



**NL Health
Services**

Privacy and Access to Information

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**Keri-Lynn Power, LLB (Hons), LLM
Committee Chair
Access to Information and Protection of Privacy Statutory Review 2025
2nd Floor, Beothuck Building
20 Crosbie Place, St. John's, NL A1B 3Y8**

Via Email: ATIPPAReview@gov.nl.ca

Re: NL Health Services Submission for the Statutory Review of the Access to Information and Protection of Privacy Act, 2015 (ATIPPA)

Dear Keri-Lynn Power:

Newfoundland and Labrador Health Services (NL Health Services) welcomes the opportunity to provide input into the statutory review of the Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015).

As the province's integrated health authority, NL Health Services manages extensive volumes of information across a large and complex health system. The organization is responsible for responding to access requests – 280 in FY 2025/26 – involving records generated across clinical, operational, administrative, financial, digital health, human resources, and corporate functions. The amalgamation of regional health systems, digitization of records, interoperability of data, emergence of new technologies, and growing public expectations regarding transparency and the protection of privacy have significantly changed the environment in which ATIPPA operates.

Our recommendations seek to preserve and strengthen the public's right of access to information and protection of privacy while ensuring that the legislation remains practical, sustainable, and responsive to modern information management realities and digital landscapes.

1. Scope, Complexity, and Processing Timelines

The current statutory response timelines do not reflect the scope and complexity of modern access requests.

NL Health Services increasingly receives requests involving large volumes of records spanning multiple years, custodians, and geographic regions; paper and electronic communications such as emails, text messages, Microsoft Teams messages and chats, voicemail records, and security footage; records originating from former regional health authorities with differing record-keeping and data collection practices; requests requiring consultation with third parties, legal counsel, or other public bodies.

The existing 20-business-day response period is often insufficient to locate, collect, review, consult on, and apply redactions while ensuring compliance with privacy obligations.

Given this, NL Health Services recommends:

- a 30-business-day response period;
- increasing timelines associated with requesting disregards from 5 to 10 business days and extensions from 15 to 20 business days.

2. Duty to Assist and Clarification and Cooperation During the Request Process

NL Health Services receives requests that are lengthy, ambiguous, or insufficiently defined. In many instances, meaningful consultation with applicants would narrow a request and improve processing efficiency. Further, consultation and cooperation with applicants is required for NL Health Services to meet its duty to assist pursuant to s. 13 of ATIPPA. However, applicants do not always engage in requests for clarification, which can lead to uncertainty regarding applicant expectations and unnecessary delays, excessive searches, and significant diversion of public resources. This can challenge a public body's ability to comply with the duty to assist.

NL Health Services recommends legislation that:

- allows public bodies to pause statutory timelines while clarification from an applicant is being sought;
- acknowledges that a public body's duty to assist is dependent upon consultation and cooperation with an applicant and shall therefore be presumed to have been met where applicant consultation and cooperation necessary to address a request has been requested and not provided within a set period of time;
- permits requests to be declared abandoned where applicants fail to respond to reasonable requests for clarification within a prescribed period.

3. Strengthening Privacy and Security Protections in a Digital Landscape

As the complexity and interoperability of digital landscapes, including the use of artificial intelligence (AI), continues to grow, the legislative framework should evolve to reflect modern privacy expectations and security requirements.

NL Health Services recommends the introduction of additional privacy rights, including:

- the right to be informed when automated decision-making is used;
- the right to request human review of significant automated decisions;
- the right to request erasure in appropriate circumstances;
- the right to object to certain secondary uses of personal information, including profiling, marketing, analytics, and research, where appropriate.

The legislation should also require:

- mandatory procurement rules to ensure third parties explicitly declare AI use and integration;
- mandatory technical security reviews for information systems containing personal information;
- stronger scrutiny of transborder data flows involving personal information;
- formal assessments before personal information is stored or processed outside Canada;
- requirements to demonstrate equivalent privacy protections in foreign jurisdictions.

4. De-identification Framework

The legislation would benefit from explicit statutory requirements for de-identification and anonymization practices for personal information.

NL Health Services recommends the introduction of provisions that:

- define de-identified and anonymized information;
- establish governance requirements for de-identification;
- support the appropriate use of de-identified information for planning, quality improvement, research, and innovation;
- establish safeguards against re-identification.

5. Common Law Privilege

A recent decision of the Supreme Court of Newfoundland and Labrador raised, but did not ultimately answer, the legal question of whether ATIPPA offers an exemption for the disclosure of

information and records subject to common law privilege. NL Health Services suggests that such privileged information should be exempted from disclosure similar to solicitor and client privileged information and records as per s. 30. Please see the following Court decision for additional information: [2025 NLSC 159 \(CanLII\) | Newfoundland and Labrador Arts Council v. Newfoundland and Labrador \(Information and Privacy Commissioner\) | CanLII](#)

NL Health Services suggests that revisions should be made to ATIPPA to confirm that information and records subject to common law privilege are exempted from disclosure.

6. Disclosure to Regulatory Bodies

Under the Personal Health Information Act (PHIA), there are exceptions to the application of the Act such that the Act does not interfere with the activities of a body with statutory responsibility for the discipline of health care professionals (s. 10(3)(d)) and, more particularly, it requires a Custodian to disclose personal health information without the consent of the individual who is the subject of the information to a body with statutory responsibility for the discipline of a health care professional (s. 41(1)(a)). However, under PHIA, health information of employees that is collected for purposes other than the provision of health care is not included in the definition of "personal health information" (s. 5(4)). Presumably, this type of information is therefore considered "personal information" captured by ATIPPA, and yet, ATIPPA does not contain a comparable exception for disclosure to regulatory bodies. NL Health Services recommends that such a provision be added.

7. Strengthening Consent Requirements

NL Health Services recommends strengthening the legislative framework governing consent for the collection, use, and disclosure of personal information. Specifically, the legislation should clearly establish:

- the forms and manner in which consent may be provided;
- an individual's right to withdraw or revoke consent at any time, subject to any prescribed exceptions;
- an individual's right to place conditions or limitations on the collection, use, and disclosure of their personal information; and
- the essential elements of valid consent, including requirements for knowledgeable consent, similar to those set out in section 23 of PHIA.

8. Workplace Investigations

Disclosure of workplace investigation records can create risks to witnesses, complainants, investigators, and the integrity of the investigation.

NL Health Services recommends that the legislation provides clarification on the term "relevant" under s. 33 (2). In addition, consideration should be given to provisions permitting refusal of disclosure, particularly where an investigation is ongoing, where release could reasonably be expected to:

- interfere with an active workplace investigation;
- prejudice investigative outcomes;
- discourage witness participation; or
- cause harm to witnesses or third parties.

9. Scope of “connected with the investigatory functions”

NL Health Services suggests that the term “connected with the investigatory functions” in s. 41(c) could be defined to provide greater clarity to public bodies as to which records and information are subject to this mandatory requirement to refuse disclosure. It is suggested that such edits would help public bodies to ensure compliance with this requirement without being unnecessarily restrictive in withholding information which is not intended to be withheld pursuant to s. 41(c).

NL Health Services respectfully submit that reforms should focus on establishing processing timelines that reflect the complexity and volume of requests; strengthening provisions that support effective applicant assistance and the management of unreasonably burdensome or ambiguous requests; stronger privacy protections to address emerging technologies and evolving digital realities; and providing public bodies with clearer legislative direction, as outlined above. Together, these changes would support meaningful access and privacy rights while ensuring the Act remains practical, sustainable, and relevant to the changing information landscape in Newfoundland and Labrador and beyond.

Thank you for the opportunity to provide input. I trust that the information and perspectives provided in this submission will assist in informing the ATIPPA review. Should you require any additional information or clarification, please do not hesitate to contact me. I would welcome the opportunity to discuss these matters further.

Yours truly,



Alissa Setliff, Ph.D.

Senior Director, Health Information Management and Chief Privacy Officer
NL Health Services