

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

**A REQUEST FOR REVIEW** of a decision of the **SYDNEY STEEL CORPORATION** with respect to the Application for access to documents related to the lease agreement related to the Sysco site in Sydney.

**REVIEW OFFICER:** **Darce Fardy**

**DATE:** **August 28, 2002**

**ISSUE:** Whether Sysco acted in accordance with the **Act** in denying documents related to the application.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated May 28, 2002, the Applicant asked that I review the decision of the Sydney Steel Corporation (Sysco) with respect to his Application.

The matter concerns Sysco's Cabinet authorization, through its agents Ernst & Young, to enter into a lease agreement transferring Sysco's piers, docking, storage and rail facilities to Provincial Energy Ventures Limited.

The Application was sent to the Office of Economic Development which transferred it to Sysco. It asked for a "copy of lease agreement between Sysco and AMCI/Provincial Energy Venture and any relevant correspondence, e-mails, and other such records in preparation of said lease". Sysco provided him with copies of

- the lease agreement dated December 12, 2001 between Sysco and Provincial Energy Ventures Limited (PEV);

- the Order-in-Council 2001-590A dated December 17, 2002 with a “Schedule A” attached, which contains what the document described as “Advice to the Executive Council - Terms and Conditions of Proposed Lease to PEV”;
- the Order-in-Council 2002-47 amending 2001-590A, with a Schedule A attached describing the limits of the property.
- a letter dated October 19, 2001 from Provincial Energy Ventures Ltd to Ernst and Young Inc., the agents for Sysco; and
- a letter dated August 3, 2001 from and to the same parties.

In a letter which accompanied the Request for Review, the Applicant said that when the President of Sysco passed over the above documents at a meeting between the two, he noticed that only a portion of the requested documents had been provided. The Applicant said Sysco should have addressed the request for e-mails and other associated documents.

The President of Sysco, in a representation to the Review, said that he had expected his meeting with the Applicant and the documents provided, coupled with a briefing provided to the Applicant as well as to the media, to satisfy the Application. He said processing e-mails and other correspondence “did not seem an effective use of resources for me to attempt an estimate of the time and resources needed to review and enumerate each and every document which might be related to the Application”.

He also said in his representation to the Review that the e-mails would be privileged, in any event, as solicitor-client communications (**Section 16**), or exempt under **Section 13(1)** which allows a public body to deny access to documents containing the substance of deliberations of the Executive Council. (All of the relevant documents are contained on e-mail.)

In a meeting with the Review Officer, the President of Sysco explained why there would be little or no communications between Sysco and government departments or between Sysco and the Cabinet. The President of Sysco reports to a Board of Directors. Briefings to the Board and to the Cabinet are usually oral. Sysco was tasked by the Government to lease the properties. Sysco prepared and administered the Request for Proposals and negotiated with the proponents.

**Conclusions:**

The Applicant is right to be dissatisfied with the way his Application was responded to. The request for relevant documents and e-mails should have been formally addressed. However, I see no evidence that Sysco was attempting to subvert the **Act** or hide documents.

The Applicant was also dissatisfied with the length of time it took to get a response to his Application. He believes the transfer from the Office of Economic Development to Sysco “contributed unnecessarily” to the delay. The Application was dated April 3, 2002 and the documents were provided May 27. **Section 7(2)** requires a public body to respond to an application within thirty days of receiving it. The time for reply can be extended under certain conditions but, in this case, no delay was noted.

I have a copy of a letter to the Applicant from the Office of Economic Development, dated April 10, telling him the Application had been transferred to Sysco in accordance with **Section 10(1)** of the **Act**. This letter referred to an earlier communication from OED to the Applicant dated April 8. The transfer must be made within ten days of receipt of the application. According to OED's letter to the Applicant the application was transferred within seven days. I am satisfied the transfer was appropriate.

Sysco wrote to the Applicant in a letter dated April 9, 2002, asking for the \$5.00 application fee "(s)hould you wish to pursue your request". Under normal circumstances I would expect a public body to begin working on an application if it has no reason to think the application fee will not be paid.

However, given all the circumstances, I cannot conclude that the OED or Sysco were negligent in responding to the application in accordance with **Section 10(1)**.

In accordance with the requirements of **Section 38**, I was provided with access to the e-mails. I concluded that, although Sysco referred to e-mails and "other documents", all of the information related to the Application is on e-mail, except for those already provided to the Applicant.

I am also satisfied that the e-mails are either exempt under Section 16, or are not relevant to the Application.

**Recommendation:**

That Sysco write to the Applicant to confirm its decision.

**Section 40(1)** requires Sysco 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 the decision.

**DATED** this 28<sup>th</sup> day of August, 2002, in Halifax, Nova Scotia.

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Darce Fardy, Review Officer