

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

A REQUEST FOR REVIEW of a decision of the **DEPARTMENT OF NATURAL RESOURCES** to deny access to records related to the **OAK ISLAND EXPLORATION COMPANY**.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **November 18, 2003**

ISSUE: Whether exemptions under **Section 20** (protection of personal privacy) and **21** (confidential information of a third party) support the Department's decision to deny access.

In a Request for Review under the Nova Scotia **Freedom of Information and Protection of Privacy Act**, dated August 21, 2003, the Applicant asked that I review the decision of the Department of Natural Resources (the Department) in response to his request for copies of records related to the search for treasures on Oak Island.

The Applicant had asked for copies of all correspondence between a third party and the Minister or the Registrar of the Department, for the past nine years.

In accordance with **Section 22** of the **Act**, the Department notified the third party of the application and invited him to consent to the request or give reasons for his objections. The Department subsequently denied access to all records, citing exemptions under **Section 21**.

The Department did not cite **Section 20** (protection of personal privacy) but because it is a mandatory exemption I am obliged to consider it.

Section 20 requires a public body to refuse to disclose records if the disclosure would constitute an unreasonable invasion of a third party's personal privacy. **Section 21** requires a public body to refuse to disclose records:

21(1)

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (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,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization.

In objecting to disclosure of the records, the third party wrote that “all of the information (was submitted) to inform the government of business and personal proposals with no intention of it being shared beyond the Minister or the Registrar”. He said he expected the

Department to keep the information private. He also felt that disclosing the records would constitute an unreasonable invasion of his personal privacy.

The Department's submission:

The Department wrote that, in its view, the information sought met all of the requirements of **s. 21**. The Department is satisfied that the records contain scientific, technical and financial information of the third party; that it was “clearly submitted to the department in confidence”; that if the records were disclosed similar information would no longer be provided to the Department; and that disclosure would do significant harm to the competitive position of the third party.

The oral submission of the third party:

The third party said all of the records in question, with the exception of the engineering report, were provided to the Department voluntarily. He said the engineering report was completed at considerable cost to the third party and that it should not be shared with a competitor.

The Applicant's submission:

The Applicant did not provide a submission.

Neither the third party nor the applicant have been provided with the identity of the other.

Conclusions:

During this Review I have spoken with the Registrar, the third party and the solicitor for the Applicant. I have also reviewed a large volume of records which were provided to the Department to keep it informed of the progress of the Oak Island treasure hunt.

In order to successfully claim s. 21(1) as an exemption, all three sub-sections (a), (b), and (c) must apply.

With respect to sub-section (a), I am satisfied that the records contain, financial and technical information.

It is clear as well that the requirement of sub-section (b) is met. It's been confirmed that the records were provided to the Department, implicitly in confidence.

In my discussions with the parties involved, I was provided with information I am not at liberty to disclose. But it has been persuasive in convincing me that disclosing the records would "result in similar information no longer being provided" to the Department and that "it is in the public interest that similar information continue to be provided".

With respect to s. 20, I note that other third parties were also named in the records. They were not notified of the application by the Department because it would have not been "practicable". I agree. At the same time I do not believe that the names of those other third parties should be disclosed. In my view the security of their identities is protected under s. 20.

Recommendation:

That the Department confirm to the Applicant that the application for the records is being denied.

Section 40 of the Act requires the Department to make a decision on this recommendation within 30 days of receiving it and to notify the Applicant and the Review Officer, in writing, of that decision.

Dated at Halifax, Nova Scotia this 18th day of November, 2003.

Darce Fardy, Review Officer