

*RIGHT TO INFORMATION AND PROTECTION OF PERSONAL  
INFORMATION REVIEW TASK FORCE*

Access To Information And Privacy Review

**INTRODUCTION**

The following comments, made on behalf of the Department of Energy, are provided in response to the Right to Information and Protection of Personal Information Review Task Force. It is the department's intention to identify various concerns and recommend potential solutions.

**TOPICS FOR CONSIDERATION**

1) Issue:                   Role of Minister of Energy as Minister responsible for NB Power

Recommendation: Allow the Chief Executive Officer ("CEO") of NB Power to be designated as responsible for the Corporation with respect to this *Act*

The Minister of Energy is also the Minister responsible for the New Brunswick Power Distribution and Customer Service Corporation, New Brunswick Power Generation Corporation, New Brunswick Power Holding Corporation, New Brunswick Power Nuclear Corporation and the New Brunswick Power Transmission Corporation ("NB Power"), as listed in *Regulation 85-68, Schedule A*, of the *Right to Information Act ("RTIA")*. The observations presented within this document, however, are those solely of the Department of Energy. NB Power will provide their comments and recommendations by separate cover.

Upon review of various access to information acts, specifically those from the Atlantic Provinces and the Federal Government, it is evident that in the case of a government corporation or institution, the responsibility lies with the corporation "head".

It is the Department's recommendation to incorporate a similar provision within New Brunswick's *RTIA*. The Minister of Energy would retain access to information responsibility for the Department of Energy, however NB Power's CEO would assume full responsibility for the corporation with respect to this *Act*. Allowing the CEO to take on this responsibility would greatly improve the manner in which NB Power related *RTIA* requests are processed.

Under the current structure, the Minister of Energy receives any and all requests which deal with NB Power issues. The request is then forwarded to NB Power seeking assistance with the file. NB Power employees locate, retrieve and produce documents as well as, when necessary, obtain legal opinions from NB Power solicitors (i.e. documentation withheld as per section 6 of the *RTIA*). Once NB Power has completed this process, the material is sent to the Department. The Minister then responds to the applicant based on information provided by NB Power.

The deadline to respond is only 30 days under the current structure which is always a challenge to meet as two separate institutions are involved. In practical terms, it seems logical that if the applicant is looking for information kept and filed within NB Power, the request should be sent there directly.

The Department of Energy therefore recommends that a provision be added to the *RTIA* which modifies the existing definition of “appropriate minister” incorporating a definition of “head” similar to what is found in various provincial access to information acts.

2) Issue: Energy and Utilities Board (“Board”)

Recommendation: Clearly define the applicability of the *RTIA* to the Board

Within the current legislation there appears to be some ambiguity respecting the Board’s applicability to the *RTIA*.

It could be argued that the Board is captured in the definition of “department” as per *(c) any other branch of the public service*, however it is funded primarily by the industries it regulates and does not receive financial support from the provincial government. It is therefore questionable whether or not this definition applies to the Board.

If it is the intent for the Board to be subject to the *RTIA*, then the definition of “department” should be amended to allow for its inclusion.

In addition, *Schedule A of New Brunswick Regulation 85-68* presently lists the Board as the Board of Commissioners of Public Utilities. This should be updated to reflect the new name which is the Energy and Utilities Board.

3) Issue: General Administration / Process

a) Recommendation: Provide for practical limits on information requested

Within the Access to Information and Privacy Review Discussion Paper, several questions were presented for consideration. We have identified a few for comment.

*1.3 A request under the Right to Information Act can be for one page or records of over a million pages....In your experience, has the lack of similar limitation in the New Brunswick legislation been problematic? Would you favour legislature amendments in support of such limitation? Is so, which ones? In your view, what should be the criteria?*

Comments:

Practical limitations should be considered. Issues such as the time spent researching, gathering and producing information as well as the cost associated with these activities should be a factor. The Minister of Energy, on numerous occasions, has received requests which have not been specific in nature. It has been necessary for the Minister to contact the applicant to seek clarification as per subsection 3(2) of the *RTIA*. In these cases, response time would have improved if there had been practical limits placed on the requests.

The Department of Energy supports any amendments to the *RTIA* which would provide for practical limits on the information requested to allow departments the ability to respond in an appropriate and expeditious manner.

b) Recommendation: Allow response time to be extended for multiple concurrent requests

*3.4 Currently there are no limits on the number of requests that one person or organization can make to any institution at any time. Should the Act limit the number of requests from a single requester to be processed at one time? By one institution? Within a year?*

Comments:

The Department of Energy recommends the adoption of a policy similar to that adopted in other jurisdictions allowing response time to be extended for multiple requests.

c) Recommendation: Limit requests to one subject matter per application

Currently there is nothing set out in the *Act* which limits the request itself. The current practice hinders the department's ability to effectively respond to the request. While we may be able to quickly respond to one subject, others may take longer to investigate and gather information. This holds up the entire process, thereby preventing the Minister from responding within the prescribed timeframe. Limiting requests to one subject matter per application would improve the process.

The Department of Energy recommends that the *RTIA* be amended to include a limitation to only one subject matter per application.

d) Recommendation: Continue to charge an application fee

*3.5 ...Do you think government should continue to charge an application fee for each information request?*

Comments:

The Department of Energy is in favour of government continuing to charge an application fee for each information request. Consideration should be given to increasing the application fee to better reflect the costs involved in researching, gathering and copying the information requested.

4) Issue: Administration

a) Recommendation: Develop standard application forms

*5.1 What do you think could be done to improve the application process that would be simpler for applicants to make clear and complete requests for information?*

Comments:

The Department of Energy would support the introduction of a standard *RTIA* application form as it would provide a consistent format across government and assist the applicant. Possibilities may be an internet-based application form as well as hard copies made available and provided to applicants upon request.

b) Recommendation: Provide for granting of extensions

*5.2 If some kind of flexibility is built into the legislation that would allow the time for responding to an information request to go beyond 30 days, what kinds of limits should be put in place to make sure that responses continue to be provided in a timely fashion?*

Comments:

Extending the time limit for responding to requests should be incorporated. This is a common practice in jurisdictions such as PEI, Nova Scotia and Newfoundland, as well as with the Federal Government as indicated in the *Access to Information Act*.

In addition, consideration should be given as to how to handle requests within the time limit. For instance, should a department begin to process a request if the initial fee has not been collected? Should the "clock stop" while seeking clarification from the applicant, only to begin again once clarification has been received?

The Department of Energy is in favour of providing a mechanism by which extensions are permitted. This could be similar to that of other jurisdictions, with provision for a 30-day extension.

5) Issue: Privacy

a) Recommendation: Specify that written notice should be given to third parties prior to releasing information

*6.1 Should government be required to consult with third parties before they release information even if it could delay the release of the requested information by at least a month?*

Comments:

The Department of Energy would support adding a stipulation to the *RTIA* which would require giving written notice to third parties when considering the disclosure of information provided by them.

b) Recommendation: Provide restrictions to information that must be supplied, similar to that set out in Manitoba legislation

*6.2 Do the restrictions set out in the Manitoba legislation provide a reasonable balance between the expectation of confidentiality by business and the need for government to remain open and transparent about its business dealings? If New Brunswick were to adopt this type of legislation, what concerns or improvements, if any, would you have to the approach that Manitoba has taken?*

Comments:

Upon review of subsection 18(1) of the Manitoba legislation, the Department of Energy would support adding such a condition to the *RTIA*.

6) Issue: Protection of Personal Information Exemptions

Recommendation: Ensure that names of individuals are protected from disclosure

During the past year, The Court of Queen's Bench of New Brunswick has provided rulings with respect to the general practice of deleting names of government officials. They are as follows:

- ◆ *Barnett vs. New Brunswick (Minister of Family and Community Services) [2006] N.B.J. No. 534 (Q.B. Riordon J.)*
- ◆ *Matthew T. Hayes vs. Minister of Intergovernmental Affairs and International Relations et. al.*, unreported decision dated February 5, 2007 (2007 NBQB 047)(Q.B., Grant J.)

The ruling in these two cases upheld the redaction of names as personal information in accordance with section 6(b) of the *RTIA*.

The Department of Energy recommends that the *RTIA* be strengthened to include a provision to ensure that names or identifiable information of individuals are not subject to disclosure.