

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

A **REQUEST FOR REVIEW** of an unsuccessful search by the **DEPARTMENT OF ENVIRONMENT AND LABOUR** for a record it originally had in its “custody or control.”

REVIEW OFFICER: Darce Fardy

REPORT DATE: April 22, 2005

ISSUE: Whether an adequate search was undertaken to find the record and whether the Department made “every reasonable effort” to assist the Applicant.

In a Request for Review, pursuant to the **Freedom of Information and Protection of Privacy Act**, dated February 28, 2005, the Applicant asked for an investigation into the failure of the Department of Environment and Labour to find a record.

The Applicant asked for any information on property owned by Nova Scotia Power (NSP) on Main Street in Wolfville. In particular she wanted a copy of an assessment report referred to in a letter from the Department to NSP which she identified by date.

There is no question that the record existed but the Department says a thorough search failed to locate it. It said the assessment report may have been forwarded to NSP but it did not approach NSP for a copy although the correspondence indicates this had been suggested by a department staff person.

The Applicant was charged \$225.00 for processing the application.

Submission of the Department:

The Department described what it believes to be a thorough search for the assessment report. The Department's Kentville Office concluded the files containing the record were in its Halifax Office. Halifax confirmed it had the file but said it did not contain the sought after record. It then asked the Kentville Office to do another search in which the District and Regional Managers became involved. The assessment report was not found.

Conclusions:

Because the Department chose not to ask NSP if it had a copy of the assessment report, I cannot conclude that "every reasonable effort" was made to assist the Applicant and that the requirements of **Section 7(1)(a)** were met. Section 7(1)(a) states:

7 (1) Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall

(a) make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely

The search undertaken confirms that the Department assumed such a record would be kept on file. It is reasonable to conclude that in this particular case there was a problem with records management. In my Review, FI-04-62, I questioned whether the applicant in that case was being asked to pay a sizable processing fee because of questionable records management. It was my view then, and is now, that the fee is unfairly levied even if the Applicant, in this case, raised no objections. The Department, when it provided a fee estimate, and the Applicant, when

she paid it, assumed the assessment report would be found somewhere in the voluminous file. Both parties were acting in good faith. In my view the Department should continue acting in good faith, and reduce the fee to the amount of the application fee, and return the rest.

Recommendations:

that the Department:

- ▶ ask NSP if it has a copy of the assessment report and, if it does, to request a copy of it for the Applicant; and
- ▶ return the processing fee.

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