

APPEALING RIGHT TO INFORMATION DECISIONS IN

New Brunswick

RESOURCES

Right to Information Act

<http://www.gnb.ca/acts/acts/r-10-3.htm>

Office of the Ombudsman

<http://www.gnb.ca/0073/index-e.asp>

Government guide

<http://www.gnb.ca/0012/information/index-e.asp>

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?

If you are not satisfied with a government department's response to your access request, you have the right to request a review of its decision by the Office of the Ombudsman. The Ombudsman may make recommendations, and these are not binding on government departments.

Alternately, you may request that a judge of the Court of Queen's Bench review a decision to refusal access to information. A judge's decision is binding on a government department but going to court may take more time and cost more money than a review by the Ombudsman.

You may not request reviews by the court and the Ombudsman simultaneously. If you first approach the Ombudsman, and he or she recommends disclosure but that recommendation is rejected by the government department, you may apply to a judge for review. If you choose to go to court without first requesting a review by the Ombudsman, you may not request a review by the Ombudsman after a judge has issued his or her decision.

WHAT ELSE CAN I HAVE REVIEWED?

In addition to complaining about the government department's decision, you may request a review by the Ombudsman if you do not receive a response to your original request for access within 30 days, or if you find a time extension to be unreasonable.

HOW DO I SUBMIT A REQUEST FOR REVIEW?

In New Brunswick, you may request a review at any time after a government department's decision has been made or after 30 days if you have received no response.

An application for review must be made in writing and a prescribed form is provided by the Ombudsman's office, or the Court of Queen's Bench clerk, for this purpose. See:
<http://www.gnb.ca/0062/regs/pics/85-68.pdf>.

HOW MUCH WILL IT COST?

There is no fee for requesting a review in New Brunswick.

WHO WILL BE INVOLVED?

You, as the one who made the original access request and requested the review, are entitled to be involved. You are the applicant or petitioner. The government department that refused your access request will also be involved. Finally, a third party whose interests are affected by an access request may be involved. For example, a business whose commercial information is being requested, or an individual whose personal information is being

requested may be parties to the appeal.

WHAT ARE THE STEPS IN THE APPEAL PROCESS?

The steps depend on whether you approach the Ombudsman or the courts.

Ombudsman

In New Brunswick you have the option of requesting review either in Court of Queen's Bench or to the Ombudsman. If you request that the Ombudsman's office review your case, it will investigate your matter and in the process may make its own inquiries. It may also inspect a record to which you have been denied access, and you will not be entitled to participate in this inspection.

If the Ombudsman's office decides it is warranted, it may conduct a hearing into your request for review. There is no right to a hearing (but if the Ombudsman's office finds in your favour without conducting a hearing, the government department has the right to insist on a formal hearing). Note that Ombudsman reviews rarely proceed to the stage of a formal hearing. Normally, the Ombudsman reviews any documents not disclosed, reviews the grounds invoked for non-disclosure and advises the parties in writing of his or her recommendation within a few days or weeks of the documentary review.

In the review process, the onus is on the government department to show that you should be denied access.

Once the Ombudsman's office has completed its investigation, it will issue recommendations which are provided to all the parties to the review. If there is a recommendation in favour of disclosure, the government department must then decide whether or not to accept it. Both you and the Ombudsman's office must be advised of the department's response. If the recommendation is not accepted, you may appeal to a judge of The Court of Queen's Bench.

Judicial review (courts)

If instead (or subsequently) you choose to request review by a judge of the Court of the Queen's Bench you must obtain and file the appropriate form with the clerk's office along with your filing fee. You must provide a copy of the completed form to the head of the government department whose decision you are contesting. The Court clerk will then advise you of the hearing date. At the hearing the department will be represented by a lawyer from the Department of Justice. You have the option of retaining a lawyer or appearing in court on your own behalf. During the hearing the judge may review copies of any materials which you are seeking and which the department has refused to provide. He or she will then decide whether your request for review should be granted, granted in part, or denied.

WHAT ARE THE POWERS OF THE OMBUDSMAN DURING A REVIEW?

The Ombudsman is authorized to conduct searches and examinations, to compel the production of documents and witnesses, and to enter government premises.

HOW LONG WILL THE REVIEW TAKE?

The Act requires the Ombudsman's office to complete its investigation within 30 days of receiving your application. The Court of Queen's Bench review process is not subject to the same time restriction and will normally take longer.

CAN I APPEAL TO A COURT IF I STILL CANNOT GET ACCESS?

If the reviewing officer is the Ombudsman, you can appeal to The Court of Queen's Bench. Appeal forms are available from the Ombudsman's Office or the Court clerk's Office or online at: <http://www.gnb.ca/0062/regs/pics/85-68.pdf>. However, when the reviewing officer is a judge of The Court of Queen's Bench, the decision is final and cannot be appealed.