

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

A **REQUEST FOR REVIEW** of a decision of the **PUBLIC PROSECUTION SERVICE** to deny information related to a violent incident at a prison.

REVIEW OFFICER: Darce Fardy

REPORT DATE: March 3, 2005

ISSUE: Whether the exemptions cited, s.15 (harm to law enforcement) and s.20 (personal information) support the decision of the Public Prosecution Service.

In a Request for Review, dated July 27, 2004, the Applicant asked that I recommend to the Public Prosecution Service (PPS) that it provide him with copies of all of the records he asked for. The records were created during an investigation into a violent altercation at a prison.

The Applicant asked for “all information” related to the prosecution of one of the inmates involved in the altercation. PPS provided the Applicant with a number of the relevant records and later provided others which the PPS previously regarded as exempt from disclosure under **Sections 15(1)(f) and 20**. The remaining records at issue were also severed or withheld under s. 15(1)(f) and s. 20.

Section 15(1)(f) is a discretionary exemption which allows a public body to refuse to disclose “information relating to or used in the exercise of prosecutorial discretion.”

Section 20 is a mandatory exemption which requires a public body to refuse to disclose personal information if disclosure would constitute an unreasonable invasion of personal privacy. Subsection (4) lists the kinds of personal information which, if disclosed, would not be an unreasonable invasion of personal privacy. Subsection (3) provides a list of the kinds of personal information which, if disclosed, would amount to an unreasonable invasion of privacy. Subsection (2) contains factors to be considered whether ss.(3) applies or not.

In accordance with **Section 38** of the **Act** I have been provided with copies of all the relevant records.

Conclusions:

I addressed the issue of prosecutorial discretion in Review # FI-03-14:

“The Act does not define ‘prosecutorial discretion’ but a definition can be found in the British Columbia access and privacy legislation which is similar to Nova Scotia’s: ‘Exercise of prosecutorial discretion means the exercise by Crown Counsel, or by a special prosecutor, of a duty or power under the *Crown Counsel Act*, including the duty or power

- (a) to approve or not to approve a prosecution,
- (b) to stay a proceeding,
- (c) to prepare for a hearing or trial,
- (d) to conduct a hearing or trial,
- (e) to take a position on sentence, and
- (f) to initiate an appeal.

In Review FI-02-37 I wrote: “(a)ny documents containing information used by PPS to determine whether charges should be laid, in my view, fall under the exemption in s.15(1)(f).”

Having read the records I have concluded that s.15(1)(f) supports the decision to deny access to the PPS's correspondence on this matter as well as the witness statements.

Parts of the witness statements were severed under s.20 because PPS felt that some of the information in the statements is likely to be inaccurate [s.20(2)(g)] and because "the personal information was compiled and is identified as part of an investigation into a possible violation of the law" [s. 20(3)(b)].

I do not agree with PPS that the names of the prison staff were "compiled" as part of the investigation. However, although s.18(1)(a) was not cited, I believe that disclosing the names of prison officials, could reasonably be expected to threaten a person's safety.

Recommendations:

That the PPS write to the Applicant reaffirming its original decision.

Dated at Halifax, Nova Scotia on this 3rd day of March, 2005.

_____ Darce Fardy, Review Officer