

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

A REQUEST FOR REVIEW of a decision of the **OFFICE OF HEALTH PROMOTION** to deny access to sections of records related to the introduction of redesigned Video Lottery Terminals in Nova Scotia.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **October 17, 2003**

ISSUE: Whether the exemption under “advice and recommendations” [s.14(1)] supports the decision to deny access to portions of records.

Whether a “reasonable search” was conducted for relevant records in accordance with s.7(1)(a).

In a Request for Review under the Nova Scotia **Freedom of Information and Protection of Privacy Act**, dated June 19, 2003, the Applicant asked that I recommend to the Department of Health that it reverse its decision to deny access to parts of records related to the introduction of redesigned Video Lottery Terminals (VLT’s). The Applicant asked for copies of “all internal health department e-mails, reports, research, Minister’s briefing notes, summaries and letters related to the replacement of VLT’s. As well as, all VLT replacement related e-mails and correspondence exchanged between the Department of Health and the

Minister of Finance, the NSGC, and the NS Alcohol and Gaming Authority and the Atlantic Lottery Corporation.”

The Applicant also asked that I examine the adequacy of the search for relevant documents.

Background Information:

In May 2001, the Nova Scotia Gaming Corporation (NSGC) began replacing older VLT's with new machines. Responsible Gaming Features (RGF's), designed to discourage excessive play, were added to the VLT's. The Application which led to this Request for Review resulted from the conclusion that the RGF's are not having the desired results of reducing excessive play.

The Department provided the Applicant with twelve records in their entirety and five records severed in accordance with **Section 5(2)** which requires a public body to sever parts that it believes are exempt under the **Act** and disclose the remainder. In all the Applicant received 75 pages. During mediation the Department agreed that some of the parts severed as “not relevant to the application” should be disclosed to the Applicant.

Although some parts of the records were refused as not relevant, most of the severing was done in accordance with **Section 14(1)**:

Advice to public body or minister

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.

The severed sections in dispute are found in five records, numbered 7, 8, 10, 11, and 12 on the summary sheet which formed part of the OHP's decision.

Although this Application was sent to the Department of Health, it was processed by the Office of Health Promotion, which was created in December 2002. Addiction Services, among other programs, were transferred from the Department of Health to the Office of Health Promotion (OHP).

The OHP's submission:

The OHP confirmed its original decision to claim s.14(1) on the portions of the records it severed. With respect to record # 8, portions of which it had deemed irrelevant to the Application, the OHP, without conceding the information was relevant to the Application, agreed, during the mediation process with this Office, to disclose two parts.

With respect to whether a "reasonable search" was conducted, the OHP described the steps it followed while looking for relevant records. The Administrator dealing with the Application, met with the Executive Director for discussions of the records requested and, subsequently, with the Director of Addiction Services who provided the records. Finally there was a meeting between the Administrator and Legal Counsel for views with regards to content.

The Administrator also spoke with the Applicant and suggested that other public bodies, i.e. the Nova Scotia Gaming Corporation, may have records related to the issue. The OHP expressed its confidence that it has provided all records relevant to the request.

OHP believes it has made every reasonable effort to assist the Applicant in accordance with **Section 7** of the **Act**.

The Applicant's submission:

The Applicant believes they should be provided with all of the information they requested because the matter of gambling addiction “involves a serious and growing public health issue.” The Applicant said “there are a great many conflicts going on with the provincial government over the VLT issue, conflicts that seem inevitable when the province collects the profits, acts as the regulator, has the responsibility to provide treatment for those who become addicted to VLT’s, and the responsibility to research the extent of the problem it has created.”

Conclusions:

The **Act** does not provide us with a definition of “advice”. In Review (FI-03-11), and other Reviews, I have adopted a definition used in orders of the Alberta and Ontario Information and Privacy Commissioners. Alberta’s Commissioner defined “advice” as “an opinion, view or judgement... expressed to assist the recipient whether to act and if so how.” (Order 97-007). The Ontario Commissioner accepted “views” and “thoughts” as advice if they lead to a course of action (Order M-457).

I am satisfied the parts severed under s.14(1) clearly contain advice and recommendations and can be denied by the OHP.

With respect to the reasonableness of the search for records, I noted in Review FI-02-50 that it is my responsibility to assure myself that a public body has done a reasonable search to identify documents. A public body must be able to provide me with sufficient

evidence to show that it has made an adequate search. An Applicant, although not in a position to know what, if any, records have been identified, must be able to provide me with a reasonable basis for concluding that a specific document related to an application may, in fact, exist. I am satisfied that OHP has made “every reasonable” effort to assist the Applicant in its search for records. My own experience with the Department of Health is that it has consistently done a conscientious job processing applications for access under this **Act**.

I would regard as good advice, OHP’s suggestion that the Applicant look to other public bodies as well in their search for information

Recommendations:

That the OHP confirm to the Applicant its decision to claim s.14(1) on the severed parts of the records it disclosed.

Section 40 of the Act requires the Office of Health Promotion 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 17th day of October, 2003.

Darce Fardy, Review Officer