



ombud

NEW BRUNSWICK • NOUVEAU-BRUNSWICK

ANNUAL REPORT

2021 • 2022



November 1, 2022

SHAYNE DAVIES

Clerk

Legislative Assembly of New Brunswick

Fredericton, New Brunswick

E3B 1C5

Mr. Davies,

Pursuant to subsection 25(1) of the Ombud Act, section 64.3 of the Right to Information and Protection of Privacy Act, section 65.3 of the Personal Health Information Privacy and Access Act, section 36 of the Civil Service Act and Section 20 of the Public Interest Disclosure Act, I am pleased to present the Annual Report of the Ombud for New Brunswick for the period from April 1, 2021 to March 31, 2022.

Respectfully submitted,



MARIE-FRANCE PELLETIER

Ombud for New Brunswick

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MESSAGE FROM THE OMBUD

On January 1, 2022, I was honoured to become New Brunswick's eighth Ombud and the second woman to occupy this position since its creation in 1967.

As I report on the past year's accomplishments, I would like to thank my predecessor, Mr. Charles Murray, for his ten years of devoted service to the position. He led the Office of the Ombud in particularly challenging times, notably during a worldwide pandemic, cumulating other legislative officer responsibilities as he did so. Much of the work included in this report is a credit to him and the outstanding members of the Ombud New Brunswick team. I am grateful to work with such dedicated employees who take the Office's mission to heart.

In 2021-2022, Ombud New Brunswick saw a nearly 25% increase in the number of administrative fairness complaints received by our Office over the previous year. The statistics we are seeing in the current fiscal year point to a continuing trend towards an increased number of contacts to our Office for assistance.

During the year, we noticed an increasing number of complaints regarding local governments, most notably with respect to: conflict of interest matters, use of closed meeting provisions, and situations where council dynamics had become difficult for individual members. Regarding closed meetings, the Ombud issued recommendations not only to local governments, but also to Regional Health Authorities on best practices involving subject matters that should or should not be considered in a closed meeting.

Complaints emanating from correctional institutions continue to represent the largest proportion of complaints to our Office. We further initiated use of force reviews following complaints from provincial inmates. These reviews allowed the Office to highlight areas of concern and promote best practices such as the importance of using effective communication techniques to de-escalate situations. The Office continues to work collaboratively with corrections officials as they work to strengthen their existing procedures. One of our reports was used by a correctional center as a case study for staff training, following an incident.

In terms of information and privacy matters, the number of access to information complaints the Office received remained comparable to the previous year. The majority of complaints received consist of “content complaints” – where the applicant is not satisfied with the information it received from a public body in response to their request – and timeliness complaints – where the public body extended a deadline to respond or did not respond at all.

We have noted an increase in the number of privacy complaints as well as self-reported privacy breaches by public bodies or custodians of personal information in the last fiscal year. Our Office worked with public bodies and custodians to encourage sound information management practices and will continue to monitor for any improvements in the coming year.

Since taking office in January, the team and I have been hard at work to reenergize and reorganize after the difficult few years experienced during the pandemic. My arrival brought with it an opportunity to rethink how we deliver on the Office’s multiple mandates.

To this end, we developed and updated our Vision, Mission and Values statements and identified the strategic goals that we will be pursuing over the next three years. These goals are to:

- **Continue to consolidate the mandates for which the Ombud is responsible**
- **Improve services offered by the Office**
- **Improve awareness of the role and responsibilities of the Ombud**
- **Share the knowledge and expertise of the Office**

This year marks the 55th anniversary of the creation of the Ombud for New Brunswick. Since 1967, Ombud New Brunswick has seen a number of changes as it adapted to a rapidly evolving public environment over the years. As we head into our 56th year of service, we will continue to strive to be agents for positive change.

Respectfully,



MARIE-FRANCE PELLETIER

Ombud for New Brunswick

VISION, MISSION AND VALUES

We are agents of positive change.

OUR VISION

Ombud New Brunswick serves as a path towards a public sector where people are treated fairly, where information is shared appropriately, and where the public service is protected from favouritism and wrongdoing.

We help find solutions.

OUR MISSION

Ombud New Brunswick assists people and public sector organizations with their concerns by conducting impartial investigations, making recommendations, and providing guidance to ensure people are treated in a consistent, fair and reasonable manner and that their rights to information and privacy are protected.

OUR VALUES

We are independent, impartial, and responsive.

Ombud New Brunswick strives to live up to the following values in the accomplishment of our work:

CONFIDENTIALITY

We conduct our investigations on a confidential basis while providing information about how public sector organizations can improve their work.

FAIRNESS

Our investigations are fair to all those involved.

IMPARTIALITY

Our investigations are impartial so that everyone can have confidence in the solutions we recommend.

INDEPENDENCE

We are free from outside influence, whether it be from politicians, media, or stakeholders.

RESPECT

We treat people with respect and dignity.

ROLES AND RESPONSIBILITIES OF THE OMBUD

The Ombud is an independent officer of the Legislative Assembly. As such, the Ombud conducts independent and confidential investigations into complaints made by individuals who believe they have been treated unfairly or their rights have been compromised. Through its work, Ombud New Brunswick supports Fairness, Transparency and Accountability within the public sector.

In certain situations, it is sometimes possible to resolve a complaint informally, ensuring that the complainants and the authorities involved achieve a mutually agreeable solution to the issues raised. If the matter cannot be resolved informally, the Ombud may choose to conduct a formal investigation and make recommendations to address the issues. In certain cases, the Ombud may also issue a public report of findings, while maintaining the confidentiality of the individuals involved.

Depending on the subject-matter of the complaint, the Ombud may investigate a number of different types of organizations.



THE OMBUD MAY INVESTIGATE COMPLAINTS INVOLVING:

- Provincial government departments
- Local governments
- School districts
- Universities
- Regional health authorities
- Agencies, boards and commissions responsible to the Province of New Brunswick
- Custodians of personal health information



THE OMBUD DOES NOT HAVE THE AUTHORITY TO INVESTIGATE COMPLAINTS INVOLVING:

- The federal government
- Private companies and individuals
- Judges and the function of any court
- Deliberations and proceedings of the Executive Council or any of its committees
- Members of the Legislative Assembly
- Legislative officers

LEGISLATIVE MANDATES

The Ombud has a broad legislated jurisdiction under six provincial statutes.

ADMINISTRATIVE FAIRNESS

The *Ombud Act* establishes the Ombud as an independent oversight body for provincial authorities such as provincial government departments, school districts, district education councils, regional health authorities, municipalities, Crown agencies, and other agencies responsible to the Province, including a number of commissions and boards. The Office of the Ombud receives and investigates complaints from members of the public who experience difficulty or feel they have been treated unfairly in their interactions with authorities. The Ombud's role is to ensure fairness in administrative processes and policies.

INFORMATION AND PRIVACY

The *Right to Information and Protection of Privacy Act* provides members of the public with the right to request information or correct information held by provincial public bodies and file complaints with the Office of the Ombud if they are not satisfied with how a public body handled their request. Public bodies also have obligations on how to handle people's personal information, and the public can ask the Ombud to investigate if they think their information has been mishandled.

The *Personal Health Information Privacy and Access Act* provides members of the public with the right to access their own personal health information held by health care providers in both the public and private sectors in New Brunswick. The public also has the right to request a correction to their personal health information in a health care provider's custody. Health care providers have obligations on how to handle personal health information and the public can ask the Ombud to investigate if they think their information has been mishandled. Additionally, health care providers are required to notify their patients/clients and the Ombud if there is a privacy breach of their personal health information.

The *Archives Act* contains the process for individuals wishing to access certain public records, which includes an application to the Public Records Committee. If the Committee denies the request to inspect the record, the individual can apply to the Ombud for a review, who will make a recommendation to either grant or deny the request.

WRONGDOING

The *Public Interest Disclosure Act* (also known as whistleblower legislation) delegates authority to investigate complaints from current employees of the public service respecting matters that are potentially unlawful, dangerous to the public or injurious to the public interest.

FAVOURITISM

Under the *Civil Service Act*, if a person has reason to believe they were not hired in a public service position because the successful candidate was appointed due to favouritism, they can make a complaint to the Secretary of the Treasury Board. If the unsuccessful candidate is not satisfied with the response of the Secretary to the Treasury Board, they can file a complaint with the Ombud.

FINANCIAL INFORMATION

FISCAL YEAR 2021-22

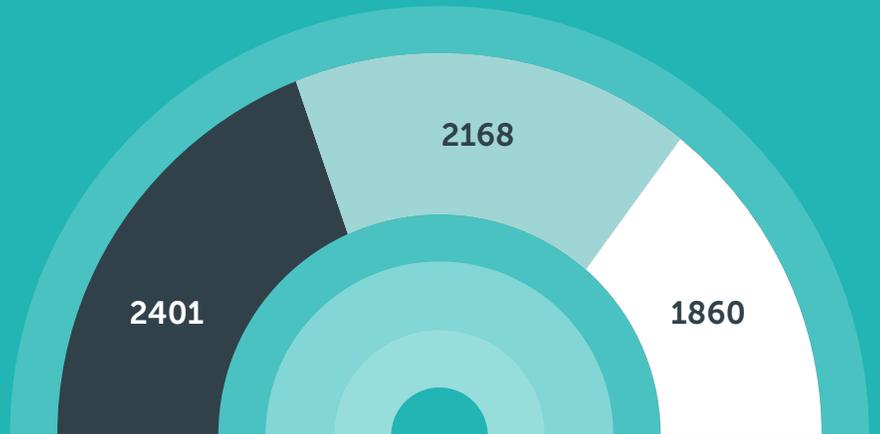
EXPENDITURE	BUDGET (\$)	ACTUAL (\$)
PERSONAL SERVICES	\$ 1,512,675.00	\$ 1,230,188.50
OTHER SERVICES	\$ 167,825.00	\$ 107,587.44
MATERIALS AND SUPPLIES	\$ 8,900.00	\$ 11,101.02
PROPERTY AND EQUIPMENT	\$ 22,600	\$ 2,870.95
TOTAL	1,712,000	1,351,747.91

OVERVIEW OF WORKLOAD VOLUMES

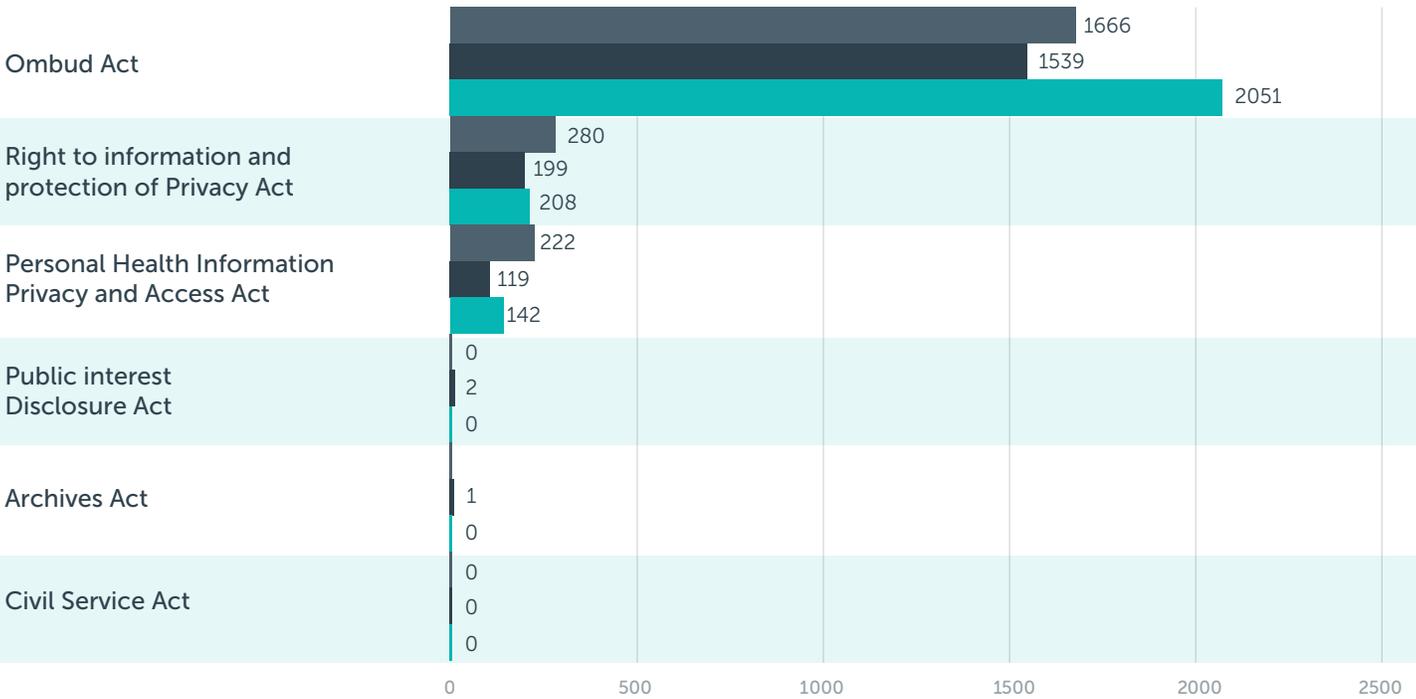
TOTAL NUMBER OF FILES

All mandates included

- 2021 - 2022
- 2020 - 2021
- 2019 - 2020



TOTAL NUMBER OF FILES BY LEGISLATION



- 2019 - 2020
- 2020 - 2021
- 2021 - 2022

CASE SUMMARIES

The inclusion of case summaries is a change to our annual reporting. Our goal is to demystify the work of the Office of the Ombud by providing examples of matters that our Office dealt with during the year. This is not an exhaustive list, but the summaries serve to better inform the public of the types of assistance that can be provided by our Office.

ADMINISTRATIVE FAIRNESS – SOCIAL DEVELOPMENT’S MEDICAL TRANSPORTATION SPECIAL BENEFIT

Our Office received a complaint from a person having trouble with accessing transportation to medical appointments. The complainant had previously received home care support services, and the support workers would drive them to medical appointments.

The complainant no longer required home support services, however the end of this service also resulted in the loss of their transportation to appointments.

Self-transportation was not an option and the complainant resided in a small community without reliable public transit. Taxi service was available, though the complainant unsuccessfully requested assistance from the Department to enable access to this service.

Our Office contacted the Department and determined that officials responsible for approving medical transportation benefits believed the complainant still received home care support services. The system had not been updated to reflect the change. Our Office explained the complainant’s current status and inquired whether the medical transportation benefit might be accessible given the lack of community transportation. The Department contacted the complainant to confirm their status and approved taxi service for transportation to medical appointments.

ADMINISTRATIVE FAIRNESS – CORRECTIONS

Approximately 30% of the complaints received by the Office are from inmates in provincial correctional facilities. The COVID-19 pandemic has been a particularly challenging time period in Corrections and inmates have relied on our Office to bring their concerns to administration.

Due to COVID-19 restrictions established by Public Health, inmates were no longer permitted to share winter coats for access to their daily yard time. Our Office received a number of calls from inmates in the winter of 2021-22, complaining about the lack of fresh air and exercise.

Corrections officials advised that they did not have enough winter coats and had been accustomed to the stock of outerwear being shared. Given the winter temperatures, it wasn't feasible to allow inmates outside with lighter clothing. Following the enquiry by our Office, Corrections determined that they should purchase additional outerwear stock to ensure an adequate supply for all inmates.

ADMINISTRATIVE FAIRNESS – USE OF CLOSED MEETINGS BY MUNICIPAL COUNCILS

Our Office has many different types of interactions with individuals who contact us for assistance. From time to time, public authorities contact our Office proactively to receive guidance in how to conduct their processes in a fair manner from the start.

This is precisely what happened when the Chief Administrative Officer (CAO) of a local municipality contacted our Office. He was interested in implementing "closed meeting" provisions for certain council meetings, but found the procedure for doing so under their municipal By-Law to be vaguely defined. Consequently, he reached out for assistance in defining clear boundaries for the use of closed meetings.

Our Office met with the CAO virtually to discuss the specifics of his question and offer suggestions on how to conduct closed meetings with fairness and transparency in mind. We explained that by-laws of a local government are subordinate to the Local Governance Act ("the LGA")

and that he should familiarize himself with the open/closed meeting provisions of that Act. The general rule, as set out in the LGA, is that meetings should be open to the public to promote accountability and transparency. There are exceptions to this rule in subsection 68(1) of the LGA. The CAO was grateful for the information provided as it helped his reflection on closed meetings.

INFORMATION AND PRIVACY – DOCUMENT SEARCH AND REDACTIONS

A complaint was made to a Department, alleging a lack of compliance with COVID-19 protocols. The persons who were the subject of the complaint filed an access to information request seeking access to all relevant records, including communications such as email, telephone calls, and text messages involving the COVID-19 compliance complainant and the Department. While the Applicants were granted partial access, the Department redacted some information under section 21(1) (unreasonable invasion of third-party privacy) of the Right to Information and Protection of Privacy Act.

Unsatisfied with the Department's response, the Applicants contacted our Office. Primarily, they questioned the redactions made to the records provided, including the identity of person(s) who made the COVID-19 compliance complaint. Furthermore, they were concerned whether the Department provided them with all relevant information as there appeared to be significant gaps in the records.

As the parties were unable to resolve the matter informally, our Office undertook a formal investigation of the complaint. Our Office found the Department's refusal to disclose personal information of third parties was proper under section 21(1) of the Act as revealing these details would be an unreasonable invasion of the other individual's privacy.

However, the Applicants raised legitimate concerns about the Department's documentation practices regarding COVID-19 compliance complaints. At the time the COVID-19 compliance complaint was made, the Department had not established a set process for these complaints and consequently did not document all relevant communications. The complaint allowed the Department to recognize the need to review its documentation practices.

Since this investigation, the Department established a new standardized process for COVID-19 compliance complaints to ensure it is able to provide accurate information upon request.

STATISTICAL INFORMATION

**ADMINISTRATIVE
FAIRNESS**

OUTCOME OF COMPLAINTS BY ORGANIZATION

Outcome of complaints within jurisdiction which does not include enquiries or non-jurisdiction complaints or complaints still under investigation at year end.

DEPARTMENTS/ AGENCIES	TOTAL	ASSISTANCE RENDERED	RECOMMENDATION MADE	CLARIFICATION PROVIDED	REFERRAL GIVEN/ NOT SUBSTANTIATED	DISCONTINUED BY CLIENT/ OMBUD
Public Safety & Corrections	399	47	1	110	62	179
Social Development	144	17	-	58	28	41
Education	23	1	-	21	-	1
Health	194	14	-	111	25	44
NB Power Corporation	22	3	-	7	9	3
Post-Secondary Education, Training and Labour	12	1	-	4	5	2
Service New Brunswick	71	4	-	35	12	20
Municipalities	27	3	1	6	11	6
Transportation and Infrastructure	20	2	-	3	3	12
WorkSafeNB	40	-	-	24	4	12
Other**	302	6	1	184	15	96
TOTAL	1254	98	3	563	174	416

**This number includes departments/agencies with 10 or less complaints during 2021-2022. This number includes investigations which were continued from the previous years.

TYPES OF COMPLAINTS BY ORGANIZATION

The following tables provide the number of complaints by type and by department/agency investigated in the year 2021-2022. 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.

 EDUCATION AND EARLY CHILDHOOD DEVELOPMENT / SCHOOL DISTRICTS	2020-2021	2021-2022
Bullying	1	-
Access to School Records	1	-
Administration	3	1
Children with Special Needs	-	2
Closing of Schools	-	2
Complaints Regarding Staff	-	2
Curriculum – testing	1	-
Employment	3	7
Home Schooling	1	-
Student Transfer	-	1
Suspensions	1	-
Transportation	1	3
Others (includes Non-jurisdiction & Enquiry)	6	12
TOTAL	18	30

 HEALTH	2020-2021	2021-2022
Addiction Services	1	-
Administration	20	15
Complaints regarding Staff	42	36
Employment	1	8
Extra Mural Services	1	1
Homemaker services	-	1
Harassment Employment	1	1
Medicare	20	19
Mental Health	14	8
Placement Services	4	3
Public Health	1	4
Treatment	2	-
Medical Treatment	13	34
Admission-Discharge	16	14
PPIA – Request information	-	3
PPIA – Complaint	-	1
Others (includes Non-Jurisdiction & Enquiry)	91	136
TOTAL	227	284

 JUSTICE AND ATTORNEY GENERAL	2020-2021	2021-2022
Administration	4	1
Complaint Regarding Staff	2	-
Support Payment and Orders	7	7
Others (includes Non-Jurisdiction & Enquiry)	5	11
TOTAL	18	19

 PUBLIC SAFETY	2020-2021	2021-2022
Administration	3	9
Complaints Regarding Staff	33	22
Emergency Measures	3	2
Employment	1	2
Permits / Licenses	10	12
Victim Services	-	1
Others (includes Non-Jurisdiction & Enquiry)	21	32
TOTAL	71	80

 CORRECTIONAL INSTITUTIONS	2020-2021	2021-2022
HEALTH ISSUES		
Assault/Abuse - Physical, Sexual, etc.	3	1
Dental	2	10
Glasses, Eye Care	2	2
Medical Appliance	5	14
Mental Health	8	9
Prescriptions Requested or Denied	33	29
Request to go to Hospital	1	1
Request to see Nurse/Doctor	14	8
Special Diet	-	2
SUBTOTAL	68	76
LIVING CONDITIONS		
Cleanliness	3	7
Clothing and Bedding	5	12
Food	8	19
Heat and Ventilation	1	2
Maintenance and Repairs	1	1
Overcrowding	-	2
SUBTOTAL	18	43
OTHERS		
Abandoned by Inmate	-	2
Administration	9	8
Classification/Transfer	9	19
Contraband	1	5
Correspondence	3	8

CONTINUED, OTHERS		
Courts	4	13
Discipline	5	-
Legal Aid	-	2
Official Language-Service	1	-
Personal/Inmate Property	17	16
Placement within Institution	26	38
Probation	-	1
Program Privileges	8	11
Recreation	6	12
Request Form	3	2
Request for House Arrest	-	1
Requests for Items Denied	1	6
Segregation	7	12
Sentence / Remission Calculation	3	2
Staff Conduct and Department	2	4
Telephone Use	7	6
Temporary Absence Program	7	4
Threatened by Other Inmates	3	-
Use of Force	3	3
Use of Restraints	2	-
Visiting Privileges	5	1
Other (includes Non-Jurisdiction & Enquiry)	55	181
SUBTOTAL	186	357
TOTAL	272	476

 MUNICIPALITIES	2020-2021	2021-2022
Administration	6	7
Complaints Regarding Staff	7	4
Employment	1	3
Municipal Bylaws	9	6
Permits-Licenses	1	5
Property Issues	1	2
Privacy	-	2
Right to Information	2	2
Roads / Streets	1	-
Services	1	-
Water / Sewage	1	3
PPIA – Request Information	-	1
Zoning	3	1
Others (includes Non-Jurisdiction & Enquiry)	8	11
TOTAL	41	47

 NB POWER CORPORATION	2020-2021	2021-2022
Administration	1	-
Billing-Amount / Calculation	1	3
Complaints Regarding Staff	-	1
Damage Claims	2	3
Disconnection	2	6
Payment Schedules	1	2
Security Deposit	1	-
Service Issues	1	1
PPIA – complaint	-	1
Other (includes Non-Jurisdiction & Enquiry)	6	7
TOTAL	15	24

 POST-SECONDARY EDUCATION, TRAINING AND LABOUR	2020-2021	2021-2022
Administration	2	2
Community College – Others	1	2
Complaint Regarding Staff	-	1
Employment Programs	1	2
Employment	-	3
Grants-Loans	-	4
Permits - Licenses – Certificates	1	-
Student Loans	2	2
Others (includes Non-Jurisdiction & Enquiry)	5	1
TOTAL	12	17

 SERVICE NEW BRUNSWICK	2020-2021	2021-2022
Administration	3	-
Complaint Regarding Staff	4	12
Employment	1	1
Permits/Licenses	4	7
Property Assessment	6	6
Property Assessment - Appeal Procedures	3	3
Registry Office – Procedures	-	1
Residential Tenancies Tribunal	59	46
Vital Statistics	1	2
Other (includes Non-Jurisdiction & Enquiry)	12	12
TOTAL	93	90

 SOCIAL DEVELOPMENT	2020-2021	2021-2022
INCOME ASSISTANCE BENEFITS		
Amount/Calculation	5	3
Delay	2	3
Denied	8	9
Discontinued/Reduced	16	21
Eligibility Criteria	4	8
Long Term Needs	3	6
Repayment	4	6
SUBTOTAL	42	56

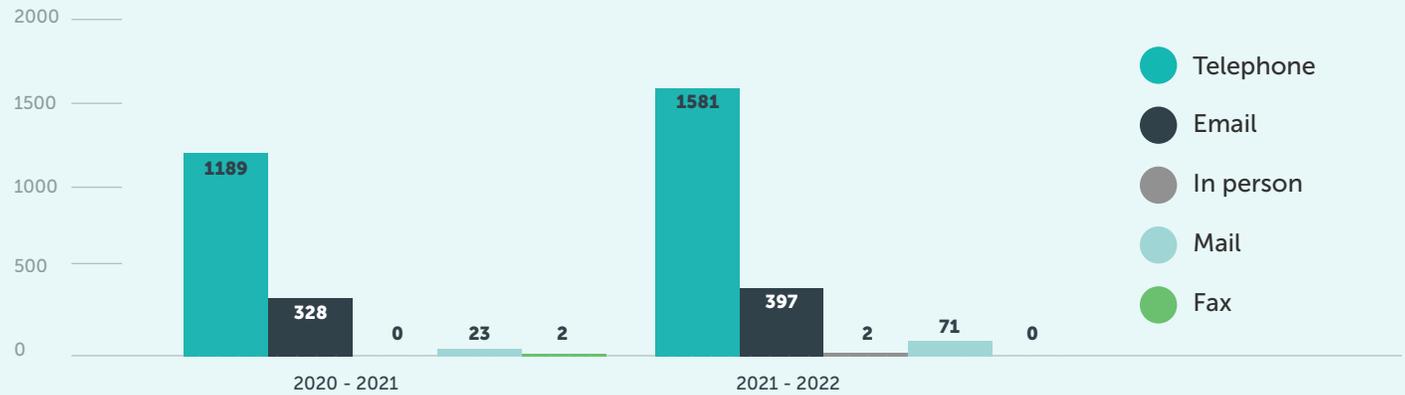
CONTINUED, SOCIAL DEVELOPMENT	2020-2021	2021-2022
HOUSING UNIT		
Availability	13	13
Evictions	6	8
Inspections	-	1
Loans – Grants	2	2
Repairs	7	11
Tenant Rights	3	1
Transfers	4	6
SUBTOTAL	35	42
OTHERS		
Administration	9	5
Adoption	1	-
Appeal Board	-	1
Appeal Process	1	2
Complaints Regarding Staff	5	11
Employment	1	1
Health Card	3	2
Medical Issues	-	1
Nursing Homes/Residential Services	9	6
Protection Services	8	9
Other (includes Non-Jurisdiction & Enquiry)	30	39
SUBTOTAL	67	77
TOTAL	144	175

 TRANSPORTATION AND INFRASTRUCTURE	2020-2021	2021-2022
Access - Right of Way	5	3
Administration	1	-
Complaints Regarding Staff	2	1
Damage Claims	1	1
Employment	3	1
Expropriation Procedures	-	1
Property Issues	3	2
Road/Bridge Maintenance	5	5
Others (includes Non-Jurisdiction & Enquiry)	2	11
TOTAL	22	25

 WORKSAFENB	2020-2021	2021-2022
COMPENSATION		
Amount / Calculation	4	5
Discontinued / Reduced	8	9
Subtotal	12	14
OTHERS		
Administration	2	3
Appeals Tribunal	4	-
Claim Denied	16	4
Complaints Regarding Staff	2	2
Health & Safety	1	-
Long Term Disability	1	2

CONTINUED, WORKSAFENB	2020-2021	2021-2022
OTHERS		
Employability Assessments	2	-
Employment	-	1
Others (includes Non-Jurisdiction & Enquiry)	13	21
SUBTOTAL	41	33
TOTAL	53	47

COMPLAINTS BY RECEPTION METHOD



COMPLAINTS BY RESOLUTION TYPE



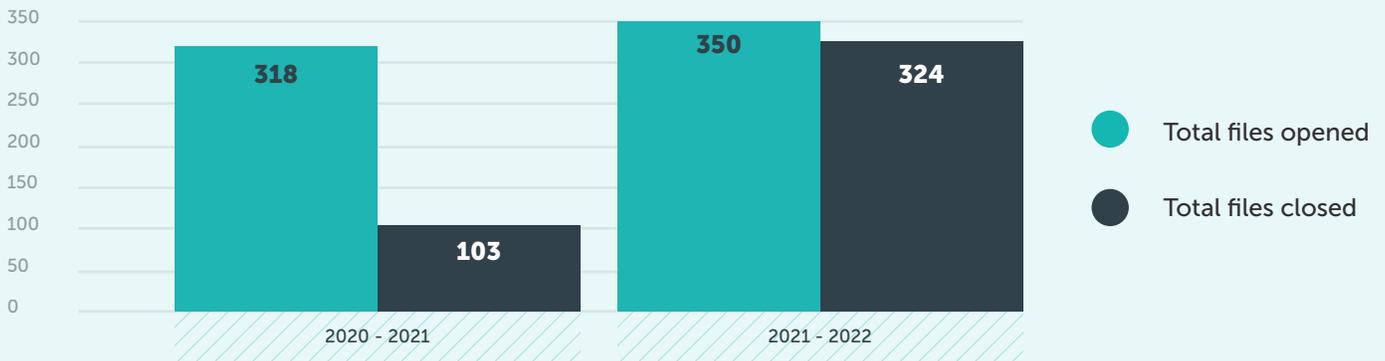
STATISTICAL INFORMATION

**INFORMATION
AND PRIVACY**

TYPES OF FILES BY LEGISLATION

2021-2022	RIGHT TO INFORMATION AND PROTECTION OF PRIVACY ACT	PERSONAL HEALTH INFORMATION PRIVACY AND ACCESS ACT
Access – Content	58	5
Access – No Response	20	2
Access – Self Extension	4	-
Breach Notification	12	118
Ombud Files	2	-
Privacy	21	14
Proposed Program/Legislation	2	2
Request to Disregard	3	-
Time Extension	6	1
Inquiries and Referrals	80	-
TOTAL	208	142

TOTAL OPENED AND CLOSED FILES





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