

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

A **REQUEST FOR REVIEW** of a decision of the **PUBLIC PROSECUTION SERVICE** to deny access to parts of a Crown file.

REVIEW OFFICER: Darce Fardy

REPORT DATE: October 25, 2005

ISSUE: Whether the decision to deny access to parts of the records at issue is supported by the exemptions found in Section 20(1) (personal information) and Section 15(1) (prosecutorial discretion).

In a Request for Review, dated June 3, 2005, under the **Freedom of Information and Protection of Privacy Act (FOIPOP)**, the Applicant asked that I recommend to the Public Prosecution Service (PPS) that it disclose all of the information in the records he asked for.

The Applicant, a solicitor representing the mother of a youth, asked for a copy of the “Conditional Sentence Order Report” and “the Crown’s complete file” as it pertains to the youth.

Background:

The Applicant is the solicitor for the family of a youth who was injured in an assault by another youth. The solicitor sought the records with the consent of the victim’s mother. The accused pleaded guilty to one count while another was withdrawn.

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The PPS provided some of the relevant records, withheld others and released some with parts severed. It cited two exemptions under *FOIPOP* to support its decision.

Section 20(3)(b):

A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

Section 15(1)(f):

The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial discretion.

Following the practice of the Review Office, both parties, the PPS and the solicitor, were asked to make submissions in support of their positions. The PPS responded at length. Even though the burden of proof related to the disclosure of records containing personal information rests with the Applicant [(Section 45(2))], he chose not to make a submission to the Review Officer.

The submission of the PPS:

The PPS explained that in the context of s.15(1)(f), it was obliged to consider that the prosecution file relates to a proceeding under the *Youth Criminal Justice Act (YCJA)*. Section 110 of the *YCJA* forbids the publication of the name of a young person, or any other information that would identify the young person as a young person dealt with under this federal statute. Section 111 of the *YCJA* forbids the publication of the name of a young person, or any information of a young

person, if it would identify that person as a victim of, or as having appeared as a witness to, an offence committed by a young person.

In using its discretion to determine if s.15(1)(f) applies the PPS wrote to third parties who made statements about the incident to ask if they consented to the disclosure of their statements. None gave consent.

In considering Section 20, the PPS first determined that none of the factors of s.20(4) applied. (Section 20(4) lists personal information which, if disclosed, would constitute a reasonable invasion of privacy.) PPS then considered s.20(3) and ascertained that s.20(3)(b) applied. In determining that ss.20(3)(b) applied, the PPS said that, in accordance with the procedures laid down by the Nova Scotia Courts, it took into consideration the criteria found in ss.20(2). [*Dickie v. Nova Scotia (Department of Health)* C.A. 148941 (1999); *Cyril House and 144900 Canada Inc.* (1999) unreported] (*For a Review of a similar decision by the Department of Justice see FI-05-33*)

Conclusions:

Given that the Applicant made no submission in support of his position, I've concluded that Section 20 applies. I am also satisfied that s.15(1) supports the PPS decision to deny access to the denied information.

Recommendations:

That the PPS reaffirm to the Applicant in writing, with a copy to the Review Officer, its decision on the application.

Dated at Halifax, Nova Scotia this 25th of October 2005.

Darce Fardy, Review Officer