

advertisements regarding the proposed development and a copy of the provinces Land Exchanges policy.

3. Information from some of the documents was severed pursuant to section 4(2) of the Act on the basis that it would reveal personal information pursuant to section 6(b).
4. The Minister's April 26, 2007 response withheld documents from release on the basis that its release:
 - would reveal personal information concerning another person for the purposes of section 6(b) of the Act;
 - would cause financial loss or gain to a person or department, or would jeopardize negotiations leading to an agreement or contract for the purposes of section 6(c) of the Act;
 - would disclose opinions or recommendations for a Minister or the Executive Council for the purposes of section 6(g) of the Act.

5. The relevant provisions of the *Right to Information Act* are as follows:

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

- (a) includes 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;

4(2) Where a portion of a document contains some information that is information referred to in section 6, and that portion is severable, that portion of the document shall be deleted and the request with respect to the remaining portion of the document shall be granted.

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

- ...
- (b) would reveal personal information concerning another person;
 - (c) would cause financial loss or gain to a person or department, or would jeopardize negotiation leading to an agreement or contract;

...

- (g) would disclose opinions or recommendations for a Minister or the Executive Council.

6. On June 7, 2007 I delegated Christian Whalen from my Office to attend and review *in camera* the documents relating to this file. The bundle of documents that were withheld under section 6(b) as they would reveal personal information concerning another person consisted of over 300 records. The documents that were withheld under 6(c) consisted of approximately 50 records relating to draft agreements. There were 5 documents that were withheld under 6(g).

Exemption 6(b) – personal information

7. My examination of the 300 records withheld under 6(b) confirms that the majority do indeed contain personal information relating to parties other than the petitioner. The majority of the documents were maps and lists that contained personal information. In my opinion these documents were not severable. However, I determined that the following eight records can be released if the personal information contained therein was severed:
 - Email chain from September 11, 2006 to September 18, 2006 from Mark Colpitts to Darlene Cole: Subject Re: Review of Land Exchange Proposal – one page.
 - Email chain from September 11, 2006 to September 12, 2006 from Mike Sullivan to Bethany Clowater Subject: Review of land exchange proposal – 1 page.
 - Email chain dated September 12, 2006 from Peter MacNutt to Darlene Cole – one page.
 - Email chain from Peter MacNutt to Darlene Cole and Kim Eaton Subject Re: Project 1 page.
 - Email chain from August 23 to September 1, 2006 from Janet Higgins to Peter MacNutt Re: Portage Vale PIDs – page 1.
 - Mill Hill – Potential Land Exchange Area Summary – undated.
 - Email dated August 14, 2006 from Gary Jochelman to Peter MacNutt Re: Maps for golf course – 1 page.
8. The bundle of documents withheld under 6(g) of the Act comprised of three different emails as well as a document entitled ‘Crown Lands Branch Advice to Minister Briefing Note’ - prepared February 5, 2007 by Nadine Morris with an attached undated document.
9. In recommendation NBRIOR-03, NBRIOR-2006-04, NBRIOR 2006-10 and NBRIOR-2006-16 I have discussed the 6(g) exemption and have referred to the case law on this point. I have determined that the exemption was properly claimed for the document titled ‘Crown lands Branch Advice to Minister Briefing Note’; however, the emails are simply discussions amongst various officials regarding the project but are not work product prepared in support of Cabinet’s deliberative process or the Minister’s decision-making function¹. I therefore recommend that these documents be disclosed with any personal information severed.
10. Regarding the documents exempted under 6(c) the bundle of documents consisted of numerous draft copies of a draft agreement, various pieces of correspondence regarding the current draft agreement including 11 emails.

¹ *Minster of Transportation v. Consulting Engineers of Ontario*, September 26, 2005, Ontario Court of Appeal, Docket C42061 Juriansz, J.A.

11. As I stated to the Minister of Energy in NBRIOR-2006-18, I would like to remind the Minister of Natural Resources of the duty imposed upon them by section 5 of the Act which requires written notice of reasons for refusal. In particular, the response from the Minister should indicate when more than one exemption applies. After review of the documents exempted under 6(c) I have determined that four of the documents that were withheld under 6(c) should have been withheld under 6(f) which states ‘the release would disclose legal opinions or advice provided to a person or department by a law officer of the Crown, or privileged communications as between solicitor and client in a matter of department business’.
12. Of the remaining documents withheld under 6(c) I find that all of the documents were properly exempted; except for the following document which I recommend that it be disclosed:
 - Email exchange between D.C and Peter MacNutt regarding the agreement dated February 20, 2007.

Dated at Fredericton, New Brunswick this day of July, 2006.

Bernard Richard, Ombudsman