

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

**A REQUEST FOR REVIEW** of a decision of the **DEPARTMENT OF HEALTH** to sever documents related to suggested changes to long term care delivery.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** **March 5<sup>th</sup>, 2003**

**ISSUE:** Whether the severing of documents related to changes to long term care delivery is supported by the exemptions cited.

In a Request for Review in accordance with the **Freedom of Information and Protection of Privacy Act**, dated December 9, 2002, the Applicant asked that I recommend to the Department of Health (the Department) that it disclose all of the information asked for.

The Applicant requested “(a)ny correspondence, memos, directives and other material from January 1, 2002 to the present time (October 23, 2002, the date the Application was filed) related to suggested changes to long term care delivery, excluding single entry access, but including financial assessments of seniors and nursing home fees”.

The Department replied that the application was being partially granted and it provided the Applicant with a list of 37 documents by number, date, description, the exemption cited and comments on types of information that was severed from the documents and denied to the Applicant.

The Department cited exemptions under:

- Section 14(1) - advice or recommendations to a Minister;
- Section 13(1) - advice to Cabinet;
- Section 20 - protection of personal privacy;
- Section 17(1)(b) - harm to the Government's interests; and
- Section 21 - confidential information of third parties.

During mediation, the Applicant said she was not looking for personal information so information denied under s.20 is not an issue in this Review. The Applicant also said she did not want a document, identified as #27.

Also during mediation, the Department disclosed a considerable amount of information it had originally withheld from the Applicant.

For this Review I am dealing with seven documents denied in part and seven documents withheld in their entirety.

**Conclusions:**

I will comment on each document by number.

Document #5 - In my view, s.14(1) supports the severing in this e-mail except for the first sentence of the severed portion. Section 14(1) gives the Department the right to use its discretion to refuse to provide access to documents containing advice to the Minister. Section 14(2) requires the Department to disclose any background information used to determine what

advice to provide to the minister. I define that severed sentence as “background information”, because it is “factual” and must be disclosed in accordance with s.14(2).

Document #6 - The Department severed this document, which contains an exchange of e-mails. Of two of the e-mails severed, one is denied under the exemption found in s.14(1) and the other under s.13(1). Section 13(1) allows the Department to refuse to disclose information that contains advice to the Cabinet. Section 14(1) allows the Department to deny access to documents containing advice to a minister. I am satisfied these two e-mails are appropriately denied to the Applicant.

Document #16 - This includes a Memorandum to Cabinet and a Communications Plan prepared for the Cabinet. I am satisfied that the remaining severed portions of both of those documents are appropriately denied in accordance with s.13(1).

Document #24 - The Department disclosed some of the financial figures under Long Term Care Nursing Home Budgeted Costs - Fiscal Year 2002-2003. The Department cited s.17(1)(b) to support the severing of this document. It reads:

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the Government of Nova Scotia or the ability of the Government to manage the economy and, without restricting the generality of the foregoing, may refuse to disclose the following information:

(b) financial, commercial, scientific or technical information that belongs to a public body or the Government of Nova Scotia and that has, or is reasonably likely to have, monetary value.

The severed information contains financial information on long-term care for the fiscal year 2002-2003 and, in my view, it meets the requirements of s.17(1).

The Department disclosed part of the document but denied the rest. It has not convinced me that the severed information has a “monetary value” to the Department. However, part (b) does not restrict the generality of s.17(1) and I am satisfied that disclosure could reasonably be expected to harm the financial interests of the Department.

Document #33 - From this document the Department disclosed part of the “Salary Breakdown by Category” for Long Term Care for 2002-2003. It cited exemptions under s.21(1) and s.17(1). I am satisfied that section 17(1) supports the denial of the remainder of the document for the same reasons given above. There is, therefore, no need for me to consider the exemption found in s.21(1).

Document #35 - This is a document titled “Respect and Fairness for Citizens”. The Department disclosed the first three pages. I am satisfied that the denial of the remaining four pages is supported by s.13(1) because it contains advice to the Cabinet and contains no background information.

Document #36 - This is a 10-page document. Five of them have been disclosed in their entirety and five have been denied in their entirety. The document is titled “Long Term Care Options”. The five disclosed pages provide statistics, financial and otherwise. The remainder contain advice to Cabinet and can be denied under s.13(1).

The rest of the documents have been withheld in their entirety.

Document #18 contains analyses of funding issues and was prepared for the Minister. It is denied under s.14(1) and s.17(1)(b). I agree that the Department may deny access to this information in accordance with s.14(1). There is no need for me to consider s.17(1)(b).

Documents #19, #21 and #22 contain policy issues and financial scenarios which can be considered advice under s.14(1). This exemption supports the decision to deny access.

Document #25 contains what the Department describes as Operational Analysis and confidential information about third parties. It was denied under s.21(1). This is a mandatory exemption which requires the Department to refuse to disclose it if it contains financial information of a third party which was provided to the Department in confidence and which, if disclosed could reasonably be expected to harm significantly the competitive position of a third party. All three conditions must be met and I am satisfied they are. Although Section 22 requires a public body to notify the third parties, “where practicable”, there is no evidence they were notified in this case. I’m satisfied it would not be practicable.

Documents #28 to #32 contain nursing care costs by nursing home and are denied under s.17(1) and s.21(1). I have concluded they can be denied under s.21(1) and here is no need for me to consider s.17(1).

**Recommendation:**

That the Department disclose, in addition to what it had already disclosed, the first sentence of the severed portion of document #5.

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**Section 40** requires the Department 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 that decision.

**Dated** at Halifax, Nova Scotia this 5<sup>th</sup> day of March, 2003.

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Darce Fardy, Review Officer