



Nova Scotia

**Freedom of Information & Protection of Privacy Review Office
Review Officer Report FI-06-56**

A Third Party **REQUEST FOR REVIEW** of a decision by **Service Nova Scotia and Municipal Relations** to disclose a Pre-Employment Reference Check.

September 15, 2006

ISSUE:

Whether the *Freedom of Information and Protection of Privacy Act* supports the decision of Service Nova Scotia and Municipal Relations to disclose a Pre-Employment Reference Check.

In a Request for Review dated July 19, 2006, a Third Party requested I recommend to Service Nova Scotia and Municipal Relations (“SNSMR”) that the Department not release any portion of a Pre-Employment Reference Check given by the Third Party.

SNSMR received an application for access to a record under the *Freedom of Information and Protection of Privacy Act* (“FOIPOP”). The Applicant sought access to opinions and views contained in reference checks provided by Third Parties concerning the Applicant.

In accordance with Section 22(1) of *FOIPOP*, SNSMR notified the Third Party of the application. The Third Party did not consent to the disclosure of the Pre-Employment Reference Check. Initially, SNSMR decided to withhold the entire record. However, in a letter dated July 4, 2006, SNSMR notified the Third Party of its decision to release the document in part. SNSMR decided to sever the third party’s personal information from the record and disclose to the Applicant any views or opinions made about the Applicant by the Third Party. SNSMR’s rationale for the decision was based on *French v. Dalhousie University*, 2003, NSCA 16 wherein the Court concluded that a person’s views or opinions about someone else are not the author’s personal information but rather the personal information of the subject.

LEGISLATION CONSIDERED:

The relevant sections of *FOIPOP* are:

Purpose

2 The purpose of this Act is

- (a) to ensure that public bodies are fully accountable to the public by
 - (ii) giving individuals a right of access to, and a right to correction of, personal information about themselves . . .

Interpretation

3(1) In this Act,

- (I) "personal information" means recorded information about an identifiable individual, including
 - (viii) anyone else's opinions about the individual . . .

Personal information

20(5) On refusing, pursuant to this Section, to disclose personal information supplied in confidence about an applicant, the head of the public body 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.

Following the practice of the Review Office, all parties were asked for submissions in support of their positions.

SUBMISSION OF THE THIRD PARTY:

The Third Party stated that SNSMR did not convey that the reference check could be disclosed to the Applicant. The Third Party continued by stating that no reference would have been given if it was known that the Applicant could have access to it.

SUBMISSION OF THE APPLICANT:

The Applicant submitted the personal information of the Third Party was not of interest. The only information sought was that which pertained to the Applicant, including other people's views and opinions.

SUBMISSION OF THE PUBLIC BODY:

SNSMR informed the Review Office that it follows all policies and guidelines of the Public Service Commission (PSC) including the Reference Check Guidelines. The PSC Reference Check Guidelines state "[r]eferees should be advised that their reference is not confidential and subject to *FOIPOP*." SNSMR continued by stating that according to Section 2(a)(ii) of *FOIPOP*, the Applicant has a right to access and to correction, if correction is a possibility of the Applicant's personal information.

ANALYSIS AND FINDINGS:

It is clear that Third Party opinions about an individual (Applicant) are the personal information of the individual (Applicant). In this particular case, the information being sought falls within the parameters of this principle and can be released unless s.20(5) of *FOIPOP* applies. Section 20(5) allows for summarization of the Applicant's own personal information, including opinions and views about the person, if a Third Party supplied it in confidence. On balance, I accept the position of SNSMR that normal notification staffing procedures were followed and the information was not supplied in confidence.

RECOMMENDATION:

That Service Nova Scotia and Municipal Relations reaffirm its decision to partially disclose to the Applicant the Pre-Employment Reference Check, severing the personal information of the Third Party.

Dated at Halifax, Nova Scotia this 15th day of September 2006.

Dwight Bishop
Acting Review Officer