

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

A **REQUEST FOR REVIEW** of a decision of the **NOVA SCOTIA PUBLIC SERVICE LONG TERM DISABILITY PLAN TRUST FUND BOARD** to deny records related to the Applicant's personal information.

REVIEW OFFICER: Darce Fardy

REPORT DATE: May 27, 2005

ISSUE: Whether Section 14(1) (advice) and 16, (solicitor-client privilege) support the decision to sever the records requested.

In a Review for Review, pursuant to the Freedom of Information and Protection of Privacy Act, dated January 12, 2005, the Applicant asked that I recommend to the Public Service Long Term Disability Plan Fund Board (the LTD Plan) that it provide all of the records requested.

The Applicant had requested "the complete contents of my disability claim file, including all documents generated in the LTD admin office and those generated under contract to Manulife Financial and Maritime Life." She also asked for the "policy guidelines" used under "discretionary funding."

Decision of the Public Body:

The LTD Plan, while noting that the Applicant had previously been in receipt of “all file documentation,” told the Applicant that it was enclosing “a copy of all documentation in your file held at the NSPS LTD Plan.”

In the Request for Review, the Applicant said that the LTD Plan failed to comply with her request to examine the records containing her own personal information. In a subsequent e-mail to the Applicant, the LTD Plan said that access to letters and emails between the LTD Office, Manulife and the Trustees was refused because they contain “advice,” pursuant to **Section 14(1)** and information “subject to solicitor-client privilege” in accordance with **Section 16**.

The LTD Plan also told the Applicant that the “guidelines” which she requested, do not exist.

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At the suggestion of the Review Office, the LTD Plan allowed the Applicant to examine her file. This Office also prepared an index of records and recommended that the Applicant be provided with this index. The LTD Plan agreed to do this. The Applicant, having received the index appeared satisfied with the severances made under s.14(1) and s.16

Conclusions:

In my view, the only matter for this review to consider is whether s.14(1) and s.16 apply to the information withheld from the Applicant.

Both of these exemptions are discretionary. A public body may refuse to disclose “advice” or information subject to solicitor-client privilege but is not obliged to. In using its discretion the LTD Plan chose to refuse access to those records.

Section 14(1) reads:

(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice, recommendations or draft regulations developed by or for a public body.

Section 16 reads:

The head of a public body may refuse to disclose to an applicant information that is subject to solicitor-client privilege.

In other reviews I have defined “advice” as an opinion, view or judgement, and thoughts and views if they lead to a course of action. I also wrote that “advice” should be interpreted in a way that a reasonable person would understand the word to mean (FI-02-84).

In my view, the records denied under s.14 contain “advice.”

With respect to s.16, in earlier reviews I have cited an opinion of the British Columbia Information and Privacy Commissioner. The Commissioner wrote that “a public body may withhold information that consists of, or would reveal, a confidential communication between a lawyer and his or her client directly related to the giving or receiving of legal advice.” He added that a further four conditions must be established:

1. There must be a communication, whether oral or written;
2. The communications must be of a confidential nature;
3. The communication must be between a client (or her/his agent) and a legal adviser;
4. The communication must be directly related to the seeking, formulating or giving of legal advice.

McNairn and Woodbury's Government Information - Access and Privacy - described solicitor-client privilege as "a substantive rule for the exclusion of evidence in legal proceedings."

I have examined closely the records denied under s.14 and s.16 and have concluded the exemptions are properly cited in accordance with the FOIPOP Act.

Recommendation:

That the LTD Plan reaffirm in writing to the Applicant its decision to deny access to records in accordance with Sections 14(1) and 16.

That if other relevant records are found that they are considered for disclosure to the Applicant.

Section 40 of the Act requires the LTD Plan 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 LTD Plan is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 27th day of May, 2005.

Darce Fardy, Review Officer