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October 12, 2005

Hon. Gerald V. La Forest
Review of Role of Information Commissioner
Suite 600, Frederick Square
77 Westmorland Street
P.O. box 730
Fredericton, N.B. E3B 5B4

Dear Mr. La Forest:

I am enclosing a copy of a recent letter to the Hon. John Reid, the Information Commissioner of Canada, with regard to a problem I encountered in the administration of the *Access to Information Act* at Canada Mortgage and Housing (CMHC).

The Access to Information Co-ordinator for CMHC, D.V. Tyler, is also their General Counsel. As General Counsel Mr. Tyler acts on behalf of CMHC with regard to the wet wall syndrome or what is commonly referred to as the "leaky condo" problem.

While Mr. Tyler is acting on behalf of CMHC in court on "leaky condos" he is at the same time, in his capacity as Access to Information Co-ordinator, withholding "leaky condo" documents from me under the *Access to Information Act* and drafting answers for the Minister to my letters and Parliamentary questions on "leaky condos".

Mr. Tyler's direct involvement as a counsel to CMHC in a B.C. "leaky condo" case, his involvement in the preparation of the Minister's response to my letters and his

involvement in the preparation of a response to my parliamentary question undermines and taints the administration of the *Access to Information Act* at CMHC.

At the same time, Mr. Tyler has an interest in ensuring that the complete story of CMHC's transgressions remain hidden from public scrutiny. As Access to Information Co-ordinator at CMHC, he is ruling as to what can be released to me on the leaky condo issue while at the same time he is a major player in the leaky condo file at CMHC both in making decisions and in providing advice to the Corporation. He can hardly put himself in the position of ruling on which of his own documents, or documents in which he had an interest, should be released to me.

This problem is illustrative of a larger problem. The Information Commissioner must have authority over the administration of the *Access to Information Act* in any department or agency of government. Such authority would allow him to address problems in the administration of the Act at CMHC or elsewhere.

There is no one in government who has a direct interest in ensuring that the *Access to Information Act* operates effectively except for the Information Commissioner, yet he lacks such an authority. It is not good enough to say that Treasury Board is responsible for the administration of the Act. There is no real advantage for anyone in government to ensure that the public has access to government records. In fact common sense would suggest that there is every reason to believe that it is natural for governments to want to limit access to their records and the scrutiny that such access brings.

The work of the Information Commissioner in ensuring that I have access to government documents is essential to my job as a Member of Parliament. I believe his independence and his control over the administration of the *Access to Information Act* needs strengthening not weakening.

I do not believe that the job of Information Commissioner should be merged with that of Privacy Commissioner. I believe the problem identified in the administration of the *Access to Information Act* at CMHC provides another reason for strengthening the powers and independence of the Information Commissioner rather than merging two essentially incompatible offices, one having to do with ensuring open and transparent access to government records, the other with ensuring government information on individuals is not misused by government or made available to the public.

In conclusion I would remind you that the natural inclination of governments to protect themselves from scrutiny is why we have an Information Commissioner and why we need to strengthen the powers and independence of the Information Commissioner. We are at a crossroad. We can enhance the powers and independence of the Information Commissioner or we can merge his office with the Privacy Commissioner, an office with conflicting objectives but we cannot do both. Merging would fundamentally alter and undermine the primary focus of the Information Commissioner, that of ensuring the public's access to government records.

I look forward to your report on the administration of the *Access to Information Act* and the possible merger of the office of Information Commissioner and Privacy Commissioner.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Cummins', written in a cursive style.

John Cummins, M.P.
Delta-Richmond East

cc. Hon. John Reid, Information Commissioner of Canada

Enclosure