

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

A **REQUEST FOR REVIEW** of a decision of **NOVA SCOTIA BUSINESS INC.** with respect to an application for access to documents related to a breakfast meeting said to have occurred between the minister and an official of a company.

**REVIEW OFFICER:** Darce Fardy

**DATE:** November 29<sup>th</sup>, 2002

**ISSUES:** Whether the information sought can be denied under exemptions found in: s.12(1)(b) (inter-governmental relations); s.14(1) (advice); s.17(1) (financial or economic interests of the public body); and s.20(1) (protection of privacy).

Whether NSBI should have provided guidance to the Applicant on how to find relevant records that were in the public domain and to which the Act did not apply.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act** (the Act), received September 9, 2002, the Applicant asked that I review the response of Nova Scotia Business Inc. (NSBI) to his application and recommend that it reverse its decision not to disclose.

The Applicant asked for access to:

The nature of and any documents concerning the business breakfast the Minister of Economic Development held with officials of Fluor Corporation on November 14<sup>th</sup>, 2001.

The Applicant was told there were no records of a breakfast meeting on November 14, 2001. However, in order to “make every reasonable effort to assist the applicant” [Section 7(1)(a)] NSBI considered a “meeting itinerary”, which it called an “alternative record”, for disclosure to the Applicant before deciding he was entitled to a part of the document revealing the names of the Canadian participants. It cited exemptions under:

- **Section 12(1)(b)**: intergovernmental affairs;
- **Section 14(1)**: advice to a minister;
- **Section 17(1)**: harm to the economic interests of the Province; and
- **Section 20(1)**: unreasonable invasion of personal privacy.

The “alternative record” in this case is the same as one in dispute in my Report *FI-02-84*. Rather than repeat the submission of NSBI in support of its decision and my reaction and recommendations, I refer readers to that Report.

*Published material:*

NSBI, in its letter of decision to the Applicant, did not tell him that some relevant documents had already been published. This was learned in NSBI’s first representation to the Review Office in which it stated that:

Since an application made under the FOIPOP Act for access to a record does not extend to include records to which the Act does not apply, Record #1a and #1b were set aside and no decision about access was made or required.

After discussions with this Office’s mediator, NSBI wrote again to the Applicant to inform him of the two relevant records, telling him that one of which is a published report

and the other is comprised of four Internet web pages published under copyright. The Applicant was told that the **Act** did not apply to these records. He was not told how he could access or identify these records.

In a second submission to the Review, NSBI said that the itinerary and the two other records “were found together under the same tab for the meeting on November 13, 2001. Therefore it was determined that all three records were responsive to the intended request”.

Explaining why the Applicant was told nothing of the contents of the records nor where to find them, NSBI said that in the event records are publicly available, a public body can use its discretion whether or not to disclose them. NSBI chose not to and made the point that if the **Act** did apply to the records they would have been denied under the exemptions cited above.

**Section 4(2)(a)** states that the Act does not apply to “published material or material that is available for purchase by the public”.

Section 7(4) states:

The head of a public body may refuse to disclose to an applicant information

(a) that is published and available for purchase by the public

**Conclusions:**

It is clear, in my view, that NSBI, by refusing to describe the published records in a meaningful way, effectively denies the Applicant access to records deemed “publicly available”.

With due respect to NSBI, which provides thorough explanations of its decisions under this **Act**, it is not, in my view, living up to its obligations under s.7(1)(a) which it cites above. S.7(4) appears in the part of the **Act** entitled “Duty of head of a public body” and should be taken to mean that the reason a public body would choose not to disclose documents in this section, was so that it could direct the applicant where to get the information on her or his own without having to apply for it under the **Act**. A reasonable effort to assist this applicant should include telling him where he can find the published material.

NSBI said that in making this decision it sought guidance from the access and privacy guidelines and procedures manuals for the provinces of Nova Scotia, Alberta and British Columbia. Its reference to the Nova Scotia guidelines was incomplete.

In addition to the quote provided by NSBI, the Nova Scotia guidelines provide sample letters for government administrators of the **Act** to use when advising applicants that material has already been published. The suggested wording (on page 43 of the Guidelines) demonstrates that the administrators are expected to either tell the applicant that the records are available for public examination, provide an applicant with copies of the published material, or provide enough information so that she/he can access the material.

In this case, NSBI was relying on the letter of the law not the spirit of the **Act**. To quote Canada’s Privacy Commissioner:

Looking beyond the letter of the law to better capture its spirit is specific to the ombudsman model.

**Recommendations:**

- that NSBI provide the Applicant with a copy of the published material it provided to the Review Officer; and
- that NSBI consider the same recommendation I made on the single document at issue in my Report FI-02-84.

While Section 40(1) obliges a public body to make a decision on this recommendation within 30 days of receiving it, I suggest to NSBI that it do so immediately.

**DATED** at Halifax, Nova Scotia, November 29<sup>th</sup>, 2002.

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Darce Fardy, Review Officer