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SECRET CANADA

# Nova Scotia's freedom of information system understaffed, lacks power, watchdog says

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Tricia Ralph, Information and Privacy Commissioner for Nova Scotia, in her office in Halifax on June 22.

DARREN CALABRESE/THE GLOBE AND MAIL

Nova Scotia was the first place in Canada to pass a freedom of information law, but today the system is “barely” functioning, says the province’s Information and Privacy Commissioner Tricia Ralph.

There is a three- to four-year backlog at the commissioner’s office, which handles freedom of information (FOI) request appeals and complaints. And Ms. Ralph said there is no way to catch up without more investigators, which the province has so far refused to provide.

“We have nine staff, including me,” she said. “Newfoundland has 14 staff and they have about half of our population.”

Even once a complaint works its way through the system – and even if Ms. Ralph rules in the applicant’s favour – Nova Scotia is one of a handful of jurisdictions in Canada with a toothless appeals commission. Ms. Ralph only has the power to make recommendations – she can’t order a public institution to release records – and [52 per cent](#) of the time, the Nova Scotia government ignores the commissioner’s rulings, according to her office’s recently released annual report.

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This means FOI requesters have little recourse if a public institution refuses to follow the province's access law. It also means that Ms. Ralph's office is repeatedly bogged down by the same types of complaints.

"We say [to government], 'You gave us these arguments last time on this very similar issue. And we told you it's not valid,' and then they do it again and again," she said. "This is why I think order-making power would be beneficial."

Order-making power gives the information commissioner the ability to force a public institution to release records. The government body can refuse, but it needs to go to court and get a judge's approval – a step that's rarely taken.

When Nova Scotia Premier Tim Houston was in opposition, he pledged to bring in the power for the information commissioner to make orders. However, since he formed government in August, 2021, Mr. Houston has not followed through on this promise.

In a statement to The Globe and Mail, the Premier's press secretary Meagan Byrd said the Nova Scotia government's priority is fixing health care, but it recognizes the Freedom of Information and Protection of Privacy Act needs updating.

"An internal committee is in place to develop a plan for reviewing the FOIPOP legislation. No decision has been made about granting order powers and the decision will not be made until the review is complete," she said.

Mr. Houston is not the first political leader to pledge transparency while in opposition, only to have a change of heart once in power. Former premier Stephen McNeil did the same thing. Before the 2013 provincial election, Mr. McNeil promised, in writing, that if he became premier he would "expand the powers and mandate of the [Office of the Information and Privacy Commissioner for Nova Scotia], particularly through granting her order-making power." But once in office, he suggested to CBC News that this pledge was "[a mistake](#)," and that the commissioner's office was "functioning properly."

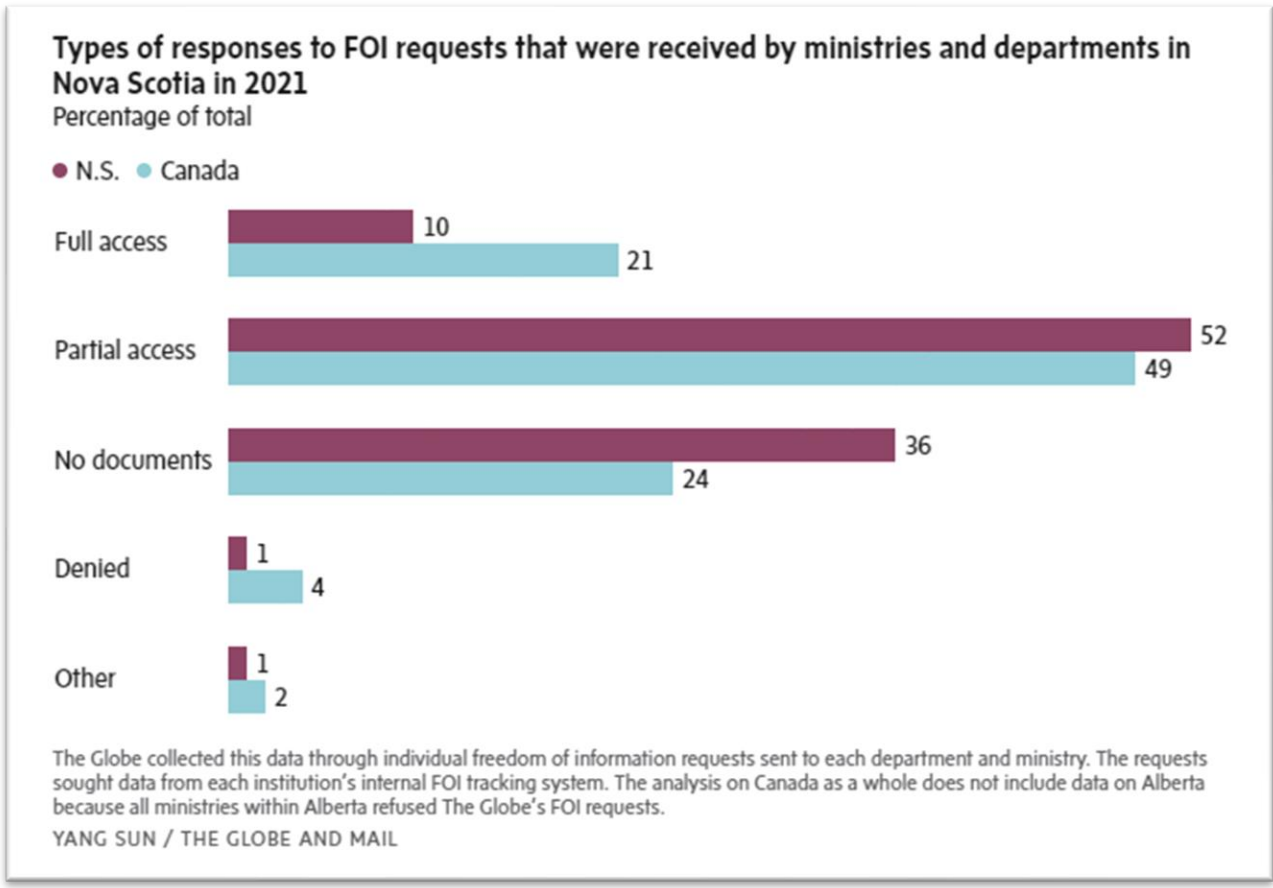
For the past 20 months, The Globe has been investigating the country's [broken freedom-of-information regime](#) in a project called [Secret Canada](#). Through more than 200 interviews, [a national audit](#) of ministry and department FOI practices and an analysis of every publicly available appeal decision from 2022, The Globe determined that every day, public institutions in this country are breaking the law when it comes to freedom of information. Across Canada, government bodies – including cities, hospitals, schools and Crown corporations – are routinely overusing redactions, violating their statutory timelines to provide records and conducting insufficient searches.



Ms. Ralph says there is no way to catch up on the backlog of cases without more investigators, which the province has so far refused to provide.

DARREN CALABRESE/THE GLOBE AND MAIL

To conduct the audit, FOI requests were sent to 253 ministries and departments in Canada for access to data from each jurisdiction's FOI-tracking system. Nova Scotia provided information for 19 ministries. The data showed that only 62 per cent of FOI requests receive records back and, of those, about 85 per cent are redacted in some way. This is one of the worst records in the country.



With respect to appeals, Nova Scotia's Office of the Information and Privacy Commissioner dealt with 16 cases that went to adjudication. (More than 80 per cent of complaints are dealt with through an informal resolution process.) Wrongdoing was found on the part of the public institution in the vast majority of cases, including the overuse of redactions, timeline violations and improper record-keeping.

Ms. Ralph's lack of order-making power played prominently [in a case](#) involving a small municipality called St. Mary's. In this case, an individual had filed an FOI request for the salaries of city employees. The municipality rejected the request, citing an exemption that protects personal information, and the individual filed a complaint. But St. Mary's ignored the appeal and didn't present its case. In a letter to the commission, officials explained: "it is highly unlikely the Municipal decision will change regardless of the outcome of the review by OPIC (sic)."

In her decision, Ms. Ralph wrote: "This disregard for the recommendation-making model demonstrates why amendments to the legislation are so desperately required." (Without the municipality's representations – the city bears the burden of proof to explain why the exemption is appropriate – the commissioner recommended the salary information be released.)

The Globe reached out to St Mary's for comment but did not receive a response.

Fred Vallance-Jones is the director of journalism at the University of King's College in Halifax and an award-winning investigative reporter. He currently has 13 complaints with the appeals commission that are from 2020.

“The system here is utterly broken,” he said.

Mr. Vallance-Jones said the FOI process works well enough if the request is for basic, innocuous documents. (The Globe's audit showed Nova Scotia had one of the fastest average response times, with the average request being closed in 38 days.) But if a request is complicated or remotely controversial, that's where there's trouble. And things seem to be getting worse, he said.

For example, in 2020, he and some students filed 13 FOI requests for copies of government gaming agreements. The province denied them for multiple exemptions, including a section that protects information that could be financially detrimental to Nova Scotia. But curiously, he said, he and the students filed nearly identical requests for a 2010 investigation – and most of those were granted without issue.

(The project that came out of that reporting won a Canadian Association of Journalists' investigative reporting award.)

For Ms. Ralph, what is especially frustrating is that much of the information being kept hidden isn't especially embarrassing.

“But the fact that you withheld it makes people naturally think, ‘well, there must be something there.’ And a lot of times there's not, but the sheer fact of doing that creates that sentiment,” she said.

“Transparency really underpins the foundations of democracy... it's easy for people to be caught up in conspiracy theories or think something is going on if their government is not being transparent with them.”

## NOVA SCOTIA'S FOI REPORT CARD

	FOI REQUESTS RECEIVED IN 2021	AVERAGE DAYS TO CLOSE A REQUEST	PERCENTAGE OF REQUESTS GRANTED WITH SOME ACCESS
Department of Advanced Education	9	57	100
Department of Agriculture	18	87	73
Department of Communities, Culture, Tourism and Heritage	27	98	N/A
Department of Community Services	377	44	91
Department of Economic Development	24	103	69
Department of Education and Early Childhood Development	60	61	71
Department of Environment and Climate Change	1,213	24	45
Department of Finance and Treasury Board	23	39	50
Department of Fisheries and Aquaculture	25	119	59
Department of Health and Wellness	340	52	74
Department of Intergovernmental Affairs	5	31	100
Department of Justice	304	44	70

Department of Labour, Skills and Immigration	77	52	87
Department of Municipal Affairs and Housing	87	60	81
Department of Natural Resources and Renewables	86	48	84
Public Service Commission	18	42	93
Department of Public Works	96	59	73
Department of Seniors and Long-term Care	8	62	100
Department of Service Nova Scotia and Internal Services	55	53	93
Nova Scotia	2,852	38	62
Canada	71,188	55	58

The Globe collected this data through individual freedom of information requests sent to each department and ministry. The requests brought data from each institution's internal FOI tracking system. The field entitled "percentage of requests granted with some access," represents FOI requests that received both full access and partial access. The numbers included in this audit are what was provided to The Globe and may not represent all FOIs sent to each institution. (For example, some institutions may have not included personal records requests.) Also, during the requested time period, some ministries may have changed their names or merged with other ministries. Finally, "N/A" indicates that the data provided by the ministry or department did not include enough information for The Globe to calculate the figure. A handful of institutions did not respond in time. All ministries within Alberta refused The Globe's FOI requests.

YANG SUN / THE GLOBE AND MAIL





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