

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

A **REQUEST FOR REVIEW** of a decision of **SERVICE NOVA SCOTIA AND MUNICIPAL RELATIONS** to deny access to the name of a person who lodged a complaint against his employer, a New Brunswick trucking company.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **August 19, 2004**

ISSUE: Whether disclosing the name of an individual who telephoned the Province's Road Safety Division to report possible safety code violations by his employer would be an unreasonable invasion of the individual's personal privacy.

In a Request for Review in accordance with the **Freedom of Information and Protection of Privacy Act (FOIPOP Act)**, dated April 5, 2004, the Applicant, a solicitor for the carrier against whom a complaint was lodged, asked that I recommend to Service Nova Scotia and Municipal Relations (SNSMR) that it reverse its decision and provide the Applicant with the information he is seeking.

Background:

The Province's Road Safety Division received a telephone complaint from an employee of the Applicant's client with respect to the hours his employer was expecting drivers to work without a break.

Because the employer operates in New Brunswick the complaint was forwarded to that Province's road safety division.

However, because Service Nova Scotia and Municipal Relations had records related to the complaint, it appropriately responded to the application for access to the records.

The Applicant had asked for:

- any documents related to the complaint;
- the name of the complainant, the date the complaint was made and any other information submitted by the complainant;
- copies of internal materials prepared by or received by SNSMR; and
- copies of any other documents related to the complaint.

The Applicant was given copies of two records, one of them a single sheet of paper identified as "Log Books" which included the name of the carrier but with the complainant's name and telephone number severed. The sheet indicates the name was removed in accordance with **Section 20** of the FOIPOP Act. The second record is an e-mail from a New Brunswick Government employee to an employee of the Road Safety division of SNSMR.

The only record at issue here is the name of the complainant. SNSMR claims that disclosing the name would constitute an "unreasonable invasion" of the privacy of the complainant. [**Section 20(1)**]. It also cited **Section 20(2)(f)** because the complaint against the trucking company was "supplied in confidence."

Section 20(1) obliges a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. Subsection 20(4) lists circumstances which are not to be considered unreasonable invasions of

privacy and subsection 20(3) sets out circumstances which are presumed to be unreasonable invasions of privacy. Subsection 20(2) contains relevant circumstances to be considered if subsection 20(4) does not apply.

The Applicant's submission:

To support his argument for disclosure, the Applicant cited a decision of the Nova Scotia Court of Appeal in *Dickie v. Nova Scotia (Department of Health)* (1999) C.A. No. 148941. According to the Applicant, “while the Court of Appeal found there would be a reasonable expectation of confidentiality in that situation, it held that not disclosing the information would not have protected any privacy rights of the third party.” He argued that if the complainant were a former driver for the trucking company there would be no reasonable expectation of privacy.

Conclusions:

The Nova Scotia Supreme Court has provided a process to follow when determining whether or not the disclosure of personal information is a reasonable or unreasonable invasion of a third party's personal privacy. [*Cyril House and 144900 Canada Inc. (Abacus Security Consultants and Investigators)*](2000) unreported S.H. 160555 (N.S.S.C.):

1. Determine if the information sought is “personal information” as defined in Section 3(1) of the FOIPOP Act.
2. Consider ss.20(4). If it is found that this subsection applies then the information must be disclosed and there is no need to consider subsections (3) or (2).
3. If the information does not fall under (4), then both subsections (3) and (2) must be considered.

Section 20(4) lists circumstances which, if apply, would be deemed a “reasonable invasion” of personal privacy. Section 20(3) describes personal information which, if disclosed, would be an unreasonable invasion of privacy. And s.20(2) contains relevant circumstances to be considered if (3) applies.

In my view, none of the circumstances of (4) apply. With respect to (3), while the Department did not cite this subsection, it must be considered if part (4) does not apply. In my view s.20(3)(b) applies because “the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.” I find none of the circumstances in (2) apply.

Recommendations:

That SNSMR write to the Applicant to confirm its decision not to disclose the name of the complainant.

Section 40 of the Act requires Service Nova Scotia and Municipal Relations 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 19th day of August, 2004.

Darce Fardy, Review Officer