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Blair Barbour  
Manager of Policy, Planning and FTP Relations  
Justice and Public Safety  
PO Box 2000  
Charlottetown PE C1A 7N8

**RE: Review of the Freedom of Information and Protection of Privacy Act**

Dear Mr. Barbour,

The Federation of Prince Edward Island Municipalities (FPEIM) appreciates the opportunity to provide comments on the review of the Freedom of Information and Protection of Privacy (FOIPP) Act. FPEIM's comments will focus on the question as to whether the FOIPP Act should apply to municipal governments, which was identified in the discussion paper. FPEIM points out that there are simpler, yet effective, ways of providing access to information and protecting privacy and is opposed to the application of the provincial FOIPP Act to municipal governments.

Openness and transparency are cornerstones of good governance. FPEIM supports and encourages practices, policies and legislation that provide the public with appropriate tools to hold municipal governments accountable for their decisions. In determining which mechanisms to put in place, consideration must be given to the size and capacity of municipal governments, as well as the cost relative to the benefits.

Until recently, municipalities in Prince Edward Island were governed by outdated legislation that lacked some of the accountability and transparency requirements commonly found in other jurisdictions. Despite these gaps, several municipalities have adopted progressive practices in the interest of increased transparency and accountability, including providing broad access to information, and engaging and informing the public.

Late last year the new Municipal Government Act (MGA) was proclaimed. The Federation and several elected municipal officials and senior staff participated in the initial stage of drafting the MGA. It has introduced several important changes to strengthen accountability and transparency, including a framework for access to information and protection of privacy. Within one year of the coming into force of the new MGA, all municipalities must establish a records retention and disposal schedule and adopt an access to information and protection of privacy bylaw.

The new legislation builds on a tradition of openness in municipal government. Municipalities in PEI and across the country have a long history of making decisions at meetings that are open to the public. The federal and provincial governments have cabinets, which meet in private and have significant executive decision-making authority. Municipalities have the most open decision-making process of the three orders of government in Canada.

Municipal councils are permitted to hold private meetings, but only in relation to specific matters that require confidentiality. The new MGA provides clarity in relation to what can be discussed behind closed doors and expands open meeting requirements to include committees that report to council.

The MGA introduces many changes that broadly affect municipal governance and administration. Transitioning from legislation that was decades behind the times to a modern act is challenging, especially for small municipalities. FPEIM is not in favour of adding to existing challenges by imposing the FOIPP Act on municipalities when there is a simpler, but effective alternative available. Only four of the 72 municipalities in PEI meet the threshold for municipal viability referred to in the report of the Commissioner on Land and Local Governance. Five municipalities have fewer than 100 residents. Imposing the provincial FOIPP Act would represent a significant cost and administrative burden, and municipalities would require external legal and other support to respond to some requests. Even the four largest municipalities do not have the internal expertise needed for administration of the FOIPP Act. There are countless examples of documents received through a FOIPP request that have sentences or sections blacked out. Someone has to make a determination as to what can be released under the law and what information is protected. Furthermore, requests for information may involve third parties that have to be consulted.

The FOIPP process would be more time consuming, therefore, the average time required to respond to a request would be longer. FPEIM suggests the additional time required to administer FOIPP would be better used addressing other municipal priorities.

A major difference between the system established under the MGA and the provincial FOIPP system is that the MGA applies to information that was created or collected on or after the coming into force of that Act, as well as information that was public before the new MGA was adopted, while FOIPP applies to all records retroactively.

Municipalities have suffered from a lack of resources and, prior to the adoption of the MGA, there were no formal requirements in place for recordkeeping. As a result, filing systems have sometimes taken a backseat to more pressing priorities. Many of the small municipalities in the province do not have a municipal office and have one part-time employee. The largest municipalities have an enormous number of records, which are not digitized for easy access. In addition, filing systems have changed over time and amalgamations have brought together municipalities with different filing systems. The cost of reorganizing or digitizing municipal archives would be exorbitant, especially for large municipalities.

FPEIM is concerned that municipalities will be presented with requests for old records that the municipality may not know how to find. In fact, the municipality might not know if the record exists. The absence of proper record keeping systems would also make it difficult to provide estimates for finding old records in a number of municipalities.

FPEIM supported making access to information and protection of privacy bylaws mandatory under the Municipal Government Act (MGA). This requirement aligns with the municipal values of public accountability and transparency, supports good decision-making and builds public trust. FPEIM is confident that the new access to information and protection of privacy requirements under the MGA will be effective and meet public needs, without the added complexities and heavier administrative burden of FOIPP on municipalities. More importantly, imposing the provincial FOIPP process would drive up the cost of processing requests for information.

It has been pointed out that municipalities in other provinces are under the provincial legislation that is equivalent to Prince Edward Island's FOIPP Act. This does not demonstrate that the process is effective, cost efficient, responsive to public needs or properly administered by municipalities in those provinces. Furthermore, comparing PEI municipalities with those in other provinces doesn't account for the outdated municipal boundaries in PEI, differences in the municipal financial framework, or that municipal legislation was decades behind most provinces until the MGA was adopted. These factors have all undermined municipal capacity relative to other provinces.

Municipal officials recognize that the work of municipalities impacts the daily lives of citizens, so it's important to make information readily available to the public. Many municipalities are doing an excellent job of providing access to municipal records, as well as providing municipal information online. In recent years, websites have become less expensive to develop and easier to update. This has contributed to the growing amount of municipal information available on municipal websites; however, the workload and competing priorities in some municipal offices continues to be an obstacle to posting information online.

FPEIM is currently developing a toolkit to support and encourage proactive disclosure of information. It will include a recommended approach for displaying information on municipal websites to make it easy for the public to find information. There is value in adopting a common approach to displaying municipal information online, but FPEIM recognizes that limited capacity will limit the participation of small municipalities.

Municipal governments have an open and transparent decision-making process, and many have embraced modern practices and policy directions to build on that tradition. The Government of PEI has entrenched many of these modern principles and approaches into the new MGA, ensuring a high standard and consistent level of municipal governance and administration across the province. Those changes include a process under the new MGA for municipalities to provide access to information and protection of privacy. The cities, towns and rural municipalities are working to implement the framework set out in the MGA. FPEIM recommends that we continue with the current process and is opposed to the application of the FOIPP Act to municipalities in Prince Edward Island.

Sincerely,



Bruce MacDougall  
President