



**Nova Scotia Freedom of Information  
and Protection of Privacy  
Report of Review Officer  
Catherine Tully**

**REVIEW REPORT FI-09-44**

**November 12, 2014**

**Service Nova Scotia**

**Summary:** The applicant sought access to a Service Nova Scotia motor vehicle collisions database. Service Nova Scotia denied access to the database stating that s. 4A(2)(1) of the *Freedom of Information and Protection of Privacy Act* (“*FOIPOP Act*”) prohibited disclosure of the information as it fell within the scope of s. 98(6) of the *Motor Vehicle Act* (“*MVA*”). The Review Officer found that s. 98(6) of the *MVA* prevails over the *FOIPOP Act* in this case by virtue of s. 4A(2)(1) of the *FOIPOP Act* and as a result, the access provisions of the *FOIPOP Act* do not apply to the requested records.

**Statutes Considered:** [Freedom of Information and Protection of Privacy Act](#), S.N.S. 1993, c. 5, s. 2 and s. 4A; [Motor Vehicle Act](#), RSNS 1989, c. 293, s. 98; [Access to Information and Protection of Privacy Act](#), SNL 2002, c A-1.1, s. 6(1); [Access to Information Regulations](#), NLR 11/07; [Freedom of Information and Protection of Privacy Act](#), RSA 2000, c F-25, s.5; [Freedom of Information and Protection of Privacy Act](#), SS 1990-91, c F-22.01, s. 23; [Freedom of Information and Protection of Privacy Regulations](#), RRS c F-22.01 Reg 1; [Freedom of Information and Protection of Privacy Act](#), CCSM c F175, s. 5(2); [Highway Traffic Act](#), CCSM c H60, s. 158(1); [Highway Traffic Act](#), RSNL 1990, c H-3, s. 171; [Traffic Safety Act](#), RSA 2000, c T-6, s. 11(3)(a).

**Authorities Considered:** [Order PO-2083](#), Ontario (Legal Aid) (Re), 2002 CanLII 46484 (ON IPC); [Report A-2013-007](#), Royal Newfoundland Constabulary (Re), 2013 CanLII 22258 (NL IPC).

**Cases Considered:** [Fitzgerald v Public Prosecution Services](#), 2014 NSSC 183; [O'Connor v. Nova Scotia](#) (Minister of the Priorities and Planning Secretariat) (2001), 2001 NSCA 132.

## **INTRODUCTION:**

[1] This is the first of two requests for review made within months of each other in the spring of 2009. Both requests relate to the data contained in the Collision Information Management System (known as the CIMS/ Collision Database) held by Service Nova Scotia.

## **ISSUE:**

[2] The *FOIPOP Act* provides that where there is a conflict between it and any other enactment, the *FOIPOP Act* prevails unless s. 4A(2) of the *FOIPOP Act* states that the provision of the other enactment prevails. Section 4A(2) includes a list of enactments that restrict or prohibit access to a record including certain provisions of the *MVA*. In this case, the particular issue is whether by virtue of s. 4A(2)(1) of the *FOIPOP Act*, subsection 98(6) of the *MVA* applies to the requested record so as to exclude it from the application of the *FOIPOP Act*.

## **DISCUSSION:**

### **Background**

[3] On March 4, 2009, the applicant made an access request to Service Nova Scotia and Municipal Relations (now “Service Nova Scotia”) for, “(a)n electronic copy in .txt delimited format of the entire database of motor vehicle collisions maintained by Service Nova Scotia and Municipal Relations”.

[4] By way of a letter dated March 31, 2009, Service Nova Scotia advised the applicant that his request for access was denied. Service Nova Scotia cited s. 4A(2)(1) of the *FOIPOP Act* as authority for denying access. They stated the requested records fell within the scope of s. 98(6) of the *MVA* which they said prohibited Service Nova Scotia from disclosing the information and so, by virtue of s. 4A(2)(1) of the *FOIPOP Act* the request for access was denied. The applicant filed a request for review of the Service Nova Scotia decision with this office on May 15, 2009.

### **The *FOIPOP Act* and Conflict with Other Enactments**

[5] Section 4A(2)(1) of the *FOIPOP Act* provides:

#### **Conflict with other enactments**

4A (1) Where there is a conflict between a provision of this *Act* and a provision of any other enactment and the provision of the other enactment restricts or prohibits access by any person to a record, the provision of this *Act* prevails over the provision of the other enactment unless subsection (2) or the other enactment states that the provision of the other enactment prevails over the provision of this *Act*.

(2) The following enactments that restrict or prohibit access by any person to a record prevail over this *Act*:

(1) subsection (5) of Section 7B, subsection (8) of Section 7C, subsection (6) of Section 98 and subsection (3) of Section 278E of the *MVA*;

[6] Service Nova Scotia is of the view that subsection (6) of s. 98 of the *MVA* applies to the requested records. The subsection reads as follows:

98 (6) Except as provided in subsection (7), all reports made pursuant to the provisions of this Section shall be for the information only of the Registrar, the Department or the police force to which they are made and no such report or any part thereof or any statement contained therein shall be open to public inspection or admissible in evidence in any trial, civil or criminal, arising out of such accident except as evidence that such a report has been made or in connection with a prosecution for making a false statement therein in violation of subsection (11).

[7] Section 98(1) of the *MVA* sets out the reporting requirements, which are as follows:

#### **Accident report**

98 (1) The driver of a vehicle involved in an accident resulting in injury or death to any person, or property damage to an apparent extent of two thousand dollars or more, shall, within twenty-four hours,

(a) if the accident takes place within a city or incorporated town, forward a written report of the accident, or report the accident in person to the Registrar, or to the nearest detachment of the Royal Canadian Mounted Police, or to the chief of police or any regular member of the police force of the city or incorporated town;

(b) if the accident takes place other than within a city or incorporated town, forward a written report of the accident or report the accident in person to the Registrar or to the nearest detachment of the Royal Canadian Mounted Police.

#### **Burden of Proof**

[8] Section 45(1) of the *FOIPOP Act* provides that for a review of a decision to refuse an applicant access to all or part of a record, the burden is on the head of a public body to prove the applicant has no right of access to the record.

#### **General Approach**

[9] The starting point for any analysis of the application of the *FOIPOP Act* is its purpose.<sup>1</sup> The Courts have emphasized the uniqueness of Nova Scotia's access legislation in a number of cases beginning with *O'Connor v. Nova Scotia*<sup>2</sup> (NSCA):

[54] I find that the purpose clause in the Nova Scotia statute is unique (among FIPPAs). This is the only province whose legislation declares as one of its purposes a commitment to ensure that public bodies are "fully accountable to the public" (underlining mine)...

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<sup>1</sup> [Fitzgerald v Nova Scotia \(Public Prosecution Service\)](#), 2014 NSSC 183 (CanLII) at para 51.

<sup>2</sup> [O'Connor v. Nova Scotia \(Minister of the Priorities and Planning Secretariat\)](#) (2001), 2001 NSCA 132 (CanLII), 197 N.S.R. (2d) 154; reflex, [2001] N.S.J. No. 360 (Q.L.) (C.A.).

[55] In summary, not only is the Nova Scotia legislation unique in Canada as being the only Act that defines its purpose as an obligation to ensure that public bodies are fully accountable to the public; so too does it stand apart in that in no other province is there anything like s. 2(b) (...)

[57] I conclude that the legislation in Nova Scotia is deliberately more generous to its citizens and is intended to give the public greater access to information than might otherwise be contemplated in the other provinces and territories in Canada...

[81] Thus it can be seen that “exceptions” are to be “limited” (s. 2(a)(iii)) and “exemptions” are to be “limited and specific” (s. 2(b)). While the Legislature chose different words when setting its own parameters to the exceptions or exemptions, I draw no meaningful distinction between the selected characterizations...

[82] Logic would dictate that any limitations upon the stated objective of insuring that public bodies are fully accountable, must be few and tightly drawn. They must be clearly identified and the basis upon which such a request for information might be refused, must be clearly stated.

[10] Therefore, any application of the exceptions set out in s. 4A of the *FOIPOP Act* should be limited and specific. The statutes listed in s. 4A(2) should be carefully reviewed to determine whether or not any apply to the records at issue. If a listed statute applies, s. 4A(2) operates so that the statutes in the s. 4A(2) list prevail over the *FOIPOP Act* to the extent of any conflict with the *FOIPOP Act*.

#### **Application of Section 98(6) of the MVA**

[11] Section 98(6) of the *MVA* makes clear that information provided in accident reports is for the information of the Department and the police force. It further provides, “no such report or any part thereof . . . shall be open to public inspection or admissible in evidence in any trial”. There is clearly a public interest behind this provision, part of which can be gleaned from the last detailed public report available in relation to motor vehicle collision reporting in Nova Scotia:

The 2002 Annual Motor Vehicle Collision Report reviews Nova Scotia’s motor vehicle collision experience for the calendar year 2002. It contains statistics relating to road traffic collisions— property damage, injury, and fatalities that occurred in the province. The report shows the principal factors contributing to road collisions, injuries, and deaths. It highlights trends in the number and severity of road traffic collisions by comparing data to previous years.

We use this data to identify trends and highlight areas where the Department of Transportation and Public Works, the Province of Nova Scotia, and police and municipal agencies should concentrate resources to improve safety for the motoring public. More specifically, we use it to

- develop highway safety projects such as education, enforcement, and communications campaigns
- identify high collision road locations so changes can be made to reduce the number of collisions
- develop expansion and twinning programs for 100-series highways
- prioritize funding for future maintenance projects
- identify possible legislative changes
- identify where further research is required

We also use this data to promote a co-coordinated and proactive approach to road safety with municipal governments and enforcement agencies.<sup>3</sup>

[12] The data is of importance to public safety on the roads and highways. In order to ensure accurate and timely collection of information regarding the factors that contribute to accidents, the *MVA* sets out prohibitions against disclosure but also includes provisions for disclosure in the limited circumstances set out in s. 98(7):

Where a person or an insurance company has paid or may be liable to pay for damages resulting from an accident in which a motor vehicle is involved, the person and insurance company and any solicitor, agent or other representative of the person or company who is thereunto authorized by the person or company in writing, is entitled to access to any such reports for the purpose of obtaining therefrom information in respect of

- (a) the date, time, and place of the accident;
- (b) the identification of vehicles involved in the accident;
- (c) the name and address of any parties to, or involved in, the accident;
- (d) the names and addresses of witnesses to the accident;
- (e) the names and addresses of persons or bodies to whom the report was made;
- (f) the names and addresses of any police officer who investigated the accident;
- (g) the weather and highway conditions at the time of the accident;
- (h) the estimate of the damage to any vehicle involved in the accident.

In this case, the public body argues simply that s. 98(6) of the *MVA* applies to the requested records and so the *FOIPOP Act* does not. The applicant argues that other provinces release this same data and therefore so should Nova Scotia.

[13] The applicant's assertion with respect to other jurisdictions is correct – other provincial jurisdictions do take a different approach to access to collision data. A review of access legislation in other Canadian jurisdictions reveals that only Newfoundland<sup>4</sup> restricts the disclosure of collision reports to a process outside of the access legislation process. Other

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<sup>3</sup> Nova Scotia Department of Transportation and Infrastructure Renewal, *2002 Annual Motor Vehicle Collision Report* at 3, available online at: <[www.novascotia.ca/tran/publications/AnnualCollisionReport02.pdf](http://www.novascotia.ca/tran/publications/AnnualCollisionReport02.pdf)>.

<sup>4</sup> *Access to Information and Protection of Privacy Act*, SNL 2002, c A-1.1, s. 6(1), online: <<http://canlii.ca/t/5261q>>; and, *Access to Information Regulations*, NLR 11/07, s. 5(j), (Access to Information and Protection of Privacy Act), online: <<http://canlii.ca/t/528z5>>.

jurisdictions such as Alberta<sup>5</sup>, Saskatchewan<sup>6,7</sup> and Manitoba<sup>8</sup> all have provisions similar to 98(6) of the *MVA* but those confidentiality provisions do not prevail over the access legislation in those provinces. Therefore, individuals can make access to information requests for collision reports in Alberta, Saskatchewan and Manitoba and the FOIPOP regime in those provinces applies.

[14] Section 98(6) of the *MVA* applies to “all reports made pursuant to the provisions of this Section.” The applicant is seeking access to the database known as the CIMs/Collision database. According to Service Nova Scotia, a two page report entitled, “Report of Motor Vehicle Collision,” also known as report form MV58A is the source of the data in the CIMs/Collision database. In support of its position, Service Nova Scotia provided this office with a description of the 62 data tables that make up the CIMs/Collision Database. A comparison of the content of each of these data tables with report form MVA58A confirms the data in the database matches with each of the data elements contained in that form.

[15] Since the source of the data in the CIMs/Collision Database is report MVA58A I must first determine if form MVA58A is a “report” within the meaning of s. 98(6) of the *MVA*.

[16] Historically, Nova Scotia published details relating to motor vehicle collisions.<sup>9</sup> In the 2002 version of that report, the connection between report forms MV58A, the *MVA* and the collision database was explained as follows:

In Nova Scotia all collisions involving property damage over \$1000, injuries or fatalities occurring on a public road as defined by the Motor Vehicle Act are required to be reported. The completed collision report forms (MV58A) are forwarded to Service Nova Scotia & Municipal Relations where they are entered into the database.<sup>10</sup>

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<sup>5</sup> [Freedom of Information and Protection of Privacy Act](http://canlii.ca/t/525b0), RSA 2000, c F-25, s.5, online: <<http://canlii.ca/t/525b0>>; and, [Traffic Safety Act](http://canlii.ca/t/526ws), RSA 2000, c T-6, s. 11(3)(a), online: <<http://canlii.ca/t/526ws>>.

<sup>6</sup> [The Freedom of Information and Protection of Privacy Act](http://canlii.ca/t/52bdb), SS 1990-91, c F-22.01, s. 23, online: <<http://canlii.ca/t/52bdb>>.

<sup>7</sup> Note: the Saskatchewan FOIPOP regulation includes a list of enactments that prevail over the FOIPOP. See: [Freedom of Information and Protection of Privacy Regulations, The](http://canlii.ca/t/52bdb), RRS c F-22.01, Reg 1, online: <<http://canlii.ca/t/52bdb>>. The list includes a reference to *The Traffic Safety Act*, but not to the provisions dealing specifically with the disclosure of collision reports referred to in s. 254(2) of *The Traffic Safety Act*.

<sup>8</sup> [The Freedom of Information and Protection of Privacy Act](http://canlii.ca/t/5278j), CCSM c F175, s. 5(2), online: <<http://canlii.ca/t/5278j>>; and [The Highway Traffic Act](http://canlii.ca/t/52bnj), CCSM c H60, s. 158(1), online: <<http://canlii.ca/t/52bnj>>.

<sup>9</sup> Collision data tables are available on the Department of Transportation and Infrastructure Renewal website for the period 2002–2006 and fatality statistics are available for the period 2009-2013 at <<http://novascotia.ca/tran/publications/>>. In addition, the more detailed 2002 report noted above is also available, online: Government of Nova Scotia, <[http://novascotia.ca/tran/publications/collisionstats/2002\\_Collision\\_Statistics.pdf](http://novascotia.ca/tran/publications/collisionstats/2002_Collision_Statistics.pdf)>.

<sup>10</sup> *2002 Annual Motor Vehicle Collision Report*, at 18, online: Nova Scotia Government <<http://www.novascotia.ca/tran/publications/AnnualCollisionReport02.pdf>>.

[17] It is s. 98(1) of the *MVA* that describes the types of motor vehicle collisions that must be reported. Other provisions of s. 98 provide the types of detail expected in the reports including full particulars of the accident, the names and addresses of the persons involved and the extent of the personal injuries or property damage. The Report of Motor Vehicle Collision (MV58A) requests all of this type of information.

[18] The *Access to Information and Protection of Privacy Act* of Newfoundland<sup>11</sup> carries a provision similar to s. 4A(2)(1) of the *FOIPOP Act*. In *Royal Newfoundland Constabulary (Re)*<sup>12</sup> the Newfoundland Commissioner examined the issue of whether or not the information requested fell within a “report” for the purposes of s. 171 of the Newfoundland *Highway Traffic Act*<sup>13</sup>:

It is my opinion that this prescribed form is meant to describe a specific form namely, a Motor Vehicle Accident report (“MVAR”) which is a carbon copy form completed by peace officers in relation to motor vehicle accidents indicating the necessary details of the incident.

[19] The Newfoundland Commissioner determined that the requested investigation report did not fall within the exception because the ‘prescribed report’ was not meant to capture any investigative information in relation to the accident.

[20] The situation here is, however, different. The data requested by the applicant is “the entire database of motor vehicle collisions”. Even on the narrowest of interpretations of s. 98(6) of the *MVA*, I am of the view that the requested information falls within 98(6) of the *MVA*. In addition to prohibiting “public inspection” of the reports, s. 98(6) makes reference to permitted disclosures under s. 98(7). In other words, the *MVA* creates its own scheme for access to the collision reports. Therefore, there is a conflict or inconsistency between public access under the *FOIPOP Act* and the prohibitions and restrictions under the *MVA*. Since it is not possible in this circumstance to comply with both the *FOIPOP Act* and s. 98(6) of the *MVA*, by virtue of s. 4A(2)(1) of the *FOIPOP Act*, s. 98(6) of the *MVA* prevails.

## **FINDINGS & RECOMMENDATION:**

[21] I find that the applicant’s request for information was a request for data originating from accident reports specified in s. 98(1) of the *MVA*. As a result, the requested information falls squarely within s. 98(6) of the *MVA*. The fact that the applicant sought the data not directly from the report forms but rather from a database itself does not, in my view, alter the fact that the source of the information was a report within the meaning of s. 98(6) of the *MVA*. To paraphrase

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<sup>11</sup> [SNL 2002, c A-1.1](http://canlii.ca/t/526lq), online: <<http://canlii.ca/t/526lq>>.

<sup>12</sup> [2013 CanLII 22258](http://canlii.ca/t/fx7f6) (NL IPC) at para 20, online: <<http://canlii.ca/t/fx7f6>>.

<sup>13</sup> [RSNL 1990, c H-3](http://canlii.ca/t/5273f), s. 171, online: <<http://canlii.ca/t/5273f>>.

former Assistant Commissioner Mitchinson, altering the format of the information, if it exists, would not change its content or the effect of its disclosure in this case.<sup>14</sup>

[22] By virtue of s. 4A(2)(1) of the *FOIPOP Act*, s. 98(6) of the *MVA* prevails over the *FOIPOP Act* in this case.

[23] I conclude that the access provisions of the *FOIPOP Act* do not apply to the requested records. I recommend that the public body take no further action in this matter.

A handwritten signature in black ink, appearing to be 'Catherine Tully', written in a cursive style.

Catherine Tully  
Freedom of Information and Protection of Privacy Review Officer for Nova Scotia

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<sup>14</sup> [Ontario Order PO-2083](http://www.ipc.on.ca/images/Findings/Attached_PDF/PO-2083.pdf) Ontario (Legal Aid) (Re), 2002 CanLII 46484 (ON IPC) at 11, also available online at: Office of the Information and Privacy Commissioner of Ontario, at 11.  
<[http://www.ipc.on.ca/images/Findings/Attached\\_PDF/PO-2083.pdf](http://www.ipc.on.ca/images/Findings/Attached_PDF/PO-2083.pdf)>.