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

REVIEW REPORT 25-14

December 04, 2025

Nova Scotia Community College

Summary:
The applicant requested records of a meeting of the public body's Board of Governors that was closed to the public. The public body issued a decision to withhold the records in full pursuant to s. 19A of the *Freedom of Information and Protection of Privacy Act* (*FOIPOP*). Section 19A of *FOIPOP* provides that if an enactment authorizes a local public body to meet in the absence of the public, the public body may withhold records that would reveal the "substance of deliberations" of the meeting.

The Information and Privacy Commissioner finds that the public body was authorized to withhold records that would reveal the "substance of deliberations" of the meeting but failed to sever the records as required by *FOIPOP*. The Commissioner recommends that the public body conduct a line-by-line review of the responsive records and issue a new decision to the applicant to disclose the ancillary information.

INTRODUCTION:

[1] On October 23, 2020, the applicant made a request to the Nova Scotia Community College (public body) for all materials and documentation related to programming decisions made in 2020 by the Board of Governors (including the Programs Committee of the Board of Governors) regarding the Aviation Mechanical Engineering programs (including Mechanical, Avionics, and Structures).

[2] On November 9, 2020, the public body issued a decision to withhold the records in full under s. 19A of the *Freedom of Information and Protection of Privacy Act (FOIPOP)* (closed meetings of local public bodies).

[3] The records under review document two in-camera meetings held by the Programs Committee of the Board of Governors in 2020.

ISSUE:

[4] Was the public body authorized to refuse access to information under s. 19A of *FOIPOP* because it would reveal closed meeting content?

DISCUSSION:

Was the public body authorized to refuse access to information under s. 19A of *FOIPOP* because it would reveal closed meeting content?

[5] The public body applied s. 19A to the entirety of the responsive records. Specifically, the public body relied on clause (b). Section 19A(b) provides that:

> 19A Where an enactment authorizes a meeting of the elected officials or the governing body of a local public body or a committee of the governing body of the local public body to be held in the absence of the public, the head of the local public body may refuse to disclose to an applicant any record that would reveal
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> …
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> (b) the substance of deliberations at a meeting held in the absence of the public unless the subject matter of the deliberations has been considered at a meeting that is open to the public or the record has been in existence for more than fifteen years.

[6] In *NS Review Report 24-04*, my predecessor, Commissioner Tricia Ralph, adopted a three-step test to decide whether exemptions regarding the substance of deliberations at a meeting held in the absence of the public can apply.

[7] I adopt a similar three-part test for section 19A of *FOIPOP*. To apply section 19A, a public body must establish that:

1. An enactment authorizes a meeting to be held in the absence of the public;
2. A meeting was actually held in the absence of the public; and
3. If disclosed, the records would reveal the substance of deliberations at a meeting held in the absence of the public.

Part 1 – An enactment authorizes a meeting to be held in the absence of the public

[8] The first part of the test is to determine whether the public body had the legal authority to meet in the absence of the public. The public body cited section 61 the *Community Colleges Act* which provides:

> Meetings
> 61 (1) The Board may make by-laws respecting the calling of its meetings, notice to Board members and the public and the conduct of business at meetings, and generally regulating the conduct of its business and affairs.

> (2) By-laws of the Board made pursuant to subsection (1) shall be open to examination by the public during the normal office hours of the College.
>
> (3) Subject to subsection (4), all meetings of the Board shall be open to the public and no person shall be excluded from a meeting except for improper conduct as determined by the Board.
>
> **(4) Nothing in this Section prevents the members of the Board from meeting in private to discuss matters related to personnel, the acquisition, sale, lease and security of property, labour relations, legal opinions and other similar matters. (emphasis added.)**

[9] The use of the phrase "and other similar matters" appears to give the public body's Board of Governors a wide discretion to determine what sensitive matters may be discussed in a closed meeting. The Programs Committee made a determination that the program review was a matter that should be dealt with in a closed meeting, and the meetings proceeded. In the absence of any suggestion that the decision to hold closed meetings was made in bad faith, or was clearly improper, there is no reason for me to further analyze the Programs Committee's decision to conduct closed meetings. The first part of the test has been met: the public body was authorized by an enactment to meet in the absence of the public.

Part 2 – A meeting was actually held in the absence of the public

[10] There is no dispute that the meetings were actually held. Therefore, the second part of the test has been met.

Part 3 – If disclosed, the records would reveal the substance of deliberations at a meeting held in the absence of the public

[11] I believe that the public body has met this third part of the test, and the records would, if disclosed in full, reveal the substance of deliberations at the meetings. The records contain detailed analysis, advice and recommendations presented to the Programs Committee; these records would allow an astute observer to accurately infer what council members discussed or decided. Therefore, the public body was correct to withhold the bulk of the information in the records.

[12] Nevertheless, the public body made an error by failing to conduct a line-by-line analysis of the responsive records and sever the records in part, to provide access to the ancillary information that is not exempt from disclosure. Section 5(2) of *FOIPOP* provides:

> 5(2) The right of access to a record does not extend to information exempted from disclosure pursuant to this Act, but if that information can reasonably be severed from the record an applicant has the right of access to the remainder of the record.

[13] This obligation is regularly referred to as the "duty to sever." This duty has been discussed in a variety of prior cases, including in *NS Review Report 25-10*.

[14] My predecessor Commissioner Tricia Ralph discussed the duty to sever records that included information that would reveal the "substance of deliberations" in *NS Review Report 24-04*. That review involved the Halifax Regional Municipality and a decision to withhold certain records of municipal council meetings under the access to information provisions of the *Part XX* of the *Municipal Government Act (MGA).* Although the present case related to a local public body under *FOIPOP*, Commissioner Ralph's analysis under the *MGA* provisions is applicable; she found that:

> [16] Former British Columbia Commissioner Loukidelis set out the following guidance on the meaning of the phrase "substance of deliberations":
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> > As *Black's Law Dictionary*, 8th ed., puts it, 'substance' is the essential or material part of something, in this case, of the deliberations themselves. […]
> >
> > Without necessarily being exhaustive of the meaning of the word 'deliberations', I consider that term to cover discussions conducted with a view to making a decision or following a course of action.
>
> [17] Information that would reveal only the topic of deliberations is not captured by s. 473 because the topic on its own does not reveal what was discussed or concluded. So, information can only be withheld under s. 473 of the *MGA* if it can reveal or allow someone to accurately infer what council members discussed or decided based on the material being considered.
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> [18] Ancillary information such as the identity of attendees and whether they left the meeting is not captured by s. 473 because such information could not reveal the substance of deliberations.
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> [19] In this matter, some of the withheld information consists of minutes, motions, recommendations, possible actions and considerations made by the Regional Council. If disclosed, this information could reveal or allow someone to accurately infer what the Regional Council members discussed or decided based on the material being considered. In contrast, information such as headings, attendees who participated or left the meeting and the date of the meeting is ancillary information that would not reveal the substance of deliberations.
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> [20] I find that the municipality was not authorized to withhold headings, names of attendees, dates and times found on pages 4, 5 and 6 of the report under s. 473 of the *MGA*. This information should be released to the applicant. I find that the municipality was authorized to withhold the remainder of the information it severed on pages 2, 3, 4, 5 and 6 of the

> report, as disclosure of this information would reveal the substance of the Regional Council's deliberations.

[15] A similar analysis should have been conducted in the present case. The public body should have conducted a line-by-line review of the responsive records and provided a severed version that disclosed ancillary information to the applicant. At the end of the day, this ancillary information may not seem particularly critical or meaningful to the head of the public body, but the applicant has a right of access to this information.

[16] Before turning to my formal recommendations, I would also suggest that the public body's Board of Governors review its standard practices for referring matters to a closed meeting. The intent of the public body's governing legislation is clear that all meetings should be public, except those meetings or parts of meetings that address the issues in section 61(4). It is all too easy for a board to routinely schedule certain matters for closed sessions, without scrutinizing each issue to determine if it could or should be dealt with in public. I would adopt the recommendation of the Ontario Ombudsman in his 2023 decision in *Haliburton (County of) (Re)* 2023 ONOMBUD 16, at paragraph 24:

> As a best practice to promote transparency and avoid confusion, when the exception…is used to close a meeting to the public, the resolution to move into closed session should include a clear reference to the relevant legislation and provision that permits the meeting to be closed.

FINDING & RECOMMENDATION:

[17] I find that the public body was authorized by section 19A of *FOIPOP* to withhold information that would reveal the "substance of deliberations" of a public body at a meeting that was closed to the public. However, as required by *FOIPOP*, the public body should have severed the records in part, disclosing ancillary information – such as headings, the topics of discussion, the attendees, and the dates and times of the meetings – to the applicant.

[18] I recommend that, within 45 days of this review report, the public body conduct a line-by-line review of the responsive records and issue a new decision to the applicant to disclose the ancillary information.

December 04, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia

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