

**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 sever personal information from records provided to an applicant.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** September 20, 2005

**ISSUE:** Whether disclosing the names of individuals would constitute an unreasonable invasion of their personal privacy in accordance with Section 20.

In a Request for Review, dated April 28, 2005, under the **Freedom of Information and Protection of Privacy Act (FOIPOP)**, the Applicant asked that I recommend to Nova Scotia Environment and Labour (DEL) that it disclose the names of the individuals that appear in the records he was provided.

*Background:*

This request for review arises from an investigation into a domestic oil spill which occurred while an oil tank was being filled. DEL provided the Applicant with all relevant records after severing the names of some individuals.

The Applicant's concern that an adequate search was not conducted was resolved during this Office's mediation process.

*DEL's Submission:*

DEL pointed out that the Applicant had said he wanted the severed names disclosed because they may be required for future legal action. It concluded that *FOIPOP* was intended to hold public bodies accountable and should not be used as a means of providing names to use in future legal action.

In its letter of decision DEL cited s.20(1):

The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

DEL did not indicate that it had applied this exemption after considering the factors to be found in other parts of s.20 [ss. (3) and (4)] or the circumstances to be found in ss. (2). Personal information is a mandatory exemption under *FOIPOP* but only "if" disclosing personal information were an "unreasonable" invasion of privacy. It is incumbent on public bodies to explain why it determined disclosure to be "unreasonable" even though an applicant has the burden of proof to show why she/he believes disclosing of names would not be unreasonable. To offer such an argument an applicant must be supplied with the reasons for the public body's conclusions.

During the Review, at my request, DEL reexamined its decision and cited subsection (3)(b) which says that disclosing personal information "compiled and identifiable as part of an investigation into a possible violation of the law" is presumed to be an unreasonable invasion of personal privacy.

**Conclusions:**

In the Nova Scotia Supreme Court decision in *Cyril House and 144900* (2000), Justice Moir said a public body cannot consider subsection 20(3) in isolation. It must, at the same time, consider whether any of the circumstances in ss.20(2) apply.

The circumstances include whether:

- disclosure would subject the public body to public scrutiny;
- the personal information is relevant to a fair determination of the applicant's rights;
- the third party will be exposed unfairly to financial or other harm;
- the personal information was provided in confidence;
- the disclosure may unfairly damage someone's reputation.

Having considered those circumstances, I am satisfied that disclosing the personal information would be an unreasonable invasion of an individual's personal privacy in accordance with s.20(3)(b).

**Recommendations:**

That DEL confirm in writing to the Applicant, with a copy to the Review Officer, its decision to deny access to the names at issue.

**Dated** at Halifax, Nova Scotia this 20<sup>th</sup> day of September 2005.

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Darce Fardy, Review Officer