REPORT **FI-02-78**

THE NOVA SCOTIA FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

A REQUEST FOR REVIEW of a decision of the **DEPARTMENT OF JUSTICE** to sever portions of an internal investigation into a prison incident.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **October 24th, 2002**

ISSUE: Whether disclosure of the severed portions of documents provided to the applicant would affect law enforcement (s.15(1)), invade personal privacy (s.20) threaten personal safety (s.18) or reveal advice to a public body (s.14(1)).

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated July 16th, 2002, the Applicant asked that I recommend to the Department of Justice (the Department) that it reverse its decision to sever the documents provided to him.

The Applicant, the victim of a prison assault, asked the Department for "a copy of the investigation" conducted by the Department following the assault. He was provided with a severed copy of the investigation report and severed copies of witness statements and other information used in the investigation. The Department cited exemptions under subsections **14(1)**,**15(1)(a)**,**(d)**,**(e)**,**(i)** and **(k)**; **18(1)** and **(2)** and **20(1)** to deny the remainder of the information. The Applicant was told that disclosure of the severed portions would:

- reveal advice provided to a public body [s.14(1)];
- harm law enforcement [s.15(1)(a)], reveal the identity of a confidential source of law enforcement information [s.15(1)(d)], endanger life or physical safety [s.15(1)(e)], be detrimental to the proper custody of prisoners [s.15(1)(i)] and harm the security of property [s.15(1)(k)];
- threaten a person's safety or interfere with public safety [18(1)(a) and (b)]; and
- subject persons to an unreasonable invasion of their privacy [s.20].

The Department explained, in a letter to the Review Officer, that the Applicant was injured in a fight with another inmate. This was followed by an incident report prepared by staff of the Halifax County Correctional Centre.

The documents the Department provided to the Applicant were severed of the names of staff of the correctional centre as "confidential sources of law enforcement information" and for personal safety reasons. Although the centre no longer exists (a new institution, the Central Nova Correctional Facility, replaces it), the Department said information about locations was severed, "because of the general knowledge base it would provide an offender population".

The Department believes that it has provided the Applicant with as much of the report as possible without compromising the future safety of the correctional officers, security in general, and the personal privacy of the inmates.

Although the Department offered arguments to support the severing of the names of correctional officers, the Applicant, in a telephone conversation with the Review Officer, said he was not interested in the names of the officers although he was concerned that not all of the correctional officers who witnessed the attack were interviewed during the investigation.

He made it clear that his interest was in determining if a complete investigation was done and hoped the report would tell him how the guilty party was in a position where he could attack the Applicant.

Conclusions:

Because the Applicant says he does not want the names of the correctional officers there is no need for me to comment on the Department's arguments to support the decision not to disclose the names.

The Department provided a page by page submission on specific records. I will refer to the pages by the numbers assigned to them by the Department.

The Department denied access to pages 3 and 4, in their entirety. They were withheld under s.14(1), s.15(1)(i) and (k) and 18. In my view page 3 contains no advice and no information that could do any of the harm alleged. A part of page 4 is exempt under s.14(1). I remind the Department of the admonition of the Nova Scotia Court of Appeal that a public body cannot hide behind labels (*O'Connor v. Nova Scotia,* 2001 NSCA #132). The label itself does not describe the contents of a document.

Other parts of page 4 are denied because the Department believes disclosure of the remainder could compromise the necessary secrecy surrounding procedures and protocols in dealing with prisons. In my view there is no evidence that disclosure of parts of page 4 would reasonably be expected harm the security of prisons (s.15(1)(k)), be detrimental to the proper custody of prisoners (s.15(1)(i)) or interfere with public safety (s.18).

The two-section investigation report (pages 8 to 15) is heavily severed. The Department believes that disclosing the previous history of the inmate who was charged, would constitute an unreasonable invasion of his privacy. Subsection 20(3) lists the kinds of information which, if disclosed, would be presumed to be an unreasonable invasion of personal privacy. Subsection 20(4) lists information that if disclosed would not be an unreasonable invasion of privacy.

In *French v. Dalhousie University,* 2002 NSSC #139 Justice Moir provided a three step approach for public bodies to take when determining if disclosure constitutes an unreasonable invasion of privacy:

1. Determine whether the requested information is personal information within the meaning of this Act.
2. Determine whether disclosure of the personal information would constitute an unreasonable invasion of privacy.
3. Determine if the presumption under 20(3) has been rebutted by Applicant. (This step is reached if s.20(4) does not apply)

I have concluded that the information meets the definition of "personal information" in **Section 3(1)(i)** of the **Act**.

I agree with the Department that subsections 20(3)(a) and (b) apply because the information contains a third party's health care history (a); and because the information was compiled as part of an investigation into possible violation of the law (b).

Pages 16-20 reveal logistical and security checks which the Department believes should not be disclosed because the patterns could be used by offenders and harm the security of institutions. I'm not convinced disclosing these documents to the Applicant would harm security of institutions but, in my view, after talking to the Applicant, the records are not responsive to the Application.

I have reviewed some 100 other documents which the Department believes are relevant. In most cases I am satisfied that the severing is appropriate. Page 94 was denied under sections 15(1)(k) and 18. While I have not seen evidence to support these exemptions, I believe the page should be protected from disclosure because it contains the personal information of the third party and that disclosing it would be an unreasonable invasion of personal privacy for the same reasons given for pages 8 to 15.

I have considered s.20(2), which provides a list of factors to be considered when making a decision on personal privacy exemptions. Factor (a) requires a public body to consider whether disclosure is desirable to hold the Department accountable for what happened in the prison. It is my view that this single factor does not outweigh the presumption of s.20(3)(a) and (b) in this particular case.

Recommendations:

That the Department disclose, in addition to what it has already disclosed:

- page 3; and
- from page 4, paragraphs 1, 2 and 4, without the recommendations.

S. 40(1) requires the Department to make a decision on these recommendations within thirty days of receiving them and to notify the Applicant and the Review Officer, in writing, of this decision.

Dated at Halifax, Nova Scotia, October 24th, 2002.

Darce Fardy, Review Officer