



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

REVIEW REPORT 26-04

April 07, 2026

Department of Public Works

Summary:

An applicant requested copies of records regarding a potential ferry service between Yarmouth, Nova Scotia and The State of New Hampshire. The Department of Public Works (the public body) located responsive records including an unsolicited proposal sent by a third party corporation, and communications between the third party and the public body. The public body determined that some of the information in the responsive records must be withheld under sections 20 (personal information) and 21 (confidential information of a third party) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*.

As required, the public body consulted with the third party. The public body proposed severing information that appeared to fall under sections 20 and 21 of *FOIPOP* from the records and releasing the remaining information. The third party objected to the release of all information in the records and requested a review of this matter by the Information and Privacy Commissioner.

The Commissioner finds that portions of the records meet the requirements of s. 20 and must be withheld. However, the Commissioner finds that the third party did not meet its burden to establish that the applicant has no right of access; specifically, the Commissioner found that the records were not supplied in confidence by the third party.

The Commissioner recommends that the public body sever the s. 20 information that must be withheld from the records and release the remaining information to the original applicant.

INTRODUCTION:

[1] An individual submitted a request for information under s. 6 of the *Freedom of Information and Protection of Privacy Act (FOIPOP)* for:

All records/presentations/communications regarding a potential ferry service between Yarmouth and New Hampshire. (Date range for Record Search: From 12/31/2020 to 11/06/2022)

[2] After conducting a search, the Department of Public Works (the public body) determined that the responsive records included information that must be withheld under sections 20 and 21 of the *FOIPOP*. The records included an unsolicited proposal sent by a third party corporation, and communications between provincial staff and the corporation.

[3] Section 20 of *FOIPOP* requires a public body to refuse access to the personal information of an individual if the disclosure would be an unreasonable invasion of privacy. Section 21 of *FOIPOP* requires a public body to refuse access to confidential information of a third party, such as trade secrets, if the information is supplied in confidence and disclosure would result in one of the harms listed in the section.

[4] As required by section 22 of *FOIPOP*, 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 partial 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:

[5] There are two issues under review:

1. 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?
2. 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?

ANALYSIS:

Burden of proof

[6] With respect to s. 20, the public body bears the burden of proving that the applicant has no right of access to a record or part of a record. 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. 20 of *FOIPOP* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

[7] The public body appropriately proposed to withhold certain personal information – such as photos of individuals and detailed CVs – because the information would be an unreasonable invasion of a third party's personal privacy. However, there are several instances where the public body identified information for severing that does not meet the test under s. 20.

[8] Specifically, on page 1 of the records the name of a MLA's constituency assistant is removed; such information, even coupled with an e-mail address and phone number, is akin to business card information, and the release of this information is not an unreasonable invasion of personal privacy. The same analysis holds true in my view for officers or representatives of the third party; their names and e-mails are being used for business purposes, and should not be withheld.

2. 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?

[9] 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.

[10] 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.

[11] The position of the third party is that the entire record should be withheld. The third party argues that the record contains highly sensitive information that, if disclosed, would undermine their negotiating position in any future RFP process related to the Yarmouth ferry service.

Step 1: Record contains commercial information of a third party

[12] The proposal contains commercial information of a third party, including its personnel, proposed business partners and strategies, and the size and attributes of the proposed ferry.

I find that the first criteria is met.

Step 2: Record supplied implicitly or explicitly in confidence

[13] This is where the third party's claim fails. The third party submits that the entire package was intended to be confidential and that they stated in the records that they were confidential. However, the assertions of the third party are not sufficient; we must consider the circumstances as a whole; the appropriate approach is described by Justice Richard Coughlan in *Chesal v. Nova Scotia (Attorney General)*, 2003 NSSC 10 (CanLII), at para 43:

In determining whether particular information is received in confidence, the Court must consider the circumstances as a whole including the content of the information, its purposes and the purposes and conditions under which it was prepared and communicated. It is not enough that the supplier of the information states, without further evidence, that it is confidential; otherwise, a party supplying the information could ensure the information was not released. Likewise, the fact information is marked confidential is not conclusive that the information was supplied in confidence. If such was the case, the mere marking of information as "confidential" would prevent its release.

[14] As Justice Coughlan stated, simply marking an item as confidential is not enough. While the third party in this case may have intended the submission to be confidential, there is absolutely nothing in the records to suggest that the provincial staff solicited the proposal or agreed at any point to keep it confidential. The third party openly shared copies of communications with an MLA and their staff without requesting any assurances of confidentiality. Put simply, the third party was looking to drum up business, and arrange meetings with public officials to make their pitch; the unsolicited proposal was intended as part of that sales approach. Given this broader context, I cannot conclude that the record was supplied in confidence.

Step 3: Disclosure could interfere significantly with the negotiating position of the third party

[15] I have not addressed this element of the test in detail, as I have determined that the record was not supplied in confidence.

FINDINGS & RECOMMENDATION:

[16] I find that the public body is required to refuse access to certain information under section 20 of *FOIPOP*. I find that the third party has not met its burden to establish that the applicant has no right of access to the records.

[17] I recommend that the public body release the records to the original applicant after severing the information that must be withheld under section 20 of *FOIPOP*.

April 07, 2026

David Nurse
Information and Privacy Commissioner for Nova Scotia

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