

# ANNUAL REPORT 2023



*Office of the Information  
and Privacy Commissioner*



**Prince Edward Island**  
**Legislative Assembly**

*Information and  
Privacy Commissioner*  
PO Box 2000, Charlottetown PE  
Canada C1A 7N8

**Île-du-Prince-Édouard**  
**Assemblée législative**

*Commissaire à l'information et  
à la protection de la vie privée*  
C.P. 2000, Charlottetown PE  
Canada C1A 7N8

November 25, 2024

The Honourable Darlene Compton, MLA  
Speaker of the Legislative Assembly  
Province of Prince Edward Island  
P.O. Box 2000  
Charlottetown, PE  
C1A 7N8

Honourable Speaker:

I am pleased to present to you the enclosed 2023 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2023, to December 31, 2023. This is the twenty-first report from this office and is submitted to you pursuant to subsection 59(1) of the *Freedom of Information and Protection of Privacy Act*.

Sincerely,

Denise N. Doiron  
Information and Privacy Commissioner

Enclosure

DND/nlk

# TABLE OF CONTENTS

## Page

I. Commissioner’s Message.....	1-2
II. Who We Are.....	3
III. What We Do.....	4
IV. Legislative Responsibility.....	5
V. Access to Information.....	6-7
VI. Protection of Privacy.....	7-10
Privacy Complaints.....	8
Breach Reporting.....	8
Privacy Impact Assessments.....	10
VII. Financial Information.....	11
VIII. Statistics.....	12-14
<i>FOIPP Act</i> .....	12
<i>HIA</i> .....	13
General.....	14-15



## Commissioner's Message:

I am pleased to present the 2023 annual report for the Office of the Information and Privacy Commissioner.

The year 2023 was a year of transition and growth for our office. We reorganized our staffing model and added two staff positions. As of the writing of this report, one of those positions is still vacant, despite our efforts to fill it. This is not a challenge unique to our office, as other Information and Privacy Commissioners Offices have had similar challenges filling vacant positions. We remain hopeful that we will find the right candidate for our vacant position in the very near future.

We continued with our modernization efforts, with a view to identifying efficiencies in our processes and streamlining our work. In 2023, we started work on acquiring and implementing an electronic file management system to move away from our primarily paper-based file system. The plan was to have the new system in place and operational by mid-2024, with an understanding that it would take some time to realize the benefits. Once it is fully operational and staff is comfortable with the system, we anticipate seeing more efficient file management and processing. We expect that we will also be better able to track the work our office does.

We have started working on developing policies and procedures to help guide our work, and that work continues. In addition, we started working on some guidelines for public bodies and custodians to assist them with responding to our office in review files and privacy breaches. The plan is, over the next couple of years, to generate a procedures and practice manual for public bodies, custodians and the general public related to reviews. We expect that such a manual will not only assist with a better understanding of how our processes work, but will also help streamline reviews.

We continue to have a backlog in our cases, but we are working on addressing the backlogged files and are also working on ways to manage new files better as they come in to reduce the time they are in our system. For instance, we have begun routinely assessing new requests for review to identify and narrow issues, attempting mediation and early resolutions when appropriate, and only conducting full inquiries when there are potentially arguable issues. In 2023 we opened 89 new files and closed 71 files, ending the year with 155 open files. While we still opened more files than we closed in 2023, the new practices we are implementing are helping to reduce the number of files being added to the backlog.

We also continue some outreach activities, with presentations to the Medical Support Services students at Holland College, the Law Society's Bar Admissions course, and a variety of special-interest groups. We would like to do more outreach but, at this time, we do not have the resources to accomplish this. We are hopeful that this is something we can continue to work on

and expand, because we consider education on information access and privacy to be a valuable piece of our mandate, not only for public bodies and custodians, but also for the citizens of PEI.

As we enter the 2024 reporting year, the last full year of my 5-year mandate, I am excited at what the future holds for our office and the people we serve. The *Freedom of Information and Protection of Privacy Act* is due for a review in 2024, and I look forward to participating and providing feedback from our lived experiences with the legislation, and recommendations for improvements, to ensure the legislation is keeping up with our rapidly evolving world and expectations.

In closing, I would like to thank the staff of the Office of the Information and Privacy Commissioner for their dedication, professionalism, and service, and their perseverance during this time of transition. Their knowledge and effort are invaluable to the work we do and the service we provide, and I am grateful for their support.

Respectfully submitted,



Denise N. Doiron,  
Information and Privacy Commissioner

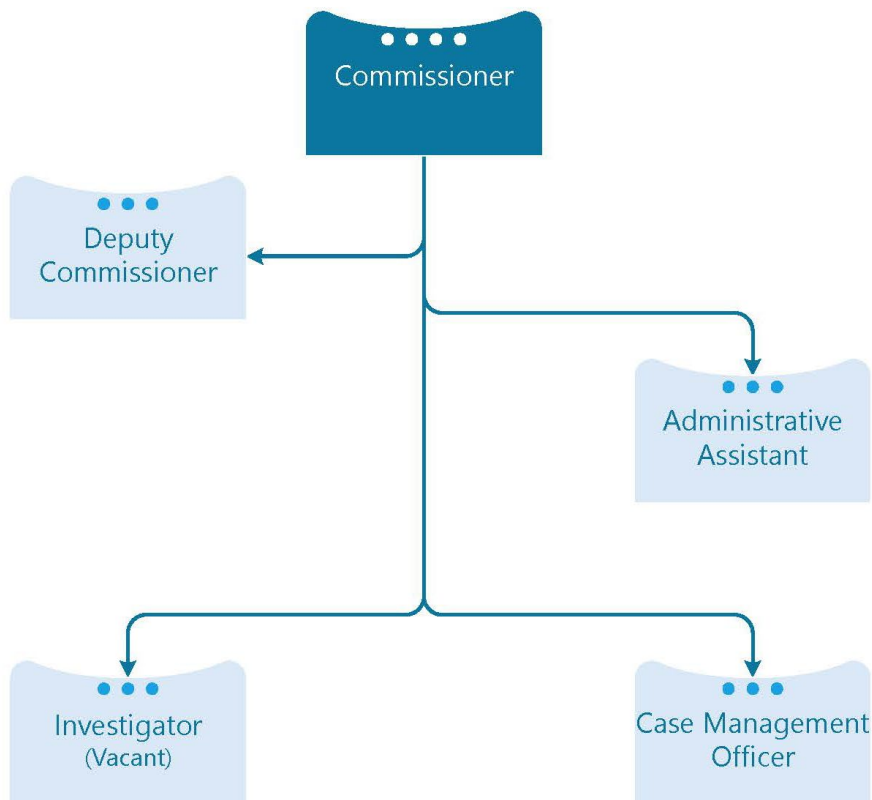
## Who we are:

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly, appointed under the *Freedom of Information and Protection of Privacy Act* (“FOIPP Act”). The appointment is for a term of five years, and the Commissioner may be reappointed. The Commissioner has legislative duties under the *FOIPP Act* and the *Health Information Act* (“HIA”).

Our office has a staff of five, including the Commissioner, to carry out the functions under the *FOIPP Act* and *HIA*. This is a new staffing model as of 2023. Prior to 2023, we were a staff of three, including the Commissioner. In 2023, we underwent a reorganization, and increased our staff complement to five full-time positions. Currently the office has a Commissioner, a Deputy Commissioner, an Investigator, a Case Management Officer, and an Administrative Assistant.

The position of Investigator is vacant, but recruitment activities are on-going and will continue until the position is filled.

## Office of the Information and Privacy Commissioner Organizational Chart



## What we do:

The Commissioner's office provides independent oversight of decisions of public bodies under the *FOIPP Act*, and of health information custodians under the *HIA*.

The Commissioner is sworn to conduct the affairs of the office with an impartial approach. We do not take sides, but we conduct investigations to determine the facts, request submissions, and make findings in an impartial manner. The independence of the office is a vital aspect of the duties.

Fairness, openness, transparency, and a respect for privacy are the broad values which guide the activities of this office.

### Under the *FOIPP Act* and *HIA*, the Commissioner:

#### CAN

- ❖ review responses to access to information requests
- ❖ investigate privacy complaints and breaches
- ❖ review Privacy Impact Assessments (PIAs)
- ❖ provide advice and recommendations
- ❖ issue directions and orders
- ❖ foster public knowledge and information

#### CANNOT

- ❖ give applicants access to information in the custody or control of public bodies or custodians
- ❖ review information access or privacy practices of private businesses or organizations (except custodians)
- ❖ review actions of private individuals
- ❖ review federal government or federal agencies

## Legislative Responsibility:

### *Freedom of Information and Protection of Privacy Act*

The Commissioner is responsible for monitoring how public bodies administer the *FOIPP Act*, and for performing other duties to ensure that the purposes of the *FOIPP Act* are achieved.

Public bodies are those designated specifically in the *FOIPP Act* and its Regulations to be “public bodies”. There are over 100 public bodies subject to the *FOIPP Act*, and include departments, boards, agencies and Crown corporations of the Government of Prince Edward Island three post-secondary institutions and four municipalities.

The Commissioner’s primary duties under the *FOIPP Act* are to perform independent reviews of decisions of these public bodies respecting access to information requests and requests for correction of personal information, and to investigate complaints that an individual’s personal information has been collected, used, or disclosed by a public body in violation of the *FOIPP Act*.

### *Health Information Act*

The Commissioner is responsible for overseeing that health information of Islanders is dealt with by health information custodians (“custodians”) in a manner consistent with the provisions of the *HIA*. The goal of the *HIA* is to ensure that Islanders are permitted access to their own personal health information, while balancing the protection of their personal privacy with the need to appropriately collect, use and disclose their personal health information for permitted purposes.

Custodians are persons or organizations that collect, maintain or use personal health information for the purpose of providing or assisting in the provision of health care or treatment or the provision of a government program or service related to health care, or health care planning. Custodians provide a wide variety of health-related services or functions, and can be government (e.g. Health PEI, Department of Health ) or private practitioners or service providers.

The Commissioner’s primary duties under the *HIA* are to perform independent reviews of decisions of these custodians respecting access to information requests and requests for correction of personal health information, and to investigate breaches of privacy and complaints that an individual’s personal health information has been collected, used, or disclosed by a custodian in violation of the *HIA*. The Commissioner also reviews and comments on Privacy Impact Assessments conducted by custodians for any new or significant change to the use, collection or disclosure of personal health information by a custodian, including the use of new technologies.

*“One of the stated purposes of the FOIPP Act is to allow independent reviews of the actions and decisions made by public bodies on access to information and protection of privacy, to ensure public bodies are acting in accordance with the established laws. This is necessary to ensure that citizens’ rights are being protected and promotes transparency and confidence in the public bodies. A public body not participating in the review process defeats this purpose.”*

*~ Order FI-23-003, para. 15*



## ACCESS TO INFORMATION:

The *FOIPP Act* provides citizens with a right of access to information held by public bodies, subject to certain limited and specific exceptions. Access to information is an important component of the democratic process, as democracy cannot meaningfully function without an informed citizenry. This requires public access to information about the activities of government. Access to information is crucial to ensuring accountability, transparency, and the trust of the public.

*“If a transitory record is responsive and has not been deleted or destroyed, an applicant still has a right to receive a copy of a transitory record, subject to specific and limited exceptions under the FOIPP Act.”*

~ Order FI-23-002, para. 16

There is a wide range of information held by public bodies that is available to the public without the necessity of making an access to information request under the *FOIPP Act*. This is referred to as “proactive disclosure”. We encourage public bodies to proactively disclose information as much as possible.

For information that is held by a public body that is not proactively disclosed, citizens are still able to ask for access to that information, but must make an access request to the public body who has custody or control over the records containing the information.

It is important to note that the *FOIPP Act* applies to information contained in records, not information in general. Public bodies are not required to answer questions, and are not required to create records of information, except in limited circumstances, and if creating the record would not unreasonably interfere with the operations of the public body.

### *Personal Information/Personal Health Information*

It is also important for citizens to understand what personal information government is collecting about them, and how that personal information is being used, accessed and disclosed. In addition to general operational information about public bodies’ activities, citizens also have the right to request access to their own personal information held by a public body.

While citizens do not have a right to access general information of a custodian (that is not also a public body), individuals have the right under the *HIA* to access to their own personal health information held by a custodian.

When a public body or custodian gets an access request, they generally have up to 30 days to respond (which may be extended under some circumstances). If individuals making an access request are not happy with a public body’s or custodian’s response to their access request, they can ask the Commissioner to review that response.

Access to information-related complaints were the highest volume of files opened in our office in 2023, with 54 access to information-related requests for review made under the *FOIPP Act* and one access to personal health information request for review under the *HIA*.

## **PROTECTION OF PRIVACY:**

Privacy has long been considered a fundamental right in Canada. It is protected through a combination of federal legislation (e.g. Charter of Rights and Freedoms, federal *Privacy Act*), and provincial/territorial legislation working together to protect citizens' personal information held by government or private institutions. Some provinces or territories also have legislation to govern how private businesses handle personal information. Although the *HIA* applies to private health care providers, there is no other PEI legislation that applies to private businesses collecting personal information in PEI. The *FOIPP Act* and *HIA* are the laws in PEI that apply to the protection of personal information held by public bodies and health information custodians.

Public bodies and health information custodians collect personal information or personal health information about individuals for the purpose of providing their services. Both the *FOIPP Act* and *HIA* require public bodies and custodians to protect this information and the privacy of the individual to whom that information relates.

The law requires public bodies and custodians to only collect such personal information or personal health information as is necessary for the provision of the service. Also, public bodies and custodians are only allowed to use the information for the purpose it was collected, or for a purpose consistent with that purpose. They are not permitted to use it for any other purpose, or to disclose it to anyone unless they are authorized to do so. They are also required to take reasonable security precautions to make sure that there is no unauthorized collection, use, disclosure of, or access to the personal information or personal health information in their custody or control. There are a number of ways to ensure individuals' privacy is being protected by public bodies and custodians.

### *Privacy Complaints*

An individual who believes that their privacy rights are not being protected by a public body under the *FOIPP Act*, or a custodian under the *HIA*, may make a written complaint to the Commissioner's office. The Commissioner is authorized to attempt to resolve such complaints. If the complaint cannot be resolved, the Commissioner will investigate and issue an order or investigation report.

In 2023, we had 12 privacy complaints regarding public bodies' handling of personal information, and 2 privacy complaints about health information custodians' handling of personal health information.

## *Breach Reporting*

When a public body or custodian discovers there was a problem with how they have been protecting personal information or personal health information, this is called a privacy breach. It could be because of internal issues (e.g. employee snooping, loss of records), or due to external issues (e.g. theft, ransomware).

The *HIA* has mandatory reporting provisions, requiring custodians to notify affected individuals and the Commissioner, in writing, if personal health information is stolen, lost, inappropriately disposed of, or is disclosed to or accessed by an unauthorized person. A custodian does not have to notify an affected individual or the Commissioner if the custodian reasonably believes the theft, loss, disposition of, disclosure of, or access to, the personal health information will not have an adverse impact on the provision of health care or other benefits to the individual, or the mental, physical, economic or social well-being of the individual to whom the personal health information relates.

In 2023, health information custodians reported 8 breaches to our office. The circumstances were varied, and included instances of unauthorized access to personal health information by an employee (i.e. “snooping”), unauthorized disclosure of personal health information, theft of items containing personal health information of individuals, and unauthorized access to personal health information by external entities (e.g. hacking).

The *FOIPP Act* does not have mandatory reporting requirements for breaches involving personal information held by public bodies. However, we encourage public bodies to voluntarily report such events to us and to work with our office on appropriate responses. In the event of a breach, the OIPC offers advice and guidance on notifications to affected individuals, investigation of the circumstances of how or why the breach occurred, and potential mitigation against similar breaches occurring in future.

We are finding that public bodies are becoming more open to voluntarily reporting breaches to our office and asking for our advice. In 2023, we had 6 voluntary breach reports from public bodies, involving such things as misdirected emails containing personal information, unauthorized disclosure and unauthorized access. We applaud such voluntary reporting and encourage public bodies to continue to be proactive in voluntarily reporting privacy breaches to our office, as this will go a long way to ensuring transparency and accountability.

### **Steps of Breach Investigation and Reporting**

Although responses to privacy breaches may vary, depending upon the unique circumstances of each breach, there are four actions which the Commissioner expects a custodian or public body to take when a privacy breach is discovered:

1. Breach Notification (to Commissioner and affected individuals)
2. Breach Containment
3. Breach Investigation
4. Remediation

After these steps are taken, the custodian or public body must prepare a written Breach Investigation Report and submit it to the Commissioner, outlining all the steps taken, the investigation findings, and remediation taken or planned. The Commissioner will review the report and can either consider the matter resolved, conduct their own investigation, or issue recommendations or an order.

## *Privacy Impact Assessments*

There are countless opportunities for organizations to utilize technological solutions to assist them with efficiencies in their work and customer service. Further, as technology has become so ingrained into our everyday lives, most people have become accustomed to its use and increasingly expect public bodies and custodians to offer online and other digital services, which are easily accessible at the consumer's own convenience. As a result, it has become much easier to collect, store, access, use, and disclose huge amounts of personal information. With the increasing expectations of the population to be able to easily and conveniently access services, the advancements in technology, and the vast amounts of personal information that can be collected by public bodies and custodians, it is more important than ever to assess the potential privacy risks of an organization's information practices.

A privacy impact assessment (PIA) is a process which helps an organization in identifying and managing the privacy risks arising from new projects, initiatives, technology systems, processes, strategies, policies, etc., including screening for factors that have potential for a widespread or serious impact on individuals, identifying and guiding the use of personal information across the organization, and identifying and mitigating potential information technology security risks. Done properly, and whether technological or otherwise, a PIA can help ensure that an organization is meeting its legal requirements and that potential privacy impacts are identified and either addressed or minimized before a problem occurs.

Under the *HIA*, it is mandatory for a custodian to prepare a PIA and submit it to the Commissioner for review and comment, prior to commencing any new, or significant change in, the collection, use or disclosure of personal health information, or the creation of, or significant change in, a personal health information system or communication technology.

PIAs are not mandatory under the *FOIPP Act*, but some public bodies conduct PIAs and voluntarily submit them to our office for review and comment. Even though they are not mandatory, we strongly encourage public bodies to conduct a PIA any time they are undertaking a new initiative, implementing new technology, making significant changes to their existing technology, or engaging in a new or significant change to the collection, use or disclosure of personal information. The process of conducting a PIA will assist a public body in identifying the impact its programs and activities will have on individuals' privacy, identifying and effectively managing privacy risks, ensuring it is meeting its legal obligations, and is adhering to the basic principles of privacy protection.

In 2023, we had six PIAs submitted to us by custodians. We know there are many new initiatives in progress and expect that number to increase in 2024 and beyond. Although we did not have any PIAs voluntarily submitted to us by public bodies in 2023, we are aware that many public bodies are beginning to conduct PIAs as a matter of practice when considering using new technologies or creating new programs involving the collection, use or disclosure of personal information. We encourage public bodies to submit them to us and are happy to review and comment on them, to assist public bodies in ensuring they are meeting their privacy obligations.

## Financial Information:

This annual report covers activities of the office during the calendar year of 2023 in all respects except the budget. The reporting period of the budget is from April 1, 2023, to March 31, 2024. <sup>1</sup>

	<b>2023-2024 Budget Forecast</b>	<b>2023-2024 Budget Estimate</b>	<b>2023-2024 Expenditures</b>
Administration	8,200.00	8,200.00	4,379.00
Equipment	14,200.00	14,200.00	21,138.00
Materials, Supplies, and Services	2,900.00	2,900.00	693.00
Professional Services	20,300.00	20,300.00	3,534.00
Salaries and Benefits	532,100.00	532,100.00	440,978.00
Travel and Training	8,300.00	8,300.00	6,827.00
<b>Total</b>	<b>586,000.00</b>	<b>586,000.00</b>	<b>477,551.00</b>

The greatest proportion of our budget was spent on salaries and benefits. The expenditure for salaries and benefits was less than the budget estimate due to staff vacancies during the budget period. Other expenditures were for operating costs such as equipment and office supplies, membership fees, travel, training, and consultation services.

The OIPC budget does not cover all the operating expenses of the office, as some supplies and services the office receives are shared with other departments of the provincial government, including Information Technology Shared Services (ITSS) and Public Works, and the Legislative Assembly (e.g. rent and utilities, photocopy paper, accounting services, and IT support), and these costs are not reflected. In addition, some of the operating costs shown are shared with OmbudsPEI, as our offices are co-located on the same floor and we share the cost of some common equipment and services (e.g. photocopier/printer, security, cleaning services).

For information regarding Commissioner and staff expenses, which are included in the above list of expenditures, please refer to our website under “Transparency and Accountability”.

<sup>1</sup> Some of this information is reproduced from page 184 of the *Prince Edward Island Estimates 2024-2025*, at [https://www.princeedwardisland.ca/sites/default/files/publications/estimates\\_book\\_2024-25\\_web.pdf](https://www.princeedwardisland.ca/sites/default/files/publications/estimates_book_2024-25_web.pdf)

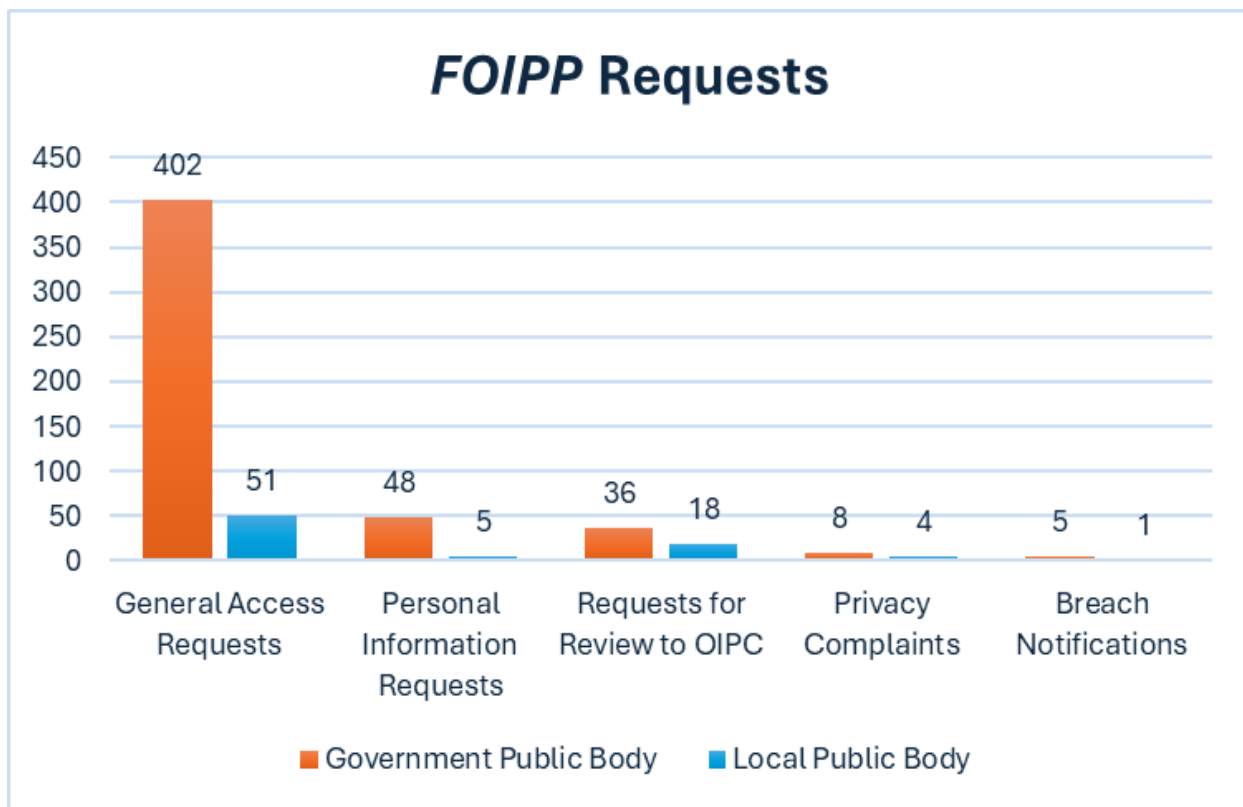
## Statistics:

### Freedom of Information and Protection of Privacy Act Statistics

Each year, we ask public bodies to provide us with the number of access requests they received from the general public under the *FOIPP Act*. Most, but not all, public bodies provide these numbers to us. The chart below shows the number of access requests received by reporting public bodies under the *FOIPP Act* in 2023, and the number of requests for review and privacy complaints this office received under the *FOIPP Act*.

In 2023, there were 506 reported access to information requests made to public bodies. Of those, 54 (9.37%) resulted in requests for review by our office. In addition, there were 12 privacy complaints made to our office involving public bodies.

While it is not mandatory for public bodies to report privacy breaches to our office, some public bodies do so voluntarily. In 2023, there were 6 privacy breach notifications voluntarily made to this office by public bodies under the *FOIPP Act*.



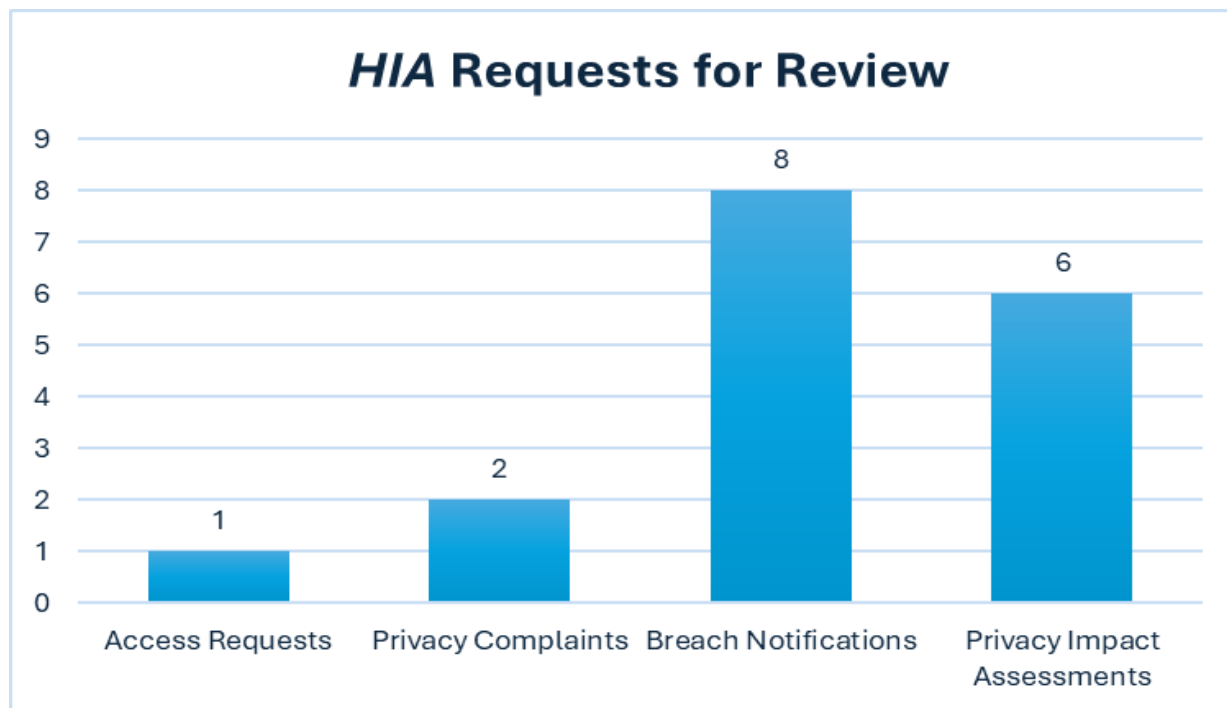
## **Health Information Act Statistics**

The *Health Information Act* applies to all health information custodians operating in the province, whether they are a public service provider (e.g. Health PEI) or a private service provider (e.g. pharmacist/pharmacy, therapist, dentist, private practitioner, etc.). A definition of who is a health information custodian can be found in the definitions section of the *HIA* and includes a list of examples of custodians.

Because there are so many health information custodians in the province, we are not able to obtain statistics from them. Therefore, we are not able to report on the number of access requests received by custodians compared to the number of requests for review this office receives.

However, we can report the types of complaints we receive under the *HIA* about how custodians manage personal health information of citizens, including complaints from individuals who requested access to their own personal health information, privacy complaints from individuals about how custodians manage their personal health information, and breaches reported by custodians.

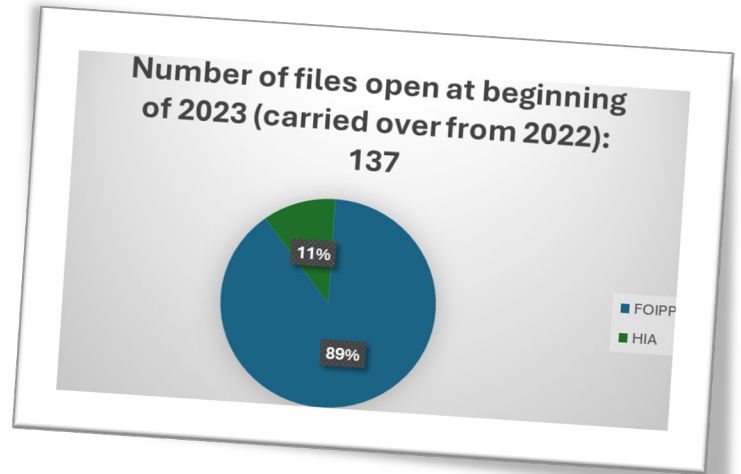
Below is a table of the types of requests for review this office received under the *HIA* in 2023:



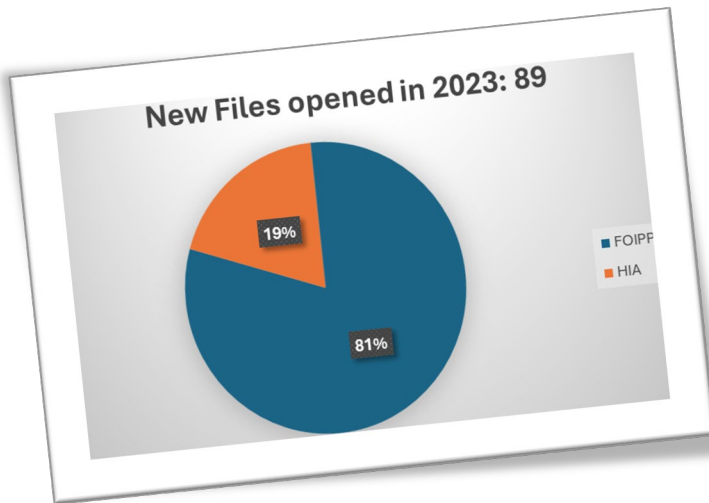


## General Statistics

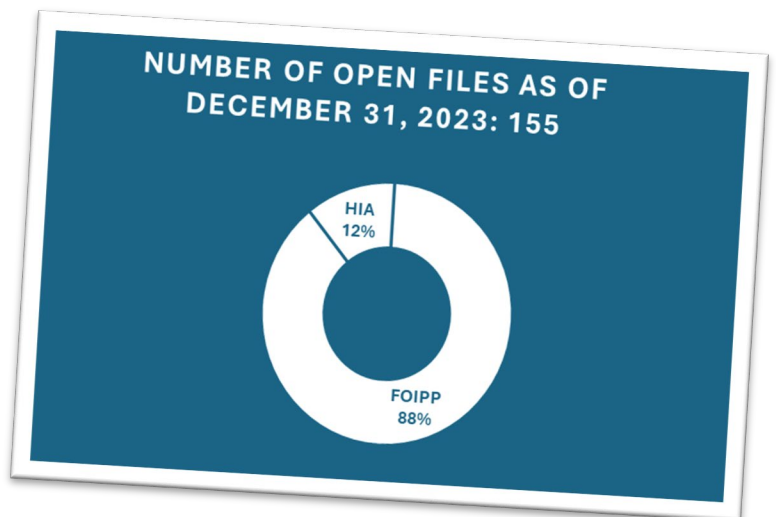
We started 2023 with 137 open files carried over from 2022. Some of these files were newly opened in 2022 and some were carried over from previous years.



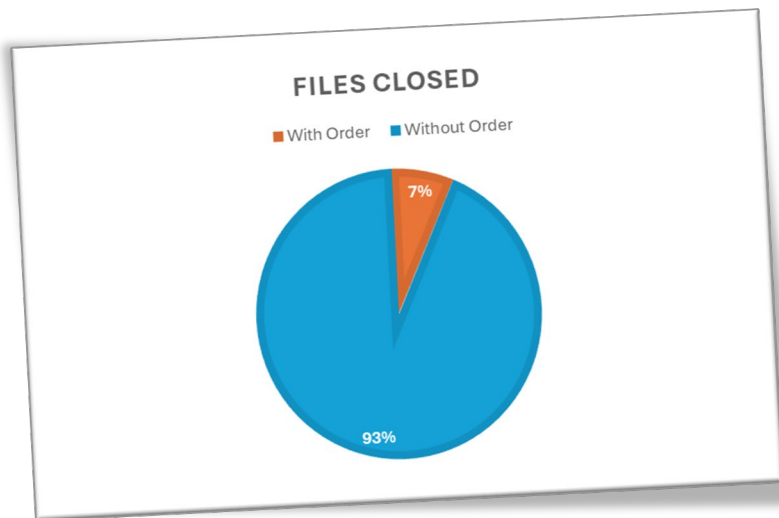
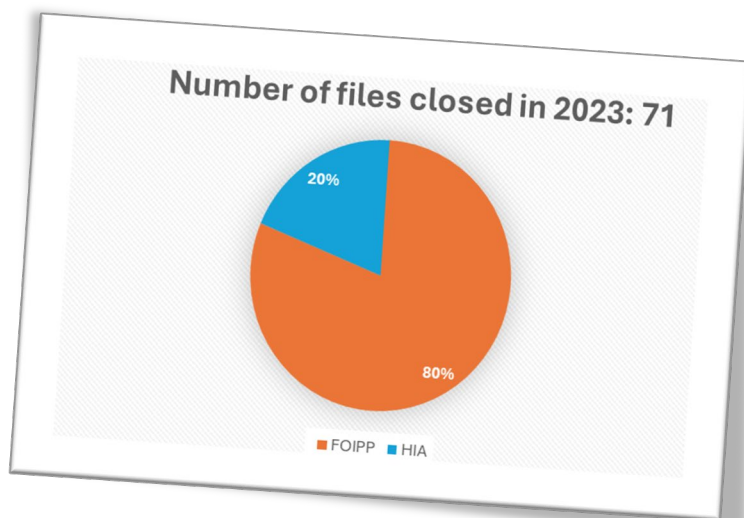
During the year, we opened 89 new review files (requests for review, privacy complaints/breach investigations, PIA reviews).



We ended 2023 with 155 open files, which were carried over to 2024



We closed 71 files in 2023, the majority of which were FOIPP-related files.



Most of the files we closed in 2023 were closed using our newly instituted early resolution process, without having to hold a full inquiry and issue orders. We issued 5 final orders and one interim order in 2023.

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