

Review of the

***Right to Information
and Protection of Privacy Act***

Minister's Report

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Province of New Brunswick
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Minister's message



I am pleased to present this report on the review of the *Right to Information and Protection of Privacy Act*.

Proclaimed on Sept. 1, 2010, the Act makes public bodies open and accountable by legislating the right of access to provincial government records while protecting personal information held by many public bodies subject to provincial legislation.

It has been four years since the Act has come into effect, and we have reviewed how the legislation has worked in practice. While we heard that most of the Act is working well, the improvements identified will help ensure that it remains effective and continues to be administered in a way that best serves the needs of New Brunswickers.

During the public consultation phase, many individuals and groups took the opportunity to carefully consider the Act as well as the wider access and privacy system in New Brunswick. Each submission deepened our understanding of the issues and shaped the recommendations. I thank everyone for their interest and input.

While finding the right balance may not always be easy, I am confident that, by working together, we can improve our approach to access and privacy to better serve New Brunswickers.

Thank you,

Hon. Dr. Ed Doherty, M.D.
Minister of Government Services

Introduction

The *Right to Information and Protection of Privacy Act* (RTIPPA) governs how public bodies collect, use and disclose information, including personal information. The Act aims to strike a balance between the public's right to know and individuals' right to privacy.

Through RTIPPA, the public is entitled to access as much public information as possible, subject only to limited and specific exceptions. At the same time, personal information must be carefully protected. It is to be gathered only when necessary; kept only as long as necessary; and used only for purposes consistent with the reason for which it was collected.

The Act came into force in 2010 and included a provision requiring that an operational review start four years after it came into force. The Act also requires that a report be submitted to the Legislative Assembly of New Brunswick within one year after the commencement of the review.

As the department responsible for RTIPPA, Government Services undertook this review, beginning in August 2014. This report details how the review was carried out and presents the most commonly heard issues and recommendations for improving the right to information and privacy system in New Brunswick.

It is common practice in Canada that access and privacy legislation be reviewed and updated regularly as this is an evolving field. In fact, one of the recommendations is that a new provision be added to the Act to ensure that it is reviewed regularly from now on.

It should be noted that this report does not include discussion of the many aspects of the process and procedures under RTIPPA that are working. Rather, it focuses on where improvements can be made.

This report presents the most common themes heard during the review. It should be noted that most of the feedback received during the consultation concerned right to information as opposed to privacy.

The challenges identified can largely be addressed through improved training and awareness; new policies and procedures; as well as amendments to the Act. Following this report, the Department of Government Services will develop a work plan and a legislative proposal for consideration by the provincial government.

BACKGROUND

Previous to RTIPPA, New Brunswick had separate acts dealing with privacy and access to information. The *Right to Information Act* (RTIA) was proclaimed in 1980, and the *Protection of Personal Information Act* (POPIA) was proclaimed in 2001. Both applied only to the provincial government.

RTIPPA combined and replaced these acts. The reach of the new Act was extended to include all public bodies, which were brought under the Act in phases:

1. Sept. 1, 2010: Provincial departments, health-care bodies and Crown corporations;
2. Sept. 1, 2012: Municipalities, municipal police forces, universities and community colleges;
3. Oct. 1, 2012: Schools, school districts and district education councils; and
4. April 1, 2013: All remaining local government bodies, including regional service commissions.

Today about 500 public bodies are subject to RTIPPA. About 220 “parent” public bodies oversee adherence to the Act for entities that fall under their jurisdiction. For example, the Department of Environment and Local Government is the single contact for 242 local service districts. Likewise, municipalities, in particular the larger cities, can have several public bodies under their jurisdiction. (e.g., parking commissions, water commissions, historical committees).

REVIEW AND CONSULTATION PROCESS

The Department of Government Services began a comprehensive review of the Act in August 2014. The first phase involved a review of known operational issues as well as a jurisdictional scan of access and privacy legislation in Canada.

The second phase began on Jan. 21, 2015, with the launch of a public consultation website, which included a discussion paper and request for feedback from stakeholders and the public. People were encouraged to give their feedback by mail, telephone, fax, email or by contacting the department to arrange for a meeting.

By the end of the consultation on March 31, 2015, the department had met with more than 100 people; received written submissions from 49 individuals and groups; and circulated a customer satisfaction survey to public bodies with a response rate of 40 per cent. The listing of participants who provided feedback is in the Appendix.

The third and final phase of this review included the analysis of the research and feedback received during the consultation, culminating in the production of this report.

Discussions and recommendations

The feedback received during the consultation has been summarized into major themes, with detailed input paraphrased for ease of presentation. Every effort has been made to fairly and accurately reflect the feedback received without altering the meaning or content.

The following discussions and recommendations are built on:

- what was heard during the consultation;
- trends and best practices of other jurisdictions; and
- known issues with the Act during the past four years.

RIGHT TO INFORMATION (RTI)

Number and scope

The increasing number and scope of right to information (RTI) requests was the primary issue reported by public bodies during the consultation. Statistics show that the number of RTI requests is steadily rising, which represents an increasing workload for public bodies.

The number of RTI requests received by provincial departments has increased 53 per cent during the last four years. However, New Brunswick continues to have the lowest number of RTI requests per capita in Canada.

Provincial departments: Total RTI requests	
2010-11	380
2011-12	431
2012-13	462
2013-14	581

Top 10 municipalities: Total RTI requests (Sept. 2012 – Sept. 2014)		
Municipality	Type	# of requests
Saint John	City	85
Fredericton	City	75
Moncton	City	67
Quispamsis	Town	21
Dieppe	City	15
Campbellton	City	13
Bathurst	City	12
Shippagan	Town	12
Edmundston	City	10
Miramichi	City	9
Total		317

The breadth, or scope, of requests has not been formally tracked; however, public bodies reported that requests are expanding in two ways:

- applications are very broad, seeking “any and all records”; and
- applications are asking for records for long periods, sometimes five, 10 or even 25 years.

These broader requests often cannot be completed within the 30-day required response time; extensions are necessary. For a small municipality, one large RTI request may require staff to put their regular work aside.

Public bodies reported that the public is using RTI requests in new ways. More applications are coming from lawyers as part of their investigations; from students as part of their studies; and from media and Members of the Legislative Assembly (MLAs) as part of their research.

This trend of increasing number and scope of RTI requests is reported across Canada. Public bodies are constantly adjusting to this increased workload.

Applicants reported that they are often unfamiliar with the information held by a public body. Therefore, they are not always aware of the names of specific documents or files for which they are looking.

The Access to Information and Privacy Commissioner (Commissioner) reported that she encourages public bodies to adopt a “duty to assist” approach (which is also a requirement of the Act) and to foster a collaborative relationship with the applicant for more complex or unclear requests. Public bodies feel that some applicants regard their attempts to clarify an application as suspicious and that the public body may be trying to hide something.

RTIPPA Coordinators / Chief Privacy Officers (CPOs)

For most public bodies, the administration of the Act is carried out by one employee, the RTIPPA coordinator.

The coordinator usually manages both the access and privacy files. In some public bodies, however, this work is split between the RTIPPA coordinator and a Chief Privacy Officer (CPO).

Some larger public bodies have one employee working full-time as the RTIPPA coordinator or CPO. For the vast majority, however, this task is assigned to an employee as one part of his or her responsibilities.

For most public bodies, RTIPPA coordinators devote most of their time to RTI requests.

RECOMMENDATIONS

- Through continued training, encourage public bodies to use the duty to assist approach to help applicants obtain the information they are seeking and to minimize the search and review time for public bodies.
- Improve public awareness through the Information Access and Privacy Unit’s website to help applicants prepare their requests.

Fees for RTI requests

In 2011, New Brunswick became the only jurisdiction in Canada to remove all fees associated with RTI requests. In April 2015, the Information Commissioner of Canada released her review of the federal *Access to Information Act*, which includes a recommendation to eliminate all fees for access requests. It is not yet known whether the federal government will adopt this recommendation.

Along with the increasing number and scope of RTI requests, the subject of fees was a recurring topic during the consultation. In short, public bodies would like a fee regime re-established for RTI requests. Applicants would prefer this service remain free of charge.

All other provinces and the federal government apply fees to RTI requests. The fee regimes vary and can range from a \$5 application fee, to fees for processing times or fees to cover the costs of reproducing records. Most provinces do not apply fees to individuals wishing to obtain information about themselves.

Some journalists suggested that fees are a barrier to the public’s right to know and that fees impede openness and transparency. The media recognizes that, while some individuals may abuse the system, imposing fees is undemocratic.

Public bodies recommended the re-instatement of a fee regime, not for full-cost recovery, but as a way to share some of the cost between themselves and the applicant. They suggested that fees may encourage applicants to refine or narrow the scope of their request and may discourage frivolous or vexatious applications.

Estimated costs of processing RTI requests

- In 2013-14, the estimated cost of processing RTI requests by all provincial departments was \$680,000.
- In 2014-15, two requests concerning the power outage affected 9 departments, cost an estimated \$50,000, and took an estimated 1,212 hours to process.

It appears that the smaller the public body, the less able they are to bear the costs of RTI requests. Public bodies were almost unanimous in their desire to apply fees to RTI requests. Municipalities noted that even if the provincial government does not charge fees, other types of public bodies (i.e., universities and municipalities) should be permitted to charge fees.

Provincial departments cautioned that a new fee regime would have to be practical and cost-effective by considering the additional administrative burden of developing cost estimates, sending invoices and collecting fees.

Public bodies suggested the following attributes for a possible new fee regime for RTI requests:

- no fee to obtain one's personal information;
- allow fees to be waived for certain circumstances (in part or in whole);
- provide a cost estimate up front, even collecting half of the fee at that time; and
- limit the fees or apply thresholds:
 - a certain number of hours free, must pay for time beyond that;
 - a certain number of free requests per applicant per year, must pay after that;
 - only charge for photocopying and postage; or
 - only charge for the time required to search and review records.

RECOMMENDATION

- As part of the Strategic Program Review, evaluate the potential re-instatement of fees for right to information requests.

Open government

There is a worldwide movement toward open government. It is driven by technology, social media and a growing demand by the public that governments be more responsive and accessible. Open government is about public bodies being more transparent with government information that is not personal.

The media representatives who responded to our call for consultations were proponents of the public's right to know. They advocated that the more information made available, the more transparent government is, which is in the public's interest. Members of the media reported that some municipalities refer them to the RTI application process when they request meeting minutes, resolutions of council, etc. Instead, they believe these types of documents are public information and should be released as a matter of course.

Many members of the public and public bodies supported proactive disclosure. It was suggested that provincial government records not containing personal information should automatically be made public. The Commissioner supports the proactive disclosure of records, such as salary and benefits, travel expenses, employment contracts for high level officials and information related to services provided by vendors or consultants.

Some members of the public suggested that responses to RTI requests should be made public by posting them online. Once non-personal information has been released to one applicant, it should be considered to be public information. British Columbia and Newfoundland and Labrador post RTI responses online, but the number of RTI requests they receive continues to increase each year.

RECOMMENDATION

- Develop guidelines supporting the proactive disclosure of non-personal information held by public bodies such as publicly posting regularly requested information or RTI responses.

Response times

Statistics show that, while it is improving, slightly more than half of RTI requests are responded to within the 30-day period. This falls well below other provinces, which respond within 30 days more than 80 per cent of the time. The Act provides for a 30-day extension under specific circumstances that can be granted by the head of the public body. If the request still cannot be completed within 60 days, the public body can apply to the Commissioner, who can approve an unlimited extension.

Processing RTI requests

1. Confirm the request with the applicant (clarify desired records, expected response times).
2. Collect records (may involve regional offices or offsite storage facilities).
3. Review records (may require external consultation or legal advice).
4. Approve and sign off (response letter signed by the head of the public body or his or her designate).

The public's expected level of service is to receive RTI responses within 30 days or earlier, especially for more straightforward requests. It was sometimes perceived that public bodies may be using the extensions unnecessarily to delay their responses, but most applicants understood that more complex requests require extra time.

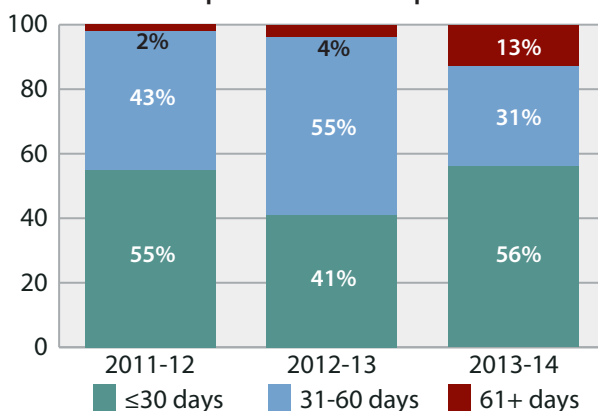
Public bodies using electronic records management systems or integrated information management systems reported being better equipped than otherwise to search and retrieve records in a timely and thorough manner. It was recognized that there is a link between right to information, privacy, security and records management, and that there is an opportunity for those operating in these four areas to work more closely together than has been the case.

Many small public bodies, especially municipalities, only have part-time staff or one staff person working on RTI requests. The response time can demand that the RTI request take precedence over other business

of the municipality. Public bodies reported that the approval portion of the RTI process can sometimes be lengthy as there can be multiple levels of approvals required.

To manage workload, public bodies have suggested that the 30-day timeline be extended, or that the 30 calendar days be modified to 30 business days. Other suggestions included varying time limits depending on the type/size of request, or a "stop the clock" mechanism when clarification or third-party notification is needed. It should be noted that no other province has lengthened the standard 30-day response time.

Provincial departments: RTI response times



When applying to the Commissioner for extensions beyond 60 days, public bodies expressed interest in a simpler, more streamlined application process such as an electronic application form. It was also suggested that the decision to extend beyond 60 days be transferred from the Commissioner to the head of the public body.

Responses

The Commissioner reported that the reason for many complaints about RTI responses is that applicants do not understand the response they received. Applicants complain that there is a lack of explanation as to what records are being released and what records are being withheld. The Commissioner encourages public bodies to prepare more meaningful responses that address the applicant's questions rather than rely on response letter templates.

Some feedback received suggested that the Commissioner should play a greater role in the RTI process, such as the Commissioner receiving a copy of all RTI requests and approving all documents to be withheld from release to the public.

RTIPPA lays out exceptions that allow for the withholding of information. Some of these are mandatory, while others are at the discretion of the public body. Respondents felt that there are too many exceptions in the Act, and too often public bodies use these provisions to delay or prevent disclosure of information that is in the public interest. It was also suggested that there needs to be more consistent application of exceptions to disclosure across different public bodies.

It was noted that the method used by public bodies when redacting information is sometimes "white out" rather than "black out." When printed on white paper, white-out makes it exceedingly difficult to know where something has been redacted or how big the redacted section may

be. This can be important information when seeking to understand what has and has not been released, and this can infringe on the applicant's right under the Act to challenge redactions.

Redaction

The censoring of the confidential portions of content before releasing it to the public. Example:

The Social Insurance Number for client [REDACTED] is [REDACTED].

It was also suggested that "blanket refusals" not be allowed. A blanket refusal refers to an RTI response that simply states that the records cannot be released. The argument is that the documents should still be released, fully redacted. For example, if a report is released, fully redacted, the applicant could still learn the date, authors, origin of the report, the nature of the issue investigated, or recommendations made as a result. A blanket refusal provides none of this information.

RTIPPA compels the fullest release of information possible. To support the objectivity or impartiality of the RTI process, the Commissioner recommended that the identity of the applicant should remain confidential until the response letter is being signed.

The role of communications officers in the RTI process was raised by media critical of their involvement. Some of the journalists who participated in the review contend that communications officers should only enter into the RTI process when they are an employee sending records to their RTIPPA coordinator as required for a response.

RECOMMENDATIONS

- Review the RTI process, looking for ways to make the RTI process faster, more efficient, and consistent.
- Improve the content of RTI response letters.
- Encourage public bodies to review and improve their information management practices including records retention and electronic records management.
- Promote stronger integration of information management practices, including right to information, privacy, security and records management.
- Establish guidelines to clarify mandatory and discretionary disclosures, and mandatory and discretionary exceptions.
- Establish guidelines on blanket refusals and methods of redacting records.
- Through training, remind public bodies that the RTI process must remain impartial.
- Encourage public bodies to adopt a best practice of keeping the identity of RTI applicants confidential during the processing period; only to be shared on a need-to-know basis.

Approval process

The Commissioner suggested that RTIPPA coordinators should have more authority allowing them to respond to some RTI requests without obtaining higher level approvals; i.e., allowing the RTIPPA coordinator to process more straightforward RTI requests on their own; and to decide which requests should go through the chain of command. New Brunswick is the only province where many heads of public bodies continue to sign off on RTI requests. In other provinces, this responsibility is frequently delegated to executive officers.

RECOMMENDATION

- Encourage the heads of public bodies to review their delegated authorities under RTIPPA.

Third-party information

Part of a response to an RTI request may include information generated by a third party such as vendor proposals, engineering or consultant reports. The public body must consider whether the information, if released, would be an unreasonable invasion of the third party's privacy or would be harmful to its business or financial interests. Public bodies may release this information, but they must first notify and consult with those third parties about its release.

With respect to third-party information, the most reported issue from public bodies was the 21-day consulting timeline, which makes it more difficult to meet the 30-day response time. On the one hand, public bodies are looking for clarification on the timelines and process around third-party consultation. On the other hand, applicants report that they sometimes feel public bodies use third-party consultation as an excuse to extend timelines.

RECOMMENDATION

- Develop guidelines for public bodies on the process and timelines for third-party consultation.

Power to disregard requests

As previously discussed, RTIPPA provides exceptions to disclosure provisions allowing for confidential information to be withheld. RTIPPA also provides for a public body to disregard an RTI request, with the Commissioner's approval, based on one of three criteria prescribed in the Act:

- the request unreasonably interferes with the operations of the public body because of the repetitious or systematic nature of the request or the requestor or previous requests;
- the request is incomprehensible, frivolous or vexatious; or
- the request is for information that has already been provided to the applicant.

Public bodies asked that the terms "unreasonable" and "frivolous and vexatious" be clarified, and they questioned whether it included repeat applicants. They also suggested removing the need to go to the Commissioner for permission to deny an RTI request based on the provisions laid out in the Act. Finally, public bodies suggested that a portion of a request could be dismissed.

The Commissioner reported that her office has received few applications from public bodies to disregard an RTI request, one of which was on the grounds of being frivolous or vexatious. The Commissioner expressed that "repetitious or systematic" is easier to prove than "frivolous or vexatious." If a public body is granted permission to disregard a request, the applicant is notified by the Commissioner.

RECOMMENDATION

- Explore the criteria for disregarding an RTI request and amend RTIPPA if necessary.

PROTECTION OF PRIVACY

Clarifying and enhancing privacy

Public bodies regularly collect, use and disclose large amounts of personal information. A major objective of the Act is to ensure that public bodies collect, use and disclose this personal information responsibly to protect personal privacy. The responsibility lies with each public body to ensure that individuals' personal information is protected at all times.

It was generally felt that the protection of privacy provisions in RTIPPA could be clarified or strengthened to make the Act more understandable and user friendly to the public and to practitioners. It should be noted that most of the feedback received with respect to privacy came from public bodies.

While RTIPPA incorporates the principles of "fair information practices" accepted by many governments and businesses around the world, there were suggestions that these "10 privacy principles" should be more clearly expressed in the legislation. It was pointed out that the now-repealed *Protection of Personal Information Act* included the 10 principles, as well as an interpretive guide, as schedules appended to this Act.

Personal information

This is defined as information that can identify an individual, including:

- a person's name, address, age, gender, sexual orientation, marital or family status, or any identifying number;
- information about a person's religion, nationality, ethnicity, personal health, political beliefs, education, employment, income, criminal history and personal views or opinions.

The issue of consent was a major concern for many public bodies. RTIPPA does not explicitly include the concept of implied consent, and this was noted to be a problem in many cases. It was suggested that the Act be updated to clarify the types of consent that are allowed, including how consent can be given, such as verbal, written, electronic signature, etc.

An example of implied consent is a social worker working on behalf a client. A social worker's elderly client would like to receive the services of Meals on Wheels, but the social worker cannot share the client's name and contact information with Meals on Wheels without the client's written consent. If RTIPPA provided for verbal consent, the social worker would more easily be able to set up that service for the client without the extra paper work.

Consultations have revealed that many public bodies do not yet have privacy policies and procedures in place. (e.g., privacy breach protocol, privacy impact assessments). Public bodies are almost unanimous in their desire to have such privacy tools.

With respect to privacy breaches (an unauthorized access to, or collection, use or disclosure of personal information), the Commissioner recommended that the reporting of privacy breaches to the Commissioner's office become mandatory.

The Commissioner and others noted that privacy impact assessments (PIAs) have become unnecessarily large and cumbersome. As a result, PIAs are not being completed in all cases.

RECOMMENDATIONS

- Amend RTIPPA to clarify the types of consent allowed.
- Develop and post fact sheets about the 10 privacy principles and any guidelines about the Act.
- Adopt privacy policies (including corporate privacy and breach policies) for provincial departments and agencies. Similar templates will be made available for other public bodies that could adapt them for their own use.
- Develop a streamlined, practical approach to conducting PIAs by developing guidelines and templates that public bodies can adapt for their own use.
- Support public bodies by providing awareness, training and resource materials on privacy.

Information sharing among public bodies

RTIPPA determines how personal information is managed by public bodies, specifically how personal information is collected, used and disclosed. The public has expectations and governments have requirements regarding the disclosure of personal information as required to provide programs and services.

RTIPPA provides for the sharing of personal information in specific situations. The lack of clarity about how and when this can take place can be challenging.

The Privacy Assessment Review Committee (PARC) provides advice to public bodies about data linking or data matching of personal information not otherwise authorized by RTIPPA. PARC provides advice to the public body, but the final decision to use and disclose the personal information remains with the head of the public body.

In 2013, RTIPPA was amended to allow for the sharing of personal information for the provision of an integrated service, program or activity addressing the mental, physical or social well-being of individuals. As this authority to share personal information was limited to one area of programming, the Act does not address the same need for sharing personal information experienced by other government programs and services.

In many provinces, the requirement of when and how personal information can be shared among public bodies is more clearly laid out in legislation, including:

- when the information is necessary for the delivery of a common or integrated program or service; and
- for the disclosure for research or statistical purposes.

Provincial departments are finding it difficult to meet the public's expectations to deliver programs and services with the current restrictions on sharing personal information. This was the number one privacy issue reported by public bodies.

An example of not being able to share personal information between public bodies to deliver a program can be found in the education system. The Department of Education and Early Childhood Development, school districts and schools are three separate public bodies that cannot share personal information with one another. However, the three need to work together to provide the service of education to each student. Because of how the Act is written, information-sharing agreements are required between each public body. Allowing these public bodies to share personal information to deliver education would reduce paperwork and allow for more seamless service delivery to the students.

RECOMMENDATIONS

- Define data linking and data matching in the Act.
- Amend RTIPPA to allow for the sharing of personal information among provincial departments and agencies as required to enable the delivery of programs, services and activities. Include specific information-sharing provisions such as for research purposes.
- Include similar sharing provisions for other public bodies.

Independent investigation and review

An applicant who is not satisfied with a public body's decisions or actions under RTIPPA has two options for an independent review. An applicant may file a complaint with the Commissioner or refer the matter to the Court of Queen's Bench. The court's decisions are binding; however, the Commissioner's recommendations are not binding and therefore are not subject to appeal.

Public bodies must consider the Commissioner's recommendations but are not obligated to accept them. Public bodies reported this can become difficult if they, and their legal counsel, interpret the legislation differently than the Commissioner, as matters can then escalate to debate in the public forum.

Also, RTIPPA can be interpreted as only providing for the Commissioner to receive complaints pertaining to right to information, not privacy matters. The Commissioner recommended that her office be given explicit authority to receive privacy complaints about the handling of an individual's personal information by public bodies.

The Commissioner also recommended that, during a complaint investigation, her office be able to review records of the Office of the Attorney General and records with solicitor-client privilege to determine whether these records should be released.

RECOMMENDATION

- Amend RTIPPA to clearly delineate the right of individuals to file a privacy complaint to the Commissioner about the handling of their personal information by a public body.

GENERAL PROVISIONS

Security

Public bodies suggested that the provisions around the security of information could be strengthened in the Act to complement privacy. It was also suggested that RTIPPA was written for a paper world and that it needs to be revised to better reflect today's digital reality.

Finally, as with PIAs, public bodies reported that Threat Risk Assessments (TRAs) have become too onerous and are sometimes ignored.

Officers of the Legislative Assembly of New Brunswick

RTIPPA does not apply to officers of the Legislative Assembly of New Brunswick. Five provinces have made legislative officers subject to their access and privacy legislation, with a few exceptions; i.e., the Speaker (Prince Edward Island) or the Legislative Council (Nova Scotia). These include: Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec and Alberta. The other eight provinces and territories, including New Brunswick, exempt legislative officers from access and privacy legislation.

During the consultation phase, no respondents raised any concerns about officers of the Legislative Assembly of New Brunswick.

The Information Access and Privacy Unit

The unit was created in 2010, and it is responsible for the central administration of RTIPPA. Staff provide training and support to public bodies that have come under the Act during the last four years as well as general information to the public.

In March 2015, a client satisfaction survey was sent to the 220 parent public bodies. Of the 87 who responded, nearly 91 per cent reported receiving training from the unit, and 78 per cent reported overall satisfaction with the level of service they received. Respondents also provided suggestions which echoed what was heard during the consultation.

Some provinces have moved to a centralized model for processing RTI requests. To date, four provinces and territories have moved to a centralized model for government departments. These jurisdictions reported that centralizing the RTI process helped improve response times and increased the consistency in the treatment of requests. Another benefit of a centralized model would be the funneling of legal opinions through one office leading to a more consistent application of the Act across departments.

The provincial government is reviewing its organization as part of the Strategic Program Review (SPR) begun in January 2015. As part of this review, the role of the unit could be expanded to include the centralized processing of RTI requests for government departments. The unit is currently located in the Department of Government Services, but SPR could determine a more suitable location.

GENERAL RECOMMENDATIONS

- Work with the Office of the Chief Information Officer to:
 - Define “reasonable arrangements for security” through regulation under RTIPPA.
 - Promote a streamlined, practical approach to TRAs by developing templates and guidelines for public bodies to use.
- Improve the training program for public bodies addressing their right to information and privacy responsibilities under the Act. The training will be tailored to different audiences (RTIPPA coordinators, management, employees) and different types of public bodies (municipalities, universities, police forces).
- In support of access and privacy practitioners, foster a community of practice where practitioners can network and share best practices and lessons learned.
- Improve the Information Access and Privacy Unit’s website and general communications to provide more information and statistics with the public and to increase general public awareness and understanding of right to information and privacy.
- In the legislative proposal, include the housekeeping amendments identified during the review such as discrepancies between English and French.
- As part of SPR, review the responsibilities and organizational location of the Information Access and Privacy Unit, including the option of centralized processing of RTI requests for provincial government departments, to improve response times, standardize the process and bring more consistency to RTI responses.
- Amend RTIPPA to ensure it is reviewed every four years.

Conclusion and next steps

It has been four years since New Brunswick implemented RTIPPA. Much progress has been made in that time. The public has more access than ever before to records and information as 400 public bodies have become subject to the Act. Privacy requirements now apply to all public bodies, assuring New Brunswickers that their personal information is being better protected than before. A legislative officer, the Access to Information and Privacy Commissioner, is now in place with the sole priority of protecting a persons' right to information and privacy.

This operational review allows New Brunswick to continue the process of clarifying privacy needs and enhancing the right to information.

The most common themes heard during the consultation:

- public bodies are struggling to adapt to the increasing number and scope of RTI requests, and they believe that fees will help address this issue;
- the public believes that more government information should be accessible and that the information should be made available free of charge and in a more timely manner; and
- provincial public bodies (departments and agencies) are finding it difficult to meet the public's expectations to deliver programs and services with the restrictions on sharing personal information.

SUMMARY OF RECOMMENDATIONS

Legislation

1. Amend the *Right to Information and Protection of Privacy Act* to:
 - a) Allow for the sharing of personal information among government departments and agencies as required to enable the delivery of programs, services and activities. Include specific information sharing provisions in RTIPPA such as for research purposes. Also include a similar sharing provision for other public bodies;
 - b) Define data sharing and data linking;
 - c) Amend RTIPPA to clarify the types of consent allowed;
 - d) Allow for an individual to file a privacy complaint to the Commissioner's office about the handling of their personal information by a public body;
 - e) Explore the criteria for disregarding a Right to Information (RTI) request and amend the Act if necessary;
 - f) Provide that the Act is reviewed every four years; and
 - g) Include other housekeeping and general amendments identified during the review.
2. Amend the General Regulation under the *Right to Information and Protection of Privacy Act* to:
 - a) As part of the Strategic Program Review (SPR), evaluate the potential re-instatement of fees for RTI requests.
 - b) Work with the Office of the Chief Information Officer to create a Regulation for "reasonable arrangements for security."

Guidelines and policies

3. Adopt privacy policies (including corporate privacy and breach policies) for provincial departments and agencies. Similar templates will be made available for other public bodies that could adapt them for their own use.

4. Develop a streamlined, practical approach to conducting Privacy Impact Assessments (PIAs) by developing guidelines and templates that public bodies can adapt for their own use.
5. Work with the Office of the Chief Information Officer to promote a streamlined, practical approach to Threat Risk Assessments (TRAs) by developing templates and guidelines for public bodies to use.
6. Develop resource materials for practitioners and place them on the Information Access and Privacy Unit's website, including guidelines concerning:
 - a) Process and timelines for third-party information;
 - b) Proactive disclosure of government information such as posting regularly requested information or RTI responses;
 - c) Clarification of mandatory and discretionary disclosures, and the mandatory and discretionary exceptions;
 - d) Blanket refusals and methods of redacting records;
 - e) That the identity of an applicant be kept confidential during the RTI processing period; and
 - f) The 10 privacy principles and any guidelines about the Act.

Process improvements/review

7. Review the RTI process looking for ways to make the RTI process faster, more efficient and consistent.
8. Encourage public bodies to review and improve their information management practices, including records retention and electronic records management.
9. Promote stronger integration of information management practices, including right to information, privacy, security and records management.
10. Encourage the heads of public bodies to review their delegated authorities under RTIPPA.
11. As part of SPR, review the responsibilities and location of the Information Access and Privacy Unit, including the option of centralized processing of RTI requests for provincial departments.

Training and awareness

12. Develop a training program for public bodies on their right to information and privacy responsibilities under the Act. The training will be tailored to different audiences (RTIPPA coordinators, management, employees), and different types of public bodies (municipalities, universities, police forces). Training topics to include:
 - a) duty to assist approach to help applicants get the information they are seeking; and, to minimize the search and review time for public bodies;
 - b) content of RTI response letters;
 - c) Impartiality of the RTI process.
13. In support of access and privacy practitioners, foster a community of practice where practitioners can network and share best practices and lessons learned.
14. Improve the Information Access and Privacy Unit's website and general communications to provide more information and statistics with the public; and, to increase public awareness and understanding of right to information and privacy and how to file an RTI request.

Appendix

Consultation contributors

Meetings were held with:

- Access to Information and Privacy Commissioner
- Department of Environment and Local Government
- Égalité Santé en Français Nouveau-Brunswick inc.
- Government of New Brunswick, Parts I through IV
- Government of New Brunswick, Part II (schools and school districts)
- Government of New Brunswick, Part III (health-care system)
- Municipal associations:
 - Association francophone des municipalités du Nouveau-Brunswick inc.
 - Association of Municipal Administrators of New Brunswick
 - Cities of New Brunswick Association
 - Union of the Municipalities of New Brunswick
- Office of the Comptroller
- Privacy Assessment Review Committee

Written submissions were received from:

Municipalities and municipal entities

- Association francophone des municipalités du Nouveau-Brunswick inc.
- Association of Municipal Administrators of New Brunswick
- City of Campbellton
- City of Dieppe
- City of Fredericton
- City of Moncton
- City of Saint John
- Regional Municipality of Grand Tracadie-Sheila
- Restigouche Regional Service Commission
- Saint John Police Force
- Town of Dalhousie
- Town of Grand Falls
- Town of Quispamsis
- Town of Riverview
- Town of Sackville
- Town of Saint-Quentin
- Town of Saint Andrews
- Union of the Municipalities of New Brunswick
- Village of Charlo
- Village of Chipman

- Village of Eel River Crossing
- Village of Memramcook
- Village of New Maryland
- Village of Salisbury

Private individuals and organizations

- Andrew Secord
- Association acadienne des journalistes
- Canadian Broadcasting Corp. News (New Brunswick)
- Comité des 12
- Deirdre L. Wade, Q.C.
- Égalité Santé en Français Nouveau-Brunswick inc.
- Mary Jane Banks
- New Brunswick Association of Real Estate Appraisers
- Private individual

Provincial entities

- Department of Agriculture, Aquaculture and Fisheries
- Department of Education and Early Childhood Development
- Department of Energy and Mines
- Department of Environment and Local Government

- Department of Government Services
- Department of Health
- Department of Natural Resources
- Department of Post-Secondary Education, Training and Labour
- Department of Public Safety
- Department of Transportation and Infrastructure
- Horizon Health Network
- NB Power
- WorksafeNB

Universities

- Mount Allison University
- St. Thomas University
- University of New Brunswick