

**ACCESS TO INFORMATION AND  
PRIVACY REVIEW**

**DISCUSSION PAPER**

**2007**

**JUNE 15, 2007**

## Answers (to the Questions)

### 1. The Context

1.1. What type of information does the government hold that would be of interest to you/your organization/your business in the future? What method would you prefer to use to access this information?	N/A
1.2. What type of information do you think should be routinely available from the government without a request under the <i>Right to Information Act</i> ?	<ul style="list-style-type: none"><li>• Information about programs and services</li><li>• Lists of license holders</li><li>• Statistical Information</li></ul>
1.3. A request under the <i>Right to Information Act</i> can be for one page of records or over a million pages. The access to information legislation in many countries provides for practical limits on a citizen's right of access, such as excessive costs to the taxpayers of providing the information, the undue disruption of governmental operations or repetitive requests. 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 limitations? If so, which ones? In your view, what should be the criteria?	<p><b>Has the lack of similar limitation in the New Brunswick legislation been problematic?</b></p> <p>Yes - Because all requests require some work to prepare a response, the processing fee of \$5.00 for each request is appropriate and should be deposited regardless of whether any information is released.</p> <p>The most problematic requests in our experience have involved applicants who want "all documents" on a certain subject. Some requests have also presented a long list of requests under the guise of a single request ("all documents on the following subjects"). These requests have tended to come from opposition MLAs, the media and lawyers.</p>

**Would you favour legislature amendments in support of such limitations? If so, which ones? In your view, what should be the criteria?**

Yes - We believe this problem could be addressed through an appropriate schedule of fees:

- \$5.00 for the request
- Routine Information - Free
- Research time must be reflected in the fee charged for the request
- A reasonable amount of research time should be free - we suggest 5 hours
- Under 5 hours of research, only the cost of copying should be charged to the applicant
- Over 5 hours, at least \$10 per hour should be charged, plus the cost of copying
- Copying fees totalling less than \$5 should be waived

## 2. Scope of the *Right to Information Act* - Institutions

The list of government institutions covered by the *Right to Information Act* is attached.

2.1. In your view, is the current coverage of institutions under the <i>Right to Information Act</i> adequate?	No
2.2. What criteria should be used to determine whether or not an institution would be subject to the <i>Act</i> ?	All institutions which are publicly funded should be subject to the <i>Right to Information Act</i> .
2.3. By what mechanism should institutions be added or removed from the list of those subject to the <i>Act</i> ? (For example, legislation would require approval from the Legislative Assembly, while regulations would require only Cabinet approval.)	Legislation
2.4. Should the <i>Act</i> include municipalities?	Yes
2.5. Should the <i>Act</i> include universities?	Unsure. Institutions which are only partially financed through public funds are a difficult "grey area".
2.6. Should the <i>Act</i> include policing agencies (the federal law already applies to the RCMP)?	Yes
2.7. Should the <i>Act</i> include other government agencies, boards and commissions? Please identify.	Yes, all publicly funded institutions should be subject to the <i>Act</i> .

### 3. Access Process

<p>3.1. Do you think the processes for making and responding to requests under the <i>Act</i> could be made easier and more effective? How?</p>	<ul style="list-style-type: none"> <li>• Educating the public on how to use the <i>Right to Information Act</i> properly would make the process easier and more satisfying for everybody.</li> <li>• Perhaps orientation meetings could be provided to the media and staff from the opposition office to explain what they can receive <u>without</u> going through this process, and also how to properly request information under the <i>Act</i>.</li> <li>• Create a request form.</li> <li>• Prepare a list of all routine business information and make it available online.</li> </ul>
<p>3.2. Are there ways to reduce the costs of processing access to information requests? Are there ways to make the process more efficient?</p>	<p>Routine business information should be put online.</p>
<p>3.3. Currently all requests are treated the same, whether the results are for personal use, commercial use or a public interest use. Should different categories of requests or requesters be treated differently under the <i>Act</i>? (For example: general public/MLAs/commercial/users/media/non-profit/associations/professional requesters who sell the information.) If so, what criteria should be used to distinguish between requesters? And what different treatment should they receive?</p>	<p>All requests should be treated equally, and should follow a fee schedule which includes research time and copies.</p>

<p>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 <i>Act</i> limit the number of requests from a single requester to be processed at one time? By one institution? Within a year?</p>	<p>The government should not limit the number of requests per individual.</p> <p>That said, the time limits for responding to <u>multiple</u> requests from a person or organization should be flexible. For example, if every member of the opposition filed one or more requests in a short time period, the Act should allow for appropriate delays in responding.</p> <p>Request should be able to be refused if they are frivolous or vexatious.</p>
<p>3.5. Most jurisdictions charge application fees (\$5 to \$15 - \$5 in the case of New Brunswick) are charged to discourage people from making frivolous requests for information. If someone is willing to pay even a small application fee, they tend to be serious about it. Do you think government should continue to charge an application fee for each information request?</p>	<p>Yes. The \$5 fee is appropriate, and should be charged regardless of the outcome of the request.</p>
<p>3.6. Do you think that there should be a fee structure? Do you think that fees should be established on a cost recovery basis or should the costs of administering the right to information legislation be drawn out of the consolidated revenue fund? In other provinces, applicants are charged an hourly fee for the amount of time it takes to search and prepare the requested documents, in addition to any copying fees. In some cases, people are only charged preparation fees if their request takes longer than 2 or 3 hours to get ready. And, sometimes, fees can be waived under certain conditions. What</p>	<p>We believe the following would be an appropriate schedule of fees:</p> <ul style="list-style-type: none"> <li>• \$5.00 for the request</li> <li>• Routine Information – Free</li> <li>• Research time must be reflected in the fee charged for the request</li> <li>• A reasonable amount of research time should be free – we suggest 5 hours</li> <li>• Under 5 hours of research, only the cost of copying should be charged to the applicant</li> <li>• Over 5 hours, at least \$10 per hour should be charged, plus the cost of copying</li> <li>• Copying fees totalling less than \$5 should be waived</li> </ul>

features do you think a fee structure should have to make sure that it is fair to everyone?	
---	--

#### 4. Review Process

In New Brunswick, government officials report that fewer than 2 per cent of the requests for information result in complaints. Even so, processes are set out in the law so that if people have complaints about their ability to access government information or about the government’s treatment of their personal information, they can choose to have their concerns reviewed. Any person who is dissatisfied with how government has handled an access or personal information matter has the right to take it before the Court of Queen’s Bench. The Court will hear the matter and make a decision that everyone must follow. However, for those who wish to have the matter heard in a fast and less costly way, both the *Right to Information Act* and the *Protection of Personal Information Act* allow for dissatisfied persons to refer their complaint to the Ombudsman for review. Because the Ombudsman provides an informed and objective review of the matter without the cost and complexity of full legal proceedings, most complainants choose this method of review. Almost all complaints referred to the Ombudsman are resolved as a result of the Ombudsman’s review and hardly anyone has had to proceed to Court afterward.

4.1. Does having the choice of these two review options (i.e. the Court of Queen’s Bench and the Ombudsman) provide people with reasonable access to fair and independent review of their access and privacy concerns? Please explain.	The current processes are satisfactory.
4.2. What changes, if any, do you think could be made to improve the review processes? A number of provinces have an independent Access and Privacy Commission. Do you believe that New Brunswick would benefit from such a model or is compliance through the ombudsman office sufficient?	The current processes are satisfactory.

## 5. Administration

There are currently certain features of the *Right to Information Act* that are making it more awkward and costly than necessary to administer. There is not, for example, a uniform way – such as a form or an internet site – that people can use to make a request for information. As such, there is nothing to guide applicants in terms of what information to include when making a written request. There are also difficulties being encountered with the strict 30-day deadline for providing a response. Under the current *Act*, there is absolutely no flexibility to extend the deadline beyond 30 days; not even with the consent of the applicant. While it must continue to be government’s goal to respond to requests as quickly as possible, there are certain complex or large volume requests for information that simply cannot reasonably be fully responded to within 30 days. New Brunswick is the only province in Canada where there is no formal way to extend the deadline beyond 30 days. Neither does the *Act* allow for requests to be transferred from one department to another if a person inadvertently sends a request to the wrong place. Because the 30-day deadline cannot be temporarily suspended in order to accommodate the time it would take to transfer the request to the correct department, the only option is to return the request to the applicant with notification as to where the request should have been sent. As part of this reform, government would like to identify the best way to address these and other minor administrative difficulties while at the same time ensuring that the goals of openness and transparency continue to be honoured. Most provinces have a separate ATIPP office as a central government agency. Should New Brunswick adopt this model?

<p>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?</p>	<p>A request form should be created, and made available at any SNB office as well as online.</p>
<p>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?</p>	<p>Thirty <u>working days</u> is satisfactory as long as it is a simple request.</p> <p>In the Act, it should be stated that extra time could be added if necessary (i.e., the request is extensive, multiple requests have been received, a third party is involved, a legal opinion is required, etc.).</p> <p>The applicant should of course be notified</p>

	<p>of the reason for the extension before the 30-day deadline is reached.</p>
<p>5.3. Are there other specific improvements to the process for accessing information that you would suggest?</p>	<p>A “process guide” for the administration of the Act should be created and distributed to all coordinators. This must include a clear explanation of fees, exemptions and the severing of information, and all departments should act consistently within these guidelines.</p> <p>The Department of Justice should also be available for consultation regarding difficult decisions.</p> <p>Education and training should be given to all RTI coordinators and also to new coordinators.</p>

## 6. Privacy

Although personal information about individuals is treated confidentially, the public is able to access much of the information held by government regarding businesses and other organizations that deal with government. There are only very specific circumstances under which information about a business can be kept confidential (see paragraphs 6(c) and 6(c.1) of the *Right to Information Act*). Furthermore, when government releases corporate information, there is no requirement that the company or organization be informed about its release. Laws in other parts of Canada are slightly more restrictive when it comes to releasing information about the companies that do business with the government. In the case of Manitoba, unless one of the exceptions applies, or unless it is considered to be in the public interest, information is not released publicly. However, if government believes that the release of such information is in the public interest, government must let the third party know that it is thinking of releasing the information. This gives the third party the chance to voice its views about whether or not the information should be released. If government decides to go ahead with the release of the information despite the concerns of the third party, the third party can choose to make a complaint to the Ombudsman and the information will not be released until the Ombudsman can review it.

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?	Yes
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?	A letter of consent should be required by the third party with an explanation of why they don't want us to release certain documents.

## 7. Limitations On Access

Even in the most open of governments, it is necessary to put in place restrictions to certain types of information. These restrictions are intended to protect information from release when its release is not in the public interest. If our goal is to have an open, yet functional, government, it is important to strike the right balance between openness and confidentiality. In almost all modern access legislation, the limitations are focused on ensuring the following objectives: maintaining individual or public health, safety and security; avoiding harm to law enforcement or legal proceedings; protecting solicitor/client privilege; maintaining relationships with other governments; protecting personal information about individuals; ensuring functionality of the government decision-making process; protecting negotiation processes; and avoiding harm to government business or the interests of third party individuals and businesses. The current *Act's* limitations are somewhat vague and often difficult to interpret. It is intended that the existing limitations be better defined in the legislation so they can be more consistently understood and applied.

<p>7.1. Are there existing limitations that you think have been interpreted too broadly or too narrowly? Are there limitations that you think are unreasonable? Are there any types of information that should be more or less restricted? Please explain why.</p>	<p>The Act (and process guide) must more clearly define "Advice to Minister" to include documents which form part of the decision-making process.</p> <p>Minutes and other materials from sensitive meetings (e.g., Deputies' Committees) should be protected by the Act.</p>
--	---

## 8. Protection of Personal Information

The *Protection of Personal Information Act* is based on a model that was developed by the Canadian Standards Association and widely adopted across Canada. It sets standards that the provincial government must follow when it handles information about individuals. It is intended to be a framework for decision-making regarding the handling of personal information to ensure that it is handled in a conscious, consistent manner. The *Act* applies to all “personal information.” It defines this as any “information about an identifiable individual, recorded in any form.” There are 10 principles – the *Statutory Code of Practice* – that the government must follow in regard to the personal information it has in its possession. These principles deal with issues relating to the proper collection, use and disclosure of personal information. The principles also state that you are entitled to find out what information government has about you, and to correct this information if it is wrong. More information about the *Protection of Personal Information Act* can be found in the pamphlet at <http://archives.gnb.ca/documents/POPI.pdf>

8.1. Are you satisfied that the information that government collects about you is being handled in such a way that your privacy is protected? If not, what concerns do you have? What more should be done to protect your personal information?	Yes
---	-----

## 9. Protection of Personal Information Exemptions

Pursuant to paragraph 7 f) the *Protection of Personal Information Act*, the government may allow for the disclosure to a third party of protected personal information. For example, Regulation 2001-14 (<http://www.gnb.ca/0062/regs/2001-14.htm>) creates an exemption where government can disclose the names, addresses, and postal codes of the holders of driver's licences issued under the *Motor Vehicle Act*, as well as the numbers of those licences, to the War Amputations of Canada to facilitate fundraising.

9.1. Do you believe that government should be allowed to create such an exemption?	Yes
9.2. If such exemptions exist, should there be safeguards to ensure that the third party does not improperly disclose the protected personal information?	Yes
9.3. If such exemptions exist, should there be a mechanism where you can have your personal information removed from the third party's control?	Yes
9.4. If such exemptions exist, what personal information should and should not be disclosed?	Non-identifying personal information should be able to be disclosed. Data such as names and addresses should be released only under very limited circumstances.

## 10. Purpose of collected information

According to the principles set out in the Protection of Personal Information Act, government departments should only collect, use or disclose information about you with your consent. While consent is sometimes given (or refused) by you directly, there are other situations in which consent can be “implied”. Consent is considered to be “implied” as long as: a) a person would be unlikely to disapprove of the way in which the information is being used; or, b) government is using the information in a way that would be expected. Decisions about whether or not personal information should be shared between government departments are or should be made based on these principles.

<p>10.1. Do you have any concerns about the sharing of personal information between government departments? What types of restrictions, if any, should be in place to ensure that information is not used inappropriately? In your opinion, what rules or protections can be put in place that would allow government departments to share information between departments in the interests of good service delivery and reduced administrative burden, while ensuring that personal information is properly protected?</p>	<p>It is likely that the public believes that government departments currently share information with one another. It is difficult to imagine that government could effectively function without a significant level of information sharing.</p> <p>One of the most important benefits to sharing information between departments and/or governments is the prevention of fraud.</p>
---	--