

**Briefing Note
Executive Council**

Title: Management of Government Information Act

Issue: Response to questions raised in the House by Mr. Jack Harris – May 17, 2005. The issues raised included: (i) how government provides for the protection of documents that should be protected for a period of time; and (ii) what that period of time is. (Hansard attached)

Background

- Access to Government Information is governed by the *Access to Information and Protection of Privacy Act* (ATIPPA). ATIPPA provides the public a right to access all records in the custody or control of a public body, subject to limited and specific exceptions to access. The Rooms and more particularly Provincial Archives is considered to be a public body for the purposes of ATIPPA..
- Section 18 of ATIPPA prohibits a public body from disclosing information that would reveal the substance of Cabinet deliberations. There is a 20-year time limit to this exception. In other words, if a Cabinet document is over 20 years old the public body cannot rely on the exception to prohibit the release of information.
- The Cabinet document would have to be released unless another exception applies to which there was no time limit (i.e., personal information or information that would harm the economic interests of the Province). Section 18 states:

18. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of Cabinet, including advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Cabinet.

(2) Subsection (1) does not apply to

(a) information in a record that has been in existence for 20 years or more;

or

(b) information in a record of a decision made by the Cabinet on an appeal under an Act.

- Personal information is also protected under ATIPPA. Personal information is defined as:
 - (o) "personal information" means recorded information about an identifiable individual, including
 - (i) the individual's name, address or telephone number,
 - (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
 - (iii) the individual's age, sex, sexual orientation, marital status or family status,
 - (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual's fingerprints, blood type or inheritable characteristics,
 - (vi) information about the individual's health care status or history, including a physical or mental disability,

- (vii) information about the individual's educational, financial, criminal or employment status or history,
- (viii) the opinions of a person about the individual, and
- (ix) the individual's personal views or opinions;

- Section 30 of ATIPPA prohibits the disclosure of personal information. However s.42 of the Act permits Archives to disclose personal information for research purposes, personal information relating to a person who has been dead for 20 years or the information which has been in existence for 50 years or more. Section 42 states:

“42. The Provincial Archives of Newfoundland and Labrador , or the archives of a public body, may disclose personal information for archival or historical purposes where

- (a) the disclosure would not be prohibited by section 30 ;
- (b) the disclosure is for historical research and is in accordance with section 41 ;
- (c) the information is about an individual who has been dead for 20 years or more; or
- (d) the information is in a record that has been in existence for 50 years or more”.

- Please note that ATIPPA does not apply to privately donated archival records.

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May 18, 2005

MR. HARRIS: Thank you, Mr. Speaker.

I have no difficulty in supporting the need for retention and a system to look after public records of the Province. We have had an existing system under the Archives Act and, as a result of the creation of The Rooms Corporation, we now have a provincial archives director, as opposed to a provincial archivist, and various other changes have been made.

I do have one concern. Obviously, I share the concerns of the Opposition House Leader with respect to how difficult we may be in terms of how we are dealing with people who may unlawfully damage, mutilate or destroy public record. What I am concerned about is: What provision is there made - and I do not see anything specifically here. We do have notions of certain public records being kept secret for a period of time. You always heard about a thirty-year rule in the case of the Cabinet documents from the British - they are now searching these documents to find out what happened thirty-five years ago. There is some sort of rule of public disclosure because, obviously, Cabinet documents are public documents as well, and normally there are rules that certain documents of government, whether they be involving an individual or involving Cabinet decision, that there is a period of time -

AN HON. MEMBER: (Inaudible).

MR. HARRIS: The minister says: Is it twenty years here? I am not sure exactly what it is, but I do not see any provision in here allowing for the keeping of certain documents, private, for a specific period of time or for a specified period of time. In fact, there seems to me to be a provision allowing the minister, at least under The Rooms Act, to authorize the destruction of documents.

I do not know whether or not all of this is really been provided for. We do have certain documents that are involving private records of individuals. Sometimes they are kept until after individuals died or after their children have died, or something of that nature. There does not seem to be addressed, specifically in this legislation, how government provides for (a) the protection of documents that should be protected for a period of time and what that period of time is, because that was provided for in the Archives Act, but it was a committee of Cabinet that made those rules. I do not see any specific provision here.

I think we have, for example, under section 6, the right of a permanent head of a public body, which is either a deputy minister or some executive officer of the corporation, to provide for the development and implementation of a record management for the creation, classification, retention, storage, maintenance, retrieval, preservation, disposal and transfer of public records, and a system providing for retention periods and disposition, but there does not seem to be a specific provision here to provide for a period whereby these records can be maintained in private and then, at some point, made public for researchers or members of the public to have access to.

It seems to me that is a very important part of government record management. Obviously, we do not expect to be able to go next year and get last year's Cabinet Minutes, if that is normally and

traditionally government's right to keep - under the Freedom of Information Act it is kept private - then, at some point, these are public documents, whether it is twenty years, whether it is thirty years, or whatever it might be. There does not seem to be any provision there for opening up these records to the public after a period of time. I wonder whether this is something that the minister can get some advice on, and we can deal with that in second reading, or deal with it in Committee stage, or, if the minister can do it now that would be acceptable, but I certainly want to see some reference to how that is to be done, whether there are some special, specific rules that might apply to that, because some of these things - we are taking the Archives Act, repealing that, and parts of that legislation are covered in The Rooms Act, parts of it are covered here, and I do not see where that is covered off.

In general terms, I do support the legislation but we might have to do something to ensure that these provisions are made.

MR. SPEAKER: The hon. the Government House Leader.

If he speaks now he will close debate at second reading.

MR. E. BYRNE: Thank you, Mr. Speaker.

I thank members opposite and, in particular, the Member for Signal Hill-Quidi Vidi raises what I see as a legitimate point.

Right now, I think we need to understand that the Department of Justice, the Departments of Government Services, Treasury Board, and the Department of Tourism, Culture and Recreation, all have sort of some management responsibilities for the governing of information, so it is spread out in a variety of different departments. What this legislation essentially does, I say to the member, it sets up the framework by which the process, handling, storage, and appropriate disposal of information will occur and take place in a more co-ordinated and centralized fashion. How that will be done, I say to the member, through Executive Council, through the Chief Information Officer, all of that sort of framework that will encompass what this legislation will be will be managed through that system.

To the point the member has raised, because it is important contextually, I think, to understand how this is going to evolve, this is an important first step. The Chief Information Officer resources will be provided in terms of insuring that we get up to speed. It is going to take some time. It is not going to be accomplished overnight, but it is part of a package of programs such as the Privacy Protection Act, Transparency and Accountability Act, access to information on a timely basis, proper recording of information. All we need to look at, for example, is the federal sponsorship scandal that is now occurring. If we ever need an illustrated point of how important and how critical it is for any government to manage its information correctly, what this particular piece of legislation will have effect upon is exactly that, so that there is a central location managed by a Chief Information Officer, co-ordinated in a singular location with the appropriate legislative requirements, the appropriate regulatory regime associated with it, to allow for any information to be readily available to the public, and information within departments or public bodies that is not deemed, I guess, is the best way to put it, in the corporate interest or in the

public interest, or really not something - that is according to the framework that is in place already -

AN HON. MEMBER: (Inaudible).

MR. E. BYRNE: Yes, sure, I will sit down and allow a question, if I could finish my thought just for a second.

What is at stake here, and what is really the pith and substance and the thrust of this legislation, is to put under one system the management of the appropriate and prudent management of all our Province's archive material, of all government information, to ensure that if there is access required to any piece of information, that people or the public itself can get access to it, where it is deemed appropriate according to the proper legislative and regulatory framework.

Lastly, to your point - I believe this is your point, and you can certainly correct me if I misunderstood it - with respect to what information is timely, this will be replacing the archives, what we are doing essentially here is, this is a first step, working with all of the departments to move this along so that the questions that you pose, or the question that you posed, we believe will be answered in the process and we believe is really answered right now.

I hope I have answered the question. If not, I will certainly entertain some more.

MR. SPEAKER: Order, please!

I notice the Member for Signal Hill-Quidi Vidi is standing, by leave, to make a comment before I call the question.

MR. E. BYRNE: By leave, Mr. Speaker.

MR. SPEAKER: The hon. the Member for Signal Hill-Quidi Vidi.

MR. HARRIS: Thank you, Mr. Speaker.

Perhaps Your Honour did not hear. I asked whether or not the minister would entertain a question, by leave, during his speech.

I just want to, on that point of the opening of records to the public and the keeping of records secret, and the notion at some point they might be public documents, under the existing Archives Act, section 14 says as follows, "Except where otherwise prohibited by law or by order of the Lieutenant-Governor in Council public records in the archives are available for public inspection."

Now, I am not saying I agree that the Cabinet should have the right to declare any document secret any time they want. I am not saying I agree with that existing provision. That act is now being repealed, but I do not see any like measure in the new act that says there is some way that documents that are of vital security, or some, by tradition, Cabinet secrets, et cetera, that they are

held secret for a period of time and then made available to the public. There does not seem to be any regime available to do that in the act, and in the public Archives Act, obviously, there was one.

I do not necessarily say I agree with that. Perhaps there should be some specific rules that should be in place, but I do not know where, in our new regime, would you consider The Rooms Act and the new Management of Information Act, whether we see either the authority to keep it secret forever or for a period of time, or the right of the public to have access to public documents unless otherwise prohibited.

I guess I am asking for the minister to at least undertake to see that officials, when looking at this act, and the implementation of it, consider that important point, that we do not have - at least I haven't been able to discover one - some power either to prohibit documents from being made public or some right of the public to have documents otherwise available to the public.

MR. SPEAKER: The hon. the Government House Leader, offering some responses to the Member for Signal Hill-Quidi Vidi.

MR. E. BYRNE: Thank you, Mr. Speaker.

I guess, either by omission or commission, we are not committing something that we neither want to omit or we neither want to commit, is really what the member is saying. The fact of it is this, that my - he shakes his head, but that is what he said, essentially.

My sense is, Mr. Speaker -

AN HON. MEMBER: (Inaudible).

MR. E. BYRNE: I learned in Grade 3, I say to the Member for Bellevue, what the sins of omission and commission were about, and I have never forgotten them. I have had to plead for apologies, Mr. Speaker, and indulgence sometimes, and forgiveness at times, but not since I have come to the Legislature, I say to the Member for Exploits.

The Member for Signal Hill-Quidi Vidi makes a valid point. My sense is that what applies will still apply - this is my sense, I say to the member - in terms of what would be available or not now available currently.

To his point, would I give an undertaking to ensure that this is the case, I will certainly give an undertaking to revisit this immediately to see if there is any concern; because I believe, and I believe that the member believes, that the intent of this legislation is to provide a new system, a more manageable system, a more effective system, and a more appropriate system for the handling of all government information. I will certainly endeavour to take upon myself the request that you have made and report back as soon as I can.

MR. HARRIS: (Inaudible).

MR. E. BYRNE: No, I know you are not. It is a valid point you raise.

For those who may be listening, the Member for Signal Hill-Quidi Vidi said to me he is not looking for a conspiracy here. I said I know he is not, because the point he has raised is a valid one. I will give the undertaking to investigate it, and if we need some revisions at some point in time to reflect that if necessary - I am not convinced they are - but, if necessary, we will certainly not hesitate to do so.

Thank you, Mr. Speaker, and I do now move second reading.

