



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

REVIEW REPORT 24-09

March 28, 2024

Halifax Regional Police

Summary: An applicant asked Halifax Regional Police (HRP) for records related to a 1996 incident where dozens of crew members on the set of the movie Titanic ate food that was allegedly laced with a drug called phencyclidine or “angel dust”. HRP withheld portions of the requested information under s. 472(1)(b) (intergovernmental affairs), ss. 475(1)(c) and (d) (law enforcement), and s. 480 (personal information) of Part XX of the *Municipal Government Act (MGA)*. The Commissioner finds that HRP was not authorized to withhold information under s. 472(1)(b) or ss. 475(1)(c) and (d) of the *MGA*. She finds that with personal identifiers withheld, factual observations of third parties do not constitute their personal information and so cannot be withheld under s. 480. She also recommends that HRP continue to withhold the personal information of third parties.

INTRODUCTION:

[1] In 1996, the movie Titanic was being filmed in Nova Scotia. In August of 1996, the Canadian Press reported that around 80 members of the Titanic film crew were taken to hospital for symptoms arising from what was originally thought to have been caused by food poisoning. News articles from around that time reported that the Halifax Regional Police (HRP) ultimately concluded that the crew’s food (the lobster chowder) had been laced with a drug called phencyclidine (PCP), also referred to as “angel dust”.

[2] The applicant asked for all records that HRP had about this incident. In response, HRP found 10 pages of responsive records but redacted portions of them pursuant to s. 472 (intergovernmental affairs), s. 475 (law enforcement) and s. 480 (personal information) of *Part XX of the Municipal Government Act (MGA)*.

[3] The applicant was not satisfied with HRP’s response to their access request and filed a request for review with the Office of the Information and Privacy Commissioner (OIPC). This file was not able to resolve informally so proceeded to this public review report.

ISSUES:

[4] There are four issues under review:

1. Was HRP authorized to refuse access to information under s. 472(1)(b) of the *MGA* because disclosure of the information could reasonably be expected to reveal information received in confidence?
2. Was HRP authorized to refuse access to information under s. 475(1)(c) of the *MGA* because disclosure could reasonably be expected to harm the effectiveness of investigative techniques or procedures?
3. Was HRP authorized to refuse access to information under s. 475(1)(d) of the *MGA* because disclosure could reasonably be expected to reveal the identity of a confidential source of law enforcement information?
4. Was HRP required to refuse access to information under s. 480 of the *MGA* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

DISCUSSION:

Burden of proof

[5] HRP bears the burden of proving that the applicant has no right of access to a record or part of a record.¹

[6] Where HRP has established that s. 480 applies, s. 498(2) of the *MGA* shifts the burden to the applicant to demonstrate that the disclosure of personal information would not result in an unreasonable invasion of personal privacy.²

1. Was HRP authorized to refuse access to information under s. 472(1)(b) of the *MGA* because disclosure of the information could reasonably be expected to reveal information received in confidence?

[7] HRP redacted portions of the responsive records pursuant to s. 472(1)(b) of the *MGA*. For the reasons provided below, I find that this information does not qualify for exemption under s. 472(1)(b).

[8] Section 472(1)(b) of the *MGA* states:

472(1) A responsible officer may refuse to disclose information to an applicant, if the disclosure could reasonably be expected to

- (a) harm the conduct by the municipality of relations between the municipality and any of the following or their agencies:
 - (i) the Government of Canada or a province of Canada,
 - (ii) the Government of Nova Scotia,
 - (iii) another municipality,

¹ *Municipal Government Act*, [SNS 1998, c 18](#), s. 498(1).

² *Municipal Government Act*, [SNS 1998, c 18](#), s. 498(2).

- (iv) an education entity as defined in the *Education Act*,
 - (v) an aboriginal government; or
 - (b) reveal information received in confidence from a government, body or organization listed in clause (a), or their agencies, unless the government, body, organization or its agency consents to the disclosure or makes the information public.
- ...
- (3) This Section does not apply to information in a record that has been in existence for fifteen or more years.

[9] Section 472(3) sets out that s. 472 does not apply to information in a record that has been in existence for 15 years or more. The responsive records were 22 years old at the time of the applicant’s access request, meaning HRP was not authorized to withhold the information from the applicant under s. 472.

[10] I find that s. 472 does not apply to any information in the responsive records. Therefore, HRP was not authorized to withhold information pursuant to s. 472.

2. Was HRP authorized to refuse access to information under s. 475(1)(c) of the MGA because disclosure could reasonably be expected to harm the effectiveness of investigative techniques or procedures?

[11] HRP withheld portions of the responsive records pursuant to s. 475(1)(c) of the *MGA* on the basis that their release could harm the effectiveness of investigative techniques or procedures. For the reasons described below, I find that this information does not qualify for exemption under s. 475(1)(c).

[12] Section 475(1)(c) of the *MGA* states:

475(1) The responsible officer may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- ...
- (c) harm the effectiveness of investigative techniques or procedures currently used, or likely to be used, in law enforcement;

[13] The Ontario Information and Privacy Commissioner’s office considered the application of its equivalent section in *ON Order PO-4096*:

[47] In order to meet the “investigative technique or procedure” test in section 14(1)(c), the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public. Senior Adjudicator John Higgins stated in Order PO-2751 that:

... The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that its

effectiveness would not be hindered or compromised by disclosure and, accordingly, that the technique or procedure in question is not within the scope of section 14(1)(c).

[48] The techniques or procedures must be “investigative.” The exemption will not apply to “enforcement” techniques or procedures.³

[14] Therefore, in order to meet its burden of proof, HRP was required to establish that release of the information severed under s. 475(1)(c) would reveal an identified investigative technique or procedure, and that the disclosure could reasonably be expected to hinder or compromise its effective utilization to the degree that it constitutes damage or detriment to law enforcement in a manner that is probable and not merely possible.

[15] HRP provided no representations on this issue, despite its burden to do so. It was also not clear from the records what information in the responsive records could be considered as investigative techniques or procedures that would not be generally known to the public.

[16] I find that s. 475(1)(c) does not apply to any information in the responsive records. Therefore, no information that HRP severed pursuant to s. 475(1)(c) can continue to be withheld.

3. Was HRP authorized to refuse access to information under s. 475(1)(d) of the MGA because disclosure could reasonably be expected to reveal the identity of a confidential source of law enforcement information?

[17] HRP withheld portions of information in the responsive records pursuant to 475(1)(d) of the MGA. For the reasons set out below, I find that this information does not qualify for exemption under s. 475(1)(d).

[18] Section 475(1)(d) states:

475(1) The responsible officer may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information;

[19] In order for s. 475(1)(d) to apply, three elements must be established:

1. The investigatory body must be engaged in law enforcement.
2. The source of law enforcement information must be a “confidential source”.
3. The disclosure must “reasonably be expected to reveal the identity” of the confidential source.⁴

³ *ON Order PO-4096, Ontario (Natural Resources and Forestry) (Re)*, [2020 CanLII 103777 \(ON IPC\)](#), at paras. 47-48.

⁴ *NS Review Report 22-03, Workers’ Compensation Board of Nova Scotia (Re)*, [2022 NSOIPC 3](#), at para. 7.

[20] Despite being reminded of its burden, HRP provided no representations on the second and third elements of the test – the source of the information must be a confidential one and disclosure would reasonably be expected to reveal the identity of the confidential source.

[21] When applying an exemption under s. 475, it is not enough for HRP assume that the harm is self-evident and can be proven simply by repeating the description of harms within the *MGA*.⁵ The *MGA* sets out a procedure for reviews of access decisions by the OIPC and gives power to the Commissioner to make any recommendations that she considers appropriate. It clearly explains that at a review into a decision to refuse an applicant access to records, the burden is on the municipality⁶ to prove that the applicant has no right of access to the records.

[22] In my view, HRP failed to satisfy its burden of establishing that disclosure of the information it withheld under s. 475(1)(d) could reasonably be expected to reveal the identity of a confidential source. However, as described below, some of the information must be withheld under s. 480 of the *MGA*.

4. Was HRP required to refuse access to information under s. 480 of the *MGA* because disclosure of the information would be an unreasonable invasion of a third party’s personal privacy?

[23] HRP severed information in the responsive records pursuant to s. 480 of the *MGA*, which requires municipalities to withhold information if its disclosure would be an unreasonable invasion of a third party’s privacy. For the reasons provided below, I find that HRP appropriately applied s. 480 to some but not all of the information in the responsive records.

[24] Section 480 of the *MGA* provides a right of privacy to third parties in that their personal information must be withheld if its disclosure would be an unreasonable invasion of their privacy. It has long been established in Nova Scotia that a four-step approach is required when evaluating whether s. 480 requires municipalities to refuse to disclose personal information.⁷ The four steps are:

1. Is the requested information “personal information” within s. 461(f)? If not, that is the end. Otherwise, the municipality must go on.
2. Are any of the conditions of s. 480(4) satisfied? If so, that is the end. Otherwise, the municipality must go on.
3. Would the disclosure of the personal information be a presumed unreasonable invasion of privacy pursuant to s. 480(3)?
4. In light of any s. 480(3) presumption, and in light of the burden upon the applicant established by s. 498(2), does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

⁵ *NS Review Report 22-12, Halifax Regional Police (Re)*, [2022 NSOIPC 12 \(CanLII\)](#), at para. 12.

⁶ Per s. 461(e) of the *MGA*, the term “municipality” includes municipal bodies. Halifax Regional Police is a municipal body.

⁷ *House (Re)*, [2000] N.S.J. No. 473, [2000 CanLII 20401 \(NS SC\)](#); and *Sutherland v. Dept. of Community Services*, [2013 NSSC 1 \(CanLII\)](#).

[25] The responsive records consist of HRP's rapid incident report. This report is essentially 10 pages of narrative text regarding HRP's investigation into the alleged lacing of food with PCP. It details who HRP officers talked to and what those people said. The people that were spoken with were people who witnessed various events related to the drug lacing incident as well as various health care providers and police officers from other detachments who were involved in the investigation by the nature of their employment. All of these people are considered to be third parties under the *MGA*, however for ease of reference in this report, I will distinguish between third party *witnesses* and third party *employees*. The information that HRP has continued to withhold under s. 480 can be summarized as (a) names, pronouns, contact information and work history of third party employees, and (b) names, pronouns, contact information and work history of third party witnesses, along with summaries of the commentary those witnesses made to HRP officers.

[26] The applicant is only interested in the withheld information related to third party witnesses. They are not interested in the names, pronouns, contact information or work history of third party employees. As such, it is not necessary for me to analyze whether names, pronouns, contact information and work history of third party employees could be released. I will only address the names, pronouns, contact information and work history of third party witnesses, as well as the related narrative information contained in the responsive records.

[27] HRP also withheld some badge numbers of its officers. Again, the applicant is not interested in that information and so there is no need for me to address this issue – badge numbers of HRP employees can continue to be withheld.

Step 1: Is the requested information "personal information" within s. 461(f)? If not, that is the end. Otherwise, I must go on.

[28] Personal information is defined in s. 461(f) of the *MGA* as recorded information about an identifiable individual and includes things like names, addresses, information about an individual's health care history, education, finances, employment history and anyone else's opinions about the individual.⁸

[29] Names, pronouns, contact information, and work history of third party witnesses meet the definition of "personal information".

[30] In contrast, some of the information withheld consists of factual observations made by third party witnesses. With personal identifiers such as names, pronouns, contact information, and work history removed, this information does not meet the definition of personal information and so it cannot be withheld. There is no need for me to continue the remaining steps of the test for factual observations where personal identifiers have been removed. I will continue the analysis for the personally identifiable information of third party witnesses.

⁸ *Municipal Government Act*, [SNS 1998, c 18](#), s. 461(f).

Step 2: Are any of the conditions of s. 480(4) satisfied? If so, that is the end. Otherwise, I must go on.

[31] Section 480(4) of the *MGA* details the circumstances in which a disclosure of personal information would not be an unreasonable invasion of personal privacy. There was no evidence or argument provided by the applicant that any provision in s. 480(4) might apply and so I must move on to step 3.

Step 3: Would the disclosure of the personal information be a presumed unreasonable invasion of privacy pursuant to s. 480(3)?

[32] Section 480(3) of the *MGA* sets out the personal information that, if disclosed, would be presumed to be an unreasonable invasion of a third party's personal privacy.

[33] HRP asserted that s. 480(3)(b) applies. Section 480(3)(b) states that disclosure would be a presumed unreasonable invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[34] I agree that disclosure of identifying information of multiple third party witnesses would be a presumed unreasonable invasion of their personal privacy because the information was compiled and is identifiable as part of an investigation into a possible violation of law.

Step 4: In light of any s. 480(3) presumption, and in light of the burden upon the applicant established by s. 498(2), does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[35] The applicant did not provide any argument or evidence to rebut the presumption that disclosure of the personal information of third party witnesses (names, pronouns, contact information and work history) would be an unreasonable invasion of their privacy.

[36] All of the personal information of third parties was collected as part of a police investigation. In *Nova Scotia (Public Prosecution Service) v. FitzGerald Estate*, the Nova Scotia Court of Appeal concluded that with regard to witness statements in a criminal matter, third parties are considered to have provided their information for the limited purpose of laying charges and potential prosecution.⁹

[37] In this matter, no charges were ever laid, and HRP's investigation file is now closed. Consistent with the Court of Appeal's determination in *Fitzgerald*, I find that the personal information of the third party witnesses was supplied in confidence within the meaning of s. 480(2)(f). This factor weighs against disclosure of information that falls within this category.

[38] As the applicant has not provided any additional information that would convince me that disclosure of the third party witnesses' personal information severed under s. 480 of the *MGA* would not be an unreasonable invasion of their privacy, I find that the personal information of third party witnesses must continue to be withheld.

⁹ *Nova Scotia (Public Prosecution Service) v. FitzGerald Estate*, [2015 NSCA 38](#), at para. 91.

FINDINGS & RECOMMENDATIONS:

[39] I find that:

1. HRP was not authorized to withhold information under s. 472(1)(b) of the *MGA*.
2. HRP was not authorized to withhold information under s. 475(1)(c) of the *MGA*.
3. HRP was not authorized to withhold information under s. 475(1)(d) of the *MGA*.
4. HRP employee badge numbers can continue to be withheld because the applicant is no longer seeking access to that information.
5. The names, pronouns, contact information and work history of third party employees (persons whose role in this incident was employment related, such as health care providers and police officers from other detachments) can continue to be withheld because the applicant is no longer seeking access to that information.
6. HRP was required to withhold names, pronouns, contact information and work history of third party witnesses under s. 480 of the *MGA* as disclosure of this information would be an unreasonable invasion of their privacy.
7. With personal identifiers withheld (names, pronouns, contact information and work history), factual observations of third party witnesses do not constitute personal information of any identifiable third parties and so cannot be withheld under s. 480.

[40] I recommend that HRP:

1. Continue to withhold HRP employee badge numbers.
2. Continue to withhold names, pronouns, contact information and work history of all third party employees (persons whose role in this incident was employment related, such as health care providers and police officers from other detachments).
3. Continue to withhold names, pronouns, contact information and work history of all third party witnesses under s. 480.
4. Disclose de-identified factual observations made by third party witnesses within 45 days of the date of this review report.
5. Disclose all information severed under s. 472(1)(b) of the *MGA* that must not continue to be withheld under s. 480, within 45 days of the date of this review report.
6. Disclose all information severed under s. 475(1)(c) of the *MGA* that must not continue to be withheld under s. 480, within 45 days of the date of this review report.
7. Disclose all information severed under s. 475(1)(d) of the *MGA* that must not continue to be withheld under s. 480, within 45 days of the date of this review report.

March 28, 2024

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

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