



HOUSE OF ASSEMBLY
Newfoundland and Labrador

Sheilagh O'Leary, M.H.A.
District of St. John's East – Quidi Vidi

Access to Information and Protection of Privacy Statutory Review 2025
2nd Floor, Beothuk Building
20 Crosbie Place
St. John's, NL
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October 8, 2026

Dear Ms. Power,

First of all, I thank you for the opportunity to comment on the current state of access to information and the protection of privacy (ATIPP) in Newfoundland and Labrador. These periodic statutory reviews are an invaluable opportunity to provide feedback that will hopefully serve to strengthen legislation and make public services more responsive to the needs of those who rely on them.

For politicians as well as the general public, ATIPP is a vital tool for finding the information we need to serve our constituents, discover how and why the government of the day makes certain decisions, and hold those in power to account. This makes for better outcomes because the opposition can more effectively highlight oversights in government policy and advocate for solutions that are more amenable to all. ATIPP therefore contributes directly to stronger, more effective governance, and is a key tool in any robust, healthy democracy.

With these purposes in mind, the basic principle guiding any changes to ATIPP legislation should be that the information in question ultimately belongs to the public, and they have a right to access it. As a result, access must always be the rule, and secrecy the exception. Transparency, when adopted as the norm, builds trust between citizens and their governments, which is crucial in this age of disinformation. When secrecy increasingly becomes the norm, however, it creates a void that those seeking to undermine the legitimacy of government and our political system can fill with false or misleading claims. Given the turbulent political climate in this province and the world at large, we cannot afford to cede any more fertile ground to the enemies of democracy.

Currently, our access to information regime is ranked twenty-fourth of any jurisdiction around the world for openness and transparency. This is no small achievement. Our party cannot support any amendments to ATIPP legislation that might undermine the strength of the current framework.

In fact, we ask that you avoid the path taken in recent years by other provinces that have reduced access to information, such as Nova Scotia. Amendments to the ATIPP legislation in that province allowed for granting more exemptions to accessing information, possibly as a means of dealing with the long backlogs in fulfilling requests.

Given the increasing backlogs and wait times for information in our own province, government must not use any future amendments to the ATIPP legislation – whether by increasing exemptions or charging application fees – to deal with mounting workloads for the staff that have to process requests. The solution to this problem lies in granting ATIPP co-ordinators greater resources, not in denying access to information and depriving the public of a crucial right.

While the people of our province can be proud of our access to information and privacy laws, we must not become complacent. There are several issues that government should address in order to strengthen the ATIPP regime and prepare it to meet the coming challenges of the years to come.

Currently, the legislation only provides the Office of the Information and Privacy Commissioner (OIPC) with powers of recommendation. When an applicant asks for a review of a decision by an ATIPP co-ordinator to refuse access, the Privacy Commissioner may side with the person appealing the refusal but has no power to compel the co-ordinator to provide the requested information. In such cases, the applicant must take the department or public body in question to court. This can be a lengthy and potentially costly process that in practice limits the right to access information. It can also appear as an intimidating and daunting process to ordinary, private citizens who have no experience in such matters, leading them to drop the matter altogether. The system should not function this way. In the spirit of making access to information the rule, the Privacy Commissioner must have the power to mandate access to information in such cases.

The OIPC also plays a crucial role in ensuring that none of the laws passed by the House of Assembly jeopardize our right to privacy, whether inadvertently or otherwise. In 2022, then-Privacy Commissioner Michael Harvey criticized the government for refusing to send his office a copy of the legislation that merged the regional health authorities into one body. According to him, it was the first time in seven years that this had occurred, and the refusal was especially troubling because the bill dealt in part with the governance and use of our private health information. For that reason, we ask that any amendments include clear language that obliges the government of the day to send drafts of all legislation to the Privacy Commissioner for review within a reasonable period before being introduced in the House for second reading. We also ask that the legislation add penalties for governments that fail to uphold their legal duties in this respect.

Similarly, we ask that you review the extent to which solicitor-client privilege is used by governments as a reason to withhold requested information. Since a court ruling

in 2023, the Privacy Commissioner cannot compel the government to provide documents it claims are protected by solicitor-client privilege. Without this power, applicants for access to information have to go before the Supreme Court to test the claims of the government. This process can prove lengthy, expensive, and daunting. Moreover, unscrupulous governments could use this exemption as a means of hiding sensitive information from the public, especially given the fact that apart from the Supreme Court, there is no referee as such who can make a ruling on whether this privilege in fact applies in a given case. A much simpler solution would be to allow the Privacy Commissioner to examine such documents to see whether they in fact are protected by solicitor-client privilege.

While our legislation focuses on the provincial government and its associated entities, other powerful actors possess large quantities of our personal information, notably in the business sector, but without the same level of protection and oversight. In other jurisdictions, notable British Columbia and Quebec, provincial access-to-information and privacy laws grant their version of the OIPC with the power to oversee the governance of information and data by all organizations not covered by federal legislation – including corporations, unions, charities, professional associations, political parties, and other entities. The *Personal Information Protection Act* even gives British Columbians the right to request records from private entities that contain their personal information. We ask that your review consider the access-to-information and privacy regimes in these provinces with the possibility of extending the powers of the OIPC to the private sector. As some corporations now have more power and wealth than provincial governments, they should not be exempt from obligations to protect our personal information and use it in ethical ways.

This added power would significantly help the OIPC to deal with the rapidly expanding realm of artificial intelligence (AI), its use, and how it treats our personal data. This data is of high value for those operating AI systems, as it is used to train their models. A joint investigation of Open AI by British Columbia, Quebec, and the federal government found that this model scraped the internet for data, including a large amount of personal data. This review would not have been possible had their access-to-information and privacy regime not been extended to cover private organizations. Their investigation found that the corporations involved did not have the legal authority to collect and use this data from the internet. Ultimately, the review led Open AI to be more privacy-minded and more compliant with federal privacy and information legislation. The provincial government should also keep AI in mind when reforming access-to-information and privacy legislation, since this technology is fundamentally different from other technology and digital storage in how it uses our personal data. In particular, the OIPC should be empowered to survey the use of AI by both government and private organizations, as well as given the tools to enforce compliance on those breaking the rules.

The Newfoundland and Labrador NDP highly values our democracy and is always seeking opportunities to strengthen it. Without access to plentiful, timely, and

accurate information, citizens are effectively disenfranchised because they cannot reasonably follow or take part in political discourse in any meaningful or effective way. As so many citizens already feel alienated from the political process and are relying more heavily on sources providing dubious, misleading, or even false claims, the government has a responsibility to combat this disturbing trend by strengthening its access-to-information and privacy protection laws.

Once again, I thank you for the opportunity to contribute to this statutory review and I hope that my input is of value to you in the process.

Sincerely,

A handwritten signature in black ink, reading "Sheilagh O'Leary". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Sheilagh O'Leary
NDP House Leader, Critic for Justice and Public Safety
MHA, St. John's East – Quidi Vidi