



Office of the  
Saskatchewan Information  
and Privacy Commissioner

# Annual Report

CHANGE IS IN THE AIR

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2020/2021



Office of the  
Saskatchewan Information  
and Privacy Commissioner

June 28, 2021

Hon. Randy Weekes  
Speaker of the Legislative Assembly  
129 Legislative Building  
Regina, Saskatchewan  
S4S 0B3

Dear Mr. Speaker:

I am pleased to present my seventh Annual Report as Information and Privacy Commissioner for Saskatchewan. I have prepared this Annual Report in accordance with the provisions of subsection 62(1) of *The Freedom of Information and Protection of Privacy Act*, subsection 52(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* and subsection 60(1) of *The Health Information Protection Act*.

The Pandemic in Saskatchewan, Canada and the World has shifted our focus and caused many of us to make significant changes to our lives at work. We have had to become more flexible with timelines but continue to insist that access and privacy legislation is still in force. As of the date of filing this report, my office is still closed and staff continue to work from home.

I thank the Members of the Legislative Assembly for their support of the Office of the Information and Privacy Commissioner. Going forward, I ask for their cooperation in modernizing legislation to recognize that we have changed from a paper-based society to a database society. Now we really do live in a digital world.

I also thank the staff of the office for their hard work over the last year in accomplishing some ambitious goals in a much more challenging remote work environment. Finally, I thank staff for their willingness to adjust their lives and work lives to provide services to Saskatchewan residents even though our front doors were closed.

Respectfully submitted,

Original signed by  
Ronald J. Kruzeniski, Q.C.  
Information and Privacy Commissioner

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# Commissioner's Message




Ronald Kruzeniski, Q.C.  
Information and Privacy Commissioner

2019-2020 was the third year in our three-year plan. In 2020-21, my office was planning to have a session to develop the next three-year plan (2020-2023). Because we were working from home, we did not hold a face-to-face meeting to develop such a plan. I will report on the accomplishments for 2020-2021 on the basis that we extended our plan for an extra year.

In my Annual Report for 2016-2017, I addressed the issues relating to "Navigating in a Digital World". So much of what we do today is now electronic and my office and society needs to continue to adjust its approaches to access and privacy in this digital world.

In the 2017-2018 Annual Report, "Reducing the Risks", I focused further on how, in our digital world, organizations may reduce the risk of privacy breaches. Breaches can occur with paper files, but most of the noteworthy breaches today involve electronic files that can impact thousands of people.

In my 2019-2020 Annual Report, I reported on the "Issues in a Pandemic". Those issues obviously touched on access to information and privacy. Now that the 2020-2021 year is over, it is noteworthy how many discussions there have been regarding privacy. It is also noteworthy how in the last fiscal year we have moved very rapidly to an even more digital world.



When *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act* (1992-1993) were implemented, we as a society were aware of the internet, but were not really using it. We were still a paper-based society. Databases existed, but were not in use to the extent they are now and generally were not accessible by the internet. For the most part, we are no longer a paper-based society. A vast amount of information about each of us is housed in databases, many of which are accessible by the internet. We look up information, we order things, and we pay bills and communicate with one another through the utilization of these databases and the internet. It is time that we modernize our access and privacy legislation to take this into account.

This need and desire to modernize access and privacy legislation is occurring all across Canada. People have recognized that there is a need to update and recognize the new reality. Later in this report, I summarize the changes that are occurring across the country in an article entitled “Change is in the Air”.

I am looking forward to my eighth year as Commissioner and to the development of a new three-year plan.

On March 20, 2020, my office closed its doors and switched to operating with all staff working from home. It took a week to get organized, but after that the office has been able to provide good service to the citizens of Saskatchewan. It is hoped in the coming year, my office will be able to return to its premises.

I want to express my appreciation to the staff of the office for their hard work, dedication and commitment to ensuring access and privacy rights are afforded to the citizens of Saskatchewan. I also want to thank our many stakeholders including applicants, complainants, public bodies, and health trustees for their continued cooperation with our office. Their cooperation makes the access and privacy system work. This thank you needs to be repeated, since we all have had to make the system work during a pandemic.

Finally, I want to thank the members of the Board of Internal Economy and the members of the Legislative Assembly for their continued support.

*Ronald J. Kruzeniski, Q.C.*  
Information and Privacy Commissioner

# About Us

The Office of the Saskatchewan Information and Privacy Commissioner (IPC) is an independent office of the Saskatchewan Legislative Assembly. It oversees three Saskatchewan statutes:

**1**

*The Freedom of Information and Protection of Privacy Act (FOIP)*

**2**

*The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)*

**3**

*The Health Information Protection Act (HIPA)*

FOIP, LA FOIP and HIPA establish the access to information and privacy rights of citizens.

## OUR MISSION

To ensure that access to information and privacy rights in Saskatchewan are respected.

## OUR MANDATE

The IPC ensures that public bodies respect the privacy and access rights of the citizens of Saskatchewan by:

- informing members of the public on their information rights;
- resolving access and privacy disputes between individuals and public bodies;
- making recommendations on public bodies' policies and practices;
- investigating and resolving privacy complaints;
- issuing recommendations on public bodies' policies and practices; and
- commenting on proposed laws, policies and practices.

# Accomplishments 2020-2021

## Education and Awareness

Goals	Accomplishments
Update resources to ensure that amendments to FOIP, LA FOIP and HIPA are captured in educational material.	The office continues to update resources with particular emphasis on the <a href="#">IPC Guide to FOIP</a> and the <a href="#">IPC Guide to LA FOIP</a> .
Continue to update and expand the <i>IPC Guide to FOIP</i> and the <i>IPC Guide to HIPA</i> , develop a similar guide regarding LA FOIP.	Developed and posted to the website Chapters 1 to 3 of the <a href="#">IPC Guide to LA FOIP</a> .
Promote mandatory annual access and privacy training for employees within public bodies and health trustees.	Continued to promote training in reports and resources.
Develop and post a resource containing access and privacy issues caused by the Pandemic.	Developed and posted to the website <a href="#">A Pandemic Binder</a> .

## Navigating in a Digital World

Goals	Accomplishments
Develop and post to website a document on the management of non-work related personal emails.	Completed and posted to website a document called <a href="#">Best Practice for the Management of Non-work Related Personal Emails in Work Issued Email Accounts</a> .
Promote ways for public bodies and health trustees to deliver electronic information securely.	Promoted file transfer by Liquid files and explored file transfer by MS Teams.
Promote a live streamed workshop in Regina, Saskatoon and Prince Albert for municipal officials and administrators.	Delivered a webinar series entitled <a href="#">LA FOIP Foundations</a> from February 1 to 4, 2021.



# Advocating for Improvement

Goals	Accomplishments
Promote and work with the Ministry of Justice to modernize access and privacy legislation recognizing that we have moved from a paper to a digital society.	Continue to suggest legislative change.
Promote and work with the Ministry of Health to modernize HIPA recognizing that we have moved from a paper to a digital society.	Continue to suggest legislative change.
Promote and work with the Ministry of Health to develop HIPA Regulation amendments including broadening the definition of a "trustee".	Continue to suggest legislative change.
Promote and work with the Ministry of Justice to develop regulation amendments to FOIP and LA FOIP including updating the lists of government institutions or local authorities.	Continue to suggest legislative change.
Promote and work with the Ministry of Justice on updating <i>The Model Professions Act</i> and promote that professional bodies will be subject to Part IV of LA FOIP or HIPA (Protection of Privacy).	Promoted a review of <i>The Model Professions Act</i> template.
Promote an amendment to <i>The Education Act</i> similar to section 117 of <i>The Municipalities Act</i> .	Promoted such an amendment.
Promote that all non-governmental organizations who receive government or local authority funds will be subject to Part IV of FOIP or LA FOIP (Protection of Privacy).	Continue to promote.

# Effective While Efficient

Goals	Accomplishments
Manage the increasing caseload so that citizens obtain the results in a reasonable period of time.	Continue to find ways to give citizens their reports sooner.
Resolve a matter by early resolution within 30 calendar days.	36 calendar days.
Issue a report or resolve a matter on review of an access request within 130 calendar days.	289 calendar days.
Issue a report or resolve a matter regarding a breach of privacy within 130 calendar days.	315 calendar days.
Complete or close a consultation file within 30 calendar days.	65 calendar days.
Respond to an application to disregard within 20 calendar days.	19 calendar days.

# The Plan 2021-2022

Core to our work is that we support access to records as requested by citizens in a timely manner and promote protection of the privacy of those citizens wherever required. The freedom of information legislation in the province enshrines the principle that citizens should have access to information generated by organizations supported by taxpayer dollars. All other objectives in this document are intended to enhance and protect the rights of citizens to obtain information.



## Education and Awareness

### Goals

Update the [IPC Guide to FOIP](#) the [IPC Guide to LA FOIP](#) and the [IPC Guide to HIPA](#).

Promote mandatory annual access and privacy training for employees within public bodies and health trustees.

Develop and deliver a webinar during Right to Know Week.

Develop and deliver a webinar for Data Protection Day.

Take part in the development of a Federal/Provincial/Territorial joint guidance document on facial recognition.

Take part in the development of a Federal/Provincial/Territorial joint statement on vaccine passports.

# Navigating in a Digital World

## Goals

Review of the office's website to determine what changes and what resources should be updated.

# Advocating for Improvement

## Goals

Promote the modernization of FOIP and LA FOIP recognizing that we have moved from a paper to a digital society.

Promote regulation amendments to FOIP and LA FOIP including broadening the lists of government institutions or local authorities.

Promote that all non-governmental organizations who receive government or local authority funds will be subject to Part IV of FOIP or LA FOIP (Protection of Privacy).

Promote the modernization of HIPA recognizing that we have moved from a paper to a digital society.

Promote updating *The Model Professions Act* template and promote that professional bodies will be subject to Part IV of FOIP or LA FOIP (Protection of Privacy).

Promote HIPA Regulation amendments including broadening the definition of a "trustee".

# Efficient While Effective

## Goals

Resolve a matter by early resolution within 30 calendar days.

Issue a report or resolve a matter on review of an access request within 130 calendar days.

Issue a report or resolve a matter regarding breach of privacy within 130 calendar days.

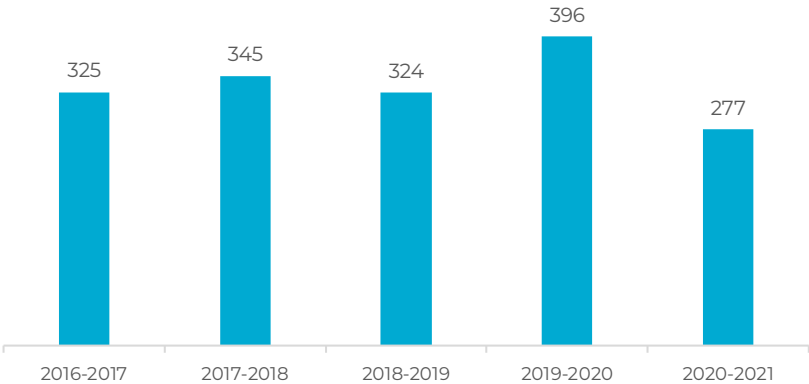
Complete or close consultation files within 30 calendar days.

Complete or close an application to disregard within 30 calendar days.

# Files and Reports

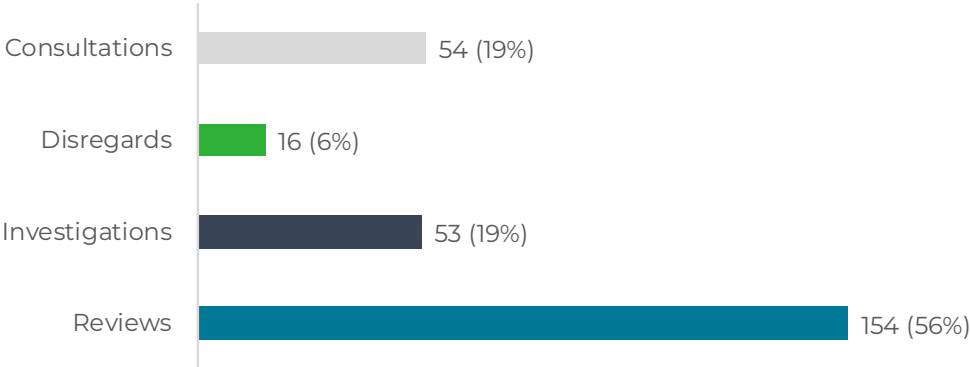
## Files Opened

One can see that the number of files opened have declined. COVID-19 would have been a factor in this decline.

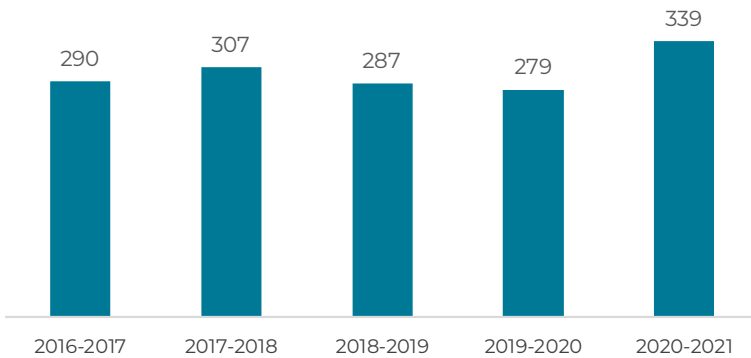


## Types of Files Opened

One can note the majority of files opened involved asking the office to do a review of the decision of a head to deny access.



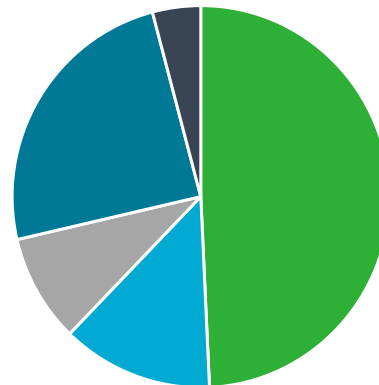
## Files Closed



My office was able, during this pandemic year, to increase the number of files closed.

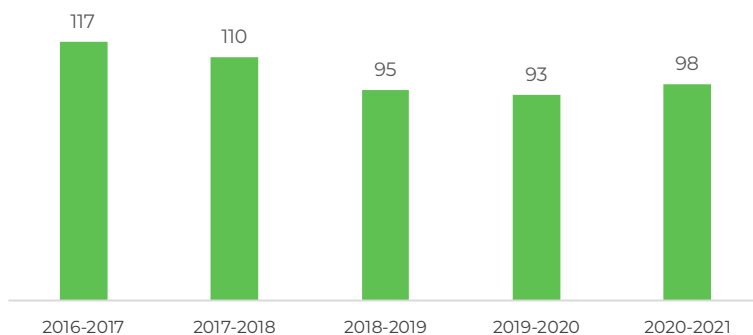
## Resolution of Files

It should be noted that approximately half of the files resulted in a report while the other half were resolved in other ways.



- Went to Report (49%)
- Consultations (25%)
- Informally Resolved (13%)
- Early Resolution (9%)
- Not Proceeded With (4%)

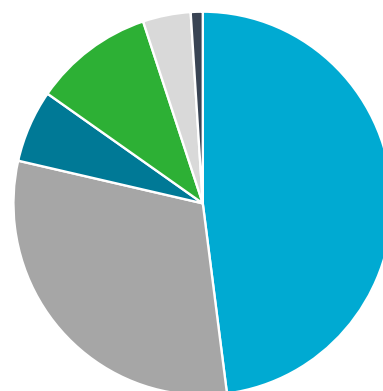
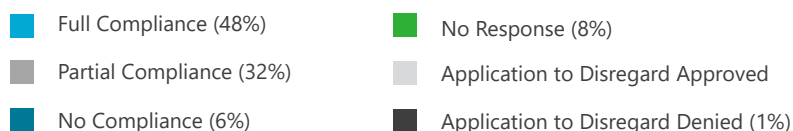
## Reports Issued



It should be noted that my office, during this pandemic year, was able to increase the number of reports issued. This was the case even though staff were working from home.

# Compliance with Recommendations

The office issued 98 reports in the 2020-2021 fiscal year. A public body or trustee is required to respond to the recommendations within 30 days of receiving the report. This is a chart showing the percentage of reports where there is full compliance, partial compliance, no compliance, and where an application to disregard was approved.



My office is obligated to report on the recommendations that were not complied with - see FOIP, subsection 62(2); LA FOIP, subsection 52(2); and HIPA, subsection 60(2). Failure to respond to a report is considered to be non-compliance. On the following pages are three tables; the first table lists those public bodies and trustees that responded to a report with no compliance; the second table lists those public bodies and trustees that responded to a report with partial compliance; the third table lists those public bodies and trustees that did not respond at all.

NO COMPLIANCE		
Government Institution	Report #	Recommendation(s) not complied with*
Ministry of Education	Review Report 386-2019	<a href="#">[41]</a>
Ministry of Highways and Infrastructure	Review Report 347-2019	<a href="#">[23]</a> , <a href="#">[24]</a>
Ministry of Justice	Review Report 158-2019	<a href="#">[35]</a>
Ministry of Justice	Review Report 204-2019	<a href="#">[28]</a> , <a href="#">[29]</a>
Local Authority	Report #	Recommendation(s) not complied with*
Saskatoon Board of Police Commissioners	Review Report 298-2019	<a href="#">[80]</a> , <a href="#">[81]</a> , <a href="#">[82]</a> , <a href="#">[83]</a>
Trustee	Report #	Recommendation(s) not complied with*
Saskatchewan Health Authority	Review Report 268-2019	<a href="#">[37]</a>

\*Refers to paragraph number in the Report. Click on the link to go directly to the Report.

## PARTIAL COMPLIANCE

Government Institution	Report #	Recommendation(s) not or partially complied with*
Ministry of Central Services	Review Report 086-2019	<a href="#">[59]</a>
Ministry of Central Services	Review Report 185-2019	<a href="#">[84]</a>
Ministry of Central Services	Review Report 187-2019	<a href="#">[102]</a>
Ministry of Central Services	Review Report 188-2019	<a href="#">[158]</a> , <a href="#">[159]</a>
Ministry of Central Services	Review Report 189-2019	<a href="#">[43]</a>
Ministry of Central Services	Review Report 274-2019	<a href="#">[98]</a>
Ministry of Education	Review Report 093-2020	<a href="#">[52]</a>
Ministry of Education	Review Report 172-2019	<a href="#">[83]</a>
Ministry of Environment	Review Report 301-2019	<a href="#">[32]</a>
Ministry of Health	Review Report 082-2019, 083-2019	<a href="#">[129]</a>
Ministry of Justice	Investigation Report 271-2017	<a href="#">[86]</a> , <a href="#">[89]</a> , <a href="#">[91]</a> , <a href="#">[93]</a>
Ministry of Justice	Review Report 147-2018, 197-2018, 008-2019, 073-2019; Investigation Report 192-2018, 221-2018, 058-2019	<a href="#">[176]</a> , <a href="#">[179]</a> , <a href="#">[180]</a> , <a href="#">[183]</a>
Ministry of Justice	Review Report 057-2019	<a href="#">[31]</a> , <a href="#">[32]</a>
Saskatchewan Government Insurance	Review Report 169-2020	<a href="#">[28]</a>
Saskatchewan Housing Corporation	Review Report 180-2019	<a href="#">[36]</a> , <a href="#">[37]</a>
Saskatchewan Human Rights Commission	Review Report 002-2020	<a href="#">[70]</a>
Saskatchewan Human Rights Commission	Review Report 065-2020	<a href="#">[175]</a> , <a href="#">[177]</a> , <a href="#">[178]</a>
Saskatchewan Public Safety Agency	Review Report 012-2020, 038-2020	<a href="#">[66]</a>

\*Refers to paragraph number in the Report. Click on the link to go directly to the Report.

## PARTIAL COMPLIANCE (continued)

Local Authority	Report #	Recommendation(s) not or partially complied with*
City of Regina	Review Report 145-2019	<a href="#">[194]</a> , <a href="#">[197]</a> , <a href="#">[198]</a> , <a href="#">[199]</a>
City of Regina	Review Report 007-2020	<a href="#">[59]</a> , <a href="#">[60]</a> , <a href="#">[61]</a> , <a href="#">[63]</a> , <a href="#">[64]</a>
City of Saskatoon	Review Report 035-2019	<a href="#">[114]</a>
Prairie South School Division No. 210	Investigation Report 211-2019; 215-219 to 241-2019	<a href="#">[348]</a> , <a href="#">[351]</a>
Sun West School Division No. 207		<a href="#">[294]</a>
Prince Albert Police Service	Review Report 276-2019, 277-2019	<a href="#">[31]</a>
RM of Senlac No. 411	Review Report 011-2020	<a href="#">[24]</a>
Saskatoon Police Service	Review Report 299-2019	<a href="#">[39]</a> , <a href="#">[40]</a>
University of Regina	Review Report 158-2018	<a href="#">[95]</a> , <a href="#">[96]</a> , <a href="#">[97]</a> , <a href="#">[98]</a>
Trustee	Report #	Recommendation(s) not or partially complied with*
LifeLabs	Investigation Report 398-2019, 399-2019, 417-2019, 005-2020, 019-2020, 021-2020	<a href="#">[176]</a> , <a href="#">[177]</a>
Saskatchewan Health Authority	Investigation Report 203-2019, 214-2019, 257-2019	<a href="#">[98]</a> , <a href="#">[100]</a> , <a href="#">[101]</a> , <a href="#">[103]</a> , <a href="#">[104]</a> , <a href="#">[105]</a> , <a href="#">[107]</a>
Saskatchewan Health Authority	Investigation Report 398-2019, 399-2019, 417-2019, 005-2020, 019-2020, 021-2020	<a href="#">[177]</a> , <a href="#">[182]</a>

\*Refers to paragraph number in the Report. Click on the link to go directly to the Report.



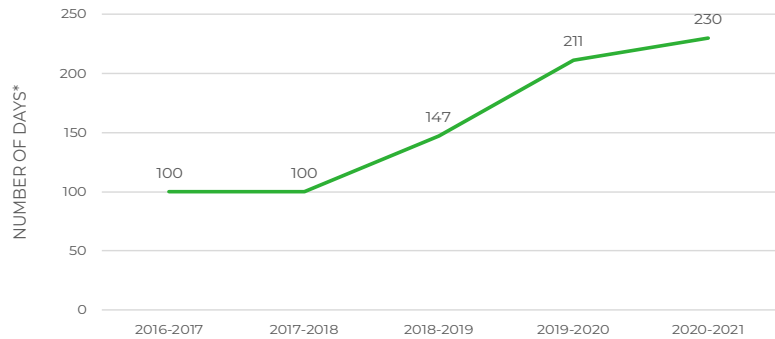
## NO RESPONSE RECEIVED

Government Institution	Report #	Recommendation(s) not complied with*
Saskatchewan Public Safety Agency	Investigation Report 140-2019	<a href="#">[70]</a> , <a href="#">[71]</a> , <a href="#">[72]</a> , <a href="#">[73]</a> , <a href="#">[74]</a> , <a href="#">[75]</a> , <a href="#">[76]</a>
Local Authority	Report #	Recommendation(s) not complied with*
City of Moose Jaw	Review Report 004-2020	<a href="#">[82]</a> , <a href="#">[83]</a> , <a href="#">[84]</a> , <a href="#">[85]</a>
Creighton School Division No. 111	Investigation Report 211-2019; 215-219 to 241-2019	<a href="#">[174]</a> , <a href="#">[175]</a> , <a href="#">[176]</a> , <a href="#">[177]</a> , <a href="#">[178]</a>
Conseil des ecoles fransaskoises		<a href="#">[355]</a>
Holy Family Roman Catholic Separate School Division No. 140		<a href="#">[302]</a> , <a href="#">[303]</a> , <a href="#">[304]</a> , <a href="#">[305]</a> , <a href="#">[306]</a>
Horizon School Division No. 205		<a href="#">[224]</a> , <a href="#">[225]</a> , <a href="#">[226]</a> , <a href="#">[227]</a> , <a href="#">[228]</a>
Light of Christ Roman Catholic Separate School Division No. 16		<a href="#">[123]</a> , <a href="#">[125]</a>
Living Sky School division No. 202		<a href="#">[253]</a> , <a href="#">[254]</a> , <a href="#">[255]</a> , <a href="#">[256]</a> , <a href="#">[257]</a>
Prince Albert Roman Catholic Separate School Division No. 6		<a href="#">[324]</a> , <a href="#">[325]</a> , <a href="#">[326]</a> , <a href="#">[327]</a> , <a href="#">[328]</a>
Horizon School Division No. 205	Review Report 170-2019	<a href="#">[80]</a> , <a href="#">[81]</a>
Northern Hamlet of Michel Village	Review Report 152-2020	<a href="#">[21]</a> , <a href="#">[22]</a>
RM of Blaine Lake No. 434	Review Report 310-2019	<a href="#">[22]</a>
RM of Blaine Lake No. 434	Review Report 311-2019	<a href="#">[31]</a> , <a href="#">[32]</a>
RM of Blaine Lake No. 434	Review Report 323-2019	<a href="#">[39]</a> , <a href="#">[40]</a> , <a href="#">[41]</a>
Village of Hyas	Investigation Report 200-2019	<a href="#">[35]</a>
Trustee	Report #	Recommendation(s) not complied with*
Saskatchewan Health Authority	Investigation Report 308-2019	<a href="#">[43]</a> , <a href="#">[44]</a> , <a href="#">[45]</a>

\*Refers to paragraph number in the Report. Click on the link to go directly to the Report.

# Response Times

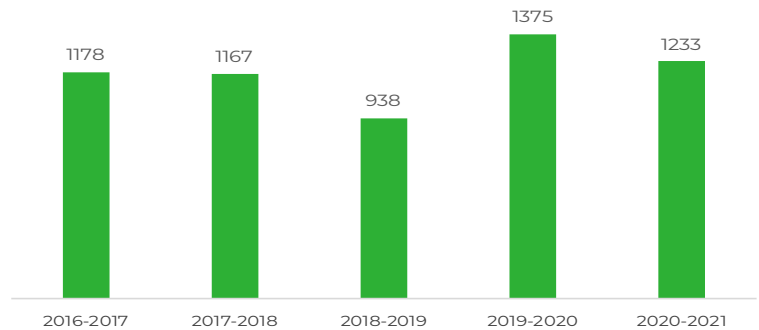
The increase in files, which includes requests for review, privacy investigations, applications to disregard and consultations, has resulted in an increase in time to issue a report or achieve resolution. There was a 9% increase in response times in 2020-2021.



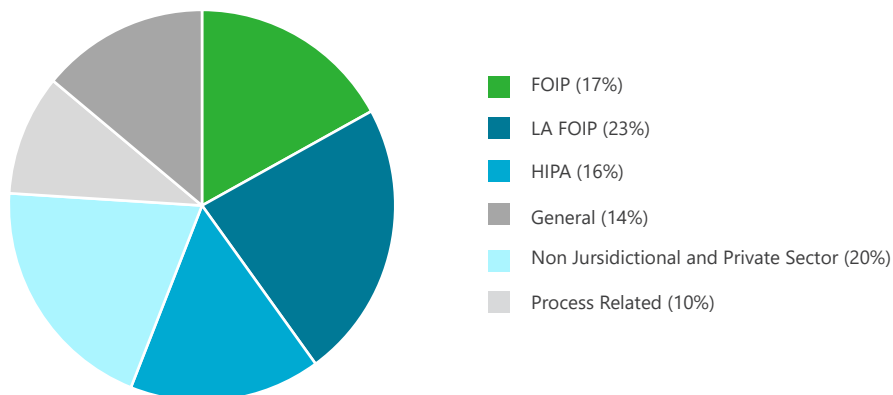
\*Average number of days that parties received their report or a resolution.

# Summary Advice

There was a 10% decrease in summary advice provided in the 2020-2021 fiscal year compared to last fiscal.



From the chart below, it is clear that the office gives advice related to the three main statutes where the office has jurisdiction; 56% of summary advice was given related to these pieces of legislation.

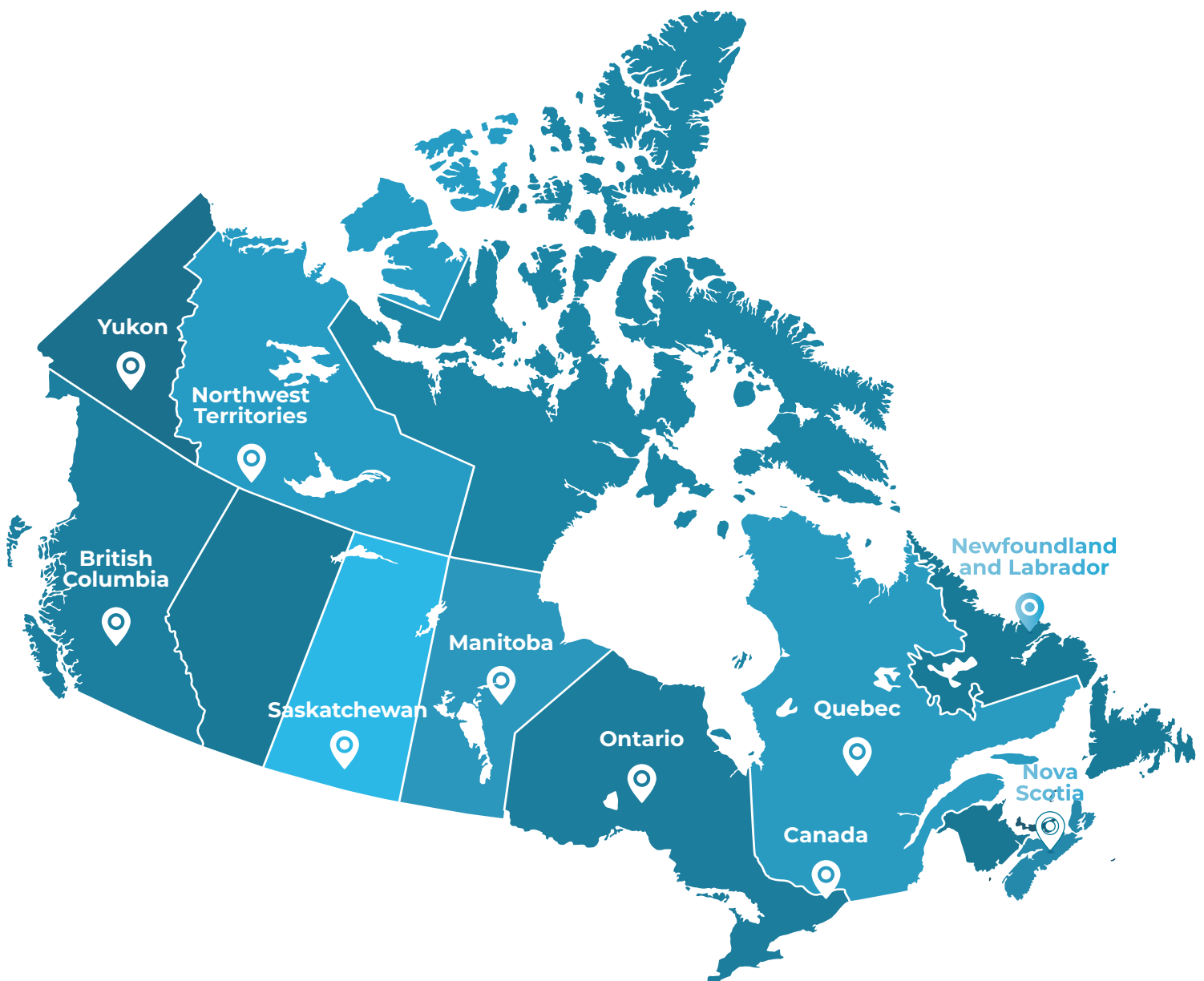




# CHANGE IS IN THE AIR

# Change is in the Air

Spring is here and the vaccination roll out is underway. It is a significant time for us in our province. Other change is afoot in our country and I wanted to outline some of the legislative change that is occurring in the access and privacy area. Click on the map below to see what the federal government, a province or territory is doing.



## Joint Resolution of Access and Privacy Commissioners in Canada (2019)

Canada's Information and Privacy Commissioners call on their respective governments to modernize legislation that strives to meet the following principles:

In terms of privacy:

- All public and private sector entities, including political parties, engaged in collecting, holding, using and disclosing personal information are subject to privacy laws;
- All public and private entities are required to establish and implement privacy management frameworks that include at minimum policies and practices designed to comply with relevant privacy laws and stand ready to demonstrate accountability;
- Transparency requirements to the public are strengthened with respect to privacy practices of public and private entities, including information sharing initiatives;
- Public and private entities are bound to practice data minimization and limited use, and use advanced privacy protection techniques, such as de-identification, whenever possible;
- Privacy impact assessments are mandated for all initiatives that involve personal information. They are a criterion for all public funding of such initiatives;
- Individuals are protected from the intrusive use of technology and ubiquitous surveillance;
- Public and private entities are required to establish appropriate security measures safeguarding personal information they hold;
- Public and private entities are mandated to notify regulators and individuals affected by privacy breaches;
- Individuals have control over their personal information including real choice and meaningful consent, except for specific circumstances included in privacy legislation. Any new exception is limited to circumstances where the societal benefits clearly outweigh the privacy incursions, and is accompanied by prescribed legal conditions that could be used to demonstrate accountability;
- Individuals are able to access and correct any personal information, including information that is inferred or attributed to the individual that is created by a public or private entity;
- Entities are obligated to use verified, up to date and accurate data;
- Digital literacy is part of training and awareness, especially for children;
- Artificial intelligence and machine learning technologies are designed, developed and used in respect of fundamental human rights by ensuring protection of privacy principles such as transparency, accountability, and fairness.

In terms of access to information:

- Coverage of public entities is as broad as possible, particularly when the entities are performing public functions or substantially financed by public funds;
- Duty to document actions and decisions made by public entities is mandatory;
- Access is free or at minimal cost;
- Responses to access requests are timely and the basis for refusals are clearly explained;
- Exceptions to the right of access are limited and subject to a public interest override;
- Information that is in the public interest is proactively disclosed;
- The right of access applies to information held by public entities in any format, including emails, text messages, etc.

With respect to enforcement:

- Individuals have effective means to assert their access and privacy rights and to challenge entities' compliance with their legislated obligations;
- Effective independent oversight offices are sufficiently funded and can rely on extensive and appropriate enforcement powers adapted to the digital environment, such as the power to conduct own-motion investigations and audits, the power to compel records and witnesses as necessary for reviews and investigations, the power to issue orders, and the power to impose penalties, fines or sanctions;
- Commissioners are consulted on changes to legislation that impact access to information or privacy rights.



# SASKATCHEWAN

In preparing this Annual Report, the Minister of Justice gave the following statement:

Saskatchewan is monitoring the changes and discussions taking place across Canada as numerous jurisdictions review and update their access and privacy legislation. The province will continue to build on significant amendments that were made to *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) in 2018 in order to keep pace with changing service delivery models and client expectations. This legislation adopted the majority of the recommendations prioritized by the OIPC including:

- a duty for government institutions and local authorities to assist applicants in obtaining information and a duty to protect personal information;
- extension of the privacy requirements under FOIP to MLA and cabinet ministers' offices;
- extension of LA FOIP to include police services;
- increasing the penalties for offences; and
- creation of a new offence for snooping by an employee of a government institution or local authority.

Saskatchewan also continues to develop resources and tools that will assist with strengthening the access and privacy regime in the province. Of particular focus recently has been protecting those most vulnerable to online privacy abuses. These changes include amending *The Privacy Act* to provide greater protection against the unauthorized electronic distribution of intimate images (revenge porn); including internet based sexual abuse in *The Protection From Human Trafficking Act* to facilitate it's online removal; and, we are actively reviewing *The Privacy Act* with a view to adding similar internet removal clauses for the same purpose. Seeking to prevent such extreme personal privacy abuses will continue to be a priority for this Government.

Work continues on developing regulations for *The Data Matching Agreements Act*. Once in force, the Act will create a transparent, privacy sensitive framework for the linking of personal information or personal health information in data matching projects involving government institutions and other organizations where consent has not been provided. It will support innovation and evidence-based decision making to help ensure the sustainability of high quality government services.

In more general terms, we look forward to continuing to work with OIPC to respond to the broad based societal shift to electronic information and documents.

## Federal Access to Information Act

Federally, in 2019-2020, the Office of the Information Commissioner (OIC) spent much of its time implementing the first significant amendments to the *Access to Information Act* since it came into effect in 1983. In 2020, the federal parliament passed changes to the *Access to Information Act*. These changes received royal assent on June 21, 2019.

[Bill C-58](#) received royal assent on June 21, 2019, bringing into force important improvements to the openness and transparency of government. These are the most significant changes to the Act since it came into force in 1983, and represent the first phase of the review of the *Access to Information Act*. Phase II will be a full review of the Act, to begin within one year of royal assent of Bill C-58.

### The Information Commissioner has a much stronger role

The Information Commissioner now has the power, following an investigation of a complaint, to make binding orders in relation to access to information requests, including ordering the release of government records. The Commissioner also now has the authority to publish the Commissioner's reports.

Orders issued by the Information Commissioner will normally take effect after 30 business days. A government institution that has serious concerns with an order could seek review by the Federal Court within 30 business days of receiving the order. In cases where a third party or the Privacy Commissioner has a right of review, there are an additional 10 business days before the order takes effect to allow these rights to be exercised.

The Prime Minister's Office, ministers' offices, senators, members of Parliament and administrative institutions that support Parliament and the courts, government departments and agencies, and Crown corporations are legally required to publish a broad range of information, without the need for a request.

Proactive publication by the Prime Minister's Office, ministers' offices, senators, members of Parliament, institutions that support Parliament and the courts, government departments and agencies, and Crown Corporations are now entrenched in law. Current and future governments now have an obligation to proactively provide Canadians with a broad range of information, including information about the use of public funds, on a predictable schedule, and without the need to make a request.

Proactive publication requirements include mandate letters, briefing packages for new ministers, briefing note titles, Question Period notes and briefing materials prepared for Parliamentary Committee appearances.

In addition, from now on, the fact that an individual is or was a Ministerial staff member, as well as their name and title will no longer be considered personal information for the purposes of administering the *Access to Information Act* and the *Privacy Act*. This change applies to records created on or after Royal Assent.

Proactive publication requirements for Senators, Members of Parliament and administrative institutions that support Parliament and the courts will come into force one year after the date of royal assent to ensure adequate time for these institutions to implement the changes effectively.

For more information on Bill C-58 click on the following links:

- <https://www.oic-ci.gc.ca/en/information-commissioners-guidance/procedures-response-amendments-access-information-act>
- <https://www.oic-ci.gc.ca/en/frequently-asked-questions-implementation-bill-c-58>

## No fees apart from the \$5 application fee

Consistent with the Government's [policy](#) in place since 2016, the updated *Access to Information Act* eliminates all fees other than the application fee. The government no longer has the authority to set or charge additional fees, such as fees for processing a request or reproduction of documents.

The amount of the application fee is set through regulation and is currently fixed at \$5.

## Institutions will be allowed to seek the Information Commissioner's approval to decline to act on "bad faith" requests, so that services may be delivered more efficiently

The number of access to information requests is growing annually, and institutions are struggling to respond in a timely manner. In a small number of cases, requesters use the right to request government information for reasons that may not be consistent with the purpose of the Act.

To help focus resources on requests that are consistent with the purpose of the Act, government institutions may now seek the Information Commissioner's approval to decline to act on an access to information request that is vexatious, made in bad faith, or is otherwise an abuse of the right of access. Before seeking the Information Commissioner's approval to decline to act on a request, an institution must make every reasonable effort to assist the person in connection with the request, including working with the requester to clarify the request. If the Information Commissioner approves an institution's decision to decline to act on a request, the \$5 application fee would be refunded.

As well, the Information Commissioner now has the authority to refuse to investigate or cease to investigate a complaint if it is trivial, frivolous or vexatious, or is made in bad faith; or if further investigation is unnecessary in the circumstances.

## Improved administration of the *Access to Information Act*

The Government is taking additional steps to strengthen access to information by improving tools available to institutions and to the public.

In fall 2018, the government launched the [ATIP Online Request Service](#) – a simple, centralized website that enables users to make access to information and personal information requests to institutions that are subject to the *Access to Information Act* and *Privacy Act*. The ATIP Online Request Service provides an easy way to make requests to over 140 institutions, with more institutions being added regularly. It can also help requesters find summaries of previous requests, so that they might not have to make their own request. It also helps identify which institution may hold the information requesters are seeking.

As well, the Treasury Board of Canada Secretariat is leading efforts to update the electronic processing tools that are used by government institutions to prepare responses to requests for information, enable institutions to give status updates for online requests, and deliver documents electronically in response to a request.

## The *Access to Information Act* will be regularly reviewed

Under the new *Access to Information Act*, the government is required to initiate a review of the Act within one year of Royal Assent of Bill C-58, and every five years afterwards. In June of 2020, the President of Treasury Board commenced that review. The first full review of the Act will enable the government to build on the targeted changes made in Bill C-58. The Information Commissioner has made recommendations to improve the *Access to Information Act* in her [submission](#) to the President of Treasury Board.



## Bill C-11, the Digital Charter Implementation Act, 2020

On November 17, 2020, the Federal government introduced [Bill C-11](#), an Act to amend the *Digital Charter Implementation Act, 2020*. This Bill is proceeding through Parliament. In an earlier [blog](#), I outlined the proposed changes. A few of those changes are featured below:

- **Meaningful consent:** Modernized consent rules would ensure that individuals have the plain-language information they need to make meaningful choices about the use of their personal information.
- **Data mobility:** Individuals would have the right to direct the transfer of their personal information from one organization to another...
- **Disposal of personal information and withdrawal of consent:** ...The legislation would allow individuals to request that organizations dispose of personal information and, in most cases, permit individuals to withdraw consent for the use of their information.
- **Algorithmic transparency:** New transparency requirements that apply to automated decision-making systems like algorithms and artificial intelligence. Businesses would have to be transparent about how they use such systems to make significant predictions, recommendations or decisions about individuals.
- **De-identified information:** ...The legislation will clarify that this information must be protected and that it can be used without an individual's consent only under certain circumstances.
- **Simplifying consent:** ...The legislation would remove the burden of having to obtain consent when that consent does not provide any meaningful privacy protection.
- **Recognition of codes of practice and certification systems:** ...The legislation would allow organizations to ask the Privacy Commissioner to approve codes of practice and certification systems that set out rules for how the CPPA applies in certain activities, sectors or business models.
- **Comprehensive and accessible enforcement model:** Under the CPPA, the Privacy Commissioner would have broad order-making powers, including the ability to force an organization to comply with its requirements under the CPPA and the ability to order a company to stop collecting data or using personal information.

The federal Privacy Commissioner has made recommendations for the improvement of Bill C-11 in his [submission](#) to the Standing Committee on Access to Information, Privacy and Ethics.

## The Privacy Act

In November 2020, the federal Department of Justice launched a public consultation and published a discussion paper on modernization of the *Privacy Act*. That consultation concluded in February 2021.

The OPC was encouraged by the depth and tone of the consultation, which signaled seriousness in government's intent for meaningful reform. The submission included over twenty specific recommendations, including:

- clarifying the "reasonably required" standard;
- adding provisions on automated decision-making and artificial intelligence;
- expanding the OPC's order-making powers;
- clarifying the proposed definition for publicly available personal information.

## BRITISH COLUMBIA

In British Columbia, a special committee of the Legislative Assembly is considering amendments to its access and privacy legislation, the *Personal Information Protection Act*. Details of their consideration can be found [here](#).

Some issues include:

- mandatory breach reporting;
- consents; and
- making PIPA substantially similar to federal legislation (PIPEDA and, when passed, Bill C-11).

## MANITOBA

### Bill 49

On November 2, 2020, the government in Manitoba introduced [Bill 49](#), an Act to amend *The Freedom of Information and Protection of Privacy Amendment Act*. This Bill provides for changes such as:

- the head of a public body must give notice where a breach of privacy occurs where there is a real risk of significant harm to the individuals affected and the Ombudsman;
- a person may seek to correct their personal information without first having to request access to the information, and the process for correcting personal information is streamlined;
- employees of a public body may notify the Ombudsman if they reasonably believe the body is treating personal information in an unauthorized manner, and no adverse actions may be taken against them for doing so;
- the Ombudsman is authorized to disclose personal information if necessary to protect a person's mental or physical health or safety;
- records more than 100 years old are to be made available without a request, if practicable;
- the types of records that are to be made available without an application for access are expanded, and the minister responsible for the Act can direct education bodies, government agencies and health care bodies to make additional categories of records available;
- the Act must be comprehensively reviewed within 10 years by the responsible minister.

See [Explanatory Notes](#) for more information.

## Bill 54

The government of Manitoba also introduced [Bill 54](#), an Act to amend *The Personal Health Information Amendment Act*. Features of that Act are:

- a trustee must give notice where a breach of privacy occurs and there is a real risk of significant harm to the individuals affected and the Ombudsman;
- a trustee can use personal health information in the course of educating employees, agents, students and health professionals to provide health care;
- a trustee must not use personal health information about its employees for employment-related purposes if it was collected for other purposes, unless the employee has given their express consent;
- an employee or officer of a trustee who believes that the trustee is collecting, using, disclosing, retaining, concealing, altering or destroying personal health information in contravention of the Act may notify the Ombudsman;
- the Ombudsman is authorized to disclose personal health information if necessary to protect a person's health or safety;
- the Act must be comprehensively reviewed within 10 years by the responsible minister.

See [Explanatory Notes](#) for more information.

## NEWFOUNDLAND AND LABRADOR

In Newfoundland and Labrador, a statutory review committee has been appointed to consult on changes to its access and privacy legislation. This is the five-year review required by Newfoundland and Labrador's legislation. Details can be found at the ATIPPA Review [website](#). The consultations took place in 2020-2021, but the consultation period has now ended. The report is expected to be filed by June 30, 2021.

## NORTHWEST TERRITORIES

### Bill 29

The Northwest Territories legislative Assembly has passed [Bill 29](#), an act to amend the *Access to Information and Protection of Privacy Act*. This Bill is not yet in force. Features of the Bill include:

- provide for the application of the Act to municipalities that are designated in regulations;
- allow for a compelling public interest to override particular statutory grounds for exemption from disclosure;
- set out a process for the Information and Privacy Commissioner to consider requests from heads of public bodies to extend time limits for responding to requests for access;
- address documents relating to human resources matters including employee evaluation documents and workplace investigation documents;
- clarify exemptions relating to business interests;
- update the general powers of the Information and Privacy Commissioner; and
- provide for a review of the Act every seven years.

## NOVA SCOTIA

The Premier's [mandate letter](#) instructed the Minister of Justice to create an advisory committee to conduct a review of the *Freedom of Information and Protection of Privacy Act* and related legislation and make recommendations on how it can be modernized.

## ONTARIO

The government of Ontario has conducted a consultation on whether Ontario should introduce legislation regarding access and privacy issues as it affects the business and nongovernment sector. The Ontario Commissioner has issued an [open letter](#) regarding the private sector consultation.

### Bill 283

Bill 283 An Act to amend and enact various Acts with respect to the health system creates three new acts including [COVID Vaccination Reporting Act, 2021](#) (CVRA).

## Data Integration Data Standards

In early May 2021, the Ontario Government released publicly the [Ontario Public Service Data Integration Data Standards](#), which are required under Part III.1 of the *Freedom of Information and Protection of Privacy Act* (FIPPA):

Part III.1 of FIPPA was passed and came into force in 2019 and was further amended in 2020. It established a scheme for a government-wide approach to data integration. Under Part III.1, the Minister of Government and Consumer Services (MGCS) is required to prepare draft data standards that address, among other things, practices and procedures related to:

- collecting, using and disclosing personal information;
- linking and de-identifying personal information;
- reporting publicly on the use of personal information;
- securely retaining personal information, including providing for a minimum retention period for personal information; and
- securely disposing of personal information.

The data standards only take effect once they have been approved by the Ontario Commissioner, which the Commissioner did in April 2021. Links to the approval letter and the data standards are on the Ontario Commissioner's website under the [Decisions](#) section.

## Bill 64

In June 2020, the government of Quebec introduced [Bill 64](#), *An Act to Modernize Legislative Provisions as Regards the Protection of Personal Information*. This Bill is proceeding through the Quebec Assembly. Features of this Bill include:

- this Bill modernizes the framework applicable to the protection of personal information in various Acts, including the Act respecting Access to documents held by public bodies and the Protection of personal information and the Act respecting the protection of personal information in the private sector;
- rules are introduced in both of those Acts concerning how public bodies and enterprises handle incidents affecting the confidentiality of personal information. Under the Bill, such bodies and enterprises must publish governance rules regarding personal information, and those that collect personal information through technological means must publish and disseminate a confidentiality policy. In addition, the Bill introduces in those Acts a requirement to conduct an assessment of the privacy-related factors in certain circumstances, including regarding any information system project or electronic service delivery project involving the collection, use, release, keeping or destruction of personal information;
- the Bill clarifies various requirements relating to the consent required before personal information is collected, used or released. Public bodies and enterprises must request the consent of the person concerned separately from any other information provided to the person. The consent necessary for certain uses or releases of sensitive personal information must be given expressly. Furthermore, the consent of the person having parental authority must be obtained to collect, use and release personal information concerning a minor under 14 years of age;
- the Bill requires public bodies and enterprises to provide certain information to the person concerned when they collect personal information using technology that includes functions allowing the person to be identified, located or profiled, or when they use personal information to render a decision based exclusively on an automated processing of such information. It establishes a person's right to access computerized personal information concerning him or her in a structured, commonly used technological format or to require such information to be released to a third person;
- the Bill updates the functions and powers of the Commission access to information. The Bill amends the penal provisions applicable for a contravention of the law, in particular by raising the amount of the fines;
- the Bill also amends the Act respecting the protection of personal information in the private sector to create the function of person in charge of the protection of personal information within enterprises and to require enterprises to ensure that the parameters of the technological products or services they use to collect personal information provide the highest level of confidentiality by default, without any intervention by the person concerned;
- the Bill withdraws the possibility for enterprises to communicate nominative lists without the consent of the persons concerned, and updates the rules governing the use of personal information for commercial or philanthropic prospection purposes;
- the Bill grants rights to a person to whom personal information relates, including the right to require that such information cease to be disseminated;
- the Bill updates the obligations imposed on personal information agents, provides for the possibility for the Commission's access to information to impose monetary administrative penalties, and sets out the terms for recovering and claiming the amounts owing; and
- the Bill also amends the *Election Act* to make the entities authorized under that Act subject to the provisions of the Act respecting the protection of personal information in the private sector, while providing for certain exceptions.

## Bill 79

[Bill 79](#), *An Act to Authorize the Communication of Personal Information to the Families of Indigenous Children who went Missing or Died after being Admitted to an Institution* aims to support Indigenous families in their search for information from an institution, an organization or a religious congregation, on the circumstances surrounding the disappearance and death of children following their admission into a health and social service institution, before December 31, 1989. Features of this Bill include:

- the purpose of this Bill is to support the families of missing or deceased Indigenous children in their search for information on the circumstances under which those children went missing or died after they were admitted to a health and social services institution, taking into account such aspects as those families' linguistic and cultural characteristics and psychosocial needs;
- for that purpose, the Bill establishes that a health and social services institution, a body or a religious congregation must, on a family member's request and subject to certain conditions, communicate to the family member the personal information that could shed light on the circumstances under which the Indigenous child went missing or died. The minister responsible for Indigenous affairs is given the responsibility to assist any person who requires assistance in making a request and following up on it. Furthermore, when acting in that capacity, the minister may, among other things, assist any person in charge of access to documents or the protection of personal information in an institution or body or any person belonging to a religious congregation who requires assistance;
- the Bill determines the rules that institutions, bodies and religious congregations must comply with as regards communicating personal information when it is reasonable to believe the person who could be a missing or deceased Indigenous child is still alive in light of the personal information held. The Bill also imposes an obligation to give reasons for a refusal to communicate information about such a person and provides for the avenues of recourse available with the Commission d'accès à l'information following such a decision;
- the minister is given the power to conduct investigations within institutions, bodies or religious congregations if one or more elements lead to the belief that information that could shed light on the circumstances under which an Indigenous child went missing or died exists, but could not be communicated to a person under the measures provided for by the Bill. The minister may assist and guide the families of missing or deceased Indigenous children in completing the formalities surrounding an application to the Superior Court for an order of disinterment. In addition, if a person is dissatisfied with the services received during his or her search for information from an institution, body or religious congregation, the person may file a complaint with the minister according to the procedure the minister establishes; and
- lastly, the Bill gives the minister the responsibility to report on the application of the Act in an annual report and determines when the measures the Bill establishes cease to have effect.

## Bill 95

[Bill 95](#), *An Act to Amend the Act Respecting the Governance and Management of the Information Resources of Public Bodies and Government Enterprises and Other Legislative Provisions*. Features of this Bill include:

- this Bill amends mainly the Act respecting the governance and management of the information resources of public bodies and government enterprises.
- in the area of information security, the Bill, in particular, requires public bodies to ensure the security of the information resources and the information they hold or use. If a breach of the confidentiality, availability or integrity of the information resources or information has occurred or if such a risk is apprehended, the bodies have an obligation to take all measures aimed at correcting the impacts of such a breach or reducing the risk of a breach. Under the Bill, the Chair of the Conseil du trésor also has all the powers necessary to support public bodies if such a breach or risk of a breach occurs, including the power to enter into agreements with any person or any body in Canada or abroad.

- in the area of digital transformation, the Bill notably provides that a public body must establish a digital transformation plan, the terms of which are determined by the Chair of the Conseil du trésor.
- the Bill also establishes a new framework for the management of government digital data held by public bodies. It provides that such data constitute a strategic information asset of the Government's digital heritage, and that their mobility and valorization for administrative or public service purposes the Bill defines, taking into account the data's nature and characteristics, and the rules which otherwise govern access to them and protect them, are of government-wide interest.
- the new management framework established by the Bill allows the Government to designate official sources of government digital data. The official sources of government digital data may, where necessary for an administrative or public service purpose, collect digital data from public bodies, use the data and communicate them to those bodies, as well as collect information from any person, including personal information. Under the Bill, the Government must, in particular, specify the data concerned and the administrative or public service purposes for which such data may be the subject of a mobility or valorization authorization. The Bill establishes that the designation of an official source of government digital data is made on the joint recommendation of the Chair of the Conseil du trésor and the minister responsible for the public body that holds the data concerned, except where certain data are held by the Minister of Health and Social Services or by any public body within the Minister's portfolio, in which case the official source of government digital data is designated on the recommendation of that Minister.
- under the Bill, specific rules apply where the government digital data in question include personal information. Among other things, in such a case, the purposes specified by the Government must be in the public interest or to the benefit of the persons concerned. The Bill also provides that a public body designated as an official source of government digital data must make an evaluation of the privacy factors, establish governance rules relating to such information that must be approved by the Commission d'accès à l'information and submit a report to the Commission every year on the personal information collected, used or communicated.
- under the Bill, the government digital data manager may entrust a public body with the mandate to circulate open data or a dataset in an open document format. The Government is also given the regulatory powers to oversee the management of government digital data, including the power to exclude data from the application of certain provisions, determine data quality standards and establish rules applicable to public bodies covered by a data mobility or valorization authorization.
- the Bill reinforces the role of the Chair of the Conseil du trésor with respect to public bodies, in particular by giving the Chair powers to establish control mechanisms, conduct audits and designate a person to verify compliance under the Act. The Bill amends the Public Administration Act to detail the functions of the Chair of the Conseil du trésor in connection with the new framework. For measures on the mobility and valorization of government digital data to be applied, the Bill also amends the specific information protection plans provided for by the Tax Administration Act, the Health Insurance Act and the Act respecting health services and social services.
- lastly, the Bill amends the Act to establish a legal framework for information technology to regularize certain electronic document signature processes by representatives of a department or body.

## Bill 24

The Yukon Legislative Assembly has passed the new *Access to Information and Protection of Privacy Act*, [Bill 24](#), which will come into force on April 1, 2021. Features of the Act include:

- replacing the existing Act's record-based approach with a new information based approach;
- establishing three prescriptive categories of public bodies and prescribed entities;
- entrenching privacy-by-design principles in the carrying out, or provision of, programs activities and services by ministerial bodies through requiring those bodies to conduct privacy impact assessments in certain cases;
- enabling public bodies to:
  - provide integrated services in collaboration with partner agencies;
  - provide a government-wide personal identity service, and
  - carry out data-linking activities;
- requiring ministerial bodies to make particular information available to the public without an access request;
- establishing specific roles and responsibilities within a public body in the processing of access requests, and clarifying the requirements to be fulfilled by a public body in the processing of access requests;
- expanding the right of access to information by allowing an applicant to request access to information contained in records that have been prepared by a public body for the following purposes:
  - briefing the Premier in relation to the formation of a new government,
  - briefing a minister in relation to their assumption of responsibilities for a department or corporation,
  - briefing a minister in relation to a sitting of the Legislative Assembly;
- narrowing exceptions to access to information by:
  - specifying records that are Cabinet records,
  - reducing the period (from 15 to 10 years) during which access to Cabinet information is prohibited,
  - establishing a specific public interest override in respect of the exception to access to Cabinet information,
  - repealing the power to deny access to information that reveals the consultations or deliberations involving officers or employees of a public body,
  - reducing the period (from 15 to 10 years) during which access to information about policy advice and recommendations may be denied,
  - establishing a general public interest override in respect of all exceptions other than the exception to access to Cabinet information;
- clarifying and expanding the Information and Privacy Commissioner's powers and duties including:
  - establishing a complaint-based investigation process,
  - establish specific rights of complaint,
  - empowering the Information and Privacy Commissioner to conduct an investigation in absence of a complaint,
  - empowering the Information and Privacy Commissioner to intervene in an application to court by a complainant;
- establishing additional offences and penalties, and increasing the maximum penalty for existing offences; and
- providing for consequential amendments necessary to ensure that other Acts are consistent with the provisions of the new Act.





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