

**PART XX OF THE MUNICIPAL GOVERNMENT ACT -
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(MUNICIPAL)**

A REQUEST FOR REVIEW of a decision of the **HALIFAX REGIONAL MUNICIPALITY** to provide an applicant with records related to the construction of a neighbour's swimming pool.

REVIEW OFFICER: Darce Fardy

REPORT DATE: September 19, 2005

ISSUE: Whether the Act supports the claim of a third party that disclosing records related to the construction of a swimming pool is an unreasonable invasion of her personal privacy.

In a Request for Review under, under **Part XX of the Municipal Government Act** (MGA), dated May 29, 2005, a third party asked that I recommend to the Halifax Regional Municipality (HRM) that it reverse its decision to provide records to two applicants.

Background:

This matter surrounds a long-standing dispute among neighbours regarding the construction of a swimming pool on one neighbour's property. Two of the neighbours claim that the construction work has eroded their properties and they have asked HRM to provide them with all the records in its custody regarding the construction of the pool. HRM has agreed to disclose most of the records, some of which are severed in accordance with the *MGA* of: personal information

under Section **480(1)**; legal advice under Section **476** and; a technical report paid for by the third party in accordance with Section **477(2)(a)**. The dispute is now before the court.

S.480(1) prohibits HRM from disclosing a third party's personal information if disclosure constituted an unreasonable invasion of the third party's personal privacy.

S.476 is a discretionary exemption which allows a municipality to refuse to disclose legal advice it has received.

S.477(2)(a) allows a municipality to refuse to disclose the results of an environmental test done for a fee "as a service to a person."

The third party's submission to the Review:

In two separate submissions, made by the third party's solicitor, the claim is made that disclosing any of the requested information would be an unreasonable invasion of her client's privacy because the information is confidential and disclosing it could harm the third party's "personal and business endeavours." The third party believes its communications with HRM on this matter have been in confidence

In a second submission the solicitor said that if any of the information contained negative comment about her client it could adversely affect the continued success of the client's business.

The submission pointed out that the applicants are seeking information, which otherwise would not be available to them, for use in Court. The solicitor concluded that assisting a private citizen to obtain information to assist them in litigation is not the legislative intent of Part XX of the *MGA*. It has nothing to do with holding HRM accountable.

Conclusions:

Given the circumstances, mediation was not an option for this Office to pursue. I have read the records that HRM intends to provide to the Applicants.

HRM does not intend to disclose two letters to the third party regarding environmental testing which the third party paid for.

The name of the individual who built the pool is severed from the records. This is in accordance with s.480(1) even though the individual's name is, of course, known to the applicants.

The third party's solicitor argues that disclosing the records to the applicants will irritate an already difficult situation existing between the owner of the property who constructed the pool and the neighbours. That may be so but my only responsibility is to determine if I agree with HRM that the records it intends to provide to the applicants do not contravene Part XX of the *MGA*. Beyond that the matter properly belongs in the court.

Because many of the documents are public HRM records, and some records the applicants already have, and because HRM has met the exemptions cited, I conclude that providing the records to the applicants is in accordance with Part XX of the *MGA*.

Recommendations:

- that HRM reconfirm in writing to the third party, with a copy to the Review Officer its intention to disclose the severed records.

Section 493 of the Act requires the responsible officer 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 Halifax Regional Municipality is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 19th day of September, 2005

Darce Fardy, Review Officer