

NSGEU

**Nova Scotia
Government
& General
Employees
Union**

March 21, 2003

Mr. Peter O'Brien, Chair
FOIPOP Review Committee
c/o Nova Scotia Department of Justice
5151 Terminal Road
P.O. Box 7
Halifax, N.S., B3J 2L6

Dear Mr. O'Brien:

Thank you for your letter of February 11, 2003 inviting us to make a submission to your Review Committee about the Freedom of Information and Protection of Privacy Act.

In our view, a fundamental feature of our system of government is access or freedom of information. As stated in Subsection 2 (a) of the Act, public bodies are fully accountable to the public by giving the public a right of access to records and giving individuals a right of access to, and a right to correction of, personal information about themselves. Ideally, this should occur without the need for this legislation and the people who work with it. Unfortunately, this does not occur and there seems to be a constant tension between governments and the public about what should or should not be accessible. This legislation has become an indispensable part of the machinery of government. Access or freedom of information has become an important indicator of how open, transparent and accountable a government is.

As the single largest union in the province with 21,000 members in a broad range of public services, it may be assumed that we have no problem obtaining information relevant to our members and the services they provide. Unfortunately, this has not been the case and access to information is a constant issue for us. We have been a regular applicant under the Act for at least seven years.

We have had extensive experience with the Act since 1996. While important changes were made to the Act in 1999, we still have some major concerns about how it operates to prevent the release of what we think should be accessible information to all in a timely fashion.

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This is not intended to criticize the work of the many FOIPOP Administrators in the various agencies and departments or the FOIPOP Review Office who have been of great assistance to us. What we are referring to is the overall approach of the government in its responses to FOIPOP applications and the weaknesses we see in the Act itself.

Our major concerns and recommendations for changes are as follows:

- **Fees**

We strongly disagree with the significant increase last year in the fees related to all aspects of the submission, processing and review of FOIPOP applications. In our view, this is completely contrary to the spirit of this legislation and also, completely unnecessary. It also means we apparently have the highest fees of any jurisdiction in Canada.

The value and benefits of having open and accessible information go far and beyond the narrow question of covering an acceptable proportion of the administrative costs. Nor do we accept the application of a "user pay" mentality to the provision of public services, especially to freedom of information. The public should not have to pay twice through their taxes and then through fees for something as fundamental as access to information. This completely undermines public confidence in the system and its supposed openness. We and they can rightly ask what is it that they are really trying to hide?

Already the perception seems to be that only journalists and political caucuses use this Act. These greatly increased fees greatly restrict the use of this Act to individuals and organizations with some financial resources and even then, to force them to be more cautious about possible applications.

We recommend that the all FOIPOP fees be reduced to the previous amounts prior to the latest set of increases in 2002 and that the government provide a full explanation of the real reasons behind the size and extend of the FOIPOP fee increases last year.

- **Time**

We have experienced major time delays between when we submit an application and when we actually receive the information requested or part thereof. In some cases, delays of well over a year have occurred for us. If the intent of the Act is to help make public bodies fully accountable, extensive delays do little to inspire confidence that this is taking place.

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We are aware of the time limits set out in the Act. We think they should be reviewed. For example, why should a public body be able to take up another 30 days in an extension when they have already had up to 30 days to respond to an application? Nor do we think 60 days are needed to ask for a review after being notified of a decision from a public body or not being notified.

We recommend all time limits for the various steps in the FOIPOP process be reviewed to shorten them as much as possible.

- **Misuse of Exemptions**

Many of our applications have not been granted and have therefore required us to request a review. In these cases, it has not been uncommon to see more than one exemption cited and with no explanation as to why they are being used. In addition, it is often the case that the possibility of severing non-exempt information from a document is not observed either. The Review Officer has pointed out these errors to the errant departments or agencies and to their credit, they usually complied with his recommendations. At the same time, this should not be necessary.

As stated by Justice Edwards in his 1993 decision, *McCormack v. Nova Scotia (Attorney General) et al.* (1993) 123 N.S.R. (2d) (271), public bodies "should detail for the applicant the reasons why the particular exemption is operative. Mere recital of the words of the relevant section is not enough."

We recommend that the present wording of the exemptions be reviewed and more accurate interpretation guidelines for all public bodies be provided about their proper use. We also recommend that the principle of severability be much more broadly applied than it seems to be at present.

- **Powers of the Review Officer**

We have greatly valued and appreciated the work of the Review Office to help mediate and make sound recommendations on our review requests. While we have not always agreed with his recommendations, we have felt fully consulted and understanding of the reasons for his recommendations. However, we think his recommendations should be mandatory on the public body concerned and not optional with some indication of reasons for not proceeding with them. It has been our experience that almost all public bodies accept his recommendations in any case.

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We recommend that the recommendations of the Review Officer be binding and not optional on the relevant public body who is a party to a FOIPOP review.

- **Third Parties**

Another major problem for us has been the power of third parties to block access to documents. We do not think these parties should have this power. In other words, it should be clearly understood by them that if they are working with or for a public body, there is the possibility that any document prepared by them can be accessed under this Act.

We recommend that third parties not have the option to agree or disagree with the disclosure of a document. Instead, public bodies should be required to ensure that any third parties are informed of the possibility of any document prepared by them may be obtained through an application under this Act.

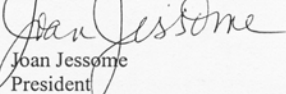
- **Culture of Openness and Accessibility**

We think much more needs to be done by the government to ensure that first and foremost, all public bodies do all they can to make their records and documents accessible to the public. Section 48 requires the publication of a directory to assist in identifying and locating records of public bodies. If such a directory exists, it is certainly not generally known.

We recommend that the government do much more to promote the right of the public to accessing records or to be able to review personal information starting with the publication of what types of information are already available from public bodies and in making better known how and who to contact for access to records. We further recommend that all public bodies ask regularly about the types of information that the public would like to see.

We have tried to outline a number of major problems that presently occur with the FOIPOP Act, and to offer constructive recommendations for addressing them. It is especially important the fees be reduced as soon as possible.

Yours sincerely,



Joan Jessome
President

Nova Scotia Government and General Employees

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- c. Hon. Jamie Muir, Minister of Justice
Kevin Deveaux, NDP Justice Critic
Michel Samson, Liberal Justice Critic