

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

A REQUEST FOR REVIEW of a decision of the Halifax Regional Municipality to refuse to disclose shapefiles for electoral boundaries.

REVIEW OFFICER: Darce Fardy

REPORT DATE: January 10, 2006

ISSUE: Whether shapefiles for electoral boundaries meet the definition of a record in accordance with Section 461(h) of the *MGA*. Whether shapefiles, if they do meet the definition of a record, can be denied under Section 477 (harm to financial or economic interests).

In a Request for Review under, **Part XX of the Municipal Government Act**, dated October 28, 2005, the Applicant asked that I recommend to the Halifax Regional Municipality (HRM) that it reverse its decision and disclose the shapefiles he requested.

The Applicant asked HRM for the “ESRI Shapefiles for city council boundaries.”

HRM replied that the requested files do not meet the definition of a record and are therefore excluded from Part XX of the *MGA*. **Section 461(h)** defines record:

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

Both the Applicant and HRM made submissions to the Review. In its submission HRM added **Section 477** (harm to financial or economic interests) as an exemption if the Review Officer determined the requested files meet the definition of a "record."

The Applicant's submission:

The Applicant explained how shapefile information could be used to help connect citizens and their councilors, with the hope that they would "facilitate informed public participation in policy formation." Even if there "was financial harm to the city", he said, "it would have to be weighed against this benefit."

The Applicant says a mapping company could digitize paper maps to obtain the same information. "That of course assumes that these companies could make a profit sufficient to justify the cost of buying the map, digitizing and distributing it . . . The fact that no major company sells the digital copy of the district boundaries should prove the data has little to no economic value."

HRM's submission:

It is the view of HRM that the actual map, not the shapefile, is the "record". The shapefiles, it said, are simply data [the "mechanism"] which are run in a program [ESRI]. It concluded that even if it were to agree the shapefile was a "record" it would have been denied the Applicant under Section 477 of the M.G.A:

The shapefile that is being requested does not exist - it would have to be produced from the underlying program and technical information. Municipal staff, at considerable time and expense, have interpreted the written, legal municipal boundary descriptions . . . The Municipality is of the opinion that this technical information “is reasonably likely to have monetary value ...”

Conclusions:

A representative from the Review Office visited HRM to view the shapefiles. The shapefile format was created using various programs and seven physical files. As well, the Review Office sought an authoritative definition of shapefiles. According to the U.S. Geological Survey, an unbiased, multi-disciplinary science organization, a shapefile is “a digital vector (non-topological) storage format for storing geometric locatic attribute information.”

I’ve concluded that the shapefile does fall within the definition of a “record” since it can be considered a “thing on which information is recorded or stored.” Therefore, I will examine HRM’s argument against disclosure. Section 477 is a discretionary exemption which allows a municipality to refuse to disclose information if disclosure “could reasonably be expected to harm the financial or economic interests of a municipality.” **Section 498** requires a municipality to “prove that the applicant has no right of access to the record.”

The Federal Court of Appeal has ruled that while proof of harm does not require “detailed and convincing evidence” there needs to be evidence “of a reasonable expectation of probable harm” (underline added) [*Canada Packers Inc. v. Canada (Minister of Agriculture)* (1989), 53 D.L.R. (4th) 246].

The Supreme Court of Canada in *Lavigne v. Canada (Office of the Commissioner of Official Languages)* 2002 S.C.C. 53 at paragraph 58 said, with respect to harm:

“...There must be a clear and direct connection between the disclosure of specific information and the injury that is alleged.”

In *Chesal v. Attorney General of Nova Scotia*, 2003 NSCA 124, Justice Bateman endorsed the view of Justice Coughlin in the lower court’s decision in *Chesal* that:

“...the legislators, in requiring “a reasonable expectation of harm,” must have intended that there is more than a possibility of harm to warrant refusal to disclose a record. Our **Act** favours disclosure and contemplates limited and specific exemptions and exceptions.”

HRM provided no evidence that disclosing shapefile would reasonably be expected to harm the financial and economic interests of the Municipality.

Recommendations:

That HRM disclose to the Applicant the shapefiles he requested.

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, HRM is deemed to have refused to follow these recommendations.

Dated at Halifax, Nova Scotia this 13th day of January, 2006

Darce Fardy, Review Officer