CENTRE FOR LAW AND DEMOCRACY

Canada: Newfoundland

Submission to the Independent Review of the Newfoundland and Labrador Access to Information and Protection of Privacy Act

July 2014

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Introduction[1]

This is the Centre for Law and Democracy's (CLD)[2] Submission to the Independent Statutory Review Committee considering Newfoundland and Labrador's *Access to Information and Protection of Privacy Act* (ATIPPA). Section 74 of ATIPPA requires that a comprehensive review of the Act take place every five years. However, partly as a result of the controversy surrounding the passage of Bill 29, Tom Marshall, Newfoundland and Labrador's Premier, announced an intention to bring forward the process shortly after taking office. The members of the Review Committee are Clyde Wells, a former Premier of Newfoundland and Labrador and Chief Justice of the province, Jennifer Stoddart, formerly Canada's Privacy Commissioner, and Doug Letto, an accomplished journalist.

When Bill 29 was first proposed, it attracted criticism from a number of sources, including CLD.[3] We welcome Premier Marshall's decision to move forward with the ATIPPA review and we are heartened by the decision to name prominent and respected individuals to the Review Committee. In announcing the committee members, the government noted a desire to ensure that Newfoundland and Labrador had "a strong statutory framework for access to information and protection of privacy, which when measured against international standards, will rank among the best."[4]

That is a bold statement which we hope will be backed up by concrete action. CLD wholeheartedly shares this desire to make Newfoundland and Labrador a world leader in term of access to information or, to use a common global term, the right to information (RTI). However, as an organisation that works with governments around the world to design, implement and improve RTI frameworks, we have a clear understanding of the scale of the reforms that would be necessary to make this a reality. This is not merely a question of repealing Bill 29. Rather, it will require root and branch reform of the ATIPPA framework and, more fundamentally, a core

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[2] CLD is an international human rights organisation based in Halifax, Nova Scotia which provides expert legal services and advice on foundational rights for democracy.

[3] See: http://www.law-democracy.org/live/newfoundland-amendments-would-significantly-weaken-openness/.

[4] The announcement is available at: http://www.releases.gov.nl.ca/releases/2014/exec/0318n05.htm.

cultural shift within Newfoundland and Labrador's public sector away from traditionally sceptical attitudes towards openness and transparency.

1. The Broader Context

At the outset, it is worth considering the broader context, and in particular the international context, more closely, in order to understand better what it would take to make Newfoundland and Labrador a global leader. In the context of the debate over Bill 29, Newfoundland and Labrador's then-Minister of Justice, the Hon. Felix Collins, took umbrage at a statement from CLD which compared the province's access law unfavourably to several from the developing world.[5] The facts, however, bear this comparison out.[6]

Canada was among the first countries to adopt RTI legislation. At the time, that fact alone made Canada a global leader in transparent and open government, but the new Canadian law also introduced important innovations. Today, over thirty years later, one hundred countries have adopted national-level RTI laws and a vast amount has been learned about what makes laws effective and what works and what does not. Despite this rich global experience, debates about RTI in Canada have an unfortunate tendency to focus solely on the Canadian context, with an occasional reference to other like-minded countries. Provinces look to one another, or to the federal government, for examples of how to craft law or policy. What these discussions miss is that RTI systems across the country are deficient, based on an obsolete 20th century model of openness whereas, across the developed and developing world, standards for RTI have advanced enormously from those which shaped, and which continue to guide, Canada's approach to openness.

The RTI Rating is a comparative analysis of legal frameworks for RTI around the world, carried out by CLD in collaboration with Access Info Europe, which measures legislation against international standards. According to the RTI Rating, 33 countries in the world have legal frameworks for RTI which are stronger than that of Newfoundland. Newfoundland's law lost points on fully 32 of the 61 different indicators which are used in the RTI Rating, scoring just 94 points out of a possible total of 150 points.[7] By comparison, the top scoring countries in the RTI Rating, Serbia, India and Slovenia, scored 135, 130 and 129 points, respectively.

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[5] See Statement of 12 June 2014 at: http://www.releases.gov.nl.ca/releases/2012/just/0614n01.htm.

[6] CLD's direct response to Minister Collins is available at: http://www.law-democracy.org/live/minister-collins-comments-about-the-centre-for-law-and-democracy/.

[7] When Bill 29 was being considered, CLD noted that its passage would lower Newfoundland's score to 93 points. However, the passage of whistleblower protection legislation in May 2014 has since raised the score by a point.

There are many ways in which ATIPPA fails to meet standards which are accepted even in developing countries, and a few examples are provided here to give a flavour of this. ATIPPA charges a $5 fee to file an access request and allows public authorities to charge requesters for the time spent considering and responding requests, which can add up to thousands of dollars. In Mexico, it is free to file requests and authorities are only permitted to charge requesters for the actual costs of reproduction and delivery.[8] ATIPPA's timeline for response is thirty days, extendable by an additional thirty days, or potentially even longer with the approval of the Information and Privacy Commissioner. In Indonesia, the timeline for responding is ten working days, extendable by an additional seven working days at the most.[9] Even before the passage of Bill 29, ATIPPA included extremely broad exceptions for cabinet confidences and internal deliberative documents. In Serbia, rather than ruling out categories of information, requests may be refused only if disclosure of the information would cause serious prejudice to a defined interest,[10] while in Nicaragua the exception for deliberative or policy-making processes expires once the decision or policy has been adopted.[11]

When Premier Marshall says he wants an RTI law which will rank among the best in terms of international standards, that is an ambitious goal. And yet, it is eminently achievable. The international standards which CLD cites, and against which ATIPPA is assessed in this Submission, were not drawn out of thin air. To the contrary, they are based on clear international standards, as reflected in actual laws which are in force around the world. Mexico's government has not gone bankrupt responding to information requests which are filed free of charge. Deliberative processes in Serbia and Nicaragua have not ceased to function effectively as a result of legislative frameworks which provide routine access to vast amounts of information that would remain classified under ATIPPA.

The right to access information held by government has been recognised internationally as a human right and is also explicitly protected in dozens of constitutions around the world.[12] International recognition is reflected in decisions of the Inter-American Court of Human Rights[13] and the European Court of Human

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[8] Federal Transparency and Access to Public Government Information Law, art. 27. Available at: www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/laweng.pdf.
[9] Law 14 of 2008 Regarding Openness in Public Bodies, ss. 22(7) and 22(8). Available at: ccrinepal.org/files/documents/legislations/12.pdf.
[10] Law on Free Access to Information of Public Importance, art. 9. Available at: http://www.seio.gov.rs/upload/documents/ekspertske%20misije/civil_and_political_rights/law_on_free__access_to_information.pdf.
[11] Law of Access to Public Information, no. 621, art. 15(e).
[12] See http://www.right2info.org/constitutional-protections-of-the-right-to which lists at least 53 and arguably 60 countries which include this right in their constitutions.
[13] *Claude Reyes and Others v. Chile,* 19 September 2006, Series C, No. 151.

Rights,[14] as well as in the UN Human Rights Committee's 2011 General Comment on Article 19 of the International Covenant on Civil and Political Rights (ICCPR),[15] to which Canada is a party. In 2010, the Supreme Court of Canada found that the right to information is protected under section 2(b) of the Constitution, as a derivative of the right to freedom of expression.[16] The scope of this was not absolute; the Court noted that it "includes a right to access to documents only where access is necessary to permit meaningful discussion on a matter of public importance". However, this clearly covers an important percentage of all RTI requests. To ensure that the processing of those requests meets constitutional standards, the rules relating to all requests must do so (i.e. RTI regimes overall must meet these standards).

Unfortunately, neither global recognition of the fundamental importance of RTI as a human right nor the Supreme Court's ruling have had an impact on attitudes towards RTI in Canada, where access systems remain stuck in the same rut they have occupied for decades. To break out of this rut, Canada needs one jurisdiction that is prepared to think outside of the (Canadian) box and be prepared to take bold steps to put in place a truly effective RTI regime. There is enormous resistance to this, based largely on accumulated attitudes and biases. To counter this will take forward looking vision. But the experience of a growing number of countries around the world clearly demonstrates that the risks feared by naysayers simply do not exist. Radical reform of ATIPPA to bring it into line with better global standards and the wider information realities of the modern world will neither impose massive costs on taxpayers nor undermine the effective functioning of government.

CLD hopes and believes that ATIPPA Review Committee can play a critical role in spurring Newfoundland and Labrador to assume a mantle of Canadian, and indeed global, leadership in government transparency. This Submission outlines the main changes that are required to transform ATIPPA into a world class law. We urge the Committee to show the leadership that is required not only to reform and improve RTI in Newfoundland and Labrador, but to show the whole country the way forward.

2. Exceptions

The most significant problem with ATIPPA is its regime of exceptions, where it scored just 14 out of a possible 30 points on the RTI Rating, or less than 50 percent. Under international standards, exceptions to the right to information should be crafted as narrowly as possible, so that only information the disclosure of which

[14] *Társaság A Szabadságjogokért v. Hungary*, 14 April 2009, Application no. 37374/05.
[15] General Comment No. 34, 12 September 2011, CCPR/C/GC/34, para. 18.
[16] *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* 2010 SCC 23, [2010] 1 S.C.R. 815. Available at: http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7864/index.do.

would create a real risk of harm to a legitimate interest may be withheld. While the precise formulation of exceptions varies around the world, the "harm test" is a uniform feature of strong RTI legislation. In addition to being firmly entrenched in international standards, it is intuitive to the notion of the right to information as a human right, which should not be infringed without a pressing reason. If information would not cause harm through its disclosure, it should surely be released. In many cases, ATIPPA instead stipulates class exceptions which apply to categories of information rather than protecting interests against harm. This cannot be justified when considered through the lens of access as a human right.

During the debate over Newfoundland and Labrador's whistleblower protection legislation, Steve Kent, the Minister Responsible for the Office of Public Engagement, was quoted as saying that "cabinet secrecy is a fundamental pillar of our system of government".[17] This is false. Unlike the right to information, which is a fundamental pillar of democratic accountability, cabinet secrecy exists to serve a particular function, namely to promote candour among public officials. This is a legitimate interest, worthy of protection. However, cabinet secrecy should only be protected to the extent that this is necessary to protect effective and candid government deliberations (or other legitimate exceptions). It is not, as the Minister's comments imply, a value to be protected for its own sake. There is no inherent right to secrecy in an official conversation between two public servants. The legitimacy of keeping an official conversation confidential depends wholly on the necessity of secrecy to smooth and effective governance.

From this perspective, the language of sections 18, 19 and 20 of ATIPPA is clearly overbroad. It may be legitimate to withhold records of actual cabinet conversations between ministers. Supporting documents, proposals, research and other background material, on the other hand, should be subject only to harm-based redaction as necessary to protect a legitimate interest, including candour within government. For the same reason, sections 7(4), 7(5) and 7(6) are illegitimate as they provide an exception for all briefing records created for an executive council member with respect to assuming responsibility for a department, secretariat or agency. Sections 18, 19 and 20 should be rewritten to allow for non-disclosure only of actual cabinet conversations between ministers and material the disclosure of which would cause tangible harm to a legitimate interest, and sections 7(4), 7(5) and 7(6) should be deleted.

In terms the specific interests here, better practice is to limit these to the effective formulation or development of government policy, the success of a policy (i.e. where this would be undermined by premature disclosure of that policy) and the

[17] James McLeod, "Whistleblower law gets mixed review", St. John's Telegram, 31 May 2014. Available at: www.thetelegram.com/News/Local/2014-05-31/article-3744869/Whistleblower-law-gets-mixed-review/1.

deliberative process (i.e. the candid or free and frank provision of advice or exchange of views). It is also important to ensure that the principle of severability, whereby documents should be redacted and released rather than withheld in their entirety, should apply to all exceptions, including those related to cabinet confidences. This runs counter to the government's official view, as spelled out in their Access to Information Policy and Procedures Manual, that the law's severability clause, which is mentioned in section 7(2), does not apply to section 18.

Although these exceptions are the most problematic, several others are not harm tested. These include several provisions within the exception for law enforcement information in section 22, namely information that would reveal investigative techniques and procedures (22(1)(c)), information about law enforcement sources (22(1)(d)), law enforcement intelligence information (22(1)(e)), information related to prosecutorial discretion (22(1)(g)), records that have been confiscated by a peace officer (22(1)(i)), information about security systems 22(1)(l)), technical information about law enforcement weapons (22(1)(m)) and correctional information supplied in confidence (22(1)(o)). Admittedly, within these categories a large amount of information could legitimately be withheld. However, these categories also include information the publication of which would be innocuous or, in some instances, beneficial. For example, a journalist writing a story about IT spending across different government departments may be interested to know the total police expenditure on anti-virus software over a given period. Although there would be no conceivable harm to releasing this figure, the information would be exempt under section 22(1)(l).

Part of section 27, which exempts third-party commercial interests, also lacks a harm test. Just because information is treated as confidential by a party does not mean that its disclosure would result in any real harm. Section 28(1), which requires public authorities to consult with third parties before the information is released, gives them sufficient opportunity to plead their case as to any legitimate reasons for seeking to keep the information out of public hands. Section 27(1)(c)(iii), which excludes information the disclosure of which would result in a significant financial loss or gain, is particularly problematic. Governments collect enormous amounts of information. One of the great benefits of an effective RTI system is that it can enable private interests to monetise this information. For example, a web developer might collate crime statistics to create an app that would track the safest walking route for a person at night or a fast-food chain might be interested in examining traffic data to decide where to open a franchise. This is technical information the disclosure of which could result in significant financial gains for the applicants and, potentially, in losses for their competition. However, there is a clear public interest in allowing this information to be accessed and monetised, and no clear rationale for why it should be withheld.

Section 26.1(1)(a), which excludes labour relations information, also lacks a harm test. Section 26.1(1)(b)(i) excludes any information which would harm the position of the public authority as an employer, essentially rendering 26.1(1)(a) unnecessary.

Section 22.1(a), which exempts information on the suitability, eligibility or qualifications for awarding a benefit, contract or grant, lacks a harm test but also fails to introduce any legitimate interest, because commercial confidentiality and privacy are both already protected elsewhere. Indeed, there should be a positive commitment to disclosing information related to the awarding of a public contract or tender. There is a key transparency interest here, to allow public oversight over a process which can be a magnet for corruption or cronyism.

Section 23, which protects information harmful to intergovernmental relations and negotiations, is also overbroad. Section 24 already allows for the protection of information harmful to the commercial or financial interests of public authorities. While it is legitimate to wish to promote good relations between and among governments within Canada, at the same time it is of the greatest importance that such relations be conducted transparently. Given that every jurisdiction in Canada is subject to its own RTI rules, there is no need for the special protection provided in section 23.

We also recommend that the government consider amending the law's treatment of solicitor-client privilege in section 21. While solicitor-client privilege is a vital ingredient in enabling effective representation of clients in the private sector, applying this concept to government lawyers ignores the very different dynamic that exists in the public sector. Solicitor-client confidentiality exists for two reasons, to allow lawyers to plan their strategies for upcoming litigation (litigation privilege) and to promote candour between lawyers and their clients. While the first of these is clearly necessary for government lawyers, the second is not, or at least is not over and beyond the protection already provided by other exceptions (for example to preserve the free and frank flow of information inside of government). When public officials deliberate with government lawyers they are discussing public affairs, not confessing their potentially sensitive personal or criminal affairs.

Furthermore, government counsel often play a range of roles in policy development, planning and administration which are functionally similar to those of their non-legally trained colleagues. This advice should not be covered by a veil of secrecy just because it happens to come from a lawyer. The solicitor-client privilege exception as it is currently worded also provides tremendous potential for abuse since, if government officials want particular discussions to be exempt from disclosure under ATIPPA, they need only bring a lawyer into the room. ATIPPA should be amended to provide an exception only for litigation privilege, namely information

which is prepared or shared in anticipation of an impending lawsuit, and not for solicitor-client privilege more broadly. Although this may seem like a big step, Nova Scotia's Premier Stephen McNeil endorsed the proposal as a campaign promise in the run up to his election in Fall 2013.[18]

Another major problem with ATIPPA's exceptions regime is the narrow applicability of the public interest override found in section 31. A public interest override, like the harm test, is a staple feature of a progressive RTI framework. However, section 31 applies only where disclosure of the information would pose a risk of severe harm to the environment or to health and safety. There are many other important public interests which can be engaged in the context of requests for information, such as promoting democratic accountability, or exposing public waste, corruption or abuses of human rights. Furthermore, section 31 applies only where the harm would be "significant" and the public interest in disclosure is "clear". Better practice is to apply the public interest override whenever, on balance, the public interest would be served by disclosure.

The Supreme Court's decision in *Criminal Lawyers' Association v. Ontario (Public Safety and Security)* effectively required the public interest to be taken into account whenever public authorities are evaluating the applicability of discretionary exceptions.[19] However, an explicit public interest test is still important both because many exceptions within ATIPPA are not discretionary and to make it clear how the Supreme Court decision is to be implemented.

Strong RTI laws also contain sunset clauses, whereby exceptions do not apply to information after a particular period of time, usually fifteen or twenty years, has passed. While some exceptions within ATIPPA contain sunset clauses, others do not. Time limits should apply to every exception.

Section 6 of ATIPPA provides for the paramountcy of the RTI law over conflicting provisions in other laws. However, section 6(2) allows for exceptions to this to be made by regulation and section 5 of the ATIPPA regulations lists twenty-four laws which are exempted in this way. Although many of the exceptions contained in these laws may be legitimate in a general way, they may not be subject to a public interest override or a sunset clause, as international standards mandate. Instead of allowing other laws to override the RTI law, needed exceptions should be consolidated into the RTI law, along with its protections of a harm test, a public interest override and a sunset clause. This is, of course, without prejudice to other laws which do not

[18] See: http://www.law-democracy.org/live/liberals-and-pcs-endorse-transparency-recommendations/. Jamie Baillie, leader of Nova Scotia's Progressive Conservative party, also officially endorsed this idea.

[19] *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* note 16, para. 48.

conflict with the RTI law but, instead, elaborate on exceptions which that law already recognises.

Recommendations:

- Section 6(2), allowing for other laws to override the RTI law, should be deleted.
- Section 7(2) should apply to all exceptions.
- Sections 7(4), 7(5) and 7(6) should be deleted.
- Sections 18, 19 and 20 should be limited to actual cabinet discussions among ministers and material the disclosure of which would harm a legitimate interest, such as the candour of internal deliberations.
- Section 21 should only apply to litigation privilege, namely information which has been shared in anticipation of a pending lawsuit or similar action.
- A requirement for harm should be added to all clauses in section 22, which protects law enforcement.
- Section 22.1(a) should be removed.
- Section 23, which excludes information which is harmful to intergovernmental relations or negotiations, should be limited to foreign relations.
- Section 26.1(1)(a), which excludes labour relations information, should be deleted.
- Section 27 should only apply to information the disclosure of which would unduly harm the commercial interests of third parties.
- Section 31 should be expanded to mandate that, if information falls within the scope of an exception, it should nonetheless be released if the overall public interest in disclosure outweighs the likely harm.
- All exceptions should be subject to a sunset clause, whereby they do not apply after a particular period has passed.
- Section 5 of the ATIPPA regulations should be deleted.

3. Oversight and Appeals

Experience shows that there is always resistance in government to openness and transparency. Proper oversight by a strong and independent administrative body is essential to an effective RTI law. In Newfoundland and Labrador, this role is carried out by the Information and Privacy Commissioner (the Commissioner).

Currently, the Commissioner only has powers to make recommendations to public authorities. Section 50 states that public authorities may decide whether or not to follow the Commissioner's recommendations. This is in line with the approach

adopted in New Brunswick, Nova Scotia, Northwest Territories, Nunavut, Saskatchewan, Yukon and at the federal level in Canada. On the other hand, oversight bodies in Alberta, British Columbia, Manitoba,[20] Ontario, Prince Edward Island and Quebec all have the power to make binding orders.

The Commissioner is an independent arbiter, and as part of the review process public authorities are given an opportunity to justify their position against disclosure. Given the specialised expertise on transparency and RTI which is concentrated in the Commissioner's office, there is no reason why its decisions should not be binding. In exceptional circumstances, where a public authority believes that executing a decision will cause significant harm, they have the option of launching a judicial appeal against the decision.

We also recommend that the Commissioner be granted additional powers to impose appropriate structural measures on public authorities which systematically fail to disclose information or otherwise underperform, either by imposing sanctions on them or by requiring them to take remedial actions, such as training programmes for staff. In order to facilitate efforts to improve RTI implementation more broadly, we recommend granting the Commissioner expanded powers to initiate their own investigations where there is concern about systematic failures to implement the law.

Another problem with ATIPPA is that, pursuant to section 43(1), the Commissioner has no power to review refusals based on section 18 (cabinet records) or 21 (solicitor-client privilege). We have already highlighted the problems with these provisions, both of which are overbroad. But ousting the jurisdiction of the Commissioner in these cases means that there is no way to review claims that information falls within their scope, short of going to court. Independent oversight is a cardinal value of an effective RTI framework and this lack of accountability runs counter to the spirit of the law.

Recommendations:

- Sections 43(1)(a) and 43(1)(b) should be deleted, making any refusal subject to review by the Commissioner.
- The decisions of the Commissioner should be binding on public authorities.
- The Commissioner should be granted the power to impose appropriate structural solutions on underperforming public authorities, and to initiate their own investigations.

[20] Although the Manitoba Ombudsman is only empowered to make recommendations, any failure by the public body to follow these recommendations can be referred to a special adjudicator who does have order-making power.

4. Time Limits

As a human right and a core system underlying democratic accountability, information requesters have a right to a speedy response. Long delays can frustrate requesters, discouraging them from making use of the system. Furthermore, information often loses its value over time. This is particularly true of information which is being requested for a commercial purpose or information which has been requested by a journalist for use in a news story.

According to section 9 of ATIPPA, public authorities are required to respond to requests "without delay", while section 11(1) imposes an overall time limit of 30 days, which may, pursuant to section 16(1), be extended by an additional 30 days. These timeframes correspond to the practice of many States although, as noted in the introduction, some operate with much shorter time limits. However, section 16(2) allows for extensions of longer than 30 days with the permission of the Commissioner, with no absolute limit placed on the time limit for responding to requests.

It is reasonable to expect that, in exceptional circumstances, public authorities might need more than 30 days to respond to requests for information. However, under no circumstances should requesters have to wait more than 60 days. If public authorities find themselves unable to respond in that time period it is likely that either their information management systems are inadequate or that they are failing to prioritise transparency appropriately. Around the world, countries which are far less developed and whose bureaucracies operate with far less advanced technology have implemented significantly shorter response times. In India, for example, response time limits are capped at 30 days with no extensions. Given the exceptionally high demand for information under India's RTI system, and the absence of digitised files in public authorities in India, it is perfectly reasonable to expect Newfoundland and Labrador's civil service to match this speed.

Recommendation:

- Section 16(2), which allows for extensions beyond an additional 30 days, should be deleted.

5. Fees

Pursuant to international standards, it is not appropriate to charge users a fee to file an access request. This is based on the idea that it is not legitimate to charge people for exercising a human right. Almost none of the countries in Europe charge for making requests for information, and Ireland recently made a commitment to do away with its fee charges.[21] This has not led to public authorities being inundated with frivolous requests in these countries, one of the justifications for fees. If Liberia and El Salvador can afford to process requests for free, there is no reason why public authorities in Newfoundland and Labrador cannot.

It is reasonable for public authorities to seek to recoup the direct expenses actually incurred in responding to an access request, such as photocopying or postage costs. However, section 68(1) of ATIPPA also allows public authorities to charge for their time in searching for and preparing information which is responsive to a request. Essentially, this forces requesters to pay for poor record management practices or for excessive caution in deciding whether exceptions apply. Charging for employee time in responding to an access request is not in line with international standards. Once again, it is worth noting that many developing countries, such as Nepal and Mexico, only charge for direct costs, and not for employee time, which is deemed to be part of the institution's general mandate.

Recommendations:

- The rules should be amended to eliminate fees for filing a request.
- Public authorities should only be allowed to charge requesters for the direct costs incurred in reproducing and delivering the information and not for employee time.

6. Other Issues

Although ATIPPA applies relatively broadly across Newfoundland and Labrador's public sector, it does not quite meet the international standard of applying to every authority which performs a public function or receives public funding, to the extent of that function or funding. ATIPPA also excludes the constituency offices of Members of the House of Assembly. All of these should be brought within the ambit of the law.

According to international standards, public authorities should be required to respect requesters' preferences regarding the form in which access is granted. According to section 10(2) of ATIPPA, complying with a requester's preference is

[21] See http://www.per.gov.ie/minister-howlin-announces-government-approval-for-removal-of-foi-application-fee/.

optional, depending on whether it would be simpler or less costly for the public authority to do so. Although speed and expense are legitimate concerns, a good RTI law should leave these decisions up to the requester, unless their preferences would create an undue burden on the public authority.

Section 17, which deals with transferring requests, should also be narrowed. If a public authority does not have the information being requested, but knows of another public authority which has this information, it should, of course, transfer the request. However, section 17 also allows for transfers in the event that the information was produced by or for another authority. It is needlessly inefficient for a public authority which holds the relevant information to transfer a user's request in such cases. If they lack proper expertise to evaluate the potential harm, they should consult with the other public authority to ascertain their opinion, but the responsibility for the request should remain with the public authority that received it.

Recommendations:

- ATIPPA should be extended to apply to private authorities which perform a public function or receive public funding, to the extent of that function or funding, as well as to constituency offices.
- Section 10(2) should be amended to require public authorities to comply with requesters' preferences regarding the form of access, unless this would create an undue burden on the public authority
- Transfers under section 17 should be limited to instances where the public authority does not hold the information being requested.