

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

A REQUEST FOR REVIEW of a decision of the **DEPARTMENT OF JUSTICE** with respect to fees for processing an application for access.

REVIEW OFFICER: Darce Fardy

REPORT DATE: April 23, 2002

ISSUE: Whether fees for access should be waived because the records sought relate to a matter of public interest.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated February 7, 2002, the Applicant asked that I recommend to the Department of Justice (the Department) that it waive fees for processing his application.

The Applicant had asked for:

Records and background information pertaining to consideration given to the distance between Miller Composting Corporation and the proposed location for correctional facilities in the site selection process that resulted in the Central Nova Scotia Correctional Facility being located at its present site in Burnside Industrial Park.

Records and background information pertaining to consideration given to the 'Nova Scotia Department of the Environment Composting Facility Guidelines' (March 1998) in the site selection process that resulted in the Central Nova Scotia

Correctional Facility being located at its present site in Burnside Industrial Park.

The Applicant wanted the records to include all correspondence between the Department of Justice and the Department of the Environment with respect to the government's composting facility guidelines as they relate to the location of the correctional facilities.

In accordance with s.11(5) the Department provided the Applicant with an estimate of the cost of processing the Application (\$365.00) and explained that "the broad scope of both applications involves searching over a 2+year period not only to determine relevant records, but also to make decisions on disclosure." However, the Department offered to waive all fees if the Applicant agreed to confine the application to records involving "correspondence" and to narrow the time frame for the records to, from January 1, 2001 to the date of his application, November 26, 2001.

The Applicant chose not to accept that offer because he believes the **Act** supports his request for a complete fee waiver.

Section 11 of the **Act** and s.6 of the Regulations deal with the question of fees. Subsection 11(2) allows a public body to charge fees for locating records and for preparing them for disclosure. Section 6 of the Regulations sets the fees: \$20.00 an hour for locating and preparing the records and 20 cents a page for copying. (Fee increases, effective April 4, 2002, do not apply to this Review).

Subsection 11(7) allows a public body to waive fees if:

- (a) the applicant cannot afford to pay or for any other reason it is fair to excuse payment; or
- (b) the record relates to a matter of public interest, including the environment or public health and safety.

In a representation to the Review, the Applicant referred to factors which I have used in other Reviews, including FI-00-102. The Applicant believes the issue relates to a matter of public interest rather than private; that the subject matter relates to a public health or safety issue; that the dissemination of the records would yield a public interest by exposing a public health or safety concern; and that disclosure would contribute to an understanding of an important public health and safety issue.

Continuing his public interest argument, the Applicant claims the government, elected in 1999, changed the proposed location of the correctional facilities for political reasons and in so doing failed to comply with its own environmental guidelines.

With respect to public health considerations, the Applicant says the government created an occupational health and safety hazard for inmates and facility staff because of the Burnside location's proximity to a composting company.

The Department says there are an estimated 550 documents related to the decision to build the correctional facilities which must be examined. It believes a fee is fair and appropriate.

Conclusions:

“Public interest” is not defined in the **Act**. I agree with the Information and Privacy Commissioner of British Columbia who believes that “(a)ny attempt to define exhaustively or finally what is meant by the term ‘public interest’ is doomed to failure” (Order # 332-1999).

There is no question that the present government’s decision to overturn the decision of the previous government to build the correctional facility in Bedford aroused much public interest at the time, as did the original decision of the former government. However, I must consider whether the matter is currently capturing the same public interest as it did at the time.

Concerns have also been expressed by some of the staff of the correctional facilities because of odours from the composting site. I have to consider whether the concerns expressed amount to an environmental matter potentially serious enough to warrant a complete fee waiver. I have concluded they do not. It is my view that it is reasonable for the Department to charge fees.

The issues that arose when plans were underway to build the facilities in Bedford, and the subsequent decision to build in Dartmouth, are no longer attracting public attention to the extent that an argument for a waiver of fees for the reasons provided by the Applicant would be effective.

I also took into account the offer of the Department to deal with the correspondence over a shorter time period at no cost. I view that as a conciliatory offer. If the Applicant had accepted the offer, he could, after reading the disclosed correspondence,

ask for a Review of any decision made to sever or deny documents. The Applicant could also determine, having seen disclosed communications, whether it would be worthwhile for him to make another application for further access.

Recommendations:

That the Applicant accept the offer of the Department to consider the correspondence from January 2001 to the date of his application, without fee and, if he does, that the Department expedite the process.

Dated at Halifax, Nova Scotia

Darce Fardy, Review Officer