



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

REVIEW REPORT 25-11

October 1, 2025

Build Nova Scotia

Summary:

The original applicant requested a copy of an addendum to an agreement (“the record”) between a provincially owned corporation and a third party corporation. The third party objected to the release of the record, claiming it should be withheld in full under s. 21(1) (confidential business information) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. The Commissioner finds that the record does not meet the requirements of s. 21(1), as the information in the record did not belong to the third party, and was not supplied, implicitly or explicitly, in confidence. The record, including the key financial terms, was negotiated by the parties. The Commissioner recommends that the public body release the record to the original applicant.

The Commissioner also determined a secondary issue related to the redacting of a witness’ name and signature; the individual was not an employee of the public body or the third party and therefore the Commissioner supports the decision to redact their name and signature.

INTRODUCTION:

[1] An individual submitted a request for information under s. 6 of the *Freedom of Information and Protection of Privacy Act (FOIPOP)* for an addendum to an agreement (“the record”) between Harbourside Commercial Park Inc., a provincially owned company, and a private corporation “(the third party)”. Build Nova Scotia (“the public body”) is presently responsible for Harbourside Commercial Park Inc., although the original application was submitted to the then Department of Transportation and Infrastructure Renewal.

[2] The public body informed the third party of the request for access to records that related to their business and provided notice regarding the release of these records. The third party applicant responded to the public body, objecting to the disclosure of all records relating to them. The public body informed the third party applicant that they had decided to grant the original applicant access to the information, and the third party applicant asked the Information and Privacy Commissioner to conduct a review of the public body’s decision under s. 32 of *FOIPOP*.

ISSUES:

[3] There are two issues under review:

1. Is the public body required to refuse access to information under s. 21(1) of *FOIPOP* because disclosure of the information could reasonably be expected to be harmful to the business interests of a third party?
2. Is the public body required to refuse access to information under s. 20 of *FOIPOP* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

ANALYSIS:

Burden of proof

[4] With respect to s. 21, as the third party applicant filed the request for review, it is the third party applicant who bears the burden of proving that the original applicant has no right of access to the record or part of the record.

1. Is the public body required to refuse access to information under s. 21(1) of *FOIPOP* because disclosure of the information could reasonably be expected to be harmful to the business interests of a third party?

[5] I find that the public body is not required to refuse access to the information under s. 21(1) of *FOIPOP*. While the record does include commercial and financial information, the information is not "of a third party" or "supplied, implicitly or explicitly, in confidence," as required under s. 21(1).

[6] Section 21(1) states that:

21 (1) The head of a public body shall refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour-relations dispute.

Not a “purely private” record

[7] The third party applicant submitted that the record is a “purely private” document. This is not accurate. Harbourside Commercial Park Inc. is a corporation established by the Province of Nova Scotia. A related agreement between the parties acknowledged that the parties are subject to the provisions of *FOIPOP*.

Contents of record are not “of a third party” or “supplied, implicitly or explicitly, in confidence”

[8] As my predecessor Tricia Ralph stated in Review Report 24-08, beginning at paragraph 18:

...The burden is on the third party to establish that:

1. Disclosure of the requested information would reveal trade secrets, or commercial, financial, labour relations, scientific or technical information of a third party;
2. The requested information was supplied implicitly or explicitly in confidence; and
3. Disclosure of the requested information could reasonably be expected to cause one or more of the harms enumerated in s. 21(1)(c).

For the third party to be successful, they must establish that all three criteria are met.

[9] In Review Report 24-08, Commissioner Ralph dealt with a similar agreement between a provincially owned corporation and a third party and concluded that while some of the terms of the agreement were commercial and financial in nature, they are not “of the third party.” She concluded that to be “of the third party,” there must be evidence that the information originated from the third party or is owned by the third party:

[30] The leading Nova Scotia decision on this topic is *Atlantic Highways*, where the Supreme Court of Nova Scotia held that information in an omnibus agreement to construct a toll highway was not commercial or financial information of a third party because the information had either already been exposed to publication or was so intertwined with the Provincial input by way of the requirements of the request for proposal or modified by the negotiation process that it clouded the third party’s claim to a proprietary interest in the information.

[31] The words “of a third party” imply that the third party must have some kind of proprietary interest in the information.

[32] It is long-established case law in Nova Scotia that where information is part of a negotiated agreement, such as a contract, s. 21 will generally not apply. More specifically, pricing information incorporated into a contract is not “of a third party” (as required under s. 21(1)(a) of *FOIPOP*) and is not “supplied” (as required under s. 21(1)(b) of *FOIPOP*). Any commercial and financial information in the land lease agreement arose from negotiation with the public body. Thus, once the financial and commercial terms were incorporated into the land lease agreement, this clouded the third party’s claim to a proprietary interest in them. As such, it does not qualify as information

“of a third party.” It is clear from the contents of the records and from the well-established case law that the information is not “of a third party”.¹

[10] In my view, the same reasoning applies here. There is no suggestion that any of the financial or commercial information in the record originated with the third party or was owned by the third party at any time. The terms in the record were the result of negotiation between the parties. Nor was the information “supplied” to the public body by the third party. This is not a case where, for example, proprietary information of a third party is appended to or incorporated into an agreement.

[11] While there are several provisions in a related agreement between the parties that discuss confidentiality, both parties acknowledged that the record was subject to *FOIPOP*. The parties cannot “contract out” of the application of *FOIPOP*. While the third party may wish to keep as much information confidential as possible, the record in this case does not meet the legal requirements of section 21(1) and should be disclosed to the original applicant.

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

[12] The only information that the public body proposed to sever was the name and signature of a witness who is neither an employee of the public body nor the third party. Because s. 20 is a mandatory exemption and none of the factors provided in s. 20(4) are met, disclosure of the personal information would be an unreasonable invasion of this individual’s privacy. As a result, I support the public body’s decision to redact their name.

FINDINGS & RECOMMENDATIONS:

[13] I find that the public body is not required to refuse access to the information under s. 21(1) of *FOIPOP*.

[14] I recommend that the public body release the record to the original applicant after redacting the personal information referenced above in paragraph 12.

October 1, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia

OIPC File: 21-00177

¹ NS Review Report 24-08, Nova Scotia (Build Nova Scotia) (Re), [2024 NSOIPC 8 \(CanLII\)](#), at para. 30.