

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

A **REQUEST FOR REVIEW** of a decision of the **NOVA SCOTIA OFFICE OF IMMIGRATION** to disclose third party information related to the province's immigrant nominee program.

REVIEW OFFICER: Darce Fardy

REPORT DATE: September 6, 2005

ISSUE: Whether Section 21 of the *FOIPOP Act*, supports the decision of the Office of Immigration to sever some of the information in records it intends to disclose.

In a Request for Review dated, June 14, 2005, under the **Freedom of Information and Protection of Privacy Act (FOIPOP)**, a third party asked that I recommend to the Office of Immigration (OI) that it reverse its decision to disclose information about the third party's business.

An Applicant had asked OI for all records related to its economic nominee program which is designed to assist immigrants who want to live and work in this province. The OI agreed to disclose information about those companies whose applications to participate in the program were approved. It withheld information which it believed to be exempt from disclosure under **Sections 20 and 21** of FOIPOP. Section 20 protects against the unreasonable invasion of an individual's privacy; s.21 requires a public body to deny access to information that contains commercial or financial information of a third party, under certain circumstances.

Under **Section 22** the OI notified the companies and asked if they had any objections to the disclosure of the information. Two companies objected. After considering their objections, the OI advised the third parties it had decided to go ahead with disclosing severed versions of the records. This review is at the request of one of the third parties.

Background:

Since 2002, the Nova Scotia Nominee Program has been providing opportunities for immigrants and their families to help the province meet its labour market needs. The assistance is offered in two “streams”: “Skilled Worker” to fill areas where skill shortages exist and “Economic” for experienced managers and business-oriented people.

In the Economic Stream, the Province, through the contracted services of Cornwallis Financial Services, receives applications from Nova Scotia companies interested in being a “Business Host.”

Companies interested in becoming Business Hosts must first be approved before they can go on the list and be eligible to accommodate an “economic nominee” (the immigrant). An immigrant, applying to become part of the program, provides a contribution of \$100,000 for her or his selected Business Host. \$20,000 of that is paid back to the nominated immigrant for a six-month contract. The Business Host is to use the remaining \$80,000 for market or product development.

The third party’s submission to the Review Office:

The third party rested its case for denying the information in the records on s.21.

Section 21 states:

Confidential information

21 (1) The head of a public body shall refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour-relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) The head of a public body shall disclose to an applicant a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an enactment.

(4) Subsections (1) and (2) do not apply if the third party consents to the disclosure. 1993, c. 5, s. 21.

The third party said it provided the necessary information to the OI in the expectation it would be kept confidential, and “may not have participated in the program if the information we supplied were to be released.”

The third party argues that the records should be denied because:

- they contain sensitive commercial and financial of the third party;
- that the application for participation was made with the expectation that it would not be made public; and
- that disclosing the information will allow competitors to determine the financial details of the immigration and the sum of money involved. And this could be used in a prejudicial manner by a competitor,

The third party also questions the claim of the OI that “Business Hosts” receive a “benefit” from being accepted on the program.

In a subsequent meeting with the Review Officer, the third party said it is important to understand that the company has received no public money and, therefore, should not be obliged to release any of the company’s information.

The OI submission to the Review Office:

The OI defended its position that disclosing information about the third party does not contravene s.21:

Since Business Host application approvals are granted by the Office of Immigration, and since disclosure of the identity of a company as an approved Business Host does not reveal confidential information supplied in support of the company’s application, and since the identity of the approved Business Hosts are made available to the

Economic Nominees without condition that they keep the identity of the company confidential, it was determined that Section 21 of the FOIPOP Act does not apply and that access to the identity of the company that is an approved Business Host cannot be denied.

In the matter of whether a Business Host receives a “benefit” from being chosen, the

OI said:

While being approved as a Business Host is no guarantee the company will be selected by an Economic Nominee (the immigrant), approved Business Host companies do enjoy the benefit of being on the list of companies from which an Economic Nominee may choose a suitable 6 month employment opportunity.

Conclusions:

I have been provided with copies of the edited records which the OI said it intends to provide to the Applicant. The first is a letter to the third party approving its application to be a Business Host. The name of the individual representing the third party is severed, the name and address of the company remains.

The second record is a copy of the form the third party filled out to apply to participate in the program. This record is also severed of individuals’ names and other personal information. It is also severed of information the OI believes to be exempt under s.21, including details of the project the third party intends to undertake with the immigrant’s investment.

For s.21 to stand, subsections (a), (b), and (c) must be met. The third party argued some of the information identified in ss.21(1)(a) would reveal some of its financial and labour information. While this may be true, it’s my view the sparse amount of information OI intends to disclose does not warrant a refusal to disclose.

The test under (b) is met because the third party was explicitly promised that the information would be held in confidence. It says so at the bottom of the application form.

With respect to (c), the third party must show proof [see s.45(3)(b)] that disclosing the completed application form could “reasonably be expected” to do “significant” harm to its competitive position or negotiating positions. In my view the third party has not done this, in either its oral or written submissions.

Recommendations:

- that the Office of Immigration write to the third party, with a copy to the Review Officer, reaffirming its decision to disclose the records.
- that the OI remove the promise of confidentiality from immigrant nominee program application because all information in government records is subject to the FOIPOP Act, unless it is specifically excluded.

Dated at Halifax, Nova Scotia this 6th day of September 2005.

Darce Fardy, Review Officer