Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
Tricia Ralph

REVIEW REPORT 20-04

July 30, 2020

Public Prosecution Service

Summary: The applicant made a request for records about himself held by the Public Prosecution Service (PPS). The records were about charges filed against the applicant that were ultimately withdrawn. The PPS provided some of the requested information but redacted some information and withheld a number of documents in full, citing prosecutorial discretion under s. 15(1)(f) and unreasonable invasion of third parties' privacy under s. 20 of the *Freedom of Information and Protection of Privacy Act* (*FOIPOP*).

The records at issue were compiled by Crown prosecutors for the conduct of a trial. The trial never occurred as the charges were withdrawn. The nature and purpose of the records allows a large portion of the information to be withheld because of the exemption for prosecutorial discretion in s. 15(1)(f). However, the Commissioner finds that this does not allow the public body to withhold in full as much information as it has. The Commissioner concludes that *FOIPOP* requires the PPS to disclose portions of the records after information exempted from disclosure is removed from the records.

With regard to s. 20, much of the information was protected by the exemption for unreasonable invasion of third parties' privacy. The Commissioner concludes that witness names and statements are protected from disclosure. However, names and business phone numbers of police acting in their professional capacity are not protected from disclosure and should be released to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5, ss. 2, 5, 15, 18, 20, 45; *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165.

Authorities Considered: British Columbia: Orders 02-38, 2002 CanLII 42472 (BC IPC); 03-16, 2003 CanLII 49186 (BC IPC); **Nova Scotia:** Review Reports FI-02-37, 2002, CanLII 17967 (NS FOIPOP), FI-04-42, 2005 CanLII 5391 (NS FOIPOP); FI-08-107, 2010 CanLII 47110 (NS FOIPOP); FI-11-72, 2015 NSOIPC 10 (CanLII); FI-12-106, 2013 CanLII 61076 (NS FOIPOP); 19-06, 2019 NSOIPC 7 (CanLII) **Ontario:** Orders 24, Ontario (Attorney General) (Re), 1988 CanLII 1404 (ON IPC).

Cases Considered: *Cummings v. Nova Scotia (Public Prosecution Service)*, 2011 NSSC 38 (CanLII); *Nova Scotia (Public Prosecution Service) v. FitzGerald Estate*, 2015 NSCA 38 (CanLII); *Krieger v. Law Society of Alberta*, [2002] 3 SCR 372, 2002 SCC 65 (CanLII); *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* [2010] 1 SCR 815, 2010 SCC 23 CanLII); *House (Re)*, 2000 CanLII 20401 (NS SC); *Sutherland v. Nova Scotia (Community Services)*, 2013 NSSC 1 (CanLII).

Other Sources Considered: Manes and Silver, *Solicitor-Client Privilege in Canadian Law* (Toronto: Butterworth's, 1993).

INTRODUCTION:

[1] The applicant filed a request for records held by the PPS. The records relate to criminal charges filed against the applicant that were ultimately withdrawn. In response, the PPS provided a package of redacted documents and withheld some records in full. The PPS stated that the disclosure of the redacted and withheld information could reveal information used in the exercise of prosecutorial discretion or that the disclosure would be an unreasonable invasion of a third party's personal privacy. The applicant filed a review to this office.

ISSUES:

[2] There are two issues under consideration in this review:

1. Is the public body authorized to refuse access to information under s. 15 of *FOIPOP* because the disclosure would reveal information relating to or used in the exercise of prosecutorial discretion?
2. Is the public body required to refuse access to information under s. 20 of *FOIPOP* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

DISCUSSION:

Background

[3] In May 2016, the applicant sought access to a prosecution file from the PPS that relates to criminal charges that had been laid against him. The charges were ultimately withdrawn and the prosecution had ended by the time he made his request for access to information.

[4] In response to his request for access to information, the PPS made two releases of records. The first release was made on July 26, 2016. The PPS released records to the applicant but also withheld a number of pages in full.

[5] The second release was made on September 18, 2019, during the investigation stage of this review and consisted of reprocessed records from the first disclosure. This release included pages that were missing from the original disclosure. During the investigation, the PPS identified a number of "duplicate" pages and withheld them from the applicant. However, these pages were erroneously identified as duplicates. This was highlighted by the Office of the Information and Privacy Commissioner's investigator. In response, the PPS committed to providing the

erroneously labelled duplicates to the applicant in redacted form, but to my knowledge, never did so.

[6] Prior to engaging in the investigation, the PPS also relied on s. 18 to redact portions of the responsive records. Through the course of the investigation conducted by this office, the PPS agreed to disclose the information that had previously been redacted pursuant to s. 18 to the applicant as part of its second disclosure release. Thus, the issue of whether s. 18 should have been applied is not addressed in this report. In addition, the PPS also disclosed information that was previously withheld as not responsive and disclosed several paragraphs that were originally redacted under s. 15.

Burden of Proof

[7] Section 45(1) of *FOIPOP* establishes that the burden is on the public body to prove that the applicant has no right of access to a record or part of a record.

[8] Where the public body has established that s. 20 applies, s. 45(2) shifts the burden to the applicant to demonstrate that the disclosure of third party personal information would not result in an unreasonable invasion of personal privacy.

Duty to Sever

[9] Section 5(2) of *FOIPOP* provides:

> (2) The right of access to a record does not extend to information exempted from disclosure pursuant to this Act, but if that information can reasonably be severed from the record an applicant has the right of access to the remainder of the record.

[10] In this case, the PPS applied severing to the majority of the documents. However, there were three packages of documents that the PPS said were duplicates and so it did not attempt to sever them as part of the reprocessed response. Our review of the documents showed that these records were not in fact duplicates. In response, the PPS committed to providing the erroneously labelled duplicates to the applicant in redacted form, but to my knowledge, never did so.

[11] In addition to the records withheld as duplicates, the PPS withheld 79 pages in full under s. 15 rather than severing these pages line-by-line. These 79 pages do not appear to be drastically different from the responsive pages that were processed and provided in a redacted form so it is not clear why these pages were withheld in full instead of severed in a line-by-line manner.

[12] *FOIPOP* requires that if the information "can reasonably be severed from the record" then the applicant has a right to the remainder of the record. This means that any remaining information that is both intelligible and responsive to the request after the exempted information has been removed should be released.[1] It is important to be pragmatic in the approach to what is reasonable. It is also essential that any interpretation of this standard not undermine *FOIPOP*'s stated purpose which includes giving the public a right of access to personal information about themselves as well as facilitating informed public participation in policy formulation, ensuring

[1] This is also the approach taken in other jurisdictions. See for example *BC OIPC Order 03-16*, 2003 CanLII 49186 (BC IPC), at para. 53 and *Ontario Order 24*, Ontario (Attorney General) (Re), 1988 CanLII 1404 (ON IPC), at p. 8.

fairness in government decision-making and permitting the airing and reconciliation of divergent views.[2]

Is the public body authorized to refuse access to information under s. 15 of *FOIPOP* because the disclosure would reveal information relating to or used in the exercise of prosecutorial discretion?

[13] For much of its redactions, the PPS relied on s. 15 of *FOIPOP* to sever information. The specific subsection it relied upon was s. 15(1)(f), which states that the public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial discretion.

[14] *FOIPOP* does not contain a definition of "prosecutorial discretion". Because of this, in several previous decisions,[3] Review Officers[4] determined that it would be appropriate to adopt the definition of "prosecutorial discretion" found in the British Columbia *Freedom of Information and Protection of Privacy Act*, which provides:

> "exercise of prosecutorial discretion" means the exercise by
>
> (a) Crown counsel, or a special prosecutor, of a duty or power under the Crown Counsel Act, including the duty or power
>
> i. to approve or not to approve a prosecution,
> ii. to stay a proceeding,
> iii. to prepare for a hearing or trial,
> iv. to conduct a hearing or trial,
> v. to take a position on sentence, and
> vi. to initiate an appeal[5]

[15] The Nova Scotia Supreme Court agreed with the adoption of the definition in the 2011 decision of *Cummings v. Nova Scotia (Public Prosecution Service)* [*Cummings*].[6] However, the Nova Scotia Court of Appeal disagreed with this approach in the 2015 decision of *Nova Scotia (Public Prosecution Service) v. Fitzgerald Estate* [*Fitzgerald*].[7]

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[2] See s. 2 of *FOIPOP*.
[3] See for example, NS Review Reports F1-04-42, 2005 CanLII 5391 (NS FOIPOP), at p. 1 (Darce Fardy) and F1-12-106, 2013 CanLII 61076 (NS FOIPOP), at p. 15 (Dulcie MacCallum).
[4] The Information and Privacy Commissioner for Nova Scotia is also known as the Review Officer and is appointed as the independent oversight authority under the *Freedom of Information and Protection of Privacy Act*, the *Municipal Government Act*, the *Personal Health Information Act*, and the *Privacy Review Officer Act*.
[5] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 Schedule 1.
[6] *Cummings v. Nova Scotia (Public Prosecution Service)*, 2011 NSSC 38 (CanLII), at paras. 20 and 24 [*Cummings*].
[7] *Nova Scotia (Public Prosecution Service) v. Fitzgerald Estate*, 2015 NSCA 38 (CanLII) [*Fitzgerald*].

[16] Rather than adopting the definition from the British Columbia legislation, the Court of Appeal in *Fitzgerald* relied on the Supreme Court of Canada decision in *Kreiger v. Law Society of Alberta*[8] for its explanation of the meaning of "prosecutorial discretion". *Krieger* and *Fitzgerald* set out the following principles with respect to the meaning of s. 15(1)(f) of *FOIPOP*:

- "Prosecutorial discretion" is a term of art. It does not merely refer to any discretionary decision made by a Crown prosecutor.[9]
- Decisions that are included in the phrase "prosecutorial discretion" include:[10]
    a) The discretion whether to bring the prosecution of a charge laid by police;
    b) The discretion to enter a stay of proceedings in either private or public prosecution;
    c) The discretion to accept a guilty plea to a lesser charge;
    d) The discretion to withdraw from criminal proceedings altogether; and
    e) The discretion to take control of a private prosecution.
- Decisions that do not go to the nature and extent of the prosecution do not fall within the scope of prosecutorial discretion, i.e. decisions that govern a Crown prosecutor's tactics or conduct before the court are not encompassed in the scope of prosecutorial discretion.[11]
- Decisions concerning the preparation for or conduct of litigation are not decisions within the ambit of prosecutorial discretion for the purposes of s. 15(1)(f).[12]
- Nothing in s. 15(1)(f) suggests that the source of the information or the fact that it was prepared at someone's request is relevant to the PPS's authority to withhold information under this section.[13]
- Steps taken by the police in the investigation of the offence is material that would have been used by the PPS in deciding whether to commence or continue a prosecution, which clearly is a discretionary decision involving the exercise of prosecutorial discretion.[14]
- Section 15(1)(f) applies where the records were used to analyze the case to see if the evidence, in light of the law, justified starting or continuing a prosecution. Records can include statements, documents, notes and summaries prepared by the PPS. This is so even if the same records also served other purposes that do not engage prosecutorial discretion such as acting as an aid in the conduct of a trial or appeal.[15]
- A disclosure of relevant evidence to the defence is a legal duty, not a matter of prosecutorial discretion.[16]

[8] *Krieger v. Law Society of Alberta*, [2002] 3 SCR 372, 2002 SCC 65 (CanLII) [*Krieger*].
[9] *Krieger* at para. 43.
[10] *Krieger* at para. 46 and *Fitzgerald* at para. 38.
[11] *Krieger* at para. 47 and *Fitzgerald* at para. 38.
[12] *Fitzgerald* at para. 39.
[13] *Fitzgerald*, at para. 42.
[14] *Fitzgerald* at para. 44.
[15] *Fitzgerald* at para. 45
[16] *Krieger* at paras. 5 and 54.

The PPS's Submissions

[17] The PPS notes that much of the records contained in the relevant file are ones that came from the enforcement agency and were generated by that agency to prosecute the offences. For example, the records include witness statements, notes of the officers, and records of the applicant's employer – a federal government department. The PPS says that the Crown prosecutors reviewed and considered all the material in the file with respect to determining how to proceed with the charges. The PPS's position is that in that context, the entire file, including issues with the charges that were laid and documents used to support the decision to lay, withdraw or proceed with charges, is all "information relating to or used in the exercised of prosecutorial discretion." In addition to the documents gathered by the enforcement agency to prove the charges, there were numerous conversations about the evidence between the police and the Crown prosecutors on the evidence relating to these charges. The PPS says that this information was used to inform the Crown prosecutors' decision on how to proceed with the charges in this file and its purposes were to determine whether the case should proceed and whether additional information was required from the police in order to determine if there was a realistic prospect of conviction.

[18] The PPS relies on the case law cited above in *Krieger*, *Cummings*, and *Fitzgerald* to highlight that only information that was "solely" used by the Crown prosecutors about tactics or conduct before the court should not be withheld. It points out the finding in *Fitzgerald* that documents in the file that can be used for more than one purpose, one of which includes information "relating to or used" by the PPS in making decisions regarding the nature and extent of a prosecution, may be withheld pursuant to s. 15(1)(f).

[19] The PPS also says that even though prosecution is complete, this does not mean that the information used in the prosecutorial discretion should no longer be protected. It argues that the protection afforded to the decision-making process of Crown prosecutors would not need to be protected in *FOIPOP* otherwise. To support this position, it relies on a 2002 decision by this office[17] where a previous Review Officer confirmed that s. 15(1)(f) can be applied even after the prosecution has been completed:

> …s. 15(1)(f) applies even after a police investigation is over and a decision has been made not to prosecute. Any documents containing information used by PPS to determine whether charges should be laid, in my view, fall under the exemption in s. 15(1)(f).[18]

[20] The PPS says that it had reviewed the records and exercised discretion in refusing to disclose information pursuant to s. 15(1)(f) by considering the following points: the information was used by the Crown prosecutors in determining whether to proceed with charges; the nature and extent of the prosecution; if the information was used to determine if the public interest is best served by prosecution of the case; and the harm from disclosure and the purpose of *FOIPOP*.

[17] NS Review Report FI-02-37, 2002, CanLII 17967 (NS FOIPOP).
[18] NS Review Report FI-02-37, 2002, CanLII 17967 (NS FOIPOP), at p. 3.

[21] With respect to public interest, the PPS argues that the information severed under s. 15(1)(f) will not inform the public about government operations to facilitate participating in policy-making decisions, ensure fairness in government decision-making, or deal with divergent views. It says that the records were clearly provided as a result of the enforcement agency's investigation into an offence for the Crown prosecutors to use in prosecuting the offences. Overall, its position is that there is no wider public interest in releasing the documents as they are only of interest to the applicant.

Analysis

[22] After conducting a line-by-line review of the material withheld from disclosure under s. 15(1)(f), I am satisfied that the majority of it is exempt from disclosure under s. 15(1)(f). This is because if the material were to be provided to the applicant, it could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion. That being said, I have identified some portions of the records that were withheld under s. 15(1)(f) to which the exemption cannot apply.

[23] There is some information to which s. 15(1)(f) was, in my view, improperly applied. The PPS applied s. 15(1)(f) to correspondence between the Crown prosecutors and the lawyer for the applicant. It is important to note that privilege cannot attach to communications between opposing parties. This is because, in making such a communication, there cannot have been an intention of confidentiality, thus there is no room for the privilege to attach.[19] It is also important to remember here that the lawyer for the applicant was acting on the applicant's behalf, as his representative and following his instructions. The applicant should have been aware that his lawyer engaged in correspondence with the Crown prosecutors about withdrawing the charges against him. I find that s. 15(1)(f) does not apply to the correspondence between the Crown prosecutors and the applicant's lawyer in this case and so should be fully disclosed. Correspondence between the Crown prosecutors and the applicant's lawyer can be found at pages 9-10, 13-17, 19-21, 77-83, 88-91, 130-133, 138-141 and 155-158 of the most recent responsive package.

[24] Although I have already said that in this case, the correspondence between the applicant's lawyer and the Crown should be disclosed, I also wish to draw attention to an inconsistency in the s. 15(1)(f) redactions. At page 9 of the responsive package, the PPS redacted the first two paragraphs of an email between the Crown prosecutors and the applicant's defence lawyer. When this email is duplicated later in the responsive package, the first two paragraphs of the email were not redacted. Clearly, there should be consistency in the redaction of duplicate records. Thus, I find that the first two paragraphs on page 9 should be released to the applicant.

[25] Next, I wish to address the topic of the PPS's exercise of discretion in applying s. 15(1)(f) redactions. With every discretionary exemption, once a public body has determined that it can apply an exemption, it needs to ask itself if it should apply it. In 2010, the Supreme Court of Canada stated, in considering the Ontario Information and Privacy Commissioner's role in reviewing exercise of discretion, that the Commissioner should return the matter for reconsideration where: the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or the decision failed to take into account

[19] Manes & Silver, *Solicitor-Client Privilege in Canadian Law*, (Toronto: Butterworths, 1993) at pp. 147-148.

relevant considerations.[20] The relevant factors that should be addressed when applying s. 15(1)(f) were cited in Nova Scotia Review Report FI-11-72 and include:

- The general purposes of the legislation: public bodies should make information available to the public; individuals should have a right of access to personal information about themselves;
- The wording of the discretionary exemption and the interests which the section attempts to balance;
- All other relevant interests and considerations on the basis of the facts and circumstances of the particular case;
- The nature of the record and the extent to which the document is significant and/or sensitive to the public body;
- Whether there is a sympathetic or compelling need to release materials;
- Whether the disclosure of the information will increase public confidence in the operation of the public body;
- The age of the record.[21]

[26] During the investigation by this office, the PPS was asked to explain how it had exercised its discretion based on the above-noted factors. As set out above, the PPS said that it exercised its discretion based on the following factors: the information was used by the Crown prosecutors in determining whether to proceed with charges; the nature and extent of the prosecution; if the information was used to determine if the public interest is best served by prosecution of the case; and the harm from disclosure and the purpose of *FOIPOP*. Aside from looking at the purpose of the legislation, the other factors that the PPS considered in exercising its discretion are not those listed above. It appears to me that that the PPS failed to take into account the relevant considerations of the above-noted factors because it did not provide any submissions on them, despite having been asked to. Thus, I find that the matter should be returned to the PPS for reconsideration because its exercise of discretion failed to take into account relevant considerations. The PPS should also apply this approach to the unprocessed records, including the erroneously labelled duplicates, which were withheld in full from the applicant.

Is the public body required to refuse access to information under s. 20 of *FOIPOP* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

[27] The PPS redacted various pieces of information on the basis that disclosure would be an unreasonable invasion of a third party's personal privacy. Section 20(1) of *FOIPOP* directs the public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[20] *Ontario (Public Safety and Security) v. Criminal Lawyers'* Association [2010] 1 SCR 815, 2010 SCC 23 CanLII) at para. 71 [*Canadian Lawyers' Association*].
[21] *Canadian Lawyers' Association* at para. 66; BC OIPC Order 02-38 2002 CanLII 42472 (BC IPC) at para. 149; FI-11-72, 2015 NSOIPC 10 (CanLII).

[28] In order to determine whether or not a disclosure would result in an unreasonable invasion of personal privacy, public bodies must take a four-step approach to their analysis:[22]

1. Is the requested information "personal information" within s. 3(1)(i)? If not, that is the end. Otherwise, the public body must go on.
2. Are any of the conditions of s. 20(4) satisfied? If so, that is the end.
3. Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 20(3)?
4. In light of any s. 20(3) presumption, and in light of the burden upon the applicant established by s. 45(2), does the balancing of all relevant circumstances, including those listed in s. 20(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

The PPS's Submissions

[29] The PPS uses the four-step test set out above to determine whether the disclosure of information would result in an unreasonable invasion of personal privacy.

[30] First, it assesses whether the severed information meets the definition of "personal information" in s. 3(1)(i). It says that the information severed is personal information because it contains the names of witnesses, home addresses, dates of births, and personal and home telephone numbers.

[31] The PPS then turns to s. 20(4) to determine whether any of the information was considered to not be an unreasonable invasion of a third party's personal privacy and therefore should have been released. It submits that the information that was severed does not meet any of the reasons in s. 20(4) and so it moved on to the next part of the test.

[32] The next consideration is whether the information was included in the list of presumed invasions set out in s. 20(3). The PPS points out s. 20(3)(b), which states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[33] The PPS says that the information severed would identify the people that were involved in the investigation into these charges. Its position is that a person who is charged with a crime is only entitled to this information without severing as part of their Charter rights to a fair trial via the discovery process. This type of access is a separate mechanism and is governed by the common law processes for criminal trials. The PPS argues that once that process is complete, if the defendant did not retain a copy, then *FOIPOP* applies to get access to the records. Otherwise,

[22] As set out in *House (Re)*, 2000 CanLII 20401 (NS SC) and *Sutherland v. Nova Scotia (Community Services)*, 2013 NSSC 1 (CanLII). This approach has been consistently followed by former Information and Privacy Commissioners. See for examples: NS Review Reports FI-08-107, FI-09-29(M) and 19-06.

the records in a prosecution that is not complete would not be excluded from *FOIPOP* until the prosecution is complete.

[34] The final step of the test applied by the PPS is to consider whether any of the circumstances listed in s. 20(2) would weigh in favour for the information to be released even if it would be presumed to be an unreasonable invasion of privacy to release the information. The PPS determines that none of the factors listed in s. 20(2) apply to mitigate the unreasonable invasion of privacy by providing copies of these records to the applicant.

Analysis

[35] I agree with the PPS that the names of witnesses, including their home addresses, dates of births, and personal and home telephone numbers are clearly personal information as set out in s. 3(1)(i). I also agree that there is nothing in s. 20(4) that applies in this circumstance. Section 20(3)(b) applies in this case, as there was an investigation into a possible violation of the *Criminal Code*. I am satisfied that the presumption in s. 20(3)(b) applies to the personal information withheld in this case.

[36] The final step of the analysis requires that I consider whether the balancing of all relevant circumstances, including those set out in s. 20(2) of *FOIPOP*, lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not. In my opinion, the relevant considerations in this case include the following:

- The personal information has been supplied in confidence. The PPS did not provide any evidence that the individuals were given any assurances that the information they gave was supplied in confidence. In my view, the individuals would have at least anticipated that their names would become public if the matter proceeded to a hearing. However, here the matter did not proceed to a hearing. Furthermore, the information was collected in the context of a prosecution and so I find that it is more likely than not that the individuals expected their personal information was being provided in confidence and that it would be used for the single identified purpose of a prosecution. I conclude that this factor favours withholding the information.
- The personal information is relevant to a fair determination of the applicant's rights. This is a file held by the PPS about the applicant with respect to charges that were laid against him and ultimately withdrawn. I find that this factor favours releasing the information.

[37] I have conducted a line-by-line review of the material withheld from disclosure under s. 20. I find that the majority of the withheld information was appropriately withheld pursuant to s. 20, however there is one exception. On page 108 of the responsive records, s. 20 was used to redact the name, email address, and phone number of a police officer. The name of a police officer conducting police business is not in and of itself an invasion of a third party's personal privacy. This officer's name and contact information were contained in various parts of the responsive package and were not redacted. Releasing the name and contact information on one document without any other identifying information would not be an unreasonable invasion of the police officer's privacy.

[38] The applicant has not submitted any representations and therefore has not met his burden to rebut the presumption of s. 20 applying to the withheld information.

FINDINGS & RECOMMENDATIONS:

[39] I find that:

1. None of the communications between the Crown prosecutors and the lawyer for the applicant in this case are subject to s. 15(1)(f).
2. Section 15(1)(f) applies to the remainder of the severed information where s. 15(1)(f) was applied.
3. Although the PPS did exercise some discretion when it reprocessed the records, it failed to take into account relevant discretionary considerations as outlined in Review Report FI-11-72.
4. The PPS failed to satisfy its duty to sever with respect to the 140 pages of documents that were withheld in full, including the erroneously labelled duplicate documents.
5. Releasing personal information about the witnesses would be an unreasonable invasion of their personal privacy.
6. Releasing business contact information relating to a police officer is not an unreasonable invasion of personal privacy.

[40] I recommend that within 30 days of accepting these recommendations, the PPS:

1. Disclose all correspondence between Crown prosecutors and the applicant's lawyer at pages 9-10, 13-17, 19-21, 77-83, 88-91, 130-133,138-141, and 155-158.
2. Disclose the first two paragraphs on page 9 that were withheld pursuant to s. 15(1)(f). These two paragraphs were disclosed to the applicant on other pages of the responsive package so he has already received this information from the PPS.
3. Disclose the police officer's name, email address and phone number on page 108 of the responsive package.
4. Process, in a line-by-line manner, the records that were withheld in full and erroneously labelled as duplicates and provide a decision to the applicant.
5. Reconsider its exercise of discretion in light of the factors listed at paragraph 34 of Review Report FI-11-72 with respect to the application of s. 15(1)(f) to the entire file.
6. Send a revised package to the applicant that includes the erroneously labelled duplicates and other records withheld in full with redactions applied after having exercised discretion to redact information.

July 30, 2020

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

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