

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

A **REQUEST FOR REVIEW** of a decision of the Department of Finance to deny access to some records, or parts of some records related to the preparation and presentation of the 2003 Nova Scotia Gambling Prevalence Study.

REVIEW OFFICER: Darce Fardy

REPORT DATE: November 26, 2004

ISSUE: Whether the exemption found in Section 14(1), “advice to a public body or minister,” supports the decision of the Department of Finance to deny access to some records, in part or in whole.

In a Request for Review, pursuant to the Nova Scotia **Freedom of Information and Protection of Privacy Act** (FOIPOP), dated September 23, 2004, the Applicant asked that I examine the denied information and recommend to the Department of Finance that it disclose all of it.

The Applicant asked for copies of all communications between the Department of Finance and the Nova Scotia Gaming Corporation, Communications Nova Scotia and the Office of Health Promotion relating to the preparation and presentation of the “2003 Nova Scotia Gambling Prevalence Study.”

He was told by the Department that his application had been partially granted with the remainder being denied pursuant to **Section 14(1)** of *FOIPOP*, which allows a public body to

...refuse to disclose to an applicant information that would reveal advice, recommendations or draft regulations developed by or for a public body or a minister.

The Department's submission:

(Use of discretion):

The Department said that in deliberating on whether or not to provide all of the records in their entirety it considered:

- (a) the purpose of the **Act**, found in Section 2, which requires public bodies to be fully accountable to the public;
- (b) the applicant's right of access, found in Section 5 of the **Act**;
- (c) the right of the public body to give and receive advice;
- (d) the sensitivity and significance of the information; and
- (e) if disclosure would increase public confidence in the government.

The submission first addressed the decision to withhold a draft copy of the report. The Department said the draft, which was provided for the Minister's review, contains mistakes corrected in the final version of the study. The Department said that providing the draft to the Applicant would result in the release of inaccurate information.

The submission also concluded that the denied records did not contain “background information” as defined in **Section 3(1)(a)** of the **Act**, and therefore Section 14(2) did not apply.

I have examined all of the records at issue.

Conclusions:

I am satisfied the Department demonstrated it had exercised its discretion in making its decision, something required of all public bodies when making decisions on discretionary exemptions.

Advice:

The **Act** does not provide a definition for “advice.” In earlier reviews I have defined it as an opinion, view or judgement expressed to help a public body or minister to decide whether to act and, if so how?

Draft versions:

The Department claimed it was denying access to the draft study because it was inaccurate. Although Section **7(1)(a)** requires a public body to respond to applications “accurately” there is no reference to accuracy in s.14(1), the only exemption cited. The only reference to accuracy is found in subsection **20(2)** which lists accuracy as one of the circumstances to consider when deciding whether to disclose personal information.

The Department cites s.14(1) on all of the withheld information even though it provided no arguments to support the view that draft versions of records are “advice, recommendations or draft regulations.”

Another public body describes a draft as a “working paper.” It would be reasonable to conclude that a “working paper” almost by definition contains advice. I am satisfied that, in this case, the draft of the report contains “advice” to the Minister.

In my opinion the disclosure of the final report meets the demands on the Department to be “fully accountable” to the public as required by **Section 2** of the **Act**.

Severed records:

I am satisfied that all of the severing of those records denied in part, except one, contain advice and can be denied under s.14(1). An-e-mail dated August 4, 2004, which contains “the plan for release next week” contains facts of the “plan,” not advice.

I found no “background information” in the records which, pursuant to s.14(2), would have to be disclosed.

Recommendations:

That the Department disclose

- the e-mail dated August 4, 2004, referred to above.

Section 40 of the Act requires the Department of Finance 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 Department of Finance is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 26th day of November, 2004.

Darce Fardy, Review Officer
