Submission to the Review Committee on the *Access to Information and Protection of Privacy Act*

Office of Public Engagement
Government of Newfoundland and Labrador
August 2014

Table of Contents

I. Overview

In 2012, the Provincial Government created the Office of Public Engagement with a commitment to developing a culture of openness and accountability. This direction was also taken in recognition that open government is an internationally recognized approach to organizational thinking which acknowledges the critical role of citizens and stakeholders in effective and sustainable governance. Open governments support the use of innovative activities, approaches and strategies to better connect people to their government and involve increased disclosure of information and data, knowledge-sharing, dialogue and collaboration, leading to a more engaged public. Ultimately, these practices support and enable better and more relevant policies, decisions, programs and services.

Since 2012, a number of practices have been promoted and advanced to create transparent practices throughout the Provincial Government. One of the initiatives undertaken by the Office of Public Engagement has been to increase the public's access to information. For example:

- disclosing the length of time it takes departments to respond to requests;
- supporting departments in being proactive and making information publicly available;
- publishing responses to general requests;
- posting information to one webpage to make it easily accessible, etc.

In 2014, the Provincial Government launched its Open Government Initiative to support the development of a formalized Action Plan. To inform the plan, a public engagement process involving departments, external stakeholders and the public is now underway. The Action Plan is expected to be completed in this fiscal year.

When the Office of Public Engagement was created, responsibility for the administration of the *Access to Information and Protection of Privacy Act* (*Act*) by the ATIPP Office was transferred from the Department of Justice. The ATIPP Office provides advice, guidance and support to public bodies with respect to access and privacy obligations, with an increased commitment to open, accountable and transparent government. The Office provides support to these bodies, including education and training; establishing policies and procedures for access requests and privacy practices; and providing advice to support consistent application of the *Act*. Assistance is also available to ensure the protection of personal information, to provide guidance with handling privacy breaches and to ensure new or redesigned programs that involve personal information comply with the privacy provisions of the *Act* by conducting privacy impact assessments.

The *Act* is based on two fundamental principles: the public's right to access the information of public bodies, and the protection of personal information in the custody of these bodies. In Newfoundland and Labrador, the *Act* applies to more than 460 public bodies, including departments, agencies, crown corporations, regional health authorities, educational bodies and municipalities. Two categories of information are accessible under the *Act*: general information and personal information. The *Act* is not meant to replace existing means of obtaining information. Individuals are encouraged to access information through informal means, where possible, by contacting the public body which may have the information.

A statutory review of the *Act* is required every five years with the first review having occurred in 2010 with the appointment of John Cummings as Review Commissioner. In 2012, in response to this review, the *Act* was amended with the passage of what is commonly referred to today as Bill 29. In January 2014, in response to public reaction to the *Act*, Government commissioned an early review in advance of the 2015 statutory review.

The Government of Newfoundland and Labrador has a unique perspective to offer on the administration and operation of the *Act*, given it is the holder of a large volume of records. This submission and, notably the annexes, will offer an analysis of some of the administrative data that Government collects related to the operation of the *Act*. Considering that the outcomes of this statutory review could result in amendments to the *Act* that could remain in effect for the next five years or beyond, ensuring the Committee has access to data about the operation and use of the *Act* is important.

This brief represents the experience of the ATIPP Office based on daily interaction with departments during the last six years as well as input from departments during the course of preparing the brief. The topics presented pertain to the administration and operation of the *Act* including experience, statistics and research. Recommendations are not provided as this is the role of the Review Committee and the basis by which Government will conduct an analysis and bring forward legislative amendments as required.

The topics presented include briefing books, response timelines, Cabinet confidences, policy advice or recommendations, security of information technology, third party business interests, personal information, etc.. These topics, along with the other topics discussed, reflect areas that 1) have garnered significant public attention since the *Act* was amended in 2012; 2) the Office is particularly interested in suggestions on improvements to the administration of the *Act*, decrease administrative processes and increase efficiency; 3) the Office has noted a shift in the patterns of usage in areas of the *Act* based on data analysis; and, 4) in the case of privacy breaches, that the Office would particularly appreciate advice on strengthening the protection of citizens' privacy.

A series of tables are provided in Annex B to present the data captured in relation to the topics during the six-year period of fiscal years 2008-09 to 2013-14. Averages prior to and following 2012 are also presented.

In terms of the trends, since 2008-09, departments are reporting an overall increase in the number of requests they receive as are other public bodies including agencies, boards, commissions, regional health authorities, school boards and municipalities. In 2008-09, 493 requests were received and by 2013-14, requests had increased to 553, or by 12 per cent over this six-year period (see Table 1).

In terms of government departments, nine receive the majority of the approximately 300 requests each year. In 2013-14, the Departments of Transportation and Works received 14 per cent of requests, Environment and Conservation 11 per cent and Advanced Education and Skills 10 per cent (see Table 2). Forty per cent of these requests were filed by political parties, 26 per cent by individuals, 19 per cent by media, and nine per cent by business (see Table 3). The number of requests received by all public bodies based on the type of applicant is shown in Table 4.

II. Role of the ATIPP Coordinator

To provide information relating to how requests are processed, it is important to understand the roles and responsibilities assigned to ATIPP coordinators. Each department is responsible for responding to requests as well as ensuring the protection of personal information in their custody. In accordance with the *Act*, departments are required to designate an employee as the ATIPP coordinator who is responsible for the day-to-day administration of the *Act* and the management of requests. Other duties may include providing advice on access to information and protection of privacy within the department, assisting in identifying training needs of staff and other job responsibilities. Within government departments, there are currently four full-time coordinators and another 20 coordinators have part-time ATIPP responsibilities as well as other job duties including information management, information technology, and policy and research (see Annex A).

Upon receipt of a request, the coordinator sends an acknowledgement letter to the applicant. To begin processing the request, the coordinator consults with senior executive, communications staff, and other employees that may have records responsive to the request. A preliminary search of records is conducted to determine whether any processing fees apply. The fee estimate is sent to the applicant and the request is placed on hold until the applicant either: confirms acceptance of the fee estimate and 50 per cent of this fee is received; modifies the request to reduce or remove fees and 50 per cent of the modified fee is received; or withdraws the request. If the request proceeds and applicable payments are received, the records are gathered and reviewed by the coordinator and the necessary staff to ensure all possible records are identified.

The search process for identifying records can be a coordinated effort among identified staff and the coordinator. The coordinator relies on the assistance of these staff, including program specific staff and records centre staff, in identifying responsive records. A comprehensive search of all records, including paper and electronic, occurs to ensure all responsive materials are provided to the coordinator. Depending on the scope of the request, the coordinator may require electronic access to current or previous employee records. Additionally, microfilm, microfiche, onsite and off-site paper records may also be reviewed.

When the records are searched and all responsive records are gathered, they are reviewed to determine whether consultations are required (e.g. third party businesses or other public bodies) and where necessary, notifications are sent and consultations occur with the appropriate individuals/organizations. The coordinator completes a line-by-line review of the records to determine whether exceptions to disclosure apply. Once the review and any consultations are complete, the final response is prepared and any records being released are provided to the applicant (see Annex C).

III. Topics for Discussion

Further to consultations with departments, the Office of Public Engagement is providing information on its experience as administrator of the Act on topics as set out below.

1. Briefing Books

In 2012, section 7 of the *Act* was amended to provide exemptions for briefing books prepared for ministers sitting in the House of Assembly and ministers assuming new portfolios, with these books not accessible for a period of five years.

When a minister assumes responsibility for a department or other public body, briefing materials are often prepared for the new minister to enable the minister to quickly gain an overview of the department's functions. This assists in reporting on the public body in Cabinet and publicly.

The briefing book will generally include some information that is publicly available, such as business plans and annual reports as well as information created specifically for the new minister, such as current assessments of operations and analyses of issues affecting the department. Briefing books provide ministers with valuable information about the department's programs, policies and operations. Departments often compile these books in preparation for a sitting of the House of Assembly. This enables the minister to respond to questions either publicly or during the House of Assembly in an informed and timely manner.

The specific exemption for an entire briefing book did not exist prior to the 2012 amendments. Before 2012, if a minister's briefing book was requested, a line-by-line review was conducted and information which consisted of policy advice or recommendations could be severed under section 20 or other sections of the *Act*, as appropriate.

Under the current legislation, the exemption of briefing books applies to books prepared for ministers sitting in the House of Assembly and ministers assuming new portfolios. If a request is made for a briefing book after five years has expired, the same line-by-line review process used prior to 2012 is undertaken with information severed in accordance with section 20 or other sections of the *Act*, as appropriate.

The 2012 review noted that the review of documents for severing purposes was having a "chilling effect" on the number of briefing books being prepared resulting in ministers sometimes not being provided with these books. The review, however, did not recommend briefing books be exempt from disclosure in their entirety.

Alberta and Yukon exempt books in their entirety for five years similar to Newfoundland and Labrador. Yukon's legislation was amended in 2012 to exempt briefing books, after the amendments were made to Newfoundland and Labrador's *Act*.

Administrative data from 2008-09 to 2011-12 shows that over four years, briefing books were requested a total of 48 times. Of these, 73 per cent of requests resulted in partial access, while the remaining 27 per cent either did not exist, were available publicly, or the request was abandoned. Following the 2012 amendments, briefing books were requested a total of seven times (five in 2012-13 and twice in 2013-14) with no records being provided, in accordance with the *Act's* exemption for briefing books.

Total Requests for Briefing Books			
Fiscal Year	**Total Requests**	**Requests for Briefing Books**	
		#	**%**
2008-09	259	5	2%
2009-10	304	11	4%
2010-11	337	16	5%
2011-12	273	16	6%
Pre-2012 Avg.	**293**	**12**	**4%**
2012-13	317	5	2%
2013-14	299	2	1%
Post-2012 Avg.	**308**	**4**	**2%**

2. Response Timelines

The *Act* requires that a public body make every reasonable effort to respond to a request in writing within 30 days with the ability to extend in limited circumstances under section 16. Prior to the 2012 amendments, the head of a public body could extend the timeline for an additional 30 days when:

- an applicant provided insufficient details to identify the record;
- there were a large number of records requested and responding within the timeframe would unreasonably interfere with the operations of the public body; or
- a public body needed to consult with a third party business.

The 2012 review did not recommend a change to the 30-day timeline. Instead, it was recommended, and the *Act* was amended to allow extensions in certain additional circumstances specifically with the public body able to extend for an additional 30 days should consultation with a third party or another public body be required.

The *Act* was also amended to allow further extensions (beyond the 30-day extension able to be granted by the head of a public body) with prior approval of the Information and Privacy Commissioner. An extension can be approved by the Commissioner for a period beyond the 30-day extension in the circumstances set out above. In addition, the Commissioner could also approve an extension when multiple concurrent requests are made by the same applicant, multiple applicants from the same organization, or where the Commissioner considers the extension fair and reasonable.

All Canadian jurisdictions provide a 30-day timeline to respond to requests, with the exception of Quebec which has a 20-day timeline. All jurisdictions permit a public body to extend timelines beyond the initial 30 days. A number of jurisdictions allow additional extensions with the approval of the Commissioner. For example, Prince Edward Island and Alberta permit extensions with approval of the Information and Privacy Commissioner when a public body receives multiple concurrent requests from a single individual or organization.

Government has placed an increased emphasis on meeting the legislative timelines in the *Act.* The time it takes departments (i.e. timelines are met or not met) to respond to these requests are posted online and reported monthly as part of the Open Government Initiative. Response timelines thus far are available from January 2013 to July 2014.

A request is considered met when the response is provided within the legislated timeline (i.e. 30 days, up to 60 days with an extension, or over 60 days with an extension approved by the Information and Privacy Commissioner). During the first six months of 2014, approximately 96 per cent of requests were responded to by departments within the legislated timelines, as compared to 69 per cent in the first six months of 2013 (see Table 5, 5a and 5b).

Often requests can take longer than 30 days as a result of legislative requirements involving consultations with third party businesses, other departments, and individuals. Administrative data for 2013-14 shows that 68 per cent of applicants received a response within 30 days, 26 per cent within 60 days while the remaining 6 per cent within more than 60 days.

Days to Respond (Departments) 2013-14		
Days	**Total**	**%**
1-10 days	13	4%
11-20 days	36	12%
21-30 days	154	52%
31-45 day	32	11%
46-60 days	44	15%
61-80 days	12	4%
81-100 days	4	1%
>100 days	4	1%
Total	**299**	**100%**

It should be noted that requests involving third party business information often require additional processing time. This is a result of the requirement to notify a business when their business information has been requested. In terms of the process followed by the ATIPP coordinator to process requests, the *Act* also requires coordinators to notify a business if a request may involve their business including commercial information. The business then has 20 days to consent to release. If they do not consent, the head of the public body has 10 days to make a final decision on whether to release and notifies the business of its decision. Where the department intends to release information without the consent of the business and has notified the business of this decision, the business has 20 days to appeal this decision to the Commissioner. During this time, the department cannot release the information relating to the business.

3. Cabinet Confidences

The confidentiality of Cabinet room deliberations and the documents that support them underscores the constitutional convention of Cabinet collective responsibility that is a cornerstone of the British democratic tradition. The relationship between Cabinet confidentiality and collective responsibility has been recognized by the Supreme Court of Canada in *Babcock v. Canada (Attorney General), 2002 SCC 57*. "Those charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny […] if Cabinet members' statements were subject to disclosure, Cabinet members might censor their words, consciously or unconsciously. They might shy away from stating unpopular positions, or from making comments that might be considered politically incorrect." "As the apex of the executive branch of government, Cabinet derives its authority to govern from the legislative branch and must make a clear account to it. This is the essence of how our representative democracy works and collective responsibility is at its core." Similarly, maintaining Cabinet confidentiality avoids creating ill-informed public or political criticism which could hamper the ability of government to function effectively and efficiently (see *Carey v. Ontario, 1986 2 S.C.R. 637*).

Prior to the 2012 amendments, section 18 of the *Act* required information to be withheld that would "reveal the substance of deliberations of Cabinet, including: advice; recommendations; policy considerations; or draft legislation or regulations submitted or prepared for submission to the Cabinet". In terms of practical application, this section required a line-by-line review and severing of information that would reveal the substance of Cabinet deliberations. The remainder of the information that did not reveal the substance of deliberations would be disclosed, subject to other exemptions under the *Act*.

The term "substance of deliberations" has been considered by courts in Nova Scotia and British Columbia. In Nova Scotia (see *O'Connor v. Nova Scotia, 2001 NSCA 132* (CanLII)), the test has been interpreted as withholding information which would allow a reader to draw accurate inferences about Cabinet deliberations, if disclosed. British Columbia courts (see *Aquasource Ltd. v. British Columbia, 1998 6444 (CanLII)*) have used a broader interpretation and have determined that the test encompasses the body of information that Cabinet considered in making a decision. Prior to the 2012 amendments, the Newfoundland and Labrador Information and Privacy Commissioner consistently applied the Nova Scotia approach when interpreting what information revealed the substance of Cabinet deliberations.

In 2012, section 18 was amended to remove the substance of deliberations test as well as clarify the definition of what constitutes a Cabinet record. It also increased the listing of records that protect the principle of Cabinet confidentiality as follows:

The definition of Cabinet record was amended to include the list of Cabinet records contained in the *Management of Information Act*, as recommended by Commissioner Cummings. Accordingly, the current definition defines Cabinet records as:

(i) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet,

(ii) draft legislation or regulations submitted or prepared for submission to the Cabinet,
(iii) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet,
(iv) a discussion paper, policy analysis, proposal, advice or briefing material, including all factual and background material prepared for the Cabinet,
(v) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet,
(vi) a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy,
(vii) a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet,
(viii) a record created during the process of developing or preparing a submission for the Cabinet, or
(ix) that portion of a record which contains information about the contents of a record within a class of information referred to in subparagraphs (i) to (viii).

- Three new categories of records were added to section 18 as follows:

  - Official Cabinet record means a Cabinet record which has been prepared for and considered in a meeting of the Cabinet which has been certified as an official Cabinet record by the Clerk of the Executive Council or his or her delegate. For example, a Cabinet paper that is prepared, brought into the Cabinet room and discussed in a Cabinet meeting is an official Cabinet record, as is the Minute of Council of that decision (arising Orders in Council are a public record as they are considered legislative instruments and/or regulatory in nature);
  - Supporting Cabinet record means a Cabinet record which informs the Cabinet process, but which is not an official Cabinet record. For example, a budget document is created and budget information is taken from the document and is included in an official Cabinet record – the original budget document is a supporting Cabinet record; and
  - Discontinued Cabinet record including those discontinued at the departmental level means a Cabinet record, the original intent of which was to inform the Cabinet process, but which is neither a supporting Cabinet record nor an official Cabinet record. For example, a Cabinet record is submitted for Cabinet consideration, however the issue is removed from the agenda and the record is never received and considered in a Cabinet meeting or a record intended for Cabinet which was discontinued at the departmental level – this record is a discontinued Cabinet record.

Section 18 was also amended to provide the Commissioner with the ability to review records that have been refused as supporting or discontinued Cabinet records. Official Cabinet records are reviewable by the Supreme Court Trial Division. Previously, the Commissioner had the ability to review all Cabinet records.

In terms of practical application, the current definition set out in paragraph 18(1)(a) provides clarity on what is a Cabinet record. The amendment to section 18 resulted in a change of practice for coordinators whereby a requested record that meets the definition of Cabinet record is now withheld in its entirety. Consequently, Cabinet records no longer require a line-by-line review

and severing to protect the substance of Cabinet deliberations which was the practice prior to 2012. It should be noted that in practice, signed Cabinet papers were fully severed and thus withheld in their entirety under the *Act* prior to 2012 and this practice continues. For all other types of Cabinet records, a line-by-line review and severing of information that would reveal the substance of Cabinet deliberations would previously occur. The remaining information that did not reveal the substance of deliberations would be disclosed prior to 2012, subject to other exceptions under the *Act*.

Seven jurisdictions exempt information that would reveal the substance of Cabinet deliberations (Nova Scotia, New Brunswick, Prince Edward Island, Ontario, Manitoba, Alberta and British Columbia). Nunavut, Northwest Territories, Saskatchewan and Yukon's legislation does not include a substance of deliberations test but rather exempts a record that would reveal a confidence of the Executive Council. In Nova Scotia, the exemption for Cabinet confidences is at the discretion of the head of the public body, whereas in other jurisdictions Cabinet confidences must be withheld.

In Newfoundland and Labrador, New Brunswick and the federal government, the Commissioner does not have the ability to review all Cabinet records in the event of a dispute. The federal government maintains the strongest protection of Cabinet confidentiality in the country - neither the Commissioner nor the courts can review Cabinet records when combined with the certification process in the *Canada Evidence Act*.

Following the amendments to section 18 in 2012, data reveals a reduction in the number of times this exemption has been used by departments. Prior to the 2012 amendments, on average, this exemption was used in approximately 11 per cent of requests annually (of which, 44 per cent were from media; 33 per cent were from political parties; and 12 per cent were from individuals). Following 2012, this exemption was used in approximately six per cent of requests annually (45 per cent were from political parties; 25 per cent were from media; and 20 per cent were from individuals) (see Table 6).

The Office of the Information and Privacy Commissioner advises that there have been no appeals brought to the courts with respect to official Cabinet records since the amendment to section 18.

Total Responses citing s.18 Cabinet Confidences

Fiscal Year	Total	s.18	
		#	%
2008-09	259	26	10%
2009-10	304	22	7%
2010-11	337	38	11%
2011-12	273	45	16%
Pre-2012 Avg.	**293**	**33**	**11%**
2012-13	317	22	7%
2013-14	299	15	5%
Post-2012 Avg.	**308**	**18**	**6%**

Numbers may not add up due to rounding.

4. Policy Advice or Recommendations

Subsection 20(1) provides a public body with the ability to withhold information that is advice or recommendations prepared for or by a minister or public body as well as draft legislation or regulations. In 2012, section 20 was amended to include the addition of several other categories of records to this section including analyses or policy options and consultations or deliberations in an effort to protect open and frank discussions of policy issues. Legislation in Prince Edward Island, Manitoba, Saskatchewan, Alberta, Northwest Territories and Nunavut contain similar provisions protecting consultations or deliberations. In addition, incomplete research or audit reports unless no progress has been made in three years were also added, modeled after similar provisions in Alberta and Prince Edward Island. Prior to the 2012 amendments, on average, this section was used in approximately 15 per cent of requests annually. Following 2012, on average, this section was used in approximately 10 per cent of requests annually.

Use of Section 20 by Fiscal Year for Government Departments			
Fiscal Year	**Total # of Requests**	**s.20**	
		#	**%**
2008-09	259	41	16%
2009-10	304	33	11%
2010-11	337	49	15%
2011-12	273	51	19%
Pre-2012 Avg.	**293**	**44**	**15%**
2012-13	317	36	11%
2013-14	299	24	8%
Post-2012 Avg.	**308**	**30**	**10%**

Subsection 20(2) provides a list of records that cannot be withheld as policy advice such as factual information; a statistical survey; a report of an external task force; a plan to establish a new program; and information cited publicly as the basis for making a decision.

5. Security of Information Technology

There is minimal language within the legislation that allows the Office of the Chief Information Officer to protect security-related information from disclosure that could negatively impact Government's information technology security. Paragraph 22(1)(l) is the primary option for protecting the confidentiality of security-related records. A number of Canadian jurisdictions provide clearer protection for information regarding security interests of government (Nova Scotia, Ontario, Manitoba, Alberta, British Columbia, and Nunavut).

6. Third Party Business Interests

Prior to 2012, section 27 required the head of the public body to refuse to disclose information that, if disclosed, could result in harm to the business that:

1. would reveal
   (i) trade secrets of a third party, or
   (ii) commercial, financial, labour relations, scientific or technical information of a third party;
2. is supplied, implicitly or explicitly, in confidence; **and**
3. if disclosed could reasonably be expected to
   (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
   (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
   (iii) result in undue financial loss or gain to any person or organization, or
   (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

In practice, to rely on section 27, all parts of the three-part test noted above needed to be met to protect business information. Additionally, "detailed and convincing" evidence of the harm to the business was required. Specifically, there needed to be a link between the disclosure of information and the harm expected from the release (OIPC Report 2006-005).

Concerns were raised during the 2012 statutory review by some public bodies that section 27 did not provide sufficient material protection for third party business information supplied to Government, particularly in respect of major resource development projects. Specifically, there was concern that section 27 could deter companies from entering into business discussions with Government and compromise Government's ability to carry out its mandate on business attraction and economic development.

In 2012, section 27 was amended to provide increased protection for third party business information. In order to rely on section 27, information must meet a one-part test, as opposed to the former three-part test. In order to meet the one-part test, the head of a public body must refuse to disclose information that could, if disclosed, result in harm to the business:

1. trade secrets of a third party; **or**
2. commercial, financial, labour relations, scientific or technical information of a third party, that is supplied, implicitly or explicitly, in confidence and is treated consistently as confidential information by the third party; **or**
3. commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to
   (i) harm the competitive position of a third party or interfere with the negotiating position of the third party,
   (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
   (iii) result in significant financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

Following the amendments to section 27, the Information and Privacy Commissioner issued a report interpreting the changes to this provision. An applicant requested a copy of a bid submitted by a third party business from the Government Purchasing Agency. The Agency withheld some information as third party business information. In this report, the Commissioner found that the amended section "still requires detailed and convincing evidence to establish a reasonable expectation of probable harm, [which] is the same standard that existed under the previous section 27." The Commissioner determined that the burden of proof had not been met by the public body and recommended the information be released (OIPC Report A-2013-08). This report has provided clear interpretation in the use of this section.

The amended section 27 is comparable to the legislation in New Brunswick, Manitoba and Saskatchewan which protects third party business information using a one-part test. Nova Scotia, Prince Edward Island, Ontario, Alberta and British Columbia have a three-part test similar to Newfoundland and Labrador's former section 27.

Following the amendments to section 27, this exception was used by departments on average 20 times annually whereas prior to these amendments, it was used on average 28 times annually (see Table 7).

Total Responses citing s.27 Third Party			
Fiscal Year	**Total**	**s.27**	
		#	**%**
2008-09	259	20	8%
2009-10	304	26	9%
2010-11	337	33	10%
2011-12	273	34	12%
Pre-2012 Avg.	**293**	**28**	**10%**
2012-13	317	23	7%
2013-14	299	16	5%
Post-2012 Avg.	**308**	**20**	**6%**

Numbers may not add up due to rounding.

While the new section has increased protection for businesses, some businesses criticize the amendments arguing that too much information is now being withheld while others support the amendment.

7. Personal Information

Prior to 2012, under section 30, public bodies were unable to disclose personal information unless it was included in a list of exceptions, regardless of whether it was harmful to personal privacy. In practice, this created challenges. For example, if an applicant wrote to a public body

and referenced another individual, the public body was required to withhold the information of the other individual referenced in the letter. In addition, subsection 30(2) listed the types of personal information that could be disclosed, including the position of employees or their exact remuneration.

In 2012, the legislation was amended to include a harm test to allow the release of personal information which would not be an unreasonable invasion of privacy. Section 30 outlines a number of factors to consider in determining what personal information can be disclosed. Examples of the types of personal information that would not be an unreasonable invasion of privacy if disclosed include salary ranges of employees, the position and functions of employees, or the personal information of an individual who has been deceased for 20 years or more. In terms of practical application, following these amendments, only the salary range of employees is disclosed. The exact salary is disclosed only when no range exists. Six jurisdictions include the term salary range in their legislation (Prince Edward Island, New Brunswick, Ontario, Manitoba, Alberta, and Nunavut).

8. Term of the Information and Privacy Commissioner

Section 42.2 provides for a two year appointment term for the Information and Privacy Commissioner. This is the shortest term of all jurisdictions and the average term of Information and Privacy Commissioners in Canada is five years. The appointment terms of other offices in Newfoundland and Labrador vary: the Auditor General is appointed for a ten-year term with no opportunity for reappointment; the Chief Electoral Officer may hold office during good behavior; the Child and Youth Advocate and the Office of the Citizens' Representative each have six-year terms with potential for reappointment; and the Commissioner for Legislative Standards has a five-year term with potential for reappointment.

9. Powers of the Information and Privacy Commissioner

The 2012 review noted that where a claim of solicitor-client privilege is made, the privilege should be as near to absolute as possible and given the importance of the credibility of the system, the claim needs to be independently verified with the review of these records entrusted to the courts, similar to that in existence in New Brunswick. With the 2012 amendments, the Commissioner's authority no longer extends to official Cabinet records or solicitor-client privilege records. As a result, the Commissioner does not have the authority to review a decision of a public body relating to official Cabinet records or solicitor-client privilege records, nor does the Commissioner have the authority to request a copy or examine such records.

Solicitor-client privilege within the legal system has evolved from a rule of evidence to a substantive right fundamental to the operation of the legal system. In *R. v. McClure*, 2001 SCC 14, the Supreme Court of Canada refers to solicitor-client privilege as being "as close to absolute as possible". They state at paragraph 35:

> "Solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis."

Later, in *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44, the SCC stated:

> "Solicitor-client privilege is fundamental to the proper functioning of our legal system. The complex of rules and procedures is such that, realistically speaking, it cannot be navigated without a lawyer's expert advice. It is said that anyone who represents himself or herself has a fool for a client, yet a lawyer's advice is only as good as the factual information the client provides. Experience shows that people who have a legal problem will often not make a clean breast of the facts to a lawyer without an assurance of confidentiality 'as close to absolute as possible.'"

The 2012 amendments expressly excluded solicitor-client privileged records from the scope of the Commissioner's authority to review and to compel the production of documents. In this regard, sections 43 and 52 were amended. Prior to the amendments there was no such express exclusion. Section 43 allowed an applicant to ask the Commissioner to review refusal of records. In conducting the review, section 52 provided the Commissioner with the power to compel a public body to produce any record notwithstanding any privilege under the law of evidence.

The question of whether the Commissioner's pre-amendment powers extended to records covered by solicitor-client privilege was considered by the Supreme Court Trial Division in *Newfoundland and Labrador (Attorney General)* v. *Newfoundland and Labrador (Information and Privacy Commissioner)*, 2010 NLTD 31. The crux of the issue was whether the language of the *Act* was clear enough to override solicitor-client privilege. The Trial Division applied a restrictive interpretation of the *Act* and found that the language was not clear enough. However, in 2011, the Court of Appeal disagreed with the decision and found that by applying a purposive interpretation, the language was ambiguous and broad enough to include solicitor-client privilege.

In the 2012 review of the *Act*, it was recommended that the *Act* be amended to make clear that independent verification of claims of solicitor-client privilege should be referred to the Supreme Court Trial Division and not the Commissioner. The review acknowledged that this recommendation came prior to the release of the Court of Appeal decision but stated that it was not necessary to wait for a decision in the matter to make the recommendation.

As noted above, the question before the Court of Appeal considered the meaning of sections 43 and 52 prior to the amendments. In considering a similar question of whether the federal Privacy Commissioner could compel the production of solicitor-client privileged records under the federal *Act*, the SCC in Blood Tribe noted that:

> "…the Privacy Commissioner is an officer of Parliament who carries out "impartial, independent and non-partisan investigations": H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General), 2006 SCC 13 (CanLII), [2006] 1 S.C.R. 441, 2006 SCC 13, at para. 33. She is an administrative investigator not an adjudicator."

In addition, in Blood Tribe, the SCC rejected the notion that the Privacy Commissioner is analogous to a court for the purpose of reviewing the solicitor-client privileged records and noted that the Commissioner is "a stranger to the privilege". The Court went on to state:

> "Client confidence is the underlying basis for the privilege, and infringement must be assessed through the eyes of the client. To a client, compelled disclosure to an administrative officer, even if not disclosed further, would constitute an infringement of the confidentiality. The objection is all the more serious where (as here) there is a possibility of the privileged information being made public or used against the person entitled to the privilege: Lavallee, at para. 44; Goodis, at para. 21; Pocklington Foods Inc. v. Alberta (Provincial Treasurer), 1993 ABCA 69 (CanLII), [1993] 5 W.W.R. 710 (Alta. C.A.). While s. 12 gives the Privacy Commissioner some court-like procedural powers, she is not a court of law."

In summary, the *Act* currently requires a determination of whether documents are solicitor and client privileged to be made by the court and explicitly excludes solicitor and client privileged documents from the Commissioner's power to compel production of documents.

10. Disregarding Requests

Prior to 2012, section 13 provided a public body with the ability to refuse to respond to a request if it was repetitive or incomprehensible. In 2012, section 43.1 was added to allow a public body to disregard certain types of requests, such as repetitive requests that unreasonably interfere with the public body's operations, requests deemed to be frivolous or vexatious, trivial requests or those made in bad faith. In addition, subsection 43.1(2) allows a public body to disregard a request that is excessively broad with the approval of the Information and Privacy Commissioner.

The ability to disregard certain requests is common across Canadian jurisdictions with most requiring the approval of the Information and Privacy Commissioner (Prince Edward Island, New Brunswick, Alberta, British Columbia, Yukon, Northwest Territories and Nunavut). Legislation in Manitoba and Ontario provides the head of the public body with authority to disregard certain requests. No other jurisdiction provides the ability to disregard excessively broad requests.

Since the addition of this section in 2012, Government departments have not used this section although it has been used by two other public bodies seven times.

11. Fees

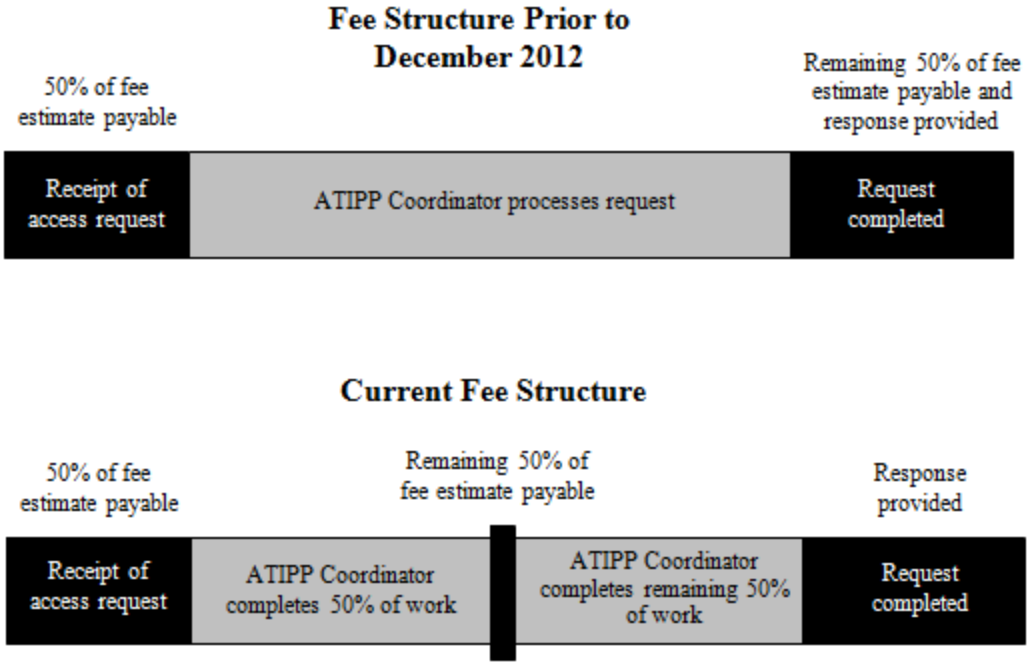
The *Act* permits the Minister responsible for the legislation to establish a fee schedule for requests. Upon receipt of a request, an ATIPP coordinator must provide an applicant with an estimate of applicable fees. The purpose of this is to give an applicant an opportunity to decide whether to proceed with the request, modify the request to reduce or eliminate the fees, request a waiver of the fees, or withdraw the request. Providing an estimate ensures an applicant is aware of the financial commitment prior to proceeding with a request. Conversely, it ensures public bodies do not incur the administrative obligation of processing a request until an applicant has committed to proceeding and paid the fees required.

The Fee Schedule prior to 2012 required public bodies to charge all applicants a $5 application fee. In terms of processing fees, applicants were charged for processing general requests with no charge for personal information requests. The first two hours of processing were provided free of charge following which a $15 per hour processing fee was charged for the time spent locating, retrieving and manually producing a record. The Schedule also outlined when an applicant was required to pay fees, with 50 per cent required up-front and 50 per cent payable upon completion of the request, prior to the applicant receiving the records.

The 2012 review recommended the fee structure be maintained. The review noted the concerns expressed by some public bodies, including that cost recovery was not possible; fees were too low to deter unreasonable requests; and fees did not apply to requests for personal information. In contrast, other public bodies advised that fees assisted in deterring unreasonable requests and led applicants to narrow and more accurately define the scope of their request. Generally, the majority of public bodies recommended an increase in fees but there was no consensus regarding amounts.

During the review of the *Act*, the Provincial Government considered the Fee Schedule and in December 2012, the Schedule was changed. The $5 application fee remained the same. Processing fees for general requests increased from $15 to $25 per hour, with the free time increasing from two to four hours. The Schedule was amended to provide the ATIPP coordinator with the ability to charge for their time spent contemplating whether to sever information in a record. Under the previous Schedule, only a coordinator's time spent searching, reviewing and severing the record was chargeable, not contemplating whether or not to sever information. Personal information requests continue to require only the $5 application fee. No processing fees are charged for these requests.

In 2012, the timing of when an applicant was required to pay fees was also modified. For fee estimates greater than $50, an applicant is still required to pay 50 per cent of the fee estimate at the outset; at which point the coordinator will complete 50 per cent of the work. Following this, the applicant is then required to pay the final 50 per cent of the fee estimate before the coordinator completes the remaining 50 per cent of the work. Under the previous schedule, the coordinator would complete 100 per cent of the work before receiving the final 50 per cent payment. The current payment schedule can result in delays in responding to requests as coordinators are unable to complete the processing of a request until all fees are paid. In addition, it can be impractical for coordinators to determine at which point 50 per cent of the request has been completed. In some instances, simply gathering the records may constitute the majority of time spent in responding to the request, while in other instances the majority of time may be spent reviewing and severing the records.



Nova Scotia, Prince Edward Island, Ontario, Alberta, the Northwest Territories, Nunavut, and the federal government require an application fee at the time a request is made, similar to Newfoundland and Labrador. Nova Scotia, Prince Edward Island, Ontario and the federal government's application fees are the same as Newfoundland and Labrador's fee at $5. The application fee in Alberta, Nunavut and the Northwest Territories is substantially higher at $25. New Brunswick eliminated all fees for requests in 2011.

A jurisdictional scan reveals that the costs to process (search, locate and retrieve) a request ranges from $10 to $30 per hour and copying fees from 15 to 25 cents per page (see Table 8).

Following 2012, there has been a decrease in the number of fee estimates issued by departments (from an annual average of 37 estimates pre 2012, to an average of 27 estimates post 2012) (see Table 9). In addition, the amount of fees paid has fallen from an annual average of $1,921 pre 2012 to $1,096 post 2012 (see Table 10). For those requests where fees are paid, the average fee paid per request was $120 pre 2012 and $137 post 2012.

12. Directory of Information

Under section 69 of the *Act*, the Minister responsible for the administration of the *Act* is required to publish a directory to assist in identifying and locating records in the custody or under the control of public bodies. This directory includes a description of the public body's mandate; a description and list of records in the custody or control of each public body; contact information for the public body; and a description of manuals used by employees of a public body in administering programs or activities.

In terms of practical application, this directory has not been compiled and published. Departments may have the ability to create a directory of information specific to their own department; however, given the independent administration of other public bodies (regional health authorities, educational bodies, municipalities, etc.) and the breadth of personal information collected, compiling a directory of all public bodies' records has been impractical.

13. Privacy Breaches

The Provincial Government is responsible for extensive amounts of personal information. Part IV of the *Act* protects this information by limiting when and how it is collected, used and disclosed by public bodies. The *Act* defines personal information as recorded information that can identify an individual (e.g., name, address, social insurance number, credit card information). Efforts are taken to ensure employees are made aware of obligation to protect privacy. Employees are provided with privacy training as a component of their orientation and in 2013, the ATIPP training was updated and is available through the Centre for Learning and Development.

A privacy breach occurs when personal information is handled in a manner not authorized by the *Act*. The *Act* provides rules for public bodies in terms of when they can access, collect, use, disclose or dispose of personal information and for what purpose. The most common privacy breaches occur when personal information of individuals is mistakenly disclosed, stolen or lost. For example, a breach occurs when a computer containing personal information is stolen or personal information is mistakenly provided to the wrong person. Most breaches reported to the Office of Public Engagement have been the result of administrative errors.

Prior to the 2012 amendments, there were no express provisions in the *Act* providing the Information and Privacy Commissioner with the ability to investigate a reported privacy breach. In practice, however, the Commissioner conducted privacy investigations, relying on section 51 of the *Act* (general powers and duties of the Commissioner) to provide this authority. In 2012, the *Act* was amended to expressly permit the Commissioner to conduct reviews upon receipt of a privacy complaint.

The *Act* does not outline a legislative procedure for handling privacy breaches. Currently, public bodies are not required to report breaches, either to the Office of Public Engagement, to the Information and Privacy Commissioner or to affected individuals, although a number of departments and public bodies report them. The Office of Public Engagement has developed materials to assist public bodies in handling breaches, including when it is advisable to notify affected individuals, the Office, and the Information and Privacy Commissioner. The process for responding to a privacy breach is as follows:

- Efforts must be taken to contain the breach;
- Potential risks to affected individuals must be evaluated;
- Affected individuals should be notified (if appropriate);
- Individuals must be advised of their right to make a privacy complaint to the Information and Privacy Commissioner; and,
- Efforts should be taken to prevent future breaches.

All provincial jurisdictions, as well as the federal government, provide the Commissioner with the ability to conduct privacy investigations, without the need for a privacy complaint to be filed. In Newfoundland and Labrador, the Commissioner may investigate a privacy complaint from an individual who believes their personal information has been breached.

Between January 2013 and June 2014, 39 privacy breaches were reported to the Office of Public Engagement and of these, 30 (77 per cent) were minor in nature, involving limited amounts of personal information; while nine were serious involving sensitive personal information (e.g., social insurance number).

In terms of personal health information, the Newfoundland and Labrador's *Personal Health Information Act (PHIA)* establishes rules regarding how personal health information is to be handled. It protects privacy as well as the right of access to personal health information. *PHIA* governs information held by custodians of personal health information, whether in the public sector, such as a hospital, or in the private sector, such as a dentist or pharmacist. Most personal health information, with few exceptions, is considered to be in the control or custody of a custodian and is therefore covered by *PHIA.* The *Act* does not apply to personal health information covered by *PHIA*. Similar to the *Act*, the Commissioner's role is to oversee the *PHIA* to ensure that the laws are being followed, and to investigate complaints from citizens who believe the laws are not being followed.

14. Child Protection and Adoption Information

Paragraph 2(o) defines personal information as recorded information about an individual including an opinion such as a reference or collateral reference check. In instances of child protection, to receive an unqualified reference or opinion, some people support an approach that ensures the details of a reference check be provided confidentially or disclosed only with the consent of the person providing the reference.

In addition, some information contained in child protection records or other records where an adoption of a child or information relating to perspective adoptive parents where an adoption is in progress, may be accessible under the *Act*. The *Child Youth Care and Protection Act* and the *Adoption Act* provide protection for these records; however there are instances where some information contained within these records may be accessible under the *Act*. For example, clinical decisions that are made by social workers in relation to potential adoptive parents under cases that are currently underway. These are records of potential parents and may be accessible under the *Act* as they are not records of children which are protected under the *Child Youth Care and Protection Act.* It is important to note that once an adoption is finalized, these records would be protected under the *Adoptions Act*. The protection of these records is seen as critical.

15. Proactive Disclosure of Information

One of the principles embedded in the legislation is the public's right to access the information of public bodies, and while the *Act* sets out procedures for requests, section 3 states the *Act* does not replace other procedures for accessing information or limit access to information that is not personal information and available to the public.

Since its creation, the Office of Public Engagement has worked collaboratively with departments to proactively disclose information to provide easier access using online postings. To date, more than 90 proactive disclosures have been posted to the Open Information webpage.

Some examples of information proactively disclosed across Government include:

- Requests completed by departments – more than 400 requests for general information processed by departments have been posted online from January 2013 to present, including a summary of the request and any records provided to an applicant.
- Orders in Council – Orders are posted online within two weeks after they are issued and include the text of the Order, the authority and applicable department.
- Response timelines for requests – response timelines are posted online monthly including whether timelines are met or not met by a department.

The Office of Public Engagement continues to work with departments to identify more information that can be shared proactively with the public. Examples of recent disclosures by departments include:

- Health Professional Vacant Position Report;
- Restaurant Inspection Reports;
- Bridge Inspection Reports;
- School Transportation Review;
- School Infrastructure Expenditures; and
- Provincial Ambulance Review.

IV. Summary

Governments function best when they are open to the people they serve. The Provincial Government has always strived to be open to meet the expectations of the people of the province. Disclosing information should be the default and withholding information should be the exception. This philosophy has guided Government in encouraging departments and agencies to disclose information in a proactive manner through the Open Government Initiative. One of the main purposes is to share data and information that can be accessed freely without the need to file formal requests.

The Provincial Government looks forward to receiving advice and guidance from the Review Committee on how to provide improved access to information in keeping with this commitment to open government practices, while ensuring the protection of personal privacy. The *Act* is designed to create a culture of openness and accountability in the public sector while protecting the personal information of citizens.

This brief provides information on the operations and administration of the *Act* including topics such as compliance with timelines, details on fee estimates and amounts paid, experience with provisions of the *Act,* such as Cabinet confidences, third party business information, as well as administrative data.

The objective of this brief is to share the Provincial Government's unique perspective as administrator of the *Act* and inform the Review Committee during its deliberations. It is not intended to influence the direction of the review nor is it designed to provide recommendations as this is the role of the Review Committee and the basis by which Government will conduct an analysis and bring forward legislative amendments as required.

While the topics in this brief pertain to administration and operations of the *Act*, as the administrator of this legislation, the Provincial Government is seeking advice and guidance from the Review Committee to ensure world-class standards in the administration of this legislation. The public's expectation is extremely high and the Provincial Government is working hard to meet these expectations.

The Provincial Government continues to strive to provide the appropriate balance of openness while respecting the fundamental principle of an individual's right to privacy. The Provincial Government makes difficult and challenging decisions that consider the human resources and financial requirements across all departments. The Provincial Government continues to seek and respond to new technologies which are expanding at a rate that challenges even the largest of jurisdictions with protection of the personal information entrusted by the people of the province.

The legislation is designed to ensure the two fundamental principles of the *Act* are being met - the public's right to access the information of public bodies, and the protection of personal information in the custody of these bodies. The Provincial Government also recognizes the need to strike a balance between the public's right to information with the need to protect limited sensitive information such as business information, Cabinet records and law enforcement information.

The Provincial Government appreciates any advice and guidance that will be provided by the Review Committee and looks forward to receiving its report and recommendations.

V. Annexes

Annex A

ATIPP Coordinators by Department			
Department	**Abbrev.**	**#**	**Status**
Advanced Education and Skills	AES	1	F/T
Child, Youth and Family Services	CYFS	1	P/T
Education	EDU	1	P/T
Environment and Conservation	ENV	1	F/T
Executive Council			
Cabinet Secretariat	CS	1	P/T
Human Resources Secretariat	HRS	1	P/T
Labrador & Aboriginal Affairs Office	LAA	1	P/T
Office of the Chief Information Officer	OCIO	1	P/T
Office of Climate Change & Energy Efficiency	OCCEE	1	P/T
Office of Public Engagement	OPE	1	P/T
Premier's Office	PO	1	P/T
Women's Policy Office	WPO	1	P/T
Finance	FIN	1	P/T
Fisheries and Aquaculture	FA	1	P/T
Health and Community Services	HCS	1	F/T
Innovation, Business and Rural Development	IBRD	1	P/T
Justice	JUS	1	P/T
Municipal and Intergovernmental Affairs			
Municipal Affairs	MIGA	1	P/T
Intergovernmental Affairs	MIGA	1	P/T
Natural Resources			
Energy and Mines	NR	1	P/T
Forestry and Agrifoods	NR	1	P/T
Service NL	SNL	1	P/T
Tourism, Culture and Recreation	TCR	1	P/T
Transportation and Works	TW	1	F/T

Note: F/T means employed full-time while P/T means full-time employees with part-time ATIPP duties as well as other duties.

Annex B
List of Tables

Table 1: Number of Requests Annually					
Fiscal Year	**Government Departments**		**Other Provincial Public Bodies**		**Total**
	Total	**%**	**Total**	**%**	
2008-09	259	53%	234	47%	493
2009-10	304	56%	243	44%	547
2010-11	337	60%	229	40%	566
2011-12	273	51%	264	49%	537
Pre-2012 Avg.	**293**	**55%**	**243**	**45%**	**536**
2012-13	317	48%	343	52%	660
2013-14	299	54%	254	46%	553
Post-2012 Avg.	**308**	**51%**	**299**	**49%**	**607**

Table 2: Total Requests by Department Annually																						
Fiscal Year	**AES**		**EDU**		**ENV**		**FIN**		**FA**		**HCS**		**JUS**		**NR**		**TW**		**Other Depts.***		**Total**	
	Total	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**
2008-09	6	2%	10	4%	29	11%	3	1%	5	2%	34	13%	33	13%	17	7%	19	7%	103	40%	259	100%
2009-10	6	2%	11	4%	43	14%	13	4%	7	2%	33	11%	16	5%	19	6%	23	8%	133	44%	304	100%
2010-11	16	5%	24	7%	46	14%	15	4%	11	3%	43	13%	38	11%	30	9%	25	7%	89	26%	337	100%
2011-12	20	7%	10	4%	28	10%	6	2%	18	7%	28	10%	23	8%	23	8%	21	8%	96	35%	273	100%
Pre-2012 Avg.	**12**	**4%**	**14**	**5%**	**37**	**12%**	**9**	**3%**	**10**	**4%**	**35**	**12%**	**28**	**9%**	**22**	**8%**	**22**	**8%**	**105**	**36%**	**293**	**100%**
2012-13	25	8%	24	8%	33	10%	24	8%	17	5%	17	5%	31	10%	26	8%	38	12%	82	26%	317	100%
2013-14	30	10%	14	5%	32	11%	16	5%	27	9%	23	8%	19	6%	15	5%	42	14%	81	27%	299	100%
Post-2012 Avg.	**28**	**9%**	**19**	**7%**	**33**	**11%**	**20**	**7%**	**22**	**7%**	**20**	**7%**	**25**	**8%**	**21**	**7%**	**40**	**13%**	**82**	**27%**	**308**	**103%**

Other departments = CYFS, EXEC, HRS, LAAO, OCIO, OCCEE, OPE, PRE, WPO, IBRD, MIGA, SNL and TCR.
Note: per cent may not add to 100 due to rounding.

Table 3: Number of Requests to Government Departments by Applicant Type*																
Type of Applicant	**2008-09**		**2009-10**		**2010-11**		**2011-12**		**Pre-2012 Avg.**		**2012-13**		**2013-14**		**Post 2012 Avg.**	
	Total	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**
Individual	84	32%	115	38%	97	29%	68	25%	**91**	**31%**	109	34%	77	26%	**93**	**30%**
Media	88	34%	75	25%	69	20%	62	23%	**74**	**25%**	73	23%	57	19%	**65**	**21%**
Political Party	64	25%	72	24%	113	34%	113	41%	**91**	**31%**	113	36%	121	40%	**117**	**38%**
Business	7	3%	11	4%	23	7%	15	5%	**14**	**5%**	11	3%	28	9%	**20**	**6%**
Legal Firm	12	5%	8	3%	15	4%	6	2%	**10**	**3%**	6	2%	6	2%	**6**	**2%**
Interest Group	3	1%	2	1%	7	2%	4	1%	**4**	**1%**	2	1%	4	1%	**3**	**1%**
Other Public Body	1	0%	3	1%	7	2%	2	1%	**3**	**1%**	1	0%	1	0%	**1**	**0%**
Researcher	0	0%	18	6%	6	2%	3	1%	**7**	**2%**	2	1%	5	2%	**4**	**1%**
Total	**259**	**100%**	**304**	**102%**	**337**	**100%**	**273**	**99%**	**294**	**99%**	**317**	**100%**	**299**	**99%**	**309**	**99%**

Note: per cent may not add to 100 due to rounding.

Table 4: Number of Requests - All Public Bodies by Applicant Type																
Type of Applicant	**2008-09**		**2009-10**		**2010-11**		**2011-12**		**Pre-2012 Avg.**		**2012-13**		**2013-14**		**Post-2012 Avg.**	
	Total	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**
Individual	215	44%	260	48%	241	43%	238	44%	239	45%	314	48%	226	41%	270	44%
Political Party	87	18%	90	16%	133	23%	130	24%	110	20%	130	20%	154	28%	142	23%
Media	133	27%	105	19%	88	16%	85	16%	103	19%	108	16%	82	15%	95	16%
Business	26	5%	52	10%	49	9%	40	7%	42	8%	62	9%	58	10%	60	10%
Legal Firm	24	5%	13	2%	27	5%	24	4%	22	4%	24	4%	11	2%	18	3%
Other Public Body	3	1%	5	1%	9	2%	7	1%	6	1%	11	2%	8	1%	10	2%
Interest Group	5	1%	4	1%	10	2%	9	2%	7	1%	6	1%	8	1%	7	1%
Researcher	0	0%	18	3%	9	2%	4	1%	8	1%	5	1%	6	1%	6	1%
Total	**493**	**101%**	**547**	**100%**	**566**	**102%**	**537**	**99%**	**537**	**99%**	**660**	**101%**	**553**	**99%**	**608**	**100%**

Note: per cent may not add to 100 due to rounding.

Table 5: Response Timelines				
Month	**Timelines Met***	**Timelines Not Met***	**Total Responses**	**% of Timelines Met**
Jan-13	10	10	20	50%
Feb-13	23	10	33	70%
Mar-13	21	11	32	66%
Apr-13	26	19	45	58%
May-13	26	5	31	84%
Jun-13	17	3	20	85%
Six Mth. Avg.	**21**	**10**	**30**	**69%**
Jul-13	27	6	33	82%
Aug-13	33	1	34	97%
Sep-13	23	1	24	96%
Oct-13	26	0	26	100%
Nov-13	24	2	26	92%
Dec-13	26	1	27	96%
Six Mth. Avg.	**27**	**2**	**28**	**94%**
Jan-14	11	1	12	92%
Feb-14	25	1	26	96%
Mar-14	29	1	30	97%
Apr-14	24	0	24	100%
May-14	14	1	15	93%
Jun-14	28	0	28	100%
Six Mth. Avg.	**22**	**1**	**23**	**96%**
TOTAL	**413**	**73**	**486**	**86%**

**The timeline for a request is considered met if response provided within legislated timeframe (i.e. 30 days, 60 days with an extension, or over 60 days with an extension approved by the Information and Privacy Commissioner)*

Note: Per cent may not add to 100 due to rounding.

Table 5a. Timelines by Fiscal Year of Departments									
Year	Total # of requests	Met		Met with Extension		Not Met		Met + Met with ext.	
		Total	%	Total	%	Total	%	Total	%
2008-09	259	186	72%	21	8%	52	20%	207	80%
2009-10	304	179	59%	23	8%	102	34%	202	66%
2010-11*	337	186	55%	34	10%	116	34%	220	65%
2011-12	273	123	45%	29	11%	121	44%	152	56%
Pre-2012 Avg.	**293**	**169**	**58%**	**27**	**9%**	**98**	**33%**	**195**	**67%**
2012-13*	317	157	50%	27	9%	132	42%	184	58%
2013-14	299	204	68%	77	26%	18	6%	281	94%
Post-2012 Avg.	**308**	**181**	**59%**	**52**	**17%**	**75**	**24%**	**233**	**76%**

Table 5b. Response Times by Fiscal Year of Departments							
Year	Total # of requests	0-30 day		30-60 days		Over 60 days	
		Total	%	Total	%	Total	%
2008-09	259	186	72%	60	23%	13	5%
2009-10	304	179	59%	83	27%	42	14%
2010-11*	337	186	55%	99	29%	51	15%
2011-12	273	123	45%	111	41%	39	14%
Pre-2012 Avg.	**293**	**169**	**58%**	**88**	**30%**	**36**	**12%**
2012-13	317	157	50%	108	34%	51	16%
2013-14	299	205	69%	79	26%	15	5%
Post-2012 Avg.	**308**	**181**	**59%**	**94**	**30%**	**33**	**11%**

Table 6: Use of s.18 Cabinet Confidences (by Applicant Type)												
	2010-11		2011-12		Pre-2012 Avg.		2012-13		2013-14		Post-2012 Avg.	
Type of Applicant	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**
Political Party	14	37%	14	31%	**14**	**33%**	11	50%	7	47%	**9**	**45%**
Media	14	37%	23	51%	**19**	**44%**	8	36%	2	13%	**5**	**25%**
Individual	6	16%	4	9%	**5**	**12%**	2	9%	5	33%	**4**	**20%**
Legal Firm	1	3%	0	0.0%	**1**	**2%**	0	0%	1	7%	**1**	**5%**
Interest Group	0	0%	0	0.0%	**0**	**0%**	1	5%	0	0%	**1**	**5%**
Business	3	8%	4	9%	**4**	**9%**	0	0%	0	0%	**0**	**0%**
Total	**38**	**101%**	**45**	**100%**	**43**	**100%**	**22**	**100%**	**15**	**100%**	**20**	**100%**

Numbers may not add up due to rounding.

Table 7: Use of s.27 Third Party (by Applicant Type)												
Type of Applicant	2010-11		2011-12		Pre-2012 Avg.		2012-13		2013-14		Post-2012 Avg.	
	#	**%**	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**
Political Party	6	18%	15	44%	**11**	**32%**	11	48%	3	19%	**7**	**33%**
Media	12	36%	14	41%	**13**	**38%**	6	26%	7	44%	**7**	**33%**
Business	9	27%	1	3%	**5**	**15%**	3	13%	3	19%	**3**	**14%**
Individual	5	15%	3	9%	**4**	**12%**	1	4%	2	13%	**2**	**10%**
Legal Firm	1	3%	1	3%	**1**	**3%**	2	9%	1	6%	**2**	**10%**
Interest Group	0	0%	0	0%	**0**	**0%**	0	0%	0	0%	**0**	**0%**
Total	**33**	**99%**	**34**	**100%**	**34**	**100%**	**23**	**100%**	**16**	**101%**	**21**	**100%**

Numbers may not add up due to rounding.

Table 8: Interjurisdictional Review of Fees				
Juris.	**Application Fee**	**Processing Fee**	**Copying Fees**	**Free**
CA	$5.00	$2.50 per 1/4 hr ($10/hr)	$0.20/pg	5 hrs
BC	No fee	$7.50 per 1/4 hr ($30/hr)	$0.25/pg (b/w) $1.65/pg (color)	3 hrs
AB	$25 non-continuing request $50 continuing request	$6.75 per 1/4 hr ($27/hr)	$0.25/pg	0 hrs
SK	No fee	$15 per ½ hr ($30/hr)	$0.25/pg	2 hrs
MN	No fee	$15 per ½ hr ($30/hr)	$0.20/pg	2 hrs
ON	$5 fee	$7.50 per 1/4 hr ($30/hr)	$0.20/pg	0 hrs
NS	$5 fee	$15 per ½ hr ($30/hr)	$0.20/pg	2 hrs
NB	No fee	No fee	No fee	No fee
PEI	$5 fee	$10 per ½ hr ($20/hr)	$0.25/pg	2 hrs
YK	No fee	$25 per hr	$0.15/pg (reg/leg) $0.25/pg (oth.size)	3 hrs
NU	$25 fee	$6.75 per 1/4 hr ($27/hr)	$0.25/pg	0 hrs
NWT	$25 fee	$6.75 per 1/4 hr ($27/hr)	$0.25/pg	0 hrs
NL	$5 fee	$25 per hr	$0.25/pg	4 hrs

Table 9: Total Requests with and without Fee Estimates						
Fiscal Year	**Total**		**Fee Estimate Provided**		**No Fee Estimate Provided**	
	#	**%**	**#**	**%**	**#**	**%**
2008-09	259	100%	46	18%	213	82%
2009-10	304	100%	33	11%	271	89%
2010-11	337	100%	43	13%	294	87%
2011-12	273	100%	27	10%	246	90%
Pre-2012 Avg.	**293**	**100%**	**37**	**13%**	**256**	**87%**
2012-13	317	100%	23	7%	294	93%
2013-14	299	100%	30	10%	269	90%
Post-2012 Avg.	**308**	**100%**	**27**	**9%**	**282**	**92%**

Per cent may not add to 100 due to rounding.

Table 10: Fee Estimates provided to Applicant and Fees Paid (Departments)						
Fiscal Year	**Estimates Provided**			**Paid**		
	#	**%**	**Total**	**#**	**%**	**Total**
2008-09	46	18%	$13,272	21	8%	$2,086
2009-10	33	11%	$15,640	19	6%	$1,328
2010-11	43	13%	$27,222	9	3%	$564
2011-12	27	10%	$9,513	13	5%	$3,707
Pre-2012 Avg.	**37**	**13%**	**$16,412**	**16**	**6%**	**$1,921**
2012-13	23	7%	$10,635	10	3%	$1,227
2013-14	30	10%	$15,761	6	2%	$964
Post-2012 Avg.	**27**	**9%**	**$13,198**	**8**	**3%**	**$1,096**

Fees rounded to the nearest dollar.

Table 11: Final Outcome of Response by Departments*																
Type of Applicant	**2008-09**		**2009-10**		**2010-11**		**2011-12**		**Pre-2012 Avg.**		**2012-13**		**2013-14**		**Post-2012 Avg.**	
	Total	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**
Full Disclosure	73	28%	114	38%	86	26%	77	28%	**88**	**30%**	117	37%	127	42%	**122**	**40%**
Partial Disclosure	81	31%	106	35%	122	36%	128	47%	**109**	**37%**	99	31%	99	33%	**99**	**32%**
Records do not exist	42	16%	38	13%	51	15%	38	14%	**42**	**14%**	51	16%	33	11%	**42**	**14%**
Access Denied	27	10%	11	4%	20	6%	15	5%	**18**	**6%**	27	9%	12	4%	**20**	**6%**
Abandoned	27	10%	26	9%	49	15%	12	4%	**29**	**10%**	7	2%	15	5%	**11**	**4%**
Withdrawn	6	2%	6	2%	1	0%	2	1%	**4**	**1%**	6	2%	6	2%	**6**	**2%**
Publicly Available	3	1%	3	1%	5	1%	1	0%	**3**	**1%**	4	1%	5	2%	**5**	**1%**
Repetitive or incomprehensible	0	0%	0	0%	2	1%	0	0%	**1**	**0%**	5	2%	0	0%	**3**	**1%**
Will Provide once records are available	0	0%	0	0%	0	0%	0	0%	**0**	**0%**	0	0%	2	1%	**1**	**0%**
Disregard request	0	0%	0	0%	0	0%	0	0%	**0**	**0%**	0	0%	0	0%	**0**	**0%**
Refuse to Confirm or Deny Existence	0	0%	0	0%	0	0%	0	0%	**0**	**0%**	0	0%	0	0%	**0**	**0%**
Total	**259**	**98%**	**304**	**102%**	**336**	**100%**	**273**	**99%**	**293**	**99%**	**316**	**100%**	**299**	**100%**	**308**	**100%**

**Percentage may not add up to 100% due to rounding.*

**Total number of final outcomes may not add up to number of requests received for a fiscal year due to incomplete requests.*

Annex C
Steps to Process Requests

	Action of ATIPP Coordinator	Explanation
1	Send application form to applicant if application is not in the required format.	An ATIPP Coordinator will need to determine whether the records being requested fall under the *Act*. At this stage, ATIPP Coordinators are encouraged to provide records through routine disclosure.
2	Duty to assist applicants.	This may include explaining the *Act*, helping narrow the scope of a request, directing them to other sources of information, etc.
3	Send notice to applicant if $5 application fee does not accompany request.	An ATIPP Coordinator may call or email applicant, if request needs to be clarified. Always be helpful and keep applicant informed.
4	Calculate the due date (30 calendar days after receipt).	Failure to respond within 30 days may be deemed a refusal of access.
5	Notify and consult.	Advise department executive and communications staff of the request.
6	Enter details in the TRIM database, if using, or other monitoring/tracking system**.** If not using TRIM, email or fax Notification of Application Form to Office of Public Engagement.	
7	Transfer request to other public body, if required. Send applicant notice of transfer.	Confirm other public body has records and transfer within 7 days.
8	Send applicant letter acknowledging request.	
9	*Initiate search for the records.*	
	Identify and assemble records.	Ensure all potential program areas are asked to search for records. Search paper, electronic and other records in any form. This may be completed by the relevant staff or the public body's ATIPP Coordinator. Keep accurate documentation of search. Make 2 copies of each record and number all documents.
10	Update database/tracking system.	
11	*Assess materials.*	
	If an extension is required send notice to applicant.	

	If records relating to a third party business are included in the responsive records send notice to third party and to applicant.	
12	Update database/tracking system.	
13	*Fee estimate*	
	Assess number of hours and photocopies required to complete request.	Consult with senior management on fee estimate. Round estimate of hours down to nearest hour. Aim for accurate estimate.
	Send written fee estimate to applicant	1. Where fees are estimated to be $50 or more, applicant will be provided with a fee estimate and required to pay 50% of the fee. Upon receipt of the first 50% of the fee estimate, the public body shall complete 50% of the work. The remaining 50% of the fee estimate must be paid prior to the public body completing the remaining 50% of the work. 2. Where fees are estimated to be less than $50, applicant will be provided with a fee estimate and required to pay the fee in full prior to the public body commencing the work to complete the request. 3. No fees beyond the $5 application fee are charged for personal information requests.
	Put time limit to respond on hold until applicant consents to costs and pays deposit.	
	Receive applicant's consent to pay costs and deposit, resume processing request; or, narrow scope of request, if possible, to reduce costs to applicant; or, close file if applicant withdraws application. *Reminder: If estimate is more than $50, send notice to applicant of balance owing prior to commencing the remainder of the work.*	Processing of request stops until deposit is received. Consider fee waiver and/or narrowing request. Clarification/narrowing of the request may involve assisting the applicant in defining the subject of the request, the specific kinds of records of interest, and the time period for which records are being requested.
14	Update database/tracking system.	
15	Make two copies of the records; one for file and one working copy.	
16	Line-by-line review of materials to determine if severing of records is required. Prepare list of records.	Often a portion of information in a record can be released to the applicant, but a portion of the record may or must be withheld under an exception to disclosure. In this circumstance, the public body may sever the information that falls under an exception (discretionary exception) or must sever the information (mandatory exception) and release the remainder of the information.

17	Consult with relevant public body, if necessary.	Consult with program areas for context and sensitivity. Lawyer/departmental solicitor must be consulted if records may be withheld under section 21 (legal advice) or section 22 (law enforcement). Tourism, Culture & Recreation and/or Environment & Conservation must be consulted if records may be withheld under section 25 (harmful to conservation). Municipal and Intergovernmental Affairs must be consulted with respect to records of a local public body under section 19 or if records may be withheld under section 23 (harmful to intergovernmental relations or negotiations). Cabinet Secretariat must be consulted if records are cabinet records under section 18 or policy advice under section 20.
18	Sever any information which is not to be disclosed. Indicate the subsections used to protect information. If more than one exception applies, note each one.	
19	Prepare draft response to applicant.	
20	Send draft to head (or designate) for approval.	Discuss any sensitive issues with head/senior management (e.g. matters of public importance to the department with the deputy minister).
21	Send response to applicant if fees are paid. Send refund, if applicable.	
22	Close file.	
23	Update database/tracking system.	
24	Send Summary Report to Office of Public Engagement (if not using TRIM database).	

Source: Access to Information: Policy and Procedures Manual, Office of Public Engagement