

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

A REQUEST FOR REVIEW of a decision of the **HALIFAX REGIONAL POLICE** to deny reference checks and other information related to the Applicant's attempts to join the police force.

REVIEW OFFICER: Darce Fardy

REPORT DATE: January 13, 2006

ISSUES: Whether the Halifax Regional Police conducted a thorough search for the records requested and whether the exemptions cited support its decisions on denying records.

In a Request for Review made under the Freedom of Information and Protection of Privacy legislation in **Part XX of the Municipal Government Act** dated November 21, 2005, the Applicant asked that I recommend to the Halifax Regional Police (HRP) that it disclose the records she has requested.

In a written request to the Halifax Regional Police, dated October 2, 2005, the Applicant, an unsuccessful job candidate with the HRP, asked for "a completed copy of all documents and materials contained in and pertaining to my application to the Halifax Regional Police Sciences Program."

HRP fully disclosed some records and denied access to others. With regards to the reference checks, HRP in its letter of decision, explained that it had summarized the

information they contain. It claimed that the reference checks themselves are exempt from full disclosure in accordance with Section **481(1)(b)** and **(c)(ii)**:

481(1) The responsible officer shall, unless the third party consents, refuse to disclose to an applicant information

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

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

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

HRP also denied records containing questions that were used on the tests and examinations that are part of the application screening process, because they do not apply to the *FOIPOP* Act. [Section 463(2)(d)]

During the mediation stage, the Applicant expressed no interest in obtaining the examination and test questions.

Both parties were asked to consider *French v. Dalhousie* 2002, NSSC 22 which ruled on a complaint from a member of the faculty of Dalhousie University who had been denied access to evaluations of his work performance.

Submission of the Applicant:

The Applicant believes some existing records, such as the results of the polygraph, medical tests and fitness assessments were not identified by the Halifax Regional Police.

The Applicant concluded that the Halifax Regional Police, as a public body, must abide by the purpose of the *Act* to give “individuals a right of access to, and a right to correction of,

personal information about themselves.”[s.462(ii)] She believes that the information she is requesting belongs to her and she cites *French v. Dalhousie* (referred to above) where the Court concluded that a person’s views or opinions about another individual are the personal information of the individual not of the person who expressed the views or opinions.

The arguments of the HRP:

Given the Applicant’s view that there are more records that have not been identified, the Review Office asked HRP to respond to several questions about how the search for records was conducted. HRP provided the name of the person who conducted the search, where the file in question was held at the station, and what types of files were searched. HRP said that “no other records exist, or existed for [the Applicant] (are) in the possession of Halifax Regional Police.”

HRP did not provide the Review Office with a submission on why the records at issue should be withheld.

Conclusions:

Section 481 is intended to apply to third parties and to protect the business and financial interests of those parties. It is not appropriately cited in this case. In any case, the Courts have confirmed that in order for this exemption to stand all three subsections must apply. [*Atlantic Highways Corp. v. Nova Scotia*, 1997, NSSC] Since nothing in subsection (a) applies, this exemption will not stand.

Although HRP did not cite Section 480, it is a mandatory exemption which I must consider in this review. Section 480(1) requires HRP to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. In my view the personal information of third parties named in the records do not meet any of the conditions described in subsections (3) and (4). In this case one must consider the circumstances found in ss. 480(2). Although HRP may not have specifically promised the individuals providing reference checks that their identities would remain confidential, I am satisfied that was implied. Consequently I am not prepared to recommend the names be disclosed. [For a detailed interpretation of s.480 see *Cyril House and 144900 Canada Inc.* (2000) (Unreported)]

The summary of the reference checks was provided to the Applicant pursuant to Section 480(5):

On refusing to disclose personal information supplied in confidence about an applicant, the responsible officer shall give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, and may allow the third party to prepare the summary of personal information.

However, in my opinion, the summary contains only a sampling of the views and opinions about the Applicant.

There is some evidence that other records related to this access to information request may exist. In a letter sent to the Applicant dated October 28, 2004, HRP indicated that the final stages for her application included a medical clearance.

Recommendations:

That the Halifax Regional Police search again for relevant records including but not limited to medical records and results of a polygraph test and decide whether or not to provide it to the Applicant.

That the Halifax Regional Police disclose to the Applicant, in addition to what has already been disclosed:

- the reference checks and their attachments (listed as Appendix B by HRP) with the names, phone numbers and any other identifying information of persons who are not employees of HRP severed;
- the title page of the Pre-Employment Screening Interview (referenced in Appendix C by HRP); and
- the three Police Cadet Interviews documents severing the questions and competencies which will be ranked (referenced in Appendix C by HRP).

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, the Halifax Regional Police is deemed to have refused to follow these recommendations.

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

Darce Fardy, Review Officer