REPORT
Nova Scotia Freedom of Information and Protection of Privacy Report of Review Officer Dulcie McCallum FI-07-59

Report Release Date: September 23, 2008

Public Body: Department of Community Services [“Community Services”]

Issues: Has Community Services properly withheld portions the Department of Community Services, Family and Children’s Services, Child Protection Services, Policy Manual dated January 1996 based on the portions of the Record being non-responsive and s. 15(1)(c), s. 15(1)(e) and s. 17(1)(c) of the *Act*?
Should Community Services be entitled to claim a late exemption under s. 18(1)(a) at the time of filing its final representations with the Review Officer?

Summary: An Applicant requested a Review of a decision by Community Services not to release a copy of the Department of Community Services, Family and Children’s Services, Child Protection Services, Policy Manual dated January 1996. Community Services granted access in part to the Record, but withheld portions citing that portions of the Record are not responsive and based on exemptions in s. 15(1)(c), s. 15(1)(e) and s. 17(1)(c) of the *Act*. Community Services also attempted to claim a late exemption under s. 18(1)(a) at the time of submitting its final representations with the Review Officer. The Applicant submitted that neither position taken by Community Services under s. 15 or s. 17 had any merit. The Review Officer found that the Policy Manual in its entirety is responsive to the Applicant’s access request; that s. 15(1)(c), s. 15(1)(e) and s. 17(1)(c) were not applicable to the Record at issue; and the late exemption request by

Community Services to consider s. 18(1)(a) over 12 months after its original decision letter to the Applicant is denied and has not been considered during this formal Review

Recommendations: 1. Community Services to release the complete Record as requested by the Applicant; and
2. Once Community Services receives notice that a Request for Review has been filed that clearly will involve the need to consult with experts, it needs to consider ways in which it can consult and gather advice in a timely way. In the future lengthy extensions such as were allowed in this case will not be granted on the basis of the need to consult experts when the need to do so was clearly foreseeable long before the matter was at formal Review.

Key Words: child abuse, child protection, delay, fictitious names, late exemption, law enforcement, non-responsive, policy manual, reasonable expectation of harm, reasonably be expected to harm the financial or economic interests, record, responsive, investigative techniques.

Statutes Considered: *Nova Scotia Freedom of Information and Protection of Privacy Act s. 2, 3(1)(e), 3(1)(k), 13(2)(a), 15(1)(c), 15(1)(e), 17(1)(c), 18; Children and Family Services Act s. 9(d).*

Case Authorities Cited: *ON Order P-880; NS Report FI-06-79; NS Report FI-04-09(M); Canada (Information Commissioner) v. Canada (Prime Minister) (T.D.), [1993] 1 F.C. 427; ON Order PO-2647; ON Order MO-2207; BC Order F07-15.*

Other Cited: *Merriam-Webster Online Dictionary 2008; Late Exemption Policy.*

REVIEW REPORT FI-07-59

BACKGROUND

On July 12, 2007, the Applicant made an access request to the Department of Community Services [“Community Services”] for the following Record:

Child Protection Standards Manual of the Department of Community Services.

On August 24, 2007, Community Services, after receiving the fees for the search and copying from the Applicant, made a decision with respect to the access request:

Access is being granted in part to this record. The manual contains a number of sample documents containing fictitious names. It was felt that the disclosure of these names might be misleading and this information is, therefore, being withheld as not responsive. Portions of Sections 2.0, 4.0, 5.0, 8.0 and 11.0 as well as all of Section 3.0 of the Manual have been denied pursuant to s.15 of the Act as the disclosure of this information that could harm the effectiveness of investigation techniques or may endanger the safety of an individual. In addition, a portion of Section 4.0 is being withheld pursuant to s.17 of the Act as this information relates plans for the management of the Department which were not implemented.

On October 11, 2007, the Applicant filed a Form 7 requesting a Review of Community Services' August 24, 2007 decision and asking the Review Officer to recommend that the head of the public body provide access to the Record as requested.

On October 18, 2007, the Review Officer requested all relevant information including a copy of the Record from Community Services who responded on October 30, 2007. The copy of the Record provided claimed two subsections under s. 15 but did not specify which applied to what portion of the Record. The Review Office asked Community Services to provide a more detailed breakdown with respect to the exemptions claimed. On February 14, 2008 Community Services provided an index of the Record which simply put into an index its original position; that both subsections under s. 15 applied to all of the sections severed pursuant to that exemption.

On April 28, 2008, the Review Office provided Community Services with extensive research regarding child protection publications from other jurisdictions. Community Services was asked to re-consider its decision based on that information and respond by May 12, 2008. No response was received until June 9, 2008, Community Services explaining the delay based on the need to consult with experts in the field. Their position with respect to release remained unchanged.

On June 24, 2008, the Investigative Findings Report was issued to the parties. The research that was provided to Community Services was also shared with the Applicant along with additional precedents. On July 23, 2008, the Applicant responded to the Investigative Findings report.

Mediation was offered but was refused by the Applicant. The parties were invited to make submissions to the Review Officer, which were to be provided by August 4, 2008.

On July 28, 2008 the Applicant provided a submission, details of which are outlined below.

On July 29, 2008, Community Services sought an extension to August 22, 2008, in which to provide its submission for the formal review because of key experts being unavailable until that time.

RECORD AT ISSUE

The Record under Review is the Department of Community Services, Family and Children's Services, Child Protection Services, Policy Manual dated January 1996. ["Policy Manual"]

APPLICANT'S SUBMISSION

The Applicant provided a response to the Investigative Findings report on July 23, 2008, which made the following points:

1. The Applicant expresses concern about the delay in getting to the point where a submission is requested [and notes the relevant dates outlined above];
2. The Applicant takes issue with the fact that the Investigative Findings report provided to both parties failed to make a recommendation to the Community Services;
3. The Applicant acknowledges the offer of Mediation and confirms that s/he considers there to be no benefit to that step;
4. The Applicant requests that the necessary steps be take in order to have a decision made by the Review Officer without further delay.

On July 28, 2008, the Application made the following submission to the Review Office:

1. There is no merit to the position taken by the public body that access can be denied to portions of the manual because it contains sample documents using fictitious names, disclosure of which might be misleading and, therefore, that information is not responsive to the access request;
2. There is no way sample documents containing fictitious names could in any way be misleading or confusing and this claim should be rejected and the material produced;
3. Neither position taken by Community Services under s. 15 or s. 17, has any merit;
4. Referring the Investigative Findings report, the Applicant notes that similar information is routinely available in other jurisdictions and is also found on the internet and, therefore, there is no basis for not disclosing the information;
5. Reference is made to a decision from the Family Court of Nova Scotia dated May 15, 2007, a copy of which was provided, in which the Judge refers to portions of the Manual outlining the interview process that are being denied production in this case.

PUBLIC BODY'S SUBMISSION

On August 27, 2008, Community Services provided their final submission to the Review Officer. The submission incorporated earlier representations and provided as follows:

1. The FOIPOP Administrator met with the Director of the Child Welfare program to review the purpose and use of the different sections of the Policy Manual and past practices with respect to disclosure. This was done to ensure appropriate disclosure;
2. Based on input from the program, disclosure practices and the purpose of the Policy Manual a decision was made to provide partial disclosure to the Applicant;
3. During the investigation stage, with a view to early resolution, the Review Office provided Community Services with research from other jurisdictions which showed what appeared to be similar information posted to their websites. Again Community Services consulted with the program area to review the research provided;
4. The mandate of the Child Welfare program is legislated by the *Children and Family Services Act*, which statute has the "best interests of the children" at its core. To ensure the obligations of this mandate are met and the program is delivered uniformly across the board, Community Services set the standard of practice through the Policy Manual;
5. The Policy Manual was developed and approved in 1996 and is currently under review. The purpose was to set a standard of practice and outline steps for all social workers to abide by while delivering services. The audience for the Policy Manual were the professionals delivering the service, not the public at large;
6. Community Services is aware of the need to consider disclosure of government documents in the context of the balance between program needs and the access legislation. The FOIPOP Administrator had extensive consultation with professionals and counsel in the child protection area to discuss Community Services' duty to assist the public and to make every reasonable effort to assist the Applicant. Community Services also looked at past practices in the children welfare sector some of which pre-date the proclamation of access legislation in the 70's;
7. Based on the discussions with the child welfare experts, Community Services further submits:
    a. Chapter 3 of the Policy Manual relates to investigatory techniques used when a referral is received and a child, or others, need to be interviewed – techniques used by both child protection workers and law enforcement;
    b. Release of this information would potentially render ineffective the interview techniques and allow perpetrators to influence the children and change how they frame their own responses, so as to avoid the abuse being discovered;
    c. Based on that analysis, Community Services refuses to disclose the information pursuant to s. 15(c), s. 15(e) and s. 18(1)(a) of the *Act* as to release would:
        i. harm the effectiveness of investigative techniques and procedures used by law enforcement (and child protection) by allowing perpetrators to avoid disclosing or influence children to prevent them from disclose abuse;

ii. endanger the life or physical safety of any other person, in particular the life or physical safety of children who are abused;

iii. threaten anyone else's safety or mental or physical health, in particularly children who are abused.

d. The part of Chapter 4 that has been severed relates to the administration of a program which has not yet been implemented and therefore is being refused pursuant to s. 17(1)(c) of the *Act.*

e. Community Services states that it is aware of the *Late Exemption Policy* of the Review Office but based on the efforts of the Department to ensure accountability and transparency, the s. 18(1)(a) late exemption claim is requested.

DISCUSSION

The purpose of the *Freedom of Information and Protection of Privacy Act* ["the *Act*"], which has been a broad and purposeful interpretation, states:

> *2 The purpose of this Act is*
> *(a) to ensure that public bodies are fully accountable to the public by*
> *(i) giving the public a right of access to records,*
> *(iii) specifying limited exceptions to the rights of access;*

The Applicant has a right of access to any record in the custody or under the control of a public body pursuant to s. 5 of the *Act*, once a request has been received. Section 3(1)(k) of the *Act* defines record as follows:

> *"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;*

The issues in this Review are:

1. Whether or not information that is contained within the requested Record can be considered non-responsive;
2. The applicability of s. 15(1)(c) and s. 15(1)(e) of the *Act* to the information severed from the Record at issue;
3. The applicability of s. 17(1)(c) of the *Act* to the information severed from the Record at issue;
4. Whether or not Community Services' request to claim a late exemption under s. 18 of the *Act* should be allowed.

ISSUE: Portion of Record Non-Responsive

Community Services takes the position that the portion of the Manual that uses fictitious names on sample forms should not be provided to the Applicant because that information is not responsive to the access request. Community Services provided the

entire Policy Manual to the Review Office, which is exactly what the Applicant requested. The Policy Manual is in its entirety, responsive to the Applicant's request.

> *In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.*
> *[ON Order P-880]*

To claim that fictitious names in a manual are not responsive has no basis or validity under the *Act*. If Community Services thought the Applicant would be confused by the use of these names, which would itself be surprising because it is clear in the Record they are for sample purposes only, under their duty to assist, Community Services should have provided him/her with an explanation about the use of fictitious names. With all due respect, for Community Services to use this argument as a basis to deny access to a portion of a Policy Manual trivializes the purposes underlying the *Act*.

ISSUE: Section 15(1)(c) and 15(1)(e) of the *Act*

Community Services relies on two discretionary exemptions under s. 15. They have applied both sections to all portions of the Record severed under s. 15. In other words, Community Services is claiming that all of the severed portions of the Record would, if released, both *harm the effectiveness of investigative techniques* ***and*** *endanger someone's safety.* The subsections relied upon read as follows:

15(1) The head of a public body ***may*** *refuse to disclose information to an applicant if the disclosure could reasonably be expected to. . .*

> *(c)* ***harm*** *the effectiveness of* ***investigative techniques*** *or procedures currently used, or likely to be used, in law enforcement;*
> *(e)* ***endanger the life or physical safety*** *of a law-enforcement officer* ***or any other person****. . .*
> ***[Emphasis added]***

Law enforcement, referred to in both subsections of s. 15, is defined in the interpretation section of the *Act* as follows:

> ***3 (1)*** *In this Act. . .*
> ***(e)*** *"law enforcement" means*
>> *(i) policing, including criminal-intelligence operations,*
>> ***(ii) investigations that lead or could lead to a penalty or sanction being imposed,*** *and*

(iii) proceedings that lead or could lead to a penalty or sanction being imposed. . .
[Emphasis added]

One of the most important mandates of Community Services is the protection of children who are at risk. Investigating reports of alleged child abuse falls within the definition of law enforcement for the purpose of the *Act*. The *Children and Family Services Act* provides agencies with the authority to investigate accordingly:

9 The functions of an agency are to
(d) investigate allegations or evidence that children may be in need of protective services.

In order for the exemption to apply, Community Services bears the onus of demonstrating that the exemption applies and thereafter that they have exercised their discretion appropriately. *[See FI-06-79]*

First, in order to meet the statutory test of "could reasonably be expected to harm" and thus make out that the exemption applies, the public body must be able to show probable harm.

In my Review FI-01-134, I address the "proof of harm"issue. 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)(1998), 53 D.L.R. (4th) 246].
The same Court, in Rubin v. Canada (Minister of Transport) 1997), 221, N.R. 145 (Fed. C.A.), said "(w)here the harm foreseen by release of the records sought is one about which there can only be mere speculation or mere possibility of harm, the standard (of proof) is not met."

In a ruling of the Nova Scotia Court of Appeal, Justice Bateman concluded "that the legislators, in requiring "a reasonable expectation of harm," must have intended that there be more than a possibility of harm to warrant refusal to disclose a record." [Unama'ki v. Chesal 2003 NSCA 124 (CanLII), (2003) NSCA 124].
[NS Review Report FI-04-09(M)]

A Federal Court of Canada case made it clear that there needs to be a clear and direct linkage between disclosure and the alleged harm.

Descriptions of possible harm, even in substantial detail, are insufficient in themselves. At the least, there must be a clear and direct linkage between the disclosure of specific information and the harm alleged. The Court must be given an explanation of how or why the harm would result from disclosure of specific information.

> *…the evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue.*
> *[Canada (Information Commissioner) v. Canada (Prime Minister) (T.D.), [1993] 1 F.C. 427]*

In this case, Community Services provided little evidence or explanation for the basis of harm to either the Applicant or to the Review Officer. The basis of their submission is that, in theory, if perpetrators have access to the questions used in investigating allegations of child abuse, that they will be able to influence children as to how they answer and will be able to modify their own responses accordingly resulting in the investigation of the abuse being negatively affected. There has to be something more than mere speculation or the possibility of harm otherwise the Legislators would have chosen different language. In fact, Community Services claims the release of the information will render the techniques ineffective. Harm is the test, not ineffectiveness.

The approach taken by Community Services in this case falls within a well-intentioned by unjustifiably cautious approach. In fact, many jurisdictions in Canada provide the equivalent information contained in the Policy Manual, which is the subject of this access request, under either routine access policies or do not require an application for access under a statute. All of those manuals that are available are also available in their entirety on the internet. Examples of where equivalent manuals are available include:

- Alberta's "Responding to Child Abuse in Alberta: A Handbook";
- British Columbia's "Best Practice Approaches – Child Protection and Violence Against Women";
- Manitoba's "Child and Family Services Standards Manual"; and
- Ontario's "Child Protection Standards in Ontario".

In fact in three of those jurisdictions, the relevant legislation requires the manuals to be available, which negates any argument by Community Services that making such information available to the general public has a negative impact on child abuse investigations. This request is about a Policy Manual, not an actual investigation involving personal information. Community Services cannot try to contain this kind of information as if Nova Scotia was an information silo unto itself and ignore the realities of the age of information that would enable perpetrators to access the same information from a variety of sources. In fact, it is clear from the Table of Contents provided to the Applicant what has been severed. This information can easily be "Googled" on the internet, is the subject of a parenting course at the University of Toronto, and is the topic of a number of books including one by author Steinhauer and periodical articles including in the Family Court Review regarding the assessment of parent-child relationships.

In addition, portions of the severed Record have been used in child protection proceedings before the Court. The Applicant provided a copy of a judgment that had sections from the Policy Manual attached as an Appendix.

In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. ***The exemption normally will not apply where the technique or procedure is generally known to the public*** *[Orders P-170, P-1487]. The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures [Orders P-1340, PO-2034].*
[ON Order PO-2647]
[Emphasis added]

Techniques in s. 15(1)(c) can be defined as follows:

1. the manner in which technical details are treated (as by a writer) or basic physical movements are used (as by a dancer); also: ability to treat such details or use such movements <good piano techniques> 2.a: a body of technical methods (as in a craft or in scientific research) b: a method of accomplishing a desired aim.
[Merriam-Webster Online Dictionary, 2008]

Part of the Record that has been withheld involves a Risk Assessment Form and a list of factors to consider in the course of an abuse investigation. Neither a form nor a list of factors fall within the definition of "techniques."

As Community Services did not provide any evidence that the disclosure of the information to the Applicant could reasonably be expected to harm the effectiveness of techniques other than theoretically and some of the severed material is already in the public domain, the exemption in s. 15(1)(c) is not applicable to this Record. As the exemption does not apply, it is unnecessary to review whether or not Community Services exercised its discretion properly.

Community Services was asked specifically to break out its reliance on different subsections under s. 15. Their response was to continue to state that both applied to all of the severed Record except for the small portion related to s. 17 discussed below. Some of the Record severed pursuant to these two subsections of s. 15 includes headings on pages even though those same headings are in the Table of Contents, an unabridged version of which was given to the Applicant.

The first subsection relied upon by Community Services has been found not to apply, I will now turn to the additional exemption claimed under s. 15(1(e) of the *Act*.

The basis of their argument regarding s. 15(1)(e) is that disclosure of the questions used in investigations could reasonably be expected to endanger the life or physical safety of any other person. Community Services believes releasing the severed portions of the Record would allow perpetrators to have access to the interrogation questions that would allow them to influence victims and change their own answers thus endangering children.

Again, Canadian Courts and Commissioners have consistently held that there must be a reasonable expectation that the life or physical safety of a person [including a child] is endangered.

> *Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [Ontario (Attorney General) v. Fineberg, (1994), 19 O.R. (3d) 197 (Div. Ct.)].*
>
> *Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to",* ***the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm".*** *Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner), [2003] O.J. No. 2182 (Div. Ct.), Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) 1998 CanLII 7154 (ON C.A.), (1998), 41 O.R. (3d) 464 (C.A.)].*
>
> *In the case of section 14(1)(e),* ***the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure.*** *In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. However, while the expectation of harm must be reasonable, it need not be probable [Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor) 1999 CanLII 3816 (ON C.A.), (1999), 46 O.R. (3d) 395 (C.A.)].*
> *[ON Order MO-2207]*
> ***[Emphasis added]***

Community Services did not provide any evidence to demonstrate that the disclosure of the information to the Applicant could reasonably be expected to endanger the life or physical safety of a person including a child. The exemption in s. 15(1)(e) is, therefore, not applicable to this Record. As the exemption does not apply, it is unnecessary to review whether or not Community Services exercised its discretion properly.

ISSUE: Section 17(1)(c) of the *Act*

Community Services has severed a portion of the Record claiming that s. 17(1)(c) applies to a specific piece of information as it has "not yet been implemented" although the decision letter indicated that the plans "were not implemented." That exemption reads as follows:

> *Financial or economic interests*
>
> *17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the*

financial or economic interests of a public body or the Government of Nova Scotia or the ability of the Government to manage the economy and, without restricting the generality of the foregoing, may refuse to disclose the following information:
(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

The first point is that the Policy Manual is 12 years old. There is no timeframe in the Policy Manual or provided by Community Services in its submission as to when implementation will take place. The *Act* does not provide a timeframe for the s. 17 exemption but it is helpful to look to the exemption for Cabinet Confidences for guidance:

13(2) Subsection (1) does not apply to
(a) information in a record that has been in existence for ten or more years;

No evidence was provided by Community Services as to the financial or economic implications of implementation.

I have held that there must be a confident and objective evidentiary basis for concluding that disclosure of information could reasonably be expected to result in harm under s. 17(1). Referring to language used by the Supreme Court of Canada in an access to information case, I have said, "there must be a clear and direct connection between the disclosure of specific information and the harm that is alleged".
[BC Order F07-15]

On the basis of the lengthy period of time the Policy Manual has been in place [12 years] and the fact that no evidence was provided by Community Services as to the financial or economic implications of implementation, s. 17(1)(c) of the *Act* has no application to this Record.

ISSUE: Late Exemption

The Review Office has a *Late Exemption Policy,* which provides:

MEMORANDUM
To: *All FOIPOP Administrators*
Date: *September 30, 2004*
From: *Review Office*
Subject: Procedure for Claiming Additional Exemption Claims
After the public body has been notified by the Review Office that a Request for Review has been received, the Public Body may claim additional exemption sections ***within 15 days of the review notification****.*
The Public Body ***must give written notice to the Applicant*** *and to the Review Office of any additional exemption sections claimed. Any additional exemption*

sections claimed outside the 15 day period may not be considered during the review process.
[Emphasis added]

In its final submission to the Review Officer dated August 27, 2008, Community Services attempted to rely on s. 18(1)(a) of the *Act* as a late exemption. The rationale given by Community Services was that notwithstanding the *Late Exemption Policy* of the Review Office this late exemption should be allowed:

"considering the efforts of this Department to ensure accountability and transparency, we kindly request your acceptance of this late claim."

Community Services argues that it is appropriate to be able to rely on s. 18(1)(a) as a late exemption based on its efforts to ensure accountability and transparency. This reasoning is illogical. Transparency means greater accessibility not less. Adding on another exemption to try to justify the severing of the Record over 12 months after its original decision letter to the Applicant is totally unacceptable. Community Services ought to have claimed this late exemption within 15 days of being notified by the Review Office that a Form 7 had been filed, which was on October 18, 2007.

The request to consider the s. 18(1)(a) exemption is also rejected because Community Services has never put the Applicant on notice that it intended to make this late exemption claim. The *Late Exemption Policy* specifically provides that the public body must give written notice to the Applicant. The Applicant has never had an opportunity to respond to it. Quite apart from the Policy, fairness would dictate the Applicant having a chance to respond to the late exemption. In any event, Community Services has provided no details on its applicability or to which portion of the Record it applies so there would be no value added in accepting it as outlined in its submission to the Review Officer.

ISSUE: Delay on the part of the Public Body

During the course of the investigation at the Review Office, Community Services was provided with a copy of all of the Review Office's research about practices in other provinces. This was done, as is often the case in the Review Office, with a view to encouraging the public body to agree to an informal resolution. In this case, the research was provided to Community Services on April 29, 2008 and a response received June 9, 2008. The FOIPOP Administrator indicated that the delay was due to the need to consult with Community Services experts, however, in the end, nothing further was released to the Applicant.

In access requests everyone including the Review Office needs to be diligent about timeliness and try to be as responsive as possible over the course of a review file being processed even where there are no statutory timelines. Where public bodies are unable to provide responses in a timely fashion they should try to provide an explanation to the Review Office so Applicants can be kept apprised. This is especially true when considerable research was provided by the Review Office and the explanation received from Community Services after canvassing the experts was extremely simplistic and it

appears that there was no effort on the part of Community Services to release more of the Record to the Applicant. The repeated requests by Community Services for time extensions in order to consult with experts should not have been necessary particularly with respect to providing its formal submission to the Review Officer. By the summer of 2008, Community Services ought to have been aware that it was going to formal review and ought to have anticipated this on the previous occasions when meeting with the experts thus avoiding another delay.

FINDINGS:

1. The Department of Community Services, Family and Children's Services, Child Protection Services, Policy Manual dated January 1996 is a Record under the *Act*;
2. The Policy Manual in its entirety is the Record responsive to the Applicant's access request;
3. Investigating reports of alleged child abuse falls within the definition of law enforcement for the purpose of the *Act*;
4. As Community Services did not provide any evidence that the disclosure of the information to the Applicant could reasonable be expected to harm the effectiveness of techniques other than theoretically and the severed material is already in the public domain, the exemption in s. 15(1)(c) is not applicable to this Record;
5. Community Services did not provide any evidence to demonstrate that the disclosure of the information to the Applicant could reasonably be expected to endanger the life or physical safety of a person including a child. The exemption in s. 15(1)(e) is, therefore, not applicable to this Record;
6. As neither of the exemptions pursuant to s. 15 of the *Act* apply, it is unnecessary to review whether or not Community Services exercised its discretion properly;
7. On the basis of the lengthy period of time the Policy Manual has been in place [12 years] and the fact that no evidence was provided Community Services as to the financial or economic implications of implementation, s. 17(1)(c) of the *Act* has no application to this Record;
8. The equivalent Policy Manual is available as a matter of routine access in some other provinces including Alberta, British Columbia, Manitoba and Ontario. In all of these jurisdictions except Manitoba there is a statutory provision requiring the manual is made available to the public on the internet;
9. The late exemption request by Community Services to consider s. 18(1)(a) is denied and has not been considered during this formal Review; and
10. The need for FOIPOP Administrators to consult with experts and other professionals in public bodies in the course of responding to an access request or a Request for a Review is very important. In this case Community Services could have anticipated the need to do so in advance having already consulted earlier in the Review process. Failure to do so in a timely fashion delayed the outcome of this Review for the Applicant.

RECOMMENDATIONS:

1. Community Services release the complete Record as requested by the Applicant; and
2. Once Community Services receives notice that a Request for Review has been filed that clearly will involve the need to consult with experts, it needs to consider ways in which it can consult and gather advice in a timely way. In the future lengthy extensions such as were allowed in this case may not be granted on the basis of the need to consult experts when the need to do so was clearly foreseeable long before the matter was at final Review.

Respectfully,

Dulcie McCallum
Freedom of Information and Protection of Privacy Review Officer for Nova Scotia