

**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 records related to a motor vehicle accident.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** November 8, 2005

**ISSUE:** Whether the decision to deny access to some of the records at issue is supported by the exemptions found in Section 20 (protection of personal privacy) and Section 15 (exercise of prosecutorial discretion).

In a Request for Review, dated June 28, 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 the requested records.

A solicitor for a client had asked for copies of “any and all” information related to a Crown file. The PPS provided some of the relevant records but denied others after considering exemptions found in Subsection **15(1)(f)** and those found in Subsection **20(3)(a)** and **(b)** and their relevant circumstances under Subsection **20(2)(g)**.

15(1):

The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to

(f) reveal information relating to or used in the exercise of prosecutorial discretion.

20(3):

A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, dental, psychiatric, psychological or other health-care history, diagnosis, condition, treatment or evaluation;

(b) 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.

20(2):

In determining pursuant to subsection (1) and (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all of the relevant circumstances including whether

(g) the personal information is likely to be inaccurate or unreliable.

*Background:*

The solicitor is acting for a person who was injured in a motor vehicle accident. There were a number of people in the car at the time of the accident and the police tried to lay charges of impaired driving. None of the occupants admitted to having been behind the wheel. Although a prosecutor's file was opened and witness statements were taken, the Crown did not proceed with charges.

The solicitor's client has commenced action against two occupants of the vehicle.

One occupant has commenced his own action against the solicitor's client.

*Submission of PPS:*

With respect to the records withheld under s.15(1)(f), the PPS said:

... the documents are properly identified as Crown work product and further they reveal information relating to or used in the exercise of prosecutorial discretion, Certain documents in question are clear examples of the exercise of prosecutorial discretion in that the Crown after receiving advice was required to reevaluate the case to determine its viability.

*The client's solicitor's submission:*

The solicitor provided his reasons for asking for the records. They included

- His client has commenced an action against two occupants of the vehicle that had the accident.
- One of the occupants has started his own action against his client.
- He understands the reason the Crown failed to proceed with the charge against his client is because the witness who made the accusation had withdrawn it.
- The issue of who was driving the vehicle is very important to his client.
- There is no real invasion of privacy, at least with respect to two of the occupants of the car, because they are already involved in law suits.

The solicitor concluded that if he could not have a copy of the complete file, he should be provided with the portion of the file that includes police investigation reports, investigation notes and statements of the parties in the civil law suits.

**Conclusions:**

In its submission to the Review Office the PPS cited the Supreme Court of Canada ruling, *R. v. Stinchcombe*, and I provided the Applicant with an opportunity to comment. However, since access to information was not an issue in this case, I cannot find much relevance for this Review. I will rely, instead, only on the exemptions cited under *FOIPOP*.

The Applicant had already received the witness statements through the criminal investigation and indicated he did not want the medical information of other third parties.

When s.20 is cited as an exemption, the burden of proof is on the Applicant to show that the disclosure of the personal information of a third party would not be an unreasonable invasion of personal privacy. However, in this case the Applicant made only a perfunctory case for disclosure.

With respect to s.20, without a persuasive submission from the Applicant's solicitor, I am prepared to agree that s.20(3) applies because "the personal information was compiled and is identifiable as part of an investigation into a possible violation of law." I have reviewed s.20(4), which reveals conditions which, if they applied, would constitute an unreasonable invasion of personal privacy, and found none applied.

It is evident that the PPS followed the direction of the Supreme Court of Nova Scotia and considered relevant circumstances including those found in s.20(2). [Cyril House and 144900 Canada Inc.(2000) (Unreported)]

I am also satisfied that s.15 applies to those records being denied under that exemption.

**Recommendations:**

That the PPS confirm in writing to the Applicant, with a copy to the Review Officer, its decision not to disclose those records denied under s.15 and s.20.

**Dated** at Halifax, Nova Scotia this 8<sup>th</sup> day of November 2005.

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Darce Fardy, Review Officer.