REPORT **FI-04-32(M)**

THE NOVA SCOTIA FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (MUNICIPAL)

A REQUEST FOR REVIEW of a decision of the **HALIFAX REGIONAL POLICE** on an application for the records of a former police officer.

REVIEW OFFICER: Darce Fardy

REPORT DATE: August 18, 2005

ISSUE: Whether the Halifax Regional Police conducted a thorough search for the records requested and whether the exemptions cited support its decisions on severing and denying records.

In a Request for Review under, **Part XX of the Municipal Government Act**, (MGA) dated May 27, 2005, the Applicant asked that I recommend to the **Halifax Regional Police** (HRP) that it provide him with the records he is looking for.

The Applicant, a former police officer, wants all records related to an investigation of an incident in which he was involved. HRP provided him with 48 records. Six of them are at issue in this Review. Four of those were severed of personal information under **Section 480** of the MGA. Two other records were denied in full but HRP did not tell the Applicant under which exemption they were being denied.

The Applicant maintains he should be given copies of all the records and he is not satisfied all relevant records have been identified.

This has been a difficult Review because the parties have not been as helpful as they need to be to allow the Review Officer to understand the issues. Although the "burden of proof" is clearly on HRP to show why some records should be refused, no attempt was made by them to support their decision. The Nova Scotia Supreme Court was critical of a public body for not detailing the reasons why a particular exemption applies. Justice Edwards said: "mere recital of the words of a relevant section is not enough." [*McCormack v. Nova Scotia (Attorney General)* (1993) N.S.J. No. 625]

At the time of preparing this review, this Office has still not been told under what exemption a record identified as R.52 was denied the Applicant.

Given the Applicant's view that there are more records that have not been identified, the Review Office asked HRP to respond to several questions about how the search for records was conducted. The HRP told us the name of the person who conducted the search, where the file in question was held at the station, and what types of files were searched. In answer to the final question, HRP said that to the best of its knowledge no files are missing or no longer exist.

During the Review process, this Office requested and received from HRP copies of the relevant records, including those it provided to the Applicant. The Applicant, also at this Office's request, sent copies of the records he received. A discrepancy was noted when the Applicant's copies did not contain a record of handwritten notes which HRP says it provided him.

There is also the matter of a store security tape which led to charges being laid against the Applicant. HRP told the Review Office it does not have a copy of the security tape explaining it is the property of the store in which the incident occurred. The Applicant, understandably, found

this difficult to accept. One of the records provided to him by HRP was a status activity report which reads in part:

> SGT MPS attended central records and retrieved the tape of the Sears security tape (the records copy of the tape) and took same to ident in Hfx Stn to have it copied for Insp W Darnbrough - professional standards. We then viewed the tape and the records tape was taken back to records.

Conclusions:

The personal information deleted under s.480 contains the names of third parties mentioned in the correspondence. Although the identity of these people may have been revealed in records that were used by the court, personal privacy rights are protected under the *FOIPOP* **Act.**

Section 480(1) is a mandatory exemption which requires HRP to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. In my view the personal information of third parties named in the records is not the kind of information which, if disclosed, could be termed either a reasonable or unreasonable invasion of privacy. [under ss.480(3) and (4)]. Ss.480(2) provides a list of circumstances to consider in determining whether a disclosure wold be unreasonable one and whether "the third party will be exposed unfairly to financial and other harm."

Given that disclosing the names could cause some discomfort to those named, I am not prepared to recommend the names be disclosed. [For a detailed interpretation of s.480 see *The Application for Information of Cyril House and 144900 Canada Inc.* S.N.S.(2000) (Unreported)]

The records in dispute also include a letter containing legal advice to HRP. I am satisfied that this can be denied in accordance with **Section 476** which allows HRP to "refuse to disclose to an applicant information that is subject to solicitor-client privilege"

The final record at issue is an internal HRP e-mail. Although no exemption was cited, I have concluded that HRP believes it contains advice and is therefore exempt under **Section 474** which allows HRP to deny access to records containing advice prepared for a public body. In previous reviews I have adopted definitions of "advice" used by the Alberta and Ontario information commissioners: an "opinion," "view" or "judgement" (Alberta 97-007) and "thoughts" or "views" that could lead to a "course of action"(Ontario M-457).

I am satisfied that the withheld e-mails contain advice and can be denied under s.474.

Recommendations:

- that HRP search again for the video tape and decide whether or not to provide it to the Applicant.
- that HRP confirm it has provided the Applicant with the hand-written notes.
- That HRP improve its system for dealing with FOIPOPapplications and Reviews and become more familiar with its obligations under Part XX of the MGA; as well with the court decisions on the interpretation of the FOIPOP Act and the MGA by the Nova Scotia Court of Appeal and the Supreme Court.

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 Police is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 18th day of August, 2005

_____

Darce Fardy, Review Officer