Office of the Information and
Privacy Commissioner of Alberta

Strategic Business Plan

2014-2017

Office of the Information and Privacy Commissioner

The Information and Privacy Commissioner of Alberta (the Commissioner) is an independent Officer of the Legislature and reports directly to the Legislative Assembly.

Through the Office of the Information and Privacy Commissioner (OIPC), the Commissioner performs the legislative and regulatory responsibilities set out in the following laws:

- the *Freedom of Information and Protection of Privacy Act* (FOIP),
- the *Health Information Act* (HIA), and
- the *Personal Information Protection Act* (PIPA)

The Commissioner is generally responsible for monitoring the administration of these laws (the Acts) to ensure their purposes are achieved.

More specifically, the Commissioner's statutory powers and duties include, but are not limited to:

- Providing independent review and resolution on requests for review of responses to access to information requests and complaints related to the collection, use and disclosure of personal and health information
- Conducting investigations on any matters relating to the application of the Acts
- Conducting inquiries to decide questions of fact and law and issuing binding orders
- Receiving comments from the public concerning the administration of the Acts
- Giving advice and recommendations of general application respecting the rights or obligations of stakeholders under the Acts
- Engaging in or commissioning research into any matter affecting the achievement of the purposes of the Acts
- Commenting on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes and existing or proposed programs
- Commenting on the implications for access to or protection of health information
- Commenting on the privacy and security implications of using or disclosing personal and health information for record linkages or for the purpose of performing data matching

Vision

A society that values and respects access to information and personal privacy.

Mission

Our work toward supporting our vision includes:

- Advocating for the privacy and access rights of Albertans
- Ensuring public bodies, health custodians and private sector organizations uphold the access and privacy rights contained in the laws of Alberta
- Providing fair, independent and impartial reviews in a timely and efficient manner

Environmental trends and issues

The environmental trends and issues from the 2013-16 Business Plan continue to shape and influence the OIPC's work.

The value of information and a society in which technology is everything…

The "Information Age" means many things to many people, but is generally understood to mean a society, an economy, that is based on access to and manipulation of information, which is enabled by technology.

One of the signs that we are living in the Information Age has been the rise of social media – the increasing degree to which **individuals are willing to share information about themselves online** – whether to obtain something tangible (goods and services, shopping discounts), feel connected to others, or to engage with society. Individuals are sharing vast amounts of personal information through blogs, social networks, e-mail, web logs, cell phone GPS signals, call detail records, Internet search indexing, digital photographs, video archives, and through online purchase transactions. Businesses, too, use social media to communicate – they blog, tweet, post to YouTube, have Facebook pages, etc. to get their message out and to receive feedback. In addition, information knows no boundaries; it flows across borders and around the globe, with technology as the common denominator that connects everything together.

As a result, businesses and government have the ability to collect an enormous amount of information about citizens. This, coupled with the development of exceptional technologies that allow vast amounts of data to be stored and analyzed in ways never previously contemplated, has led to a phenomenon that has come to be known as **"Big Data."**

Big Data refers to the ability to track and analyze everything from online purchases to the latest Twitter trending topics. It offers massive opportunities for real-time intelligence about responses to products, services and even political decisions. The advantages for businesses are obvious: companies want to listen to what is being said about them and leverage this information for marketing or reputation management purposes. Big Data enhances a business's ability to meet customer expectations, provide better customer service, and improve consumer products. In the world of Big Data, consumer information has value.

The same can be said for health information. In Alberta, efforts have been underway for years to encourage and facilitate the implementation of electronic medical records, to build the **provincial electronic health record** (Netcare) and to connect with systems in other provinces. In many ways, Alberta is leading the country in endeavors such as the adoption of electronic medical records. Alberta is also leading in facilitating patients' access to their own health information through the design and implementation of personal health portals.

The potential benefits of electronic health records for patients and society in general are significant, including the ability to ensure that comprehensive and timely patient information is available to healthcare practitioners and for reducing workplace inefficiencies. A vast electronic repository of health information also holds incredible research potential for improved treatments, quality of care, patient safety and other purposes such as policy

development. Patient health information has value.

Advances towards providing individuals with the ability to access their own health information online encourages patient participation in their own health care and treatment and reduces reliance on formal access processes.

We are also seeing an increased government focus on **multi-agency citizen-centred** service delivery in all jurisdictions, including Alberta. This global trend seeks to replace the traditional delivery of public services by myriad, disparate government agencies with a network of public, private and non-profit groups that come together to achieve a common mission or program outcome. This new service delivery model recognizes that the social and economic challenges facing citizens are complex and require interaction between government and community-based providers; it may also hold some promise for reducing government inefficiencies and bureaucracy. The foundation that underpins multi-agency citizen-centred delivery of government services is the sharing of information beyond the sectoral boundaries of private, public, and health, and, in some cases, across provincial and national borders.

At the same time as government is re-evaluating how it delivers programs and services, we increasingly hear commitments to **"accountability," "transparency" and "openness."** These terms are so frequently used as to risk becoming cliché; however, the principles of government accountability and transparency and the public's right to access information held by public institutions are as current and essential as ever. It is access to information that allows citizens to scrutinize government decisions and actions and, as a result, to more fully and effectively participate in the democratic process.

The emphasis on accountability and transparency goes hand in hand with the rise of global **open government and open data** movements.[1] At national, provincial and municipal levels in Canada, governments are committing to initiatives that advance open government and open data agendas. One of the fundamental principles of the open data movement is that information datasets must be available in standard machine-readable formats – to facilitate analysis and manipulation of the data, as well as mash-ups with datasets from multiple sources, including other governments, in other jurisdictions. Another emerging trend is to facilitate open government and open data by developing protocols to ensure that information systems are designed and built with principles of access in mind. These initiatives underscore that information about government decision-making is essential to democracy. Citizens value information about government.

Governments also value information about citizens. This is evidenced by an increased emphasis on **citizen engagement** and government consultation strategies, often employing the use of web tools (government blogging, Tweeting, online forums, etc.). Moreover, the public is increasingly willing to use the Internet and social media to engage with government, and to advocate or lobby for causes (recent examples include the reaction to the federal government's Lawful Access legislation, and cyber-bullying).

The prevalence of mobile devices – smart phones, laptops, iPads, USB keys – means that **information is always on the go**, never stationary, and certainly not confined to any one jurisdiction. Geo-location technologies, such as Radio

[1] Open government, as used here, is more generally about the proactive and routine release of information to citizens; open data refers to offering government data in a more useful and machine-readable format to enable citizens, the private sector and non-government organizations to leverage it in innovative and value-added ways.

Frequency Identification Devices (RFIDs) and GPS tracking, are specifically designed to monitor the location of things – such as mobile devices – as well as people. All of these devices, and many more, are increasingly connected to the Internet and to each other. One of the most significant emerging trends in technology is said to be the Internet of Things. Some projections suggest that up to 100 billion uniquely identifiable objects will be connected to the Internet by 2020.

Governments, businesses and health custodians alike are looking to technology solutions to maximize efficiencies and reduce costs. **Cloud computing environments**, for example, are increasingly seen as a preferred choice, notwithstanding the possibility that information might be stored on servers in far-flung jurisdictions.

Joining disparate databases together in integrated information systems, as well as the need to uniquely identify someone in the online environment, requires diligent attention to **identity management.** Biometric technologies – facial recognition, fingerprinting, palm vein and iris scanning – are under constant development and are being deployed in new and previously unforeseen ways. Reflecting our interconnectedness and borderless society, provincial, national and international initiatives are underway that are focused on standardization and interoperability of identity management systems.

And finally, new technologies are making it possible to automate processes that have traditionally been manual, sometimes with significant, unintended consequences. With technologies that allow for unprecedented search, analysis and distribution of electronic information, the practical obscurity that was inherent in manual processes is a thing of the past.

Implications for access and privacy

The integrated, interconnected, cross-sectoral and often highly technical initiatives described above offer many potential benefits for individuals and society; however, these initiatives also raise a host of access, privacy and data security issues.

For initiatives that involve multiple participating stakeholders, for example, it is imperative to establish appropriate governance and accountability structures to ensure that basic responsibilities under access and privacy legislation can be met (e.g. limiting collection, restricting use, responding to access requests, security breaches, etc.).

Cross-sectoral initiatives may also run into inconsistent legislative requirements. For example, health custodians, unlike public bodies or private sector businesses, are legally required to submit a Privacy Impact Assessment (PIA) to the OIPC for review and comment before implementing new information systems. Non-profit participants may or may not be subject to access and privacy legislation. Private sector organizations have a duty to report certain privacy breaches to the OIPC, while other participating stakeholders may not have the same obligation. Inconsistent legislative requirements can result in potential risks to personal and health information not being identified or assessed.

Establishing legislative authority to share information can be complex, and is made even more so when participants are subject to more than one of the Acts (e.g. a health professional, such as a psychologist or physiotherapist, in independent practice may normally be subject to PIPA but if contracted to the Workers' Compensation Board, he or she may fall under the FOIP Act). When operational staff do not understand the application of the Acts, this creates

confusion as to what they can or should do with respect to personal and health information.

Transparency can also be an issue. Complex, integrated information systems initiatives are often not well understood by sophisticated users, much less the individuals whose personal or health information may be stored in them. Given this, it may be a challenge for individuals to exercise their rights under access and privacy laws – whether to complain about the collection, use or disclosure of their information, or to request access to it.

Large databases and advanced analytics provide a temptation to use information for new purposes other than those for which the information was collected. There are situations in which individuals would likely not object to their information being used for other purposes – for example, the use of health information for research purposes. Studies have shown that most patients are not concerned that their information will be used for research purposes, and would in fact be surprised if this were *not* the case. What they do expect, however, is that health information that is used for research purposes will be subject to strict protocols and safeguards. Alberta's HIA was designed to facilitate health research within such a system of controls.

Instead, individuals are often more concerned with secondary use of information for public safety purposes. Massive amounts of information collected, warehoused, and integrated, are sometimes seen as a silver bullet, guaranteeing a safer society. Often, new initiatives will trade-off privacy rights in the quest for more security. Any such re-purposing of information for public safety, or new collections of information, must be scrutinized closely and demonstrably necessary. The risk is that often only a single initiative is considered at any one time, and the slippery slope trend towards a surveillance society goes unnoticed.

Vast databases of information also present a tempting target for identity thieves and fraudsters. While most privacy breaches reported to the OIPC relate to human error and mailing and transmission errors (fax and email), a significant number are the result of database hacks or phishing scams – that is, a targeted attempt by thieves to gain access to personal information for nefarious purposes. Many other breaches are also technology-related in that they involve the loss or theft of computer equipment, and particularly unencrypted mobile devices. Technology-related breaches are particularly egregious in that the number of affected individuals can be enormous.

A particularly disturbing occurrence is unauthorized access by an authorized user of an information system; that is, when a trusted user abuses his or her access privileges to "snoop" on others. While most authorized users of information systems are properly trained and respectful of privacy laws, it remains the case that unauthorized access by authorized users continues to occur and can be very difficult to identify.

Finally, open government and open data initiatives, while providing opportunities for citizens to have routine access to information about government decision-making, and reducing the burden on already strained formal access to information processes, can also give rise to privacy risks. Careful thought and planning must go into any decision to publish machine searchable data to ensure privacy is protected. Personal identifiers may be removed, but there are many examples where seemingly disparate information elements can be combined and linked back to specific individuals. It can be difficult to determine in advance which seemingly harmless data elements can be combined in such a manner.

Challenges for the OIPC

1. Meeting public and stakeholder expectations for timely resolution of complaints, requests for review

The OIPC has traditionally been structured according to the three Acts, including a PIPA Team, a FOIP Team and an HIA Team. Further, the business model since the Office's inception has been primarily reactive – responding to complaints and requests for review as they are submitted.

The statistics on cases that come before the OIPC have remained relatively constant over the last three years. However, the complexity of cases has increased, as evidenced by more parties, more represented parties, more complex issues (including technology-related cases such as HIA PIAs, solicitor-client privilege), and more cross-sectoral issues. Increasing complexity requires more time to investigate, research and resolve.

Amendments to the HIA in 2010 extended the scope of the Act to include new custodians (the OIPC is just now starting to receive PIAs from these custodians, including optometrists and Registered Nurses). Further amendments to the HIA may be forthcoming when the Act is reviewed. Amendments in 2010 to PIPA resulted in new powers and responsibilities for the Commissioner related to breach reporting and notification. The FOIP Act is currently subject to a government review, which may result in amendments that will impact the Commissioner's powers and responsibilities. These amendments have the real potential to result in additional cases or work for the OIPC.

The focus on access to information appears to be increasing over the past two years. This is evident in Service Alberta's 2010-11 Annual Report, which reported a 29% increase in requests to government departments, agencies, boards and commissions from the previous fiscal year. Increased numbers of access requests can result in an increase in the number of requests for review to the OIPC.

In the 2012 OIPC Stakeholder Survey, respondents indicated that the timeliness of OIPC processes is the area most in need of improvement. Consequently, any additional increases in cases will further affect the OIPC's ability to provide timely resolution of complaints and requests for review.

The OIPC has examined its office structure and identified opportunities for improvement. In 2012-13, a new office structure was announced, based on two teams divided by function rather than legislation. The new structure will allow the OIPC to respond to sector-specific fluctuations in case loads, and to cover staff vacancies as they arise. It will also help to ensure that the OIPC can respond to an external environment that is increasingly moving towards sharing information between the public, private and health sectors, and where issues are not confined to any specific sector. The new structure provides an opportunity for the OIPC to review its processes to improve consistency, enhance efficiencies, and ultimately increase timeliness. The OIPC is transitioning towards this new structure, and this work will be a priority in 2014-15. In addition, the OIPC will focus on developing strategies to communicate with stakeholders and the public about OIPC processes, manage expectations, and provide proactive education and guidance to facilitate compliance outside the formal complaint process.

2. Ability to identify and address access and privacy issues proactively for effective oversight

As already described, current stakeholder initiatives are increasingly complex, sophisticated, cross-sectoral, highly technical, interconnected and, most importantly, not necessarily transparent to the individuals whose information is collected, used and disclosed.

The OIPC's traditional, primarily reactive, oversight model (responding to complaints and requests for review) is not adequate to provide effective oversight for these initiatives, or to reassure Albertans that their privacy is respected and protected. Because these initiatives are not always transparent to the public, it is not realistic for the OIPC to rely on complaints or requests for review as an indicator of legislative compliance. In fact, complaints submitted to the OIPC generally do not reflect the access and privacy issues and initiatives that stakeholders are primarily engaged with.[2]

Given this situation, the OIPC has considered alternative models of oversight and has identified a need to establish a function within the office that will focus on proactive compliance and special investigations. This same function will also oversee voluntary and mandatory reporting to the OIPC (including PIAs submitted to the OIPC for review and comment, and breach reporting). The OIPC has identified this kind of reporting and monitoring work to be essential to providing effective regulatory oversight. Further solidifying this function within the OIPC will be a priority in 2014-15.

The OIPC has also identified a need to allocate resources towards providing meaningful consultation, education, advice and direction in advance or in the absence of receiving complaints. This requires the ability to engage in research and policy work to understand the issues and challenges facing stakeholders. The OIPC needs to be in a position to research best practices and legislative models in other jurisdictions, including internationally. It is equally important for the OIPC to engage with the public to understand their issues and concerns, ensure they are aware of their rights under legislation, and to develop and make available resources to assist them to monitor and manage their own privacy.

3. Adequate staff and resources

OIPC resources are primarily invested in staff, and budget increases generally reflect in-range movement and cost of living. The number of OIPC staff increased by two positions in fiscal year 2012-13, and again by two positions in 2013-14, for a total of 42 full-time equivalents (FTEs).

In 2012-13, the OIPC saw an overall 9 per cent increase in the total number of cases opened, due mainly to a significant increase in FOIP-related matters. The OIPC expects to see this trend continue and is committed to implementing a new function-based office structure, recruiting to fill vacant positions, and reviewing current processes to identify opportunities to improve consistency and timeliness.

This commitment includes building on the success of the OIPC's pilot project initiated in 2012-13 to establish and develop internal litigation expertise. This strategy has already shown promise, and the OIPC will continue to look for opportunities to reduce its dependence on external legal resources and to reduce costs over time.

In addition to the above, the OIPC will continue to work to manage limited resources as effectively and efficiently as possible by looking for opportunities to

[2] OIPC Stakeholder Survey 2012

share support services with other Legislative Offices, working with other access and privacy regulators to maximize resources and share expertise, and to ensure that OIPC information systems are enabled to support staff to perform as effectively and efficiently as possible.

4. OIPC staff members have the information, training and expertise required to provide effective oversight, guidance

The increasing proliferation of technology challenges the OIPC to stay on top of new developments. It is clear from the environmental trends and issues discussed earlier that technology underpins most of the significant initiatives that are underway in the public, private and health sectors. Ubiquitous technology (from biometrics to mobile devices, geo-location tracking software to the interoperability of information systems, social media to open data initiatives) is possibly the most significant factor affecting privacy and access to information today. In particular, the proliferation of electronic devices, the amount of data that can be stored on those devices, their increased portability, and the number of technology-related privacy breaches, give rise to concern.

These conclusions are borne out in the recent stakeholder survey conducted by the OIPC. When asked to rate 23 access and privacy issues based on their importance to public bodies, organizations and health custodians, it is significant that the top 6 issues were all technology-related.[3]

It is imperative that OIPC staff be positioned to provide comprehensive and informed reviews of information systems and initiatives, and proactive guidance and direction to stakeholders who are grappling with new technologies.

In addition to keeping up with new technologies, OIPC staff also need to be aware of access and privacy issues that cross all sectors, as well as jurisdictions. Particularly with the advent of public/private/health partnerships, issues are no longer confined to any one sector. Even more importantly, there are opportunities for each sector to learn from the others. For example, the advanced technical work that is being completed in the health sector related to interoperable systems, self-serve health portals, and the anonymization of health information for research purposes, has the potential to lead and guide in the public and private sectors. The mandatory PIA requirement under the HIA is another model that may have application outside of the health sector. The OIPC Stakeholder Survey conducted in 2012 suggests a strong correlation between having a PIA policy in place and building a mature privacy management framework.

Further, for organizations operating in multiple jurisdictions, and where multiple jurisdictions are struggling with similar initiatives (e.g. open data and open government), it is incumbent on OIPC staff to be aware of relevant issues arising, decisions, and best practices.

As the OIPC transitions towards a new office structure, the focus will be on ensuring staff are cross-trained to develop deep knowledge of all three Acts. The OIPC will also actively work to develop technology expertise as well as broad knowledge and understanding of access and privacy issues.

[3] The top 6 issues were: (1) rapid growth of technology, (2) mobile device security, (3) open government ad proactive disclosure, (4) misuse of personal information by authorized users, (5) data migration, (6) direct public access to own records (i.e. via internet portals).

5. Effective Knowledge Management

Many OIPC staff members have a long history with the Office. This means they have in-depth knowledge of the development and growth of the OIPC and the many issues that have been considered and resolved over the years.

Given the number, variety and increased complexity of issues before the Office, however, it is no longer feasible to rely on long-term staff members to be the source of all corporate knowledge. The OIPC is significantly disadvantaged each time a long-term staff member leaves the Office.

Further, the OIPC's case management system (TRAX) was initially built in 2001, and has only been incrementally tweaked over the years. The system was not designed to provide timely or meaningful access to information about the thousands of case files that have been resolved in the long history of the Office.

The OIPC has identified a need to more effectively manage corporate knowledge in order to improve the Office's capabilities and enable better decision-making.

To address this need, the OIPC established the position of Director – Knowledge Management in 2012-13. A key function of this position is to oversee a project to modernize the OIPC's case management system. Much of the work of designing and building this system has been completed and the focus in 2014-15 will be on implementation.

At the same time, the OIPC has been working to modernize its website in order to improve communication with stakeholders and the public. The updated website is under development and will be implemented in 2014-15.

6. "Walking the talk"

The OIPC has a role to play in advocating for stakeholder adoption of access and privacy best practices, often beyond the legal requirements set out in the Acts.

Proactive disclosure of information – ideally in accessible, machine-readable formats – is one such example. In 2010, the OIPC, along with federal and provincial counterparts across Canada, jointly issued a resolution calling on governments at all levels to commit to open government. This call was reiterated in 2012-13 when the OIPC provided comments on Government policy for proactive expense disclosure.

Advocating for stakeholder adoption of access and privacy best practices is not enough, however. The OIPC believes it has a responsibility to lead by example when it comes to the standards of accountability it sets for stakeholders.

To this end, the OIPC has expanded its proactive expense disclosure to include the travel and hosting expenses of the Assistant Commissioner and OIPC Directors. In addition, the OIPC will be proactively assessing its information holdings to identify additional opportunities for proactive disclosure, and to facilitate disclosure in machine-readable formats where possible.

Goals and Key Strategies: 2014-2017

The following goals and strategies have been developed in acknowledgement of current environmental trends and issues, and to address the challenges described previously in this Business Plan.

GOAL 1: Meaningful, proactive consultation and communication with stakeholders and the public

1.1 Identify and facilitate opportunities to consult with external stakeholders.
1.2 Publish guidance, direction and awareness materials to enhance stakeholder compliance.
1.3 Identify and facilitate opportunities to consult with other access and privacy regulators.
1.4 Plan, host and participate in workshops, conferences and educational forums to benefit stakeholders and the public.
1.5 Identify and facilitate opportunities to consult with the public.
1.6 Publish proactive education, advice and direction for the public.

GOAL 2: Efficient, effective, timely processes

2.1 Reduce dependence on external legal counsel.
2.2 Implement new office structure to more effectively balance workload, provide effective oversight.
2.3 Consolidate and streamline intake, mediation and investigation processes to ensure they are fair, accessible, transparent, timely, high quality and consistent.
2.4 Review and revise adjudication process as necessary to ensure they are fair, accessible, transparent, timely, high quality and consistent.
2.5 Implement proactive compliance and special investigation function.
2.6 Implement research and policy function within OIPC to support investigations, legislative review, proactive education, awareness and direction.
2.7 Identify and consider opportunities to share support services with other Legislative Offices.
2.8 Research models and consider merits of establishing Advisory function within the OIPC.

GOAL 3: Effective access to and use of OIPC information

3.1 Implement new case management system (OB1).
3.2 Build and implement updated OIPC website.
3.3 Establish accountable business planning and reporting processes, including meaningful performance targets.
3.4 Identify and facilitate further opportunities to proactively disclose OIPC information, datasets.
3.5 Review information management systems and schemes within OIPC to enhance efficiency and communication.
3.6 Review technology requirements to best support staff, efficient processes.

GOAL 4: Staff members are engaged, knowledgable and expert

4.1 Identify and facilitate opportunities for internal communication and consultation.

4.2 Identify and facilitate opportunities for internal team building.

4.3 Identify training requirements to ensure staff members are supported in their roles.

4.4 Ensure OIPC policies addressing key staff issues are in place and communicated to staff.

4.5 Ensure staff members have timely access to relevant local, provincial, national, and international news and information regarding access and privacy issues.