

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

A **REQUEST FOR REVIEW** of a decision of **DEPARTMENT OF COMMUNITY SERVICES** to withhold the name of a complainant.

REVIEW OFFICER: Dwight Bishop

REPORT DATE: February 3, 2006

ISSUE: Whether disclosing the name of a person who lodged a complaint regarding possible child neglect would constitute an unreasonable invasion of the complainant's personal privacy.

In a Request for Review, dated November 29, 2005, under the **Freedom of Information and Protection of Privacy Act (FOIPOP)**, the Applicant asked that I recommend to Community Services that it release the name of the person who filed a complaint against the Applicant.

In its initial response to the Applicant, the Department said that disclosing the name of the Applicant would reveal the identity of a confidential source of law-enforcement in accordance with Section 15(1)(d).

Since the information requested contains the personal information of a third party, the Review Office informed both the Applicant and Community Services that Section 20 needed to be considered. Section 20 is a mandatory exemption that protects the privacy of a third party's personal privacy. The relevant provisions are:

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.

(2) In determining pursuant to subsection (1) or (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 the relevant circumstances, including whether

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence.

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

(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.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure;

(b) there are compelling circumstances affecting anyone's health or safety;

(c) an enactment authorizes the disclosure;

(d) the disclosure is for a research or statistical purpose and is in accordance with Section 29 or 30;

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

- (f) the disclosure reveals financial and other similar details of a contract to supply goods or services to a public body;
- (g) the information is about expenses incurred by the third party while travelling at the expense of a public body;
- (h) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the request for the benefit; or
- (i) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the request for the benefit or is referred to in clause (c) of subsection (3).

Community Services informed the Review Office and the Applicant that the investigation to which this request relates was closed while under review.

Submission of the Public Body:

Community Services considered the name of the referral source as personal information of an identifiable individual as defined by Section 3(i)(i) of *FOIPOP*: “personal information means recorded information about an identifiable individual including the individual’s name, address or telephone number.” Community Services considered s.20(3) and concluded that s.20(3)(b) applied since the referral source was used in order “to investigate suspected child abuse, and given that child abuse is subject to criminal prosecution, this subsection applies.” As this exemption relates to a possible violation of law, Community Services stressed for it to apply, “the violation does not have to be proven.” With respect to s.20(2)(e), Community Services said that to disclose the identity of the referral source could have

“negative repercussions for the individual” such as the threat of physical safety. This in turn could reduce the number of reports that Community Services receives and “impede its work with respect to child protection.” With regards to s.20(2)(f), the record indicated that the information was received in confidence and the confidentiality of this information should be maintained.

Community Services did not provide a submission regarding the s.15(1)(d) exemption.

Submission of the Applicant:

The Applicant felt violated by the complaint made against her. She believed that she had the right to know the name of her accuser as she never wanted to associate with him/her again. She continued, “if I called, there would be proof and I would stand behind any wrongs I see happen to children.” The Applicant said she had no intention to cause harm to this person.

Conclusion:

The Nova Scotia Supreme Court has provided guidance to follow when determining whether or not the disclosure of personal information is a reasonable or unreasonable invasion of a third party’s personal privacy. [*Cyril House and 144900 Canada Inc. (Abacus Security Consultants and Investigators)*](2000) unreported S.H. No.160555 (N.S.S.C.)]:

1. Determine if the information sought is “personal information” as defined in Section 3(1) of the FOIPOP Act.

2. Consider s.20(4). If it is found that this subsection applies then the information must be disclosed and there is no need to consider subsections (3) or (2).
3. If the information does not fall under (4), then both subsections (3) and (2) must be considered.

Section 20(4) lists circumstances which are considered to be a reasonable invasion of personal privacy. Section 20(3) creates a presumption of an unreasonable invasion of privacy of personal information, and s.20(2) contains relevant circumstances to be considered if (3) applies.

Having examined the circumstances surrounding this matter, it is my view, that the information under review is personal information as defined under s. 3(1) of *FOIPOP*. The information under review contains the name of an identifiable individual. I considered s.20(4) and I am of the opinion that the information does not meet any of the circumstances contained in that provision. In my view, s.20(3)(b) applies as the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. With regards to s.20(2), I am convinced that the information was received in confidence from a citizen. I believe that releasing the name of complainants in situations of this nature will reduce the likelihood of reports being made to Community Services and impede its work with respect to child protection.

I am satisfied that there is enough evidence to conclude that s.20(1) applies and the name should not be disclosed. Having reached this conclusion there is no need for me to consider the exemption claimed under s.15.

Recommendations:

That Community Services write to the Applicant, with a copy to the Review Officer, confirming its decision to refuse to disclose the name of the complainant.

Dated at Halifax, Nova Scotia this 3rd day of February 2006.

Dwight Bishop, Review Officer