



Centre for Law and Democracy
Attn: Michael Karanicolas, Legal Officer

October 1st, 2013

Via email: Michael@law-democracy.org

Dear Mr Karanicolas:

On behalf of Premier Darrell Dexter, Leader of the New Democratic Party, I want to thank you for your letter on transparency in government.

The NDP strongly supports accountable government, and supports the use of the Freedom of Information and Protection of Privacy (FOIPOP) Act as one means of ensuring accountability. One of the first actions the NDP took after forming government was to reduce the FOIPOP fee from \$25 per request to \$5.

Nova Scotia is viewed as having one of the strongest FOIPOP programs in the country. In fact, under the NDP, Nova Scotia received an 'A' grade from Newspapers Canada's 2012 Freedom of Information Audit.

With regard to your specific questions:

1. The NDP is open to considering research and policy analysis that would show how the more complex and costly review system in other provinces improves citizens' timely access to information, by comparison to the experience in Nova Scotia.

Nova Scotia takes a unique approach to its Freedom of Information legislation. The very strong purpose clause and strictly limited exceptions and exemptions ensure openness well after the legislation took effect. Reviews are accessible and timely because the Review Officer does not have quasi-judicial powers or the more complex and costly procedures required to exercise such powers, unlike Review Officers in provinces with much more limited purpose clauses and broader exemptions. The current law also enables Nova Scotia to consider a wide range of citizens, such as journalists, for appointment to the position of Review Officer.

The relatively few cases taken to the judicial level have provided enduring guidance on the basic principles of the legislation, none more so than my own appeal in the case of *O'Connor v. Nova Scotia*, 2001 NSCA 132.

2. The NDP will consult with FOI Officers and the Review Officer to ensure that public bodies are acting appropriately when using the discretionary 30 day extension from the mandatory 30 day timeline in the legislation. The NDP will also consult the Review Officer about the cases where she permits more than 60 days because it should only be in rare circumstances such as a very large volume of records or third party considerations.
3. The NDP would welcome an opportunity to hear the Centre's reasons for this request. Solicitor-client privilege is an important principle of the common law. Canadian courts have found that waiver of privilege in one situation usually means that the privilege is deemed to be waived in all situations, even those not anticipated at the time of the original waiver. Again, it would be very useful to know the Centre's analysis of how this would advance the overall public interest, particularly when Nova Scotia's application of the privilege in the FOIPOP Act is strictly limited by the higher courts.

I trust that your members and allied organizations will have the opportunity to review the NDP platform in informing their voting intentions in this election. More details on our campaign are available on the website at <http://www.nsndp.ca/>. Thank you for the opportunity to outline the NDP positions on this issue.

Best regards,

Dan O'Connor

Dan O'Connor

Chief of Staff to Premier Darrell Dexter, Leader, Nova Scotia New Democratic Party