There has never been a decision by this government to deny access to the Auditor General. We agree with the Auditor General on the need for access. We argued for it in opposition, and we want to follow through on it now. However, now that we're the government, we have a responsibility to get it right.

Discussions have been ongoing with the Auditor General for some time now about substantial revisions to the Auditor General Act. Those discussions included this specific issue (the issue of waiver), but not this specific audit. Originally, we expected the legislation would be introduced in the spring sitting. However, that did not prove possible, and we're now committed to introducing legislation in the fall.

The key issue is how to allow the Auditor General to have access to documents, without thereby opening to disclosure documents which are legitimately confidential. The December 2000 NS Supreme Court decision in Nova Scotia v. Royal & Sun Alliance, which is available on www.canlii.org, shows how this issue can arise. The judge also states that the Auditor General does not have the power to see documents to which solicitor-client privilege applies. It is puzzling to us that the Auditor General says the opposite in his report.

This issue, which is known as "limited waiver", is enshrined in statute in other provinces like Ontario. We have no such provision in our Auditor General Act. Our view is that it is necessary to have a legislative framework in place before privileged documents are handed over to the Auditor General. The Auditor General apparently believes the existing legislative framework is sufficient. With respect, we disagree, and we are backed up by the court case and the practice in other provinces.

There are also procedural protocols that have to be worked out, such as the protocol for handling documents that are privileged, whether and how the Auditor General can refer to documents that are privileged, and how disputes about whether a document is privileged are to be handled.

We believed that the process in place to draft revisions to the Auditor General Act was the right way for this issue to be resolved. Now, with the benefit of hindsight, it is obvious that we should have identified the issue of limited waiver as an issue that needed to be expedited, and we should have dealt with it in advance of the rest of the revisions.

All of the above explanation is necessary to answer your question. Our Cabinet has never made a decision to deny access. The matter never came before us because in the normal course we would have dealt with the matter when a legislative proposal was ready. In denying access, the Clerk of the Executive Council was simply following through on long-standing and well-established practice.

Assuming the legislation is passed in the fall, the issue will be resolved once and for all. We will then specifically invite the Auditor General to complete his NSBI and IEF audits. It is important and necessary that this audit be finished.

By the way, something that was missed by the reporters was that the audit was supposed to cover March 2009 to September 2010 - in other words, 15 months of the last government, and only 3 months of ours. The idea that we are "covering up", when most of the audit would have covered the previous government, is ... well, far-fetched.

In two sentences: We agree with the Auditor General that he should have access, but we believe that a legislative framework has to be place first. This will be done in the fall sitting of the House.

Best regards,
Graham