

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

**A REQUEST FOR REVIEW** of a decision of the **DEPARTMENT OF ENVIRONMENT AND LABOUR** to withhold and sever documents sought by the Applicant.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** February 3<sup>rd</sup>, 2003

**ISSUE:** Whether **Sections 4(2)(d), 14(1), 16, 18 and 20(1)** support the decision of the Department of Environment and Labour to sever documents related to this application.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act** (the **Act**), the Applicant asked that I review the decision of the Department of Environment and Labour (the Department) in response to his request dated October 1, 2002 for his “entire personal information file” held by the Department.

The Department, in a letter acknowledging the application, told the Applicant:

You have received copies of all past relevant personal information pertaining to yourself that is in the custody and control of NS Environment & Labour (previously NS Dept. of Labour) up to and including May 10, 2002. Copies of any records pertaining to yourself held by the department dated from May 11, 2002-Oct.10, 2002 will be sent to you by Nov.8, 2002, ...

Certain information in these records was severed according to **Sections 4(2)(d), 14(1), 16, 18 and**

**20(1)**. These sections provide as follows:

- 4(2)** Notwithstanding subsection (1), this Act does not apply to
  - (d) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;
  
- 14 (1)** The head of a public body may refuse to disclose to an applicant information that would reveal advice, recommendations or draft regulations developed by or for a public body or a minister.
  
- 16** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor-client privilege.
  
- 18 (1)** The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
  - (a) threaten anyone else's safety or mental or physical health; or
  - (b) interfere with public safety.
  
- 20 (1)** The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

In accordance with **Section 38** I have been provided with copies of the relevant documents which can be described as the severed portions of letters, e-mails and handwritten notes.

**Conclusions:**

I have reviewed the information severed from the records at issue and concluded the following:

*Jurisdiction [s.4(2)(d)]*

In my view, none of the information severed according to this part of the Act are notes, communications or draft decisions of a person acting in a judicial or quasi-judicial capacity. *Black's Law Dictionary*, 4<sup>th</sup> ed., defines quasi-judicial as “the action, discretion, etc., of public administrative officers, who are required to investigate facts.... and to exercise discretion of judicial nature”.

*Advice:*

In my view none of the information at issue can be withheld according to s.14. Most of the documents denied under *advice* are e-mails providing information. A Briefing Note contains only factual information and cannot be described as *advice*.

*Solicitor-client privilege:*

In McNairn and Woodbury's *Government Information: Access and Privacy*, solicitor-client privilege is described as:

a substantive rule for the exclusion of evidence in legal proceedings. A person who is privy to matters that originated in privileged circumstances is entitled to resist disclosure of those matters. Information protected by the privilege includes confidential communications, passing both ways, between a lawyer and his or her client that took place in the course of a professional relationship, whether or not in contemplation of litigation. However, the communication must be in the context of the client seeking legal advice from the solicitor. (at 3-40)

Section 16 specifically recognizes and incorporates the common law concept of solicitor-client privilege which is not defined in the Act and therefore must be defined by the

common law concept. In order for this to apply there must be an existing or contemplated relationship between a client and a solicitor.

There are 4 records where the Department has claimed s.16. None of them, in my view, can be denied under solicitor-client privilege.

*Health and Safety*

Several e-mails are denied because their disclosure may interfere with public safety or the safety of individuals. In my view the probability of public safety being threatened by the disclosure of the e-mails is too remote to be considered as an exemption.

*Personal information:*

I am satisfied the disclosure of names in the documents denied under s.20 would be, under the circumstances, an unreasonable invasion of their privacy.

I agree with the Department's severance of information that is not relevant to the application.

**Recommendation:**

That the Department disclose the information it has denied under sections 4(2), 14, 16 and 18.

**Section 40** of the Act requires the Department of Environment and Labour 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** at Halifax, Nova Scotia this 3<sup>rd</sup> day of February, 2003.

Darce Fardy, Review Officer