

**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 sever certain records related to an air quality complaint

REVIEW OFFICER: Darce Fardy

REPORT DATE: April 22, 2005

ISSUE: Whether Sections 14 (advice) and 20 (protection of personal privacy), support the decision to sever the records.

In a Request for Review, pursuant to the **Freedom of Information and Protection of Privacy Act** (FOIPOP), received November 23, 2004, the Applicant asked that I recommend to the Department of Environment and Labour (the Department) that it reverse its decision to sever parts of some records it provided in response to the Application.

The Applicant had asked the Department for copies of all records related to the quality of air in and around property owned by Maritime Steel and Foundries Limited in New Glasgow. More than 290 records are relevant to the application. The Department provided most of the records in their entirety and severed fewer than 30 of them under exemptions found in **Section 20** which protects against an unreasonable invasion of personal privacy, and **Section 14** which allows a public body to refuse to disclose records containing advice to a public body.

Background

The Applicant owns commercial rental property in New Glasgow. Some of his tenants moved out complaining of poor air quality. The Applicant believes the air quality problem is related to the Maritime Steel plant nearby. He is seeking all the information the Department has on this issue including what investigations they did as a result of the complaints, and the recommendations that resulted.

The Applicant's submission:

The Applicant says he has learned from the records he received that the Department has had, and continues to have, concerns about the operations of the company plant from a health and safety perspective. He believes the recommendations which followed reviews on the nature of the emissions escaping from the plant would be of interest to those living nearby.

The Applicant is not convinced he has received all relevant information which, he contends, should be in the public domain.

Conclusions:

S.14

“Advice” is not defined in the FOIPOP Act and as noted by Justice Pickup, in *Fuller v. the Queen* (2003) NSSC058, there is no judicial interpretation of this section. The Saskatchewan Court of Queen’s Bench suggested the meaning of advice be adopted “in ordinary parlance.” [*John Weidlich v. Saskatchewan Power Corporation*, 1997, Q.D.Q. No. 834]

The Ontario Access and Privacy Commissioner, in Order 118, concluded that advice generally pertains to “the submission of a suggested course of action (underline mine) which will ultimately be accepted or rejected by the recipient during the deliberative process.” This definition has been accepted by the Nova Scotia Supreme Court in *O’Connor v. Nova Scotia*, 2001, NSSC 6.

The Department severed four “bullets” under “Current Position - Recommendation.” In my view the first, second and fourth bullets do not contain “a suggested course of action” and should not be denied the Applicant.

The other record severed under s.14 is found in an e-mail from a Department official to a provincial medical officer of health. It is my view that the severed part of this e-mail also does not contain “a suggested course of action.”

S.20

Section 45(2) requires the Applicant to bear the burden of proving that disclosing personal information would not be an unreasonable invasion of privacy. The Applicant’s submission made no reference to s.20 so I will assume it was not an issue for him.

Recommendations:

That the Department disclose in addition to what it has already disclosed:

1. the first, second and fourth bullets on the second page of the briefing note dated July 15, 2004 (page 107 of the index of records); and
2. the entire e-mail dated 2004-07-16 (Pages 115-116 of the index of records).

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. If a written decision is not received within 30 days, the Department is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 22nd day of April, 2005.

Darce Fardy, Review Officer