

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

A REQUEST FOR REVIEW of a decision of the **DEPARTMENT OF COMMUNITY SERVICES** to sever “advice” to the Minister from documents provided to an applicant.

REVIEW OFFICER: **Darce Fardy**

REPORT DATE: **May 7, 2002**

ISSUE: Whether information denied the Applicant can be described as “advice” to a minister and exempt from disclosure under Section 14(1).

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated February 25, 2002, the Applicant asked that I review a decision of the **Department of Community Services** (the Department) to claim an exemption under s.14(1), “advice to a minister,” on information he is seeking.

The Applicant had asked for copies of “records and background information” related to fourteen different aspects of the Family Assistance Program, ranging from “(a) the number of applications received in 2000” to “(n) any and all briefing notes and advice to the Minister pertaining to the Program.”

The Applicant was provided with copies of records some of which were severed of information the Department claimed was exempt under s.14(1) which allows a public body to refuse to disclose records containing advice given to a public body or minister.

In response to one of his requests the Applicant was told that “(t)here are no specific policies in place in respect to the Family Assistance Program,” but that the released documents “make it clear what the criteria are for qualifying for the Program.”

The Department noted it was providing the Applicant with a copy of the Communications Plan/Strategy documents and briefing notes with “advice” severed.

The Applicant cited Orders of the Ontario Information and Privacy Commissioner (118 and P-883) related to s.13(1) of the Ontario Act which exempts “advice” to the government and is similar to s.14(1) of the Nova Scotia FOIPOP Act. The Ontario Commissioner ruled that “advice” and “recommendations” must relate to a suggested course of action which will ultimately be accepted or rejected by a public body.

The Applicant drew attention to several severed documents, which were identified as “Talking Points for Caucus,” and argued that because they were disclosed to members of the party caucus outside the Cabinet they could not be denied under s.14(1).

In accordance with s.38 I have been provided with copies of the relevant documents.

Conclusions:

Although the Applicant did not argue specifically that the Cabinet had waived the right to deny access to information because it had been shared with the party caucus, he appeared to allude to it when he raised the matter of the “Talking Points to Caucus.” This issue was addressed by the Nova Scotia Supreme Court in *O’Connor v Her Majesty the Queen*, (2001 NSSC 6). In this case, the Appellant argued that because the subject matter was shared beyond

Cabinet any privilege pertaining to the documents had been waived. Justice MacDonald did not agree and said: “This type of limited exposure should not automatically vitiate cabinet confidentiality.”

I agree with the definition of “advice” and “recommendations” found in Orders of the Ontario Information and Privacy Commissioner cited by the Applicant and have used it in my own Reviews.

In earlier Reviews I have agreed that proposed answers to predicted questions for a minister to use if she/he saw fit met the accepted definition of “advice” because they recommend a response to be used by a minister which she/he may use or not. In this case some “Q’s and A’s” were severed and some were provided. A decision to provide some and not others does not automatically mean that all “Q’s and A’s” provided to a minister must be disclosed. Section 14(1) gives the Department the discretion to disclose or deny.

In several of the briefing notes, sections headed “Key Messages” are severed. The key messages are recommended points for a minister to raise and fit under the s.14(1) exemption.

I have concluded that s.14(1) supports the decision of the Department to sever.

DATED in Halifax, Nova Scotia, on May 7, 2002

Darce Fardy, Review Officer