



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Annual Performance Report

2009-2010

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September 8, 2010

Message from the Information and Privacy Commissioner

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

I am pleased to present the Office of the Information and Privacy Commissioner's Annual Performance Report for 2009-2010.

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

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

Edward P. Ring
Information and Privacy Commissioner

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OVERVIEW

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

- Investigations
- Public Education
- Oversight

The Office of the Information and Privacy Commissioner's original budget was \$1,124,700. The amended budget was \$1,124,700 and the actual amount spent was \$1,007,107, resulting in a variance of approximately \$117,593. The variance occurred due to a number of circumstances that were beyond the control of the OIPC:

1. Approximately \$80,000 was not spent in salaries due to the following circumstances. The Assistant Commissioner was on an interchange with the federal Privacy Commissioner's Office. His temporary replacement is paid at a lower salary resulting in a savings of approximately \$18,000. Approximately \$35,000 was not spent due to the late hiring of the Mediation, Communications and Policy Analyst in November of 2009. Approximately 22,000 was not spent to hire a co-op student due to the hiring of an individual through the Office of Employment Equity for Persons with Disabilities. Approximately \$5,000 was not spent on overtime.
2. Approximately \$16,500 was not spent on transportation. Again, this under expenditure resulted as travel requirements were lower than anticipated at budget time.
3. Approximately \$19,000 was not spent on professional services. This amount was allocated to cover legal fees for outside services due to a number of then outstanding court cases. The cases in question were subject to court submission schedules, etc. and were not concluded in the 2009-10 fiscal year and subsequently were carried over into the current fiscal year.

4. Approximately \$2,000 was not spent on purchased services due to unexpected savings for items necessary for the hosting of the Federal/Provincial/Territorial Information and Privacy Commissioners Conference in St. John's.

VISION

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

MISSION

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

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

- giving the public a right of access to records;
- giving individuals a right of access to and a right to request correction of personal information about themselves;
- preventing the unauthorized collection, use or disclosure of personal information by public bodies;
- providing for an independent review of decisions made by public bodies under the *ATIPPA*;
- reviewing a decision, act or failure to act of a public body that relates to an access request or a request to correct personal information;
- investigating complaints about an extension of time for responding to a request or a fee required under the *Act*;
- making recommendations to ensure compliance with the *Act* and regulations;
- informing the public about the *Act*;
- receiving comments from the public about the administration of the *Act*;

- commenting on the information and privacy implications of proposed legislation and programs;
- commenting on the implications of record linkages and information technology on the protection of privacy;
- informing the head of a public body about a failure to adequately assist an applicant;
- making recommendations to public bodies or the minister responsible for this *Act* about the administration of the *Act*.

January 17, 2010 was the fifth anniversary of the proclamation of the *ATIPPA* (with the exception of the Privacy Provisions). The Privacy Provisions were proclaimed into force on January 16, 2008. The initial priority for the Office was to build an awareness of access to information principles and best practices both within government institutions and within the larger public body sector. Challenges associated with internal capacity building regarding knowledge of the legislation, relevant judicial and Commissioner rulings and precedents have been experienced along with the worldwide expansion in laws and practices covering access to information and privacy issues. Other challenges were experienced due to the requirement to balance staff resources and demands in maintaining currency with advances in information management and technology as well as our requirement to educate and inform the public regarding the role and mandate of the OIPC as well as the legislation. Additionally, resources were utilized to commence the process of developing the OIPC Policy and Procedures manual.

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

1. Independence

OIPC staff will conduct investigations independent of any influence.

2. Integrity

OIPC staff will provide accurate, unbiased advice and recommendations.

3. Confidentiality

OIPC staff will adhere to a standard of absolute confidentiality.

4. Judgment

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

5. Respect

OIPC staff will listen to and considers the ideas and opinions of others and works collaboratively to achieve results.

LINES OF BUSINESS

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

Investigations

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

Public Education

The Office ensures that members of the public are aware of their rights to access information and how they can exercise those rights. As appropriate, the Office informs the public about these rights through public commentary and education/awareness programs aimed at explaining the administration and operation of the *ATIPPA* and our Office. A series of province-wide education/awareness sessions were conducted in specific locations that began in the spring of 2009.

Oversight

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

NUMBER OF EMPLOYEES

The Office has a staff complement of 13, including the Commissioner (62% female and 38% male). Of the thirteen positions, three are currently being filled on a temporary basis.

PHYSICAL LOCATION

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

REVENUES AND EXPENDITURES

The 2009-10 budget for the Office of the Information and Privacy Commissioner was \$1,124,700. The details are noted below and on page 13 of the report.

| | |
|---------------------------------------|---------------------------|
| 01 Salaries | 767,200 |
| 02. Employee Benefits | 13,500 |
| 03. Transportation & Communications | 99,300 |
| 04. Supplies | 12,300 |
| 05. Professional Services | 80,000 |
| 06. Purchased Services | 139,400 |
| 07. Property, Furnishings & Equipment | <u>13,000</u> |
| Total | <u>\$1,124,700</u> |

OTHER KEY STATISTICS

Access Requests

The complexity of access requests seems to be compounding resulting in more investigative time required and longer periods needed to conclude the investigation and report.

2007-2008 – 131 active files in total

2008-2009 – 164 active files in total

2009-2010 – 164 active files in total

Privacy Requests

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

2007-2008 – 6 active files in total

2008-2009 – 23 active files in total

2009-2010 – 26 active files in total

HIGHLIGHTS AND ACCOMPLISHMENTS

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

1. Hosted the Federal, Provincial, Territorial Information and Privacy Commissioners' Annual Conference (St. John's)
2. Participated in a number of Canada Infoway Conference (Mississauga, ON, Halifax, NS)

3. Participated in eight (8) Personal Health Information Act Steering Committee Meetings as well as a total of fifteen meetings as part of various working groups (St. John's)
4. Presented to the Canadian Bar Association, National Privacy Sub-committee Meeting (St. John's)
5. Participated in Children's On-Line Privacy Working Groups (Fredericton, NB)
6. Meeting/Discussion and Consultation with British Columbia Information and Privacy Commissioner (St. John's)
7. Presentation by and discussions with senior officials from the Newfoundland and Labrador Centre for Health Information, specifically concerning the roll-out of The Pharmacy Network as part of the Electronic Medical Health Records System (St. John's)
8. Participated in "Right to Know" Week at Memorial University (St. John's). College of the North Atlantic, (Stephenville and Corner Brook)
9. A number of investigators attended personal health information related training in various locations in preparation for proclamation of the *Personal Health Information Act* (Calgary, Toronto, and Ottawa)
10. Commissioner attended the 31st International Conference for Heads of Data Protection Agencies (Madrid, Spain)
11. OIPC sponsored Personal Health Information training seminar with major stake holders in preparation of proclamation of *PHIA* (St. John's)
 - Dr. Deborah Grant – OIPC Ontario
 - OIPC – NL Staff
 - Regional Health Authority Delegates
 - *PHIA* Steering Committee Members (various)
 - Department of Health and Community Services Representatives
 - Newfoundland and Labrador Centre for Health Information Representatives
 - Memorial University Delegation
 - Privacy Commissioner of Canada Representative
 - Representatives from various Private Sector Interest Groups
12. Six OIPC staff attended Conciliation Skills for Investigators Workshop (*PHIA* proclamation preparation) (Toronto, ON)
13. OIPC participated in joint Data Protection Day Events (St. John's and Stephenville) partnering with:

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

OUTCOME OF OBJECTIVES/REPORT ON PERFORMANCE

Objective - By March 31, 2010, the Office of the Information and Privacy Commissioner continued work on the policy and procedures manual including jurisdictional reviews and best practice discussion.

Measure: Continued work on development of the policy and procedures manual.

| Indicators | Accomplished 2009-2010 |
|---|---|
| <ul style="list-style-type: none"> ➤ Progress made on policy and procedures manual. ➤ Jurisdictional review completed. ➤ Discussions held on best practices. | <p>During this reporting period, the draft policies and procedures were reviewed and changes made where required based on the day-to-day demands and reality of the Office. A jurisdictional policy and procedures review was conducted of all provinces and territories. Staff sessions were held on a periodic basis to discuss and update the draft policies and procedures and to discuss best practices. A Mediation, Communications and Policy Analyst (MCPA) was hired to lead policy and procedures development. Although good progress has been made in refining and fine tuning the existing policies, some work still remains to be done and this will continue to be one of the high priority tasks for the MCPA.</p> |

Objective: By March 31, 2011, the Office of the Information and Privacy Commissioner will have completed and published its policy and procedures manual.

Measure: Will have completed and published its policy and procedures manual.

Indicator:

- Feedback information gathered from previous year’s jurisdictional scan and in-house meetings and discussions to refine existing policies and procedures.
- Policy and Procedures manual completed and published.

Objective: By March 31, 2010, the Office of the Information and Privacy Commissioner will have continued liaison with the Department of Justice ATIPP coordinating office to identify coordinators for all public bodies.

Measure: Will have continued liaison with the Department of Justice ATIPP coordinating office to identify ATIPP coordinators for all public bodies.

| Indicators | Accomplished 2009-2010 |
|--|---|
| ➤ Compile a comprehensive list of coordinators in all public bodies subject to ATIPPA. | This objective has been completed. During this reporting period a number of meetings were conducted between officials from the OIPC and the ATIPP Coordinating Office. An initiative was undertaken to develop the comprehensive list and this has been accomplished. It is important to note that there will likely always be deviation from the list due to, on occasion, public bodies being added to the list or some public bodies being removed. Additionally, recognition must be given to the fact there will always be some turbulence concerning the identity of the coordinator due to a number of factor such as change of appointment, change of employment and retirement, just to mention a few. Overall, in spite of an acceptable level of turbulence this objective has been accomplished to the degree that it can be. |

Objective: By March 31, 2011, the Office of the Information and Privacy Commissioner will have completed a survey with all 467 public body ATIPPA Coordinators to determine the coordinator continuity and/or turnover rate and make appropriate recommendations to the head of the public body.

Measure: Will have completed survey.

Indicators:

- Conduct survey.
- Received and analyzed results from survey.
- Determined findings and made recommendations.

Objective: By March 31, 2010, the Office of the Information and Privacy Commissioner will have continued to accomplish its goal of conducting briefings in all selected locations.

Measure: Will have conducted briefings.

| Indicators | Accomplished 2009-2010 |
|--|---|
| <ul style="list-style-type: none"> ➤ The number of sessions conducted. ➤ Number of participants attending/reached. ➤ Feedback received. | <p>As a result of the feedback received from the 2008-09 sessions, most of which had 10 or less participants, our approach for the 2009-2010 reporting period was very much more targeted and focused. We primarily advertised our willingness and availability to present to groups, organizations and associations, etc. This approach worked much better and resulted in the Office participating in 75 events in the form of conferences, panels, presentations, discussions, etc. This approach saw a dramatic increase in the number of participants. On average there was between 30-50 participants per event with two events having 200 and 600 participants respectively. This resulted in excellent, cost-effective and efficient exposure. The format for the 2009-2010 outreach initiative was very successful</p> |

| | |
|--|---|
| | <p>with a much improved attendance for all events as compared to the 2008-2009 campaign. Post event discussions from event coordinators as well as email and telephone feedback received was very positive and encouraging.</p> |
|--|---|

Objective: By March 31, 2011, the Office of the Information and Privacy Commissioner will have concluded its initial public education program and will have identified further areas/locations requiring briefings.

Measure: Will have concluded initial public education programs and will have identified further areas/locations to concentrate its education efforts.

Indicators:

- Number of areas identified and targeted.
- Number of sessions conducted.
- Feedback information gathered.

OPPORTUNITIES AND CHALLENGES

The Office of the Information and Privacy Commissioner continues to grow along with the demands and workload. We still struggle with the backlog of files and are challenged to complete our investigations within the 90 day legislated timeframe. Many of our requests for review continue to become more complicated and detailed and therefore, time consuming to conclude.

The Privacy Provisions that were proclaimed in January 2008 has resulted in a number of complex and in depth investigations by our Office. These investigations quite often are very technical in nature and on occasion require on-site review and investigation. The increase in privacy breach related investigations has detrimentally impacted the Office's ability to make significant progress in clearing up or even

significantly improving on the access request backlog and has contributed to a significant number of access requests running well over the 90 day legislated time period for conclusion.

During this reporting period considerable time, energy and resources have been spent in preparation for the proclamation into force of the Personal Health Information Act (*PHIA*). It is anticipated that this will occur in late 2010-2011 fiscal year. The Office of the Information and Privacy Commissioner has played a very active role in the preparation for the roll-out of this legislation. Our Office participates as a member of the *PHIA* Steering Committee and holds memberships on both the Education and Regulation Working Groups. Additionally, our Office is routinely called upon to contribute as part of some of the other working groups. During this reporting period our Office has undertaken an extensive and comprehensive training initiative to ensure our investigative staff are prepared to meet the oversight challenges that we anticipate will occur when *PHIA* is proclaimed. Staff traveled to other jurisdictions in the country, both provincial and federal, that have been working in a health information environment for some time and participated in discussions and training related to policy, procedures and investigative methodologies. Our Office planned, conducted and hosted a two and one half day training seminar in St. John's which featured a health information expert from the Office of the Ontario Information and Privacy Commissioner, with considerable experience in this field. The seminar had participation from all major stakeholders involved with health information in Newfoundland and Labrador, representation from the Office of the Privacy Commissioner of Canada, along with representation from a number of outside interest groups. This event was a great success and exceeded our outcome expectations.

During this reporting period, our Office spent considerable time and effort in conducting the preliminary work that was necessary for our comprehensive submission and contribution to the first ATIPPA legislative review which was launched early in 2010.

Finally, our Office was involved in a number of significant court cases resulting in decisions that, to a large degree, compromised the ability of the Office to carry out its mandate. These decisions dealing with Section 5 (jurisdiction) and Section 21 (solicitor and client privilege) are particularly problematic and has resulted in one application by the OIPC to the Newfoundland and Labrador Court of Appeal.

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, 2010.
(un-audited).*

| | <u>Actual</u> \$ | <u>Estimates Amended</u> \$ | <u>Original</u> \$ |
|---|---------------------|------------------------------------|-----------------------|
| OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER | | | |
| Current | | | |
| 6.1.01. Office of the Information and Privacy Commissioner | | | |
| 01 Salaries | 687,205 | 767,200 | 767,200 |
| 02. Employee Benefits..... | 21,361 | 21,500 | 13,500 |
| 03. Transportation & Communications | 40,127 | 56,500 | 99,300 |
| 04. Supplies | 22,717 | 23,100 | 12,300 |
| 05. Professional Services..... | 61,279 | 80,000 | 80,000 |
| 06. Purchased Services..... | 157,873 | 159,800 | 139,400 |
| 07. Property, Furnishings & Equipment. | <u>16,545</u> | <u>16,600</u> | <u>13,000</u> |
| | <u>1,007,107</u> | <u>1,124,700</u> | <u>1,124,700</u> |
| 02. Revenue – Provincial | <u>(6,505)</u> | <u>(8,800)</u> | <u>(8,800)</u> |
| Total: Office of the Information and Privacy Commissioner | <u>1,000,602</u> | <u>1,115,900</u> | <u>1,115,900</u> |

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