

August 29, 2014

Mr. Clyde Wells, Chair
ATIPPA Review Committee
83 Thorburn Road, Suite C
St. John's, NL
A1B 3M2

Dear Mr. Wells:

The Canadian Federation of Independent Business (CFIB) is a non-partisan and not-for-profit organization that represents independently-owned small- and medium-sized enterprises. We represent 109,000 members in Canada and over 2,000 members in Newfoundland and Labrador.

Thank you for your letter of August 26, 2014. I would also like to thank you for giving me the opportunity to present before you, Mr. Letto and Ms. Stoddart in June, which allowed me to provide our members' input on access to information in Newfoundland and Labrador. They have specifically raised concerns about exemptions under Section 27, the red tape involved related to Parts V and VI, and the regulations associated with the legislation. The presentation highlighted the impact the current process to access information has had on small businesses in the province.

Many small business owners have found it more difficult to get access to information they otherwise had access to before Bill 29 was adopted. Public bodies do not have to give reasons for refusal to release information, but can simply state which section of the *Access to Information and Protection of Privacy Act* (ATIPPA) they feel applies for refusal. As it relates to section 27, changes have made it easier for a public body, and by extension, third parties to deny information concerning business interests.

Further, when small business owners request information from government, they expect they will receive that information. When they are refused information, the vast majority will wonder why, but many do not have the resources nor the time to undertake the process as outlined in the legislation. The process to get refused information is clearly onerous and cumbersome.

For clarity, it should be understood that the provisions in the ATIPPA should prevail over sections in other Acts. There should be no reason for other legislation to make reference to provisions in the ATIPPA. If Government is to have access to information legislation, it is necessary to have the ATIPPA as the overarching umbrella legislation for these purposes. Further, Cabinet can make any amendments to the regulations to ensure provisions in another Act prevail. As a result, there is access to information legislation, but it is possible that these do not apply because the head of a body can rely on special sections in another piece of legislation. This leads potentially to different treatment on how information can be released and even if it is released at all.

Fundamentally, access to information allows for transparency and accountability and, in business transactions with government, the same principles should apply. For instance, small business owners access information to ascertain whether government bodies have spent the money they stated they would upon awarding a tender. Public bodies have internal processes in place to govern how goods and services are procured, but the public should have assurances that those processes are being followed. The only way to know is to be able to ask questions and get answers to those questions. In a 2013 report, the Office of the Information and Privacy Commissioner noted that for the purposes of accountability under the ATIPPA, it is necessary for public bodies to disclose how much is paid for goods and services they purchase. It concluded that certain types of information were available before Bill 29, and it should still be.

In conclusion, I would like to re-iterate the recommendations presented to you in June:

- **Revisit the section 27 exemptions and the applicable test.** Many small business owners feel that the provisions under section 27 have placed information out of reach. Information they were able to access prior to Bill 29 became restricted. From a small business perspective, it is necessary to revert to the provisions in place prior to Bill 29.
- **Re-consider the number of legislative exceptions provided in the regulations.** Small business owners do not have the time and resources to understand fully what is required of them under the legislation that affects them. Currently, the legislative exceptions identified in the regulations bring confusion as to how information is treated. Reducing the number of exceptions in the regulations may contribute to a solution.
- **Ensure an appropriate balance of government accountability and business practice.** Small businesses recognize that there is a cost to doing business with government. Some information may be released to the public for transparency and accountability purposes. CFIB members value the principle of accountability of public bodies to ensure that taxpayers are getting the best value for their dollars.

It was a privilege, on behalf of our members, to appear before you and your colleagues and I look forward to reviewing the Committee's final report when it is released.

Sincerely,



Section 30

Vaughn Hammond
Director of Provincial Affairs, Newfoundland and Labrador