

2. The Minister's response, dated January 19, 2007, provided what the Minister of the day, the Honorable Hédard Albert, considered a fulsome response in the following terms:

In accordance with your request pursuant to the *Right to Information Act* dated December 15, 2006, we are enclosing information and documents relative to your request.

At the time of dissolution of government, there were sixteen Executive Secretaries (Section 18 of the *Civil Service Act*) ; thirty six Ministerial staff (Section 18 of the *Civil Service Act*) and seventeen Ministerial constituency staff (these are not Section 18 appointments) for a total of 69 staff persons.

We are unable to provide you with a budgeted amount for severance packages as you requested, as government does not budget separately for this. Severance payments are to be covered by departmental budgets when an election is held.

With respect to your request for the "amount offered in the severance package", enclosed is a document entitled "Terms and Conditions of Employment for Personal Staff to Members of the Executive Council" which describes the guidelines used for calculating severance benefits of ministerial staff whose employment ceases. This is approximately one month's pay for each year of service.

As well, the severance guidelines in relation to Ministerial constituency staff during an election are attached. These guidelines would have been applied to the seventeen Ministerial Constituency staff noted above.

Finally, we are enclosing a receipt for your check of five dollars.

3. In his March 19, 2007 letter accompanying his petition, the petitioner submits as follows:

I am referring the following Right to Information Act petition to your office. The Office of Human Resources responded to a request I filed on Dec.15. I received a partial response from the minister. Although the minister provided background information and the precise number of executive secretaries and ministerial constituency staff members who were considered political staff, there was no answer given on how much these packages cost the province of New Brunswick. And although the minister provided an approximate scale for calculating severance packages it is impossible to estimate the requested figure considering the minister only released the number of staff members but withheld the salaries and years of service. For these reasons, I do not believe my request was fully and adequately responded to so I am petitioning your office over the department's refusal to offer a precise figure on the amount the government paid regarding severance packages to political staff members after the Sept. 18 election.

4. I met subsequently last spring with departmental officials, including the deputy minister of OHR, and obtained from her assurances that in the Minister's view the request had been responded to in full and as such the

Minister had not withheld any information and was not relying on any exceptions under the Act since the petitioner had received exactly what he had requested. I pressed the deputy minister to read the access request more liberally, but she insisted that the department's practice is to read the access requests as they come and to interpret the letter of each request as plainly as possible, so as to avoid any ambiguity in the Minister's response.

5. I was also informed that the detailed information with respect to which employee had received which amount of severance was not available from OHR, but would only be available from the individual departments concerned, that it had not been aggregated and therefore did not exist as such within the department. The departmental officials I met submitted that this information had not been requested by the petitioner since the request was only for amounts "budgeted", and that it was not necessary to refer the petitioner elsewhere as he had not requested that level of detailed information in any event.
6. With respect, I find the department's handling of this particular access request to be inconsistent with its duty to seek clarification of the access request, to make a diligent search of its records and to refer, if necessary the petitioner to the appropriate responding department. This complaint underscores the need for legislative reform aimed at requiring both sides to reach a common understanding of the search requested and the information being sought. Other legislative schemes provide explicitly for a duty to assist requesters in formulating their access to information request. Even in the absence of such a legislative duty privacy and access commissioners have interpreted access to information laws as requiring a public authority to make inquiry and seek clarification of right to information requests.
7. McNairn and Woodbury in their annotation of the Ontario FIPPA laws¹ conclude as follows:

Order 134 (Re Ministry of Financial Institutions; December 27, 1989)

An institution has an obligation to seek clarification regarding the scope of a request and, if it fails to discharge this responsibility, it cannot rely on a narrow interpretation of the scope of the request on an appeal to the Commissioner [This principle was applied in *Order PO-1730* (Re Ontario Hydro; November 17, 1999).]

Order 38 (Re Ministry of the Solicitor General; February 9, 1989)

An institution that receives a broadly worded request has three options in making its response. It can choose to respond literally to the request, which may involve an institution-wide search for records requested. It may request further information from the requester so that it may narrow its area of search. Finally, it

¹ McNairn and Woodbury, 2005 Annotated Ontario Freedom of Information and Protection of Privacy Acts, Thomson-Carswell 2006, pp. 279-280.

may narrow the search unilaterally but, if it does so, it must outline the limits of the search to the requester.

8. New Brunswick Courts have also held public authorities to account where they have failed to make a diligent search to identify and collect responsive records which supply parts of the information sought. (See *Woods v. Premier of New Brunswick* [2003] NBJ 149 (NBQB), Russell, J.) It is not permissible to respond to a petitioner that a complete answer does not exist in a given document, and therefore no detailed response is available.
9. In *Order PO-1857-I* (Re Ministry of the Solicitor General; January 19, 2001) the Ontario Information and Privacy Commissioner's Office held that on a appeal challenging the reasonableness of a government authority's search, the authority must provide sufficient evidence of the details of the search including the name of the employee(s) who conducted the search, the level of experience of these employee(s) and details concerning their familiarity with the subject matter of the request.
10. In dealing with this matter I am mindful also of the findings of the Ontario Commissioner's office in relation to the duties and powers inherent in her office which I believe are equally applicable to the role of the Ombudsman or a judge of the Court of Queen's Bench in dealing with petitions under the *Right to Information Act*. In *Order PO-1954-I* (Re Ministry of the Solicitor General; October 3, 2001) the hearing officer found as follows:

In conducting a reasonable search inquiry, the *Act* gives me the power as well as the obligation to satisfy myself that all reasonable steps have been taken to locate and identify records responsive to a request. I have the ability as well as the responsibility to determine what questions are objectively relevant in this regard, and to require that these questions be answered.
11. Unfortunately, I have no satisfactory evidence before me to enable me to find that the Minister of the Office of Human Resources does not have access to the records requested. Failing such it appears to me, in any event, that the information would no doubt be available in aggregate form or in raw data that could easily be aggregated, if not by the Minister for the Office of Human Resources, then by the Comptroller's Office or the Department of Finance which would have issued the cheques. Some better means of obtaining the information should be available other than directing the petitioner to every other ministry in government.
12. The information requested in this request is very sensitive information with great public interest. It is not in the least surprising that following a change in government and the letting go of all employees tied to an outgoing political faction, that the media and the public will want to know how much government has paid in severance to such individuals. Various means could be devised to protect the personal information sought if it was determined that the

private interests at stake in such matters outweighed the legislation's dominant purpose and the public interest in a full airing and accounting of such expenditures.

13. The Minister in this case however has chosen the path of avoidance and has produced a response that does not forward any opportunity to deal with the right to information request in a balanced and reasonable manner having regard to the various interests at stake.
14. The danger patent in the Minister's handling of the right to information request in the current case, is that if unchecked such sharp practices on the part of a government authority could readily turn the *Right to Information Act* into an instrument of disinformation, which can only weaken and erode public confidence in our public administration.
15. In recent weeks, as a result of a cabinet shuffle and retirements in the civil service the respondent department is headed by a new Minister and a new deputy minister. This may provide a ripe opportunity to consider this request anew.
16. **I recommend that the Minister revisit the petitioner's right to information request with a clear regard to his duty to make a diligent search, to clarify the meaning and scope of the request and to refer, if necessary the petitioner to the appropriate responsive department, in keeping with the cases discussed above.**

Dated at Fredericton, this 20th day of November, 2007.

Bernard Richard, Ombudsman