

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

A REQUEST FOR REVIEW of a decision of the **DEPARTMENT OF ENVIRONMENT AND LABOUR** to deny access to the name of a complainant.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **June 2, 2004**

ISSUE: Whether **Section 20**, the protection of personal privacy exemption, supports the Department's decision to refuse to disclose the name of the person who complained about conditions in a garage.

In a Request for Review, under **the Freedom of Information and Protection of Privacy Act**, dated March 15, 2004, the Applicant asked that I recommend to the Department of Environment and Labour (the Department) that it reverse its decision to deny access to the name of the person who made a complaint against his client.

The Applicant, in his application to the Department, said it was necessary and essential that his client be provided with the name of the person who complained so that his client could "protect his good name and for the continuation of his business as it exists today." He pointed out that different agencies had received similar complaints about his client and that all of them were found to be without merit.

The Department provided some records related to the complaint but added that disclosing the name would constitute an unreasonable invasion of the complainant's personal privacy. It cited **Section 20** of the **Act**. The relevant subsections for purposes of this Review are:

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 pursuant 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

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Nova Scotia or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(f) the personal information has been supplied in confidence.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(b) the personal information 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 a 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

(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.

Background:

The Applicant's client operates a garage. A complainant reported that the car hoist was not operating properly and had not been inspected. The complaint to the Department was followed by an investigation by its Occupational Health and Safety Division (OHS). The OHS was provided with a recent hoist inspection report prepared for the garage.

The Applicant's submission:

The Applicant wrote that the decision of the Department "is not based on any realistic concern for embarrassment or any other factors which should reasonably mitigate against the revealing of the name of the complainant." There is nothing, he said, "that would indicate any difficulty to the person who filed the complaint" if the name were disclosed.

The Department's submission:

The Department said it investigated the Applicant's claim that the latest complaint against his client is one of several and found that "there is no evidence of more than one complaint received by this Department against the Applicant's client."

The Department explained it receives many complaints and requests for investigations in all areas of its mandate. The majority come from the public most of whom are acting in the public good. The Department said "(t)he general belief held by such complainants is that they are speaking with a government official in confidence."

The Department also noted it acted in good faith in providing the Applicant with copies of all relevant records on the matter with only the name of the complainant severed.

Conclusions:

Although the Department introduced a second exemption in its submission to the Review Officer, I have decided, in accordance with this Office's policy on "New Discretionary Exemption Claims" not to entertain it because it was not claimed within 15 days after the Department was notified that a Request for Review was filed with this Office.

In determining whether disclosing the complainant's name is an "unreasonable invasion of personal privacy" I am guided by a ruling of the Nova Scotia Supreme Court in which Justice Moir lays down the steps to be followed when using Section 20. (*Cyril House and 144900 Canada Inc.* (2000) S.H. No. 160555). I will follow those steps but rather than repeat them here I refer readers to my Review FI-04-12 found on our website.

I find that s.20 can be cited because the name of the complainant is that individual's "personal information" as defined in **Section 3(i)**.

I find that none of the factors in s.20(4) apply. With respect to s.20(3) it can be successfully argued that the personal information is identifiable as part of an investigation into a possible violation of the *Occupational Health and Safety Act*. In my view s.20(3)(b) applies.

With respect to subsection 20(2)(a), it is my view that this complaint has to do with conditions at the garage not with the activities of the Department. I also find that the effect of disclosing the name of the complainant would not be to promote public health or safety [s.20(2)(b)].

With respect to subsection 20(2)(c), it is my view that denying the Applicant the name of the complainant does not prevent his client from exercising his rights. Although the OHS

investigation may have taken up some of his time, no actions were taken against him as a result of the complaint.

There is no evidence to show that the third party made his complaint in confidence, even though the Department believes that complainants generally believe they are making these types of complaints in confidence [s.20(2)(f)]. All in all I am not persuaded that the presumptions under s.20(3)(b) of an unreasonable invasion of personal privacy have been removed by any of the circumstances of s.20(2).

Recommendations:

That the Department confirm in writing to the Applicant its decision to deny access to the name of the complainant.

Section 40 of the Act requires the Department of Environment and Labour 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 2nd day of June, 2004.

Darce Fardy, Review Officer