



(...)

13. What are the specific professional credentials and from what institution (C.V.) for each Service New Brunswick assessors servicing Campobello Island.
3. On March 27, 2007, the Minister responded to the Petitioner's request by providing him with answers to most of the questions outlined in his request made pursuant to the *Right to Information Act*. However, in a letter dated April 23, 2007 in which the Petitioner acknowledges receipt of the Minister's correspondence, he alleges that the Minister "did not answer key questions or provide specific information as requested in item 6" (information required for sales comparison). The Petitioner adds: "His answers continue to be evasive and lack substance to validate the assessment of our property."
4. It is to be noted that the Minister provided the Petitioner with two options to consult relevant and supporting material: (i) providing copies of the relevant material or (ii) allowing him to examine the said material in St. Stephen, New Brunswick. The Minister added the following indications:

We are enclosing the confidential information related to your property (PAN 03810527). Certain information has been severed from the documents. This information is being withheld on the basis that its release would reveal personal information concerning another person in section 6(b) of the *Act*.
5. The Minister fails to identify which information was withheld pursuant to paragraph 6(b) of the Act or alternatively, which documents were affected by this measure.
6. At issue is whether the Minister Responsible for Service New Brunswick provided the Petitioner with the documents containing the information requested and whether the information severed from the material requested by the Petitioner legitimately falls under the statutory exemption provided in subsection 6(b) of the Act.
7. On June 25, 2007, an *in camera* review of the responsive records identified by the Minister was carried out, pursuant to subsection 7(4) of the Act. Chief among the records available for consultation by the Petitioner or capable of being reproduced for his benefit as indicated in the Minister's response on March 27, 2007 are:
  - a. Residential Valuation Guide
  - b. Tax Benefits Programs (information)
  - c. New Brunswick Real Property Assessment Manual

- d. Assessment Data Analysis Module (Date procedures)
- e. Class/Building Codes
- f. Policies and Procedures Manual Assessment Branch
- g. 2005, 2006 and 2007 Taxing Authority List

## The law

8. The relevant provisions of the *Right to Information Act* are as follow:

2. Subject to this Act, every person is entitled to request and receive information relating to the public business of the Province, including, without restricting the generality of the foregoing, any activity or function carried on or performed by any department to which this Act applies.

(...)

3(1) Any person may request information by applying to the minister of the department where the information is likely to be kept or filed, and the appropriate Minister shall in writing within thirty days of the receipt of the application grant or deny the request.

(...)

3(8) If information has been published and is available to the applicant in published form

(a) the appropriate Minister shall notify the applicant in writing, referring the applicant of the publication, and

(b) this Act no longer applies to the request for information.

(...)

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.

(...)

7(1) Where an applicant is not satisfied with the decision of an appropriate Minister or where an appropriate Minister fails to reply to a request within the time prescribed, the applicant may in the prescribed form and manner (...)

(b) refer the matter to the Ombudsman.

(...)

10(1) Upon having reviewed the matter referred to him, the Ombudsman shall forthwith, in writing, advise the appropriate Minister of his recommendation and shall forward a copy of such recommendation to the person making the referral.

8. The relevant provisions of the *Protection of Personal Information Act* are as follow:

1(1) In this Act

(...)

“personal information” means information about an identifiable individual, recorded in any form;

1(3) An individual is identifiable for the purposes of this Act if

(a) information includes his or her name,

(b) information makes his or her identity obvious, or

(c) information does not itself include the name of the individual or make his or her identity obvious but is likely in the circumstances to be combined with other information that does.

## **The analysis**

9. The issue at hand raises two questions that are distinct in nature yet both are integrally part of this problematic situation. The first inquiry is aimed at determining whether the Minister respected his obligations pursuant to section 2 of the *Right to Information Act* and as a result provided the Petitioner with

the information he requested. This namely addresses the nature of the Petitioner's question 13 (February 24, 2007). The second question focuses on the exercise of the Minister's discretionary power. More specifically, I am asked to examine whether the Minister properly exercised his discretion in refusing to disclose the specific credentials and the institution for each of the Service New Brunswick assessors servicing Campobello Island, New Brunswick (Question 13 in Petitioner's February 24, 2007 letter to the Minister).

10. The first question – whether the Minister provided the Petitioner with the requested information – may be only answered adequately and thoroughly by first addressing the second question. In essence, the question at the heart of the Petitioner's referral is as follows: despite the exemption claimed (i.e. by refusing to disclose the information related to the assessors' credentials), can it be adduced that the Minister provided the Petitioner with all relevant information pursuant to section 2 of the Act? In light of the relevant jurisprudence, this question should be answered in the affirmative. This is not to say however that recommendations regarding this specific situation cannot be issued.
11. Section 6 of the *Right to Information Act* provides that information is exempted for the general right to obtain the said information when the latter contains “personal information” relating to a third party. As it now stands, the law in New Brunswick (see namely *Barnett v. New Brunswick (Minister of Family and Community Services)*, [2006] N.B.J. No. 534; *Goodwin v. Province of New Brunswick (Minister of Finance)*, [1999] N.B.J. 455) holds that reports or documents produced by, owned or in the possession of a governmental agency that stands to reveal “personal information” – interpreted broadly – about an individual is protected by privacy legislation and can be exempted from disclosure.
12. In *Goodwin v. New Brunswick (Minister of Finance)*, supra, Justice Russell reviewed the interpretation given to the concept of “personal information” as it appears in the federal *Access to Information Act* and *Privacy Act*, and concluded that a similar interpretation could be given to the relevant provisions present in New Brunswick legislation. Moreover, Justice Russell duly reaffirmed the position taken by Justice LaForest in *Dagg v. Canada (Minister of Finance)*, [1997] S.C.J. No. 63, and reminded us that government employees enjoy a reasonable expectation of privacy in the course of their employment. Hence, the expression “personal information” found in privacy legislation – whether provincial or federal – should be interpreted as encompassing information relating to the individual himself even though this information may be indirectly relevant to the performance of a governmental function (see *Barnett v. New Brunswick (Minister of Family and Community Services)*).

13. These cases underline the importance of reading both the *Right to Information Act* and the *Protection of Personal Information Act* together. While the first may appear to emphasize the *de facto* right of the Petitioner to have access to the information in the possession of the Minister insofar as it relates (specifically or more generally) to the fundamental issue, that is, whether the Petitioner's property was assessed correctly, the legislated provisions aimed at protecting privacy are somewhat counter-indicative as they emphasize the right of the assessor to benefit from the protection of his privacy, namely the personal information held by government about himself or herself.
14. As noted above, "personal information" is interpreted particularly broadly by the courts when determining whether information related to the privacy of individuals – including government employees when acting in this capacity – held by governmental institutions should be disclosed in the context of a Right to Information Request. In light of the cases identified above, it is only logical to conclude that even though the objective criteria to be qualified as an assessor are not necessarily classified as "personal information" since they have no way of linking given information with an "identifiable individual" for the purposes of the *Protection of Personal Information Act*, a person's credential and curriculum vitae are clearly and directly pertinent to a person's privacy. Disclosing the requested information would in fact release information that is relevant to an identifiable individual. I am of the opinion that in the instant case, this disclosure would serve no other purpose than to violate an assessor's right to privacy.
15. However, I find that the disclosure of the objective qualifications required of all assessors in the Province of New Brunswick would not violate any person's right to the protection of their personal information. Inversely, it could very well serve the purpose of answering the Petitioner's question regarding the assessors' qualifications. As a result, I must conclude that this information is relevant pursuant to section 2 of the *Right to Information Act* and that the Minister should reconsider his answer to the question 13 of the Petitioner's original Right to Information Request. It sum, it is relevant to understanding the functions the assessors perform.
16. Even though I was unable to find jurisprudence emanating from New Brunswick courts regarding this issue, a similar analysis was drafted by the Supreme Court of Canada (Justice Gonthier, *ponens*) in *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] S.C.J. No. 7, and is instructive in the case at hand. In its unanimous decision, the Supreme Court of Canada reiterated that in the context of an information request, the *nature* of the information itself is relevant and not the nature or purpose of the request (at par. 32). Therefore, insofar as the information requested is relevant to the general characteristics of the tasks performed by a civil servant – such as employment qualifications – the information will not necessarily be considered "personal information"

for the purpose of right to information and privacy legislation. However, subjective information that is determinative about an individual's ability to perform the relevant functions (of an assessor for example) may very well intrude on this person's privacy. By way of analogy, the conclusions of Jerome A.C.J. in *Canada (Information Commissioner) v. Canada (Solicitor General)*, [1988] 3 F.C. 551 (cited in the preceding cases) is relevant:

There is no indication that qualitative evaluations of an employee's performance were ever intended to be made public. Indeed, it would be most unjust if the details of an employee's job performance were considered public information simply because that person is in the employ of the government. (par. 12)

17. In sum, given that the nature of the information is the determining factor, it is my opinion that a general description of the qualifications required to be appointed as qualified assessor in the Province of New Brunswick sheds sufficient light on the assessment process and procedure and would serve the Petitioner well in his quest to have an appropriate answer to his question.
18. My attention now turns to the first question. Did the Minister Responsible for Service New Brunswick respect his obligations as provided by section 2 of the *Right to Information Act*? Considering the preceding discussion regarding the information exempted from disclosure, this question should be answered in the affirmative even though some of the information was withheld pursuant to paragraph 6(b) of the Act.

## Conclusion

19. With regards to the first issue raised in the context of our analysis, that is, whether the Minister provided the Petitioner with the information requested, in my opinion, the Minister has respected his obligations under the *Right to Information Act* and the Petitioner has benefited from the provisions of section 2 of the Act. This action by the Minister therefore suffices to dispose of the *Right to Information Act* petition. Pursuant to paragraph 3(8)(b) of the Act, there is no obligation under the statute on a public body to disclose information which is already published and publicly available.
20. The second issue dealing with whether the information severed by the Minister concerning the personal and professional credentials of the assessors is in fact legitimately exempted from disclosure pursuant to paragraph 6(b) of the *Right to Information Act* must be answered in the affirmative. However, for the reasons outlined in the preceding analysis, we recommend that the scope of the exemption be reviewed.

21. **In the result, I recommend in the instant case that all objective information regarding the professional qualifications of all assessors in the Province of New Brunswick be disclosed to the Petitioner.**

Dated at Fredericton, this 10<sup>th</sup> day of September, 2007.

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**Bernard Richard, Ombudsman**