



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

**Tricia Ralph**

**REVIEW REPORT 24-18**

**November 21, 2024**

**Halifax Regional Police**

**Summary:** An applicant asked Halifax Regional Police (HRP) for records relating to the death of their family member. HRP relied on s. 480 (personal information) of *Part XX* of the *Municipal Government Act (MGA)* to withhold portions of the responsive records because it believed the information was a third party's personal information that must be withheld under s. 480. The Commissioner agrees with HRP and finds that s. 480 requires HRP to continue to withhold the third-party information severed from the responsive records.

**INTRODUCTION:**

[1] The applicant asked the Halifax Regional Police (HRP) for all records it had about its investigation into the sudden death of their family member. The applicant only wanted to know more about their family member's death, and did not seek any personal information of any other third parties. For this reason, this review only considers the application of s. 480 to withhold the personal information of one third party, the applicant's deceased family member.

[2] In response to the applicant's request, HRP found 15 pages of responsive records, which made up HRP's investigation file into the third party's death. HRP provided the applicant with the responsive records, but withheld portions of the information pursuant to s. 480 (personal information) 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).

**ISSUE:**

[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.<sup>1</sup>

[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.<sup>2</sup>

### 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?

[7] HRP relied on s. 480 of the *MGA* to partially sever information in the responsive records. Section 480 requires municipalities<sup>3</sup> 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 all of the information in the responsive records.

[8] Section 480 of the *MGA* provides a right of privacy to third parties in that their personal information must be withheld from an applicant 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 municipal bodies to refuse to disclose personal information.<sup>4</sup> 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 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?

[9] To expand upon paragraph 1 of this review report, the applicant was only interested in the personal information of the third party contained in pages 8-15 of the responsive records. The applicant was specifically looking for personal information that is medical in nature. Most of the factual information about the circumstances of the third party's death was already released by HRP to the applicant. The applicant made clear that they are only interested in the personal information of their third-party family member and not any personal information of other third

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

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

<sup>3</sup> HRP is considered a "municipality" pursuant to s. 461(e) of the *Municipal Government Act*, [SNS 1998, c 18](#).

<sup>4</sup> *House (Re)*, [2000] N.S.J. No. 473, [2000 CanLII 20401 \(NS SC\)](#). See also *Sutherland v. Dept. of Community Services*, [2013 NSSC 1 \(CanLII\)](#).

parties mentioned in the responsive records. As such, this report only addresses the personal information of the applicant's third-party family member.

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

[10] 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.

[11] The information withheld was the third party's personal information (specifically medical information). The withheld information clearly meets the definition of "personal information." So, I must move on to step 2.

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

[12] 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 either party that any provision in s. 480(4) might apply. It was also not apparent upon my analysis that any provision in s. 480(4) might apply. 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)?***

[13] 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.

[14] Section 480(3)(a) of the *MGA* states:

480(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information

(a) relates to a medical, dental, psychiatric, psychological or other health-care history, diagnosis, condition, treatment or evaluation;

[15] HRP compiled medical information about the third party as part of its investigation. As per s. 480(3)(a) of the *MGA*, this information is presumed to be an unreasonable invasion of the third party's personal privacy.

[16] Section 480(3)(b) of the *MGA* is also relevant here, and states:

480(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information

- (b) 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;

[17] It is evident that HRP's investigation report (the responsive record) was clearly compiled as part of an investigation into a possible violation of law.

[18] As such, I agree with HRP that the presumptions in s. 480(3)(a) and 480(3)(b) apply to the third party's personal medical information contained in the responsive records.

***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?***

[19] The final step in the analysis is the most important. Finding that a s. 480(3) presumption applies is not enough. A presumption can be rebutted. The municipality must balance all relevant circumstances, including those listed in s. 480(2) of the *MGA*, to answer the ultimate question: would disclosure of the requested information constitute an unreasonable invasion of a third party's personal privacy? The test is not whether the disclosure of third-party personal information would result in an invasion of a third party's personal privacy; the test is whether the disclosure of third-party personal information would result in an *unreasonable* invasion of a third party's personal privacy.

[20] Additionally, the considerations listed at s. 480(2) of the *MGA* are not an exhaustive list. Rather, the analysis requires that all relevant factors be considered.

[21] Neither party provided any representations on this aspect of the analysis. The withheld information is clearly the personal information of a third party. The burden is on the applicant to establish that its release would not constitute an unreasonable invasion of privacy of the third party, who happens to also be their family member. When applicants do not provide submissions in this regard, my decision becomes quite difficult.

*Compassion for the applicant*

[22] In many decisions in our jurisdiction, as well as others across Canada, motive or compassion is considered when weighing access requests made by bereaved family members who would like to understand the full details and considerations surrounding a loved one's death.<sup>5</sup>

[23] Compassion has two core considerations:

- i. Are there any indications of what the deceased would have wanted?
  - (a) It is relevant to consider the nature of the relationship between the applicant and the deceased and to also consider the knowledge of the applicant with respect to the deceased's personal information. A lack of awareness weighs against disclosure

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<sup>5</sup> *NS Review Report 19-03, Halifax (Regional Police) (Re)*, [2019 NSOIPC 4 \(CanLII\)](#), at para. 42; *NS Review Report 16-08, Nova Scotia (Department of Justice) (Re)*, [2016 NSOIPC 8 \(CanLII\)](#), starting at para. 29.

while existing knowledge of the requested information weighs in favour of disclosure.

ii. What are the needs of the grieving relatives?

(a) The deceased's family is in the best position to determine the therapeutic value of any personal information received.<sup>6</sup>

[24] With respect to the needs of the grieving relatives, understanding the full details and circumstances surrounding a loved one's death is an integral part of the grief process. Greater knowledge of the circumstances of a loved one's death is, by its very nature, compassionate.<sup>7</sup> This weighs in favour of releasing the withheld information to the applicant.

[25] In terms of whether there are any indications of what the deceased would have wanted, I have no evidence before me about the relationship between the deceased third party and their applicant family member. I do not know if they were close or if they were estranged. This factor weighs against disclosure.

[26] The applicant provided anecdotal evidence to explain that HRP did talk with them while the investigation was ongoing. According to the applicant, HRP verbally provided the applicant with some of the deceased third party's personal medical information. The knowledge of the applicant weighs in favour of disclosure of information already disclosed to them during that time.

#### Sensitivity of the information

[27] The sensitivity of the information is another relevant consideration in determining whether disclosure of the information would be an unreasonable invasion of a third party's personal privacy. Former Commissioner Catherine Tully stated in *NS Review Report 19-03* that medical information (particularly in the context of an investigation into the death of a third party) is sensitive information which weighs against disclosure of information that falls within this category.<sup>8</sup>

[28] In this case, the information withheld is the medical information of the third party. It is particularly sensitive and does not, for the most part, specifically assist in understanding the events leading to the third party's death. I find that this factor weighs against disclosure.

#### Passage of time and death of a third party

[29] In previous decisions, former Commissioner Catherine Tully discussed consideration of the effect of passage of time and death of a third party.<sup>9</sup> It is established that the deceased do have privacy rights but also that such rights may diminish over time.

[30] In this matter, the applicant's original request for the responsive record was made the same year as their family member's death. Now, around five years have passed. Given the relatively

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<sup>6</sup> *NS Review Report 19-03, Halifax (Regional Police) (Re)*, [2019 NSOIPC 4 \(CanLII\)](#), at para. 43.

<sup>7</sup> *NS Review Report 19-03, Halifax (Regional Police) (Re)*, [2019 NSOIPC 4 \(CanLII\)](#), at para. 44.

<sup>8</sup> *NS Review Report 19-03, Halifax (Regional Police) (Re)*, [2019 NSOIPC 4 \(CanLII\)](#), at para. 41.

<sup>9</sup> *NS Review Report 16-03, Department of Community Services (Re)*, [2016 NSOIPC 3 \(CanLII\)](#), at para. 42-51.

short period of time since the death of the third party, I find that passage of time has not diminished the deceased's right to privacy and so this factor does not favour disclosure in this particular case.

***Would disclosure constitute an unreasonable invasion of privacy?***

[31] The question now boils down to whether the factors in favour of disclosure outweigh the presumed unreasonable invasion of a third party's personal privacy that would result from the disclosure of the withheld personal information. In my view, based on the considerations above, they do not.

[32] Therefore, I recommend that HRP continue to withhold the information it severed from the responsive records from the applicant.

**FINDING & RECOMMENDATION:**

[33] I find that HRP was required to withhold the personal information of the third party found at pages 8-15 of the responsive records under s. 480 of the *MGA*.

[34] I recommend that HRP continue to withhold the personal information of the third party found at pages 8-15 of the responsive records from the applicant.

November 21, 2024

Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia