

Review of Nova Scotia's Freedom of Information and Protection of Privacy (FOIPOP) Legislation Framework

Working Group Terms of Reference (TOR)

Dated: September 28, 2023

PURPOSE

The purpose of this document is to describe the scope of the review of Nova Scotia's *Freedom of Information and Protection of Privacy Act (FOIPOP Act)* and related legislation and regulations.

This document will be used to guide the work of the internal Working Group to identify recommended amendments to the legislation.

BACKGROUND

The internal Working Group (The Working Group) has been established to conduct a review of *FOIPOP* and related legislation and regulations. The Working Group will present legislative options to the Minister of Justice with respect to how the legislation and accompanying regulations should be modernized.

While the *FOIPOP Act* is the cornerstone, the information and privacy legislative framework in Nova Scotia includes the following legislation:

- o *FOIPOP Act*;
- o *Municipal Government Act (MGA) Part XX*;
- o *Privacy Review Officer Act (PRO Act)*; and
- o *Personal Information International Disclosure Protection Act (PIIDPA)*.

Part XX of the MGA is the municipal counterpart to the *FOIPOP Act*. Its content is effectively the same as the *FOIPOP Act*. The *PRO Act* designates the Privacy Review Office as the oversight body for access and privacy matters in Nova Scotia. Currently this act and the privacy oversight capacity of the Privacy Review Officer does not apply to municipalities. *PIIDPA* applies to public bodies, including municipalities, and requires that any personal information held by them or on their behalf is accessed, stored and disclosed within Canada unless certain conditions are met.

The FOIPOP Act is functional but dated and a review is required. The last substantial update to the FOIPOP Act was in 1999. PIIDPA dates back to 2006 and the PRO Act was enacted in 2008. A one-time legislated review of the FOIPOP Act took place in 2003 and resulted in what is referred to as the O'Brien Report.

Many changes have occurred in the world of information, access, and privacy, not the least of which are technological advances and societal values with respect to both transparency and privacy. As such, the legislative regime is due for a comprehensive review. Undertaking the current review is a result of direction in the Minister of Justice's mandate letter, dated September 14, 2021.

WORKING GROUP COMPOSITION

This Working Group will be comprised of the following employees from the Department of Justice's Policy and Information Management and Legal Services divisions and the departments of Service Nova Scotia and Cybersecurity and Digital Solutions:

- William Trask, Executive Director, Policy and Information Management, Department of Justice (Chair)
- Leslie MacLeod, Solicitor, Department of Justice
- Arilea Sill, Chief Information Access and Privacy Officer, Service Nova Scotia
- Jeannie Flynn, Executive Director, Digital Culture, Strategy and Performance, Cybersecurity and Digital Solutions

Additional employees from the above-noted departments will support the Working Group in undertaking the review.

1. OVERVIEW

The purpose of the review is to generate recommended legislative amendments for the Minister's consideration.

The Working Group will complete a comprehensive review of the information access and privacy legislative framework, with consideration given to recommendations from the following reports issued by the Office of the Information and Privacy Commissioner (OIPC):

- *"Accountability for the Digital Age: Modernizing Nova Scotia's Access & Privacy Laws" (June 2017)*
- *"Big Data Guidelines for Nova Scotia" (October 2017)*
- *2018 FOIA Website Breach Report (also including the 2019 Auditor General's Report)*
- *2022 OIPC Annual Report*

In addition to the FOIPOP Act, the MGA Part XX (notably s.519(1) which requires 1 year of notice prior to legislative changes that impact revenue/expenses), PRO Act and PIIDPA will be considered. Similarly, while a review of the Personal Health Information Act (PHIA) is not in scope, the review will consider PHIA and its interaction with FOIPOP where there is a direct overlap with any proposed FOIPOP changes.

The Working Group will present the finalized legislative options to the Minister of Justice when the review is completed.

This review will engage the Office of the Information and Privacy Commissioner, internal government stakeholders, municipalities and relevant public bodies in a meaningful way, ensuring that impacts across different organizations are considered. The Working Group will also be accepting written submissions from the public and stakeholders outside of government.

2. SCOPE OF WORK

2.1 The Working Group will conduct a comprehensive review of the provisions and operations comprising the information and privacy legislative framework, which will include but not be limited to, the following:

- o A review of the stated purposes of the legislation in the areas of:
 - > Access to Information
 - > Protection of Privacy
 - > Oversight

2.2 Consideration of legislation, standards, access and privacy principles and leading practices in other provinces and territories in Canada and internationally.

- o The Working Group will conduct an examination of leading international and Canadian practices, legislation, generally accepted privacy and access principles embedded in legislation and academic literature related to access to information and protection of privacy legislative frameworks and identify opportunities and challenges experienced by other jurisdictions.

2.3 Recommendations from previous reviews and reports, including but not limited to:

- o The Working Group will consider recommendations for legislative changes that have been previously put forward from the OIPC.
- o The Working Group will consider a recommendation on page 517 of the Final Report of the Restorative Inquiry – Nova Scotia Home for Colored Children *“There was agreement that clearer language in the Freedom of Information and Protection of Privacy Act (as well as other relevant legislation) would be helpful.*

An amendment to the Act to specifically allow departments (or organizations or agencies) to share personal information for the purpose of implementing new programs or approaches to delivering services, such as [Family Led Decision Making] (FLDM)] or other social programs, would be advisable.”

3. WORKING GROUP PROCESSES

3.1 The Working Group’s scope of engagement will include:

- o Relevant government departments to consider and understand impacts to public service delivery, interactions with other legislation and budgets
 - o This may include how FOIPOP changes interact with their individual department and how changes to FOIPOP will impact government at an enterprise level
- o Information and Privacy administrators (IAP administrators), or those employed by departments or public bodies that administer or operationalize the information access and privacy legislative framework (they may have various titles).
- o Office of Information and Privacy Commissioner
- o Members of the media.
- o Political Party Caucus Offices.
- o Municipalities.
- o Other Canadian jurisdictions, to understand how they have approached updates to their access and privacy laws.
- o Written submissions from the public.

3.2 Roles and Responsibilities

The Working Group will be responsible for the following:

- o Developing a work-plan for the review.
- o Developing and implementing an engagement plan.
- o Engaging and liaising with internal and external subject matter experts.
- o Preparing recommendations that include options for review by the Minister.
- o Regular progress updates to the Ministers and Deputy Ministers of Justice and SNS.

4. DELIVERABLES

The Working Group will prepare a package of legislative options and recommendations for submission to the Minister of Justice to be tabled in the House of Assembly.