

## **Department of Public Safety**

### **RIGHT TO INFORMATION**

#### **Title of Legislation:**

Most jurisdictions in Canada do not use the term or phrase 'right to information'. The most common terms are 'access to' or 'freedom of' information. Using such 'neutral' terminology would be preferable as it avoids creating public or other expectations.

#### **Should The Act Include Other Government Agencies/Boards and Commissions?**

It is the position of the Department of Public Safety that the intent of the legislation should be to make government as transparent as possible with consideration being given to having no blanket exemptions for provincial government organizations/agencies. Exemptions tend to raise suspicion. For example, in New Brunswick, there are various Boards of Police Commission who are exempted from current legislation. Also, there are RCMP municipal contract police services that are exempted. Although it can be argued that it is not appropriate to release a good portion of information held by these agencies, there may well be information that would be in the public interest to be released. An additional question is whether Crown Corporations, such as Service New Brunswick, should continue to be exempt from the RTI legislation. In reality SNB is an extension of government as it is the service delivery agency of many government programs and services, including several from the Department of Public Safety.

However, some types of information should continue to be subject to either absolute or situation-related protection if government is to be able to function effectively and if important information is to continue to exist in some written/recorded format. The apparent assumption by some segments of society that government would function better if no information was subject to protection is certainly open to debate. Therefore, it would be inappropriate for this notion to be enshrined in legislation.

## **Fee Structure**

The current fee of \$5 is not a deterrent to frivolous requests. It is suggested that the initial fee be increased (to \$25). In addition to the initial fee, persons requesting such information should be advised of the approximate costs of the information request (photocopying, etc) and also provided the option to abandon or modify the request or pay the full costs. Costs should include labour, photocopying, or any other electronic format.

Only in the extreme and clearly defined situations should the fee and associated costs be waived. Fees and costs should be reasonable and affordable but not prohibitive.

## **Review Process**

The current review process is conducted through the Ombudsman's Office or through an application to the Court of Queen's Bench. While some jurisdictions have a Commissioner's Office, it would appear that the few cases that are appealed can be handled through the current processes. Creating additional administrative bureaucracy should be avoided unless there is a compelling reason to introduce it.

## **Third Party Consultation**

Currently, there is no provision to notify a 3<sup>rd</sup> party that a RTI request has been made to a government department/agency and that may contain identifying information about the 3<sup>rd</sup> party. There is no opportunity for a 3<sup>rd</sup> party to launch an appeal; however, it is suggested that 3<sup>rd</sup> parties should be consulted in instances where 3<sup>rd</sup> party information has been provided in confidence. Such situations may include private sector/corporate documents, 3<sup>rd</sup> party contracts and so on. Consideration should also be given to

providing an appeal process for third parties where they disagree with the government's decision to release their information. In the event that such an appeal would occur, then, the normal timeframe to respond to the original RTI request should be suspended pending the outcome of the appeal.

Another important issue relates to the current 30-day time limit for an initial response to a RTI request. There is the belief that there should be a minimum of 45 days, and perhaps as many as 60 days, particularly, in the situation where a 3<sup>rd</sup> party may be required to be consulted prior to the release of the information.

### **Limitations on Access**

A key issue raised is the fact that the current legislation is silent on 'the security of the person'. In today's post 9-11 world, the gathering of 'intelligence' and other personal information from a wide range of government and non-government sources requires various levels of protection and security for both the person and the information. The issue is whether there should be limitations or exemptions on specific classes of sensitive personal and government information? Section 6.f (1) is not clear enough to signal exemptions or limitations to the release of potentially sensitive information.

## **PROTECTION OF PERSONAL INFORMATION**

### **Exemptions**

There is much debate as to what personal information should be protected and what information should be subject to release. Any revision to the current legislation must be precise in its intent. For example, should personal/client information be released where it has been determined the individual poses a significant risk to society or to a community? Under what circumstances should personal information be shared within government agencies or with third parties? Should exemptions be required to be made within POPIA or should the exemptions be tailored to specific provincial legislation? For example, the release of personal information of a high risk offender is found in the federal corrections legislation and not under the

federal Privacy Act. Do we need to define 'the public interest' so as to achieve a more reasonable balance between personal privacy protection and the individual/societal protection?

These are all questions or issues that should be examined while undertaking the current review of the RTI legislation.

### **Third Party Control**

In circumstances where an individual requests to know with whom their personal information was shared, that individual has a right to know and, also, a right to challenge the release of his/her personal information to third parties. For example, there could be a question of accuracy of the information and/or the relevance of collecting certain information. There must also be remedies to information inaccuracies and, in some circumstances, the outright removal of information from a client's personal file.

### **Purpose of Collected Information**

It is always best to obtain the written consent of the client (or parent/guardian as appropriate) whenever personal information is being collected. If exemptions are warranted, then such should be found within specific provincial acts/regulations. While it is important to have a 'seamless' sharing of information, this cannot be done in the absence of trust, credibility and understanding by the 'collectors and keepers' of personal information.

More than ever, and in our post 9-11 era, there is the sense of a growing need to share personal information, in a controlled manner, between and amongst government agencies and departments. However, there must be a cautious balance between the need to know and protection of personal information. There must be an openness and transparency in our 'privacy practices'.

A black or white approach to both privacy protection and access to information seems much too simplistic; there are certainly 'shades of grey' and they warrant consideration if legislation on these related topics is to be useful in a dynamic society.

Privacy and protection of personal information should be a core consideration in any department's services, programs and activities and these privacy practices must be communicated to both clients and to the public. The continuing challenge is how to ensure this by a coherent package of reasonable legal, administrative and technical measures, while allowing for appropriate information sharing under specified circumstances in the context of giving consideration to several important factors:

1. personal privacy,
2. the need for individual and societal protection,
3. the requirements associated with effective, efficient provision of quality public sector services to individuals and groups, and
4. sound management of finite public resources aimed at providing optimal value for money.

It is essential that measures for the protection of personal information under government department/agency control are incorporated into all of their programs, services and activities. Government needs to promote a privacy sensitive culture across all of its departments and agencies to demonstrate leadership in protecting personal information and to maintain the trust and confidence of New Brunswickers.

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