



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

REVIEW REPORT 26-06

June 12, 2026

Department of Health and Wellness

Summary:

An applicant requested under s. 6 of the *Freedom of Information and Protection of Privacy Act*¹ (*FOIPOP*) all records for a specified date range related to a business, including records regarding consideration for investment and confirmation of monies issued to the business in 2023, correspondence, and proposals. Pursuant to s. 21 of *FOIPOP*, the public body identified a third party for consultation.

The public body proposed withholding portions of the record under section 20 of *FOIPOP* and releasing the remaining information. The third party objected to the release of all information in the records under sections 20 and 21 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 of *FOIPOP* and must be withheld. The Commissioner also finds the information in the records does not meet the requirements of s. 21(1) of *FOIPOP* because the third party would not suffer any of the harms set out in section 21(1) if the information was released.

The Commissioner recommends continuing to withhold portions of information under s. 20 of *FOIPOP* and releasing the remaining information to the original applicant.

INTRODUCTION:

[1] An individual submitted an access request for all records related to a business, including any proposals submitted and any correspondence between the business and the public body, for a specified date range.

¹ *Freedom of Information and Protection of Privacy Act*, [SNS 1993](#), c 5.

[2] The records included an application submitted by a third party to the public body for the Mental Health and Addictions Community Wellness Grant. The third party's application was not successful.

[3] As required by section 22 of *FOIPOP*, the public body informed the third party of the access request and provided notice regarding the release of these records.

[4] The third party originally did not participate in the third-party consultation. Because the public body received no response from the third party, they informed the third party that they had decided to grant the applicant partial access to the information. However, the third party asked the Information and Privacy Commissioner to conduct a review of the public body's decision under s. 32 of *FOIPOP*, claiming the entirety of the records should be withheld under s. 20 and s. 21 of *FOIPOP*.

[5] 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 that section.

[6] During the informal resolution process, the third party agreed to narrow their objections to certain records within the third party consultation package ("records").

ISSUES:

[7] 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

[8] 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.

[9] With respect to s. 21, as the third party filed the request for review, it is the third party 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?

[10] The public body planned to sever certain personal information from the records, including personal e-mail addresses and phone numbers, and the names of individuals unrelated to the third party. I agree this is appropriate.

[11] The only guidance I would offer the public body relates to page 29 of the records. This page is part of the third party's funding proposal and included a first-person account of an individual's medical history.

[12] The Supreme Court of Nova Scotia's four-step test to evaluate whether s. 20 requires a public body to refuse to disclose this information² is found below:

1. This information is personal information within the meaning of s. 3(1)(i);
2. None of the conditions in 20(4) are satisfied;
3. The disclosure of this information is presumed to be an unreasonable invasion of privacy pursuant to s. 20(3) as it is personal medical information;
4. The relevant considerations weigh against disclosure (sensitivity of the information and the information was supplied in confidence).

[13] Although similar information is available from the third party's website, this first-person account was included as part of the application. Based on this, I believe the disclosure of this information would constitute an unreasonable invasion of privacy and I recommend severing the first three paragraphs on page 29 of the records.

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?

[14] 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,

² House, Re, 2000 [CanLII 20401](#) (NS SC).

- (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.

[15] As Former Commissioner Ralph has stated in *Review Report 24-08*, 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).³

[16] Additionally, the third party must satisfy all three criteria to establish that the information must be withheld.⁴

Step 1: Record contains commercial information of a third party

[17] I accept that the grant application included commercial information of the third party. It detailed the third party's services and their plans to grow their organization's capacity. Therefore, the first step of the test is met.

Step 2: Record supplied implicitly or explicitly in confidence

[18] I accept that the Government of Nova Scotia solicited grant applications and requested detailed business information, including budgets, for proposed projects. Although there was no explicit statement regarding confidentiality, a degree of confidentiality is implied when there is an open call for funding submissions.

[19] If this was a successful grant application, the expectations of confidentiality would have favored disclosure as the public has the right to know what public bodies are spending public money on.⁵ However, this grant application was not successful, and no contract was formed. Therefore, the second part of the test is met.

Step 3: Disclosure could reasonably be expected to cause one of the harms enumerated in s. 21(1)(c)

[20] I am not satisfied that the third party would suffer any of the harms set out in section 21 should the information be released.

³ *NS Review Report 24-08, Build Nova Scotia (Re)*, [2024 NSOIPC 8 \(CanLII\)](#), at para. 18.

⁴ *Atlantic Highways Corp. v. Nova Scotia*, [1997 CanLII 11497 \(NS SC\)](#), at p. 7. See also *NS Review Report 17-08, Department of Health and Wellness*, [2017 NSOIPC 8 \(CanLII\)](#), at para. 39.

⁵ *NS Review Report 17-08, Department of Health and Wellness*, [2017 NSOIPC 8 \(CanLII\)](#), at para. 54.

[21] The third part of the s. 21 test is that the disclosure could reasonably be expected to result in the harms listed in s. 21(1)(c). A “reasonable expectation of harm” requires evidence well beyond a mere possibility that harm is expected to occur.⁶

[22] I will look at each relevant subsection of section 21(1)(c) and consider if the disclosure of the record could reasonably be expected to cause harm.

Could the disclosure harm significantly the competitive position or interfere significantly with the negotiating position of the third party?

[23] The language of *FOIPOP* states that any interference must be “significant.”⁷ There is nothing here to suggest such a harm will occur.

[24] Despite the third party’s funding application not being approved, it appeared well-written, credible, and complete with the exception of including a detailed budget. The basis for the decision is set out in the record; the third party was deemed ineligible based on the published criteria. Furthermore, it was one of many applications that was not funded.

Could disclosure result in similar information no longer being supplied to the public body when it is in the public interest that similar information continues to be supplied?

[25] The release of the information would not have any chilling effect on similar information being provided to public bodies.

[26] Harm under s. 21(1)(c)(ii) is not found to exist where a third party supplies information where there is a financial incentive for the third party to supply the information.⁸ As such, non-profit organizations would not be deterred by the release of the records.

Could disclosure result in undue financial loss or gain to any person or organization?

[27] There is no reason to believe the competitive position of the third party or its financial position will be significantly impacted.

[28] The third party’s service offering is unique as it is closely linked to the founder’s personal experience. As this offering is unique to the third party, it is not the type of information that someone can simply take and replicate without a similar background and deep subject matter expertise. Furthermore, there was no intellectual property included in the proposal.

[29] As all three criteria must be met to establish that the information must be withheld, I find that the information in the records does not meet the requirements of s. 21(1) of *FOIPOP*.

⁶ *NS Review Report F1-09-100, Nova Scotia Business Inc (Re)*, [2015 CanLII 70493](#) (NS FOIPOP), at para. 44. See also *Mercer Frosst Canada Ltd. v. Canada (Health)*, [\[2012\] 1 SCR 23](#), at para. 201.

⁷ *Atlantic Highways Corp. v. Nova Scotia*, [1997 CanLII 11497 \(NS SC\)](#).

⁸ *NS Review Report 16-01, Nova Scotia Business Inc. (Re)*, [2016 NSOIPC 1 \(CanLII\)](#), at para. 39.

FINDINGS & RECOMMENDATION:

[30] I find that the public body is required to refuse access to certain information under section 20 of *FOIPOP*.

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

[32] I recommend that the public body release the records to the original applicant after severing the above-noted information on page 29 that must be withheld under section 20 of *FOIPOP*.

June 12, 2026

David Nurse
Information and Privacy Commissioner for Nova Scotia