

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

A **REQUEST FOR REVIEW** of a decision of the **SOUTHWEST REGIONAL SCHOOL BOARD** to deny access to records concerning the Applicant.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **July 5, 2004**

ISSUE: Whether **Sections 20(1)** and **20(2)(f)** support the decision of the Southwest Regional School Board to deny access to records related to the Applicant.

In a Request for Review under the Nova Scotia **Freedom of Information and Protection of Privacy Act** (FOIPOP), dated March 8, 2004, the Applicant asked that I recommend to the Southwest Regional School Board (SWRSB) that it provide him with the records he has asked for.

In an Application for Access, the Applicant asked the SWRSB for copies of any “material bearing or in reference to my name and/or position ... with the Southwest Regional School Board.” The Applicant named six people who, he believes, may have knowledge of “administrative actions” taken against him. They included teachers, a school principal, a school board member, and a SWRSB employee.

In its response the SWRSB said that all relevant records, except those already provided to the Applicant “were excluded as per section 20 of the act.”

Background:

The Applicant is a retired teacher who was aware his behaviour was being questioned before he left the profession. He wants to see what was written about him by those lodging complaints or by those in authority.

The Applicant’s submission:

The Applicant asserts he should be provided with the documents containing his personal information, in accordance with **Section 2** of the **Act**, which gives individuals a right of access to and a right to correction of personal information about themselves held by a public body. The Applicant also believes that Section **20(2)(c)** supports his application because the records contain personal information “relevant to a fair determination of (his) rights.”

During the mediation process, the SWRSB specified the particular subsections of s.20 it was relying on.

20(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

(2) In determining subject to subsection (1) and (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(f) the personal information was supplied in confidence.

The SWRSB did not make a submission. Under **Section 45(2)**, when a record is refused because it contains the personal information of a third party, the burden is on the applicant to prove that disclosing the information would not constitute an unreasonable invasion of the third party's personal privacy. When it's the personal information of the applicant the burden of proof is on the public body.

Conclusions:

“Personal information” as defined in **Section 3(1)(i)**, includes a person's name. The records at issue contain individuals' names so s.20, the exemption cited by the SWRSB, applies. The SWRSB made no reference to ss.(3) and (4) of s.20. Sub-section (3) provides examples of the kinds of information which, if disclosed, would be presumed to constitute an unreasonable invasion of personal privacy. Sub-section (4) contains information which, if disclosed, would **not** constitute an unreasonable invasion of personal privacy. Sub-section (2) provides relevant circumstances to be considered. Interpreters of s.20 have been instructed by the Nova Scotia Supreme Court to first determine if the personal information falls under ss.(4). If it doesn't then ss.(3) and (2) must be considered. (*Cyril House* (2000) S.H.160555). While the information does not fall under ss.(4) or (3) I agree with the SWRSB, having considered ss.(2)(f), that some third party names should be withheld because the information was provided by individuals who believed they were doing so in confidence and out of concern for the welfare of the students.

However, referring back to the definitions of “personal information” it is clear from s.3(1)(i)(viii) that “anyone else’s opinion about the individual” is the personal information of that individual.

So, while the records at issue contain the personal information of third parties, they also contain the personal information of the Applicant. The Nova Scotia Court of Appeal has ruled that opinions expressed about an individual who was the subject of a university “peer review,” are the personal information of that individual and disclosure would not be an unreasonable invasion of privacy if the information were necessary to the individual knowing what was said about him. [*Dalhousie University v. French* (2003) NSCA 16].

It is my view that some of the records should be disclosed with some “personal information” removed; and that other records should be summarized in accordance with Section 20(5) of the Act which requires a public body “on refusing... to disclose personal information supplied in confidence about an applicant” to “give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of the third party who supplied the personal information.”

Recommendations:

That the SWRSB disclose (we have numbered the records for easy reference by the SWRSB):

- Record #1 with the third party’s name severed
- Record #2 with third party names severed
- Record #3.

- Record #4.
- Record #7 in summary only without disclosing the identity of the third party.
- Record #8 in summary only without disclosing the identity of the third party.

Section 40 of the Act requires the Southwest Regional School Board 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 SWRSB is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 5th day of July, 2004.

Darce Fardy, Review Officer