



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Annual Performance Report

2018-2019

www.oipc.nl.ca
1.877.729.6309



September 25, 2019

Message from the Information and Privacy Commissioner

This Annual Performance Report has been prepared in accordance with Government's commitment to accountability as outlined in the **Transparency and Accountability Act**. This **Act** provides a legislative framework for strengthening accountability of government entities through multi-year performance-based plans and annual performance reports presented to the House of Assembly.

I am pleased to present the Office of the Information and Privacy Commissioner's Annual Performance Report for April 1, 2018 to March 31, 2019.

As Commissioner, I am accountable for the results reported herein and for any variances from the objectives outlined in the 2017-2020 Activity Plan.

A handwritten signature in blue ink, which appears to read "Michael Harvey". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Michael Harvey
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
- Advocacy and Compliance
- Oversight

The OIPC oversees compliance with and protects and promotes rights and obligations established under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) and the **Personal Health Information Act** (PHIA).

Number of Employees

The Office has a staff complement of 13 permanent positions (77% female, 23% male).

Physical Location

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

Budget

The 2018-2019 budget for the OIPC was \$1,337,200. Details of our revenues and expenditures are on page 23 of this Report.

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

MANDATE

The mandate of the OIPC is derived from the provisions of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) and the **Personal Health Information Act** (PHIA).

Our ATIPPA, 2015 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 on their breach responses;
- educating public bodies about compliance in order to help prevent the unauthorized collection, use or disclosure of personal information by public bodies;
- educating public bodies about compliance with the access provisions of ATIPPA, 2015, including the duty to assist, in order to facilitate timely and user-friendly application of ATIPPA, 2015;
- 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 making 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 making a final determination in the matter;

- making recommendations to public bodies to ensure compliance with ATIPPA, 2015 and to better achieve the objectives of ATIPPA, 2015;
- informing and educating the public about ATIPPA, 2015;
- monitoring and auditing the practices and procedures employed by public bodies in carrying out their responsibilities and duties under ATIPPA, 2015;
- 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 ATIPPA, 2015 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 ATIPPA, 2015 about the administration of ATIPPA, 2015.

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 in respect of his or her personal health information or the personal health information of another, including privacy breaches;
- making recommendations to support 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; 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 OIPC provides the following lines of business.

Investigations

Under ATIPPA, 2015, the investigative mandate of the Office expanded considerably. The Office 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.

Under PHIA, the Office 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. We also investigate 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.

Advocacy and Compliance

Under ATIPPA, 2015, a number of new or expanded roles were prescribed for the 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 within the Office. This line of business incorporates the following parts of our 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. As part of this undertaking, a significant revision of the OIPC website with new tools and information for public bodies, custodians and the general public has been completed. New 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.

The 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, the Office 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 our Office. Additionally, all Reports issued by the Commissioner under ATIPPA, 2015 and PHIA are published on the OIPC website. The OIPC also uses its Twitter account to broaden public awareness of privacy and access to information issues.

The OIPC is very much engaged in education and training for public bodies. In this regard, we continue to issue quarterly newsletters and we continue to offer presentations to various audiences, including groups of Access and Privacy Coordinators and senior leadership within public bodies. We have also developed a wide variety of guidance

documents to assist public bodies in interpreting ATIPPA, 2015. We send these to Access and Privacy Coordinators by email, discuss them in presentations, summarize them in our newsletter and post them on our website. We also present a conference (currently held at roughly 18 month intervals) to the entire access and privacy community, including information management and information technology professionals, to share best practices and encourage collaboration and knowledge transfer.

2) Audit

An important new feature of ATIPPA, 2015 is our audit function, which provides the OIPC with 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 we have developed in-house expertise based largely on intensive study of experiences from other jurisdictions, in particular, British Columbia. This year we completed an audit involving the Newfoundland and Labrador English School District's Use of Video Surveillance in Schools and on School Buses, and we have initiated two other audits. The audit is an important oversight tool because it allows us to identify compliance risks in such a way as to help public bodies avoid privacy breaches or other non-compliance incidents in the future, and to encourage and support best practices. Information about our audit program is available on our website.

3) Privacy Impact Assessment (PIA) Review

This is another new and important feature of ATIPPA, 2015. Specific circumstances are prescribed in ATIPPA, 2015 for when the 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 in conjunction with the development of programs or services. Public bodies sometimes request that the 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 our PIA expectations is available on our website.

4) Privacy Breach Reporting

Yet another new role prescribed by ATIPPA, 2015 is a requirement for public bodies to report all privacy breaches to the OIPC. This requirement provides important information to the OIPC about privacy compliance issues and it helps the OIPC to identify emerging or repeating patterns in privacy breach incidents. We can thus tailor our approach by choosing timely topics for seminars, newsletters and new guidance documents.

Oversight

The Office oversees compliance by public bodies with ATIPPA, 2015 and custodians with PHIA. The Office has a wide variety of general oversight functions and mandates, outlined above under the “Mandate” section. These range from receiving and deciding on requests from public bodies for time extensions to reviewing and commenting on draft legislation where there may be implications for access to information or protection of privacy.

OTHER KEY STATISTICS

ATIPPA, 2015 Access

In this past year we have experienced a decrease in the number of access to information complaints pursuant to ATIPPA, 2015 compared to our numbers from 2017-2018. The 2017-2018 numbers were high from a historical perspective, representing the second-highest number of active files carried by this Office since it was established. While the 2018-2019 numbers have decreased slightly from 2017-18, overall, they remain higher than most previous years. This is a reflection of the fact that the number of access requests being filed to public bodies overall continues to increase. The decrease is a good sign, however, that despite the high number of requests, most public bodies are performing well. It is clear that requesters are becoming more familiar with the legislation and how to use it, along with how to make a complaint if the response is not satisfactory. This number also includes complaints by third parties after notification that either their personal information or their business

information may be disclosed to an applicant. The Office 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 we continue to meet. In most cases where Reports are issued, this is done prior to day 65, however complaints are typically resolved informally even sooner than that.

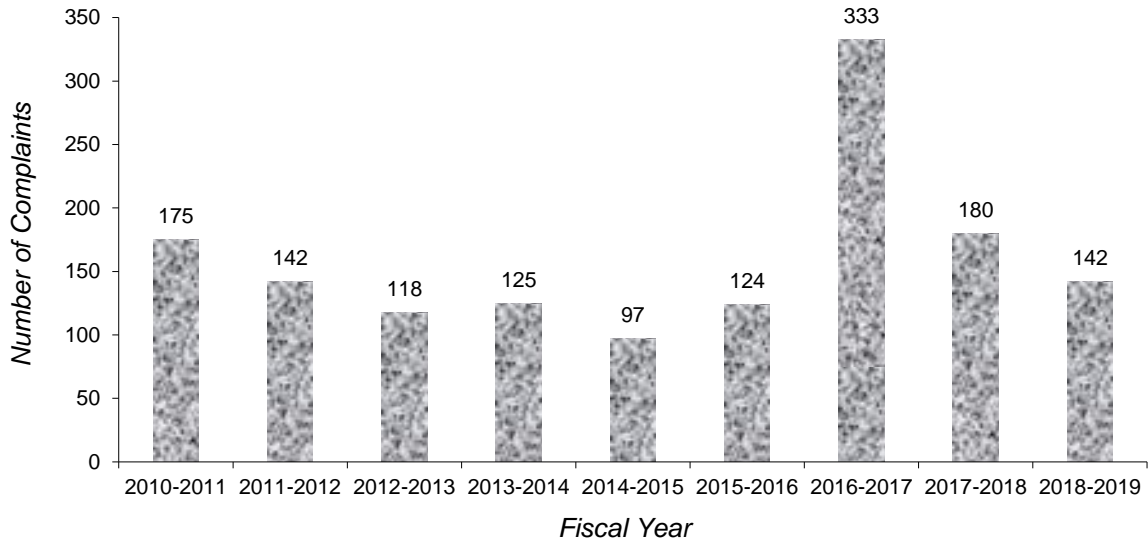


Figure 1: Total Active ATIPPA, 2015 Access Complaints

ATIPPA, 2015 Privacy

Privacy breach complaints continue to present a significant challenge for the Office, and the current number of active privacy complaint files represents the second-highest number since this Office was established. These investigations are often complex and time consuming. They can involve site visits and on rare occasions the engagement of technical experts. They can also lead to offence prosecutions, which occurred this year when two individuals were charged. OIPC staff continue to build their expertise in privacy investigations in order to meet this challenge, through professional development opportunities and knowledge sharing.

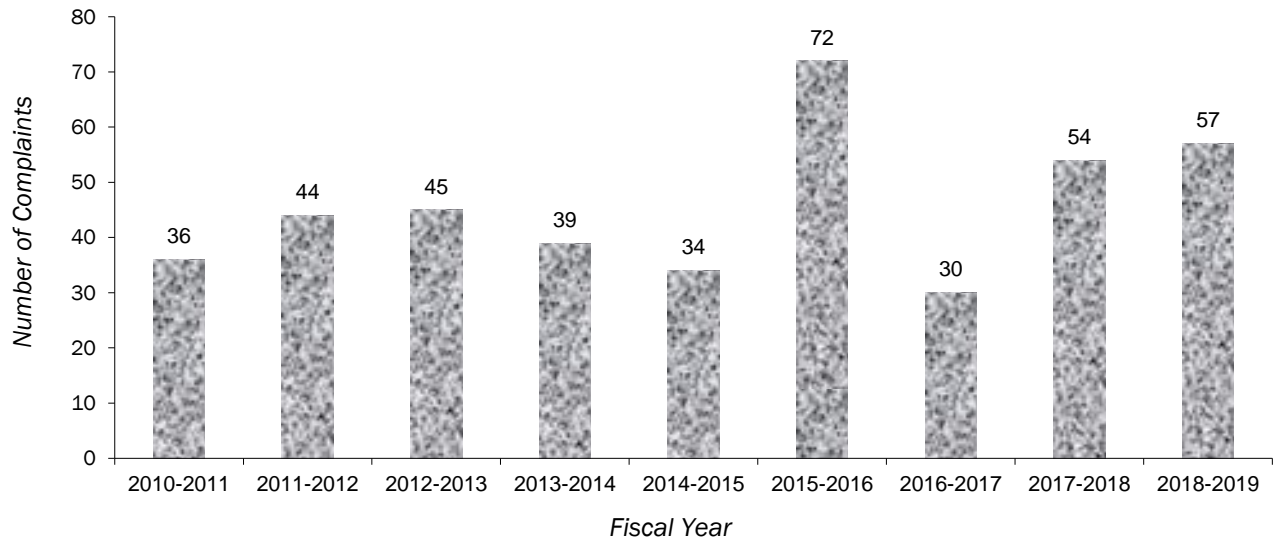


Figure 2: Total Active ATIPPA, 2015 Privacy Complaints

PHIA Access/Corrections

Complaints under PHIA related to access or corrections amount to a relatively small part of the investigative workload of the OIPC. While the numbers tend to fluctuate from year to year, the 2018-2019 year saw eight active files. In addition to the complaints received this year, we continue 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 we provide typically results in the correct application of PHIA, thereby reducing the likelihood of complaints.

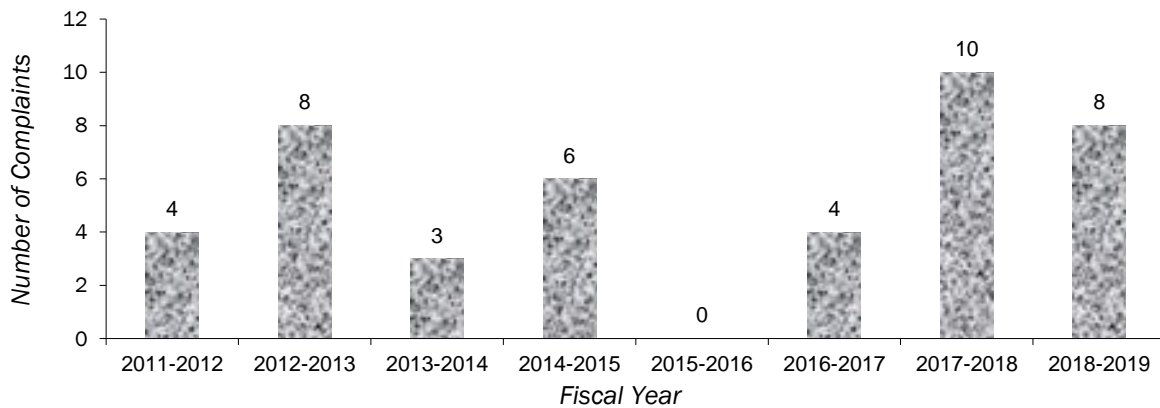


Figure 3: Total Active PHIA Access/Corrections Complaints

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.

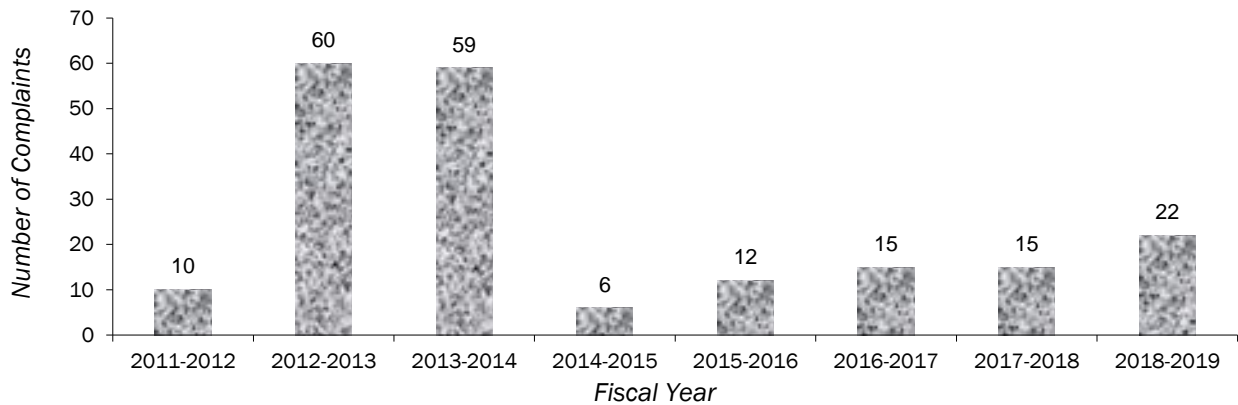


Figure 4: Total Active PHIA Privacy Complaints

HIGHLIGHTS AND ACCOMPLISHMENTS

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

PRESENTATIONS		
Date	Audience	Topic
April 6, 2018	Royal Newfoundland Constabulary Communications Staff	Privacy Breaches
April 22, 2018	Royal Newfoundland Constabulary Communications Staff	Privacy Breaches
April 18, 2018	Churchill Square Dental	PHIA Overview
April 30, 2018	Access, Privacy, Security and Information Management (APSIM) Workshop	A Day in the Life of a Coordinator
May 1, 2018	APSIM Conference	Privacy Breaches from an IM, Health and Security Perspective
May 1, 2018	APSIM Conference	Fees & Costs Associated with Requests

May 1, 2018	APSIM Conference	Secondary Use of Data for Research Purposes
May 1, 2018	APSIM Conference	Privacy Tools
May 2, 2018	APSIM Conference	Successful IM Programs
May 2, 2018	APSIM Conference	PHIA Review
May 25, 2018	Royal Newfoundland Constabulary Communications Staff	Privacy Breaches
May 28, 2018	Medical Practice Associates	Legislative Privacy Provisions
June 6, 2018	Professional Municipal Administrators Spring Symposium	Roles of the Head and the Coordinator and Conflicts of Interest
June 11, 2018	City of St. John's	ATIPPA, 2015 Overview
June 12, 2018	City of St. John's	ATIPPA, 2015 Overview
June 18, 2018	Town of Paradise	ATIPPA, 2015 Overview
June 21, 2018	Small Jurisdictions Conference	Collaborations for Nimble Regulators
June 22, 2018	Town of Paradise	ATIPPA, 2015 Overview
July 18, 2018	Chartered Professional Accountants - Small Practice Group	Privacy Overview
September 10, 2018	Student Support Services Newfoundland and Labrador English School District	Privacy Breaches (Overview)
September 12, 2018	Federal/Provincial/Territorial Commissioners' Conference	
September 18, 2018	Town of CBS Town Council	ATIPPA, 2015 Overview
September 19, 2018	Government Information Management Community of Practice	Privacy Management Program
September 22, 2018	NL Association Optometrists	PHIA Overview
September 24, 2018	Right to Know Week Public Panel	Strengthening the Right to Know
October 9, 2018	Canadian Institute for Health Information Privacy Symposium	Panel
October 19, 2018	Canadian Bar Association Symposium	Personal Information in Cannabis Transactions
October 24, 2018	City of St. John's	ATIPPA, 2015 Overview
October 29, 2018	OIPC Workshop	New tools on OIPC Website; Anonymity of Applicants; Use of Social Media for Background checks
October 31, 2018	NL Law Society (Bar Admissions)	Legislative Overview

November 19, 2018	Student Support Services Newfoundland and Labrador English School District	PHIA Overview
November 23, 2018	City of St. John's	ATIPPA, 2015 Overview
November 26, 2018	Canadian Access and Privacy Association	Social Media Background Checks
November 30, 2018	Department of Children, Seniors and Social Development - Adult Protection	ATIPPA, 2015 Overview
January 30, 2019	Central Health Management	ATIPPA, 2015 Overview
February 5, 2019	NL Liquor Corporation Managers/Directors	ATIPPA, 2015 Overview
February 21, 2019	Licensed Cannabis Retailers	ATIPPA, 2015 Overview
March 26, 2019	Town of Gander Fire Services	ATIPPA, 2015 Overview

Other examples of activities and events include the following:

1. annual meeting/telephone conference with all Regional Health Authorities;
2. staff members attended the International Association of Privacy Professionals (IAPP) Symposium and other privacy and access to information conferences;
3. consultations with the Office of the Child and Youth Advocate;
4. participated in International Association of Privacy Professionals Knowledge Net events;
5. Director of Research and Quality Assurance attended the annual Federal/Provincial and Territorial Information and Privacy Commissioners' Conference;
6. regular meetings with the Office of the Chief Information Officer about issues of mutual relevance;
7. OIPC staff participated with privacy oversight counterparts across Canada in meetings and teleconferences related to privacy issues associated with the development of electronic health records, under the auspices of the Canada Health Infoway Privacy Forum;
8. a number of meetings and teleconferences were held with stakeholders and experts in relation to Open Contracting;
9. review of current access and privacy curricula offerings of private training institutions and the College of the North Atlantic with a view to assisting in enhancing those programs;

10. participated in and created activities for Right to Know Week 2018 and Data Privacy Day 2019; and
11. internal staff and external Steering Committee members initiated planning for an APSIM conference slated for Spring 2020.

One of the major changes in how the Office's oversight function operates since ATIPPA, 2015 came into force is that Commissioner's Reports are only one source of guidance regarding the interpretation of ATIPPA, 2015 and PHIA for public bodies, custodians and the general public. Some of the detailed research and analysis which was once found in a typical Commissioner's Report is now found in our ever-broadening selection of [guidance documents](#).

Building on the work begun following proclamation of ATIPPA, 2015, in this past year we have continued to develop a number of new guidance documents as we continue to revise older ones:

- Business Interests of a Third Party (Section 39) (Revised)
- The **Public Procurement Act** and ATIPPA, 2015
- Designating the Head of a Local Public Body
- ATIPP Coordinators' Toolkit
- PHIA Compliance Checklist for Custodians
- Responding to a Commissioner's Report
- Transitory Records
- Protecting Personal Information in Cannabis Purchase Transactions

These guidance documents are very important because of the many challenges faced by custodians complying with PHIA and public bodies in complying with ATIPPA, 2015. Because of deadlines in ATIPPA, 2015, Access and Privacy Coordinators need to be able to quickly refer to such resources as they make decisions, and hopefully avoid complaints about either the process or the outcome. The guidance documents also aid citizens in understanding their rights of access to information and protection of their personal information. Some of these

guidelines have been through a second or third revision because they are living documents that evolve in response to case law, legislative changes and other developments. We look forward to adding new guidance documents next year.

An important part of our oversight mandate was fulfilled in commenting on a number of Draft Bills. In accordance with section 112 of ATIPPA, 2015, it is a requirement that the Commissioner be consulted on draft legislation before it is tabled in the House of Assembly where the Bill could have implications for access to information or protection of privacy. This important provision ensures that privacy and access to information are considered by an independent body with expertise in this area when new laws are being drafted. Over the past year a significant number of Bills were referred for consultation, including:

- **Real Estate Trading Act, 2019**
- **Interpretation Act (Amendment)**
- **Public Service Pensions Act, 2019**
- **Student Financial Assistance Act**
- **Public Bodies Reporting Act**
- **Pension Plan for Teachers Act**
- **Management of Greenhouse Gas Act and Revenue Administration Act (Amendment)**
- **Provision of Emergency Health and Paramedicine Services Act**
- **Oil and Gas Corporation Act**
- **Highway Traffic Act No. 2 (Amendment)**
- **Reporting Requirements of Public Bodies Act**
- **Workplace Health, Safety and Compensation Act (Amendment)**
- **Workplace Health, Safety and Compensation Act No. 2 (Amendment)**
- **Public Sector Compensation Transparency Act (Amendment)**
- **Labour Standards Act (Amendment)**
- **Management of Greenhouse Gas Act (Amendment)**
- **Innovation and Business Investment Corporation Act**
- **Other Post-Employment Benefits Eligibility Modification Act (Amendment)**
- **Salary Restraint and Extinguishment of Severance Pay Act**
- **Highway Traffic Act (Amendment)**
- **Control and Sale of Cannabis Act**
- **Energy Corporation Act (Amendment)**
- **Court Security Act, 2010 (Amendment)**
- **Tenancies of Residential Premises Act**
- **Intimate Images Protection Act**
- **Schools Act, 1997**

We welcome consultations from public bodies and custodians regarding Privacy Impact Assessments (PIAs) and our experience is that the process is beneficial for all parties. In this past year, custodians and public bodies contacted the OIPC to consult on the privacy impacts of various initiatives, including facial recognition and CCTV, a number of different software systems, and devices equipped with smart technology. Western Health provided a draft of its PIA on the Provincial Incident Employee Reporting Systems (PIERS) initiative, and the Human Resource Secretariat has been consulting with OIPC on the development of a PIA on the PeopleSoft system. The OIPC has also reached out to the Office of the Chief Information Officer regarding its Digital by Design initiative and we anticipate a cooperative and productive dialogue will ensue.

Another important oversight tool available to the Commissioner is audit. On December 6, 2018, this Office released an audit involving Newfoundland and Labrador English School District's Use of Video Surveillance in Schools and on School Buses. This audit is available online at <http://www.oipc.nl.ca/reports/audit>.

Work continues on a second audit launched in 2017-2018, this one involving electronic access controls. During 2018-2019, the Office planned and launched one additional audit examining the timeliness of responses in one public body after noticing a number of deemed refusals. These audits are expected to be concluded during the 2019-2020 fiscal year.

In March 2018, the OIPC issued Privacy Management Program (PMP) Guidelines. During 2018-2019, the OIPC has worked on developing resources to support public bodies and custodians in their PMP development; these efforts included letters to most heads of public bodies to ensure they are aware of the OIPC expectations regarding a PMP. The OIPC also continued to work on its own PMP.

The OIPC has continued to maintain communication with officials of the Department of Health and Community Services regarding the review of PHIA. It is a legislative requirement that PHIA undergo a Review every five years. The first mandatory review was launched by the Minister of Health and Community Services on December 20, 2016, and was conducted by a Review Committee chaired by Dr. David Morgan. The OIPC provided its formal submission and supplementary submissions during a previous reporting period. The Committee's final report

was issued in May of 2017, and an amended version was published in September of 2017. Since that time there have been ongoing discussions about the Report and its recommendations, as well as next steps towards potential amendments to PHIA. The Report and other resources are available at <http://www.phiareviewnl.ca/>.

The OIPC, along with key stakeholders, once again delivered an APSIM conference bringing together professionals from all four communities. The conference was called **We are Connected – Control–Alt–Delete: Control Data, Use Alternatives, and Delete Risks**, and it was held on April 30 through May 2, 2018. This conference is presented at no cost to participants and it allows our common communities to grow, work collaboratively, and build awareness of their interconnected and interdependent roles. The conference brought together over 25 speakers and over 200 registrants.

REPORT ON PERFORMANCE

Issue 1: ATIPPA, 2015

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 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, and further work continues.

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.

Planned for 2018-2019	Actual Performance for 2018-2019
The conference was hosted in 2018, earlier than planned, so this objective has been met.	<ul style="list-style-type: none"> • The Conference was hosted April 30 through May 2, 2018 at Memorial University School of Medicine. • The Conference featured over 200 registrants and 25 speakers.

	<ul style="list-style-type: none"> • Conference attendees were able to avail of many choices in the agenda to suit their needs, with no registration fees or costs other than their own transportation and lunch.
<p>Establish committee before March 31, 2019 to plan next conference.</p>	<ul style="list-style-type: none"> • The Conference Steering Committee was re-established well in advance of the 2020 Conference, with membership from across the privacy, access, information management and information security disciplines. • Returning Steering Committee members renewed their membership and new members were added. Much of the planning for the 2020 conference will occur in the upcoming reporting period.
<p>Develop topics and agenda and choose speakers for next conference.</p>	<ul style="list-style-type: none"> • Topics and a preliminary agenda have been drafted internally and some potential speakers have been identified for presentation to the Steering Committee.

Discussion of Results

This objective was achieved more than one year in advance of the time frame in our 2017-2020 Activity Plan. At that point we had only organized our own conference once, and the time frame for a second one was unclear. We currently hope to be able to host a new conference approximately every 18-24 months. Given the fiscal realities of the participants' organizations, our goal since 2016 has been to offer a free conference with no registration fees or other costs to participants. This involves finding a suitable location that can be obtained at little or no cost. As a result, it can be challenging to obtain a commitment from a potential host location who may have other operational priorities or paying clients. Despite our intentions and best efforts, it now appears likely that conferences could be presented at irregular intervals of 1.5 to 2 years depending on venue availability

As a result of hosting the conference earlier than anticipated, however, we are now able to report that the Steering Committee has been renewed and much of the planning for the 2020 conference will occur in the upcoming reporting period.

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 ATIPPA, 2015 which is to ensure that the access to information process is user-friendly.

Indicators for 2019-2020

Review existing materials and similar guides from other jurisdictions to develop content.

Ensure visual appeal through layout, pictures, etc. so that it is more user friendly.

Promote guidance piece for public benefit through available channels.

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 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.

Planned for 2018-2019	Actual Results for 2018-2019
Outreach strategy has already been initiated in consultation with the Department of Advanced Education, Skills and Labour (AESL).	<ul style="list-style-type: none"> As noted, the outreach plan has already been implemented. A letter was sent to the College of the North Atlantic and private colleges requesting information about relevant programs. Course offerings were assessed and gaps in curricula were identified.
Discussion of options for curriculum enhancement.	<ul style="list-style-type: none"> OIPC has used the information from outreach to develop a proposal to bring to AESL with a recommended approach to cooperatively address gaps in course offerings.
Pursue alternatives (presentations and resources) if curriculum enhancement not feasible.	<ul style="list-style-type: none"> Curriculum enhancement is still considered the most feasible option and is being pursued. This option will only be implemented if AESL or the colleges reject the support offered by OIPC.

Discussion of Results

Awareness of statutory obligations under PHIA among those who work in the health sector has been an ongoing challenge, particularly those employed in private sector clinics. This initiative has the potential to substantially address this long-standing gap, and in this regard it positions the OIPC as leaders and innovators in Canada. We will continue to vigorously pursue completion of this initiative with the goal of seeing privacy incorporated within all appropriate curricula of educational programs aimed at preparing students to work in our health care system.

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.

Indicators for 2019-2020

Review anticipated legislative amendments flowing from 2017 PHIA Review Committee recommendations.

Update existing and, where required, create new guidance documents to reflect legislative amendments.

Disseminated guidance materials to custodians through online and in-person education sessions.

Issue 3: Public Education

Both ATIPPA, 2015 and PHIA contain an explicit mandate to inform the public about each Act. 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 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 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 ATIPPA, 2015 and PHIA 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 ATIPPA, 2015 and PHIA, and we intend to build on these efforts during the period of this Activity Plan.

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 PHIA is readily available and accessible to members of the public.

Planned for 2018-2019	Actual Results for 2018-2019
Timeline calculator to be added, which will assist the public in understanding time frames and date ranges associated with processes under ATIPPA, 2015 and PHIA.	<ul style="list-style-type: none"> • A timeline calculator has been added to the OIPC website, which incorporates amendments to the list of defined statutory holidays in the Interpretation Act.
“Complaint checker” to be developed, which will serve as criteria/FAQ for individuals wishing to file a complaint.	<ul style="list-style-type: none"> • A complaint checker has been added to the OIPC website.
Video tutorial to be developed on OIPC complaint processes.	<ul style="list-style-type: none"> • A video tutorial was added to the OIPC website explaining the OIPC complaint processes. • The tutorial provides additional information about how to make a request, what you can ask for, what to do if you are not satisfied, the role of the OIPC, and the legislative timelines.

Discussion of Results

These items comprise a suite of tools aimed at assisting the general public in using the access to information process, however they will also be helpful to Access and Privacy Coordinators in explaining the process to Applicants, and also for new Coordinators to assist in their own training and orientation.

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 PHIA, including explaining the complaint and appeal processes.

Indicators for 2019-2020

Review existing materials and similar guides from other jurisdictions to develop content.

Ensure visual appeal through layout, pictures, etc. so that it is more user friendly.

Promote guidance piece for public benefit through available channels.

OPPORTUNITIES AND CHALLENGES

We continue to encounter increasingly novel and complex issues in access and privacy, and as a result, we must constantly reinvent and reinvigorate our own processes. Although many new policies and procedures were developed following the enactment of ATIPPA, 2015 regular updates continue to be required.

Our experience with ATIPPA, 2015 is that the combination of tools available to us has meant that our activities involve far more than simply investigating complaints. We have found that the outreach and education efforts described above, such as producing and disseminating detailed guidance documents, publishing newsletters, conducting presentations, organizing conferences, using our audit and PIA review mandate, and continuing advocacy for proactive disclosure, means that our oversight role is balanced into an equal measure of investigations and advocacy/compliance. This serves the public better, and is a better use of public resources. We look forward to continuing to meet new challenges in the coming year as we strive to protect and uphold the access to information and protection of privacy rights set out in the laws we oversee.

	2018-2019	2017-2018	2016-2017
ATIPPA, 2015 Access Complaints	112	160	315
ATIPPA, 2015 Privacy Complaints	41	46	23
PHIA Access Complaints	7	8	4
PHIA Privacy Complaints	16	9	9
Time Extensions	181	173*	151
Disregards	94	102*	41*
ATIPPA, 2015 Breach Notifications	240	201	183
PHIA Breach Notifications	16	17*	38

*Corrected numbers from 2017-2018 Annual Report.

Figure 5: Summary of OIPC Statistics

In conclusion, the OIPC will continue to strive to fulfill the various components of its mandate. We continue to encourage and support an environment of open communication and dialogue with public bodies and custodians and to work in a spirit of cooperation. We are pleased with the role we have played in the legislative review of PHIA, and we congratulate the Department of Health and Community Services in ensuring a transparent and detailed review process. We look forward to positive legislative enhancements to PHIA in the coming year.

With ATIPPA, 2015 acknowledged as being on the cutting edge of access to information law, and PHIA amendments anticipated, this Office is hopeful that Newfoundland and Labrador will boast some of the strongest access and privacy legislation in the country, and we look forward to and are excited to be a key part of this very important legislative regime. ATIPPA, 2015 includes a requirement for a statutory review to be commenced in 2020. In anticipation of this review, the OIPC will be conducting research and analysis throughout 2019-2020 so that our submission to that statutory review, when it is launched, can contribute to keeping this statute at the forefront of progressive access to information and protection of privacy legislation in Canada. We also look forward to continued cooperation and consultation with all stakeholders, with the aim of providing the best possible service to the citizens of the Province as they exercise their rights under ATIPPA, 2015 and PHIA.

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, 2019 (unaudited).

	<u>Actual</u> \$	<u>Estimates</u> <u>Amended</u> \$	<u>Original</u> \$
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER			
Current			
6.1.01. Office of the Information and Privacy Commissioner			
01.Salaries	1,071,488	1,116,800	1,116,800
02.Employee Benefits	2,151	6,500	6,500
03.Transportation & Communications	23,446	32,100	32,800
04.Supplies	6,826	7,700	7,700
05.Professional Services	28,891	46,700	50,000
06.Purchased Services	118,640	122,400	122,400
07.Property, Furnishings & Equipment	<u>4,981</u>	<u>5,000</u>	<u>1,000</u>
	<u>1,256,423</u>	<u>1,337,200</u>	<u>1,337,200</u>
02.Revenue - Provincial			
Total: Office of the Information and Privacy Commissioner	<u>1,256,423</u>	<u>1,337,200</u>	<u>1,337,200</u>

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