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

REVIEW REPORT 22-10

April 19, 2022

Department of Natural Resources and Renewables

Summary: In 2016, the Auditor General of Nova Scotia conducted an audit of the Department of Natural Resources and Renewables (public body) concerning its mandate to implement the *Endangered Species Act* and produced an audit report. The applicant requested all records relating to commitments made by the public body in response to the report. The public body provided the applicant with access to records that were severed or withheld under s. 4A (conflict with another enactment), s. 14 (advice or recommendations), s. 17 (financial or economic interests) and s. 20 (personal information) of the *Freedom of Information and Protection of Privacy Act*. The Commissioner finds that s. 4A does not apply to the requested records and recommends that the public body reprocess the applicant's request where s. 4A was applied. She finds that s. 14(1) applies to some but not all of the requested records. Where s. 14(1) does not apply, she recommends disclosure. Where s. 14(1) does apply, she recommends that the public body reconsider its application in light of the requirement to apply discretion. The Commissioner finds that the public body failed to discharge its burden of establishing that s. 17(1)(b) or (d) applies and recommends disclosure of the records redacted pursuant solely to those sections. Finally, she finds that s. 20 applies to all the information severed pursuant to it except for the professional business contact information. She recommends the professional business contact information be disclosed.

INTRODUCTION:

[1] The Department of Natural Resources and Renewables[1] (public body) is responsible for Nova Scotia's *Endangered Species Act* (*ESA*).[2] The purpose of the *ESA* is to provide for the protection, designation, recovery and other relevant aspects of conservation of species, including habitat protection, in the province.[3]

[2] In the months leading up to June 2016, the Auditor General of Nova Scotia (AG) conducted a performance audit of the public body's management of conservation and recovery for species at risk in relation to its obligations under the *ESA*. The purpose of the performance audit was to

[1] At the time the access to information request was made, the public body was titled Department of Natural Resources. It is now titled Department of Natural Resources and Renewables.
[2] *Endangered Species Act*, SNS 1998, c. 11 (*ESA*).
[3] See s. 2 of the *ESA*.

determine whether the public body was appropriately managing the conservation and recovery of Nova Scotia's species at risk. Following this audit, the AG published his June 2016 report (AG Report).[4] The results of the performance audit were discussed in Chapter 3 of the AG Report.

[3] The AG Report set out five recommendations for action directed at the public body. The AG Report also contained the public body's responses to the AG's five recommendations. Each response included a commitment to have various tasks completed by October 31, 2016.

[4] Several months later, in December 2016, the applicant requested all documents and communications relating to the commitments made by the public body in response to the AG Report.

[5] In response, the public body provided the applicant with 172 pages of records, partially severed pursuant to ss. 14, 17 and 20 of the *Freedom of Information and Protection of Privacy Act* (*FOIPOP*).[5] In addition, the public body redacted and/or withheld some records and attachments[6] pursuant to s. 4A of *FOIPOP* and s. 13(2) of the *Auditor General Act*.[7]

[6] The applicant objected to the severing the public body applied and the public body's decision to withhold some records and filed a request for review with this office.

ISSUES:

[7] There are four issues under review:

1. Did s. 4A of *FOIPOP* restrict or prohibit access to the responsive records?
2. Was the public body authorized to withhold information under s. 14 of *FOIPOP* because disclosure of the information would reveal advice, recommendations or draft regulations?
3. Was the public body authorized to refuse access to information under s. 17 of *FOIPOP* because disclosure could reasonably be expected to harm the financial or economic interests of the public body?
4. Was the public body required to withhold information under s. 20 of *FOIPOP* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

DISCUSSION:

Burden of proof

[8] The public body bears the burden of proving that the applicant has no right of access to a record or part of a record.[8]

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[4] Michael Pickup, *June 2016 Report, Chapter 3: Species at Risk: Management of Conservation and Recovery*, online: https://oag-ns.ca/sites/default/files/publications/Full%20Report_0.pdf starting at p. 47.
[5] *Freedom of Information and Protection of Privacy Act*, SNS 1993, c. 5.
[6] Page 6 and its attachment were withheld. The email at pp. 100-103 was severed and its attachment withheld. The email at p. 172 was severed and its attachment withheld.
[7] *Auditor General Act*, SNS 2010, c. 33.
[8] *FOIPOP*, s. 45.

[9] Where the public body has established that s. 20(1) 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.

1. Did s. 4A of *FOIPOP* restrict or prohibit access to the responsive records?

[10] The public body relied on s. 4A of *FOIPOP* and s. 13(2) of the *Auditor General Act* to withhold and/or sever some records. For the reasons set out below, I find that s. 4A of *FOIPOP* does not apply to the requested records that are in the custody and control of the public body.

[11] Section 4A of *FOIPOP* explains which Act prevails in cases of conflict:

> 4A (1) Where there is a conflict between a provision of this Act and a provision of any other enactment and the provision of the other enactment restricts or prohibits access by any person to a record, the provision of this Act prevails over the provision of the other enactment unless subsection (2) or the other enactment states that the provision of the other enactment prevails over the provision of this Act.

[12] Thus, *FOIPOP* applies unless s. 4A(2) sets out that the *Auditor General Act* prevails or the *Auditor General Act* itself contains language that says it prevails over *FOIPOP*.

[13] Section 4A(2) of *FOIPOP* does not state that the *Auditor General Act* prevails. However, s. 13(2) of the *Auditor General Act* provides:

> 13(2) All information contained in the files, audit records and other records of the Office is exempt from the *Freedom of Information and Protection of Privacy Act* and disclosure under any other legislation.

[14] "Office" means, "the Office of the Auditor General and includes the Auditor General, the Deputy Auditor General and such other employees as the Auditor General may appoint pursuant to this Act."[9]

[15] The public body's position was that because s. 13(2) of the *Auditor General Act* refers broadly to "all information", the Act's intention is to extend the exemption to records beyond the custody or control of the Office of the Auditor General. In other words, the public body thought that the legislation required it to withhold any documents it had that would also be found in the Office of the Auditor General's files, such as correspondence. In my view, this interpretation is too broad.

[16] In *Order 01-27*,[10] a public body argued that s. 3(1)(a) of British Columbia's *Freedom of Information and Protection of Privacy Act* (*FIPPA*),[11] which excludes the application of *FIPPA* to a record in a court file, should be interpreted to mean that any public body who also held a copy of a record in a court file was prohibited from releasing it. Former Commissioner Loukidelis rejected this argument on the basis that the meaning of "a record in a court file" is

[9] Section 2(j) of the *Auditor General Act*.
[10] *BC Order 01-27, Ministry of Attorney General, Re*, 2001 CanLII 21581 (BC IPC).
[11] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165.

plain and therefore only applies to records that are physically located in a court file.[12] It was noted that this section does not exclude records in the custody of a public body simply because originals or copies of the same records are also physically located in a court file.

[17] The reasoning in the above-discussed review is instructive to this current review. Section 13(2) of the *Auditor General Act* prevails over *FOIPOP* in terms of the records held by the Office of the Auditor General, meaning someone cannot make an access to information request under *FOIPOP* to the Office of the Auditor General for the records it maintains. Here however, the records at issue are held by the public body, which is distinct and separate from the Office of the Auditor General. Section 13(2) does not extend to copies of such records held by a public body. Had the Legislature intended such a broad meaning, it would have included such language. It did not. As a result, s. 13(2) of the *Auditor General Act* does not extend to records held by another public body.

[18] I find that s. 4A of *FOIPOP* does not restrict or prohibit access to the responsive records that are in the custody and control of the public body.

2. Was the public body authorized to withhold information under s. 14 of *FOIPOP* because disclosure of the information would reveal advice, recommendations or draft regulations?

[19] The public body severed some of the information from the responsive records based on s. 14 of *FOIPOP*, which gives a public body discretion to withhold advice, recommendations or draft regulations developed by or for a public body or a minister. For the reasons set out below, I find that s. 14 applies to some but not all of the withheld information. However, even where I agree that s. 14 applies, the public body failed to demonstrate that it exercised its discretion and so I recommend that the public body reconsider the application of s. 14 in light of the requirement to apply discretion.

[20] Under s. 14(1), a public body may withhold information if the information would reveal advice, recommendations or draft regulations developed by or for a public body or minister. Section 14(2) states that a public body cannot withhold background information under s. 14(1) and s. 14(3) makes clear that a public body cannot withhold information under s. 14(1) if the record has been in existence for five or more years.

[21] My predecessor, former Commissioner Tully, set out an in-depth analysis of the purpose, application and requirements of s. 14 in *NS Review Report 18-02*.[13] I will not repeat that analysis here, but I do adopt it. The process for determining whether s. 14(1) applies involves three steps:

1. Determine whether disclosing the information "would reveal advice, recommendations or draft regulations developed by or for a public body or a minister."
2. If so, it is then necessary to consider whether the information at issue is excluded from s. 14(1) because it falls within any of the categories of information listed in ss. 14(2)-(4).
3. Determine whether the public body has exercised its discretion lawfully.

[12] *BC Order 01-27, Ministry of Attorney General, Re*, 2001 CanLII 21581 (BC IPC), at paras. 11-12.
[13] *NS Review Report 18-02, Department of Community Services (Re)*, 2018 NSOIPC 2 (CanLII).

[22] In terms of explaining how it complied with the above test, the public body said that it withheld two broad categories of information under s. 14(1). First, it withheld a number of individual lines from emails where those lines refer to options, considerations to take into account and opinions of the author on the advantages and disadvantages of given approaches.

[23] Second, the public body severed or withheld draft communications and records. It said that these drafts reflect the decision-making process of government. The public body noted that with the increasing use of technology, advice is often conveyed through drafting documents, where the authors can include comments and markups within the electronic tool for feedback. The public body said that these drafts identify the "false starts, blind alleys, wrong turns, changes of mind, the solicitation and rejection of advice, and the re-evaluation of priorities and the re-weighing of the relative importance of the relevant factors…" that the Supreme Court of Canada explained could be withheld in *John Doe v. Ontario (Finance)*.[14] The public body also argued that it fulfills a critical public interest role in terms of what and how it communicates to the public. It said that communications and policy documents are carefully drafted for accuracy and precision prior to being issued. The public body thought that revealing the substance of earlier drafts would work against ensuring that the public is accurately informed of government activities.

Step 1: Would disclosing the information reveal advice, recommendations or draft regulations[15] developed by or for a public body or a minister?

[24] In my view, some of the information on the redacted or withheld records does not contain advice or recommendations. I have set out the particulars in Appendix 1A to this report.

[25] These records do not contain advice or recommendations because they contain scheduling and logistical conversations regarding the working group and the response plan.

[26] Therefore, I find that s. 14 does not apply to these records or portions of records and so should be disclosed to the applicant.

[27] In contrast, some of the redacted or withheld records do contain information that qualifies as advice or recommendations. Please see Appendix 1B to this report for the particulars.

[28] These records contain information that qualifies as advice or recommendations because they include discussions around messaging and press engagement,[16] a candidate for a position and the content and organization of response documents.[17] These records also include actual

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[14] *John Doe v. Ontario (Finance*), 2014 SCC 36 (CanLII), [2014] 2 SCR 3, at para. 44.
[15] Draft regulations were not at issue in this report.
[16] These fall under the category "communication strategies, key message documents, media plans (that contain advice), opinions, implications and considerations of various communication issues" considered in *NS Review Report 18-02, Department of Community Services (Re)*, 2018 NSOIPC 2 (CanLII) at para. 17; (see also *BC Order F17-51, University of British Columbia (Re)*, 2017 BCIPC 56 (CanLII).
[17] This is in keeping with the following principles from *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII), [2014] 2 SCR 3*:*

> The exemption is intended to protect a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue.

recommendations, advice, issue identification, suggested courses of action and meeting notes that reveal discussions of strengths and weaknesses of various nominees as part of a recommendation process.[18]

[29] As these records have met the first step of the test, I will continue my analysis of Step 2 in relation to these records only.

Step 2: If so, it is then necessary to consider whether the information at issue is excluded from s. 14(1) because it falls within any of the categories of information listed in ss. 14(2)-(4)?

[30] Section 14(2) of *FOIPOP* explains that even if the information constitutes advice, recommendations or draft regulations developed by or for a public body or minister, it cannot be withheld if it is "background information".

[31] "Background information" is defined in s. 3(1)(a) of *FOIPOP* and includes things like factual material.

[32] That being said, there are times where background information may be withheld. As former Commissioner Tully explained in *NS Review Report 18-02*:

> …it is possible that factual material included with advice or recommendations may be withheld where, for example, the facts are compiled and selected by an expert using her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body. In addition, where the facts, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations, s. 14 might also apply.[19]

[33] Appendix 2A to this report details the pages where I find that the information severed is background information as set out in s. 14(2) of *FOIPOP*.

[34] Because s. 14(2) applies to the portions of records identified in Appendix 2A, I find that the redacted portions of these records should be disclosed to the applicant.

[35] Appendix 2B to this report details the pages which I find contain information where the considerations set out in ss. 14(2)-(4) do not apply. In other words, the severed information is not background information and s. 14(1) applies to it.

[36] For clarity, I find that the records or portions of records listed in Appendix 2B contain information that qualifies as advice or recommendations (s. 14(1)). These records are not excluded from s. 14(1) because they do not fall into any of the categories listed in ss. 14(2)-(4).

> Recommendations include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.

[18] These were found to qualify as "advice or recommendations" in *NS Review Report 18-02, Department of Community Services (Re)*, 2018 NSOIPC 2 (CanLII); *BC Order F17-19, Vancouver (City) (Re)*, 2017 BCIPC 20 (CanLII).

[19] *NS Review Report 18-02, Department of Community Services (Re)*, 2018 NSOIPC 2 (CanLII), at para. 22.

[37] As these records have met the second step of the test, I will continue my analysis of Step 3 in relation to these records only.

Step 3: Did the public body exercise its discretion lawfully?

[38] The final stage of the application of s. 14 is to consider the public body's exercise of discretion. Former Commissioner Tully explained the relevant factors and considerations in the exercise of discretion in *NS Review Report 18-02*,[20] which I adopt but will not repeat here. I would highlight the factor that when the policy advice exemption is claimed, the public body should consider whether the decision to which the advice or recommendation relates has already been made.

[39] The public body provided no explanation for any factors it used in the exercise of discretion.

[40] As such, I find that the public body failed to meet its burden of proof with regard to the application of this discretionary exemption. As set out below, I recommend that the public body reconsider the application of s. 14 (where I have found that s. 14(1) applies) in light of the requirement to apply discretion, the factor highlighted in paragraph 38 above and the passage of time.

3. Was the public body authorized to refuse access to information under s. 17 of *FOIPOP* because disclosure could reasonably be expected to harm the financial or economic interests of the public body?

[41] The public body relied on s. 17(1)(b) and (d) to withhold some information on the responsive records. For the reasons set out below, I find that the public body failed to discharge its burden of establishing that s. 17 applies to the withheld information.

[42] Section 17 gives the public body discretion to withhold information that could reasonably be expected to harm the financial or economic interests of a public body or the Government of Nova Scotia or the ability of the Government to manage the economy. It then lists a number of subsections that identify specific categories of information that can be withheld. Section 17(1)(b) gives the public body discretion to withhold financial, commercial, scientific or technical information that belongs to a public body or to the Government of Nova Scotia and that has, or is reasonably likely to have, monetary value. Section 17(1)(d) gives the public body discretion to withhold information that could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party.

[43] Harms-based exemptions require a reasoned assessment of the future risk of harm. The leading case in Canada[21] on the appropriate interpretation of the reasonable expectation of harms test found in access to information laws determined that access statutes mark out a middle

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[20] *NS Review Report 18-02, Department of Community Services (Re)*, 2018 NSOIPC 2 (CanLII), at paras. 45-50.
[21] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 SCR 674, 2014 SCC 31 (CanLII) at para. 54. This office has relied on this test in a number of previous decisions including *NS Review Report 18-02, Department of Community Services (Re)*, 2018 NSOIPC 2 (CanLII) at para. 38. The former British Columbia Commissioner referred to this as a "reasoned assessment of the future risk of harm" in *Order F08-22, Fraser Health Authority (Re)*, 2008 CanLII 70316 (BC IPC) at para. 44.

ground between that which is probable and that which is merely possible. A public body must provide evidence well beyond or considerably above a mere possibility of harm in order to reach that middle ground.[22]

[44] In its representations, the public body set out a number of cases about the requirement to establish harm. It said the information it severed pursuant to s. 17(1) is related to information that had not yet been implemented or made public at the time it made the access to information decision. Also, it explained that at the time the applicant requested the information, the preparation of responses to the recommendations in the AG Report was ongoing. The public body said that this information could reasonably be expected to reveal decisions prematurely. It said harm could result if the public was misinformed before a final decision had been made. This was the extent of the public body's representations on this exemption. The public body's argument alleges harm could occur but does not make clear *what* possible harm could result. As such, the public body has not demonstrated that disclosure could reasonably be expected to cause harm.

[45] With respect to s. 17(1)(b), the public body did not explain how the information is financial, commercial, scientific or technical information. It did not explain how that information has or is reasonably likely to have monetary value. And it did not explain how disclosing the information could reasonably be expected to harm the financial or economic interests of a public body or the Government of Nova Scotia.

[46] Regarding s. 17(1)(d), while the records were created in preparation of a response to the AG Report and may be seen as "premature disclosure" of a project, the public body failed to set out how the disclosure could reasonably be expected to harm the financial or economic interests of a public body or the Government of Nova Scotia.

[47] It is not enough for a public body to simply cite the applicable tests and precedent law without explaining how they apply to the information that is on the responsive records.

[48] As such, I find that the public body failed to discharge its burden of establishing that s. 17 applies to the withheld information.

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

[49] The public body relied on s. 20(1) to withhold some information on the responsive records. Section 20(1) requires the public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. For the reasons set out below, I find that s. 20 applies to all the information severed pursuant to it except for the professional business contact information on pages 14,16 and 50.

[22] *Nova Scotia Review Report 18-11, Department of Transportation and Infrastructure Renewal (Re),* 2018 NSOIPC 11 (CanLII) at para. 34.

[50] It is well established in Nova Scotia that a four-step approach is required when evaluating whether or not s. 20 requires that a public body refuse to disclose personal information.[23] The four steps are:

1. Is the requested information "personal information" within the meaning of 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. Otherwise, the public body must go on.
3. Would the disclosure of the personal information be a presumed 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?

Step 1: Is the requested information "personal information" within the meaning of s. 3(1)(i)?

[51] Information is severed or withheld in full under s. 20 on pages 13, 14, 16, 17, 19, 20, 22, 32, 37, 38, 44, 46, 48, 50, 143–149, 151–152, 155, 157, 158 and 160–171. The information consists of names, email addresses, physical addresses, positions, phone numbers and a curriculum vitae.

[52] All of this information is about or relates to identifiable individuals and as such is personal information as contemplated by s. 3(1)(i) of *FOIPOP*.

Step 2: Are any of the conditions of s. 20(4) satisfied? If so, that is the end.

[53] Section 20(4) of *FOIPOP* lists a number of conditions where a disclosure of personal information is considered to not be an unreasonable invasion of a third party's personal privacy. None of the conditions of s. 20(4) are met; therefore I must go on.

Step 3: Would the disclosure of the personal information be a presumed unreasonable invasion of privacy pursuant to s. 20(3)?

[54] Section 20(3) of *FOIPOP* provides a number of circumstances where the disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Section 20(3)(d) puts personal information that relates to employment or educational history in this presumptive category.

[55] I have categorized the information withheld under s. 20(1) into three groups.

Group 1

[56] The personal information on pages 32, 37, 38, 44, 46, 48, 155, 157, 158 and 160–171 relates to both employment and educational history. I agree with the public body that the unreasonable invasion presumption applies. As such, in step 4, the applicant has the burden to overturn the presumption.

[23] See for example *House (Re)*, [2000] N.S.J. No. 473, 2000 CanLII 20401 (NS SC); and *Sutherland v. Dept. of Community Services*, 2013 NSSC 1, 2013 NSSC 1 (CanLII).

Group 2
[57] The personal information on pages 143–149 and 151–152 are the names, addresses and phone numbers of private citizens and property owners. This information was supplied in the context of private citizens and property owners outlining environmental concerns. None of the presumptions listed in s. 20(3) are relevant to this type of information.

Group 3
[58] The personal information on pages 13, 14, 16, 17, 19, 20, 22, is the professional business contact information of a member of the media. Page 50 contains the phone number of an employee of the public body. The public body explained that its approach when dealing with information that could be considered professional business contact information is to search for it online to see if that information is publicly available. If it's located online, it's disclosed to the applicant. If it's not located online, it is severed.

[59] This office has previously extensively discussed the application of s. 20 to the personal information related to individuals in their business capacity.[24] In general, professional business contact information lacks a distinctly personal dimension and so release of the information would not constitute an unreasonable invasion of personal privacy. In some jurisdictions, the courts have determined that this type of information does not even qualify as personal information because it is not "about" an individual.[25]

[60] The member of the media was clearly acting in their professional capacity, as was the public body employee. In my view, it is not presumed that disclosing this information would be an unreasonable invasion of privacy pursuant to s. 20(3).

Step 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?
[61] Section 20(2) of *FOIPOP* requires the public body to consider a non-exhaustive list of relevant circumstances in determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy.

[62] The applicant did not provide any representations, despite having the burden to demonstrate that the disclosure of third party personal information would not result in an unreasonable invasion of personal privacy.

[63] For Group 1, there is a s. 20(3) presumption that disclosure would be an unreasonable invasion of a third party's personal privacy. The applicant did not identify any considerations that would overturn this presumption. None of the circumstances listed in s. 20(2) apply to this information.

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[24] See for example, *NS Review Report FI-12-01, Halifax Regional Municipality (Re)*, 2015 CanLII 54096 (NS FOIPOP); and *NS Review Report 19-06, Nova Scotia (Energy and Mines) (Re),* 2019 NSOIPC 7 (CanLII).
[25] For a complete discussion of these two points see *NS Review Report 16-10, Department of Business (Re),* 2016 NSOIPC 10 (CanLII) at paras. 96–101.

[64] For Group 2, there is not a s. 20(3) presumption that disclosure would be an unreasonable invasion of a third party's personal privacy. However, for this group of records, the public body identified s. 20(2)(f) as a relevant consideration. Section 20(2)(f) weighs in favour of non-disclosure if the personal information was supplied in confidence. Typically, when citizens write to ministers, they do not expect that their name and personal contact information would be released to an access to information applicant. The applicant did not identify any considerations that would weigh in favour of disclosure. In my view, this leads to a conclusion that release of this information would constitute an unreasonable invasion of privacy.

[65] For Group 3, there is not a s. 20(3) presumption that disclosure would be an unreasonable invasion of a third party's personal privacy. The public body's position was that none of the circumstances listed in s. 20(2) apply to this information. This means the balance is neutral. The applicant did not identify any considerations that would weigh in favour of disclosure.

[66] With the exception of the professional business contact information on pages 14, 16 and 50, I find that s. 20 applies to all of the information that was withheld pursuant to it.

FINDINGS & RECOMMENDATIONS:

[67] I find that:

1. Section 4A of *FOIPOP* does not apply to the requested records so as to exclude copies of them in the custody and control of the public body.
2. Section 14 applies the information withheld, as set out in Appendix 2B.
3. Section 14 does not apply to any other withheld information.
4. The public body failed to demonstrate that it exercised discretion in withholding information under s. 14.
5. Section 17(1)(b) or (d) does not apply to the withheld information.
6. Section 20 applies to all the information severed pursuant to it except for the professional business contact information on pages 14, 16 and 50.

[68] I recommend that the public body:

1. Process the applicant's request under the provisions of *FOIPOP* where it applied s. 4A within 45 days of the date of this review report.
2. Disclose all information that does not qualify as advice or recommendations within the meaning of s. 14 to the applicant within 45 days of the date of this review report.
3. Where s. 14(1) applies, reconsider its application in light of the requirement to apply discretion and particularly in light of the factor highlighted in paragraph 38. Then, disclose any additional information to the applicant within 45 days of the date of this review report.
4. Disclose the information severed solely under s. 17(1)(b) or (d) to the applicant within 45 days of the date of this review report. Where the information was severed under both s. 14 and s. 17, the public body is to follow the recommendations for s. 14, as s. 17 does not apply.

5. Disclose the professional business contact information on pages 14, 16 and 50 to the applicant within 45 days of the date of this review report.

April 19, 2022

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

OIPC File: 17-00081

Appendix 1A

Information that does not qualify as advice, recommendations or draft regulations

The information on the following pages does not qualify as advice or recommendations:

- 25–26
- 28–29
- 32
- 37
- 38
- 44–46 (September 7 email only)
- 48
- 51
- 79 (September 30 email only)
- 83
- 84
- 86 (October 19 email only)
- 87
- 91 (October 30 email only)
- 92 (second bullet only, duplicated on 115)
- 101
- 155
- 156

Appendix 1B

Information that does qualify as advice, recommendations or draft regulations

The following records or portions of records do contain information that qualifies as advice or recommendations:

- The emails severed on pages 7–8 and 15–16, 40–42, 46 (September 7 email only), 56–57, 59–60, 61–74, 79 (September 29 email only), 80, 85, 86 (October 20 email only), 91 (October 31 email only), 92 (bottom portion after second bullet only, duplicated on page 115), 93, 100, 102 and 114.
- Bio Strategy Response spreadsheet (4-page attachment to email on page 76).
- Backup of III SMPs – 2016.xlk spreadsheet (attachment to email on page 79).
- DNR Species at Risk AG Recomm-_Update¬_October 2016_Ver 1.xlsx: VI DNR Report on SAR Auditor Geberal.docx (attachment to email on page 88).
- DNR Report (recommendations, key actions) on pages 94-99 (duplicated on pages 108–113; subsequent drafts on pages 118–122).
- Draft document on pages 106–107.
- Tables #1–6 on pages 123–141.
- Branch note on pages 157–159.

Appendix 2A

Records that contain background information

The following pages contain information that constitutes background information:

- Briefing note on pages 40–42 except the section titled “Recommendation/Advice”.
- Budget table on pages 57–58.
- Report on AG recommendations on pages 61–74: the introductory paragraph on page 61 and the AG recommendations.
- Bio Strategy Response spreadsheet (4-page attachment to email on page 76): the preface.
- Backup of III SMPs – 2016.xlk spreadsheet (attachment to email on page 79): the species at risk list.
- DNR Species at Risk AG Recomm-_Update¬_October 2016_Ver 1.xlsx: VI DNR Report on SAR Auditor Geberal.docx (attachment to email on page 88): the species at risk list.
- DNR Report (recommendations, key actions) on pages 94–99 (duplicated on pages 108–113, subsequent drafts on pages 118–122): the introductory paragraph and the AG recommendations from 2016 public report.
- Draft document on pages 106–107: the AG recommendations from 2016 public report.
- Email on page 114.
- Tables #1–6 on pages 123–141: the species lists.

Appendix 2B

Records that do not contain background information

The following pages contain information where the considerations set out in ss. 14(2)-(4) do not apply. In other words, the information severed is not background information:

- The emails on pages 7–8 and 15–16.
- September 7 email on page 46 which provides discussion of a candidate for a position.
- The emails on pages 56–57, 59–60, 79 (September 29), 80, 85, 86 (October 20 email only), 91 (October 31), 92 (bottom portion), 93, 100 and 102.
- Briefing note on pages 40–42: the only portion that qualifies for s. 14(1) is the "Recommendation/Advice" section.
- Report on AG recommendations on pages 61–74: s. 14(1) applies to all except the background information and AG recommendations.
- Bio Strategy Response spreadsheet (4-page attachment to email on page 76).
- Backup of III SMPs – 2016.xlk spreadsheet (attachment to email on page 79).
- DNR Species at Risk AG Recomm-_Update¬_October 2016_Ver 1.xlsx: VI DNR Report on SAR Auditor Geberal.docx (attachment to email on page 88): issue identification and suggested course of action.
- DNR Report (recommendations, key actions) on pages 94–99 (duplicated on pages 108–113, subsequent drafts on pages 118–122): issue identification and suggested course of action.
- Draft document on pages 106–107: suggested course of action.
- Tables #1–6 on pages 123–141: issue identification and suggested course of action.
- Branch note on pages 157–159.