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

MINISTER'S REPORT

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Protection of Privacy Act***
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Minister's message



It is my pleasure to present this report with findings and recommendations from the second major review of the *Right to Information and Protection of Privacy Act*.

Since its proclamation in 2010, the Act has promoted open, transparent, and accountable government and public bodies. It gives every person the right to access information about the public business of these bodies, with some exceptions. It also protects individuals' information privacy by setting rules for how these bodies collect and handle personal information.

A lot has changed since the first major review of the Act in 2015. The world has seen huge advances in technology, a global pandemic, and public expectations for more and better online public services. With these came new challenges and opportunities for individuals exercising their rights to information access and privacy, and for public bodies upholding them.

We asked you how the Act is working and how we can make it work better. We received over 50 responses! This report reflects what we heard.

I would like to thank all those who provided responses. Your feedback is critical to ensuring the Act continues to serve the needs of all New Brunswickers.

Thank you,

A handwritten signature in blue ink, appearing to read 'Ernie L. Steeves'. The signature is fluid and cursive.

Hon. Ernie L. Steeves
Minister of Finance and Treasury Board

Introduction

The *Right to Information and Protection of Privacy Act* (RTIPPA) is about information. It directs how governments and others must treat information. That means personal information (PI), too. The Act aims to strike a balance between the public's right to know and individuals' right to privacy.

Through RTIPPA, you have the right to access as much public information as possible, with limited exceptions. At the same time, we in government have a duty to protect people's PI carefully. We gather it only when needed. We keep it only as long as necessary to do what is needed. And we use it only for purposes consistent with the reason for which we collected it.

The Act came into force in 2010. RTIPPA included a provision requiring that an operational review start four years after the Act came into force – so, 2014. The Act also requires a report to the legislature within one year after we started the review – so, 2015.

That first review was thorough and we have implemented almost all its recommendations (see the progress from the 2015 report on page 7). One of the most important was that we should review RTIPPA not just once but every four years. This became law on April 1, 2018. That means we had to start the current review by April 1, 2022, which we did. We completed it on time, by March 31, 2023.

Finance and Treasury Board (FTB) is the department responsible for RTIPPA.

As part of the most recent review, the government of New Brunswick (GNB) conducted a public survey. We also released a discussion paper requesting feedback. We received more than 50 submissions. This response demonstrates how a great variety of people are invested in upholding the right to information and the protection of privacy in New Brunswick. Submitters ranged from governments and other public bodies to media and the general public. Most of the input concerned the right to information.

Below you will read feedback and recommendations that we took from these submissions and from the survey. In addition, we scanned what others across Canada are doing and did a review of New Brunswick court decisions, and offered recommendations from that research. Multiple sources give New Brunswickers the best current wisdom on how we can improve your access to information and the protection of your privacy. Stakeholders and the public voiced the need for greater transparency. Those who hold information want an improved process so they can serve you better. Everyone wants greater clarity. And we need to adapt RTIPPA to the digital era.

We have divided the recommendations into two sections: amending the Act and process improvements. Following this report, FTB will create an action plan. The plan will respond to the report's findings and recommendations.

Background

RTIPPA helps make government – and almost 500 other public bodies in New Brunswick – open, transparent and accountable to you.

- It gives you, and every person, the right to access information that government and public bodies hold, with some exceptions.
- It requires government and public bodies to handle your PI in a way that upholds your right to information privacy.

What is a public body? It is an organization that gets all or some of its funding from the public, to provide government services to the public – schools, hospitals, police forces, municipalities and community colleges, to name a few. There are many others. So, there is a great number of organizations that, under RTIPPA, are required to share most of their information with the public.

You have the right to access almost all information that the government or other public bodies hold, with some exceptions. These are required or permitted by the Act to ensure that disclosing some types of information isn't harmful.

You also have a right to information privacy. This means you have the right to know when we or other public bodies collect your information, for what purpose and by what lawful authority. It also means you have a right to ask for your information to be corrected if it's wrong. And if there's a privacy breach that places you in harm's way, we must let you know.

The current report has recommendations based on the feedback we received and research into what other provinces and the federal government are doing. A list of those who submitted suggestions is in Appendix B (page 11).

The 2022-23 review, and therefore this report, focus on how to improve RTIPPA for New Brunswickers. Given that improvements are the main focus of this report, it is important to also recognize the aspects that are going well. FTB led the implementation of most of the 2015 recommendations, apart from a few such as clarifying the types of consent allowed and including specific information-sharing provisions for research purposes. Those two have carried over as recommendations in the current report. See the list of improvements that flowed from the 2015 report, immediately following.

WHAT'S WORKING WELL: IMPROVEMENTS SINCE 2015 REVIEW

Providing better services through sharing information internally: Bill 59, *An Act to Amend RTIPPA*, passed and allowed a change to the Act. This enabled public bodies to share PI needed to provide a common service or a service provided by two or more public bodies working together. They need to specify the information in a written agreement. They also need to show how they will protect the PI.

Right to privacy: Bill 59 also provides a clear right to file a privacy complaint to the Ombud. This refers to the handling of PI by a public body.

Regular reviews: There is now a comprehensive operational review of the Act every four years.

Better security: Privacy and security experts have worked together. This produced better ways to assess privacy impacts and security risks.

More comprehensive training: GNB has developed guidelines, templates, training and/or training

materials that are available to all public bodies. Topics include:

- managing privacy breaches;
- conducting privacy impact assessments (PIAs);
- the process and timelines for third-party information;
- mandatory and discretionary exceptions and disclosures;
- blanket refusals and redacting records;
- maintaining the confidentiality of an applicant's identity;
- delegating authority under RTIPPA;
- using the "duty to assist" approach to help applicants get the information they are seeking;
- the importance of information management (IM) and records management (RM);
- Right to Information (RTI) response letters (updated in 2017-18); and
- the 10 privacy principles.

Improving Information Management/Records Management (IM/RM):

- IM/RM managers in public bodies who must comply with the *Archives Act* can get advice and support from the Provincial Archives.
- FTB encourages public bodies to set up proper records management at the start of new programs and services.

Fostering excellence: In January 2020 FTB set up Networks of Excellence in privacy and in access to information for government departments. These allow sharing of information and knowledge, and promote collaboration and consultation. They also develop guidance and training materials for government departments that are available to other public bodies.

What we heard: highlights

It has been helpful to hear from people on both sides of the situation – those who request information and those who must provide it. The public struggles with how to write a request to get the information they're seeking. Some find the processes poorly documented or inconsistent, complex and overly technical. They want better guidance and support. Some respondents had concerns around compliance with time limits. On the other side of the coin, the public bodies are faced with a simple fact: they are required to respond within time limits with their finite resources, whether they receive one or 10 or 100 requests. And, like the public, they, too, find the processes complex and difficult to navigate. Some public bodies expressed that they struggle under these circumstances to do their job as well as they would like, and they would like more training. So, we need clearer and more user-friendly processes for greater efficiency and effectiveness, for all parties.

Submitters on both sides agree that a formal process is not necessary in every case. We heard a desire for more proactive disclosure of information. We heard a need to better inform the public that they can request information informally. These two things would go a long way toward using RTIPPA in the spirit in which it was intended – as a last resort.

The public survey showed clearly that citizens are concerned about privacy. Many don't understand how public bodies use their PI. Set against that is the survey finding that the majority of respondents are actually comfortable with public bodies analyzing data and information they collect to make better decisions about programs and services. However, the Act does not explicitly state that we can use PI in this way. Some public bodies don't have a common understanding of what RTIPPA requires them to do about privacy – or the best practices for how to do it. They need more guidance and operational support than they are getting.

Technology changes quickly and often. Just a few years after they were written, some terms and requirements about privacy in RTIPPA are outdated. They don't fully support protecting privacy in the digital era. They need to be updated to provide clarity and foster accountability. There is confusion about RTIPPA's purposes. Do the purposes still reflect the needs of a society that has changed a great deal since 2010? Clearly, from the feedback received, there is a need to clarify, expand and better express the purposes. There's also a need to more clearly identify which public bodies the Act applies to and when other Acts apply instead of RTIPPA.

We heard that current gaps and inefficiencies in complaint resolution processes cause difficulties. These include delays and additional expenses. They also deny third parties the ability to participate, even though they're affected by the outcome.

For a fuller list of the concerns we heard, please see Appendix A, page 10.

Recommendations

RECOMMENDED AMENDMENTS TO RTIPPA

1. Clarify how specific an information request must be.
2. Modify the definition of “record” to:
 - limit it to existing physical records; and
 - exclude automated electronic records (such as system logs and metadata).
3. Define the term “university investigation,” for which records are exempt from the Act. The definition should include a variety of student matters. The Act protects university employees already. A definition would offer students the same protection.
4. Allow removal of exact duplicate records when processing requests.
5. Allow extension of response time limits with the applicant’s consent.
6. Allow a public body to disregard an RTI request without Ombud permission if records were already provided in full.
7. Require a third party to notify the public body of its intent to complain.
8. Stop the clock on the time limit for responding to an RTI request when there is a third-party complaint, until the complaint is resolved.
9. Make it easier to transfer requests and related records to other departments/public bodies.
10. Eliminate barriers to allow for a single point of co-ordination when there are multiple public bodies involved in responding to the same RTI request.
11. Protect information related to security. Require that public bodies not disclose such information in response to an RTI request.
12. Include additional factors to guide whether or not to disclose third-party PI. These will help public bodies determine if it would be an unreasonable invasion of privacy.
13. Make it easier to understand provisions regarding public bodies’ use of PI; for example, that
 - they may use it to evaluate and improve their own programs and services; and
 - they may share it with another public body.
14. Clarify that public bodies can notify an applicant that their PI is correct.
15. Add lost or stolen PI to the definition of “privacy breach.”
16. Add that consent under the Act can expire and be withdrawn, and prescribe acceptable forms of consent other than written (e.g., verbal).
17. Clarify the meaning of “secure disposal” as it relates to PI. Ensure the term is being used consistently and appropriately.
18. Update the definition of PI. Add two examples: biometric data and an individual’s likeness.
19. Add new privacy protection requirements for contracted information managers and agents of public bodies.

20. Require public bodies in Parts I, II and III of GNB to adopt best practices in privacy management. This includes PIAs for any new program or service that includes PI. Require that the Ombud review PIAs for common and integrated services, programs and activities
21. Remove the reference to the "Privacy Assessment Review Committee" (PARC), which does not exist. Update requirements for use and disclosure of PI in areas related to PARC's mandate. These include using PI for research or statistical purposes and for data linking.
22. Include protecting information privacy in the list of the Act's purposes.
23. Add a list of all New Brunswick acts or provisions prevailing over RTIPPA. Include a requirement to periodically update the list.
24. Clarify how the Act applies to private companies when contracted to provide
25. Require the Ombud to get the consent of all parties to a complaint before extending the complaint investigation time limit.
26. Require the Ombud to:
 - notify a third party when the Office of the Ombud receives a complaint about a public body's decision whether or not to disclose a third party's information; and
 - provide the third party a copy of the complaint and decision.
27. Require the court to:
 - notify a third party when it receives a referral to review a public body's decision, act or omission re disclosing the third party's information; and
 - provide the third party a copy of the referral and related decision.
28. Enable a third party to participate in a court review involving its information.
29. Clarify that when a complainant appeals to the court regarding a public body's refusal to fulfill an RTI request, the appeal relates only to that original refusal, not to any recommendation of the Ombud's.

RECOMMENDED PROCESS IMPROVEMENTS

30. Improve the RTIPPA website to provide operation and process assistance.
31. Strengthen data collection and public reporting on RTI requests among all public bodies.
32. Offer public bodies annual RTI training.
33. Post RTI requests to government departments - and their responses - online for public access, but do not publish personal or legally restricted information.
34. Provide public bodies with more training on privacy management. Provide resource materials on integrated services and programs, including guidance documents.
35. Develop and/or improve the language in privacy statements for government programs and services.
36. Report statistics on privacy-related matters in FTB annual RTIPPA reports.
37. Publish and update periodically a list of public bodies subject to RTIPPA.
38. Include court and Ombud decisions on RTIPPA in training and training materials FTB gives to public bodies.

Conclusion

We have completed the operational review of RTIPPA.

The recommendations above will achieve the following overarching goals.

1. Increasing trust

- Improving transparency
- Strengthening accountability

2. Updating the Act to address the needs of the digital era

3. Improving clarity

- Improving understanding of the law and best practices
- Stating protection of privacy as a purpose

4. Addressing challenges

- Of the public (e.g., improving the complaint resolution process)
- Of public bodies

5. Improving compliance of public bodies

What we heard: the basis for the recommendations

- There is not enough information and support for applicants to be able to understand the RTI process. RTI processes and requirements are complex, unclear, and have gaps.
- Public bodies struggle with the administrative cost to process requests. Barriers include fixed time limits, limited operational support and guidance, and no controls on the number or scope of requests.
- The definition of “record” is very broad and does not reflect current forms of communication and automated records. As it stands, it could include duplicate records.
- The term “university investigation” is not defined and thus unclear.
- There is a gap in the Act for specifically protecting information that would harm security.
- There are common requests to more than one public body, which duplicates effort and is therefore inefficient. Public bodies need the authority to transfer records so just one can deal with the request.
- RTIPPA does not list enough factors to guide public bodies on whether to disclose PI as part of an RTI request.
- The Act needs updated definitions of certain terms. These include “privacy breach” and “personal information” (PI).
- RTIPPA doesn’t explain what types of consent are valid, other than written consent, or provide for consent to expire or be withdrawn.
- RTIPPA doesn’t contain provisions for using/disclosing PI for research and data linking purposes. The Act instead relies on the Privacy Assessment Review Committee (PARC), which doesn’t exist, to advise on such uses and disclosures.
- RTIPPA isn’t clear on whether PI can be used across a public body for other programs and services and for program evaluation and analysis.
- Some government departments and public bodies do not understand well how common and integrated programs and services (CISPAs) work.
- RTIPPA doesn’t contain explicit privacy protection requirements for information managers and agents of public bodies. Agents are those whose work includes acting on a public body’s behalf. Requirements are grouped into CISPA provisions and not well understood.
- Newer aspects of privacy are complex. There are inconsistent interpretations of best practices and of privacy obligations under RTIPPA.
- New Brunswick public bodies are not required to show how they protect privacy. Other Canadian jurisdictions and the private sector have to do this. RTIPPA doesn’t require government departments to conduct privacy impact assessments (PIAs).
- When an applicant requests a correction to their PI, RTIPPA doesn’t provide an option to notify them that their PI is already correct.
- Using simple and transparent language is a key factor to building citizens’ trust and confidence.
- RTIPPA doesn’t include “protecting information privacy” as one of its purposes.
- It isn’t clear in RTIPPA:
 - what and when other New Brunswick acts apply instead of RTIPPA;
 - how it applies to private companies providing public services or operating public facilities; and
 - what public bodies it does apply to.
- Complaint procedures under the Act can create hardships for complainants, third parties, and public bodies due to:
 - the Ombud’s power to extend indefinitely the timeline to complete a complaint investigation;
 - conducting full investigations into complaints about mandatory exceptions to disclosure;
 - no requirement to notify a third party when an applicant makes a complaint to the Ombud about a public body’s decision related to the party’s information, or refers the decision or a related act or omission to the court for review; and
 - confusion about the specific matter RTIPPA says a complainant can appeal to the court.
- There is limited awareness and inconsistent use of learnings from court and Ombud decisions on RTIPPA as a guide to RTIPPA decisions by public bodies.

List of submitters

Stakeholders	Total number of submissions
Members of the public	34
Media	1
Private sector	1
Other	2
Public bodies:	
GNB-Part I	3
GNB-Part II	1
GNB-Part III	3
GNB-Part IV Crown corporations	1
Universities	1
Municipalities or municipal organizations	3
Other local government bodies	3
Total	53