

**THE NOVA SCOTIA FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT**

**A REQUEST FOR REVIEW** of a decision of the **DEPARTMENT OF COMMUNITY SERVICES** to withhold and sever documents sought by the Applicant.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** **December 19<sup>th</sup>, 2002**

**ISSUE:** Whether Sections 16 and 20(1) support the decision of the Department of Community Services to sever documents related to this application.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act** (the **Act**), the Applicant asked that I review the decision of the Department of Community Services (the Department) in response to his request dated August 15, 2002 for his personal information, “from last FOIPOP application up to this date, electronic or otherwise”, held by the Department.

The Department, in its decision, told the Applicant he was being provided with some of the records requested. Other records were severed because, according to the Department, disclosure would be an unreasonable invasion of a third party’s personal privacy and would reveal information subject to solicitor-client privilege. The relevant exemptions are found under **Sections 16, 20(1) and 20(3)(a)**. These sections provide as follows:

**16** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor-client privilege. 1993, c. 5, s. 16.

**20 (1)** The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

**(3)** A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, dental, psychiatric, psychological or other health-care history, diagnosis, condition, treatment or evaluation;

In accordance with **Section 38** I have been provided with copies of the relevant documents which can be described as the severed portions of a one-page memorandum [section 16] and the severed portions of 3 pages of caseworker's notes [section 20(3)(a)].

**Conclusions:**

*Personal information:*

The caseworker's notes do not contain the personal information of the Applicant and so are not responsive to the application. The Applicant did not provide a signed consent form from the individual this information is about.

*Solicitor-client privilege:*

In McNairn and Woodbury's *Government Information: Access and Privacy*, solicitor-client privilege is described as:

a substantive rule for the exclusion of evidence in legal proceedings.  
A person who is privy to matters that originated in privileged

circumstances is entitled to resist disclosure of those matters. Information protected by the privilege includes confidential communications, passing both ways, between a lawyer and his or her client that took place in the course of a professional relationship, whether or not in contemplation of litigation. However, the communication must be in the context of the client seeking legal advice from the solicitor (at 3-37).

After reviewing the documents I have concluded that the memorandum cannot be protected from disclosure by solicitor-client privilege. Section 16 specifically recognizes and incorporates the common law concept of solicitor-client privilege which is not defined in the **Act** and therefore must be defined by the common law concept. In order for this to apply there must be an existing or contemplated relationship between a client and a solicitor. I conclude that there is no basis for a claim of either "contemplated litigation privilege" or "legal professional privilege" on this memorandum.

**Recommendation:**

That the Department disclose the memorandum.

**Section 40** of the Act requires the Department of Community Services to make a decision on this recommendation within thirty days of receiving this Report and to notify the Applicant and the Review Officer, in writing, of the decision.

**Note:**

In the past I have advised this applicant that he is abusing this legislation by filing countless applications over the past few years for his own personal information. In many cases he seeks regular updates from those departments and public bodies filing a series of applications. This Department alone has received 24 applications from him. Departments and the Review Officer are spending an inordinate amount of time on his applications and appeals. In other jurisdictions, the access legislation allows a public body to dismiss “frivolous and vexatious” applications. The Nova Scotia Act contains no such provision in the expectation that the Act will be used responsibly. The great majority of applications meet that expectation.

**DATED** at Halifax, Nova Scotia this 19<sup>th</sup> day of December, 2002.

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Darce Fardy, Review Officer