



29 July 2021

Gary Burrill  
Leader, Nova Scotia New Democratic Party  
6208 Quinpool Road, Unit 102  
Halifax, NS  
B3L 1A3  
By email: [gary.burrill@nsndp.ca](mailto:gary.burrill@nsndp.ca)

Dear Mr Burrill:

I write to you to ask that the Nova Scotia New Democratic Party (NS NDP) make a specific election commitment to amend the *Freedom of Information and Protection of Privacy Act* (FOIPOP Act), so as to improve government transparency and accountability. I write on behalf of the Centre for Law and Democracy (CLD), a Halifax-based international human rights NGO that promotes the right to access information held by government or the right to information (RTI), the right to freedom of expression and other human rights that underpin participatory democracy. CLD believes that RTI reform should be a central issue in the ongoing election campaign.

CLD is renowned internationally for its significant expertise in the area of RTI legislation. CLD is regularly hired for its expertise on RTI by the main inter-governmental organisations working on this issue, such as UNESCO and the World Bank. We are currently working with UNESCO to develop its Massive Open Online Course (MOOC) on this issue. Among other things, we have developed the [RTI Rating](#), the leading international methodology for assessing the strength of RTI laws, which we continuously update to assess all of the now over 130 countries that have national RTI laws.

We welcome the fact that the NDP's recent vision document includes commitments to RTI reform. We welcome the vision document's commitment to making Nova Scotia's Information and Privacy Commissioner a formal Officer of the Legislature, a move that would improve the Commissioner's formal and perceived independence from government. However, we are asking you, as part of your election promises, to make additional specific positive commitments to amend the FOIPOP Act.

The Centre for Law and Democracy is a non-profit human rights organisation working internationally to provide legal expertise on foundational rights for democracy.

**CENTRE FOR  
LAW AND  
DEMOCRACY**

39 Chartwell Lane  
Halifax, N.S.  
B3M 3S7  
Canada  
Tel: +1 902 431-3688  
Fax: +1 902 431-3689  
Email: [info@law-democracy.org](mailto:info@law-democracy.org)  
[www.law-democracy.org](http://www.law-democracy.org)

**Board of Directors**

Lee Cohen  
Toby Mendel  
Alex Neve  
Dawn Russell  
Scott Campbell

Centre for Law and  
Democracy  
(A company limited by  
guarantee)

In 2013, CLD produced a detailed [Analysis of the FOIPOP Act](#), as well as an [assessment using the RTI Rating](#), that contains 18 recommendations to bring the law into line with international standards (the Act only scores 85 out of a possible 150 points on the RTI Rating which would put it almost exactly in the middle of the countries rated there). The FOIPOP Act has not undergone significant changes since the publication of that Analysis, so all 18 recommendations remain relevant. However, at this point we are asking for a specific public commitment to overhaul the outdated FOIPOP Act, including in the three specific ways outlined below. Making these changes would immediately and dramatically improve transparency and accountability in the province.

**If elected as Premier, I will undertake a comprehensive process to review and then amend the FOIPOP Act, including by making the following specific changes:**

1) **To give the Information and Privacy Commissioner granted binding power to order public bodies to release information.** Currently, the Commissioner only has the power to make recommendations, which are not infrequently ignored by public bodies. This only leaves Nova Scotians with one option, namely going to court, which is inaccessible in practice due to cost and time for the vast majority of applicants, thereby in effect denying them an opportunity to vindicate their right to information. Granting the Commissioner order-making power would appropriately shift the burden to public bodies to justify any refusals to comply with her decisions. Experience both within Canada and internationally has shown that giving commissioners order-making power is central to an effective right to information system.

2) **To add a comprehensive and robust public interest override for all exceptions.** Where a proper public interest override is in place, it requires public bodies to disclose information even where an exception applies if the public interest in disclosure *outweighs* the harm to the interest which is protected by that exception. An example might be if disclosing the information would harm national security but shed light on human rights violations committed by intelligence services. By “comprehensive”, we mean an override that applies to all exceptions and takes into account all public interests that are served by disclosure. The override in s. 31 of the FOIPOP Act meets these conditions although the way it is drafted may be understood by some as privileging the interests found at s. 31(1)(a). By “robust”, we mean that the override is mandatory rather than discretionary and that it applies whenever, on a simple balancing test, the public interest in disclosure outweighs the harm from this. The public interest override in s. 31 does not meet either of these conditions since it is discretionary (a public body “may” disclose) and does not involve balancing the harm and the public interest, instead being triggered when it is “clearly in the public interest” to disclose information or when there is a “risk of significant harm” to the environment or health and safety.

3) **To add sunset clauses to all exceptions protecting public interests which last for 20 years or less.** The sensitivity of information decreases over time. For example, information collected by a labour conciliation board is normally no longer sensitive by the time several years have passed following the resolution of the dispute. Sunset clauses provide clarity and certainty that information which was once legitimately exempt can be disclosed once sufficient time has passed that the risk of harm is negligible. Currently, the FOIPOP Act has sunset clauses of varying lengths for certain exceptions (such as for intergovernmental affairs, deliberations of the

Executive Council and advice to a public body or Minister). Sunset clauses should apply to all exceptions in the FOIPOP Act which protect public interests, with the longest such clauses being engaged after 20 years, in line with international practice.

This election is a watershed opportunity for the NS NDP to prove that its stated commitment to accountability and transparency is genuine. Time and time again, politicians in Nova Scotia and, indeed, across Canada, have made expansive yet vague promises to reform RTI legislation only to renege later, leading to a situation where most Canadian jurisdictions are lagging compared to countries around the world in this area. We ask you to break the cycle and to make and then respect specific promises on RTI reform. It is our role to hold politicians publicly accountable, and voters will appreciate learning about your response to this letter when they read it.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J.Y. Hoh'.

J.Y. (Jian Yang) Hoh  
Legal Officer  
Centre for Law and Democracy  
jyhoh@law-democracy.org