



OMBUD NB
N.-B.

LISTEN . REVIEW . RESPOND . ÉCOUTER . ÉTUDIER . CLARIFIER .

**Annual Report
2019 - 2021**

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February 18, 2022

Mr. Shayne Davies
Clerk
Legislative Assembly
Province of New Brunswick
Fredericton, NB

Sir:

Pursuant to Subsection 25(1) of the *Ombud Act*, Section 36 of the *Civil Service Act* and Section 30 of the *Public Interest Disclosure Act*, I am pleased to present, on behalf of my predecessor, the Forty-eighth Annual Report of the Ombud for the period of April 1, 2019 to March 31, 2021.

Respectfully submitted,



Marie-France Pelletier

Ombud



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Statutory Responsibilities

The Office of the Ombud in New Brunswick has a broad legislated jurisdiction under the *Ombud Act*, as well as significant compliance and administrative responsibility and fairness in the public sector.

The Office of the Ombud currently has responsibilities under six Statutes.

1. *Ombud Act*
2. *Civil Service Act*
3. *Archives Act*
4. *Public Interest Disclosure Act*
5. *Right to Information and Protection of Privacy Act*
6. *Personal Health Information Privacy and Access Act*

Office of the Ombud Goals

The Office of the Ombud is committed to the following goals:

1. To conduct independent, confidential investigations to resolve complaints.
2. To provide efficient, effective and accessible services to the public within the framework of the human and fiscal resources provided.
3. To review policies, procedures, legislation and regulations to resolve existing complaints and, where applicable, to recommend changes to improve administrative practices.
4. To initiate reviews and investigations on the Ombud's own motion, when appropriate, to ensure fairness in the delivery of public services to every New Brunswick resident.



The Ombud

The Ombud is an Officer of the Legislative Assembly and is independent of government.

The *Ombud Act* provides the authority to investigate complaints into any matter of administration. In accordance with the *Act*, all investigations are carried out in a confidential manner and information is only divulged where necessary in furtherance of the investigation. Accordingly, all files of the Office of the Ombud are confidential.

What we can do

The Ombud and his staff investigate complaints against:

- Provincial government departments
- School districts
- Regional health authorities
- Municipalities
- Crown agencies
- Other agencies responsible to the Province including:
 - Commissions
 - Boards and corporations
 - Or any other public authority as defined under the *Ombud Act*.

What we can't do

The Ombud and his staff do NOT have authority to investigate complaints concerning:

- The federal government
- Private companies and individuals
- Judges and functions of any court
- Deliberations and proceedings of the Executive Council or any committee thereof.



Performance Indicators

The Office of the Ombud measures its performance in delivering the various legislated services through a number of indicators.

Supporting our central mission

INDICATOR

The Office of the Ombud has one central mission: to ensure that all New Brunswick citizens are treated with administrative fairness by government and its agencies. Under the *Ombud Act*, the Office of the Ombud strives to guarantee that individuals are served in a consistent, fair and reasonable manner by New Brunswick Government organizations.

RESULT

Our central mission is communicated through various public and government employee education activities and speaking opportunities by the Ombud and staff, and are reinforced through the office's web page, printed material, and our Annual Report.

Providing service in an effective and efficient manner

INDICATOR

The Office of the Ombud ensures its staff members are properly trained and up to date on current events and challenges by providing the following:

- Internal training provided to new staff members
- External training sessions
- Regular staff meetings
- Reference tools such as newspapers, books, various contact numbers, websites and policies
- Sharing knowledge, training and experience within the Office
- Continued self-training is expected in such areas as:
 - The authorities with which they interact
 - Relevant law and regulation related to those authorities
 - *Ombud Act*
 - Investigative skills, techniques and technologies

RESULT

The Office of the Ombud staff members are able to address clients' concerns in a professional, knowledgeable, reliable, and timely manner.



Office Financial Information

2019-2020

	Budget (\$)	Actual (\$)
Personal Services	968,452	860,654
Other Services	87,500	79,806
Materials and Supplies	8,700	5,026
Property and Equipment	11,100	2,863
TOTAL	1,075,752	948,349

2020-2021

	Budget (\$)	Actual (\$)
Personal Services	1,302,325	1,218,557
Other Services	167,825	116,192
Materials and Supplies	8,900	5,894
Property and Equipment	22,600	14,265
TOTAL	1,501,650	1,354,909



Ombud Act

Under the *Ombud Act*, the Office of the Ombud conducts independent and confidential investigations into complaints from individuals regarding administrative matters involving provincial government departments and other related organizations such as school districts, regional health authorities and municipalities.

In 1967, the Government of New Brunswick introduced legislation creating the Office of the Ombud. The Ombud is an independent officer of the Legislative Assembly with a mandate under the New Brunswick *Ombud Act* to conduct independent investigations into the delivery of public services by government officials.

Depending upon the nature of a complaint, it is sometimes possible to resolve the complaint informally. If an investigation identifies that an administrative error or injustice has occurred, and the matter cannot be resolved informally, the *Act* provides for the Ombud to make a recommendation to the administrative head of the authority concerned.

Complaints under the Ombud Act

ACCESS

The Office of the Ombud is accessible to every person in the Province of New Brunswick. People who feel they have a problem with a provincial government agency can contact the Office in either official language.

The Office of the Ombud receives complaints in a variety of ways: by letter, by telephone, by fax, by email and by personal interview at our office or in the client's community.

COMPLAINTS

The Office of the Ombud investigates an extremely diverse cross-section of complaints related to government departments, municipalities, school districts, regional health authorities, crown agencies and other authorities responsible to the Province as defined under the *Ombud Act*.



INVESTIGATION

In accordance with the *Ombud Act*, the Office conducts independent and confidential investigations into complaints from individuals regarding administrative matters.

In conducting an investigation, staff of the Office of the Ombud may be required to critically analyze and review policies, procedures, legislation, case law, and government records. Information is also obtained from officials either through meetings or correspondence. In addition to receiving information from clients through interviews or correspondence, investigators may obtain information through site visits conducted throughout the province.

As a result of the information gathered through the investigation, the Office of the Ombud makes a finding. If, on the conclusion of the investigation, the finding supports the client's complaint, the Ombud will facilitate a resolution or, in the alternative, make a recommendation for corrective action. The Ombud does not have the authority to require the government to act, however, negotiation has proven to be very effective. Where there is insufficient evidence to establish that the complaint is justified, the investigation is discontinued and the client is advised of the results in writing.

PROVIDING INFORMATION AND REFERRALS

When a complaint is outside the Ombud's jurisdiction to investigate, the Office provides information and, where appropriate, refers individuals to other complaint mechanisms or possible sources of assistance.

Correctional Institutions

Section 13(4) of the *Ombud Act* provides that any person in custody has a right to have a letter forwarded to the Office of the Ombud unopened, thereby ensuring them the opportunity of bringing their complaints to this Office for investigation.

Inmates are provided with an orientation manual by the Department of Public Safety on admittance to each of the correctional institutions. The manual advises the inmate that the Office of the Ombud investigates complaints from individuals who feel they have been treated unjustly.



In 2019-2021 the Office received inquiries and complaints regarding a wide range of issues. Section 12 of the *Ombud Act* empowers the Office to investigate complaints “*with respect to a matter of administration,*” which the courts have interpreted broadly to include any government matter other than matters relating to the affairs of the Courts or the Legislature.

In some cases where complaints alleging a criminal assault have been brought forward, the Ombud has exercised his discretion not to investigate and has instead referred the matter to appropriate police authorities. In other instances where an inquiry or a complaint does not fall within the jurisdiction of the *Ombud Act*, individuals are referred to the appropriate body.

As inmates are within the care of the Province of New Brunswick, every complaint that is within the jurisdiction of this Office to investigate is acted upon as expeditiously as possible. This usually requires that the matter be brought to the attention of the Department of Public Safety so that the Department in addition to the correctional facility concerned are also given the opportunity to be heard.

On receiving information from both parties and in carrying out any further reviews that may be necessary, this Office concludes the investigation and the inmate is advised accordingly.

Civil Service Act

In 1994, the Civil Service Commission was amalgamated with the Office of the Ombud. Through a change to the *Civil Service Act*, the Ombud was made responsible to hear appeals and investigate complaints regarding the selections for appointment to the civil service. However, in December 2009, new amendments to the *Civil Service Act* significantly reduced the Ombud’s authority.

On December 1, 2009 substantial amendments to the *Civil Service Act* came into effect and, as a result, the way by which an appointment within the New Brunswick civil service can be reviewed or challenged has changed considerably. One of these modifications involves the basis on which a review or challenge of an appointment can be initiated by an unsuccessful candidate. Pursuant to the amended *Act*, where a candidate is screened-in for further assessment in the context of an open or closed competition but is not successful, this person may challenge an appointment “if the candidate has reason to believe that the successful candidate was appointed to the position because of favouritism” (subsection 33.1(1), *Civil Service Act*).



Favouritism is the only ground on which a complaint may be submitted to our Office pursuant to the amended *Civil Service Act* under the complaint process. Favouritism means giving preference to a candidate that is based on factors that supersede the assessment of qualifications, and that is attributable to a relationship or connection that is external to the workplace.

In accordance with established practice and the relevant provisions of the Civil Service Act, the first level of review is done by an unsuccessful candidate requesting from the department an explanation as to the reasons why they were not successful in obtaining an appointment to the vacant position. The task of responding to this request will likely be delegated to departmental human resources staff.

If an unsuccessful candidate remains unsatisfied with the initial response and once they have been notified that a person has been appointed to the position, they may, within 30 days, forward a complaint to the appropriate Deputy Minister and clearly state how they believe that the appointment of the successful candidate was based on favouritism. The Deputy Minister may choose to investigate the matter or dismiss the complaint.

Finally, if, after receiving the Deputy Minister's response to a request to have an appointment process investigated, the unsuccessful candidate remains unsatisfied, they may, within 30 days, file a complaint with the Office of the Ombud alleging that the successful candidate was appointed on the basis of favouritism.

The Office of the Ombud cannot intervene in the process before the two first steps outlined above have been taken.

In summary, the three steps available to screened-in candidate to challenge the appointment of the successful candidate to the relevant position are as follows:

- 1.** Send a written request to the HR branch of the department requesting feedback as to why they were not successful in obtaining the appointment.
- 2.** If an individual remains unsatisfied after receiving feedback from the HR branch, they can send a formal complaint to the Deputy Minister of the department which ran the competition indicating how they believe that the appointment of the successful candidate was based on favouritism.
- 3.** After receiving the response from the Deputy Minister, if the individual remains unsatisfied, they may, within 30 days, file a complaint with the Office of the Ombud.

If the Ombud investigation finds that a complaint has merit, the Ombud can make a recommendation to government. The Ombud cannot revoke an appointment.



Public Interest Disclosure Act

The *Public Interest Disclosure Act* came into force on July 1, 2008. Originally, the office of the Conflict of Interest Commissioner provided oversight for complaints under this Act. In June of 2011 amendments were made to the Act and the Office of the Ombud became responsible to receive complaints under this Act.

PURPOSE

The purpose of the Act is to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service that are potentially unlawful, dangerous to the public or injurious to the public interest and to protect people who make those disclosures. It is commonly known as ‘Whistleblower’ legislation.

WRONGDOING

Employees of the public service can contact the Ombud or the Department concerned if they feel there has been wrongdoing. Wrongdoing is defined in the Act as:

- a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;
- b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- c) gross mismanagement, including of public funds or a public asset;
- d) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (c).

If the Ombud receives a complaint from an individual who is not an employee of the Public Service, under section 23 he may forward the claim to the chief executive of that portion of the public service in respect of which the claim is made.

REPRISALS

Under the *Act*, if an employee (or former employee) feels a reprisal has been taken against him or her, they may file a complaint with the Labour and Employment Board. The Office of the Ombud is unaware of any activity under the reprisal section of the Act.



Right to Information and Protection of Privacy Act

In June 2019, amendments to New Brunswick legislation transferred the oversight responsibility for the *Right to Information and Protection of Privacy Act* and the *Personal Health Information Privacy and Access Act* from the Office of the Integrity Commissioner to the Office of the Ombud for New Brunswick.

The main purposes of the *Right to Information and Protection of Privacy Act* are set out in section 2 of the *Act* and are:

- to grant the public a right to request and receive information about how Provincial and municipal entities (“public bodies”) conduct public business on the public’s behalf, which is only restricted by the limited and specific exceptions set out in the *Act* (Part 2 of the *Act*: Right to Information);
- to regulate how public entities collect, use, and disclose the personal information of citizens in their day-to-day operations (Part 3: Protection of Privacy);
- to grant individuals a right to request and receive their own personal information held by public bodies, which is only restricted by the limited and specific exceptions set out in the *Act* (Part 2: Right to Information);
- to grant individuals a right to request correction to their own personal information held by public bodies (Part 3: Protection of Privacy); and
- to provide an independent review of public bodies’ decisions under the *Act*, either through the Ombud’s Office or the courts (Part 5: Review).

The Personal Health Information Privacy and Access Act (the “*Act*”) is access and privacy legislation that applies to health care providers, referred to as custodians, in both public and private health sectors in New Brunswick. The main premise of this legislation is that your personal health information belongs to you, not to your health care provider.



The main purposes of the *Personal Health Information Privacy and Access Act* are set out in section 2 of the *Act* and are:

- to grant individuals a right to examine and receive a copy of their personal health information and to request the correction or amendment to their personal health information maintained by a custodian, subject to the limited and specific exceptions set out in this *Act* (Part 2: Access to Personal Health Information);
- to regulate how custodians collect, use, disclose, retain and securely destroy personal health information that protects the confidentiality of personal health information and the privacy of the individual to whom the personal health information relates (Part 4: Collection, Use and Disclosure of Personal Health Information);
- to facilitate the effective provision of care, planning and management of the health care system;
- to set up tools to ensure the accountability of persons who handle personal health information and to set up tools to protect the security and reliability of the information they handle;
- to provide for an independent review and custodians' decisions under the *Act*, either through the Commissioner's Office or the courts (Part 6: Review); and
- to provide effective remedies for violations of this *Act*.





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STATISTICS
2019 - 2021

Types of Complaints by Department

The following tables provide the number of complaints by type and by department investigated in the year 2019-2021. In consideration of the confidentiality provisions of the *Ombud Act*, **only those departments with more than 10 complaints are set out in the tables below.**

Correctional Institutions		
Health Issues	2019-2020	2020-2021
Assault/Abuse - Physical, Sexual, etc.	1	3
Dental	4	2
Glasses, Eye Care	-	2
Medical Appliance	12	5
Mental Health	12	8
Prescriptions Requested or Denied	35	33
Request to go to Hospital	-	1
Request to see Nurse/Doctor	22	14
Subtotal	86	68

Living Conditions		
Cleanliness	7	3
Clothing and Bedding	5	5
Food	11	8
Heat and Ventilation	-	1
Maintenance and Repairs	1	1
Subtotal	24	18



Others		
Abandoned by Inmate	2	-
Administration	8	9
Classification/Transfer	11	9
Contraband	-	1
Correspondence	4	3
Courts	4	4
Discipline	4	5
Official Language-Service	-	1
Personal/Inmate Property	13	17
Physiotherapy	1	-
Placement within Institution	18	26
Program Privileges	15	8
Recreation	7	6
Request Form	-	3
Requests for Items Denied	2	1
Segregation	11	7
Sentence / Remission Calculation	1	3
Staff Conduct and Department	7	2
Telephone Use	5	7
Temporary Absence Program	9	7
Threatened by Other Inmates	1	3
Use of Force	-	3
Use of Restraints	-	2
Visiting Privileges	1	5
Other (includes Non-Jurisdiction & Inquiry)	54	55
Subtotal	178	186
TOTAL	288	272



Public Safety		
	2019-2020	2020-2021
Administration	6	3
Complaints Regarding Staff	42	33
Coroner Services	3	-
Emergency Measures	1	3
Employment	2	1
Permits / Licenses	9	10
Victim Services	4	-
Others (includes Non-Jurisdiction & Inquiry)	32	21
TOTAL	99	71

Social Development		
Income Assistance Benefits	2019-2020	2020-2021
Amount/Calculation	6	5
Delay	8	2
Denied	20	8
Discontinued/Reduced	15	16
Eligibility Criteria	13	4
Long Term Needs	6	3
Repayment	8	4
Subtotal	76	42



Housing Unit		
Availability	15	13
Evictions	9	6
Inspections	2	-
Loans - Grants	5	2
Repairs	10	7
Tenant Rights	3	3
Transfers	6	4
Subtotal	50	35

Others		
Administration	4	9
Adoption	2	1
Appeal Board	2	-
Appeal Process	3	1
Complaints Regarding Staff	7	5
Employment	3	1
Health Card	2	3
Heat Supplement	3	-
Medical Issues	1	-
Nursing Homes/Residential Services	14	9
Protection Services	6	8
Other (includes Non-Jurisdiction & Inquiry)	27	30
TOTAL	200	144



Health		
	2019-2020	2020-2021
Addiction Services	-	1
Administration	18	20
Complaints regarding Staff	74	42
Employment	-	1
Extra Mural Services	-	1
Hospital Employment	4	-
Harassment Employment	-	1
Medicare	13	20
Mental Health	7	14
Placement Services	1	4
Public Health	1	1
Treatment	1	2
Medical Treatment	24	13
Admission-Discharge	9	16
Others (includes Non-Jurisdiction & Inquiry)	81	91
TOTAL	233	227

Justice and Attorney General		
	2019-2020	2020-2021
Administration	4	4
Complaint Regarding Staff	-	2
Support Payment and Orders	6	7
Others (includes Non-Jurisdiction & Inquiry)	22	5
TOTAL	32	18



Worksafe NB

Compensation	2019-2020	2020-2021
Amount/Calculation	9	4
Discontinued/Reduced	28	8
Subtotal	37	12

Others		
Administration	14	2
Appeals Tribunal	5	4
Claim Denied	12	16
Complaints Regarding Staff	10	2
Deeming	-	-
Health & Safety	1	1
Long Term Disability	1	1
Employability Assessments	-	2
Employment	1	-
Medical Payments	3	-
Medical Rehabilitation	2	-
Permanent Partial Impairment	1	-
Retraining	-	-
Others (includes Non-Jurisdiction & Inquiry)	15	13
TOTAL	102	53



NB Power Corporation		
	2019-2020	2020-2021
Administration	-	1
Billing-Amount / Calculation	8	1
Complaints Regarding Staff	2	-
Damage Claims	5	2
Disconnection	15	2
Employment	3	-
Payment Schedules	4	1
Security Deposit	1	1
Service Issues	3	1
Other (includes Non-Jurisdiction & Inquiry)	7	6
TOTAL	48	15

Education / School Districts		
	2019-2020	2020-2021
Bulling	-	1
Access to School Records	-	1
Administration	2	3
Appeal Process	1	-
Children with Special needs	1	-
Complaints Regarding Staff	1	-
Curriculum - testing	-	1
Employment	1	3
French Program	1	-
Home Schooling	-	1
Suspensions	-	1
Transportation	1	1
Others (includes Non-Jurisdiction & Inquiry)	7	6
TOTAL	15	18



Transportation		
	2019-2020	2020-2021
Access - Right of Way	1	5
Administration	1	1
Complaints Regarding Staff	1	2
Damage Claims	4	1
Employment	5	3
Expropriation Procedures	1	-
Highway Signage		
Property Issues	3	3
Road/Bridge Maintenance	3	5
Others (includes Non-Jurisdiction & Inquiry)	4	2
TOTAL	23	22

Municipalities		
	2019-2020	2020-2021
Administration	1	6
Complaints Regarding Staff	1	7
Employment	1	1
Municipal Bylaws	6	9
Permits-Licenses	1	1
Property Issues	3	1
Right to Information	-	2
Roads / Streets	1	1
Services	1	1
Water/Sewage	3	1
Zoning	-	3
Others (includes Non-Jurisdiction & Inquiry)	5	8
TOTAL	23	41



Service New Brunswick

	2019-2020	2020-2021
Administration	-	3
Complaint Regarding Staff	3	4
Employment	2	1
Permits/Licenses	8	4
Property Assessment	2	6
Property Assessment - Appeal Procedures	2	3
Registry Office - Procedures	-	-
Residential Tenancies Tribunal	34	59
Vital Statistics	1	1
Other (includes Non-Jurisdiction & Inquiry)	3	12
TOTAL	54	93

Post-Secondary Education and Training

	2019-2020	2020-2021
Administration	4	2
Community College - Admissions Procedures	1	-
Community College - Others	1	1
Community College - Programs	2	-
Complaint Regarding Staff	3	-
Employment Programs	2	1
Grants-Loans	2	-
Permits - Licenses - Certificates	-	1
Student Loans	4	2
Others (includes Non-Jurisdiction & Inquiry)	5	5
TOTAL	24	12



Outcome of Complaints by Department 2019-2020

(Outcome of Complaints within Jurisdiction which does not include inquiries or non-jurisdiction complaints or complaints still under investigation at year end)

Departments/ Agencies	Total	Assistance Rendered	Recommendation Made	Referral Given/ Clarification Provided	Not Substantiated	Discontinued by Client/ Ombudsman
Public Safety & Corrections	322	46	1	88	36	151
Social Development	135	15	-	47	23	50
Health	162	12	3	79	23	50
NB Power Corporation	38	17	-	7	6	8
Post-Secondary Education, Training and Labour	15	2	-	7	2	4
Service New Brunswick	45	3	-	17	6	19
Municipalities	13	1	-	2	3	7
Transportation and Infrastructure	17	1	-	7	3	6
Worksafe NB	78	6	-	48	4	20
Other**	137	6	-	68	12	51
Total	962	109	4	370	113	366

**This number includes departments/agencies with 10 or less complaints during 2019-2020. This number includes investigations which were continued from the previous years.



Outcome of Complaints by Department 2020-2021

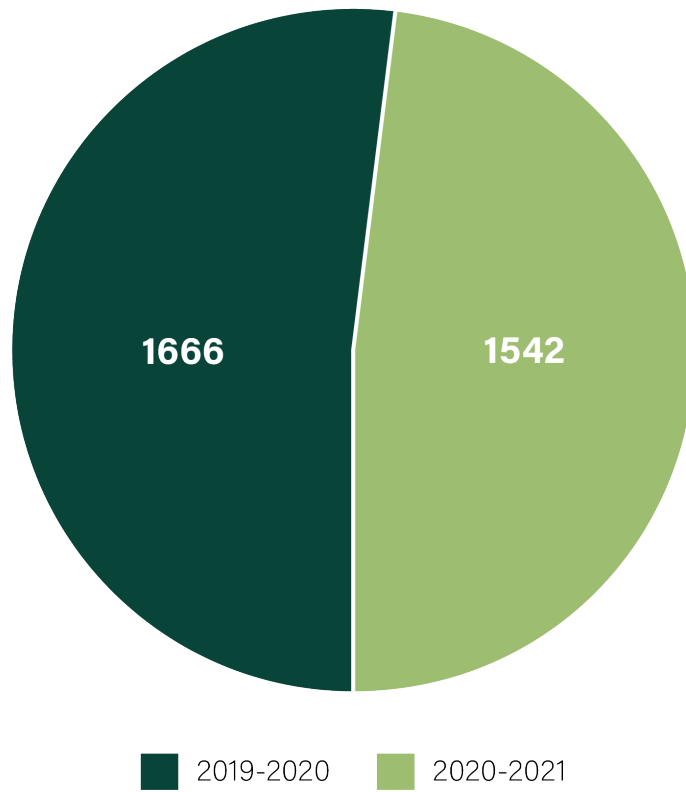
(Outcome of Complaints within Jurisdiction which does not include inquiries or non-jurisdiction complaints or complaints still under investigation at year end)

Departments/ Agencies	Total	Assistance Rendered	Recommendation Made	Referral Given/ Clarification Provided	Not Substantiated	Discontinued by Client/ Ombudsman
	280	26	2	70	55	127
Social Development	110	18	1	42	30	19
Health	130	9	1	76	23	21
Worksafe NB	48	1	-	29	4	14
Service New Brunswick	74	7	-	34	7	26
Municipalities	28	6	-	5	10	7
Transportation and Infrastructure	16	-	-	4	6	6
Education	14	1	-	7	1	5
Other**	207	8	-	109	21	69
Total	907	76	4	376	157	294

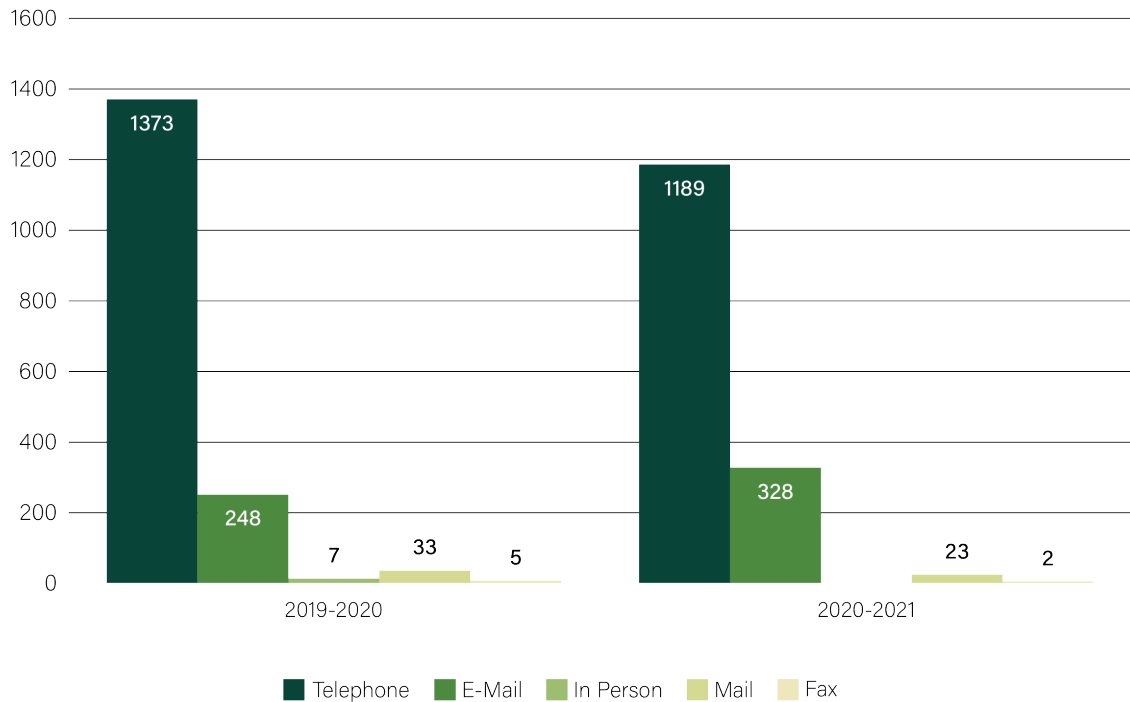
**This number includes Departments/agencies with 10 or less complaints during 2020-2021.
This number includes investigations which were continued from the previous years.



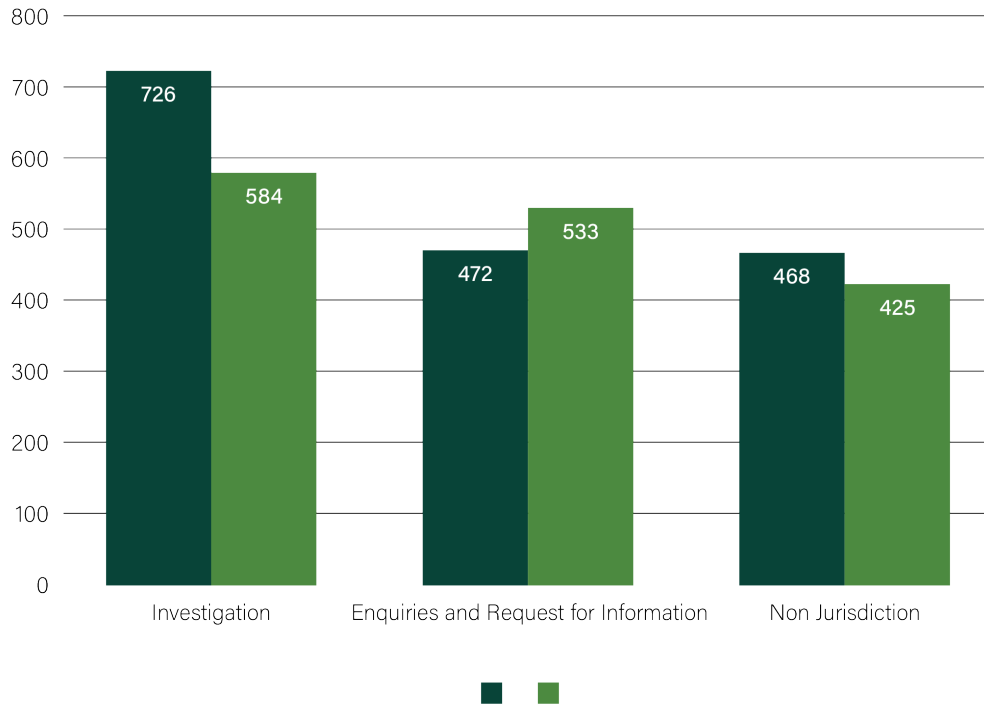
Total Number of Complaints per Year



Complaints Received by Reception Method



Complaints by Intake Type



Right to Information and Protection of Privacy Act and Personal Health Information Privacy and Access Act Statistics

2019/2020	Right to Information and Protection of Privacy Act	Personal Health Information Privacy and Access Act
Access - Content	81	6
Access – No Response	24	1
Access – Fees	-	7
Access – Self Extension	4	-
Correction	1	1
Breach Notification	20	174
Court Inquiry	2	-
General inquiry	56	29
Media	6	2
Privacy	9	1
Proposed Program/Legislation	3	1
Request to Disregard	6	-
Time Extension	32	-
Public Education	1	-
Ombud Files	12	-
Referrals	24	-
Total	280	222



2020/2021	Right to Information and Protection of Privacy Act	Personal Health Information Privacy and Access Act
Access - Content	68	5
Access – No Response	19	-
Access – Fees	-	3
Access – Self Extension	2	-
Correction	1	-
Breach Notification	8	92
Court Inquiry	1	-
General inquiry	51	14
Media	4	-
Privacy	14	3
Proposed Program/Legislation	2	1
Request to Disregard	-	-
Time Extension	18	-
Public Education	-	-
Ombud Files	2	-
Referrals	9	-
Total	199	119

Total Files

