

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

A REQUEST FOR REVIEW of a decision of the **UNIVERSITY COLLEGE OF CAPE BRETON** to destroy a document containing personal information.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **March 19, 2002**

ISSUE: Whether the University College acted in accordance with this **Act** when it destroyed documents containing personal information related to a complaint that had been withdrawn.

In a Request for Review, under the **Freedom of Information and Protection of Privacy Act**, dated February 11, 2002, the Applicant asked that I review the response he received to an application for access to documents believed in the custody of the University College of Cape Breton (UCCB).

The Applicant had asked for all documents related “to the Ethics Committee charge” against a student in June of 2001. The University replied that “we have no records that respond to your application”.

The Applicant apparently got the answer he expected and wants me to comment on the appropriateness of destroying documents containing personal information.

This matter concerns a complaint made to the UCCB Ethics Committee against a former President of the Students' Union. (Students' Union Presidents are also members of the UCCB's Board of Governors). The former union president was informed by letter on November 21, 2001, some five months after the complaint was made, that it had been withdrawn by the complainant for personal reasons. The same letter added that because "no proceedings have gone forward or recommendations made, all materials and correspondence associated with this matter have been destroyed." The letter said this was done "(I)n accordance with the practice of the University College."

On receiving the Application for access to related documents, UCCB's Administrator for this **Act** wrote to the three university officials involved, one of them the complainant, to inform them of the Application and to ask them to check their files to ascertain whether they had in their possession any records related to the matter. All three replied that they had no copies of relevant documents.

The Students' Union has copies of most of the documents, some of which appear on its web site. The document it does not have, and the subject of the complaint doesn't have, is a copy of the letter of complaint.

Among the documents provided to me by the Students' Union was a letter indicating UCCB had made a settlement offer to the subject of the complaint which was rejected. The Students' Union says the settlement offer was made verbally. The letter provided to me was from the solicitor for the subject of the complaint to a UCCB solicitor confirming "your Without Prejudice offer to settle this matter on the basis of my client issuing an apology". UCCB says the

approach to the subject of the complaint was an informal, verbal attempt to reach a resolution of the matter. It said there was no settlement and, therefore, no decision.

Conclusions:

Letters of complaint contain the “personal information” of the individual who is the subject of the complaint and who therefore has the right of access to the documents outlining the complaint. “Personal information” is defined in s.3(1)(i) as, among other things, an individual’s name, address or telephone number and “anyone else’s opinions about the individual”. **Section 2(a)** states the purpose of the **Act**, which includes “giving individuals a right of access to, and a right to correction of, personal information about themselves.”

A public body’s obligations with respect to the retention of personal information can be found in **Section 24(4)**:

Where a public body uses an individual’s personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

The issue at hand is whether the informal, verbal attempt at resolving the matter, was a decision. UCCB has argued that the withdrawal of the complaint meant no decision was made. The Students’ Union believes the informal approach for a settlement was a decision. The solicitor for the subject of the complaint understood it to be “an offer to settle” and used this phrase in a letter to the UCCB solicitor dated September 19, 2001.

According to Black's Law Dictionary the word "decision" has no fixed legal meaning. This leads me to agree with the Students' Union argument that UCCB made a decision "that directly affects" the subject of the complaint when it attempted to resolve the matter.

The Nova Scotia Courts expect public bodies to adopt a liberal interpretation of the purpose of this Act. The Nova Scotia Court of Appeals has concluded that this Act "should be construed liberally in light of its stated purpose" and that "doubt ought to be resolved in favour of disclosure". [*McLaughlin v. Halifax-Dartmouth Bridge Commission* (1993) 125 N.S.R. (2d) 288 at pp 292-293]

I conclude that UCCB has not lived up to its obligations with respect to the retention of personal information found in Section 24(4).

Recommendations:

That UCCB

- Reexamine its practices with respect to the retention of personal information in light of the demands of Section 24(4).

Dated at Halifax, Nova Scotia, March 19, 2002.

Darce Fardy, Review Officer