



documents had been redacted to protect personal information in accordance with subsection 4(2) of the *Right to Information Act* (“the Act”).

3. The Petitioner raised a number of concerns in the referral to our office, all of which I will address in turn.

## **Analysis**

### **A. Application of the 6(b) exemption regarding personal information**

4. In providing the requested information to the Petitioner, the Department redacted certain documents to block out the names of government officials acting in their official capacity, including the name of the CFO, in accordance with the personal information exemption under 6(b) of the *Act*.

5. Section 6 of the *Act* provides:

There is no right to information under this Act where its release

...

(b) would reveal personal information concerning another person;

6. In determining the application of the 6(b) exemption, the Department also relies on the following definitions under section 1 of the *Act*:

“identifiable individual” means an individual who can be identified by the contents of information because the information includes

(a) the individual’s name,

(b) makes the individual’s identity obvious, or

(c) is likely in the circumstances to be combined with other information that includes the individual’s name or makes the individual’s identity obvious;

....

“personal information” means information about an identifiable individual;

7. The issue of whether the names of civil servants acting in their official capacity constitute severable personal information has been addressed previously by this office in the Barnett recommendation.<sup>1</sup> While it was my interpretation that the names of public officials acting in their professional capacity do not constitute personal information, the Court of Queen’s Bench did not agree with this reasoning and found that this information is severable

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<sup>1</sup> *Barnett v. Dubé*, NBRIOR - 2006-06.

personal information in accordance with the definition provided in section 1 of the *Act*.<sup>2</sup>

8. As the Court of Queen's Bench has definitively ruled on this issue, I am not in a position to recommend that the redacted names be released. However, I would like to take this opportunity to highlight how a strict interpretation of the definition of personal information and the 6(b) exemption can and often does lead to absurd results. In the instant case, the Petitioner had requested copies of e-mail correspondences between the Petitioner and the CFO. Copies of the correspondences were provided to the Petitioner, but the name of the CFO was redacted as personal information under the 6(b) exemption. The Petitioner clearly knows the name of the CFO as the requested correspondence was between the Petitioner and the CFO. The RTI Coordinator at Public Safety expressed some concerns about severing information that the Petitioner already had; however, the coordinator understood that it needed to be done in accordance with the current interpretation of the definition of personal information and the 6(b) exemption.

**B. Petitioner's request for original electronic format of January 27, 2009 letter**

9. The petitioner had requested the original electronic copy of the CFO's letter to him dated January 27, 2009, both from the CFO directly and in his Right to Information request.
10. During our review of the file, the Department indicated that it was unable to provide the document in the requested format as there was no way to redact the personal information and because they were unable to protect the integrity of the document by providing a "locked" copy that could not be subsequently amended or altered .
11. As per the definition in section 1 of the *Act*:

"document" includes any record of information, however recorded or stored, whether in printed form, on film, electronic means or otherwise
12. There is no provision in the *Act* that provides that an applicant cannot request a document in a specific format, thus there is nothing to suggest that the petitioner does not have the right to make this particular request. However, as there is also no provision that provides guidance as to how such requests be handled and no provincial case law to date on point, this particular aspect of the petitioner's request raises a novel issue.
13. Looking to the federal *Access to Information Act* and its application and interpretation, the Trial Division of the Federal Court held in *Tolmie v.*

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<sup>2</sup> See *Barnett v. New Brunswick (Family and Community Services)*, 2006 NBQB 411 and *Hayes v. New Brunswick (Justice)*, 2008 NBQB 112.

*Canada*<sup>3</sup> that while a person has the right to seek access to information, this does not include the right to have the requested information provided in a particular format. In this case, the applicant requested a copy of the Revised Statutes of Canada in electronic form. The Department of Justice denied the request as it was in the process of preparing a CD-ROM version of the statutes for sale to the public and as it had already published the statutes and thus they were already available to the public in print form. The Information Commissioner upheld the Department's decision, which decision was then upheld by the Federal Court.

14. In the Petitioner's case, his request for the electronic version of this letter is quite similar to the situation in *Tolmie*. I note that while the Petitioner did not request publicly available information as was the case in *Tolmie*, he is requesting a document that he is already in possession of and has access to all of the information contained in the letter, only in a different format.
15. I see no reason to challenge the interpretation put forward by the Federal Court in the *Tolmie* decision regarding requests for information in a particular format and find it to be consistent with the provisions and spirit of the *Act*. As the Petitioner has a copy of the letter from when it was originally sent to him, it is difficult to see how the refusal to grant his request to have another copy of the same letter in a different format is denying his right to information. I leave it to the discretion of the Minister to determine if it is practical or otherwise desirable to provide a copy of the letter in the requested format to the Petitioner.

**C. Petitioner's request for specific provisions of legislative, regulatory and policy requirements**

16. The Petitioner also requested a "paper copy of the appropriate legislation, regulatory and policy requirements referred to by the Chief Firearms Officer" in the letter dated January 27, 2009, which were provided in the Minister's response.
17. In the petition to this Office, the Petitioner states that the response "did not clearly identify which legislation, regulatory and policy requirements were not met" in relation to the bilateral agreement provided in support of the application for an Authorization to Transport (ATT).
18. While recognizing the Petitioner's desire to seek clarification and guidance on this particular matter, I would suggest that the Right to Information process is not the proper avenue for this purpose. The Act is designed to facilitate the right to access government information, but not to request assistance in clarifying or interpreting this information. The Petitioner may wish to follow

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<sup>3</sup> *Tolmie v. Canada (Attorney General)*, [1997] 3 F.C. 893 (T.D.).

up with the Chief Firearms Office if he has specific questions about the information he has been provided with.

19. I am satisfied that the Minister's response adequately addresses this part of the Petitioner's request.

**D. Copy of letter and bilateral agreement**

20. In the petition to this Office, the Petitioner states: "I did not receive a copy of the letter or the bilateral agreement which was the consideration of this request."
21. Reviewing the original request to the Minister reveals that the Petitioner did not specifically request these pieces of information, although they could be considered to be included under the general request for all communications external to the Department of Public Safety.
22. We raised this issue with department officials upon our review of this petition, who informed us that these two documents were additional responsive records that had not been included in the original response to the Petitioner. The department asked for our direction on how to proceed and Legal Counsel advised to provide copies to the Petitioner.
23. On April 23, 2009, the department provided a copy of these two documents to the Petitioner, with a copy of this correspondence provided to this Office. As the documents have been provided to the Petitioner, there is no need for any further recommendation on this point.

**E. No document count/format of Department's response**

24. The Petitioner also expressed frustration with the format of the Minister's response, in particular that there was no document count and thus there was no way to know how many documents were to be received through the request.
25. The quality of the format of responses to access requests is a recurring issue, and the *Act* does not provide guidelines as to how responses are to be organized, which means there is no requirement that a document count be provided.
26. That being said, this Office has addressed this issue with several departments and we have consistently promoted as a best practice that responses ideally would at minimum provide a list of all responsive records and clearly state which applicable and corresponding exemptions are being applied if any information is withheld. Providing a well-organized and detailed response not only assists the public in understanding responses to requests, but also makes the application of exemptions visible and easier to understand, which I hope in

turn has the effect of improving public confidence in the right to information process.

27. Further, well-organized responses also assists this Office in the conduct of reviews of requests in that we can quickly identify what information was withheld under which exemption, which reduces the time and resources required to complete reviews.
28. We raised these matters with department officials in the conduct of this review, and have no recommendations to issue on this point.

### **Recommendation**

29. **In light of the applicable legislation and the nature of the information involved, it was determined that the severed portions of the record disclosed to the Petitioner were appropriately severed.**
30. **I am satisfied that the disclosure made in this case constitutes a full and frank disclosure of all records in the Minister's possession related to this request.**
31. **Consequently, no further disclosure is recommended.**

**Dated at Fredericton, this 28<sup>th</sup> day of May, 2009.**

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**Bernard Richard, Ombudsman**