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

REVIEW REPORT 25-02

February 21, 2025

Department of Labour, Skills and Immigration

Summary: The applicant asked the Department of Labour, Skills and Immigration (public body) for information about 14 acute workplace deaths that occurred in Nova Scotia in 2018. In response, the public body partially disclosed information to the applicant. The public body withheld information pursuant to s. 20 (personal information) of the *Freedom of Information and Protection of Privacy Act*. The Commissioner finds that because the public body erred in its application of the s. 20 analysis, release of the withheld information in the responsive records would result in an unreasonable invasion of the personal privacy of multiple third parties. She recommends that the public body continue to withhold it from the applicant.

INTRODUCTION:

[1] The applicant's request for information arose from a desire to understand and shed light on tragic workplace fatalities in Nova Scotia. The applicant asked the Department of Labour, Skills and Immigration (public body)[1] for details of each investigation conducted by the public body surrounding 14 acute workplace deaths that occurred in Nova Scotia in 2018, including:

1. the victim's occupation
2. the location of the incident
3. the date of the incident
4. the results of the completed investigations
5. name of companies involved
6. if there was a stop-work order or compliance order following the incident

[2] In response to the applicant's request, the public body created and provided three pages of records: a 1-page investigation report about two of the 14 workplace deaths that occurred in 2018 and a 2-page summary table about the 14 workplace deaths that occurred in 2018 (responsive

[1] At the time the access to information request was made, the public body was titled the Department of Labour and Advanced Education. After the applicant filing their access request, this public body was divided into two public bodies: the Department of Advanced Education and the Department of Labour, Skills and Immigration.

records). The responsive records in this matter did not exist prior to the applicant's request. Instead, the public body created the records in an effort to fulfill the applicant's request.

[3] The summary table contains the following headings of information:

1. name(s) of companies involved
2. date and location of incident
3. deceased occupation
4. description of incident/results of investigation
5. orders issued/results of investigation[2]

[4] The public body disclosed the responsive records to the applicant but severed portions of information in them pursuant to s. 20 (personal information) of the *Freedom of Information and Protection of Privacy Act* (*FOIPOP*).

[5] The applicant objected to the severing applied by the public body and filed a request for review with our office. The matter was not able to resolve informally and so proceeded to this public review report.

ISSUE:

[6] Was 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:

Burden of proof

[7] The public body bears the burden of proving that the applicant has no right of access to a record or part of a record.[3]

[8] Where the public body has established that s. 20(1) applies, s. 45(2) of *FOIPOP* 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.

Was 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?

[9] The public body severed portions of information from the responsive records under s. 20 of *FOIPOP*. Section 20 of *FOIPOP* requires public bodies to withhold information if its release would be an unreasonable invasion of a third party's personal privacy. For the reasons set out below, I find that the public body erred by not appropriately applying s. 20 of *FOIPOP* to the records. This error prevents any further disclosure of the information requested by the applicant.

[2] Note that the titles of the headings were disclosed to the applicant in response to their access request.
[3] *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5, s. 45.

As a result, I find that the information in the responsive records must remain withheld from the applicant.

[10] It is well established in Nova Scotia that a four-step test is required when evaluating whether s. 20 requires a public body to refuse to disclose personal information.[4] Referred to as the *House* test, 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 the 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)? If not, that is the end. Otherwise, I must go on.

[11] The first step of the test requires that the information be "personal information" as defined by *FOIPOP*. Personal information is defined in s. 3(1)(i) 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.

[12] To qualify as personal information, the information at issue must first relate to an "identifiable" individual. It can be considered something obvious like a name, but it can also be the content of the document itself that identifies the individual even where no name is present.[5] Second, the information must also be "about" that identifiable individual. Just because a third party is named in a document does not mean that the other information contained in the document is "about" that individual.[6] Lastly, there can be information contained in a document that can be information "about" more than one individual.[7]

[13] There are names and identifying details withheld in the investigation report and page 1 of the summary table. This is clearly personal information that must remain withheld. The remaining information withheld consists of factual information regarding each workplace incident. While the withheld factual information on its own would not be considered personal information, if combined with the information previously released to the applicant and/or other publicly available information, it would be enough to identify multiple third parties. Therefore, this information is considered recorded information about an identifiable individual.

---

[4] This test has been consistently applied in Nova Scotia Review Reports and is based on the Supreme Court of Nova Scotia decision in *House, Re*, 2000 CanLII 20401 (NS SC), at p. 3.
[5] *NS Review Report F1-10-19, Nova Scotia (Justice) (Re),* 2015 CanLII 54095 (NS FOIPOP), at para. 16.
[6] *NS Review Report F1-10-19, Nova Scotia (Justice) (Re),* 2015 CanLII 54095 (NS FOIPOP), at para. 17.
[7] *NS Review Report F1-10-19, Nova Scotia (Justice) (Re),* 2015 CanLII 54095 (NS FOIPOP), at para. 18.

[14] As the information withheld is personal information, I must move on to Step 2.

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

[15] Section 20(4) of *FOIPOP* 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. 20(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. 20(3)?

[16] Section 20(3) of *FOIPOP* sets out the personal information that, if disclosed, would be presumed to be an unreasonable invasion of a third party's personal privacy.

[17] Section 20(3) states, in part:

> 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;
>
> …
>
> (d) the personal information relates to employment or educational history;
>
> …

[18] Regarding 20(3)(b) of *FOIPOP*, the information was compiled as part of the public body's investigation into a possible violation of law under the *Occupational Health and Safety Act*[8] and as such, s. 20(3)(b) applies to the personal information withheld in this case.

[19] Regarding 20(3)(d) of *FOIPOP*, former Information and Privacy Commissioner for Nova Scotia, Catherine Tully concluded that documents that provide investigation outcomes or contents of interviews all fall within the s. 20(3)(d) presumption.[9] Therefore, the presumption in s. 20(3)(d) applies to the third-party personal information withheld in this case.

[20] I find that the presumptions in s. 20(3)(b) and 20(3)(d) apply to the information withheld from the responsive records.

---

[8] *Occupational Health and Safety Act*, SNS 1996, c 7.
[9] *NS Review Report 17-01, Nova Scotia (Justice) (Re),* 2017 NSOIPC 1 (CanLII), at para. 59.

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?

[21] The final step in the *House* analysis is the most important. Finding that a presumption applies is not enough. A presumption can be rebutted. All relevant circumstances, including those listed in s. 20(2) of *FOIPOP*, must be considered to answer the ultimate question: would disclosure of the requested information constitute an *unreasonable* invasion of personal privacy? The test is not whether the information is third-party personal information or whether release of the information would invade a third party's privacy. Rather, the test is whether the disclosure of third-party personal information would result in an *unreasonable* invasion of a third party's personal privacy. Therefore, I will consider whether any consideration set out in the subsections of s. 20(2) of *FOIPOP* apply in this matter. I will then address other relevant considerations.

Public scrutiny

[22] The applicant argued that s. 20(2)(a) is a relevant consideration in favour of disclosure.

[23] Section 20(2)(a) states that a relevant consideration is whether the disclosure is desirable for the purpose of subjecting the activities of the Government of Nova Scotia or a public body to public scrutiny.

[24] First the applicant pointed me to *NS Review Report 20-05*, which is related to government activities in response to the death of a child in care. The applicant argued that the responsive records in this review report would, *similar to NS Review Report 20-05*, subject the activities of the public body to public scrutiny, as they show the steps taken by the public body in response to the workplace fatalities.

[25] As I noted in *NS Review Report 20-05:*

> The very heart of this matter arises from the applicant testing whether there are records relating to a known death, and if there are, whether anything in the records sheds light on related government activity or non-activity.[10]

[26] The applicant next pointed me to news articles where families of employees who died on work sites have publicly advocated for details of fatal workplace incidents to be made more public. There are numerous news articles to this effect where the activities of the public body have been called into question. It goes without saying that workplace fatalities are serious. The public body's actions in response to workplace fatalities should be as transparent as possible. As I noted in *NS Review Report 23-15*:

> [T]he public body is tasked with investigating workplace safety when there is a major accident or fatality. That information is then used to inform any prosecution. Members of the public have no choice but to rely on the public body to respond to workplace deaths of their loved ones

[10] *NS Review Report 20-05, Nova Scotia (Department of Community Services) (Re)*, 2020 NSOIPC 5 (CanLII), at para. 44.

> and to conduct sufficient investigations to ensure that responsible parties are held accountable. Furthermore, there are news stories in Nova Scotia where the loved ones of people who died in workplace fatalities have publicly called for more information to scrutinize the public body's actions regarding its workplace investigations.[11]

[27] Based on the facts in this particular case, information about the activities of the public body relating to the workplace fatalities were already released to the applicant at the time of their access request. Therefore, the remaining withheld information would not shed further light on the activities of the public body. As such, I find that s. 20(2)(a) is not a relevant factor that weighs either in favor or against disclosure.

Creating a record

[28] Section 8(3) of *FOIPOP* states:

> The head of a public body shall create a record for an applicant if
>
> > (a) the record can be created from a machine-readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise; and
> > (b) creating the record would not unreasonably interfere with the operations of the public body.

[29] In this case the public body created a record, but it does not appear to be from a machine-readable source. The source is unknown. In the creation of these records, the public body included and disclosed elements of personal information that the applicant did not request.

[30] This error at the outset set in motion a series of decisions that led the public body to the disclosure decision it made. It has also left me unable to make any recommendations for further disclosure and as such leaves the applicant without the information that would be most meaningful to them based on their submissions to me.

Publicly available information

[31] When creating the responsive records, the public body said it reviewed media stories already in the public domain in an attempt to fulfill its duty to assist and disclose information already available to the applicant. As a result, the public body said that it withheld what it considered to be personal information of multiple third parties that could not be found reported in the media. This is not the correct approach when attempting to balance the duty to assist with the principles of openness and transparency and the requirements of s. 20 of *FOIPOP*.

[32] Public availability of the information in the responsive records is a factor to consider when balancing all relevant considerations in Step 4 of the *House* test and is one that public bodies should continue to do. It often results in a factor weighing against disclosure.

---

[11] *NS Review Report 23-15, Nova Scotia (Labour, Skills and Immigration) (Re)*, 2023 NSOIPC 16 (CanLII), at para. 64.

[33] When personal information held by a public body is also publicly available, and an applicant makes an access to information request for it, it is critical for public bodies to engage with applicants about the scope of their request. The correct approach is to apply the *House* test to the requested information. This requires completing the first three steps of the analysis and then in the final step, when the public body considers all of the relevant factors, the public body should consider whether disclosure of the requested information, when combined with other information being released to the applicant by the public body and/or other publicly available information, would result in an unreasonable invasion of personal privacy of third parties.

[34] In this case, the publicly available information is found in media reports, which is a factor that weighs against disclosure.

[35] Furthermore, because the *House* test was not correctly applied, enough personal information was released by the public body to, when combined with the remaining withheld information and/or other publicly available information, identify third parties. Overall, this factor weighs against disclosure.

Release of data by other jurisdictions

[36] The applicant noted that other provinces, including Alberta, British Columbia, Quebec, and New Brunswick, release factual information regarding workplace fatalities regularly on a public website.[12] In response to the applicant's argument, the public body argued that context is important to consider in terms of population size. It noted that Alberta has a population 5 times the size of Nova Scotia. It also said that the information routinely released by New Brunswick (which has a population size similar to Nova Scotia) is consistent with what the public body disclosed to the applicant.

[37] When assessing the effects of population size on identifiability from release of information, Information and Privacy Commissioners have said that there is no blanket rule or magic number which would mark the cut-off for population sizes in any case. Rather, as former Nunavut Commissioner Keenan Bengts said:

> Each situation must be assessed on its own merits, taking into account not only the number in the statistical outline, but also a whole range of factors that could result in the identification of individuals.[13]

[38] Nevertheless, in my view, the issue in this particular case is less about whether the requested information is similar to that publicly found in other provinces and more about identifiability of third parties as a result of the previous disclosure of information to the applicant and/or the public availability of information.

---

[12] Government of Alberta, *Worksite fatality investigation summaries* (undated), online: <https://www.alberta.ca/fatality-investigation-summaries>; and WorkSafe BC, *Shared Data* (undated), online: <https://www.worksafebc.com/en/about-us/shared-data>.

[13] *NU Review Report 19-148, Review Report 19-148 (Re)*, 2019 NUIPC 1 (CanLII). See also *VinAudit Canada Inc v Yukon (Government of)*, 2023 YKSC 68 (CanLII).

Passage of time and death of third parties

[39] Most Canadian access to information statutes have a date following death when the legislature has determined that personal information may be disclosed.[14] Such a disclosure may occur for one of two reasons: either the definition of personal information excludes information about an individual for a specified length of time after death, or disclosure of the information is no longer considered to be an unreasonable invasion of personal privacy. The length of time after death before these rules apply ranges between 10 and 30 years.[15]

[40] Nova Scotia's *FOIPOP* legislation does not include any rule specific to whether privacy rights end with death and, if they do not end with death, how long they last.[16] However, previous Information and Privacy Commissioners for Nova Scotia have determined that deceased persons do have privacy rights but that they diminish over time.[17]

[41] The deaths at issue in this case all occurred in 2018. It is notable that at the time of the access request, approximately one year had passed since the deaths occurred. Today, only six years have passed since the deaths at issue. In my opinion, there has not been sufficient passage of time since the death of the third parties to diminish the third parties' privacy rights.

[42] This factor weighs against disclosure.

Sensitivity of the information

[43] 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. The withheld information was all collected as part of an investigation into workplace fatalities. It describes actions of third parties at a most sensitive moment: the time of their deaths.

[44] This factor weighs against disclosure.

Public interest

[45] The applicant also raised public interest as a relevant consideration that weighs in favor of disclosure. I agree with the applicant that workplace safety is no doubt generally a matter of public interest. However, the arguments the applicant put forth in this respect were addressed in my analysis above in relation to s. 20(2)(a) - public scrutiny. As noted above, the public scrutiny consideration is not relevant in this case. Additionally, in my view, public interest on its own would not be enough to override the above presumptions and additional factors that weigh against disclosing the withheld information nor justify the unreasonable invasion of the personal privacy of third parties that would result.

---

[14] *NS Review Report 16-03, Department of Community Services (Re),* 2016 NSOIPC 3 (CanLII), at para. 46.
[15] *NS Review Report 16-03*, *Department of Community Services (Re)*, 2016 NSOIPC 3 (CanLII), at para. 46.
[16] *NS Review Report 16-03*, *Department of Community Services (Re)*, 2016 NSOIPC 3 (CanLII), at para. 46.
[17] *NS Review Report 16-03, Department of Community Services (Re),* 2016 NSOIPC 3 (CanLII), at para. 46.

Balancing the considerations: would disclosure constitute an unreasonable invasion of a third party's privacy?

[46] The circumstances of this matter are unfortunate. The release of factual information about the circumstances of a workplace fatality would benefit the applicant and the general public. That being said, I must address the fact that the public body made multiple errors in creating the responsive records and in processing this access to information request. These errors mean that no additional disclosure can be made.

[47] The applicant was not seeking personally identifiable information. They wanted to know factual information about what happened that led to the deaths in the workplace. The applicant did ask for names of companies where the deceased third parties worked. However, releasing the names of companies contributed to rendering any factual information the applicant was seeking as personally identifiable and so not releasable. There was an opportunity for the public body to work with the applicant at the outset of the applicant's request to explain this. That would have given the applicant the opportunity to modify the scope of their request to focus on the elements they were most interested in and should have resulted in the most possible disclosure without including personally identifying information. Instead, when the public body created the responsive records for the applicant, it inconsistently added elements the applicant did not seek, including personally identifiable information. The result of this was that because personally identifying information was released, the factual information could no longer be released. This is because, when combined with the elements of personally identifying information already released and/or other publicly available information, additional disclosure would now result in an unreasonable invasion of multiple third parties' personal privacy.

[48] The public body also failed to correctly apply the *House* test when it processed the responsive records. It only considered what was already publicly known in media stories for its initial release of information and found it to be a factor in favour of disclosure. However, even if personal information is publicly known, it does not lose its character as personal information. The fact that it is publicly available information may, like in this case, be a factor that weighs against disclosure. Public bodies are required to complete the *House* test to determine whether they are required to withhold personal information that would result in an unreasonable invasion of a third party's personal privacy.

[49] Because of these errors, if any more information were to be released, it would now result in an unreasonable invasion of multiple third parties' privacy.

[50] A better approach would have been to work more closely with the applicant at the start to determine what information was most important to the applicant. Perhaps if that was done, factual information around the circumstances of these workplace fatalities could have been released in a manner that would not result in an unreasonable invasion of any third party's privacy.

[51] I find that release of the withheld information in the responsive records would result in an unreasonable invasion of third parties' personal privacy, and so I recommend that it continue to be withheld.

FINDING & RECOMMENDATION:

[52] I find that release of the withheld information in the responsive records would result in an unreasonable invasion of the personal privacy of multiple third parties.

[53] I recommend that the public body continue to withhold the information severed from the responsive records.

February 21, 2025

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

OIPC File: 19-00405