

2. In her petition dated February 22, 2007, the petitioner attached as Appendix 2 the following reply from the Commission, dated February 2, 2007:

As per your request, attached is a list of “contacts” logged on your NB Power account.

3. This reply was sent to her by Louis Haché, Customer Service Manager for the company’s Eastern Region. The February 2nd reply came 10 days prior to the resumption of the hearing of the Small Claims case, and it was the company’s follow-up to the exchanges with Mr. Darren Murphy. The list of contacts consisted in a 13-page computer printout providing a detailed chronicle of interactions between the petitioner and Customer Service, from July 25, 2002 to November 9, 2006.

4. On February 13, 2007, the day after the hearing of the petitioner’s case in Small Claims Court concluded, the Minister replied to her as follows:

This is in response to your request for assistance under the *Right to Information Act* for documentation concerning your account number ...

It is my understanding that Mr. Darren Murphy, former Manager of NB Power – Central Region, made arrangements to provide you with the information which you requested. As a result we have not proceeded with your request and I am returning your \$5.00 cheque.

5. On April 5, 2007, a review of the Power Commission’s files took place, pursuant to subsection 7(4) of the Act. In reply to the petition of February 22, the Minister indicated that the Power Commission did not have any documents to give to the petitioner in response to that petition. According to him, all of the responsive documents had already been shared with the petitioner through the Small Claims Court proceeding, apart from a few e-mails and letters that were exempted from the duty of disclosure owing to the applicable solicitor-client privilege.

6. The responsive documents identified by the Minister were grouped together in three ring binders, with the photocopies of the said documents being approximately 5 to 6 inches thick. Several documents appeared twice. Most of the documents previously disclosed were contained in affidavits filed in Small Claims Court. The documents included the following:

February 2, 2007	chronicle of communications with NB Power
March 17, 2007	decision by adjudicator Myer Rabin dismissing the petitioner’s Small Claims case
March 5, 2007	affidavit of Albert Dupuis

March 6, 2007	affidavit of Darren Murphy
March 6, 2007	affidavit of Louis Haché
March 5, 2007	expert report from Ernst Wiebe
March 9, 2007	affidavit of Colin Murray
March 9, 2007	affidavit of Steve Wilcox
Various dates	series of e-mails and other correspondence between Mr. Haines and his clients and witnesses in preparation for the hearing at different times between September 2006 and February 2007
Various dates	series of newspaper clippings

7. No other responsive document was identified by the Minister or the Power Commission.
8. Paragraph 6(f) of the Act exempts documents that “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.”
9. In my view, there is no doubt that the documents for which the Minister claimed an exemption under paragraph 6(f) are in fact exempt owing to privileged communications (see *Mackin v. New Brunswick (Attorney General)* (1996), 183 N.B.R. (2d) 223 (Q.B.) (Larlee, J.) and *Hagerman v. Minister of Energy* NBRIOR-2006-18 of July 12, 2006).
10. Given the Minister’s very complete disclosure at the time of the Small Claims Court proceeding, and the Minister’s more recent confirmation that there are no other documents related to the complaint in his possession, there are no grounds for recommending more complete disclosure in this matter. As for the complainant asking to see the expert reports that enabled the Commission to conclude that its transformer was not defective, the answer seems to be that he has no test results or independent reports confirming these facts other than the tests done by Ralph Smith and Steve Wilcox, of which the petitioner was well aware.
11. However, it would have been preferable to communicate all of the information disclosed at the proceeding through various affidavits in a more timely manner. The Right to Information request was made in December 2006, and according to the Act, a reply ought to have been sent to the petitioner by

January 6, 2007, more than a month before the resumption of her case.

12. Among the affidavits disclosed at the proceeding is a letter from the Assistant General Counsel of the Power Commission to the petitioner's solicitor ordering the petitioner to cease vilifying the representatives of NB Power and indicating that the corporation would not share any more information with the petitioner unless forced to do so. The letter of March 8, 2004 from Lynn Walsworth to Robert Basque clearly indicated as follows:

We acknowledge receipt of your letter of March 3, 2004, with attached Authorization from Mrs. Cormier to release personal information concerning herself to your office and to Ralph Smith P. Eng. We agree this authorization would cover NB Power with respect to anything that might constitute "personal information" relating to Mrs. Cormier within the meaning of POPIA. However, we note that most of the information requested by Mr. Smith is not "personal information" within said meaning. If you wish, under the auspices of this Authorization, to provide a narrower list of documents that relate solely to Mrs. Cormier's premises or power accounts, we would be happy to provide them, as we do for all our customers.

...

Given the campaign of vilification in which Mrs. Cormier appears to be engaged against NB Power, we are no longer willing to cooperate with her. Apart from providing information to which she is legally entitled (the personal component of which, as mentioned above, will be provided if the information is appropriately requested in accordance with reasonably accepted Canadian standards for privacy requests), NB Power is not willing to provide further information.

13. In the circumstances, since the petitioner had already been advised by NB Power that it would provide her with information only within the strict requirements of the Act, it would have been preferable for the Crown corporation to comply strictly with the Act when it received the request. The fact that there was a legal proceeding under way and that the request had been sent more than two months prior to the resumption of the proceeding merely adds to the duty of diligence owed by the Minister and the Crown corporation in this matter.

Dated at Fredericton, New Brunswick, this 23rd day of April, 2007.

Bernard Richard, Ombudsman