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# *Right to Information and Protection of Privacy Act Review Report*

JUNE 2026 FINANCE AND TREASURY BOARD

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# Summary

The *Right to Information and Protection of Privacy Act* (RTIPPA) is key for maintaining a healthy democracy in New Brunswick. The *Act* fosters transparency, accountability, and public trust in government and other public bodies by providing the public with a legal right of access to records. It also protects individuals' privacy rights by setting out rules for how personal information must be handled.

The *Act* mandates a review every four years to assess the law and how it is working in practice. In the summer of 2025, the latest review was launched and undertaken by the Department of Finance and Treasury Board to identify opportunities for improvement. The feedback received during public engagement was integral to the review process, and along with jurisdictional research, informed the review's findings and recommendations for the provincial government to consider.

## KEY FINDINGS

### **Significant opportunities exist to reform RTIPPA in ways that enhance transparency.**

RTIPPA's scope excludes certain entities and records covered in other Canadian right to information (RTI) laws. Several of RTIPPA's exceptions to the right of access could be narrowed, clarified or shortened timewise to improve transparency. Currently, the Ombud's recommendations for public bodies to release information are not binding. The review heard from multiple stakeholders that better outcomes could be achieved if the law was reformed to give their recommendations greater force. Additionally, RTIPPA does not require public bodies to proactively disclose records, which can improve access by making information available without a request.

### **Resource and training gaps in the RTI system limit the law's effectiveness.**

RTIPPA's success in providing timely access to information in the public interest also depends on the resources in place to support it. The review heard that it takes too long to get information through the current RTI system and the quality of responses vary.

Public bodies reported multiple challenges in meeting their RTI obligations under the *Act*, including a lack of capacity, training, and tools. They shared that the problem is exacerbated by an increase in complex, broad requests and the volume of digital records. Many stressed there was insufficient human resources or a misalignment of human resources needed to manage requests effectively, which was particularly acute for local governments and staff balancing RTI alongside additional job responsibilities. The need for more RTI training and modern digital tools for intake, tracking, and simplifying response effort were emphasized.

### **Updated privacy rules are needed to address emerging technologies, improve risk management and support responsible information sharing.**

Emerging technologies like artificial intelligence (AI) and automated decision systems (ADS) introduce new risks to personal information, underscoring the need to embed privacy risk management methodologies, such as privacy impact assessments and privacy management programs, into RTIPPA. Additionally, the law's complex and ambiguous information-sharing provisions, combined with a risk-averse culture in some public bodies, hinder collaboration and effective service delivery. There is a need for clearer rules that support better services and outcomes for individuals while maintaining strong privacy protections, as well as better training, and a cultural shift toward citizen-first approaches.



### 1. Strengthen transparency and accountability:

- Consider expanding RTIPPA's scope to include additional entities that are closely tied to government.
- Consider adding proactive disclosure requirements to the Act to foster greater openness.
- Consider introducing a requirement for public bodies to ensure decisions and actions are properly recorded.
- Consider amending certain exceptions to disclosure, such as the "advice to a public body" exception, to enhance transparency.
- Explore transitioning to a hybrid review model where public bodies must follow certain recommendations of the Ombud unless otherwise authorized by the Courts.

### 2. Enhance privacy safeguards:

- Consider modernizing RTIPPA to address privacy risks posed by emerging technologies like AI and ADS and ensure transparency by requiring public bodies to notify individuals at the time their personal information is collected if it will be used in an automated decision system that makes decisions directly affecting them.
- Consider requiring public bodies to develop privacy management programs and conduct scalable privacy impact assessments.
- Explore ways to improve collaboration and data sharing across public bodies while safeguarding privacy, enabling a more citizen-centered approach to service delivery.

### 3. Improve RTI operations:

- Consider centralizing the processing of RTI requests within government to improve efficiency, optimize resources, and ensure the consistent application of RTIPPA.
- Consider mechanisms to improve RTI support for local governments, such as a shared services model for processing requests or a dedicated central municipal advisor.
- Develop and provide an RTIPPA training program and a comprehensive policy manual to support public bodies in meeting their legislative obligations.
- Implement a modern, centralized online portal to streamline the submission, tracking and management of RTI requests in government to improve the user experience for both applicants and public bodies and enhance operational efficiency.

# Minister's Message

It is my pleasure to present this report containing findings and recommendations from the most recent review aimed at modernizing the *Right to Information and Protection of Privacy Act*.

This legislation forms the foundation of our province's access to information and privacy protection framework. The law grants every person the right to access information, with few exceptions, ensuring that public bodies operate with openness while safeguarding the personal information entrusted to them. Additionally, it protects individuals' privacy by establishing rules for how these bodies collect and handle personal information.

The methods by which governments collect, manage, and use information are constantly evolving. Emerging technologies, particularly artificial intelligence, open up a wide range of opportunities while simultaneously raising significant privacy concerns. Public expectations are changing, and it is essential for service delivery practices to be supported by legislation that is both strong and adaptable.

We asked all New Brunswickers, and specifically frequent users of the right to information system and processes how the *Act* is working and how we can make it work better. Over 220 survey responses and 54 written submissions were received. Together with additional research and many valuable conversations with stakeholders, we believe this report reflects the input that we received and findings from our jurisdictional analysis.

Thank you for your continued interest and participation as we strive to ensure that RTIPPA remains a strong and modern framework for the people of New Brunswick.

Thank you,



**Hon. René Legacy**  
Minister of Finance and Treasury Board





# Introduction

## ABOUT THE ACT

New Brunswick's *Right to Information and Protection of Privacy Act* (RTIPPA) is more than a set of rules. It is an integral part of a healthy democracy. The *Act* empowers individuals to access information held by public bodies while protecting their privacy rights. It promotes public participation, fosters informed discussion, enhances accountability, and ultimately helps build a stronger, more engaged society.

RTIPPA applies to over 400 public bodies across the province including government departments, schools, health authorities, universities, Crown corporations, municipal police forces, and local governments. The *Act* has the following purposes:

### Access to information

Granting individuals the right to request and obtain records held by public bodies subject to limited and specific exceptions.

### Protection of privacy

Establishing rules for the collection, use, disclosure, and safeguarding of personal information, while also granting individuals the right to access and correct their personal information.

### Oversight

Creating an independent oversight body, the Ombud, tasked with resolving access and privacy complaints and ensuring these rights are upheld.

## PURPOSE AND CONTEXT OF THE REVIEW

RTIPPA requires that a comprehensive operational review of the *Act* take place every four years. In 2025, the government initiated the latest review in fulfilment of its statutory obligation. Periodic reviews of the law are carried out to ensure it remains responsive to changes, including advancements in technology, shifts in societal norms, new operational realities, and public expectations. This review also focused on assessing how well the *Act* meets its core objectives while identifying opportunities to improve it. In doing so, special attention was paid to aligning RTIPPA with the government's commitment to making access to information more accessible and less restrictive.

This report provides an overview of how the 2025 review was conducted and highlights key findings. It also offers recommendations for the government to consider as part of its efforts to improve and strengthen the *Act*.

The review was comprehensive, covering both issues with the law itself and how it is operationalized. Over 100 issues and topics were identified; however, this report focuses on the most commonly heard themes and those with the greatest potential to advance the government's goal of making access to information under RTIPPA more accessible and less restrictive.

Feedback from participants has been paraphrased for ease of presentation in this report, and every effort has been made to fairly and accurately reflect the input received without altering the meaning. While not every issue or recommendation could be included, all feedback was reviewed and remains part of the review.

The Department of Finance and Treasury Board, which administers RTIPPA, sincerely acknowledges and values the thoughtful contributions provided by all stakeholders during this review process. The input received was instrumental in shaping this report's recommendations and guiding the ongoing evolution of the Act.

## **REVIEW PROCESS AND APPROACH**

The Department of Finance and Treasury Board adopted a multi-faceted approach to the review. Beginning in the summer of 2025, the review involved the following activities:

### **Public engagement**

On July 28, 2025, a public survey was launched alongside the publication of a discussion paper designed to spark dialogue and encourage feedback. As part of an inclusive approach to the engagement, we sought input from First Nations communities and a range of stakeholders including public bodies, journalists, and political parties. The consultation yielded 155 survey responses and more than 50 written or oral submissions. The public consultation concluded on September 12, 2025.

### **Engagement with RTIPPA professionals**

The department conducted a survey of public body employees responsible for handling right to information (RTI) requests and managing privacy related matters. This survey, conducted from July 30 to August 29, 2025, drew 65 responses, representing approximately a 37% response rate. The department also attended the Association of Municipal Administrators of New Brunswick conference to further understand the experiences of local governments.

### **Jurisdictional analysis**

Privacy and access to information frameworks in other Canadian jurisdictions were analyzed to understand current trends, best practices, and potential innovations to strengthen RTIPPA's framework.

### **Regulatory and judicial decisions**

Decisions from oversight bodies and the courts were reviewed to help understand how access and privacy laws are being applied and interpreted.

### **Provincial data analysis**

Available data on right to information requests, such as usage trends, response times, and decisions, were analyzed to provide a clearer picture of how RTIPPA is functioning.



# Right to information

## OVERVIEW OF WHAT WE HEARD

Stakeholders brought a range of experiences and perspectives to the review of the RTI system. There was a strong common message: the current system is falling short of expectations. From applicants, we heard concerns about delays, frequent extensions, and difficulty navigating the RTI process. From public bodies, we heard about perceived abuse of the system, the complexity of the law, and the practical difficulties of managing requests with current capacity, training, and tools.

These shared experiences painted a clear picture: New Brunswick's RTI system is not reaching its full potential. Stakeholders expressed a desire for meaningful improvements to make the system more effective and responsive. While perspectives differed on solutions, stakeholders want a system capable of delivering on its core purpose: the provision of timely access to information in the public interest.

## DUTY TO DOCUMENT

Strong records management is essential for good public administration for many reasons. In the context of access to information, it is foundational. The public's right to know relies on the proper creation and availability of records. The public cannot effectively hold public bodies accountable if key decisions and actions are not recorded. "Duty to document" is the term used to describe a public body's responsibility to create records of decisions, actions and processes.

Legislating a duty to document has been recommended as a solution to ensure accountability. Canadian Information Commissioners did so in a joint statement, citing a trend in RTI complaints about records that should exist but do not because of the use of new communication technologies and an emerging oral culture of decision-making. Newfoundland and Labrador's Muskrat Falls inquiry also recommended it to address a situation where important information was not documented to avoid potential public scrutiny under their access law. Currently, British Columbia is the only province who has a legal duty to document, while New Zealand is seen as a leader internationally.

In the discussion paper we asked whether New Brunswick should adopt a duty to document. Many stakeholders suggested that a duty to document be enshrined in legislation, citing its importance for transparency and accountability. They emphasized the need for clear standards, oversight, and enforcement. On the other hand, some public bodies raised concerns about the practicality of implementing such a duty, citing concerns about the administrative burdens and resource constraints such a duty could impose, particularly for smaller public bodies.

Strengthening existing policies and records management practices instead of legislating a duty to document was suggested as an alternative, noting that legislating duty to document could be challenging to establish and enforce. The need for guidance, well defined standards of the duty, and adequate training were noted as being necessary to support a successful implementation of a duty to document.

## RECOMMENDATION



- Consider a requirement in law that public bodies develop and implement reasonable measures to create, manage, and preserve records in accordance with established information management requirements.

## SCOPE OF RTIPPA: WHO THE ACT APPLIES TO

Some organizations and records currently fall outside of the *Act*, which limits public access to information. The discussion paper and public survey invited input on whether additional entities or types of records should be included under RTIPPA.



*“From a transparency perspective, we should not have entities in NB that hide behind not being included in legislation. Other entities have adapted to their requirements in being subject to the Act, and further expansion should be explored.” – Stakeholder*

### Office of the Attorney General

RTIPPA does not apply to the records related to the legal affairs of the Office of the Attorney General (OAG). Concerns were raised that this exclusion hinders transparency. Some stated the OAG should be included under the scope of RTIPPA, just as other public bodies have adapted to having their records subject to the *Act*. New Brunswick differs from other jurisdictions in Canada, where such records are subject to right to information laws.

### Provincial Archives

Government records in the care, custody and control of the Provincial Archives are excluded from RTIPPA. New Brunswick is the only jurisdiction in Canada where such records are not subject to right to information laws. Instead, the Provincial Archives are governed by the *Archives Act*, which has some inconsistencies with RTIPPA. Stakeholders supported the application of RTIPPA to archival government records to ensure consistent transparency and protection for government information, no matter how old it is.

### Legislative Officers

Legislative Officers shared with us their support for transparency, but raised concerns about coming under RTIPPA, citing risks to impartiality, their investigatory functions, and their advisory roles. They also highlighted potential resource challenges and noted that many of their governing laws already include access and privacy provisions. Expanding RTIPPA’s scope to include Legislative Officers would require a very careful and comprehensive analysis to address conflicts with existing laws and to safeguard their mandates and independence as oversight bodies.

### Government bodies

Currently, RTIPPA applies to government bodies where all the members or directors of its governing board are appointed by an *Act* or the Lieutenant-Governor. We heard that organizations with strong government ties should be subject to RTIPPA. Examples include those where the government has a controlling interest or where the majority of members, officers, or boards of management are appointed by an *Act*, the Lieutenant-Governor, or a Minister. Requiring that additional organizations closely tied to government be subject to the *Act* was suggested to enhance transparency and openness, particularly around government activities and their impact on public finances. This is a practice in some other jurisdictions, like British Columbia, Alberta and Newfoundland and Labrador.



*“While RTIPPA applies to a wide array of public sector entities, the current wording of the definitions leaves out some organizations that are closely linked to government operations.” – Stakeholder*



## RECOMMENDATIONS

- Consider expanding the scope of RTIPPA so it applies to records related to the legal affairs performed by the Office of the Attorney General.
- Consider bringing government records in the care, custody and control of the Provincial Archives under the scope of RTIPPA.
- Maintain that Legislative Officers and their records are outside the scope of RTIPPA.
- Consider amending the definition of “government body” to include organizations where the government has a controlling interest or ownership, and where the majority of officers, directors, or members are appointed by a Minister, Lieutenant-Governor, or an Act.

## ACTS THAT OVERRIDE RTIPPA

Stakeholders expressed concerns about the growing number of legislative provisions in other provincial laws that override RTIPPA. Concerns were also raised about the lack of process to review whether these clauses are necessary and effective.

While laws that override access and privacy legislation are not unique to New Brunswick and can sometimes be justified, stakeholders noted that since the Act came into force in 2010, around 70 provincial laws now either wholly or partially prevail over RTIPPA. Despite this, RTIPPA does not include a comprehensive list of these laws. Requiring a list in the Act would improve transparency and make it easier to assess on an ongoing basis whether such clauses are needed. Newfoundland and Labrador follows this, requiring that all prevailing clauses be listed in their right to information and privacy legislation and a similar approach is also taken in New Brunswick’s own *Personal Health Information Privacy and Access Act*.



*“While the Legislative Assembly has the ultimate authority to decide the laws of the Province, if it only deals with prevailing clauses on a case-by-case basis, it may be doing so without a clear sense of the overall impact that these clauses may be having on access and privacy rights.” – Ombud*



## RECOMMENDATIONS

- Add to RTIPPA a list of all legislative provisions that prevail over RTIPPA.
- Develop a process to identify and evaluate laws that may supersede RTIPPA to assess the necessity and potential impact on access and privacy rights.

## TIMELINESS OF RESPONSES

Under RTIPPA, public bodies are required to respond to RTI requests within 30 business days, unless a legal basis for an extension is established. In 2024-25, the Government of New Brunswick (GNB) met the 30 business day timeline for 59.5% of requests. Public bodies outside of GNB performed better, with an 83.8% 30 business day average response rate, but this does not come without challenges.

We heard during the consultation that it takes too long to get information. The public wants quicker access to information and, for journalists, obtaining information quickly is crucial to their work. For many, delays can be more than an inconvenience; they impede timely participation in public debates, delay community and individual decision-making, and undermine trust in the system.

For those responsible for responding to requests, the situation is also challenging. Public bodies told us that meeting the current 30 business day deadline is no small feat. Reasons were consistent across the board. The complexity and broad scope of some requests can be daunting, requiring hundreds if not thousands of pages of documentation to be located, retrieved, analyzed, and sometimes redacted to protect sensitive or confidential information. For many public bodies, all of this is done by an employee who balances these demands alongside their many other professional responsibilities. Gaps in staff training, resource pressures, weak records management practices, and lack of modern technological tools further exacerbate the matter. Some public bodies suggested making response time limits longer and more flexible, depending on the complexity and volume of the request.

We heard concerns about instances where public bodies delayed releasing responses until the very end of the 30 business day timeframe, even when the requested information was ready in advance. This delay was seen as conflicting with the spirit of RTIPPA. Newfoundland and Labrador's RTI law contains a provision that requires public bodies to respond to requests without delay to ensure the prompt release of information.

Social Development noted that they receive requests for personal information under RTIPPA when a separate process exists to routinely process certain types of files through regional offices. There is no mechanism under the *Act* to move these requests, with the applicant's consent, to the existing process, which would alleviate pressures on the RTI system.

Ultimately, as we heard from those using the system and those working within it, one thing was clear: tensions over timelines are about more than just setting or meeting specific deadlines. Fixing this issue cannot rest on simply shortening or extending the legislated timeframes. Instead, broader changes are needed to address the root causes of these delays. The focus needs to shift to strengthening the core system itself by investing in better tools and technology, improving training for RTIPPA staff, optimizing resources, and strengthening records management, while also incorporating legislated changes to help alleviate some pressures.

## RECOMMENDATIONS



- Consider requiring public bodies to respond to requests for information without delay.
- Consider allowing public bodies to redirect formal requests for personal information under RTIPPA, with an applicant's consent, to the appropriate branch in the public body that has an established alternate access procedure.

## TIME EXTENSIONS

Time extensions are an important tool under RTIPPA, offering public bodies extra time when they face legitimate challenges meeting the 30 business day response deadline. These extensions are intended to apply in specific and limited circumstances, such as when there is a large volume of records that must be searched. Public bodies are permitted to extend response timelines by up to 30 additional business days on their own authority. For longer extensions, approval must be sought from the Ombud.

We heard during the review that the public places significant importance on timely access to information, and time extensions are often viewed as barriers to access. At the same time, we heard from public bodies calling for more flexibility in unique and challenging situations.

One suggestion was for RTIPPA to allow time extensions with an applicant's consent. When applicants and public bodies agree that an extended timeline makes sense, the *Act* currently does not allow consent to act as the basis for an extension. Stakeholders noted this limitation is an opportunity for improving both flexibility and cooperation. Similar practices for allowing applicant consent as the basis for an extension are already allowed in other jurisdictions, including British Columbia, Manitoba, and the Yukon.

We also heard about the challenges that arise during exceptional situations, like a natural disaster or pandemic. These events can trigger disruptions in operations, from office closures to staff being redeployed to emergency response teams. Under current rules in RTIPPA, there is little room for flexibility in such scenarios. Public bodies pointed to the need for amendments that would allow extensions in cases of unplanned extraordinary circumstances. These would allow public bodies extra time to process requests. Jurisdictions like Manitoba, Newfoundland and Labrador, and Alberta already make allowances for such situations within their RTI frameworks.

What became clear from the feedback is that time extensions are viewed very differently depending on one's perspective. For applicants, they can feel like a barrier that delays transparency and access to critical information. For public bodies, they are an essential lifeline when faced with overwhelming volumes of records or extraordinary conditions. Any changes in how time extensions are handled must strive to meet both needs. The process must not only address operational challenges but also build confidence among the public by fostering clarity and trust.

As an alternative to time extensions, it was suggested that the 30 business day time limit be paused in certain scenarios, such as when a public body seeks clarification from an applicant and is awaiting a response. In these situations, the time limit could temporarily stop and resume once the requested information is obtained.

## RECOMMENDATIONS



- Consider allowing an extension of a response time limit with the applicant's consent.
- Consider allowing a time extension, with Ombud approval, for an unseen extraordinary circumstance that results in an unplanned operational closure or interruption.
- Explore the pause of time limits, rather than extensions, in certain situations such as when a public body is awaiting clarification from an applicant or consulting with a third party.

## PROACTIVE DISCLOSURE: A PATH TO OPEN GOVERNMENT

Open government is built on the principles of transparency, citizen participation, and accountability. Globally, open government practices are gaining traction, driven by increased public demand for transparency, advancements in digital technology, and the recognition that being “open by default” promotes effective governance.

RTIPPA relies on a request-based process as the main tool for transparency and does not require public bodies to publish certain records proactively. This means many records remain accessible only through formal RTI requests. Some public bodies in New Brunswick take proactive steps to voluntarily release information, but there is no requirement to do so under the *Act*.

We asked in both the public survey and discussion paper whether RTIPPA should include a requirement for public bodies to proactively disclose information to the public. Seventy seven percent (77%) of public survey respondents supported the proactive release of information. Stakeholders highlighted it could reduce administrative workloads, improve system efficiency, and foster greater openness. One public body emphasized that RTIPPA should not be seen solely as a tool for access but as a framework to promote trust, accountability, and openness within public bodies. They suggested that public bodies could be required to proactively release information that is frequently requested or that supports transparency and accountability in their operations.

Some concerns were raised about the potential resources required to implement proactive disclosure. We also heard that existing transparency frameworks or laws requiring the disclosure of certain records already exist, like in the *Local Governance Act*.

## RECOMMENDATIONS



- Consider amending RTIPPA to require the proactive release of information.
- Consider developing a process in government to review completed RTI requests to identify frequently requested records that could be proactively released.

## FEES

The topic of fees was a recurring theme raised by stakeholders. It sparked diverse opinions, reflecting the tension between ensuring accessibility and addressing administrative challenges.

New Brunswick is the only jurisdiction in Canada to not charge fees associated with RTI requests. The fee regimes across other Canadian jurisdictions vary and can range from a \$5 application fee to specific hourly rates that cover the cost of processing the request. Most jurisdictions do not charge fees to individuals who have requested information about themselves.

Public bodies shared their growing struggles with meeting the demands of RTI requests. Local governments vividly described their challenges: balancing high staff workloads with limited staff, and responding to large, broad scope and complex requests, all while relying on taxpayer resources. “One request can take up to 400 hours to gather all the information that was requested, and at no cost to the applicant,” explained an RTIPPA Coordinator, underscoring the scale of the challenge.

In response to these pressures, many public bodies advocated for a fee structure or cost recovery mechanism. They suggested that introducing an application fee or other reasonable fee structure could help recover administrative costs, particularly for labour intensive requests. A fee system, they suggested, could also discourage frivolous, vexatious or overly broad requests and encourage applicants to submit clear, focused, and well-intentioned requests.

On the other side of the issue, the importance of maintaining free and open access to information was emphasized, warning that fees could compromise the fundamental principle of transparency. As one stakeholder put it, “Fees of any kind would make the system less accessible to the public and would erode the public’s right to know.”

The divide was evident in the public survey results: 32% of public respondents supported charging fees for RTI requests, while 68% of public body employees felt fees should be introduced.

Fees introduce additional workloads, including calculating fee estimates, processing waivers, and handling fee related complaints. These administrative processes increase staff time and can exceed the revenue generated. While fees may encourage narrowing the scope of requests, this outcome can be achieved through other measures without imposing financial barriers.

## RECOMMENDATION



- Maintain that fees are not charged for RTI requests and provide clear language in the *Act* to that effect.

## EXCEPTIONS TO DISCLOSURE

Right to information laws must strike a careful balance between protecting the public's right to access information and safeguarding other important public and private interests, such as personal privacy. One way this balance is achieved is through exceptions, which are specific provisions that allow public bodies to withhold certain types of information. Exceptions play a key role in maintaining this balance. For many, however, the current exceptions under RTIPPA are too broad, misused, and relied on too frequently.

Stakeholders shared that some exceptions are not based on a clear measure of harm, which makes them out of step with international standards. Collectively, this undermines public trust and limits access to information in ways that feel at odds with the goals of transparency. At the same time, public bodies noted a gap in the exceptions, with the lack of a security exception leaving certain information unprotected which could pose risks to privacy, security, or the effective functioning of public bodies.



*"RTIPPA contains too many exceptions allowing officials to withhold broad classes of information without having to show that releasing that information would cause significant harm." – Member of the public*

## Cabinet confidences

Protecting the confidentiality of Cabinet discussions helps ensure an efficient decision-making process, as well as allows Ministers to freely and frankly debate proposals and stand collectively behind their decisions. This protection is widely understood as necessary for effective government and has been recognized by the Supreme Court of Canada.

What we heard, however, is that RTIPPA's cabinet confidence exception may be broader than it needs to be. Most Canadian jurisdictions allow cabinet confidences to be disclosed after a certain period of time. However, under RTIPPA, there is no automatic time limit for the exception. Several stakeholders explained that the current framework can lead to a practice where public bodies issue blanket refusals to release any cabinet related information. They questioned whether this level of restriction is justified and pointed to other jurisdictions where cabinet information is released in ways that remain consistent with good governance.

The following suggestions were brought forward by stakeholders or identified in jurisdictional scans as possible options to preserve the core principle of cabinet confidences while allowing greater transparency:

- Consider allowing the disclosure of factual or background information in support of cabinet discussions where it would not jeopardize the deliberative process,
- Consider defining an automatic release period for historical cabinet records that are older than a certain time period without requiring the approval of a Clerk or other authority,
- Grant government the ability to consent to the release of their own cabinet information if requested under the *Act*, and

- Consider giving the Ombud the power to require the production of records claiming cabinet confidences.

### **Advice to a public body**

The “advice to a public body” exception in RTIPPA exists to protect the ability of public servants to provide full, free and frank advice during the policy-making process. The Supreme Court of Canada has emphasized the importance of keeping these deliberations confidential, allowing ideas to fully evolve and policies to be carefully developed. Without this protection, the decision-making process risks being disrupted by the exposure of incomplete thoughts, shifted priorities, or discarded proposals, which are natural parts of crafting good public policy.

That said, concerns were raised about this exception. Stakeholders told us that the broad and sometimes inconsistent application of the term “advice to a public body” leads to excessive redactions. It is sometimes viewed as a mandatory rather than a discretionary exception, with little to no consideration of factors that might favour the release of information. The 20-year restriction on disclosure of information falling within the scope of “advice to a public body” in RTIPPA is seen as excessive, especially where the limit is typically 15 years or less in most other Canadian jurisdictions. Additionally, stakeholders called for greater clarity on what constitutes advice to a public body and a narrower scope for this exception.

### **Unreasonable invasion of a third party’s privacy**

We heard concerns about how the exception that protects the privacy of third parties is being applied. While public bodies are committed to safeguarding privacy, we heard that the exception in section 21 is sometimes interpreted in an overly cautious way. As a result, public bodies can take a blanket approach, redacting or withholding all information that may appear to be third-party personal information, even when disclosure might not constitute an unreasonable invasion of privacy.

RTIPPA does provide examples of situations where disclosing third party information is or is not considered an unreasonable invasion of privacy. However, it was noted that this list is limited, leaving room for uncertainty when none of the examples apply. For public bodies trying to balance privacy and transparency in their decision making, this lack of more nuanced guidance can be a challenge.

In comparison, most other Canadian jurisdictions include a list of specific factors in their RTI laws that public bodies must consider before determining whether the release of information could unreasonably invade an individual’s privacy. These factors help provide clearer direction and a consistent framework to evaluate such requests. Updating RTIPPA to incorporate similar provisions could offer public bodies the clarity they need to navigate the exception with more confidence.

We also heard that it is not always clear to public bodies whether it is an unreasonable invasion of privacy to release the name and business contact information of an employee of a public body or a third party organization acting in a professional capacity.

### **Third party business and financial interests**

We heard concerns about how section 22 of RTIPPA is being applied. This provision requires public bodies to protect information belonging to third parties where its release could cause harm to the third party’s business or financial interests. While the intention of this exception is clear, many stakeholders felt that it is frequently applied too broadly and, in some cases, misapplied.

The Ombud shared that businesses often claim their information is confidential as a matter of principle, without showing how its release would harm their interests. Public bodies are often accepting of this without asking for evidence or challenging the third party. As a result, more information may be withheld from disclosure than allowed. One stakeholder highlighted that this practice undermines transparency and accountability, particularly in cases where public resources are involved. They emphasized how this often shields from public view key details about decisions and expenditures involving third parties delivering public services.

Other jurisdictions, such as Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, for example, require that public bodies use a three-part harms test to assess whether third party business information should be protected. They must establish that the information falls into a defined category, was supplied in confidence, and that its release could reasonably be expected to cause harm. Stakeholders suggested adopting this kind of test in New Brunswick to provide clearer accountability for how section 22 is applied and to ensure that only truly sensitive information is protected.

While Section 22 is a mandatory exception, the section also includes exclusions that outline when the protection does not apply, such as when the third party consents or the information is already publicly available. RTI laws in some provinces, such as British Columbia, Alberta, Prince Edward Island, and Newfoundland and Labrador, also exclude records that contain third party business information when they reach a certain age.

We also heard calls for better public access to environmental information. Given that the environment is a shared resource for all New Brunswickers, it was suggested the list of exclusions under section 22 be expanded to ensure environmental reports and impact assessments are accessible to the public, rather than being restricted under claims of protecting business interests.

### **Protection of security related information**

One of the concerns raised during the review is that RTIPPA does not include an exception to protect information that, if disclosed, could harm the security of systems or buildings. Stakeholders identified this as a significant gap in the legislation, particularly in cases where information responsive to RTI requests, such as security logs, could, if released, compromise the government's ability to secure its infrastructure and systems against potential threats. In this regard, New Brunswick stands as an outlier among Canadian jurisdictions. Every other province and territory includes provisions in their respective RTI laws to protect information where its disclosure could reasonably be expected to threaten security, whether physical or digital.



## RECOMMENDATIONS

- Consider amending RTIPPA's cabinet confidence exception to improve access.
- Consider including a list of factors in RTIPPA for public bodies to consider in determining when the disclosure of personal information would and would not be an unreasonable invasion of privacy.
- Clarify in the *Act* that a name, business contact information, and job title about an employee of a public body or third party organization acting in a professional capacity is not protected.
- Consider amending the exception related to third party business and financial interests to include a three-part harms test.
- Explore adding additional exclusions to the third party business and financial interests exception, such as setting a time limit at which point information is no longer protected or allowing the release of environmental reports.
- Amend the "advice to a public body" exception to reduce the time before it expires and include a broader list of the types of information and records that are excluded under the exception.
- Amend RTIPPA to allow public bodies to protect information where its release could be reasonably expected to harm or threaten the security of a property or system, including cybersecurity.

## PUBLIC INTEREST OVERRIDE

A public interest override recognizes that, even when certain information is protected under RTI laws, there may be cases where the public good outweighs the reason for the protection. As explained by the UK Information Commissioner's Office, "public interest" is not simply what interests the public but, rather, what is in the broader public good. It can take many forms, including the public interest in securing the best use of public resources or ensuring justice and fair treatment for all.

In New Brunswick, RTIPPA provides a mandatory public interest override in cases where withholding information presents a significant risk to the environment, public health, or safety. However, the legislation does not include a general public interest override that applies to other circumstances where the public interest outweighs the reasons for keeping the information private. In the discussion paper, we asked for recommendations on potential changes to RTIPPA's public interest override.

Many stakeholders suggested that RTIPPA would benefit from adopting a general public interest override. It was also suggested to define the term "public interest" through guidance or law, as the term can be vague and decisions on evaluating public interest could vary widely without clear parameters. The Yukon codifies the factors public bodies must consider when deciding if the public interest in disclosure outweighs the harm of releasing the information. For New Brunswick, stakeholders recommended adopting a similar approach and including a list of factors in the law.



## RECOMMENDATIONS

- Consider aspects of a mandatory general public interest override in RTIPPA that apply to discretionary exceptions, except where the release of information could harm an individual, public safety, law enforcement, or legal proceedings.
- Consider developing a non-exhaustive list of factors to consider when assessing whether information should be disclosed in the public interest, to be included either in law or guidance materials.

## INDEPENDENT REVIEW MODEL

We heard a range of perspectives on New Brunswick's current independent review model, where the Ombud has the power and authority to investigate complaints and make non-binding recommendations. Many public bodies believe the Ombud model works well, valuing its flexibility and its focus on informal problem solving. They noted that the weight of the Ombud's recommendations is enough to encourage compliance from public bodies.

However, other stakeholders, both the public and some public bodies, highlighted a significant challenge with the current model. Where the Ombud lacks the authority to enforce its recommendations, public bodies can choose not to comply with recommendations to release certain information or records. This not only impedes access to information but also puts the burden on individuals to appeal the public body's decision to the Court of King's Bench. This is a costly and complex process that many New Brunswickers cannot afford to pursue.

In looking at alternative models, stakeholders expressed mixed preferences. Some advocated for empowering the Ombud with binding order-making powers, which would compel public bodies to comply with its decisions, shifting the burden of appeal onto the public bodies rather than individuals. However, it was noted by the Ombud that a model with order-making powers requires more procedures and resources.

Other stakeholders, including the Ombud, suggested implementing a hybrid approach, like Newfoundland and Labrador. In this model, public bodies would either comply with certain recommendations of the Ombud or seek a court declaration that authorizes the public body to not follow the recommendation. Those in favor of this model pointed out that it strikes a balance by retaining the Ombud's flexibility while strengthening enforcement and accountability. Those in support of the current Ombud's model indicated they would prefer the hybrid model over order-making powers if the oversight model must change.



## RECOMMENDATION

- Explore adopting a hybrid independent review model where public bodies must follow certain recommendations of the Ombud unless they obtain a court declaration stating otherwise.

## MODERNIZING RTI OPERATIONS: DIGITAL TOOLS

A consistent message we heard during the review was the need to modernize GNB's approach to managing RTI requests. Applicants and public bodies alike described the challenges of operating in an outdated, inefficient system, where non-automated processes create unnecessary obstacles for everyone involved. Members of the public shared their frustrations with the current process of downloading the PDF request for information form, completing it, and emailing it to the appropriate public body, all without a way to easily track the status of their requests or communicate securely with the public body. For individuals seeking information from multiple government departments, it becomes increasingly frustrating to send the PDF form to each body individually.

One stakeholder pointed to provinces like Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, which have introduced user-friendly online submission channels. Stakeholders emphasized that adopting a centralized portal for government department RTI requests or having a system that better coordinates central intake of requests in government would be a meaningful step forward. It was suggested GNB adopt a portal that would allow applicants to file requests for information electronically, upload supporting documents, identify the appropriate public body through assisted routing, receive automated acknowledgements and milestone notices, and securely message RTI coordinators. As one stakeholder said, "these features are now standard practice in modern access regimes."

We also heard about the specific challenges public bodies face in the absence of effective digital tools. Many rely on time intensive manual methods to process requests, such as sorting through thousands of emails and electronic records. This creates extra work and inefficiencies. One public servant described current tools as "extremely time-consuming," while another noted that better software could greatly reduce administrative burdens, allowing them to focus on meeting timelines and fulfilling the intent of the *Act*.

There was wide agreement from stakeholders that embracing digital tools would make the process more effective and accessible for everyone.

### RECOMMENDATION

- Adopt and implement an online digital RTI request portal and case management system for government departments.



## SYSTEM CAPACITY AND SUPPORT

### Growing challenges in managing RTI by smaller public bodies and local governments

Throughout the consultation process, public bodies emphasized that managing RTI requests is becoming more difficult. The complexity and breadth of requests have increased. In today's digital environment, vast amounts of records and information are created and stored electronically, which has dramatically expanded the volume of records that may need to be reviewed for a single request. Many exact duplicates exist among digital records, with no mechanism under the *Act* to remove them. These changes have put significant strain on the existing capacity of many public bodies.

Smaller public bodies highlighted their particularly acute challenges, as some offices operate with only one or two staff members. They reported that processing large or multiple concurrent requests while maintaining other key services they are responsible for is nearly impossible.

One municipal official shared the reality of these constraints, stating, “There’s not enough staff to provide the information – even with extension deadlines, it doesn’t remove anything off my desk. Giving me 30 days to respond or 100 days to respond is not a solution.” Many stakeholders described the RTI process as inefficient, time-consuming, and under-resourced. One respondent succinctly voiced their frustration, stating that current methods feel “completely helpless” in the face of large or repeated requests.

The disproportionate impact of requests on local governments was a prominent concern. Research shared by the Union of Municipalities of New Brunswick showed that municipal governments in the province employ significantly fewer staff relative to population size compared to other provinces. This makes capacity challenges especially difficult for local governments tasked with meeting their obligations under RTIPPA, where some requests are handled by the most senior staff or those carrying already large workloads.

Appointing a centralized municipal analyst to provide support, as seen in Newfoundland and Labrador, or working with local governments to explore a shared service model for processing RTI requests as a service to local governments were potential options raised by the Information Access and Privacy Unit in Finance and Treasury Board to improve capacity.

### **Burden of overly broad and repeated requests**

A recurring theme in consultations with public bodies was the strain created by overly broad, repetitive, or “fishing expedition” requests. Some public bodies feel these requests are often inconsistent with the *Act’s* purpose of strengthening accountability. Public bodies expressed concern that such requests are sometimes designed to harass, annoy or overburden public bodies. These types of requests have a negative impact on their resources and ability to respond to other RTI requests.

While RTIPPA includes a provision for the Ombud to approve requests to be disregarded if they meet the threshold of being “frivolous or vexatious,” some stakeholders highlighted the lack of clear criteria or standards for defining such requests under section 15(b) of RTIPPA, leading to uncertainty and inconsistency in managing these situations.

### **Complexity of RTIPPA**

RTIPPA is a quasi-constitutional law that safeguards individual rights while balancing multiple, often competing, societal interests. As such, the law is complex. Stakeholders provided feedback on the *Act* itself, particularly its language. They suggested revising RTIPPA to use clear, plain terms to ensure it is more accessible for users. Simplifying the language could help reduce inconsistencies in interpretation and application and improve the overall effectiveness of the *Act*. We also heard about restructuring the *Act* to make it easier to follow and interpret.

## **Need for training and standardized frameworks**

Throughout the review process, we consistently heard that training and support are critical to the effective implementation of RTIPPA. While some RTIPPA coordinators felt supported, with 62% of respondents to the RTIPPA coordinator survey reported having the tools, resources, or support to fulfill their responsibilities, many emphasized gaps in their knowledge. A recurring theme was the lack of standardized training. Coordinators spoke of the need for accessible resources to help navigate the complexities of the *Act*, particularly in understanding and applying exceptions and other nuanced provisions. One RTIPPA coordinator captured these challenges plainly, stating that the most challenging aspect of their role is “Knowing where to start and the steps in the process. I have no background or training at all in this space.” Even seasoned RTI coordinators report ongoing challenges in navigating the complexities of RTIPPA, particularly when dealing with intricate exceptions and provisions within the *Act*. Suggested improvements included annual training programs and clear step-by-step guidance on how to handle requests and interpret the *Act*.

We also heard about how the absence of a coordinated support system is a key factor contributing to inconsistencies in how departments and public bodies process and interpret RTIPPA requests. The experience and skills of RTI coordinators can vary substantially, sometimes influencing how requests are handled. It became clear that without proper training and tools to guide them, coordinators are left to navigate a complicated process with little foundational support, and the job becomes even more overwhelming and resource intensive.

## **Decentralized approach**

Currently, GNB operates a decentralized model for processing RTI requests, where government departments independently manage their own requests. Each department has a designated RTI Coordinator who is responsible for the intake and processing of RTI requests, who may also have other roles. Stakeholders noted inefficiencies and cases of inconsistency when one department approves the release of a record while another withholds releasing the same record. Uneven resourcing between government departments was also raised as a concern with the current model, as each department has autonomy over how resources are allocated to RTI, which can result in variation in how roles are defined and resourced.

Some departments and stakeholders expressed support for transitioning to a centralized RTI processing model to address these issues. A central unit would handle the intake and processing of all Part I government RTI requests. The Centre for Law and Democracy noted in their submission that a centralized system can be effective for smaller jurisdictions. Most jurisdictions, including all Atlantic provinces except New Brunswick, have adopted centralized processing models with positive results. In addition to optimizing resources, reported benefits include greater consistency in service to applicants and improved job satisfaction for RTIPPA Coordinators, who process requests as a one dedicated RTI team.

## **Information Access and Privacy Unit**

The Information Access and Privacy Unit, established in 2010, was originally created to support the administration of the *Act* and provide public bodies with training, support, guidance and tools to implement the *Act*. Over time, the unit’s mandate increased and now includes managing privacy operations, offering advisory support for both department-specific and enterprise-wide IT projects, serving as system administrator for a central RTI tracking system, providing strategic leadership and policy development on privacy and access across government, and leading large-scale review initiatives like this current review of the *Act*.

Although its mandate has expanded, the unit has not been allocated adequate resources to support its increased responsibilities, hindering its ability to effectively carry out its duties. This has hampered its ability to provide guidance, practical tools, and not only design and deliver foundational training, but also advanced training that incorporates Ombud and court interpretations of the law. The unit wants to support public bodies, but it needs the time, space, and resources to do so effectively.

Large scale reviews are time-consuming, and New Brunswick is an outlier in the frequency of its reviews. Prince Edward Island, Yukon, and British Columbia mandate reviews every six years, while Manitoba and Newfoundland and Labrador conduct these reviews every five years. RTIPPA requires a review every four years. One possible option is to have another party conduct the reviews as seen in other jurisdictions like Newfoundland and Labrador or British Columbia, where reviews are carried out by an independent party or committee of the legislative assembly. Adopting a similar approach would reduce the mandate of the office.

## RECOMMENDATIONS



- Consider mechanisms to provide better RTIPPA support to local governments: Explore a shared services model or appoint a dedicated central RTIPPA municipal analyst.
- Consider allowing public bodies to disregard requests, with approval of the Ombud, where a request is overly broad or not in good faith.
- Consider centralizing the processing of RTI requests for government departments to improve response times, optimize resources, standardize processes and bring consistency to RTI responses.
- Review the mandate and organization location of the Information Access and Privacy Unit to have it structured alongside a central RTI processing unit.
- Amend the *Act* to allow public bodies to remove exact duplicate records when processing requests.
- Develop a comprehensive RTIPPA policy and procedures manual to accompany RTIPPA.
- Develop a RTIPPA training program for public bodies to help them meet their obligations under the *Act*.
- Consider exploring amendments to the *Act* to require an alternate mechanism for the comprehensive review of the *Act*, such as a committee of the legislative assembly or a committee appointed by the Minister with independent representation.
- Consider amending RTIPPA to require a comprehensive review of the *Act* every 5 years instead of every 4 years.



# Protection of privacy

The protection of personal information is also a core purpose of RTIPPA. The Act is designed to ensure that personal information entrusted to public bodies is handled responsibly. As we heard throughout the review, there are evolving factors that make it increasingly important to strengthen privacy provisions within the Act.

## INFORMATION SHARING ACROSS PUBLIC BODIES

Effective information sharing between public bodies is an essential component of modern service delivery and policy development. Pressing societal issues, such as homelessness, cut across mandates and require collaboration, co-ordination and information sharing to enable collective problem solving.

Throughout the review, we heard about the complexity of RTIPPA's rules regarding the sharing of personal information, and in particular, that rules for common or integrated services, programs or activities (CISPA's) can hinder data sharing and the collaboration needed to advance shared priorities.

Challenges around sharing personal information were raised in the 2014 review of RTIPPA. Provisions for CISPA's were introduced in 2018 to address these challenges. While a step in the right direction, we heard that there are still challenges with information sharing. In particular, the provisions related to CISPA's are not well understood, the framework is overly complex, and negotiating and implementing agreements for information sharing can be challenging. Unclear definitions and ambiguity around what qualifies as a "common or integrated program" were also cited as concerns. This is particularly frustrating for departments with shared mandates and common goals, where the inability to share data can slow critical initiatives.

Beyond legislative gaps, we heard about a cautious, risk-averse culture within many public bodies. This can slow data sharing even when it is lawful and beneficial. This culture can create inconsistencies and variation in information sharing across departments, and unintentionally slow collaborations that could improve outcomes. Stakeholders emphasized that legislative changes alone will not resolve these challenges. True, meaningful reform will require training, tools, and cultural change to encourage information sharing while maintaining strong safeguards for privacy.

Stakeholders also called for reforms to align with innovations such as citizen-first approaches, where information is entered once and used seamlessly across departments to enable effective service delivery without requiring repeated submissions of personal information.

## RECOMMENDATIONS



- Explore ways to amend RTIPPA to improve information sharing across public bodies to support a citizen-first approach. This may include, for example, providing more clarity or alternative mechanisms to establish common or integrated services, programs or activities.
- Support any legislative changes around information sharing with training to create a shared understanding of the legislative intent.

## EMERGING PRIVACY CHALLENGES

Stakeholders emphasized the need for RTIPPA's privacy provisions to evolve with advancing technologies like artificial intelligence (AI) and automated decision systems (ADS). Concerns were raised about the *Act's* lack of guidance on AI, leaving gaps in regulating the collection, use, and protection of personal information. AI and advanced data analytics can generate, analyze and combine vast amounts of information in ways that were not anticipated when the *Act* was first developed.

Stakeholders emphasized the importance of adopting clear definitions for concepts such as AI, ADS, and generative AI to ensure these technologies are explicitly addressed within a legal framework. Most survey respondents (83%) supported that public bodies should be required to notify individuals when using their personal information in systems that rely on AI or algorithms to make decisions that directly affect them. Safeguards such as transparency, human oversight, and monitoring of AI use in public bodies were emphasized by stakeholders to promote fairness and accountability.

Stakeholders pointed to the importance of New Brunswick aligning with best practices for regulating privacy and AI as seen in other jurisdictions like Alberta and even international models adopted in Europe. These approaches include clear protections for data derived from personal information, guidelines for de-identification and re-identification risks, and provisions that require public bodies to notify and inform citizens about how their information is used in AI processes. Some suggested these changes could fit within an updated and modernized RTIPPA, while others suggested a separate, dedicated piece of legislation may be better suited to address the broader governance and ethical considerations of AI technologies.

We heard that while policy directives are useful tools for providing guidance, they lack the enforceability and authority of legislation. Stakeholders emphasized that a legal framework is necessary to ensure clarity, consistency, and accountability in the use of AI across all public bodies in the province.

## RECOMMENDATIONS

- Amend RTIPPA to address AI and include definitions such as automated decision systems, artificial intelligence, and generative AI.
- Consider requiring public bodies to provide notice to individuals at the time personal information is collected if they intend to use it in an automated decision system that will make decisions that directly affect individuals.



## PRIVACY RISK MANAGEMENT

Another theme raised during the review was ensuring privacy is embedded as a core consideration during system, program and service development. Stakeholders emphasized the value of implementing privacy management programs (PMPs). PMPs set out a framework of policies, procedures and tools used to protect personal information throughout its life cycle, including ongoing education and regular privacy risk reporting. British Columbia and Alberta require their public bodies to develop PMPs.

Privacy assessments were identified by stakeholders as critical tools to evaluate and mitigate potential privacy risks identified in programs, services, or systems. They are now becoming standard in public sector privacy legislation as seen in jurisdictions like British Columbia, Alberta, and Newfoundland and Labrador. It was noted that such assessments need to be flexible and scalable to the context of the initiative and sensitivity of the information involved and that adequate guidance and resources to support the process must be provided.



## RECOMMENDATIONS

- Consider requiring public bodies to establish and implement privacy management programs.
- Explore requiring government departments to complete privacy impact assessments that are scalable and proportionate to the sensitivity of the information.

## VOTER PRIVACY

Elections New Brunswick expressed concerns about privacy gaps related to elector (voter) lists. Elector lists are shared with all registered political parties and include electors' personal information, such as address and gender. Protecting this information is paramount, yet there is no legislation that protects the privacy of voter information.

Elections New Brunswick has published two papers recommending legislative changes to safeguard voter information: *Modernizing New Brunswick's Electoral Legislation*, published in 2019, and *Electoral Data Privacy*, published in 2025. The Chief Electoral Officer and the Ombud both pointed to these papers during this review of RTIPPA to advocate better protections to voter privacy. They suggest requiring political parties to develop and publicly disclose privacy policies approved by the Chief Electoral Officer, with authority granted to either the Ombud or Elections NB to audit compliance. Jurisdictions like Ontario, British Columbia, and the federal government have enacted similar privacy policy provisions in their elections acts.



## RECOMMENDATION

- To address risks to voter privacy, explore introducing a provision into legislation, such as the *Elections Act*, that requires political parties to be subject to privacy requirements with an independent body empowered to verify and enforce privacy compliance.

## ADDITIONAL PRIVACY FEEDBACK FROM STAKEHOLDERS

- Stakeholders highlighted that RTIPPA does not clearly indicate whether personal information can be used across public bodies for purposes beyond its original collection, such as program evaluation, analysis, or facilitating other services.
- While RTIPPA mandates the establishment of a Privacy Assessment Review Committee to oversee and advise on the use and disclosure of personal information for activities like data linking and research, this committee does not exist. This approach is unique to New Brunswick and does not align with practices in other Canadian jurisdictions.
- The definitions of key terms such as "privacy breach" and "personal information" require modernization to address current privacy concerns and technological contexts.
- Stakeholders noted that RTIPPA does not adequately address what constitutes valid consent, beyond written consent. It also lacks clear requirements for what qualifies as meaningful consent.



## RECOMMENDATIONS

- Provide clearer language in RTIPPA on how personal information can be used across a public body, including its use for program evaluation, improvement, analysis, and research of its own programs, services, and activities.
- Remove the Privacy Assessment Review Committee from RTIPPA and replace it with specific provisions and requirements for data linking and the use/disclosure of personal information for research purposes.
- Update the definition of personal information: include biometric information and clarify that the list of personal information cited in RTIPPA is not exhaustive.
- Explore amending the definition of personal information to remove that information must be “recorded” in order for it to be personal.
- Amend the definition of “privacy breach” to include circumstances where personal information has been lost or stolen.
- Amend RTIPPA to expand the definition of consent to include verbal consent and align it with meaningful consent practices, incorporating factors such as timing, plain language, express consent, withdrawal processes, and electronic consent options.



# Conclusion

RTIPPA serves as the cornerstone of access to information and privacy protection in New Brunswick. Periodic and comprehensive reviews of such legislation are required to ensure it remains relevant and capable of addressing evolving societal needs, technological advancements, and public expectations.

This review identified multiple opportunities to enhance the law. Through consultation, stakeholders were able to share their experiences and challenges, providing valuable insights into the implementation of RTIPPA. Key themes emerged from this process:

- The public consistently expressed a desire for improved and more timely access to information.
- Significant opportunities exist to reform the *Act* in ways that enhance transparency, including further limiting exceptions to disclosure, expanding the *Act's* scope, introducing a requirement for proactive disclosure and a general public interest override, revising the independent review model, and legislating a duty to document.
- Public bodies face notable challenges in fulfilling their obligations under RTIPPA due to resource constraints, increasing request complexity and the volume of digital records, and insufficient training and support. They advocated for legislative and administrative reforms to better address these challenges.
- Privacy protections must be updated to address emerging technologies while supporting public bodies in their efforts to enhance program and service delivery.



# List of recommendations

## LEGISLATIVE

### Duty to document

1. Consider a requirement in law that public bodies develop and implement reasonable measures to create, manage, and preserve records in accordance with established information management requirements.

### Scope of the Act

2. Consider expanding the scope of RTIPPA so it applies to records related to the legal affairs performed by the Office of the Attorney General.
3. Consider bringing government records in the care, custody and control of the Provincial Archives under the scope of RTIPPA.
4. Maintain that Legislative Officers and their records are outside the scope of RTIPPA.
5. Consider amending the definition of “government body” to include organizations where the government has a controlling interest or ownership, and where the majority of officers, directors, or members are appointed by a Minister, Lieutenant-Governor, or an Act.
6. Add to RTIPPA a list of all legislative provisions that prevail over RTIPPA.

### RTI process, timeliness and time extensions

7. Consider requiring public bodies to respond to requests for information without delay.
8. Consider allowing public bodies to redirect formal requests for personal information under RTIPPA, with an applicant’s consent, to the appropriate branch in the public body that has an established alternate access procedure.
9. Consider allowing an extension of a response time limit with the applicant’s consent.
10. Consider allowing a time extension, with Ombud approval, for an unseen extraordinary circumstance that results in an unplanned operational closure or interruption.
11. Explore pausing time limits, rather than extensions, in certain situations such as when a public body is awaiting clarification from an applicant or consulting with a third party.

### Proactive disclosure

12. Consider amending RTIPPA to require the proactive release of information.

## **Fees**

13. Maintain that fees are not charged for RTI requests and provide clear language in the *Act* to that effect.

## **Duplicate records and disregarding requests**

14. Consider allowing public bodies to disregard requests, with approval of the Ombud, where a request is overly broad or not in good faith.
15. Amend the *Act* to allow public bodies to remove exact duplicate records when processing requests.

## **Exceptions and public interest override**

16. Consider amending RTIPPA's cabinet confidence exception to improve access.
17. Consider including a list of factors in RTIPPA for public bodies to consider in determining when the disclosure of personal information would and would not be an unreasonable invasion of privacy.
18. Clarify in the *Act* that a name, business contact information, and job title about an employee of a public body or third party organization acting in a professional capacity is not protected.
19. Consider amending the exception related to third party business and financial interests to include a three-part harms test.
20. Explore adding additional exclusions to the third party business and financial interests exception. For example, setting a time limit at which information is no longer protected, or allowing the release of environmental reports.
21. Amend the "advice to a public body" exception to shorten its expiry and include a broader list of the types of information and records that are excluded under the exception.
22. Amend RTIPPA to allow public bodies to protect information where its release could be reasonably expected to harm or threaten the security of a property or system, including cybersecurity.
23. Consider aspects of a mandatory general public interest override in RTIPPA that apply to discretionary exceptions, except where the release of information could harm an individual, public safety or law enforcement or legal proceedings.
24. Consider developing a non-exhaustive list of *factors* to consider when assessing whether information should be disclosed in the public interest, to be included either in law or guidance materials.

## **Independent review model**

25. Explore adopting a hybrid independent review model where public bodies must follow certain recommendations of the Ombud unless they obtain a court declaration stating otherwise.

## Privacy

26. Explore ways to amend RTIPPA to improve information sharing across public bodies to support a citizen-first approach. This may include, for example, providing more clarity or alternative mechanisms to establish common or integrated services, programs or activities.
27. Amend RTIPPA to address AI and include definitions such as automated decision systems, artificial intelligence, and generative AI.
28. Consider requiring public bodies to provide notice to individuals at the time personal information is collected if they intend to use it in an automated decision system that will make decisions that directly affect individuals.
29. Consider requiring public bodies to establish and implement privacy management programs.
30. Explore requiring government departments to complete privacy impact assessments that are scalable and proportionate to the sensitivity of the information.
31. To address risks to voter privacy, explore introducing a provision into legislation, such as the *Elections Act*, that requires political parties to be subject to privacy requirements with an independent body empowered to verify and enforce privacy compliance.
32. Provide clearer language in RTIPPA on how personal information can be used across a public body, including its use for program evaluation, improvement, analysis, and research of its own programs, services, and activities.
33. Remove the Privacy Assessment Review Committee from RTIPPA and replace it with specific provisions and requirements for data linking and the use/disclosure of personal information for research purposes.
34. Update the definition of personal information: include biometric information and clarify that the list of personal information cited in RTIPPA is not exhaustive.
35. Explore amending the definition of personal information to remove that information must be “recorded” in order for it to be personal.
36. Amend the definition of “privacy breach” to include circumstances where personal information has been lost or stolen.
37. Amend RTIPPA to expand the definition of consent to include verbal consent and align it with meaningful consent practices, incorporating factors such as timing, plain language, express consent, withdrawal processes, and electronic consent options.

## Administration of the Act

38. Consider exploring amendments to the *Act* to require an alternate mechanism for the comprehensive review of the *Act*, such as a committee of the legislative assembly or a committee appointed by the Minister with independent representation.
39. Consider amending RTIPPA to require a comprehensive review of the *Act* every 5 years instead of every 4 years.

## NON-LEGISLATIVE

40. Develop a process to identify and evaluate laws that may supersede RTIPPA to assess the necessity and potential impact on access and privacy rights.
41. Consider developing a process in government to review completed RTI requests to identify frequently requested records that could be proactively released.
42. Adopt and implement an online digital RTI request portal and case management system for government departments.
43. Consider mechanisms to provide better RTIPPA support to local governments: Explore a shared services model or a dedicated central RTIPPA municipal analyst.
44. Consider centralizing the processing of RTI requests for government departments to improve response times, optimize resources, standardize processes and bring consistency to RTI responses.
45. Review the mandate and organizational location of the Information Access and Privacy Unit to have it structured alongside a central RTI processing unit.
46. Develop a comprehensive RTIPPA policy and procedures manual to accompany RTIPPA.
47. Develop a RTIPPA training program for public bodies to help them meet their obligations under the *Act*.
48. Support any legislative changes around information sharing with training to create a shared understanding on the legislative intent.

# Who we heard from

## ORGANIZATIONS AND PROFESSIONALS THAT MADE ORAL OR WRITTEN SUBMISSIONS

Acadie Nouvelle

ADM Corporate Services, GNB

Aidan Raynor, CHCO-TV and The Courier

Anglophone School District West

Auditor General of New Brunswick

Bruce Wark, Inglis Professor of Journalism (retired)

Butternut Valley

Canadian Bar Association, New Brunswick Branch

Canadian Broadcasting Corporation

Centre for Law and Democracy

Chief Privacy Officers Working Group

Chief Electoral Officer, Elections New Brunswick

City of Edmundston

City of Fredericton

Commissioner of Official Languages of New Brunswick

Cybersecurity Team, Office of the Chief Information Officer

DataNB

Department of Agriculture, Aquaculture, and Fisheries

Department of Education and Early Childhood Development

Department of Energy

Department of Environment and Local Government

Department of Health

Department of Intergovernmental Affairs

Department of Justice and Public Safety

Department of Natural Resources

Dept of Post-Secondary Education, Training and Labour

Department of Social Development

Égalité Santé

Executive Council Office, Communications & Marketing

Grand-Bay Westfield

Information Access and Privacy Unit, Office of the Chief Information Officer

i-SIGMA

Nathalie Sturgeon, Editor-in-Chief, The Courier; Senior Producer, CHCO-TV; National Director – Atlantic, Canadian Association of Journalists

New Brunswick Green Party

NB Financial and Consumer Services Commission

NB Advocate

Office of the Chief Information Officer

Official Opposition Members' Office

Ombud of New Brunswick

Provincial Archives of New Brunswick

Service New Brunswick

Stanley Tromp, FOI Journalist

Union of Municipalities of New Brunswick

University of New Brunswick

Vitalité Health Network

## **PUBLIC SUBMISSIONS**

Eight written submissions were received from members of the public.