

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

**A REQUEST FOR REVIEW** of a decision of the **DEPARTMENT OF HEALTH** to disclose a summary of the approved budget of a nursing home in the Province.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** **July 16, 2003**

**ISSUE:** Whether a third party can show proof that disclosing the approved budget of a government supported nursing home would do significant harm to its interests.  
[Mandatory exemption: Section 21(1)]

In a Request for Review under the Nova Scotia **Freedom of Information and Protection of Privacy Act**, dated April 24, 2003, the third party asked that I recommend the Department of Health (the Department) reverse its decision to disclose a summary of the approved budget for the nursing home it operates.

The Department agreed to disclose the budget in response to an application for access under this **Act**. An applicant had asked for the “draft budgets/financial plans of all nursing homes receiving government funding, and any other materials used in determining per diem rates” of each home.

The Department agreed to provide the applicant with

- a Long Term Care memorandum, dated October 28, 2002 and
- copies of summaries of approved budgets, 2002-2003.

In accordance with **Section 22** of the **Act**, the Department notified the operators of the homes, as interested third parties, of its decision, to offer them an opportunity to ask for a Review of the decision. The third party objected to the disclosure and has asked for a Review.

*The third party's case:*

In a letter to the Department, the third party said it objected to the decision to disclose the requested budget information because the nursing home industry in Nova Scotia is “very competitive and homes are competing against one another. Any such disclosure of information has the potential to adversely affect the operation of a nursing home.”

Later, in a conversation with the Review Officer, the third party said that disclosing major projects funding could arm a competitor with information it could use to prepare for the third party's expansion plans.

The third party also claimed disclosure would constitute an unreasonable invasion of personal privacy.

*The Department's submission:*

The Department does not accept the argument that disclosing the budget summary would significantly harm the third party's financial or competitive positions. Since the homes have 99% occupancy and waiting lists, the Department concluded no operator could lose its competitive edge or suffer financially if operators saw each other's budgets.

The Department made the following points to support its decision:

- It does not disclose the audited financial statements of nursing homes which the operators must provide. It discloses only the financial information it uses to demonstrate the mechanism for recognizing reasonable costs of nursing care in order to arrive at some "per diem" rates.

- These rates are public information, readily available.

**Conclusion:**

With respect to personal privacy (s. 20), the record at issue contains no personal information as defined in **Section 3(1)(i)**.

The third party's case rests on **Section 21(1)**, particularly the following subsections:

**21 (1)** The head of a public body shall refuse to disclose to an applicant information

1. (a) that would reveal

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
- (iii) result in undue financial loss or gain to any person or organization

All three subsections of **s.21(1)** must apply in order for the exemption to stand (*Atlantic Highways Corp. v. Nova Scotia* (1997) 162 N.S.R. (2d) 27).

This case and other Nova Scotia Supreme Court and Court of Appeal rulings have paid particular attention to **Section 2(b)** of the **Act** which outlines its purpose to

- (i) facilitate informed public participation in policy formulation;
- (ii) ensure fairness in government decision-making;
- (iii) permit the airing and reconciliation of divergent views.

**Section 45(3)(b)** places the burden of proof on the third party to show how disclosure could do the harm alleged.

Absent convincing evidence that disclosing the budget would do significant harm to the third party's financial or competitive interests; it is my view that the Department's decision to disclose should stand.

## **Recommendations:**

That the Department disclose the approved budget.

**Section 40** requires the Department of Health to make a decision on this recommendation within 30 days of receiving this report and to notify the Applicant and the Review Officer of that decision.

**Dated** at Halifax, Nova Scotia this 16th day of July, 2003.

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Darce Fardy, Review Officer