

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

A **REQUEST FOR REVIEW** of a decision of the **WORKERS' COMPENSATION BOARD** to refuse to disclose the names, fax numbers and phone numbers of employers in the Board's database.

REVIEW OFFICER: Darce Fardy

REPORT DATE: December 2, 2005

ISSUE: Whether the information sought contains personal and confidential information and thereby can be a denied to an applicant pursuant to Sections 20 and 21(1) of the Act.

In a Request for Review, under the **Freedom of Information and Protection of Privacy Act (FOIPOP)** dated September 15, 2005, the Applicant asked that I recommend to the Workers' Compensation Board (WCB) that it disclose the records he has asked for.

The Applicant asked for the company names, fax numbers and telephone numbers of all employers who are in the WCB's database. The WCB denied the Application under the mandatory exemptions found in Section 20 and Section 21(1), specifically ss.20(3) (i) and ss. 21(a)(ii), (b) and (c)(i).

Personal information

20 (1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

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

(i) the personal information consists of the third party's name together with the third party's address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

Confidential information

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

(a) that would reveal

(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.

Both parties were invited to make submissions to the Review Officer.

Submission of the WCB:

The WCB explained what is required to meet the Applicant's request. There are 18,000 employers registered with the WCB. (Most businesses are required to register with the WCB so that their employees are protected with workers' compensation insurance). The

Applicant is asking for three pieces of information on 18,000 employers. This information is contained within a database that has many pieces of information on the 18,000 employers. All of these records would have to be culled to remove the information requested, because the information sought does not exist as a separate complete list.

In any event the WCB believes the information can be denied under ss.20(3)(i) because the applicant intends to use it for a mailing list; and ss.21(1)(a)(ii), (b) and (c)(i) applies because the information sought contains financial or commercial information of a third party, which was supplied in confidence to the WCB and which, if disclosed could “reasonably be expected” to “significantly harm” the interests of the 18,000 employers.

WCB concluded that, in its opinion, it is precluded from releasing this information “as a result of the fact its usage is for a business purpose.”

The submission of the Applicant:

The Applicant challenges the opinion of WCB that the information he wants contains personal information. He said he was looking only for information of a “business” nature which does not fit within the definition of “personal information” found in Section 3(1)(i). He describes what he is looking for as “business card” information and the disclosure of this, he argues, would not cause harm to the employers identified.

Conclusions:

The appropriate process for reviewing an exemption under Section 20 is found in a case heard before the Supreme Court of Nova Scotia. [*Cyril House (Abacus Security Consultants)* 2000, NSSC (unreported)] It must first be determined that the information does, in fact, meet the definition of “personal information.” If it doesn’t, of course, s.20 cannot be cited as an exemption.

“Personal information” is defined in Section 3(i) as “recorded information about an identifiable **individual**.” It provides some examples, such as name, address, telephone number, race and ethnic origin of an **individual**. (Emphasis added). Although this list is not exhaustive, it is useful in helping to determine whether or not the information sought meets the definition.

I have concluded that the information does not meet the definition even if the company name were to bear the name of the employer. In that case the name would be regarded as “business information” to which Section 21 could apply if all the conditions of that exemption were met.

Section 45 places the burden of proof on the WCB to show that:

- the information sought contains commercial or financial information which
- was supplied to the WCB implicitly or explicitly in confidence and which if disclosed
- would “reasonably be expected” to “harm significantly” the interests of the employer.

The WCB offered no evidence to support citing s.21(1).

The WCB has not said it cannot gather the information but it is obvious that doing so will be a formidable task. And it's worth noting, to paraphrase the Supreme Court of Nova Scotia in *Gatemaster Inc. V. Nova Scotia (Department of Housing and Municipal Affairs)*, (2000), that disclosing the information would not be "for the purpose of making the government accountable to the public or encourage public discussion." However, this does not mean that such records cannot be requested under *FOIPOP*.

Recommendations:

- That the WCB provide the Applicant with an estimated fee in accordance with Section 11(2) and (5) and an estimate of the time that would be required to fulfill the application. If the Applicant is prepared to wait for the production of the records and to pay the requested fee, I recommend the WCB grant the application.

Section 40 of the Act requires the WCB 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 WCB is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 2nd day of December, 2005.

Darce Fardy, Review Officer