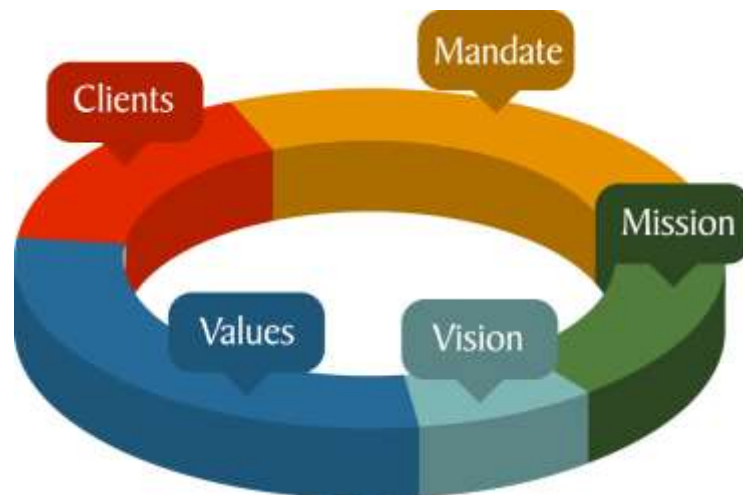




OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR



ACTIVITY PLAN 2017-2020



Message from the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner of Newfoundland and Labrador is accountable to the House of Assembly of the Province and to the people of Newfoundland and Labrador.

This Activity Plan has been prepared in accordance with Government's commitment to accountability as outlined in the *Transparency and Accountability Act* (the "*Act*"). The *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.


It allows us to shape and measure our performance for the current year and will serve as a foundation for the future.

Our Office is designated as a Category 3 Government Entity under the *Transparency and Accountability Act*. As such, we are required to prepare an Activity Plan that sets a clear direction for our activities for the next three years, taking into account our legislative framework and mandate. All planned activity will of course be impacted by the availability, or lack thereof, of future resources.

In the year preceding this planning period, workload in regard to most duties saw significant growth, including a 303% increase in applications for time extensions and a 156% increase in Reports written. While we are coping, our ability to achieve the goals identified in this Activity Plan may be impacted by unforeseen events and circumstances, and these priorities may require adjustment accordingly.

Our Office, its organization and resources, will continue to reflect and respond to the changing access and privacy environment as well as emerging issues related to personal health information and will monitor related issues as we move forward.

As the Information and Privacy Commissioner, I recognize my obligation under the *Transparency and Accountability Act* and I am accountable for the preparation of this Plan and for the achievement of the objectives contained therein.

A handwritten signature in blue ink, appearing to read 'D. Molloy', with a stylized flourish at the end.

Donovan F. Molloy
Information and Privacy Commissioner

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OVERVIEW

The Office of the Information and Privacy Commissioner was created by statute, the *Access to Information and Protection of Privacy Act (ATIPPA)*, which was proclaimed on January 17, 2005. The privacy provisions of the *Act* were not initially in force, but were proclaimed on January 16, 2008. *The Personal Health Information Act (PHIA)* was proclaimed on April 1, 2011. The original *ATIPPA* was subsequently repealed and replaced by the *ATIPPA, 2015*, which came into force on June 1, 2015.

Commissioner Donovan Molloy was appointed in November 2016 for a six year term. The Commissioner is an independent Officer of the House of Assembly and reports directly to the Legislature through the Speaker of the House. Staff members of the Office of the Information and Privacy Commissioner are part of the Public Service, Government of Newfoundland and Labrador. The Office of the Information and Privacy Commissioner has oversight responsibilities under the *ATIPPA, 2015* and *PHIA*.

Under *ATIPPA, 2015* the Office is responsible for protecting and upholding access to information and protection of privacy rights. The *ATIPPA, 2015* provides individuals with the right of access to information in the custody or control of public bodies, including provincial government departments, Crown corporations, municipalities, and health care and education bodies. There is also a right of correction of personal information held by public bodies. The privacy provisions (Part III) establish rules for the collection, use and disclosure of personal information by public bodies. The *ATIPPA, 2015* established significant new education and advocacy roles for the Office. There are over 400 public bodies that are subject to *ATIPPA, 2015*.

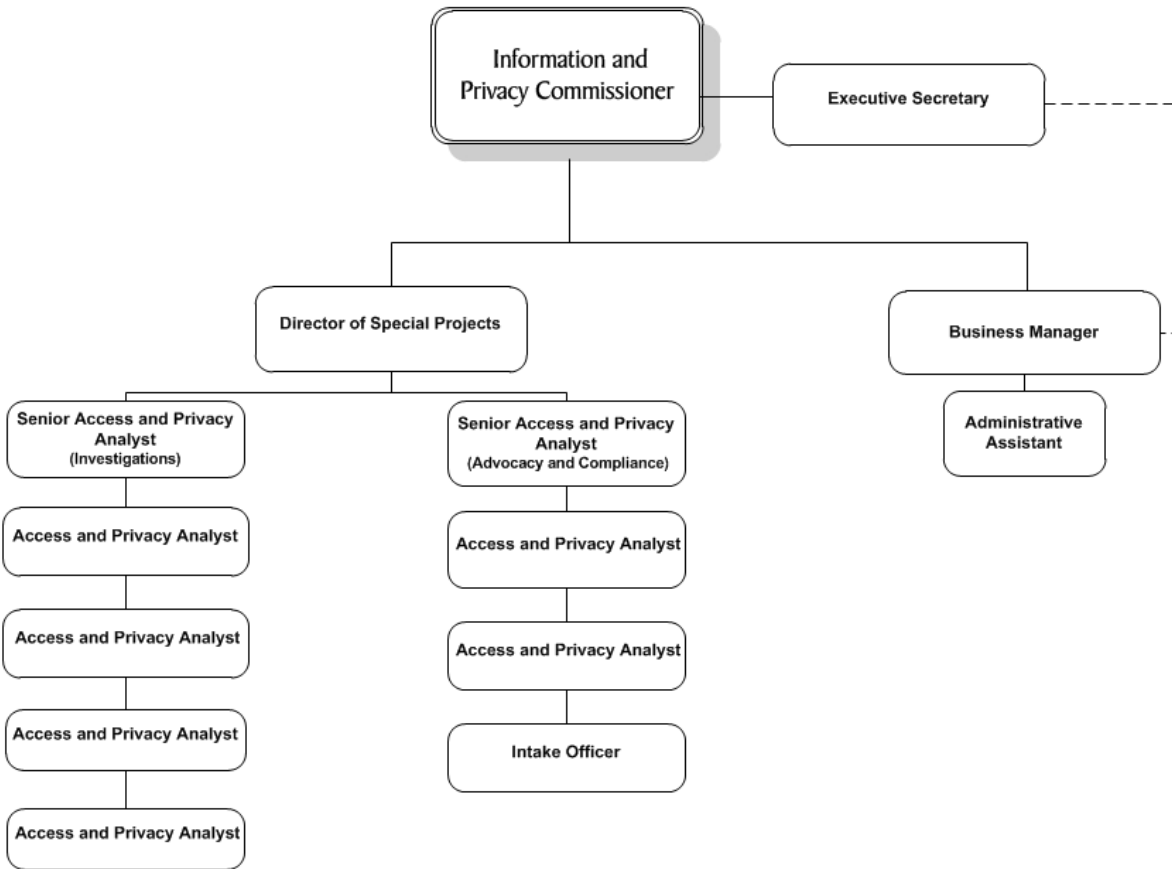
Under *PHIA*, the Office is responsible for upholding and protecting rights relating to personal health information in the control or custody of custodians. These include the rights of access to and correction of personal health information and the requirement that personal health information must be protected appropriately by custodians. *PHIA* also establishes rules which must be followed by custodians relating to the collection, use and disclosure of personal health information. There are thousands of custodians of personal health information that are responsive to *PHIA*, including health professionals in private practice such as physicians, pharmacists and dentists, the Regional

Health Authorities, the Newfoundland and Labrador Centre for Health Information, and many others.

For the year ending March 31, 2018, the annual budget for the Office is \$1,337,200. Our website, www.oipc.nl.ca provides general information about the Office, information about the complaint process, and copies of our Reports in pdf format. In addition, our website contains links to various forms for making a complaint, filing an access request, or reporting a privacy breach. The website also contains a number of resources and guidance documents, newsletters, information about promotional and education events presented or supported by the Office, our Twitter feed, links to relevant Court decisions, information about past legislative reviews, as well as links to other provincial and federal oversight offices, and more.

The first statutory legislative review of *PHIA* was announced by the Minister of Health and Community Services on December 20, 2016. The Review is being conducted by a Committee which will present a report with recommendations for the Minister in 2017. The Department of Health and Community Services will then analyze the recommendations and determine what, if any, amendments are required to *PHIA*. If significant amendments to *PHIA* arise from this Review, based on past experience with amendments to *ATIPPA* in 2012 and 2015, it is likely that this will increase the workload at the OIPC. The results of this legislative review and subsequent changes to the *Act* will impact the Office throughout the entire Activity Plan period, and may result in the need to adjust plans and priorities as required.

Additionally, carrying over into this planning cycle are an increasing number of court cases relating to the *ATIPPA, 2015* that have been initiated during the past few years which expend significant time and resources. The outcome of these cases could also have a substantial impact on the operation of the OIPC.



The Office has a total of 14 staff (61.5% female, 38.5% male). These include: the Commissioner, Director of Special Projects, Senior Access and Privacy Analyst (Advocacy and Compliance), Senior Access and Privacy Analyst (Investigations), six Access and Privacy Analysts, Intake Officer (vacant), Business Manager, Executive Secretary and Administrative Assistant.

The House of Assembly Management Commission approved the budget of \$1,337,200 for the Office of the Information and Privacy Commissioner for fiscal year 2017-2018. The details are noted below:

Salaries	\$1,116,800
Employee Benefits	\$6,500
Transportation and Communications	\$32,800
Supplies	\$7,700
Professional Services	\$50,000
Purchased Services	\$122,400
Property, Furnishings and Equipment	\$1,000
TOTAL	\$1,337,200

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MANDATE

The mandate of the Office of the Information and Privacy Commissioner is derived from the provisions of the *ATIPPA, 2015* and *PHIA*.

Under *ATIPPA, 2015* our mandate includes:

- being an advocate for the public right of access to information;
- being an advocate for protection of privacy;
- receiving privacy breach reports which public bodies must forward to the OIPC on a mandatory basis and providing feedback and consultation to public bodies in their breach responses;
- educating public bodies about compliance with the access provisions of the *Act*, including the duty to assist, in order to facilitate timely and user friendly application of the *Act*;
- investigating complaints in relation to a decision, act, or failure to act of a public body that relates to an access to information request;
- conducting privacy investigations in response to complaints or at the Commissioner's own motion;
- receiving, investigating and making a final determination in relation to time extension requests from public bodies;
- receiving, investigating and making a determination in relation to a request from a public body that it be allowed to disregard an access to information request from an applicant;
- receiving an application from a person who has filed an access request to revise costs associated with the request and to make a final determination regarding the costs which may be charged by the public body;
- receiving an application from a person who has filed an access request to review a decision by the head of a public body not to waive the payment of costs associated with the request and to make a final determination in the matter;

- making recommendations to public bodies to ensure compliance with the *Act* and regulations and to better achieve the objectives of the *Act*;
- informing and educating the public about the *Act*;
- monitoring and auditing the practices and procedures employed by public bodies in carrying out their responsibilities and duties under the *Act*;
- reviewing and authorizing the collection of personal information from sources other than the individual the information is about;
- reviewing privacy impact assessments prepared by public bodies;
- receiving comments from the public about the administration of the *Act* and about matters concerning access to information and the confidentiality, protection, and correction of personal information;
- commenting on the implications for access to information and protection of privacy of proposed legislation, programs, and practices of public bodies;
- commenting on the implications of record linkages and information technology on the protection of privacy;
- informing the head of a public body about a failure to adequately assist an applicant; and
- making recommendations to public bodies or the Minister responsible for this *Act* about the administration of the *Act*.

Under *PHIA* our mandate includes:

- investigating a decision, act or failure to act of a custodian that relates to an access request for personal health information or a request for correction of personal health information;
- investigating complaints where an individual believes on reasonable grounds that a custodian has contravened or is about to contravene a provision of *PHIA* or the regulations with respect to his or her personal health information or the personal health information of another, including privacy breaches;
- making recommendations to support compliance with the *Act*;

- informing the public about the *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; and
- commenting on the implications for the confidentiality of personal health information of using or disclosing personal health information for records linkage or using information technology in the collection, storage, use or transfer of personal health information.

LINES OF BUSINESS

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

Investigations

Under the *ATIPPA, 2015*, the OIPC receives and investigates complaints from applicants and third parties with respect to access to information requests; complaints from individuals about a failure to correct personal information; and complaints about an improper collection, use or disclosure of personal information. Under *PHIA*, the OIPC receives and investigates complaints respecting the failure of a custodian to grant access to an applicant's own personal health information or to correct an applicant's personal health information. The OIPC also investigates complaints under *PHIA*, including privacy breach complaints, from an individual who believes on reasonable grounds that any provision of the *PHIA* or its regulations has been or is about to be contravened. The OIPC also investigates complaints about a fee charged for access to information under *ATIPPA, 2015* and *PHIA*. Additionally the Commissioner may initiate an investigation on his or her own motion.

Public Education

The Office ensures that the public is aware of its rights in accordance with *ATIPPA, 2015* and *PHIA*, including the rights of access to information, correction of personal information, and protection of privacy, including the right to file a complaint or appeal. Related information is made available through resources developed and posted on the Office's website, as well as through public presentations to interested groups, media interviews by the Commissioner, and the OIPC twitter account @OIPCNL. Members of the public are invited to contact the OIPC to seek information about any aspect of the operation of the *ATIPPA, 2015, PHIA* and our Office.

Oversight

The Office acts as an oversight body. This involves operationalizing the mandate of the Office through the many powers and duties found in *ATIPPA, 2015* and *PHIA*, in addition to those encompassed by investigation and public education. The goal of effective oversight is to use the tools provided to the Commissioner under the legislation to ensure that public bodies and custodians comply with their legislative requirements. These tools include audit; receiving breach reports; initiating a special report to the legislature; commenting on the implications for access or privacy of proposed legislative schemes or programs; educating public bodies and custodians; outreach to public bodies, custodians and other stakeholders such as groups and organizations representing the interests of custodians and public bodies. Public bodies and custodians also contact the OIPC to seek advice, guidance and information about their responsibilities under the law. As part of the oversight function, the OIPC also receives requests from public bodies under *ATIPPA, 2015* for approval of an extension of time to respond to an access request or permission to disregard a request for access.

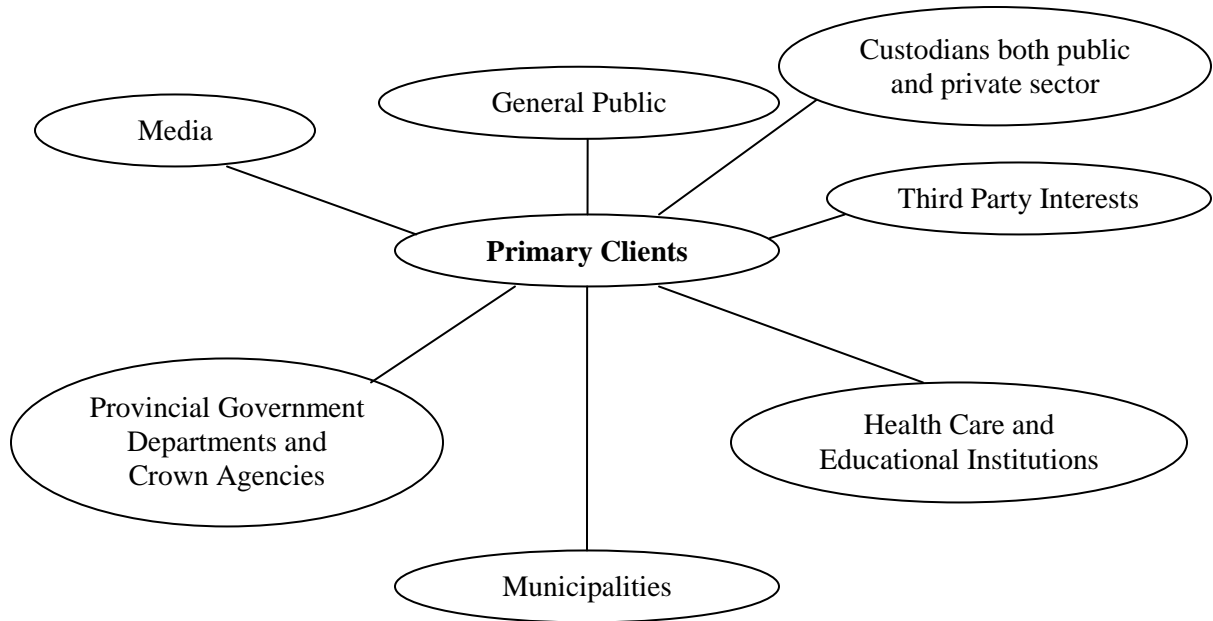
VALUES

This Office values 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 our integrity such 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 value statements and will guide the Office as we move 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 and unbiased advice and recommendations.
Confidentiality	The OIPC will maintain absolute confidentiality in respect of documents submitted to it, subject to only those disclosures permitted by law.
Judgment	Professional knowledge and judgment will be exercised in interpreting policies, practices and procedures to ensure compliance with the <i>ATIPPA, 2015</i> and <i>PHLA</i> .
Respect	The ideas and opinions of others will be listened to and considered and staff of the OIPC will work collaboratively with one another to achieve results.

PRIMARY CLIENTS

The Office of the Information and Privacy Commissioner 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 *PHLA*. 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 *PHLA* 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.

ISSUES

Issue 1 – *ATIPPA, 2015*

The *ATIPPA, 2015* came into force on June 1, 2015, following a comprehensive review process. Since that time, the OIPC has made a number of changes to adapt to the expanded mandate it was given under the new regime. Among a great many other changes, the Review Committee, Chaired by former Premier Clyde Wells, made recommendations (which were ultimately accepted) to ensure that the OIPC had a clear mandate to educate public bodies about the *ATIPPA, 2015* and to become an advocate for access and privacy.

Many efforts have been under way since June of 2015 to fulfil that mandate, however more needs to be done.

Objective 1: By March 31, 2018 the Office of the Information and Privacy Commissioner will have completed and published additional guidance pieces interpreting the exceptions to the right of access and other provisions found in the *ATIPPA, 2015* for the benefit of public bodies and their access and privacy coordinators.

Indicators:

- Completed several new guidance pieces.
- Published guidance pieces on the OIPC website.
- Explained and communicated new guidance pieces to public bodies through our newsletters and presentations.

Objective 2: By March 31, 2019 the Office of the Information and Privacy Commissioner will have organized and hosted a conference on access to information, protection of privacy, information management and information security for a broad range of stakeholders within the Province.

Objective 3: By March 31, 2020 the Office of the Information and Privacy Commissioner will have developed a plain-language guidance document for use by access to information applicants in order

to carry out one of the purposes of the *ATIPPA, 2015* which is to ensure that the access to information process is user-friendly.

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

The *Personal Health Information Act* was proclaimed into force on April 1, 2011. There are thousands of custodians subject to this legislation, in both the public and private sectors. On December 20, 2016 the Honourable John Haggie, Minister of Health and Community Services, announced the first legislative review of *PHIA*. The review process involved appointment of a Review Committee which invited submissions from various stakeholders (including the OIPC) and the general public, and it is expected to result in a report with recommendations to the Minister for amendments to *PHIA*. It is anticipated that any amendments will be passed and proclaimed into force during the period covered by this Activity Plan.

Based on our experience with past reviews of *ATIPPA* as well as preparations for the initial proclamation of *PHIA*, it is expected that there will be significant demands on the resources of the OIPC to work collaboratively with the Department as well as other major stakeholders in the health care field 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 our normal legislative oversight activities, which currently place significant demands on the Office. This has involved a number of investigations resulting from privacy breaches, including investigations which have led to the prosecution of offences. One such prosecution is currently before the courts.

Despite any changes which may ultimately be made to *PHIA*, it is necessary for this Office to continue with its oversight activities as currently prescribed. In particular, we have identified the need to provide further guidance and outreach to custodians, especially those operating in the private sector with whom our relationship is not as well established as it is for the regional health authorities and some of the other large public sector custodians.

Objective 1: By March 31, 2018 the Office of the Information and Privacy Commissioner will have completed an outreach initiative to all of the associations, boards and professional colleges representing health care professionals to help ensure that their members are aware of the basic elements of *PHIA* compliance.

Indicators:

- Completed first year of publication of a twice-annual *PHIA* newsletter for custodians.
- Made contact with all associations, boards/colleges for distribution of newsletter to members.
- Invited representatives of all associations, boards/colleges to meet individually with the Commissioner and/or staff to offer assistance in understanding and applying *PHIA*, to offer our services to speak at conferences and AGMs and to establish or re-establish professional working relationships.

Objective 2: By March 31, 2019 the Office of the Information and Privacy Commissioner will have developed a strategy to reach out to post-secondary institutions which offer training in health-related fields with the goal of including information about *PHIA* and privacy protection within the formal curriculum of those programs, or if that is not possible, to offer presentations and resource materials about *PHIA* and privacy to instructors of those programs.

Objective 3: By March 31, 2020 the Office of the Information and Privacy Commissioner will have developed new guidance materials for custodians subject to *PHIA*.

Issue 3 – Public Education

Both *ATIPPA, 2015* and *PHIA* contain an explicit mandate to inform the public about each *Act*. The *ATIPPA, 2015* carried forward a strong message about public education from the Review Committee which conducted a comprehensive review of the law in 2014. The report of the Committee placed a strong emphasis on the important role which must be played by the OIPC in

relation to public education. This resulted in a new provision being placed in the *ATIPPA, 2015* in section 95(2) which says the Commissioner “shall ... develop and deliver an educational program to inform people of their rights and the reasonable limits on those rights under this Act...”.

Since proclamation of the *ATIPPA, 2015*, significant efforts have been made to engage with public bodies and to make every effort to try to ensure that they have the knowledge and skills necessary to comply with the law, and in particular that they understand the many new requirements of the revamped law. A number of efforts have also been made to reach out to the public as well, however it is clear that these efforts need greater coordination and emphasis in order to fulfil the mandate of developing and delivering an educational program. The OIPC takes its responsibilities to educate the public about the *ATIPPA, 2015* and *PHLA* very seriously. Significant resources and effort have been invested by our Office to ensure, to the extent possible, that the people of the Province receive appropriate, necessary and timely information on the *ATIPPA, 2015* and *PHLA*, and we intend to build on these efforts during the period of this Activity Plan.

Objective 1: By March 31, 2018 the Office of the Information and Privacy Commissioner will have identified and extended an offer to community organizations, professional associations, and business groups for the purpose of informing them about both *ATIPPA, 2015* and *PHLA*, customizing our presentations to the needs and interests of each audience where appropriate.

Indicators:

- Identified community organizations, professional associations, business groups and others.
- Extended offers to meet with or present to each entity.

Objective 2: By March 31, 2019, the Office of the Information and Privacy Commissioner will have reviewed and improved the function of its website to ensure that information about rights granted under *ATIPPA, 2015* and *PHLA* is readily available and accessible to members of the public.

Objective 3: By March 31, 2020, the Office of the Information and Privacy Commissioner will have developed a plain-language user guide for the general public about *ATIPPA, 2015* and *PHLA*, including explaining the complaint and appeal processes.