REPORT **FI-04-06(M)**

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

A REQUEST FOR REVIEW of a decision of the **CAPE BRETON REGIONAL MUNICIPALITY** to refuse to disclose the names of people said to have made a complaint against the Applicant.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **April 27, 2004**

ISSUES: Whether disclosing the name of the complainant would constitute an unreasonable invasion of personal privacy. Whether an adequate search was done for a copy of a petition.

In a Request for Review under **Part XX of the Municipal Government Act**, (MGA) received January 27, 2004, the Applicant asked that I recommend to the **Cape Breton Regional Municipality** (CBRM) that it reverse its decision not to provide the Applicant with the names of the people who complained against him.

The Applicant asked for copies of

> "All information on file pertaining to complaints and allegations made against me concerning the state of my property. In particular a petition that was sent to the 'Dangerous and Unsightly Premises', Building Services Office, regarding the structural condition of (the) fence."

In its response to the Applicant, CBRM said it has followed the practice for some time of not supplying the names of those who file complaints relating to unsightly premises. It said this practice was supported by Section 480(3)(b) of the MGA. CBRM did not address, until later, the matter of the petition. The relevant subsections of s.480 for purposes of this Review are:

> **Personal Information**
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> **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.
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> **2)** In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the responsible officer shall consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the municipality to public scrutiny;
>
> (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;
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> (c) the personal information is relevant to a fair determination of the applicant's rights;
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> (e) the third party will be exposed unfairly to financial or other harm;
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> (f) the personal information has been supplied in confidence;
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> (g) the personal information is likely to be inaccurate or unreliable; and
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> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

> **(3)** A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information
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> (b) was compiled, and is identifiable as, part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
>
> **(4)** A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
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> (a) the third party has in writing, consented to or requested the disclosure;
>
> (b) there are compelling circumstances affecting anyone's health or safety;
>
> (c) an enactment authorizes the disclosure; and
>
> (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a municipality.

Background:

This application follows a long-standing dispute between neighbours. In this case one neighbour complained about the state of the Applicant's property. Earlier, the Applicant was a claimant in Small Claims Court accusing a neighbour of undermining a new fence the claimant had erected. The claimant was awarded costs and the neighbour was ordered to pay an amount to cover repairs to the fence he had undermined.

The Applicant's submission:

The Applicant likened this case to a similar one dealing with a complaint about the condition of other properties and cited a Supreme Court ruling in which the judge ordered CBRM to name the people who complained about the condition of some North Sydney buildings. (*Sydney*

Precision Machining Ltd. and Luxandric Ltd. v. Cape Breton Regional Municipality (2003) NSSC 222).

The Applicant, despite CBRM's denial that it has a copy of a petition against him, remains convinced that there is a petition, that it was signed by several people, that it claimed the Applicant's fence was unsafe, and that the petition was provided to the 'Dangerous and Unsightly Premises' Building Services Office. He also questioned whether CBRM made an adequate search for a copy of the petition referred to in the application.

The Applicant feels that CBRM has been paying undue attention to his property at the behest of the neighbour.

CBRM's submission:

CBRM says it has searched and made enquiries and is satisfied that it does not have in its custody or under its control a copy of a petition requested by the Applicant. In fact it doubts whether a petition exists. It believes there were references to a petition in communications between solicitors, acting for the feuding neighbours, and that may have led the Applicant to believe that CBRM had a copy.

Although CBRM did not address s.480(3)(b) in its submission, it claimed it in its decision. It also said another reason it refuses to disclose names of those who make complaints is because this might discourage someone with a legitimate complaint from coming forward.

Conclusions:

Section 480 of the **MGA** is a mandatory exemption protecting third parties from an unreasonable invasion of their personal privacy. It contains factors to consider when determining whether the disclosure of personal information is a reasonable or unreasonable invasion of privacy. In other Reviews (see FI-04-12), I have referred to a ruling of the Nova Scotia Supreme Court in which Justice Moir explains the steps to follow when considering this exemption. (*Cyril House and 144900 Canada Inc.* (2000) S.H. No. 160555). I will not repeat it here but I will follow the Court's lead.

I find that none of the factors in subsection 480(4) apply. I find I agree with CBRM that the name of the complainant is personal information and is identifiable as part of an investigation into a possible violation of the law against unsightly property [s.480(3)(b)]. I have also concluded that none of the circumstances to be considered in subsection (2), which might support the Applicant's request for disclosure, are applicable in this case.

The *Sydney Precision* case mentioned by the Applicant does not apply in this case because it did not involve the **FOIPOP Act**.

With respect to the adequacy of the search for the petition, **Section 467** expects a public body to "make every reasonable effort" to assist an applicant openly, accurately and completely. This requires an adequate search for relevant documents. It is my responsibility to assure myself that a public body has done a reasonable search to identify documents. The public body must provide me with sufficient evidence to show that it has made an adequate search and an Applicant, who, naturally is not in a position to know which documents have been identified

as responsive to the application, must provide me with a reasonable basis for concluding that a specific document related to the application exists.

At the request of the Review Office, CBRM reviewed the file again and confirmed it had not received a petition in this regard and the officials could not recall one being presented. I also spoke with the Municipal Clerk, and I am satisfied that if a petition exists, the Municipality doesn't have it. If it did, I would see no reason for the CBRM not to disclose it to the Applicant with identifying information of third parties removed.

Recommendations:

That CBRM confirm to the Applicant in writing the decision it made in response to the application.

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. If a written decision is not received within 30 days, the CBRM is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 27th day of April, 2004.

Darce Fardy, Review Officer