



June 15, 2007

**TO:** Donald Savoie

**FROM:** Kim MacPherson, Comptroller

**COPY:**

**SUBJECT: Office of the Comptroller – Response to Right to Information and Protection of Personal Information Task Force**

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On behalf of the Office of the Comptroller (OOC), I would like to offer comments for consideration of the Task Force.

**Right to Information Act**

The issues of primary concern with respect to the current **Right to Information Act** include the following:

- ❖ **Is the OOC subject to the Act?** Currently, the Office is not specifically listed in Schedule A to the regulation;
- ❖ **Access to draft audit reports and working paper files – Should they be protected similar to that in other jurisdictions such as Alberta and the federal government?**

Audit working papers prepared resulting from various internal audit engagements should be protected. Audit working papers contain confidential information, opinions and other pertinent information required to fulfill the audit engagements. Individuals are often interviewed with the basic understanding that information they provide will be held in strictest confidence. Also the OOC has legal authority to access confidential government documents, copies or excerpts that may exist on file. Professional auditing standards on file documentation must be adhered to. Open access would infringe on the integrity, confidentiality, completeness and quality of the documentation and the OOC's ability to appropriately perform the internal audit function for the government.

Currently the Federal Government in its Access to Information legislation, section 22.1 restricts access to draft audit reports and audit working papers for a period not to exceed 15 years. The Government of Alberta also has similar provisions in its legislation.

### **Protection of Personal Information Act**

The issues of primary concern with respect to the current Protection of Personal Information Act include the following:

#### **❖ Appropriateness of disclosure of employee salary information in Public Accounts?**

Public Accounts disclosure of employee salary and/or other remuneration has existed for many years in New Brunswick. Salaries of Boards, Crowns and Agencies were added in 2000. The current threshold for reporting is \$40,000.

While the Office of the Comptroller is not aware of any legal challenges to date with respect to the disclosure of individual salaries and payments to suppliers, concerns have been raised over the years.

Sections 3.4(g) and 3.5 of Schedule B of the Protection of Personal Information Act (POPIA) is cited as justification to disclose employee salaries paid; travel and other employee expenses paid; and payments to suppliers. Sections 3.4(g) and 3.5 of Section B are as follows:

#### *Section 3.4*

Consent is not required when a public body collects uses or discloses personal information

(g) For some other substantial reason in the public interest, whether or not it is similar in nature to paragraphs (a) to (f).

#### *Section 3.5*

A public body may disclose personal information under paragraph 3.4(g) in furtherance of the public interest in open government.

However, section 3.6 of POPIA provides further guidance in applying sections 3.4 and 3.5.

#### *Section 3.6*

Before collecting, using or disclosing personal information without consent under paragraph 3.4 or 3.5, a public body shall consider the nature of the information in question and the purpose for which it is acting, and shall satisfy itself that in the circumstances that purpose justifies the action proposed.

Disclosure practice of employee salary information in other jurisdictions varies. Recent research indicates there is no such disclosure in PEI or Newfoundland and Labrador. Remaining provinces do publish employee salaries information in Public Accounts documents using various formats and thresholds.

❖ **Appropriateness of disclosure of payments to suppliers, grant and contribution payments and loan disbursements in Public Accounts?**

Similar to the above discussion on salary disclosure, this practice has existed for many years and is considered to be in furtherance of the public interest in open government.

❖ **Inability to share information between departments – including basic payment information such as name, address, banking details resulting in inefficiencies, redundant data files and duplication of effort between departments;**

The current privacy legislation maybe interpreted too tightly and/or erred on the side of caution, thereby preventing departments from sharing information when it makes sense to do so for effective and efficient delivery of programs and payments to businesses and citizens.

The end result is duplication across government and added burden on businesses and citizens to communicate with various departments. Questions arise as to who owns the data, who can/should maintain it, who can have access to it, what security features need to be developed and maintained to ensure limited access. Increased security causes inefficiencies with respect to making payments from government, sharing information internally and reporting on a government wide basis. The duplication of databases of vendor information also makes it difficult to comply with aspects of the federal and provincial legislation that crosses departments. GNB departments should be viewed as one GNB entity rather than as several unique entities. One set of confidentiality rules should apply to all departments which ensures personal information is properly protected from disclosure to unauthorized 3<sup>rd</sup> parties.

The Office of the Comptroller appreciates the opportunity to provide input. If the task force would like further information or clarification on any of the above issues, please advise.

Respectfully submitted,

*(original signed by Kim MacPherson)*

Kim MacPherson  
Comptroller