

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

A **REQUEST FOR REVIEW** of a decision of **DALHOUSIE UNIVERSITY** to provide severed copies of records to a former part-time clinical instructor.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** **July 21, 2004**

**ISSUE:** Whether the records requested are exempt from disclosure under Sections 20 (protection of personal privacy); 14 (advice to a public body); and 18 (personal or public safety).

In a Request for Review, in accordance with the **Freedom of Information and Protection of Privacy Act** (FOIPOP), dated April 10, 2004, the Applicant asked that I recommend to Dalhousie University (Dalhousie) that it provide him with copies of all of the records he requested.

The Applicant wanted copies of all records leading up to the termination of his employment at Dalhousie. He was provided with 35 records, many of them copies of correspondence he had been having with the faculty which employed him. He was denied copies of another 20 records for which Dalhousie claimed exemptions under Sections **16, 18 and 20**.

S.20 is a mandatory exemption which requires a public body to refuse to disclose the personal information of third parties if disclosure would be “an unreasonable invasion” of that party’s personal privacy.

S.16 is a discretionary exemption which allows a public body to refuse to disclose information subject to solicitor-client privilege.

S.18 allows a public body to refuse to disclose information to an applicant, “including personal information about the applicant, if the disclosure could reasonably be expected to threaten anyone else’s safety or mental or physical health.”

*Background:*

The Applicant was involved in certain unwanted communications with two students. His contract as a part-time clinical instructor was terminated. Subsequently the termination was cancelled and the Applicant was granted sick leave until the end of his contract. He is now in dispute with Dalhousie which explains why he is asking for copies of all relevant records.

During this Office’s mediation process, the records at issue were reduced to two: copies of communications between the Dean and the Academic Employment Relations Officer; and copies of transcripts of the allegations made against the Applicant, with all identifying information removed. At that time Dalhousie cited an additional exemption, **Section 14** which allows a public body to refuse to disclose information “that would reveal advice, recommendations or draft regulations to a public body.” To summarize, Dalhousie is citing s.14, s.18 and s.20 with respect to these records.

In accordance with **Section 38** of the **FOIPOP Act** I have been provided with copies of all records related to the application.

*Dalhousie's submission:*

Much of the submission dealt with matters no longer at issue in this Review. It also addresses matters, the details of which, in my view, should be kept confidential although they are helpful to me in reaching my conclusions.

With respect to s.20, Dalhousie believes that disclosing the records which contain the opinions and feelings of two students would be an unreasonable invasion of their personal privacy.

With respect to s.18, Dalhousie believes that disclosing the records could have an adverse emotional affect on the students.

Dalhousie also asserts that the information denied under s.20 and s.18 is known to the Applicant because of his own communications and actions.

Dalhousie believes information can be denied under s.14 because it contains "advice to a public body."

When personal information of a third party is requested, the burden is on the Applicant to prove that disclosing that personal information would not be an unreasonable invasion of personal privacy. The Applicant did not respond to requests from the Review Office to submit a representation to this Review.

**Conclusions:**

*S.14:* It is clear that the communications of the Academic Employment Relations Officer were designed to give advice to the Dalhousie management on what actions to take as a result of the incidents. In my view, s.14 applies.

*S.18:* I agree with Dalhousie that disclosure of the transcripts of allegations could reasonably be expected to have a deleterious effect on the students who complained.

*S.20:* This mandatory exemption contains four sub-sections. Subsection 20(1) requires a public body to refuse to disclose personal information to an applicant if disclosure would be an unreasonable invasion of a third party's personal privacy. In this case the third parties are the two students.

Sub-sections (3) and (4) contain examples of information which, if disclosed would, or would not, constitute an unreasonable invasion of personal privacy. Sub-section (2) lists the relevant circumstances to be considered when determining whether disclosure would amount to an "unreasonable" invasion of privacy. Sub-section (2) contains relevant circumstances to be considered when sub-sections 20(1) and 20(3) apply.

In *Cyril House*, S.H. 160555, April 20, 2000, unreported, Justice Moir outlines a four-step process in determining whether or not s.20 applies. The first step is to determine whether or not the information meets the definition of "personal information" found in **Section 3(i)** of the FOIPOP Act. I have concluded it does.

The second step is to see if the information meets any of the circumstances in s.20(4) and, therefore, must be disclosed. If this is so then there is no need to consider other sub-sections. I have concluded that none of these circumstances are met. Disclosure would not be a "reasonable" invasion of privacy.

In my view, the circumstances of s.20(3) also do not apply. Consequently, in line with *Cyril House*, I must consider sub-sections 20(1) and 20(2).

The circumstances of s.20(2) to be considered are whether:

- the disclosure is desirable for the purpose of subjecting the activities of . . . a public body to scrutiny;
- the disclosure is likely to promote public health and safety or to promote the protection of the environment;
- the personal information is relevant to a fair determination of the applicant's rights;
- the third party will be exposed unfairly to financial or other harm;
- the personal information has been supplied in confidence;
- the personal information is likely to be inaccurate or unreliable;  
and
- the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Given that the Applicant knows the names of the students and what they have complained about; and the sensitive nature of this information to the students, I have concluded that disclosing the transcript of the allegations would be an unreasonable invasion of their personal privacy. These records are properly withheld under s.20 as well as s.18.

**Recommendations:**

That Dalhousie write to the Applicant with a copy to the Review Officer reaffirming its decision to disclose to the Applicant no more records than it already has.

**Section 40** of the Act requires Dalhousie 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 21st day of July, 2004.

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Darce Fardy, Review Officer