

June 14, 2007

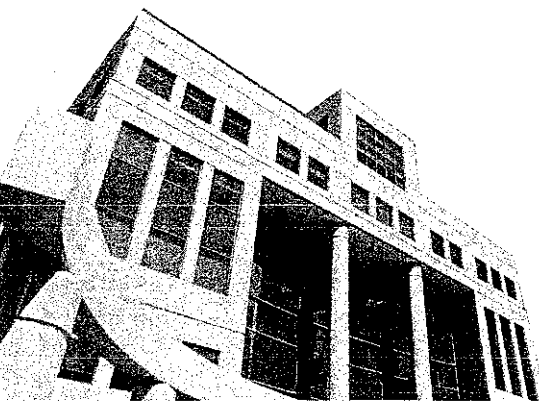
Donald Savoie  
Right to Information and Protection of Personal Information Review Task Force  
Sartain MacDonald Building, Suite 103  
P.O. Box 6000  
Fredericton, NB E3B 5H1

Dear Mr. Savoie,

I am writing in response to your letter of May 2, 2007, in which you invite the City of Moncton to participate in your review of the access to information and privacy legislation. At my request, municipal staff has studied and discussed the provided Access to Information and Privacy Review Discussion Paper and the following are our comments on some of the issues and questions raised.

The City of Moncton is committed to the principles of accountability, openness and transparency while ensuring the protection of individual's personal privacy. It is our current policy that every resident has a right to and shall, on request to the City Clerk, be given access to any record under the control of the Corporation with few exceptions. Therefore, the government's right to information and protection of personal information legislation is consistent with not only our current policy but also our belief that municipal governments should operate in as transparent a manner as is possible and practical. However, in order to provide for an independent review of decisions about the disclosure of information and possible violations of individual privacy, and to be consistent with other access and privacy legislation in other jurisdictions, we are of the opinion that a modernized version of the government's right to information and protection of personal information legislation should apply to municipalities as well as all agencies, boards and commissions that are directly accountable to them. The revised legislation should attempt to strike a balance between the public's right to know, the individual's right to privacy, and the need for local government to provide services and undertake their other functions effectively and efficiently.

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The following are additional comments we would like to provide on this issue:

- The new legislation should provide for a fair fee structure based on time spent locating the requested records and preparing the information. You may consider a fee structure that differentiates between commercial requests and general requests (members of the general public, academia, media, etc). You may also consider a separate fee structure for extremely large requests.
- A modest application fee may help to deter frivolous requests without interfering with the proper use of the Act. The government may want to consider increasing the fee in order to reflect current practice across the country.
- There may be value in having legislation to allow the head of an institution to reject the request, under reasonable grounds, if it is judged to be frivolous or vexatious. Notwithstanding, the person who made the request should have access to an appeal process through the Ombudsman for a review of the decision.
- The thirty-day deadline to fully respond to a request is appropriate, and like the province, is a current policy of the City of Moncton. However, in certain cases where a municipality concludes that it will be unable to respond within the legislated time frames, there should be a mechanism where time extensions are permitted beyond the thirty-days. The municipality would have to inform the applicant in writing that the response will exceed the thirty day time frame, specify the expected date of response, and that the applicant, if dissatisfied with the extension, can file a complaint with the Ombudsman.
- As for the protection of personal information, any new legislation should be clear about what constitutes personal information and include comprehensive rules regarding the collection, retention, use, disclosure and disposal of personal information in the municipalities' custody or control.

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Donald Savoie

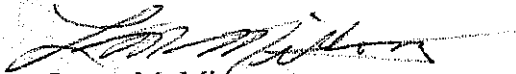
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Thank you for the opportunity to respond to the discussion paper and provide our comments on potential changes to the legislation. Expanding the scope of these legislative amendments to include municipalities is a positive measure that will encourage more openness in local government and ultimately more interest and involvement from citizens and the public. We look forward to your recommendations to the New Brunswick government on this important initiative.

Sincerely,



Lorne M. Mitton  
Mayor

c.: Members of City Council  
L.E. Strang, City Manager

Att.: Availability of Municipal Documents & Information to the Public Policy



**0209 AVAILABILITY OF MUNICIPAL DOCUMENTS**

**&**

**INFORMATION TO THE PUBLIC**

**(Issue Date: November 3, 1997)**

**0209.01 Purpose**

The City of Moncton is committed to the principles of openness and accessibility. Given these principles, every person who is a resident of the City of Moncton has a right to and shall, on request to the City Clerk, be given access to any record under the control of the Corporation of the City of Moncton with few exceptions. Records refer to information which actually exists at the time of the request, or if it does not exist, can be readily produced from a machine readable record. This Policy applies to all Agencies, Boards and Commissions which are directly accountable to the City of Moncton and which include, but are not limited to:

- Codiac Transit
- Lions Senior Citizen's Board
- Moncton Museum Board
- Mosquito and Pest Control Authority
- Resurgo Inc.
- Heritage Preservation Board
- Moncton Industrial Development
- Greater Moncton Economic Commission
- Emergency Measures Task Force
- The Commission of Three Communities
- Capitol Theatre

*(If records are not under the control of the Corporation, the applicable Agency, Board or Commission will produce the record.)*

Based on the above, the City Clerk will provide access to any record under the control of the Corporation with the exception of the following. *(Note: Where a document contains confidential information, the City Clerk may, where possible, delete the offending section and provide the document.)*

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The City Clerk will refuse to provide any record or part thereof that would:

- **Reveal City Confidences, namely,**
  - a) a draft of a resolution, by-law or other legal instrument by which the City acts; or
  - b) a record of the deliberations of a meeting of its Council or a committee of its Council meeting in camera.
- **Reveal Personal Information, namely,**

*Information that would constitute an unreasonable invasion of the privacy of a person, which includes:*

  - a) information relating to race, national or ethnic origin, mother tongue, colour, creed, health, religion or political beliefs, age, sex, sexual orientation or marital status or family status;
  - b) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities, or which was obtained on a tax return or gathered for the purpose of collecting a tax.

This is in addition to Corporate Policy 0807 that states Personnel Records are confidential documents and will only be shown to unauthorized individuals upon the agreement of the Employee. This agreement will be demonstrated by written authorization to examine/disclose contents.

- **Reveal Government Information, namely,**

*Information the City has received in confidence from a government body, agency or organization or their designates.*
- **Reveal Third Party Information, namely,**

*Information supplied in confidence, implicitly or explicitly, that if disclosed could reasonably be expected to:*

  - a) prejudice the competitive position or interfere with the contractual or other negotiations of a person, group of persons, or organization;
  - b) result in similar information no longer being supplied to the City where it is in the public interest that similar information continue to be so supplied;
  - c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

- d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations or personnel dispute.
  - e) Harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.
  - f) Reveal information of a personal or confidential nature supplied as part of a permit or license application process.
- **Reveal Law Enforcement Information**, namely,
    - a) information prepared in the course of law enforcement, inspections or investigations, which has the function of enforcing and regulating compliance with Federal and Provincial laws and Municipal by-laws and resolutions;
    - b) information the disclosed of which is prohibited by law;
    - c) information that if disclosed could reasonably be expected to expose the author of the information or any person who has been quoted or paraphrased in the information to civil liability; or
    - d) information about the history, supervision or release of a person under the control or supervision of a correctional authority.
  - **Reveal Information Soon To Be Published**, namely,  
*Information the City Clerk believes, on reasonable grounds, has been or will be made public within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.*
  - **Reveal Solicitor-Client Privilege**, namely,  
*Information that is subject to solicitor-client privilege as defined in the Canadian Barristers Association Code of Professional Conduct.*
  - **Reveal Advice or Recommendations**, namely,  
*Intra or inter departmental reports, documents and correspondence.*

**0209.01 Request Process**

**Request** – A person seeking access to a record shall make a request for access in writing to the City Clerk and shall provide sufficient detail to enable the City Clerk to identify the information.

**Sufficiency of Detail** – If the request does not sufficiently describe the information sought, the City Clerk shall inform the applicant of the deficiency.

**Notice of Extension** – While requests for information shall be handled as quickly as is possible, if a request cannot be addressed in a reasonable time-frame (30 days) the City Clerk shall give the person who made the request written notice of the extension. The notice of extension should clearly state the length and the reason for the extension.