Office of the Information & Privacy Commissioner
Nova Scotia

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Law Amendments Committee or Public Bills Committee
c/o Office of the Legislative Counsel
Legc.office@novascotia.ca

//via email//

Dear Law Amendments Committee or Public Bills Committee:

Re: *Bill 1 – An Act Respecting Government Organization and Administration*

I write today to contribute to the public debate of *Bill 1, An Act Respecting Government Organization and Administration* (*Bill 1*) as introduced on February 18, 2025. Particularly I write with respect to sections 16-21 and 29-33 of *Bill 1*.

My Office was not consulted prior to the introduction of the amendments contained in *Bill 1* to the *Freedom of Information and Protection of Privacy Act* (*FOIPOP*), *Part XX of the Municipal Government Act* (*MGA*), and the *Privacy Review Officer Act* (*PRO)*. To the best of my knowledge, neither was the public.

Bill 1 contains several provisions that in principle, my office has been advocating for quite some time for. Many of the proposed provisions are welcome. Today I outline three areas of concern:

1. Structure of the provisions to disregard requests for access to information,
2. Provisions related to "sufficient particulars", and
3. New inconsistencies and gaps created by amendments in *Bill 1*.

1. Power to disregard requests for access to information

If drafted appropriately, provisions that would allow the ability to disregard requests in very limited circumstances are welcome. However, at times the wording of the proposed amendments misses the mark.

Adding the power for public bodies and municipalities to disregard requests for access to information that are repetitive, frivolous and vexatious, not made in good faith or excessively broad or incomprehensible is an important tool to manage requests that amount to an abuse of process. Requests such as these can have significant consequences, particularly for a small public

body or municipality. Adding an ability to disregard such requests provides a more effective means of managing these types of requests, but it is important to ensure that this extraordinary remedy is only granted in very limited situations.

The proposed amendments start to miss the mark in terms of the ability for public to disregard requests where "responding to the requests would unreasonably interfere with the operations of the public body". This is not frequently seen in other jurisdictions. Access to information is a quasi-constitutional right in Canada. Requests that would unreasonably interfere with the operations of the public body or municipality are typically large in volume. Access to information requests cannot be denied on the basis that they are so large that their processing would be considered as unreasonably interfering with the operations of a public body or municipality. Where other jurisdictions include unreasonable interference with operations in their disregard clauses, it is typically paired with another qualifier such as "and are repetitious or systematic nature". Some jurisdictions do not allow disregarding for this reason whatsoever. Furthermore, there is a risk that the proposed amendment could mean that requests for information could be outright not processed where a public body or municipality does not adequately fund operations.

Also, the proposed amendments in *Bill 1* which address a public body's and municipality's ability to disregard requests for access to information without the permission of the Information and Privacy Commissioner (Commissioner) are not aligned with the laws across our country. Across the country, exercise of this power requires public bodies and municipalities to seek the permission of the Commissioner before disregarding a request for access. This preserves applicant's access rights to the fullest, while also providing appropriate checks and balances between the public body or municipality and the oversight office. The proposed wording in *Bill 1* sets out a right of appeal as opposed to requiring Commissioner approval. Effectively, this places a positive obligation on the applicant to take additional actions if they disagree with a public body's or municipality's decision. This would actually create more, not less, administrative burdens on an already taxed system. In the alternative, it simply limits applicant's access rights as statistics show that only 2-4% of applicants appeal public body decisions in Nova Scotia.[1]

The wording of these proposed amendments appears to limit access rights and increase administrative burdens on an already taxed system. It is unlikely this will address long-standing inefficiencies[2], however it will create new processes with new burdens. The power for a public body and municipality to disregard a request for access to information on its own, without seeking the approval of the Commissioner, is one that warrants consultation so that fulsome discussion can be had about the necessity of such an extensive power to limit access rights of Nova Scotians by public bodies and municipalities.

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[1] *Information Access and Privacy Services Annual Report 2023/24*, at page 10.
[2] *GNS News Release: Province Introduces Changes to Government Organization, Administration*, February 18, 2025.

2. **Sufficient Particulars**

Another proposed amendment that raises concern is the requirement for applicants to specify the "topic or issue of the requested record with sufficient particulars as to time, place and event to enable an individual familiar with the topic or issue to identify the record." Expanding the definition of sufficient particulars in this way places an unrealistic burden on applicants. As it is written, a public body or municipality requires an applicant to provide each of those details before it will deem the request to have "sufficient particulars". It will be rare for an applicant to know that level of detail. Also, gathering that level of detail when needed, versus in all cases, is what the duty to assist provisions in the existing legislation are for.

Furthermore, the existing legislation already addresses this issue by allowing public bodies and municipalities to take time extensions to gather sufficient particulars. It is unclear why this provision is necessary except to limit access rights. The powers for public bodies and municipalities created through these proposed provisions warrants consultation so that fulsome discussion can be had about the necessity of such a broad power.

3. **New inconsistencies and gaps created by Bill 1**

Finally, there are a number of proposed amendments that create inconsistencies or appear to be inadvertent omissions. Some of those are listed below. A more fulsome list was provided to the Nova Scotia Government on February 21, 2025.

At times, *Bill 1* sets out amendments to *FOIPOP* that are inconsistent with the amendments *Bill 1* would make to the *MGA.* An example is that under *FOIPOP*, *Bill 1* provides a power for the Commissioner to refuse to conduct or discontinue a review. However, *Bill 1* does not provide a similar power for the Commissioner under the *MGA*.

Another example of an inconsistency between *FOIPOP* and the *MGA* that would be created by *Bill 1* relates to the ability for an applicant to examine or a record or ask for a copy of it. *Bill 1* would remove this ability from *FOIPOP* but retain it in the *MGA*.

Bill 1 sets out a new timeline for the Commissioner to make recommendations in 14 days, however it does not contain a provision that explains what recourse there is or what the consequences are of not completing this task in 14 days. This appears to be an omission.

Conclusion

The Nova Scotia Government is currently in the midst of conducting a thorough legislative review of *FOIPOP*, *PRO* and the *MGA*. It is unclear why these few provisions are being introduced now, prior to the completion of the legislative review, and without consultation. Access to information is a quasi-constitutional right in Canada. Proposed amendments that could or would limit access to information rights must be drafted carefully and only following

considerable and meaningful consultation. In my office's view, there is a way for a compromise to be made such that there are provisions that enable an efficient and effective way to address requests that amount to an abuse of process or are too broad, that do not unduly restrict access to information rights. Moving forward now, without fulsome consultation, poses risk to the access rights of Nova Scotians.

For all these reasons, I recommend and urge the Committee to request that *Bill 1* be withdrawn until such time as modifications can be made to the proposed amendments following consultation with my office and stakeholders.

Yours truly,

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia