

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

A **REQUEST FOR REVIEW** of a decision of the **EXECUTIVE COUNCIL** to sever documents related to the decision of the Government to raise tobacco taxes.

REVIEW OFFICER: Darce Fardy

REPORT DATE: April 12, 2002

ISSUE: Whether **Sections 13(1)** and **14(1)** support the decision to sever documents related to the application.

In a Request for Review, under the **Freedom of Information and Protection of Privacy Act**, dated February 14, 2002, the Applicant asked that I review the decision of the Executive Council to sever documents related to his request for “background information” used to provide explanations or analysis to the Executive Council to assist it in making the decision to raise tobacco taxes.

The Applicant was told he was entitled to “part of a briefing note on the tobacco tax proposal which was part of a presentation to Cabinet.” He was given the section of the briefing note called “BACKGROUND” which had been severed. The Executive Council cited exemptions under **Sections 13(1)** and **14(1)** of the **Act** which read:

- 13(1) The head of a public body may refuse to disclose to an Applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted

or prepared for submission to the Executive Council or any of its committees.

- 14(1) The head of a public body may 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.

The Applicant believes the Executive Council relied too heavily on those exemptions.

The Executive Council does not agree. It said that other sections of the briefing note referred to issues raised and discussed, and recommendations. It severed sentences from the section “BACKGROUND” because “although labelled ‘Background’ are not factual background information, but are policy considerations presented to the Executive Council.”

Conclusions:

The Executive Council appears to suggest that the severed sentences from the “Background” are not really background information under the Act because they are not factual. Section 3(1)(a) gives the term “background information” a dozen definitions. Factual material is one of them. Other definitions include: “economic forecast,” “cost estimate,” and “feasibility study” (see my Review FI-01-150).

To help determine whether all of the withheld information contains the “substance of deliberations” of the Executive Council we have the *O'Connor* decision which, although under appeal by the Government, is at this time the foremost authority in Nova Scotia on s.13. Justice Saunders said the question to be asked when determining if a document contains the substance of deliberations of the Executive Council is: “Is it likely that the information would permit the reader

to draw accurate inferences about Cabinet deliberations?” He said there is no need to give a broad, expansive definition to “substance of deliberations” (*O’Connor v. Nova Scotia*, 2001 NSCA #132).

I am satisfied that most of the withheld information contains the “substance of deliberations” of the Executive Council. I must now determine if the Executive Council has denied access to “background information” as defined in the Act.

In s.13(2) we find that s.13(1) does not apply to

- (c) background information in a record the purpose of which is to present explanations or analysis to the Executive Council...

In my Review, FI-01-150, I found that the public body had denied access to documents containing an “economic forecast” and a “feasibility study” as found in the definition of “background information.”

It is my view that the sentences severed and withheld from the “BACKGROUND” section of the document include a forecast and should be disclosed in accordance with s.13(2). The remainder of the document is appropriately withheld.

Recommendation:

That the Executive Council disclose:

- all of the information under “BACKGROUND”

Dated at Halifax, Nova Scotia April 12, 2002

Darce Fardy, Review Officer

