



August 5, 2021

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

Dear J.Y.,

I am pleased to respond to your letter as follows:

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.

- A PC government will make the FOIPOP Officer an Officer of the Legislature. We are also committed to updating the legislation to bring it in line and up to standard with other FOIPOP legislation across Canada. The PC Party knows what it is like to take the government to court in order to get information. The PC Party is committed to making the government more transparent.

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.

- Upon forming the government, we will update the FOIPOP legislation to be in keeping with the standards that other provinces have.

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 PC 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.

- Upon forming the government, we will update the FOIPOP legislation to be up to the standard other provinces have, and work towards a more transparent government.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tara Miller', with a long, sweeping underline.

Tara Miller
Campaign Co-Chair
PC Party of Nova Scotia