

ANNUAL REPORT

for the period January 1, 2006 to December 31, 2006

**NOVA SCOTIA
FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY
REVIEW OFFICE**



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**Nova Scotia Freedom of Information and Protection of Privacy
Review Office**

February 02, 2007

The Honourable Cecil Clarke
Speaker
The Legislative Assembly
Province of Nova Scotia

Sir:

In accordance with Section 33(7) of the **Nova Scotia Freedom of Information and Protection of Privacy Act**, I am pleased to present to you and, through you, to the Members of the Legislative Assembly, the Annual Report of the Review Office for the period from January 1, 2006 to December 31, 2006.

Respectfully,

A handwritten signature in cursive script that reads "Dwight Bishop".

Dwight Bishop
Acting Review Officer



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MISSION STATEMENT

To facilitate informed public participation by promoting openness and transparency of government and public bodies.

INTRODUCTION

The Annual Report of the Freedom of Information and Protection of Privacy Review Officer is laid before the House of Assembly in accordance with section 33(7) of the *Freedom of Information and Protection of Privacy Act*. The Review Officer is an independent ombudsman, appointed by Order-in-Council to oversee the *Freedom of Information and Protection of Privacy Act* and Part XX of the *Municipal Government Act*. At the request of applicants the Review Officer reviews decisions made by public bodies in response to applications for access to records in the custody or under the control of those bodies. The Review Officer may mediate and/or make recommendations for the decision to be changed or adjusted, or may confirm the decision. The Review Officer also investigates privacy complaints with the cooperation of all affected parties.

Effective January 24, 2006, the Acting Review Officer was appointed pending the selection and appointment of a permanent Review Officer.

REVIEW OFFICER'S MESSAGE

I have enjoyed my year as Acting Review Officer. It has left me with a deeper understanding and appreciation of the impact access and privacy has on the lives of Nova Scotians. Mediation has become more relevant in addressing complaints, reflecting a twenty-six percent increase in files resolved this year. This can be attributed to the efforts of Review Office staff, along with a better understanding of the *Acts* and a willingness to cooperate from both applicants and public bodies.

The development of an Interdepartmental FOIPOP Steering Committee is most encouraging. This committee is designed to further enhance knowledge and understanding of access and privacy issues in Nova Scotia and will serve as a useful tool for classification, standardization and training.

The selection and appointment of permanent positions within the Office was crucial in achieving our goals. Fees and privacy continue to be recurring issues that warrant further thought. In closing, I would

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like to thank all those who supported me during my year as Acting Review Officer, particularly the Review Office staff and public bodies. I would also like to extend a warm welcome to the new Review Officer, Dulcie McCallum. Ms. McCallum brings a broad range of knowledge and expertise to the position, which I believe will aid in furthering the goals of the Review Office.

BUSINESS PLANNING

BUSINESS PLAN

The 2006–2007 Business Plan contained the following priorities:

Investigation, Mediation and Review Processing

- Continue to improve/streamline the overall review process, ensure timely response to requests for review, reduce the number/need of review requests, increase the number settlements through informal discussion and mediation sessions.
- Increase consultation and focus on privacy issues.
- Conduct an office reorganization and position reclassifications.
- Develop staff training plans regarding privacy and access issues.

Awareness and Education

- Advocate for the *Acts*, and increase the awareness of citizens and public servants of their rights and obligations provided by the *Freedom of Information and Protection of Privacy Act*, Part XX of the *Municipal Government Act*.
- Develop and implement a communication plan to enhance the profile and openness of the Review Office.
- Establish and participate on an Interdepartmental FOIPOP Steering Committee.
- Co-host the Annual Atlantic Access and Privacy Workshop in June, and conduct an open house during ‘Right to Know Week’ in September.

Public Administration

- Continue working with government and public bodies towards a culture of compliance with the *Acts*, reducing the need for review requests and increase in privacy and access requests.
- The *Freedom of Information and Protection of Privacy Act* warrants consideration during any future legislative changes. We will continue to recommend to the government areas to improve the *Freedom of Information and Protection of Privacy Act*.

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ACCOUNTABILITY REPORT

At the time of this Annual Report, the Review Office has met most of its priorities and efforts are ongoing with respect to achieving those outstanding. The Accountability Report for the Freedom of Information and Protection of Privacy Review Office for the year ending March 31, 2006 was prepared pursuant to the *Provincial Finance Act* and the government policies and guidelines that require the reporting of outcomes against the Freedom of Information and Protection of Privacy Review Office Business Plan for the 2005–2006 fiscal year. The 2005–2006 Accountability Report is available on our Website at www.foipop.ns.ca.

BUDGET

The Freedom of Information and Protection of Privacy Review Office Budget for the 2006-2007 fiscal year was \$256,000. Budget as of December 31, 2006:

| CATEGORY | EXPENDITURES* |
|-------------------------------|---------------|
| Salaries and Benefits | 94,529 |
| Travel | 1,968 |
| Professional/Special Services | 30,788 |
| Supplies and Services | 9,228 |
| Other | 24,712 |
| Total | 161,225 |
| Percent of Budget Spent | 63 |

* Budget reporting is on a fiscal year basis from April 01 to March 31, while the above-noted expenditures are from April to December 2006.

FEES

Sections 6 through 10 of the Nova Scotia Freedom of Information and Protection of Privacy Regulations contain guidelines for fees charged in the course of Access and Review Requests. Application fees vary from one jurisdiction to another across the country. Several jurisdictions have no fees, while many have fees less than those in Nova Scotia.

The Review Office processed five Review Requests pertaining to the issue of fees in 2006. In each instance, the factual information

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The Review Office processed five Review Requests pertaining to the issue of fees in 2006. In each instance, the factual information

provided by the Applicant supported the case for a fee reduction or waiver.

Lower fees are in keeping with the approach in other jurisdictions. The Review Office is pleased that the Minister of Justice has undertaken to examine the issue of fees in Nova Scotia.

PRIVACY

Sections 24 to 31 of the *Freedom of Information and Protection of Privacy Act* create standards for the collection, use and disclosure of personal information. The *Act* does not appear to provide for specific review authority by the Review Officer in privacy matters. In some respects this situation bears a resemblance to that of the Ontario Commissioner.

As a matter of practice, privacy investigations are examined where there is mutual cooperation of all concerned parties. During this reporting period, the Review Office opened six privacy investigations, all dealing with the issue of the inappropriate disclosure of personal information. Of the six, one was outside the jurisdiction of the Review Office and one public body chose not to participate. Two complaints were substantiated, one not substantiated. One investigation is ongoing.

The issue of investigative authority in the area of privacy has been the subject of judicial comment in several recent decisions of the Ontario Divisional Court. These decisions found that despite the absence of an explicit grant of power under Ontario's access and privacy statutes, the Information and Privacy Commissioner of Ontario has the discretion to investigate and report on privacy complaints brought by members of the public against government institutions. This authority is basically rooted in the Commissioner's duty to report to the Legislature. The application of this principle to Nova Scotia's Freedom of Information and Protection of Privacy legislation is being examined. The issue of systematic reviews also warrants further examination.

ACTIVITIES AND ACCOMPLISHMENTS

STAFF

In January 2006, with the retirement of former Review Officer Darce Fardy, I assumed the role of Acting Review Officer pending the appointment of a permanent Review Officer. At the beginning of the

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year. the Review Office consisted of one full time employee, acting in dual roles as Case Review Analyst and Mediator/Investigator, and a casual Intake/Administrative Assistant. During 2006 the Mediator/Investigator and Case Review Analyst positions were filled with permanent staff. A casual Intake/Administrative Assistant position was also continued under contract. Some part-time assistance was also received from the Office of the Ombudsman. The Review Office was pleased to provide student work placements for an Office Information Technology student and an Information and Library Sciences student, fulfilling the practical aspects of their respective programs.

RIGHT TO KNOW WEEK

September 28th is recognized as International Right to Know Day. A proclamation by Premier Rodney MacDonald marked September 24 – 29 as Right to Know Week in Nova Scotia. This was the first year for the Nova Scotia Freedom of Information and Protection of Privacy Review Office's participation in Right to Know Week, including representation on the National Planning Committee.

The Review Office held an Open House, co-hosted by Halifax Public Libraries at the Spring Garden Road Memorial Library. This event included presentations by the Acting Review Officer and the President of the Right to Know Coalition of Nova Scotia, Darce Fardy. Attendees included private citizens, government employees and members of the media.

The Review Office supported the Right to Know Coalition of Nova Scotia in hosting a forum at the University of King's College to discuss issues related to the principles of openness and accountability in government and other public bodies. This event included representatives from the Nova Scotia Department of Justice, the Atlantic Institute for Market Studies, the Conservative, Green and New Democratic Parties of Nova Scotia.

The Review Office co-hosted a Professionals' Breakfast with the Association of Records Managers and Administrators (ARMA). This event was attended by FOIPOP Administrators, members of the International Association of Administrative Professionals (IAAP), the Atlantic Provinces Library Association (APLA) and ARMA. The event included presentations by the Deputy Minister of Justice, President of the Right to Know Coalition of Nova Scotia and the National Chair for the Canadian Association of Professional Access and Privacy Administrators.

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POLICIES, PROCEDURES AND GUIDELINES

In adherence with the *Government Records Act*, the Review Office obtained approval for its Standard for Operational Records (STOR) on March 31, 2006 and began implementing the Standard.

Office policies and procedures were revised and incorporated in the Review Office Procedures Manual, Office brochures and “Frequently Asked Questions.”

As a result of increased interest in video surveillance by public bodies, the Review Office developed Video Surveillance Guidelines that provide a point of reference for the use of video surveillance and recording in public areas by a public authority. A copy of these guidelines can be found at Appendix A of this Report.

COMMITTEES AND MEMBERSHIPS

Committees

- FOIPOP Interdepartmental Steering Committee
- Right to Know Week Planning Committee
- Atlantic Access and Privacy Workshop Planning Committee
- GoverNEXT Steering Committee
- Healthy Workplace Initiative Committee

Memberships

- International Association of Administrative Professionals (IAAP)
- Canadian Association of Professional Access and Privacy Administrators (CAPAPA)
- Canadian Access and Privacy Commissioners’ Network
- Association of Records Managers and Administrators (ARMA)

CONFERENCES AND TRAINING

Conferences

- Privacy Investigators Conference
- DNA Advisory Committee Conference
- Atlantic Canada Access & Privacy Workshop

Training

- French Training Level 1
- Negotiation, Meditation and Conflict Resolution
- Aboriginal Perceptions
- Privacy Impact Assessments
- Foundations of Administrative Justice
- Information Access and Protection of Privacy Foundations
- Diversity and Employment Equity Education
- Privacy in a Liberal Democracy
- Personal Information International Disclosure Act
- Records Management Fundamentals

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Logo



To coincide with Right to Know Week activities, the Review Office launched its new logo on September 26, 2006. Our logo represents the Review Office’s independent, ethical and objective role in the balance between the public’s right to know and an individual’s right to privacy. A lapel pin was also designed. This logo replaces the original “key” concept.

WEBSITE

Our Website underwent design improvements in 2006. The site received 38,382 visits. The revised version may be viewed at www.foipop.ns.ca

PUBLIC OUTREACH

| AUDIENCE | DATE |
|--|--------------|
| MSVU Records Management | January 31 |
| Dalhousie Library Students Students | March 16 |
| ARMA | February 27 |
| Atlantic Access and Privacy Conference | June 19–20 |
| Road Clinic – Antigonish, NS | September 5 |
| Right to Know Week | September 28 |
| FOIPOP Administrators | October 11 |
| Association of Muncipal Tax Collectors | November 9 |
| DNA Advisory Committee | November 23 |

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REVIEW STATISTICS

GENERAL INQUIRIES

| Access Request Process | Review Request Process | Privacy | Federal Legislation | Jurisdiction | Referred to Other Department | Total |
|------------------------|------------------------|---------|---------------------|--------------|------------------------------|-------|
| 106 | 77 | 89 | 28 | 44 | 49 | 393 |

This is the first year for tracking General Inquires. 83% of calls were from private citizens.

REVIEWS OPENED BETWEEN JANUARY 1, 2006 AND DECEMBER 31, 2006

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|------------|------|------|------|------|------|------|------|------|------|------|------|------|
| Provincial | 54 | 86 | 102 | 122 | 112 | 111 | 136 | 99 | 53 | 60 | 72 | 61 |
| Municipal | 0 | 0 | 0 | 0 | 4 | 14 | 18 | 14 | 14 | 16 | 13 | 20 |
| Total | 54 | 86 | 102 | 122 | 116 | 125 | 154 | 113 | 67 | 76 | 85 | 81 |

Local public bodies such as hospitals, universities and school boards were not subject to the Act before 2001 and municipal bodies were not subject to the Act before 1999.

REVIEWS BY TYPE OF INFORMATION REQUESTED

| | General | Personal | Personal/General | Correction |
|------------|---------|----------|------------------|------------|
| Provincial | 28 | 28 | 5 | 0 |
| Municipal | 13 | 5 | 2 | 0 |

REVIEWS OPENED BY APPLICANT GROUP

| Media | General Public | Political | Organizations | Other Public Bodies |
|-------|----------------|-----------|---------------|---------------------|
| 9 | 49 | 6 | 16 | 1 |

RESOLUTION OF FILES CLOSED IN 2006 (NOT NECESSARILY OPENED IN 2006)

| Review Report Issued | Resolved through Mediation | Resolved through Partial Mediation and by Review Report | Withdrawn or Abandoned | Screened Out |
|----------------------|----------------------------|---|------------------------|--------------|
| 15 | 50 | 6 | 6 | 3 |

The Review Office closed 80 files in 2006. 14 files opened in 2005 were resolved in 2006 and are included in the total. 14 files opened in 2006 have been carried over into 2007.

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2006 CONCLUSIONS OF THE REVIEW OFFICER WHERE A REPORT WAS ISSUED

| Agree with Public Body | Agree in-part with Public Body | Disagree with Public Body |
|------------------------|--------------------------------|---------------------------|
| 6 | 3 | 12 |

2006 PUBLIC BODY RESPONSES TO THE REVIEW OFFICER'S RECOMMENDATIONS

| Recommendations Accepted | Partial Acceptance | Recommendations Rejected |
|--------------------------|--------------------|--------------------------|
| 13 | 5 | 3 |

2006 PRIVACY INVESTIGATIONS

| Primary Issue Disclosure | Public Body No Participation | Public Body Participation | Well Founded | Not Well Founded | No Jurisdiction |
|--------------------------|------------------------------|---------------------------|--------------|------------------|-----------------|
| 6 | 1 | 3 | 2 | 1 | 1 |

One privacy investigation is ongoing.

2006 TIME EXTENSIONS

| Public Body | Number of Time Extensions Requested | Extension Granted |
|---|-------------------------------------|-------------------|
| Halifax Regional Municipality | 1 | Yes |
| Immigration | 1 | Yes |
| Justice | 4 | Yes |
| Natural Resources | 1 | Yes |
| Nova Scotia Public Service LTD Plan | 1 | Yes |
| Service Nova Scotia and Municipal Relations | 2 | Yes |
| Tourism Culture and Heritage | 2 | Yes |
| Trade Centre Limited | 1 | Yes |

2006 CONCLUSIONS OF THE REVIEW OFFICER WHERE A REPORT WAS ISSUED

| Agree with Public Body | Agree in-part with Public Body | Disagree with Public Body |
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| Service Nova Scotia and Municipal Relations | 2 | Yes |
| Tourism Culture and Heritage | 2 | Yes |
| Trade Centre Limited | 1 | Yes |

MEDIATION SUMMARIES

FI-06-07 Successful Construction Bid

An applicant asked the Nova Scotia Liquor Commission (NSLC) for a copy of a winning construction bid. The NSLC disclosed the bid amount but withheld the remainder of the record under section 21 of *FOIPOP*, “confidential information.”

As a result of mediation, NSLC agreed to release the bulk of the record.

FI-06-31 Audit Report as Part of Legal Proceedings

An applicant asked the Department of Justice for all internal audit reports for 2005 and 2006. The Department of Justice responded by stating only one record responsive to the application existed and it had been withheld under section 15(1)(a) of *FOIPOP* “disclosure could reasonably be expected to harm law enforcement as the matter is now being reviewed by the police.”

Through mediation it was established that the investigation was now concluded and the record's status was one relating to a future prosecution. As such the record was temporarily excluded from *FOIPOP* under s.4(2) “a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.”

All parties agreed that once the issue was settled in court, the request for access to a record would be reactivated at no charge and would be processed accordingly.

FI-06-66(M) Protecting Identity of Complainants

An applicant asked the Halifax Regional Municipality (HRM) for all complaints made against him during a specific time period. The HRM notified the Third Parties of the application for access to a record and its decision to provide the records to the Applicant in severed form. The Third Parties believed that their identity could be extrapolated from the severed information and requested a review of the HRM's decision.

The Mediator reviewed the material and spoke to the Applicant and the Third Parties about their interests and concerns. The Applicant was interested in the nature and date of the complaints and whether the complaints were being made from a single household. The Third Parties did not wish to be identified either directly or indirectly as the complainants.

The Mediator proposed a generic summary of the complaints with dates. As well, households making the complaints would be

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The Mediator proposed a generic summary of the complaints with dates. As well, households making the complaints would be

distinguished by alphabetic designation (i.e., Household A). All parties agreed with this approach and the matter was settled.

FI-06-53, FI-06-54, FI-06-55 Survey Statistics

An applicant asked several universities for a copy of the data for three questions that formed part of a student survey. All three universities withheld the records under section 17(1) of *FOIPOP* (Financial or economic interests). In addition, all three referred to a document titled “Protocol for Data Use,” as further reason to withhold the data.

The Mediator was able to find at least two of the three answers from the survey posted to the University websites; the information was already publicly available and therefore not subject to *FOIPOP*. For the remaining answer, the Universities agreed to release the data to the Applicant.

REVIEW REPORT SUMMARIES

FI-06-26(M) Interpretation of a “Municipal Body”

The Applicant requested agreements between South West Shore Development Authority (SWSDA) and a Third Party related to options to purchase specific properties.

The SWSDA declined the application on the grounds that it is outside the jurisdiction of Part XX of the *Municipal Government Act (MGA)*. The Applicant appealed the decision to the Review Office. Section 461(e) of the *MGA* states a “municipality” means a regional municipality, town, county or district municipality, village, service commission or municipal body (s.461(e)). Section 461(d) of the *MGA* defines a “municipal body” to mean a committee, community council, agency, authority, board or commission, whether incorporated or not

- (i) a majority of the members of which are appointed by, or
- (ii) which is under the authority of, one or more municipalities.

During the investigative process, it was determined that membership and control of SWSDA is strictly limited and directly linked to the area’s municipalities. SWSDA’s own publications and website acknowledge that “each municipal unit has an equal vote on the board” of SWSDA and SWSDA is an “arm of municipal units” in question. The Review Officer also determined that seats are directly linked to the area municipalities, which comprise the majority of the board.

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In conclusion, the Review Officer found that the SWSDA falls within the *MGA* for the purpose of records and recommended that the SWSDA accept and process the Application for Access to a Record under Part XX of the *Municipal Government Act*, Freedom of Information and Protection of Privacy. The SWSDA did not agree with the Review Officer's recommendations.

FI-06-37(M) Harm to the Competitive Position

The Applicant requested a recommendation to the Halifax Regional Municipality (HRM) that it release the domestic bid estimate for hosting the 2014 Commonwealth Games.

HRM withheld the bid citing s.481 of the *Municipal Government Act*:

- 481(1) The responsible officer shall, unless the third party consents, refuse to disclose to an applicant information
- (a) that would reveal
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
 - (b) that is supplied, implicitly or explicitly, in confidence; and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position, or interfere significantly with the negotiating position, of the third party . . .
 - (iii) result in the undue financial loss or gain to any person or organization.

The Review Officer concluded that the domestic bid is part of a work in progress; the actual monetary costs of the Games will be available after May 2007 in a separate document and information, such as the mandatory sports and the approximate overall cost of the Games, is already in the public domain. The Review Officer believed that disclosure of proposed monetary spending when negotiations are still underway may seriously inhibit the HRM's ability to secure the Games, but the bid portion could be severed.

The Review Officer recommended that the HRM disclose the record in part including the approximate overall cost of the Games. The HRM agreed with the Review Officer's recommendations.

FI-06-56 Other's Opinions About an Individual

A Third Party requested that the Review Officer recommend to Service Nova Scotia and Municipal Relations (SNSMR) that the Department not release any portion of a Pre-Employment Reference

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The Review Officer recommended that the HRM disclose the record in part including the approximate overall cost of the Games. The HRM agreed with the Review Officer's recommendations.

FI-06-56 Other's Opinions About an Individual

A Third Party requested that the Review Officer recommend to Service Nova Scotia and Municipal Relations (SNSMR) that the Department not release any portion of a Pre-Employment Reference

Check given by the Third Party.

The Review Officer found that Third Party opinions about an individual are the personal information of the individual and not of the Third Party who gave those opinions:

- 3 (1) In this Act,
- (i) “personal information” means recorded information about an identifiable individual, including
 - (viii) anyone else’s opinions about the individual ...

The information being sought falls within the parameters of this principle and can be released unless section 20(5) of *FOIPOP* applies. Section 20(5) allows for summarization of the Applicant’s own personal information, including opinions and views about the person, if a Third Party supplied it in confidence.

The Review Officer accepted that normal notification staffing procedures were followed and the information was not supplied in confidence. The Review Officer recommended SNSMR release the reference check, severing the personal information that identified the referee.

FI-06-60 Request for Proposals

A Third Party requested the Review Officer recommend to the Guysborough Antigonish Strait Health Authority that it not release any portion of the successful proposal it submitted for a Request for Construction Services.

The Third Party argued that the proposal should be withheld under s.21(1)(a)(b)(c) of the *Freedom of Information and Protection of Privacy Act*:

- 21 (1) The responsible officer shall, unless the third party consents, refuse to disclose to an applicant information
- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
 - (b) that is supplied, implicitly or explicitly, in confidence; and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position, of the third party, ...

This exemption is a three-part test and all parts (a, b and c) of section 21(1) must be met for the exemption to stand. The proposal was supplied during the tendering process and is now incorporated into the contract. It is “negotiated” information, since its presence in the

Check given by the Third Party.

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contract signifies that the other party agreed to it. Accordingly, the requirements for s.21(1)(b) were not met.

The Review Officer also concluded that although it was the Third Party's position that the release of the information would harm its competitive advantage, these statements in themselves, without clarification or detail, do not meet the standard set out in s.21(1)(c).

The Review Officer recommended that the Guysborough Antigonish Strait Health Authority disclose to the Applicant the Contract in part, severing the personal information of identifiable individuals.

COURT CASE SUMMARIES

Reid v. Halifax Regional School Board, 2006 NSSC 56

The Appellant, Carl Reid, was employed by the Halifax Regional School Board (HRSB) as the principal of Gaetz Brook Junior High School from the summer of 2002 until his resignation in June 2005. In 2004 the HRSB began an investigation of the appellant. During the course of the investigation, a forensic audit report was prepared by Grant Thornton LLP. Various applications for access to this report were submitted to HRSB. The appellant was identified as a Third Party as defined in the *Freedom of Information and Protection of Privacy Act (FOIPOP)* and was notified as required by s.22 of *FOIPOP* of his ability to apply for a review of any decision made by the head of a public body relating to a request for access to a record. The Appellant filed a review request and the Review Officer conducted a review in which he recommended the forensic audit be released. Mr. Reid appealed the decision of the HRSB to follow the recommendations contained in the Review Officer's report on the basis that such disclosure would prejudice his interests or violate his personal privacy.

The Honourable Justice Walter R. E. Goodfellow affirmed the Review Officer's recommendations and the application to prohibit the HRSB from releasing the audit report was dismissed. Mr. Reid appealed this decision on the grounds Justice Goodfellow erred in deciding the forensic audit does not contain information supplied in confidence, within the meaning of s.20(2)(f) of *FOIPOP* and that disclosure of the forensic audit would not be an unreasonable invasion of the appellant's privacy pursuant to s.(20)(1) of *FOIPOP*. The appellant requested a stay of the Chamber judge's decision to release the forensic report until the appeal was heard. The application for a stay was granted and the appeal was set to be heard on September 25, 2006; however, Mr. Reid later dropped his objections and withdrew his appeal.

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Doctors Nova Scotia v. Nova Scotia (Department of Health), 2006 NSCA 59

Doctors Nova Scotia appealed Nova Scotia Supreme Court Justice Douglas L. MacLellan's decision, cited in our 2005 Annual Report, with respect to the disclosure of physicians' names from the 2002-2004 billings stating that the disclosure of named physicians' individual billings would unreasonably invade the physicians' privacy. In his decision, Justice MacLellan affirmed the four part analytical approach to section 20 of the *Freedom of Information and Protection of Privacy Act (FOIPOP)* by Justice Cromwell in *Dickie v. Nova Scotia (Department of Health)*, [1999] N.S.J. No. 166(C.A.) and Justice Moir in *Re House and 144900 Canada Inc.* 2000 Carswell N.S. 429 (NSSC). The issue before the Court of Appeal was whether the Chambers judge committed an appealable error under the standard of review respecting the four part analysis.

After determining that the records requested were not subject to section 20(4)(f) of *FOIPOP*, the Court of Appeal held that the names attached to the billing information consisted of personal information describing physicians' "income." Section 20(3)(f) of *FOIPOP* presumes this to be an unreasonable invasion of privacy unless rebutted under section 20(2). The Court did not find anything in section 20(2) to support the rebuttal of the presumption; in other words that the disclosure would unreasonably invade the physicians' privacy. The appeal was allowed and the names of individual physicians were ordered not to be disclosed.

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ACCESS STATISTICS

2006 PUBLIC BODY APPLICATIONS AND REVIEWS FOR ACCESS TO INFORMATION

| <i>FOIPOP Provincial Act – Government Departments/Agencies/Boards and Commissions</i> | | |
|--|---------------------|----------------|
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Aboriginal Affairs | 0 | 0 |
| Acadian Affairs | 0 | 0 |
| Agriculture & Fisheries | 15 | 1 |
| Archives & Records Management | 0 | 0 |
| Communications Nova Scotia | 3 | 0 |
| Community Services | 153 | 4 |
| Department of Energy | 0 | 0 |
| Economic Development | 19 | 0 |
| Education | 13 | 2 |
| Emergency Measures Organization | 0 | 0 |
| Environment & Labour (Includes Alcohol and Gaming Authority, Fire Marshal, Occupational Health and Safety) | 301 | 2 |
| Executive Council | 5 | 0 |
| Finance | 8 | 1 |
| Halifax-Dartmouth Bridge Commission | 1 | 0 |
| Health | 78 | 3 |
| Human Rights Commission | 8 | 0 |
| Immigration | 4 | 0 |
| InNOVACorp | 0 | 0 |
| Intergovernmental Affairs | 4 | 0 |
| Justice | 59 | 12 |
| Natural Resources | 9 | 0 |
| Nova Scotia Business Inc. | 6 | 0 |
| Nova Scotia Gaming Corporation | 2 | 0 |
| Nova Scotia Legal Aid | 1 | 0 |
| Nova Scotia Community College | 0 | 0 |
| Nova Scotia Film Development Corporation | 2 | 0 |
| Nova Scotia Insurance Review Board | 0 | 0 |
| Nova Scotia Liquor Corporation | 9 | 3 |
| Nova Scotia Public Services LTD Plan | 1 | 0 |
| Office of Health Promotion | 1 | 0 |
| Police Commission | 0 | 0 |

ACCESS STATISTICS

2006 PUBLIC BODY APPLICATIONS AND REVIEWS FOR ACCESS TO INFORMATION

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|--|---------------------|----------------|
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Aboriginal Affairs | 0 | 0 |
| Acadian Affairs | 0 | 0 |
| Agriculture & Fisheries | 15 | 1 |
| Archives & Records Management | 0 | 0 |
| Communications Nova Scotia | 3 | 0 |
| Community Services | 153 | 4 |
| Department of Energy | 0 | 0 |
| Economic Development | 19 | 0 |
| Education | 13 | 2 |
| Emergency Measures Organization | 0 | 0 |
| Environment & Labour (Includes Alcohol and Gaming Authority, Fire Marshal, Occupational Health and Safety) | 301 | 2 |
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| Finance | 8 | 1 |
| Halifax-Dartmouth Bridge Commission | 1 | 0 |
| Health | 78 | 3 |
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| Nova Scotia Film Development Corporation | 2 | 0 |
| Nova Scotia Insurance Review Board | 0 | 0 |
| Nova Scotia Liquor Corporation | 9 | 3 |
| Nova Scotia Public Services LTD Plan | 1 | 0 |
| Office of Health Promotion | 1 | 0 |
| Police Commission | 0 | 0 |

| PUBLIC BODY | APPLICATIONS | REVIEWS |
|---|--------------|---------|
| Premier's Office | 7 | 1 |
| Public Service Commission | 8 | 0 |
| Public Prosecution Service | 17 | 2 |
| Securities Commission | 0 | 0 |
| Service Nova Scotia & Municipal Relations | 16 | 6 |
| Sport & Recreation Commission | 0 | 0 |
| Tourism, Culture and Heritage | 16 | 0 |
| Trade Centre Ltd. | 4 | 0 |
| Transportation & Public Works | 17 | 2 |
| Treasury & Policy Board | 10 | 0 |
| Utility & Review Board | 0 | 0 |
| Waterfront Development | 0 | 0 |
| Workers' Compensation Board | 9 | 1 |
| Workers' Compensation Appeals Tribunal | 0 | 0 |
| FOIPOP Provincial Act – Universities/School Boards | | |
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Acadia University | 4 | 2 |
| Annapolis Valley Regional School Board | 1 | 1 |
| Atlantic School of Theology | 1 | 0 |
| Cape Breton-Victoria Regional School Board | 0 | 0 |
| Chignecto-Central Regional School Board | 2 | 1 |
| Conseil Scolaire Acadien Provincial | 0 | 0 |
| Dalhousie University | 16 | 3 |
| Halifax Regional School Board | 6 | 0 |
| Mount Saint Vincent University | 9 | 1 |
| Nova Scotia Agricultural College | 2 | 0 |
| Nova Scotia College of Art & Design | 0 | 0 |
| Saint Mary's University | 2 | 1 |
| South Shore District School Board | 1 | 0 |
| St. Francis Xavier University | 3 | 0 |
| Strait Regional School Board | 2 | 1 |
| Tri-County School Board | 1 | 1 |
| Universite Sainte-Anne | 1 | 0 |
| Cape Breton University | 1 | 0 |
| University of King's College | 0 | 0 |

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|---|--------------|---------|
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| Utility & Review Board | 0 | 0 |
| Waterfront Development | 0 | 0 |
| Workers' Compensation Board | 9 | 1 |
| Workers' Compensation Appeals Tribunal | 0 | 0 |
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| St. Francis Xavier University | 3 | 0 |
| Strait Regional School Board | 2 | 1 |
| Tri-County School Board | 1 | 1 |
| Universite Sainte-Anne | 1 | 0 |
| Cape Breton University | 1 | 0 |
| University of King's College | 0 | 0 |

| <i>FOIPO Provincial Act – District Health Authorities</i> | | |
|---|---------------------|----------------|
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Annapolis Valley District Health Authority | 0 | 0 |
| Cape Breton District Health Authority | 3 | 0 |
| Capital District Health Authority | 17 | 2 |
| Colchester East Hants Health Authority | 0 | 0 |
| Cumberland Health Authority | 0 | 0 |
| Guysborough Antigonish Strait Health Authority | 2 | 2 |
| IWK Health Centre | 5 | 1 |
| Pictou County District Health Authority | 1 | 0 |
| South Shore District Health Authority | 0 | 0 |
| South West Health | 2 | 0 |
| <i>Municipal Government Act – Commissions/Municipalities/Towns</i> | | |
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Cape Breton Regional Municipality | 1 | 0 |
| Halifax Regional Municipality | 34 | 9 |
| Municipality of the County of Annapolis | 2 | 0 |
| Municipality of the County of Antigonish | 0 | 0 |
| Municipality of the District of Argyle | 0 | 0 |
| Municipality of the District of Barrington | 1 | 0 |
| Municipality of the District of Chester | 1 | 0 |
| Municipality of the County of Inverness | 0 | 0 |
| Municipality of the County of Kings | 1 | 0 |
| Municipality of the County of Pictou | 0 | 0 |
| Municipality of the County of Richmond | 0 | 2 |
| Municipality of the County of Victoria | 0 | 0 |
| Municipality of the District of Clare | 0 | 0 |
| Municipality of the District of Colchester | 0 | 0 |
| Municipality of the District of Cumberland | 0 | 0 |
| Municipality of the District of Digby | 1 | 0 |
| Municipality of the District of Guysborough | 2 | 0 |
| Municipality of the District of Hants East | 1 | 0 |
| Municipality of the District of Lunenburg | 1 | 0 |
| Municipality of the District of Shelburne | 1 | 0 |
| Municipality of the District of St. Mary's | 0 | 0 |
| Municipality of the District of West Hants | 1 | 1 |
| Municipality of the District of Yarmouth | 0 | 0 |

| <i>FOIPO Provincial Act – District Health Authorities</i> | | |
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| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Annapolis Valley District Health Authority | 0 | 0 |
| Cape Breton District Health Authority | 3 | 0 |
| Capital District Health Authority | 17 | 2 |
| Colchester East Hants Health Authority | 0 | 0 |
| Cumberland Health Authority | 0 | 0 |
| Guysborough Antigonish Strait Health Authority | 2 | 2 |
| IWK Health Centre | 5 | 1 |
| Pictou County District Health Authority | 1 | 0 |
| South Shore District Health Authority | 0 | 0 |
| South West Health | 2 | 0 |
| <i>Municipal Government Act – Commissions/Municipalities/Towns</i> | | |
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Cape Breton Regional Municipality | 1 | 0 |
| Halifax Regional Municipality | 34 | 9 |
| Municipality of the County of Annapolis | 2 | 0 |
| Municipality of the County of Antigonish | 0 | 0 |
| Municipality of the District of Argyle | 0 | 0 |
| Municipality of the District of Barrington | 1 | 0 |
| Municipality of the District of Chester | 1 | 0 |
| Municipality of the County of Inverness | 0 | 0 |
| Municipality of the County of Kings | 1 | 0 |
| Municipality of the County of Pictou | 0 | 0 |
| Municipality of the County of Richmond | 0 | 2 |
| Municipality of the County of Victoria | 0 | 0 |
| Municipality of the District of Clare | 0 | 0 |
| Municipality of the District of Colchester | 0 | 0 |
| Municipality of the District of Cumberland | 0 | 0 |
| Municipality of the District of Digby | 1 | 0 |
| Municipality of the District of Guysborough | 2 | 0 |
| Municipality of the District of Hants East | 1 | 0 |
| Municipality of the District of Lunenburg | 1 | 0 |
| Municipality of the District of Shelburne | 1 | 0 |
| Municipality of the District of St. Mary's | 0 | 0 |
| Municipality of the District of West Hants | 1 | 1 |
| Municipality of the District of Yarmouth | 0 | 0 |

| PUBLIC BODY | APPLICATIONS | REVIEWS |
|-------------------------------|--------------|---------|
| Region of Queens Municipality | 0 | 0 |
| Town of Amherst | 1 | 0 |
| Town of Annapolis Royal | 0 | 0 |
| Town of Antigonish | 0 | 0 |
| Town of Berwick | 0 | 0 |
| Town of Bridgetown | 0 | 0 |
| Town of Bridgewater | 0 | 0 |
| Town of Canso | 0 | 0 |
| Town of Clark's Harbour | 0 | 0 |
| Town of Digby | 0 | 0 |
| Town of Hantsport | 0 | 0 |
| Town of Kentville | 0 | 0 |
| Town of Lockeport | 0 | 0 |
| Town of Lunenburg | 0 | 0 |
| Town of Mahone Bay | 0 | 0 |
| Town of Middleton | 0 | 0 |
| Town of Mulgrave | 0 | 0 |
| Town of New Glasgow | 1 | 0 |
| Town of Oxford | 0 | 0 |
| Town of Parrsboro | 1 | 1 |
| Town of Pictou | 0 | 0 |
| Town of Port Hawkesbury | 0 | 0 |
| Town of Shelburne | 0 | 0 |
| Town of Springhill | 1 | 1 |
| Town of Stellarton | 0 | 0 |
| Town of Stewiacke | 0 | 0 |
| Town of Trenton | 2 | 0 |
| Town of Truro | 0 | 0 |
| Town of Westville | 0 | 0 |
| Town of Windsor | 0 | 0 |
| Town of Wolfville | 0 | 0 |
| Town of Yarmouth | 0 | 0 |

| PUBLIC BODY | APPLICATIONS | REVIEWS |
|-------------------------------|--------------|---------|
| Region of Queens Municipality | 0 | 0 |
| Town of Amherst | 1 | 0 |
| Town of Annapolis Royal | 0 | 0 |
| Town of Antigonish | 0 | 0 |
| Town of Berwick | 0 | 0 |
| Town of Bridgetown | 0 | 0 |
| Town of Bridgewater | 0 | 0 |
| Town of Canso | 0 | 0 |
| Town of Clark's Harbour | 0 | 0 |
| Town of Digby | 0 | 0 |
| Town of Hantsport | 0 | 0 |
| Town of Kentville | 0 | 0 |
| Town of Lockeport | 0 | 0 |
| Town of Lunenburg | 0 | 0 |
| Town of Mahone Bay | 0 | 0 |
| Town of Middleton | 0 | 0 |
| Town of Mulgrave | 0 | 0 |
| Town of New Glasgow | 1 | 0 |
| Town of Oxford | 0 | 0 |
| Town of Parrsboro | 1 | 1 |
| Town of Pictou | 0 | 0 |
| Town of Port Hawkesbury | 0 | 0 |
| Town of Shelburne | 0 | 0 |
| Town of Springhill | 1 | 1 |
| Town of Stellarton | 0 | 0 |
| Town of Stewiacke | 0 | 0 |
| Town of Trenton | 2 | 0 |
| Town of Truro | 0 | 0 |
| Town of Westville | 0 | 0 |
| Town of Windsor | 0 | 0 |
| Town of Wolfville | 0 | 0 |
| Town of Yarmouth | 0 | 0 |

| <i>Municipal Government Act – Police</i> | | |
|--|---------------------|----------------|
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Amherst Police | 0 | 1 |
| Annapolis Royal Police | 0 | 0 |
| Bridgewater Police | 0 | 0 |
| Cape Breton Regional Police | 85 | 0 |
| Halifax Regional Police | 64 | 4 |
| Kentville Police | 0 | 0 |
| New Glasgow | 1 | 0 |
| Springhill Police | 0 | 0 |
| Stellarton Police | 0 | 0 |
| Trenton Police | 1 | 0 |
| Truro Police | 3 | 0 |
| Westville Police | 0 | 0 |
| <i>Other Public Bodies</i> | | |
| PUBLIC BODY | APPLICATIONS | REVIEWS |
| Atlantic Lotto Corporation | 11 | 1 |
| Children's Aid Society of Shelburne County | NR | 1 |
| Family and Children's Services Kings County | 13 | 1 |
| Nova Scotia Board of Examiners in Psychology | 1 | 1 |
| South West Shore Development Authority | NR | 2 |

NR = No response as of March 27, 2007.

| <i>Municipal Government Act – Police</i> | | |
|--|---------------------|----------------|
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| Amherst Police | 0 | 1 |
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| Halifax Regional Police | 64 | 4 |
| Kentville Police | 0 | 0 |
| New Glasgow | 1 | 0 |
| Springhill Police | 0 | 0 |
| Stellarton Police | 0 | 0 |
| Trenton Police | 1 | 0 |
| Truro Police | 3 | 0 |
| Westville Police | 0 | 0 |
| <i>Other Public Bodies</i> | | |
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APPENDIX A

NOVA SCOTIA FREEDOM OF INFORMATION & PROTECTION OF PRIVACY
REVIEW OFFICE
VIDEO SURVEILLANCE GUIDELINES

The following is solely intended to provide a point of reference for the use video surveillance and recording in public areas by a public authority, i.e. a police force.

Video surveillance and recording should only be considered and utilized to address a real, pressing and substantial problem.

- The problem to be addressed by video surveillance must be pressing and substantial, and of sufficient importance to warrant overriding the right of individuals to be free from surveillance in a public place. Accordingly, evidence of the problem to be addressed is needed and should include real evidence of risks, dangers, crime rates, etc. Specific and verifiable reports of incidents of crime, public safety concerns or other compelling circumstances are needed, not just anecdotal evidence or speculation.

A Privacy Impact Assessment of the proposed video surveillance and recording should be conducted before it is implemented.

- A Privacy Impact Assessment (PIA) of the proposed video surveillance should be conducted to identify the actual, or potential, kind and degree of interference with privacy that may result, and determine ways in which any adverse effects may be mitigated.

Fair information practices should be respected in collection, use, disclosure, retention and destruction of recorded personal information.

- The information collected through video surveillance should be minimal. Its use should be restricted, its disclosure controlled, its retention limited, and its destruction assured.
- If a camera is manned, the recording function should only be turned on in the event of an observed or suspected infraction. If a camera records continuously, the recordings should be conserved for a limited time only, according to a retention schedule, unless they have captured a suspected infraction or are relevant to a criminal act that has been reported to the police.
- Information collected through video surveillance should not be used for any purpose other than the purpose that a police force or public authority has explicitly stated in their respective policy.
- Information relating to any release or disclosure of recordings should be documented.

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Policy Development

A comprehensive written set of policy guidelines governing the use of video surveillance and/or video recording is fundamental. Such policy should clearly set out:

- the rationale and purpose of the video and/or recording system
- the location and field of vision of the equipment
- notification to the public that they will be under video surveillance
- the rationale and purpose of the specific locations of equipment and fields of vision selected
- which personnel are authorized to operate the system
- the time(s) when the surveillance will be in effect
- whether, and when recording will take place
- the place where signals from the equipment will be received and monitored

Additionally, fair information principles should also be considered when developing policy relating to video recorded information. Such as the security, use, disclosure, retention and destruction of the video recordings and the right of individuals to have access to their personal information captured.

The policy should also identify a person accountable for privacy compliance and privacy rights associated with the system and should require officers, employees and contractors adhere to it, and provide sanctions if they do not. The policy should also provide a process to be followed in the event of inadvertent privacy and security breaches. Finally, the policy should also provide procedures for individuals to challenge compliance with the respective policy.

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