

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

A **REQUEST FOR REVIEW** of a decision of **NOVA SCOTIA ENVIRONMENT AND LABOUR** to deny access to part of a record related to an asphalt plant located in Bridgewater, Nova Scotia.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **August 8, 2005**

ISSUE: Whether the decision to deny access to part of a requested record is supported by Section 14 of the FOIPOP Act.

In a Request for Review, dated April 23, 2005 under the **Freedom of Information and Protection of Privacy Act (FOIPOP)**, the Applicant asked for a review of the decision of Nova Scotia Environment and Labour (the Department) related to an application for access to “any and all environmental information pertaining to the asphalt plant located on Logan Road in Bridgewater”.

In its original decision the Department severed some parts of the records citing exemptions under **Sections 14** (advice); **15** (law enforcement); **20** (personal information) and **21** (confidential information of a third party.)

Through the mediation efforts of the Review Office, the Department agreed to provide all records in their entirety except a section of one record which it withheld under s.14. The Applicant said she had no interest in any records containing personal information.

Conclusions:

The only matter in dispute is the citing of s.14, a discretionary exemption 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”. Any background information in the record must be disclosed.

The part denied under “advice” is in a “COMMUNICATION FORM” dated June 12/03. In it a Department official is providing suggestions on what the Department should do with respect to enforcing air quality regulations at the asphalt plant.

In previous Reviews, I have adopted definitions of “advice” used by the Alberta and Ontario Information and Privacy Commissioners. The Alberta Commissioner defined “advice” as an “opinion”, “view” or “judgement”. The Ontario Commissioner accepted “thoughts” or “views” if they led to a course of action.

The Nova Scotia Court of Appeal expects “advice” to be given its “ordinary meaning” [*McLaughlin v. Halifax-Dartmouth Bridge Commission* (1993) 125 N.S.R. (2d) 288]. The Federal Court has advised public bodies “to choose the interpretation that least infringes on the public right of access”. [*Canada (Information Commissioner) v. Canada (Immigration and Refugee Board)*, 1997 F.C.J. No. 1812.]

I am satisfied, having read the record, that the part severed from the document is advice which the Department may deny under s.14.

Recommendations:

That the Department confirm in writing to the Applicant, with a copy to the Review Officer, its decision to sever the final 14 lines of the record dated June 12, 2003, marked as R128 in the records index.

Dated at Halifax, Nova Scotia this 8th day of August, 2005

Darce Fardy, Review Officer