporation	Informal Resolution	2021-05-27	30			2021-07-09	30
Department of Environment, Climate Change and Municipalities	Informal Resolution	2021-08-25	30			2021-10-07	30
Royal Newfoundland Constabulary	Informal Resolution	2021-11-01	31			2021-12-15	31
Newfoundland and Labrador Liquor Corporation	Informal Resolution	2021-06-04	31			2021-07-20	31
Town of Paradise	Informal Resolution	2021-12-22	31			2022-02-04	31
Town of Happy Valley-Goose Bay	Informal Resolution	2021-06-02	31			2021-07-16	31

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Department of Transportation and Infrastructure	Informal Resolution	2021-03-12	31			2021-04-27	31
Department of Fisheries, Forestry and Agriculture	Informal Resolution	2021-06-25	31			2021-08-11	31
Newfoundland and Labrador Liquor Corporation	Informal Resolution	2021-06-10	32			2021-07-27	32
Newfoundland and Labrador Liquor Corporation	Informal Resolution	2021-06-10	32			2021-07-27	32
Newfoundland and Labrador Liquor Corporation	Informal Resolution	2021-06-10	32			2021-07-27	32
Town of Appleton	Informal Resolution	2021-08-04	32			2021-09-21	32
Department of Health and Community Services	Informal Resolution	2022-01-25	35			2022-03-15	35
Town of Portugal Cove-St. Philip's	Informal Resolution	2021-09-01	37			2021-10-26	37
Office of the Seniors Advocate	Informal Resolution	2021-11-25	38			2022-01-19	38
Department of Education	Informal Resolution	2021-09-27	39			2021-11-23	39
Department of Education	Informal Resolution	2021-11-10	39			2022-01-06	39
Memorial University	Informal Resolution	2022-01-11	40			2022-03-08	40
Department of Health and Community Services	Informal Resolution	2021-12-29	40			2022-02-23	40
Western Health	Informal Resolution	2021-03-24	42	2021-05-25	0	2021-05-25	42
Department of Health and Community Services	Informal Resolution	2021-03-16	42			2021-05-14	42
Department of Health and Community Services	Informal Resolution	2022-01-31	43			2022-03-31	43
Department of Health and Community Services	Informal Resolution	2022-01-31	43			2022-03-31	43
Newfoundland and Labrador Liquor Corporation	Informal Resolution	2021-06-14	44			2021-08-17	44
Department of Health and Community Services	Informal Resolution	2021-07-08	45			2021-09-13	45
Department of Justice and Public Safety	Informal Resolution	2021-02-08	46			2021-04-14	46
Memorial University	Informal Resolution	2021-06-07	47			2021-08-13	47
Town of Trout River	Informal Resolution	2021-05-07	48			2021-07-16	48
College of the North Atlantic	Informal Resolution	2021-10-12	45	2021-12-08	5	2021-12-15	50
City of Mount Pearl	Informal Resolution	2021-02-19	51			2021-05-04	51
Department of Digital Government and Service NL	Informal Resolution	2021-02-12	51			2021-04-27	51

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
City of St. John's	Informal Resolution	2021-09-28	35	2021-11-18	16	2021-12-10	51
College of the North Atlantic	Informal Resolution	2021-08-27	52			2021-11-12	52
Memorial University	Informal Resolution	2021-10-27	52			2022-01-11	52
Town of Bauline	Informal Resolution	2021-03-29	52			2021-06-11	52
Department of Justice and Public Safety	Informal Resolution	2021-06-28	53			2021-09-14	53
Treasury Board Secretariat	Informal Resolution	2021-05-20	54			2021-08-09	54
Town of Grand Falls-Windsor	Informal Resolution	2021-07-20	54			2021-10-06	54
Town of Grand Falls-Windsor	Informal Resolution	2021-09-29	54			2021-12-16	54
Newfoundland and Labrador English School District	Informal Resolution	2021-06-18	55			2021-09-08	55
Town of Paradise	Informal Resolution	2021-08-26	55			2021-11-16	55
Treasury Board Secretariat	Informal Resolution	2021-11-10	58			2022-02-02	58
Office of the Premier	Informal Resolution	2021-06-22	58			2021-09-15	58
Department of Digital Government and Service NL	Informal Resolution	2021-05-21	58			2021-08-16	58
Department of Fisheries, Forestry and Agriculture	Informal Resolution	2021-08-06	58			2021-10-29	58
Memorial University	Informal Resolution	2021-08-16	59			2021-11-09	59
Town of Paradise	Informal Resolution	2021-05-20	59			2021-08-16	59
Office of the Premier	Informal Resolution	2021-06-15	59			2021-09-09	59
Department of Fisheries, Forestry and Agriculture	Informal Resolution	2021-12-13	59	2022-03-07	1	2022-03-08	60
Newfoundland and Labrador Film Development Corporation	Informal Resolution	2021-07-16	60			2021-10-13	60
Department of Health and Community Services	Informal Resolution	2021-11-23	60			2022-02-16	60
Newfoundland and Labrador English School District	Informal Resolution	2021-07-19	62			2021-10-18	62
Department of Health and Community Services	Informal Resolution	2021-10-15	60	2022-01-07	2	2022-01-11	62
Memorial University	Informal Resolution	2021-11-25	33	2022-01-12	30	2022-02-23	63
Town of Musgrave Harbour	Informal Resolution	2021-07-22	64			2021-10-25	64
Memorial University	Informal Resolution	2021-11-16	34	2022-01-04	30	2022-02-15	64
Treasury Board Secretariat	Report	2021-11-17	0	2021-11-17	24	2021-12-21	24
City of Mount Pearl	Report	2021-03-09	31	2021-04-22	8	2021-05-04	39
City of Mount Pearl	Report	2021-02-16	24	2021-03-22	30	2021-05-04	54
Town of St. George's	Report	2021-03-09	30	2021-04-21	25	2021-05-27	55

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Department of Transportation and Infrastructure	Report	2021-06-28	37	2021-08-20	21	2021-09-21	58
Memorial University	Report	2021-05-17	36	2021-07-08	22	2021-08-10	58
Department of Children, Seniors and Social Development	Report	2021-04-05	43	2021-06-04	16	2021-06-28	59
Commissioner for Legislative Standards	Report	2021-04-05	43	2021-06-04	16	2021-06-28	59
Treasury Board Secretariat	Report	2021-07-08	40	2021-09-03	19	2021-10-01	59
City of St. John's	Report	2021-09-14	39	2021-11-09	20	2021-12-08	59
Department of Health and Community Services	Report	2021-05-04	59	2021-07-28	1	2021-07-29	60
Department of Digital Government and Service NL	Report	2021-04-06	35	2021-05-26	25	2021-06-30	60
Memorial University	Report	2021-08-30	30	2021-10-13	30	2021-11-25	60
Heritage Foundation of NL	Report	2021-07-19	44	2021-09-21	17	2021-10-15	61
Memorial University	Report	2021-07-27	32	2021-09-13	29	2021-10-25	61
Office of the Premier	Report	2021-04-07	60	2021-07-02	2	2021-07-06	62
Department of Transportation and Infrastructure	Report	2021-02-09	49	2021-04-20	13	2021-05-07	62
Serious Incident Response Team	Report	2021-01-15	43	2021-03-17	19	2021-04-14	62
City of Mount Pearl	Report	2021-02-04	32	2021-03-22	30	2021-05-04	62
Town of Paradise	Report	2021-03-19	50	2021-06-01	13	2021-06-18	63
Memorial University	Report	2021-05-11	41	2021-07-09	22	2021-08-11	63
Town of Salmon Cove	Report	2021-03-18	35	2021-05-07	28	2021-06-17	63
City of Mount Pearl	Report	2021-02-03	33	2021-03-22	30	2021-05-04	63
Royal Newfoundland Constabulary	Report	2021-07-14	33	2021-08-31	30	2021-10-14	63
Memorial University	Report	2021-01-07	32	2021-02-22	31	2021-04-07	63
Department of Environment, Climate Change and Municipalities	Report	2021-08-23	30	2021-10-05	33	2021-11-23	63
Memorial University	Report	2021-03-04	45	2021-05-07	18	2021-06-03	63
Department of Fisheries, Forestry and Agriculture	Report	2021-06-02	59	2021-08-26	5	2021-09-02	64
Eastern Health	Report	2021-02-08	58	2021-04-30	6	2021-05-10	64
Department of Municipal and Provincial Affairs	Report	2021-12-01	56	2022-02-18	8	2022-03-02	64



Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Newfoundland and Labrador Legal Aid Commission	Report	2021-02-05	54	2021-04-23	10	2021-05-07	64
Memorial University	Report	2021-06-30	45	2021-09-03	19	2021-10-01	64
Town of Lewisporte	Report	2021-03-05	44	2021-05-07	20	2021-06-07	64
Memorial University	Report	2021-06-17	44	2021-08-20	20	2021-09-20	64
Department of Fisheries, Forestry and Agriculture	Report	2021-01-04	42	2021-03-03	22	2021-04-05	64
Town of Witless Bay	Report	2021-12-17	35	2022-02-07	29	2022-03-18	64
Town of Gander	Report	2021-07-30	58	2021-10-25	7	2021-11-03	65
Royal Newfoundland Constabulary	Report	2021-11-12	53	2022-01-27	12	2022-02-14	65
Town of Grand Falls-Windsor	Report	2021-07-13	48	2021-09-21	17	2021-10-15	65
Department of Health and Community Services	Report	2021-02-26	46	2021-05-04	19	2021-06-01	65
Memorial University	Report	2021-06-23	40	2021-08-20	25	2021-09-27	65
Department of Education	Report	2021-10-01	58	2021-12-24	7	2022-01-05	65
Department of Health and Community Services	Declined to Investigate	2022-01-28	30			2022-03-11	30
Town of Conception Bay South	Declined to Investigate	2021-12-01	64			2022-03-02	64
Town of Conception Bay South	Declined to Investigate	2021-12-01	64			2022-03-02	64
Town of Gander	Declined to Investigate	2022-02-22	12			2022-03-10	12
Town of Gander	Determination on Costs	2021-08-06	16			2021-08-30	16
Royal Newfoundland Constabulary	Formal Investigation not Conducted	2021-02-19	62			2021-05-19	62
Eastern Health	Formal Investigation not Conducted	2021-05-27	65			2021-08-30	65
Newfoundland and Labrador English School District	No Jurisdiction	2021-06-29	0			2021-06-29	0
Town of Grand Falls-Windsor	No Jurisdiction	2021-07-09	0			2021-07-09	0
Department of Children, Seniors and Social Development	No Jurisdiction	2021-06-22	4			2021-06-28	4
Royal Newfoundland Constabulary	No Jurisdiction	2021-04-19	6			2021-04-27	6
Royal Newfoundland Constabulary	No Jurisdiction	2021-10-22	17			2021-11-17	17
Royal Newfoundland Constabulary	Withdrawn	2021-07-13	1			2021-07-14	1
Town of Kippens	Withdrawn	2021-11-01	2			2021-11-03	2
Office of the Premier	Withdrawn	2021-08-13	4			2021-08-19	4

Public Body	Means of Resolution	Review Started	Days for Informal Review	Formal Review Stared	Days for Formal Review	Date Complaint Resolved	Total Days
Town of Portugal Cove-St. Philip's	Withdrawn	2021-09-29	4			2021-10-05	4
Department of Digital Government and Service NL	Withdrawn	2021-12-29	9			2022-01-11	9
Memorial University	Withdrawn	2022-02-17	13			2022-03-08	13
Town of Grand Falls-Windsor	Withdrawn	2021-07-21	19			2021-08-18	19
Town of Grand Falls-Windsor	Withdrawn	2021-07-20	20			2021-08-18	20
Town of Kippens	Withdrawn	2021-11-30	30			2022-01-12	30
Town of Kippens	Withdrawn	2021-11-30	30			2022-01-12	30
Town of Kippens	Withdrawn	2021-11-30	30			2022-01-12	30

## Appendix B

Timelines (business days) for Privacy Complaints for the  
2021-2022 Reporting Period under the  
*Access to Information and Protection of Privacy Act, 2015*



Public Body	Means of Resolution	Review Started	Date Complaint Resolved	Total Days
Town of Petty Harbour Maddox Cove	Informal Resolution	2021-07-15	2021-07-27	12
Department of Children, Seniors and Social Development	Informal Resolution	2021-06-01	2021-06-30	29
Town of Brigus	Informal Resolution	2021-12-14	2022-01-20	37
Royal Newfoundland Constabulary	Informal Resolution	2021-12-03	2022-01-12	40
Workplace Health, Safety and Compensation Review Division	Informal Resolution	2021-03-10	2021-04-22	43
Newfoundland and Labrador Housing Corporation	Informal Resolution	2021-05-03	2021-06-17	45
Department of Tourism, Culture, Arts and Recreation	Informal Resolution	2021-03-10	2021-04-27	48
Department of Fisheries, Forestry and Agriculture	Informal Resolution	2021-04-12	2021-06-14	63
Town of Conception Bay South	Informal Resolution	2021-05-04	2021-07-13	70
Nalcor Energy	Informal Resolution	2021-03-09	2021-06-14	97
Memorial University	Informal Resolution	2021-11-12	2022-03-04	112
Royal Newfoundland Constabulary	Informal Resolution	2021-10-21	2022-03-07	137
Department of Digital Government and Service NL	Informal Resolution	2021-02-23	2021-12-22	302
Newfoundland and Labrador English School District	Informal Resolution	2020-06-09	2021-08-25	442
Department of Health and Community Services	Informal Resolution	2020-01-10	2021-04-23	469
Town of Happy Valley-Goose Bay	Report	2020-11-30	2021-05-04	155
Labour Relations Board	Report	2020-08-28	2021-05-06	251
Department of Children, Seniors and Social Development	No Jurisdiction	2021-09-07	2021-09-22	15
Newfoundland and Labrador Housing Corporation	No Jurisdiction	2021-06-30	2021-07-20	20
Memorial University	Formal Investigation not Conducted	2021-03-09	2021-06-22	105
Royal Newfoundland Constabulary	Formal Investigation not Conducted	2021-07-26	2021-11-16	113
Department of Fisheries, Forestry and Agriculture	Formal Investigation not Conducted	2021-09-23	2022-02-15	145
Department of Children, Seniors and Social Development	Formal Investigation not Conducted	2020-10-22	2021-04-21	181
Department of Immigration, Skills and Labour	Formal Investigation not Conducted	2020-09-02	2021-04-01	211
Workplace NL	Formal Investigation not Conducted	2021-02-25	2021-11-19	267
Town of Brent's Cove	Formal Investigation not Conducted	2020-10-08	2021-11-16	404
Commissioner for Legislative Standards	Declined to Investigate	2021-08-12	2021-09-22	41

Public Body	Means of Resolution	Review Started	Date Complaint Resolved	Total Days
Department of Digital Government and Service NL	Declined to Investigate	2021-10-19	2021-11-05	17
Department of Health and Community Services	Declined to Investigate	2021-10-05	2021-11-05	31
Department of Children, Seniors and Social Development	Declined to Investigate	2021-10-05	2021-11-05	31
Royal Newfoundland Constabulary	Declined to Investigate	2021-10-01	2021-11-03	33
Newfoundland and Labrador Centre for Health Information (NLCHI)	Declined to Investigate	2021-11-25	2021-12-30	35
Royal Newfoundland Constabulary	Withdrawn	2021-10-05	2021-10-15	10
Western Health	Withdrawn	2021-10-05	2021-10-15	10
Memorial University	Withdrawn	2021-02-08	2021-04-15	66
Workplace NL	Withdrawn	2021-02-16	2021-05-19	92







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