



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

REVIEW REPORT 26-08

July 20, 2026

Halifax Regional Municipality

Summary:

An applicant requested access to records relating to the designation of the Halifax Memorial Library as a surplus property. Halifax Regional Municipality (“the public body”) processed the request and decided to release the responsive records in part, applying various discretionary exemptions to disclosure under the *Municipal Government Act (MGA)*, including sections s. 473 and s. 477.

In its written representations to the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC), the public body committed to release certain information that had been withheld. However, instead of releasing the information, the public body purported to make a new decision on the original access request. In this second decision, the public body applied new discretionary exemptions to withhold some of the information the public body had agreed to disclose. The public body took the position that this second decision was a new decision on the original access request, and that the new decision would be subject to a fresh review by the Commissioner.

After reviewing the overall legislative scheme, the Commissioner concludes that the responsible officer for the public body had no authority to reopen the matter at their own discretion, and the public body’s second decision was unlawful. The Commissioner concludes that there are specific instances during or following the review process when a public body’s decision may be reopened. For example, a supplementary disclosure may be made during the review process with the consent of the parties and the OIPC. Reopening and reconsideration may be also recommended by the Commissioner in a final review report, and the public body may accept and implement that recommendation. A reconsideration may also be ordered by Nova Scotia’s Supreme Court, and the public body would be required to comply.

The Commissioner recommends that the public body release all remaining information withheld under s. 473 and s. 477 in the original access decision to the applicant. As the second decision is unlawful, and of no force and effect, the Commissioner has not considered the validity of any claims raised in that decision, specifically ss. 476 and 474.

INTRODUCTION:

[1] In July 2022, an applicant submitted a request for information under s. 466 of *Part XX* of the *Municipal Government Act (MGA)*. The applicant requested records related to the decision by the public body to designate the Halifax Memorial Library as a surplus property.

[2] The public body processed the application and issued a decision. The responsive records were released in part. The public body withheld certain information because disclosure of the information would disclose the minutes or substance of deliberations held in private (s. 473 of *MGA*) and because disclosure could reasonably be expected to harm the financial or economic interests of the public body (s. 477 of the *MGA*). The public body also withheld not responsive information, third-party personal information (s. 480), solicitor-client privileged information (s. 476), and information that is publicly available for purchase (s. 463). Three issues – including the application of section s. 480 of the *MGA* – were resolved during the informal resolution stage of the review. A fourth issue (s. 476) was also set to resolve because the public body’s application of s. 476 in its original access decision was authorized. However, when the public body issued a new disclosure during this review, it applied s. 476 to information where it had not in its original decision. This resulted in s. 476 remaining as an issue under review, but only where it was newly applied.

ISSUES:

[3] Six issues were initially identified by the OIPC Investigator assigned to this matter. Three issues were resolved at the informal resolution stage, leaving three issues:

1. Was the public body authorized to refuse access to information under s. 473 of the *MGA* because disclosure of the information would disclose the minutes or substance of deliberations held in private?
2. Was the public body authorized to refuse access to information under s. 477 of the *MGA* because disclosure could reasonably be expected to harm the financial or economic interests of the public body?
3. Was the public body authorized to refuse access to information under s. 476 of the *MGA* because it is subject to solicitor-client privilege?

ANALYSIS:

Burden of proof

[4] With respect to the exemptions raised in this matter, the public body bears the burden of proving that the applicant has no right of access to a record or part of a record.

Public body did not provide representations to support its decision to withhold

[5] I will address issues one and two together:

1. Was the public body authorized to refuse access to information under s. 473 of the *MGA* because disclosure of the information would disclose the minutes or substance of deliberations held in private?

2. Was the public body authorized to refuse access to information under s. 477 of the *MGA* because disclosure could reasonably be expected to harm the financial or economic interests of the public body?

[6] In its representations, the public body referred to the original rationale for withholding information under s. 473 and s. 477 but agreed to release the records that had been withheld. The public body did not provide representations explaining or supporting its original decision to withhold the information. With respect to the records withheld under s. 473, the public body stated:

At the time of the decision by the responsible officer in 2022, the report had not been made public. The Municipality declassified and released the report to the public on July 5, 2024. The report can be found here:

<https://cdn.halifax.ca/sites/default/files/documents/city-hall/regional-council/210928rc173.pdf>

In all other instances, the Municipality redacted records discussing the content of the report, or records produced in relation to the decisions coming out of the report, including letters to the Province in relation to recommendation. Now that the report has been released to the public, **the Municipality sees no reason to withhold the records in question.**

The Municipality will review and release the remaining records withheld originally under section 473. (emphasis added)

[7] The public body redacted information under s. 477 in two places. With respect to the records withheld under s. 477, the public body wrote:

The second [redaction], contained at page 214 of the record and redacted pursuant to 477(1)(b) is a link to an HRM website used for producing Council reports. The Municipality's past practice was to redact such information. **Since then, the Municipality has changed its practice, and such information would be released.**

The Municipality will review and release the records unredacted. (emphasis added)

[8] These written statements were not ambiguous. The public body made specific reference to the records under review, agreed they should be released, and committed to releasing them in full.

[9] Relying on the public body's representations, the OIPC Investigator notified the applicant that they would receive a supplementary disclosure from the public body, which was to include the release of all records withheld under s. 473 and s. 477. To this point in time, the informal resolution process worked as it should, and the matter appeared to be on the cusp of being fully resolved to the satisfaction of all involved.

Public body purported to reopen the original access request and make a new decision

[10] Unfortunately, things then went off the rails. On May 11, 2026, the public body purported to issue a new disclosure decision that disclosed some of the records as agreed but withheld certain information under a discretionary exemption (s. 474) that was not cited in the original decision or in the public body's submissions. Additionally, the public body replaced the exemption it was relying on (s. 473) for five pages with another discretionary exemption (s. 476). The public body did rely on s. 476 to withhold some information in the original access decision, and the OIPC Investigator deemed it was authorized. But the public body's application of s. 476 to these five pages was new and was not encapsulated in the OIPC Investigator's opinion.

[11] The public body did not follow the process prescribed by the Commissioner for raising late exemptions during a review.¹ The public body's position is that this second decision is a valid decision on the original access request and would be subject to a fresh review under the *MGA*. Presumably, under the public body's analysis the present review would be moot; however, I reject this approach.

[12] The public body made an error when it purported to reopen the access request and issue a new decision outside of the review process prescribed by legislation. The public body's second decision was unlawful and is of no force and effect. I can only consider the original decision – and the representations on that decision. As the public body did not put forward substantive arguments to support its initial decision to withhold information under sections 473 and 477, I conclude it did not meet its burden of proof to establish that the applicant had no right of access to the records in question.

Statutory decision-makers have limited authority to reopen decisions at their own discretion

[13] Given the importance of the underlying legal issues here, I will take some time to review the authority of a statutory decision-maker – in this case, the responsible officer for the public body – to reopen a decision. It is important to distinguish between reopening at the discretion of the decision-maker and reopening during the review process or following a review or appeal to the Supreme Court of Nova Scotia, and I address each situation below.

[14] The legal doctrine of *functus officio* holds that once a decision is made by a statutory decision-maker (or an administrative tribunal), the original decision-maker's authority is spent. The decision is final and may only be reopened and reconsidered by the original decision-maker if authorized by law. The doctrine of *functus officio* is closely tied to procedural fairness, as it prevents a decision-maker or tribunal from altering or varying their decision, thereby protecting the finality of decisions and contributing to the proper functioning of the legal system.

[15] The authority of a statutory decision-maker to reopen a decision was also summarized well by Justice McVeigh of the Federal Court in *Siyaad v. Canada (Public Safety and Emergency Preparedness)*:

¹ *Guide to Review Process* (December 2020), online: OIPC Nova Scotia
<<https://oipc.novascotia.ca/sites/default/files/publications/OIPC%20Guide%20to%20Review%20Process.pdf>>, p. 4.

[81] ... Justice Sopinka [in *Chandler*] was also clear in stating that, “As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, **that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances.**”

[82] The exceptions laid out in *Chandler* have been revisited by the Federal Court and the Federal Court of Appeal (see *Chopra v Canada (Attorney General)*, 2014 FCA 179 [“*Chopra*”]). In *Chopra*, the Federal Court of Appeal held that a Public Sector Integrity Commissioner was not *functus* when he reopened a closed complaint file. While he lacked statutory authority to do so, in *Chandler*, the SCC explained that administrative tribunals may reopen a decision for which there is no right of appeal.

...

[84] **The general rule held up by Justice Sopinka seems to be clear: the decision cannot be revisited because “the tribunal has changed its mind”. (emphasis added)**²

[16] Canadian courts have found that the analysis of whether a specific decision-maker is *functus officio* must be done on a case-by-case basis, considering the overall legislative scheme; see, for example, the Federal Court decision in *Kurukkal v. Canada (Minister of Citizenship and Immigration)*.³

[17] Canadian courts have also specifically considered whether decision-makers in access to information matters can reopen their decisions. In *AstraZeneca Canada Inc v Health Canada*, at paragraph 63, the Federal Court found that there was no inherent power for the access decision-maker to reopen, but that reopening is permitted after certain triggering events during a review or appeal:

[63] During the course of this litigation under section 44 of the Act, the Respondent decided, after reviewing the affidavit of an officer of the Applicant, that certain information should now be disclosed. This decision to disclose is a reversal of the Respondent's earlier decision that this specific information was exempt from disclosure.

...

[65] The Applicant argues that the Minister has no jurisdiction to make a second decision to disclose and that the original decision cannot be altered during the review of the decision. It puts its case succinctly that the Minister's decision to disclose cannot be made a "moving target". The Applicant relies upon the decision of *Matol Botanical International Inc. v. Canada (Minister of National Health and Welfare)* (1998), 84 F.T.R. 168 (F.C.T.D.).

² *Siyaad v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 448 (CanLII), paras. 81-82 and 84.

³ *Kurukkal v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 695 (CanLII), [2010] 3 FCR 195.

[66] For the reasons given by Justice Noël in *Matol*, I agree that the Minister cannot initiate another disclosure process after the Minister has made the decision not to disclose some of the information requested. **There must be some other triggering event provided for under the Act to allow for this additional disclosure.**⁴ (emphasis added.)

Responsible officer for the public body has no authority to reopen decision at their own discretion

[18] As noted above, there are various factors to consider when assessing whether a statutory decision-maker is *functus officio* or has authority to reopen a decision at their own discretion. I have analyzed the access to information regime in Nova Scotia based on the case law above and determined that the responsible officer for the public body has no authority to reopen a decision on an access to information request at their own discretion outside of the review or appeal processes. I found the following factors compelling:

- There is no express authority for the responsible officer for a public body to reopen a decision independent of a review by the Commissioner or an appeal to the Supreme Court.
- The public body is legally obligated to make its decision on the original access request within a set time period, which may only be extended in accordance with the legislation. Other steps are also time-limited, such as the consultation process for third parties, confirming the legislative intent to set out a comprehensive step-by-step decision-making and appeal framework.
- There are two paths for review/appeal set out in the legislation. If there were no right of appeal or review, this would weigh in favour of finding that an implied authority to reopen exists (as in *Chopra* cited above). In our freedom of information legislation, there are two time-limited routes for an appeal: a request for a review by the Commissioner or a direct appeal to the Nova Scotia Supreme Court.

[19] I have also concluded that there are, as in the *AstraZeneca* decision, certain “triggering events” which may authorize a reopening during or following the review process or an appeal to court. The *MGA* authorizes mediation (s. 489); for this authority to be effective, the parties must have some discretion to modify their positions, and consent to actions by the public body. For example, it is common for the parties to consent to a supplementary disclosure by the public body, which sees additional information released to the applicant. A reopening may also be the agreed outcome of a negotiated informal resolution, but again, this is with the consent of the parties and the OIPC.

[20] Reopening and reconsideration may be also recommended by the Commissioner in a final review report, and it is clear that a public body may accept and implement that recommendation (s. 493(1)(a)). A reconsideration may also be ordered by Nova Scotia’s Supreme Court, and the public body would be required to comply (s. 495(5)). This aligns with the Federal Court’s

⁴ *AstraZeneca Canada Inc. v. Health Canada*, [2005 FC 1451 \(CanLII\)](#), paras. 63 and 65-66.

analysis in *Porter Airlines Inc. v. Canada (Attorney General)* which discussed the “triggering events” in the *AstraZeneca* decision, beginning at para 50:

[50] Thus, *AstraZeneca*, above, upheld *Matol Botanical*, above, in finding that a Minister cannot, on his or her own initiative, reverse themselves and start the process anew with the necessary notices, representations and procedural steps.

[51] Rather, *AstraZeneca*, above, identifies two triggering events or opportunities provided for in the Act where a Minister may change his or her original decision, or at least take a position inconsistent with the original decision:

- i. pursuant to section 29 where the Minister, may, upon the Information Commissioner’s recommendation decide to disclose information which the Minister originally decided was exempt from disclosure; or
- ii. pursuant to a section 44 court review process. (emphasis added)⁵

Was the public body authorized to refuse access to information under s. 476 of the *MGA* because it is subject to solicitor-client privilege?

Late raised exemptions are permitted – to a point

[21] In its original access decision, the public body withheld pages 57-61 of the records under s. 473. The public body failed to correctly identify these five pages of records as potentially exempt under s. 476, and then the public body failed to raise this as a late exemption during the review process. The Commissioner has published clear rules for the late raising of exemptions,⁶ and the OIPC is more than willing to work with public bodies through the review process to address serious issues, such as the late identification of solicitor-client records. However, the public body must engage in a timely manner and abide by the timeline set out by the Commissioner for late-claimed exemptions.

[22] In this case, the public body did not raise solicitor-client privilege as a potential exemption on pages 57-61 of the records during the review process. As noted above, the second decision of the public body is unlawful, and of no force and effect. I will not consider the validity of claims raised in that decision.

FINDING & RECOMMENDATION:

[23] I find the public body erred when it purported to reopen the access request and issue a new decision outside of the review process prescribed by legislation. The second decision is unlawful, and of no force and effect. I have not considered the validity of any claims raised in that decision.

⁵ *Porter Airlines Inc. v. Canada (Attorney General)*, 2013 FC 780 (CanLII), paras. 50-51.

⁶ *Guide to Review Process* (December 2020), online: OIPC Nova Scotia <<https://oipc.novascotia.ca/sites/default/files/publications/OIPC%20Guide%20to%20Review%20Process.pdf>>, p. 4.

[24] Therefore, I recommend that within 45 days, the public body release all remaining information withheld in its original access decision under s. 473 and s. 477 to the applicant.

July 20, 2026

David Nurse
Information and Privacy Commissioner for Nova Scotia