

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

A REQUEST FOR REVIEW of a decision of the **SOUTH SHORE HEALTH/SOUTH SHORE REGIONAL HOSPITAL** to provide access to only a part of a consultant's report.

REVIEW OFFICER: Darce Fardy

REPORT DATE: September 26th, 2002

ISSUES: Whether the exemption under **Section 14(1)** (advice to a public body) supports the decision to sever the consultant's report before providing it to the Applicant.

Whether the documents relate to the management of personnel or the administration of a public body and can be denied under **s.17(1)**.

Whether the information should be disclosed because it is "clearly in the public interest".

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated July 17, 2002, the Applicant asked that I recommend to South Shore Health that it change its decision with respect to his Application and provide him with the entire report he asked for.

South Shore Health was asked for copies of all records, including background information, pertaining to a \$25,000.00 consultant's report commissioned by the South Shore

District Health Authority. A request for a copy of the report itself was included in the Application.

In response to the Application, South Shore Health provided copies of the consultant's terms of reference, the consultant's original proposal, an invoice, the minutes of meetings and other related documents. It denied the Applicant access to the entire report, and to some documents which accompanied it, claiming an exemption under **Section 17(1)(c)**. **S.17(1)** allows a public body to refuse to disclose information if disclosure would harm its financial or economic interests.

Subsection 17(1)(c) identifies the kind of information that could be denied:

“plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public”.

The consultant's report was commissioned to assist in the development of specific long and short term plans to guide the South Shore District Health Authority in fulfilling its mandate in the face of an expected cut of \$5,000,000 from its operating budget.

South Shore Health explained that the report was still in draft form and had not yet been shared with the Board of Directors.

The Applicant, in a representation to the Review, said that it was his view that the report met the definition of “background information” found in **Section 3(1)(a)(xi)** which reads:

“a report of an external task force, advisory board or similar body that has been established to consider any matter and make reports or recommendations to a public body...”

The Applicant also argued that the matter was one of public interest and should be disclosed in accordance with **Section 31(1)** which allows a public body to disclose, with or without an application under this **Act**, information the disclosure of which is clearly in the public interest. **S.31** applies notwithstanding any other provisions or exemptions under the **Act**.

During the course of this Office's mediation, South Shore Health provided the Applicant with a second decision and disclosed all but the consultant's report. In this decision it also cited an exemption under **Section 14(1)** which gives a public body the discretion to deny access to documents containing advice prepared by or for a public body or a minister.

After further mediation South Shore Health issued a third decision, providing the Applicant with all but four pages of the consultant's report.

South Shore Health continues to argue that the four withheld pages concern the management of personnel and of the administration and that disclosing this would harm the health authority's negotiating position with the Department of Health and, therefore, threaten South Shore Health's financial and economic interests. It provided the Review Office with no arguments to support its claim to a **s.14(1)** exemption.

South Shore Health also said that it expected to disclose pages 23, 24, 26 and 27 by the end of November.

Conclusions:

In arriving at my conclusions I must consider:

- whether the four pages at issue contain information regarding the management of personnel and of the administration;
- whether the public body could be harmed financially and economically by disclosure and if disclosing the pages would harm the health authority's negotiating position.
- whether the pages contain advice to a public body; and finally
- whether the pages contain "background" information and must be disclosed in accordance with Section **14(2)**.

Although South Shore Health also cited **s.14(1)** as an exemption on the four pages of the consultant's report, I will not consider it in this Review because, in my view, the information is exempt under **s.17(1)**. I agree with South Shore Health that disclosing the pages could reasonably be expected to harm the Health Authority's financial and economic interests and that the information relates to the management of personnel and to the administration of the Health Authority.

I have examined the four pages to determine if they contain "background" information as defined in the **Act** and have concluded they do not.

While there is certainly a high degree of public interest in decisions made by health authorities, in earlier Reports I have applied stringent conditions which must be met for a public interest argument to succeed. (See Report FI-00-102). In my view those conditions are not met in this case. In coming to this conclusion I have noted South Shore Health's promise to disclose the entire consultant's report by the end of November, 2002.

Recommendation:

- that South Shore Health write to the Applicant to reconfirm its decision with respect to pages 23, 24, 26 and 27 of the consultant's report.

Dated this 26th day of September, 2002, in Halifax, Nova Scotia.

Darce Fardy, Review Officer