

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

A **REQUEST FOR REVIEW** of a decision of the **MUNICIPALITY OF THE COUNTY OF RICHMOND** to deny access to proposals made by third parties for a subdivision development and each Evaluation Committee member's score results.

**REVIEW OFFICER:** Dwight Bishop

**REPORT DATE:** May 3, 2006

**ISSUES:** Whether Sections 480 and 481 of Part XX of the *Municipal Government Act (MGA)* support the decision of the Municipality of the County of Richmond to withhold the requested records.

In a Request for Review, dated February 12, 2006 the Applicant requested I recommend to the Municipality of the County of Richmond (the County) that the County release the proposals submitted in relation to a subdivision development and each Evaluation Committee member's score results. In its decision letter to the Applicant, the County stated it would not disclose the requested information on the basis of s.480 and s.481 of the *MGA*.

During the Review Office's mediation process, the Applicant withdrew the request for the proposals.

The relevant sections of Part XX of the *MGA* are:

**Personal information**

**480 (1)** The responsible officer 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 whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the responsible officer 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 privacy if the personal information...
  - (f) describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness...
- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if...
  - (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a municipality...

### **Confidential information**

- 481** (1) The responsible officer shall, unless the third party consents, refuse to disclose to an applicant information
- (a) that would reveal
    - (i) trade secrets of a third party, or
    - (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...

### **SUBMISSION OF THE PUBLIC BODY:**

The County did not make a submission to the Review Office.

**SUBMISSION OF THE APPLICANT:**

The Applicant stated, “this committee’s wages are paid for by tax payers money, and the scoring results, resulted in the spending of tax payers money, and the information requested is needed to determine the fairness of the scoring and qualifications of each member of the evaluating committee.”

**ANALYSIS AND FINDINGS:**

The core of the review is whether each committee member’s evaluation score results can be denied under s.480 (personal information) and s.481 (confidential information).

With regards to s.481, the burden of proof is with the County to establish that the applicant has no right of access to a record [Section 498(1) of the *MGA*]. To exempt information under s.481(1), a three-part test exists. In accordance with *Atlantic Highways Corp v. N.S.* (1997), 162 N.S.R.(2d) 27 (SC), the County must show proof that:

- disclosing the remaining records would reveal trade secrets or commercial or financial information of the winning bidder;
- the records were submitted in confidence; and
- the disclosure must “reasonably be expected to harm significantly the competitive position of the third party.”

The County made no submission to the Review Officer in support of withholding information under s.481(1).

With respect to the claim of s.480 (unreasonable invasion of personal privacy), I note the “personal information” contained within the score results are the names of the committee

members. In *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R.403, 1997 CanII 358 (S.C.C), the Supreme Court of Canada accepted the argument that the names of public servants are information relating to their position and functions as public servants, and should be disclosed. It is a function of each committee member to score the proposals.

I conclude that s.480 and s.481 of Part XX of the *MGA* do not apply to each Evaluation Committee member's score results.

**RECOMMENDATIONS:**

That the Municipality of the County of Richmond disclose to the Applicant each committee member's score results set out in the March 28, 2003 request for proposals.

**Section 493** of the **MGA** 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 Municipality of the County of Richmond is deemed to have refused to follow these recommendations, and the Applicant has a right to appeal to the Supreme Court of Nova Scotia.

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

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Dwight Bishop  
Acting Review Officer