

**Response to:  
ACCESS TO INFORMATION AND PRIVACY  
REVIEW**

**Response from:  
Government of New Brunswick  
Records Management Network**

**June 13, 2007**

## RM Network – Who we are?

The New Brunswick Government Records Management Network was established in 1988 to lead, communicate, and collaborate on records management matters within New Brunswick government departments, agencies, boards, commissions, and corporations.

The purpose of the Records Management Network is to advance records and information management within the Government of New Brunswick in a forum that permits the exchange of ideas, the dissemination of information, and the achievement of common goals within the field.

## Answers (to the Questions)

Due to the nature of the questions, some answers are the same or similar.

### 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> ?	Government should be open with - Information about programs and services and their delivery mechanisms, - Statistics, demographics, etc., - Any information that does not contain identifiable personal information.  All government information should be open or publicly available apart from the exceptions laid out in the current <i>Act</i> .
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.	Yes, it has been problematic. Sometimes the request is vague or unclear. In the past, employees had to work with the applicant in order to understand the information required. There should be a mechanism in place to allow the applicant and the respondent to work together to clearly define what the applicant's request. This would reduce the time to respond and the associated costs.

<p>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>	<p>Issue: The total costs to answer a request are not tracked and are, at the current time, impossible to determine. The application fees could be raised to discourage “fishing expeditions”, however the fees should not be so high that the requester cannot afford to make the request, but should represent fair costs associated with gathering the information.</p> <p>Issue: Most departments do not manage their information as effectively as they could. This results in increased time to respond (which means increased costs to government), and poor service to the public. Additionally, poor information management may lead to inadvertent omission of information when responding. (If you don’t know you have the information, or can’t find it, you cannot provide it.) Until this issue is corrected, the fees should not be representative of the recovery costs.</p> <p>Issue: Furthermore, the bulk of GNB information is now produced electronically. Employees are not equipped to handle electronic records. They have neither the training nor the technology required to manage or control their electronic information. There is not one central “repository” for departmental information, so the RTI coordinators must approach a multitude of employees to ensure that they get what they need. As a result, more time and money are expended than should be necessary, and it is easy to “miss” valuable and pertinent information.</p> <p><u>Recommendation:</u> The RM Network recommends an effective framework to manage government information.</p> <p><u>Recommendation:</u> Upon the implementation of an information management framework, the RM Network recommends tracking all costs and recommends total costs recovery, especially if they are extensive.</p>
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	<p>However, the RM Network feels that with an efficient information management framework in place, the fee structure may not need to be excessive. If information would be managed properly, \$5.00 may be sufficient.</p> <p>Fees for photocopies could be increased to more accurately reflect costs. Estimates for copies should be provided early in the process so that the requestor can decide whether or not to proceed with the request. (This may help reduce the problem of requests being made but the applicant not picking up or paying for the copies.) GNB should also investigate the provision of electronic copies (i.e. PDF versions of documents), in order to reduce costs.</p> <p><u>Recommendation:</u> If fees are to be different for different groups of people, the RM Network recommends that the fee structure must remain affordable to individuals making requests.</p> <p><u>Recommendation:</u> The RM Network recommends the development and use of a request form under the <i>Right to Information Act</i>. The form would require specific information from the requestor (in order for employees to understand the request) and would outline the fee structure. This form could also be used as a tracking device for such things as collecting statistics, determining the time spent per request, the turn-around time, etc.</p>
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**2. Scope of the *Right to Information Act* – Institutions**

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

<p>2.1. In your view, is the current coverage of institutions under the <i>Right to Information Act</i> adequate?</p>	<p>The list on page 16 of the Discussion Paper is not up-to-date. For example, Service New Brunswick and the Office of the Comptroller are not listed and should be.</p>
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2.2. What criteria should be used to determine whether or not an institution would be subject to the <i>Act</i> ?	Any publicly funded institutions should be subject to the <i>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.)	To add an institution to the list, approval from Cabinet should be satisfactory. (Therefore changes should be made by regulation.)  If an institution must be exempt, then this should be covered in their own legislation.
2.4. Should the <i>Act</i> include municipalities?	Yes
2.5. Should the <i>Act</i> include universities?	Yes, if they are funded by GNB.
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 included.

### 3. Access Process

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?	See the answer in section 1.3 above.  <u>Recommendation:</u> An effective records and information management framework is essential for efficient access, retrieval and sharing of government records. In addition to technology and training, the RM Network recommends more skilled resources both centrally and in each department to manage government information.
3.2. Are there ways to reduce the costs of processing access to information requests? Are there ways to make the process more efficient?	See the answer in section 1.3 above.

<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>The RM Network feels that all requests should be treated equally under the <i>Act</i>.</p> <p>However, if fees are to be different for different groups of people, the RM Network recommends that the fee structure must remain affordable to individuals making requests.</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 RM Network does not support any limits to the number of requests that can be made by one requester or institution.</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, government should continue to charge an application fee for each information request.</p> <p>Fees should represent fair costs associated with gathering and making the information available to the individual requesting.</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</p>	<p>See the answer in section 1.3 above.</p>

<p>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 features do you think a fee structure should have to make sure that it is fair to everyone?</p>	
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**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.

<p>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.</p>	<p>The RM Network feels that:</p> <ul style="list-style-type: none"> <li>- the Office of the Ombudsman provides satisfactory service; however more resources should be made available to that office.</li> <li>- the Court of Queen's Bench is a satisfactory venue for appeals.</li> </ul>
<p>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</p>	<p>Yes, The RM Network feels that an appropriately funded independent Access and Privacy Commission and Commissioner would improve the review process.</p> <p>This Commission should also be mandated to provide education about</p>

ombudsman office sufficient?	access to information and privacy to the public and to government institutions.
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**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?

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?	The use of a form. See the answer in section 1.3 above.
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?	<u>Recommendation:</u> If anticipated that the time to respond to a request is to go beyond 30 days, the RM Network recommends that both the applicant and the department should discuss the matter and agree to a satisfactory timeframe.
5.3. Are there other specific improvements to the process for accessing information that you would suggest?	See the answer in section 1.3 above. See the answer in section 3.1 above.  Response times would be reduced if government information was better

	<p>managed.</p> <p><u>Recommendation:</u> The RM Network recommends more education to employees so that they understand the fundamentals and the benefits of effective records and information management.</p> <p><u>Recommendation:</u> The RM Network recommends a consistent process in government when responding to a <i>Right to Information Act</i> request in regards to blacking out names, titles, etc. for the protection of personal information.</p>
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**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.

<p>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?</p>	<p>The RM Network agrees with the current <i>Act</i> in regard to release of information related to businesses.</p> <p>If the third party is another department or agency involved in delivering a service, the department (that received the request) must consult with or inform the other department or agency.</p> <p>If the third party is in another jurisdiction, the applicant should be required to submit another request to that jurisdiction.</p>
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<p>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?</p>	<p>6(c) and 6(c.1) of the <i>Right to Information Act</i> sufficiently protects businesses.</p> <p>If this process were changed, more resources would be required. The RM Network does not feel that it would be an improvement.</p>
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**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 focussed 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><u>Recommendation:</u> The RM Network would prefer to see more explanations in the <i>Act</i> or <i>Regulation</i> for restricted information. For example, Advice to Minister and legal opinions are restricted. Perhaps a handbook with additional guidance and more examples could be made available (online for the public as well as government employees).</p> <p>If information was managed more effectively, a security classification system for information could be developed and used. This would contribute to the appropriate protection of information.</p>
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## 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>.

<p>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?</p>	<p>Without an information management framework and more education, there is a greater potential for employees to be (unknowingly) negligent in protecting privacy.</p> <p><u>Recommendation:</u> The RM Network recommends a controlled information management environment to reduce risk to protection of personal information.</p> <p><u>Recommendation:</u> The RM Network recommends an education program for employees to inform them that privacy is a real concern and to make them more conscientious in their day-to-day activities. For example, personal information and confidential information should <u>not</u> be stored on laptops or left on printers.</p>
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## 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.

<p>9.1. Do you believe that government should be allowed to create such</p>	<p>No, the government should not be allowed to create such an exemption.</p>
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<p>an exemption?</p>	
<p>9.2. If such exemptions exist, should there be safeguards to ensure that the third party does not improperly disclose the protected personal information?</p>	<p>Yes, there should be safeguards. However even with safeguards, the government loses some control to protect personal information.</p>
<p>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?</p>	<p>If such exemptions exist, there must be a process to allow the removal of an individual's personal information from a third party's control.</p> <p>This added process of removing personal information (redaction) would take time.</p> <p>In all cases, the public must consent to having their personal information provided to a third party.</p> <p>As an example, request for information about employee's personal information would be forwarded to unit responsible for the activity (i.e. Human Resources, Corporate Services, etc.).</p>
<p>9.4. If such exemptions exist, what personal information should and should not be disclosed?</p>	<p>The only information that can be disclosed is that which the citizen consents to having disclosed.</p> <p>There should be a process in place to assure that this is done properly, and will require government to change the way it collects information, regardless of format in which it is captured.</p>

**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>In order to share information between departments while assuring that it is protected adequately, information must be maintained in a controlled government environment and managed consistently, according to business rules. This requires a higher level of information management than that which currently exists in GNB.</p> <p>A government-wide policy is required: If information is shared between departments, and if the citizen does not want to disclose his/her personal information, the other department(s) must also protect the information. See Section 9.</p> <p>It is a known fact that government has considered implementing records and information systems that will have a unique identifier for clients. This may be problematic when used in relation to citizens. This type of approach must be managed and closely monitored in order to protect citizen's privacy and comply with <i>POPIA</i>.</p>
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