

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

A REQUEST FOR REVIEW of a decision of the **DEPARTMENT OF NATURAL RESOURCES** to deny access to a report on all-terrain vehicle safety.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **February 27th, 2003**

ISSUE: Whether the report can be denied under the exemption found in Section 14(1) - advice.

In a Request for Review, under the **Freedom of Information and Protection of Privacy Act**, dated December 6, 2002, the Applicant asked that I recommend to the Department of Natural Resources (the Department) that it disclose a copy of an internal report on the use of all-terrain vehicles.

The Department turned down the request, citing an exemption under **Section 14(1)**, which allows a public body to:

refuse to disclose to an applicant information that would reveal advice, recommendations or draft regulations developed by or for a public body or a minister.

In its submission to the Review in support of its decision, the Department said:

(t)his document is a work in progress and contains recommendations developed by an interdepartmental committee and submitted to Deputy Ministers for review.

During the Review process after exchanges of communications between the Review Officer and the Department, the Department agreed to disclose the portions of the report under a “Background” heading. In a second decision, also during the Review process, the Department disclosed all information under the headings “Goal” and “Objective”. The Department is now denying access only to those portions under the heading “Strategy”.

The Applicant argues that the entire report meets the definition of “background information” found in **Section 3(1)(a)(x)** and must be disclosed in accordance with Section 14(2) which obliges a public body to disclose “background information” used by the public body:

3(1)(a)(x) A report on the results of field research undertaken before a policy proposal is formulated.

The Department doesn’t agree. It says the report was not based on the results of field research. The Department also said it expected the report to be made public very soon.

Conclusions:

The matter to settle, now that the parts of the report under “Background”, “Goal”, and “Objective” have been disclosed, is whether the parts under the heading “Strategy” contain information which constitutes advice and if they do, does Section 14(2) apply.

“Advice” has been defined by the Alberta Information and Privacy Commissioner as “an opinion, view or judgement” based on the knowledge and experience of an individual and “expressed to assist the recipient whether to act and, if so, how” (Order 97-007). The Ontario Commissioner accepts “thoughts” and “views” as well as “advice,” if they lead to a suggested course of Action (Order M-457).

McNairn and Woodbury in *Government Information - Access and Privacy* at 3-25 say “it is often difficult to separate the factual elements from an expression of opinion”. It cited the Federal Court of Appeal which ruled, as an example, that “criteria” could be regarded as “implicit advice”.

I am satisfied that the information under “Strategy” contains advice and can be denied under s.14(1), unless s.14(2) applies.

Other access and privacy legislation in the country has the equivalent of s.3(1)(a)(x) of the Nova Scotia legislation. The Ontario Information and Privacy Commission defines “field research” as, “a systematic investigation, conducted away from the laboratory and in the natural environment, of the study of materials and sources for the purpose of establishing facts and new conclusions” (Order P-763). The *Concise Oxford Dictionary* (8th edition) defines “field” to mean “...carried out or working in the natural environment, not in a laboratory, etc.”

The report at issue here is called “Strategies to Promote the Responsible Use of Off-Highway Vehicles in Nova Scotia”. The study was done by a group called “the Off-Highway Vehicle Working Group”. In my view, given the assignment handed to the study group, it is reasonable to conclude that that field research was used by the committee even if the committee itself met at the Department’s offices.

I remind the Department that the Nova Scotia Supreme Court believes the **Act** should be “construed liberally in light of its stated purpose”(McLaughlin v. Halifax-Dartmouth Bridge Commission (1993) 125 N.S.R. (2d) 288). Given the definition found in s.3(1)(a)(x), it is my view a liberal interpretation would lead to the disclosure of the entire report.

I believe this application to be one of those which would have prompted the Department, even before considering any exemptions, to ask itself “What harm would disclosure do?” In my view it’s a reasonable question to ask. Having read the report carefully I believe one would expect the public body to conclude, in this case, that on balance, the obligations for openness and accountability would outweigh any harm that may follow the disclosure of the report.

Recommendation:

That the Department disclose, in addition to the information it has agreed to disclose:

- the sections under “Strategy”.

...

Section 40 obliges the Department to make a decision on this recommendation within 30 days of receiving the Review Officer’s Report and to make that decision known, in writing, to the Applicant and the Review Officer. I urge the Department, having promised that the report would be made public soon, to not wait the full 30 days before making a decision.

Dated at Halifax, Nova Scotia this 27th day of February, 2003.

Darce Fardy, Review Officer