REPORT **FI-02-96**

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 deny access to reports requested by the Applicant.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **December 4, 2002**

ISSUE: Whether the information contained in documentation related to incidents at a residential care facility can be described as "personal information" under the **Act** and subject to exemption from disclosure.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act** (the **Act**), the Applicant asked me to review the decision of the Department of Community Services not to provide him with the documents he requested.

The Applicant had asked for copies of "all documentation related to resident incidents" at a residential care facility (the facility). The Department denied access in full to the documents requested citing s.20(1), s.20(2) and s.20(3)(b) of the **Act**. The Department stated that it decided not to notify any third parties, citing s.22(1A).

In his Request for Review, the Applicant suggested that the names of individuals related to or involved with resident incidents at the facility be edited from the documents requested. During the mediation stage of the review process, the Applicant clarified that he was not seeking access to the names or personal identifiers of any of the **residents** of the facility.

Therefore the names of the residents are no longer at issue in this Review.

It should be noted that **Section 5(2)** expects public bodies, when a relevant document contains exempt information, to sever the exempt information and provide the rest to an applicant.

In accordance with **Section 38** of the **Act**, I have been provided with sample copies of the documents at issue.

Submission of the Public Body:

In written submissions to this Office, the Department argued that the confidence of the children in the privacy of the facility would be undermined if members of the public could obtain intimate details of relationships between unidentified individuals residing in the facility. It said the facility provides a home for these children and they should have the same protection of privacy as individuals would have in their own home. The Department went on to state that the child standards manual for residential care facilities contains significant reference to privacy and confidentiality and confirms the notions of individuals' right to privacy. In the Department's view, the facility would not be able to operate if members of the public could access details in respect of incidents that happen in the facility which are of such a personal and intimate nature involving these adolescents. The Department concluded that it would be an unreasonable invasion of the privacy of the past, current, and future residents of this facility to provide a member of the public with information in respect of incident reports.

In its letter of decision to the Applicant the Department wrote:

> Despite the fact that personal identifying information in respect of these incident reports can be severed from the report, we believe

> that the confidence of children that their activities in the Centre are private would be undermined if members of the public could obtain intimate details of relationships and activities between individuals residing in the facility. This facility provides a home for children and in our opinion the children are entitled to the same protection of privacy as individuals would have in their own homes.

Conclusions:

The protection of privacy exemption is found in ss.20(1) which requires a public body to refuse to disclose personal information to an applicant "if the disclosure would be an unreasonable invasion of a third party's personal privacy". Subsection 20(2) provides a list of relevant circumstances which should be considered by a public body when determining whether disclosure of personal information would constitute an unreasonable invasion of privacy. Subsections 20(3) and 20(4) provide lists of circumstances whereby disclosure would be considered an unreasonable, and reasonable, invasion of personal privacy. In my view, if it can be concluded that the information at issue with the names and personal identifiers of the residents at the facility severed is "personal information" as defined by s.3 of the **Act**, then I am satisfied that the presumption found in s.20(3)(b) does apply.

This brings me to the issue of whether the information requested is "personal information".

"Personal information" is defined in s.3(1)(i) as "recorded information about an identifiable individual...". In past Reviews, I have said that there could never be a certainty that someone, somewhere, would not be able to identify an individual even if all identifiers were removed. But there has to be a reasonable expectation of this happening. In this case, the onus is on the Department to prove, as a pre-requisite, that the reports contain information that would

meet the definition of "personal information". If the third party individuals are not "identifiable", s.20(1) does not apply.

I am satisfied it was not practicable to notify the individuals named in the report to seek consent for the disclosure of the information.

During the Review I met with the Department which said it was satisfied that the details of the incidents themselves could identify individuals to other individuals in the facility. It also felt that because this information was with respect to children, special care must be taken not to cause them more undue upset in their lives.

With respect to s.20(2), the Department said this was one of the relevant circumstances it considered in reaching its decision to deny access to the incident reports.

In this Review I must balance the concerns of the Department for the welfare of the residents of the facility, which are understandable, with the Applicant's rights, in accordance with this **Act**, to access to documents in the custody or under the control of a public body.

I have not been satisfied that there is a reasonable expectation that the identities of individuals would be disclosed in severed copies of the incident reports. It could happen but I am loath to make a recommendation based on that proposition.

However, in my recommendations I will take into account the concerns of the Department.

Recommendations:

That the Department disclose to the Applicant a summary of the details of the incident reports, including the number and a brief description of the incidents reported. If the

Department accepts these recommendations, I am available to provide advice on how they should be followed.

In correspondence with the Applicant the Department inferred a fee may be charged in accordance with **Section 11**. If these recommendations are accepted the Department should first provide the Applicant with an estimate of the cost of processing the reports.

Section 40(1) requires the Department to make a decision on these recommendations within 30 days of receiving them and to notify the Applicant and the Review Officer, in writing, of the decision.

DATED at Halifax Nova Scotia, December 4, 2002.

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Darce Fardy, Review Officer