

**THE NOVA SCOTIA FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT  
(MUNICIPAL)**

**A REQUEST FOR REVIEW** of a decision of the **HALIFAX REGIONAL POLICE** to deny test results and other information related to the Applicant's attempts to join the police force.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** April 1, 2004

**ISSUES:** Whether the personal information in the records belongs to the Applicant and therefore must be disclosed; or whether it belongs to the persons who evaluated the Applicant and therefore must be denied?

In a Request for Review made under the Freedom of Information and Protection of Privacy legislation in **Part XX of the Municipal Act** and dated April 9, 2003, the Applicant asked that I recommend to the Halifax Regional Police (HRP) that it disclose the records he has requested.

In a written request to the Halifax Regional Police, dated February 24, 2003, the Applicant, an unsuccessful job candidate with the HRP, asked for copies of his written test results, background check results, other test results as well as interview notes and results related to his job applications.

HRP fully disclosed some records, disclosed some in severed form, and denied access to others. In its letter of decision, the HRP explained that it had severed some records and denied others because it believed disclosure of the test results would constitute an unreasonable invasion of a third party's personal privacy. It cited **Sections 480(1) and (3)(b) and 463(1)(d)**. Subsequently HRP corrected the exemptions to s.480(1) and (3)(d) and s.463(2)(d):

480(1) The responsible officer shall refuse to disclose personal information to an applicant, if the disclosure would be an unreasonable invasion of a third party's personal privacy.

480(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information

(d) relates to employment or educational history.

Section 463(2) lists records to which this **Act** does not apply, including (d): a record of a question that is to be used on an examination or test.

*Background Information:*

In December 2002, the solicitor for the Applicant wrote to HRP to ask for records containing the results of an aptitude test taken by her client while applying to become a police officer. The solicitor noted that her client had been informed that he failed "immediately upon completing the test." HRP replied that it would not be providing the test results.

This was followed by a letter to HRP from the solicitor, dated January 2, 2003, asking for her client's entire file. On February 14, the solicitor wrote again to HRP to say she was awaiting a reply to her January 2 letter. On February 24, with still no reply from HRP, the solicitor filed an application for access under the Act.

During the mediation stage, the Review Office identified the records at issue and encouraged both parties to narrow their focus. The Applicant expressed no interest in learning the names of third parties. The HRP agreed to disclose the following records to the Applicant: the results of his medical tests, his finger print information, his pre-employment polygraph examination, his fitness assessments and driving records. All records disclosed during the mediation stage clearly contained the applicant's personal information.

Before beginning my Review, I asked both parties to consider *French v. Dalhousie* 2002, NSCA 16 which ruled on a complaint from a member of the faculty of Dalhousie University who had been denied access to evaluations of his work performance.

*Submission of the Applicant:*

The Applicant's solicitor made two submissions to the Review Office, one accompanied the request for review and the second was in response to my request that the Applicant consider *French v. Dalhousie*.

The solicitor said that her client (the Applicant) had reason to believe that he was unfairly denied employment with HRP. Having received no "reasonable explanation" for not

being hired, the solicitor argues that the Applicant should be provided with the records he has requested.

With respect to s. 480(1), the solicitor also argues that employees of HRP are not “third parties” as defined in Section 461(k) of the Act and “therefore, any documents prepared by them regarding (the Applicant’s) suitability for the police force cannot be protected from disclosure.”

From the list of records compiled by the Review Office and provided to both parties, the solicitor drew attention, to records containing oral and written character references. She said “(t)hese records are of statements made about (her client) . . . It is difficult to imagine how disclosing their contents . . . could possibly represent an unreasonable invasion of the ‘personal privacy’ of any of the authors . . . In summary, (the Applicant) relies on the legal principles outlined by the Nova Scotia Court of Appeal in *French v. Dalhousie*.”

*The arguments of the HRP:*

The HRP said the records sought should be denied because they contain the employment history of those people who provided the references. It said that because the records also contain questions they can be denied in accordance with s.463(2).

**Conclusions:**

Some of the records contain questions used on tests and I agree with HRP that they are not subject to the **Act**. However these questions can, in my view, “reasonably be severed” [see s. 465(2)].

I agree with the Applicant that public bodies and, by extension, employees of public bodies are not “third parties” as defined in the **Act**. In any case the Applicant has no interest in the names of employees who appear in the records nor in any other personal information about them.

HRP also claims that the records contain personal information related to the employment or educational history of other third parties. HRP did not specify but I assume it was referring to “employment history.” In Review FI-98-81, while noting that “employment history” is not defined in the **Act**, I adopted a definition provided by the British Columbia Information and Privacy Commissioner who took the phrase to mean “what individuals did in their workplaces on particular projects . . . to their tangible activities in the workplace such as research projects and related activities” (*Order P-1180*). The Nova Scotia Court of Appeal’s view is that “(i)n the employment context, employment history is used as a broad and general term to cover an individual’s work record.” [*Dickie v. Nova Scotia (Department of Health)* (1999) N.S.J. No. 116]

I have concluded that notes taken during the interviewing or testing of candidates for a job cannot be described as the “employment history” of the interviewer.

The personal information the Applicant has requested is his own personal information as defined in s.461(f)(viii). In *French v. Dalhousie* the Court concluded that a person's views or opinions about someone else are not the author's personal information but rather the personal information of the subject.

**Recommendations:**

That the Halifax Regional Police disclose to the Applicant, in addition to what has already been disclosed:

- the 1-page Report Summary dated November 23, 1993, listed as number two (2) on the list of records;
- the records headed "Interview Selection - Final Calculation" consisting of four interviews, listed as number three (3) on the list of records;
- the Atlantic Police Academy Graduation Test of December 19, 1993 (sever names of persons who are not employees of HRP), as listed on number four (4);
- the character references - undated (sever names of persons who are not employees of HRP), as listed on number five (5);
- the telephone character references, dated May 10 - 17, 1995 (sever names of persons who are not employees of HRP), as listed on number six (6);
- the written employment references, after removing the names and titles of those who provided the references, as listed on number seven (7);

- the HRP psychological assessment report on the applicant after removing the names and titles of the authors (this report was not on the list of records); and
- the two Police Recruit Interview Evaluation forms after removing the questions, listed as number eleven (11) on the list of records.

**Section 493** of the Act requires the responsible officer 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 that decision.

**Dated** at Halifax, Nova Scotia this 2<sup>nd</sup> day of October 2003.

---

Darce Fardy, Review Officer