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

REVIEW REPORT FI-12-01(M)

August 6, 2015

Halifax Regional Municipality

Summary: The applicant sought access to all correspondence and communications relating to the granting of a building permit for a specified property. The Municipality severed information under s. 480(1) of the *Municipal Government Act* ("*MGA"),* and gave the third party notice of its decision. The third party objected to the disclosure of any information in the record on the grounds that disclosure would harm its confidential personal and business interests. The Review Officer recommended disclosure of all but third party signatures. The third party failed to meet its burden of showing that the Municipality was required to withhold any part of the record under s. 481 of the *Act.* Moreover, the Review Officer found that the Municipality need not have withheld the third party's name as it would not, under these circumstances, result in an unreasonable invasion of privacy if disclosed. The Review Officer found that the Municipality was correct in withholding the signatures of third parties under s. 480(1) of the *MGA.*

Statutes Considered: *Access to Information Act*, RSC 1985, c A-1; *Building Code Act*, RSNS 1989, c 46, s. 4(1); *Building Code Regulations*, NS Reg 209/2003, s. 1.4.1.1.(1), 2.1.1.3, and 2.1.1.4; *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165; *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5, s. 20 and 21; *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31; *Interpretation Act*, RSNS 1989, c 235; *Municipal Government Act*, SNS 1998, c 18, ss. 461(f), 462(c), 477, 480, 481, 482, 485(2), 490(2), 498(3); *Personal Information Protection Act*, SA 2003, c P-6.5., s. 17.

Authorities Considered: Alberta Order F2008-028, F-2011-014**;** British Columbia Investigation Report 12-04, BC Orders 331-1999, F08-03, F09-14, 01-25; Nova Scotia Review Reports FI-03-37(M), FI-06-13(M), FI-06-37(M), FI-07-12, FI-07-38, FI-08-107, FI-09-29(M), FI-10-19, FI-10-59(M); Ontario Orders M-138, M-197, MO 2362, P-454; Newfoundland Report A-2012-011; Saskatchewan Report LA-2014-002.

Cases Considered: *Air Atonabee Ltd. v. Canada (Minister of Transport) (1989),* 37 Admin. L.R. 245 (FCTD); *Atlantic Highways Corp. v. Nova Scotia* (1997) 1997 CanLII 11497 (NS SC), 162 N.S.R. (2d) 27; *Canada (Information Commissioner) v. Canada (Canadian Transportation Accident Investigation and Safety Board)* 2006 FCA 157; *Chesal v. Nova Scotia (Attorney General) et. al.*, 2003 NSCA 124; *House (Re),* [2000] N.S.J. No. 473; *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner),* 2014 ABCA 231, *Leon's Furniture Limited v.*

Alberta (Information and Privacy Commissioner), 2011 ABCA 94 (CanLII); *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 SCR 23, 2012 SCC 3; *Mount Royal University v. Carter*, 2011 ABQB 28; *O'Connor v. Nova Scotia,* 2001 NSCA 132; *Sutherland v. Dept. of Community Services*, 2013 NSSC 1.

Other Sources Considered: *Black's Law Dictionary* (5th Edition) (West Group Co.: St. Paul, Minn., 1979), "individual"; *Canadian Oxford Dictionary*, (Toronto: Oxford University Press, 1991), "individual".

INTRODUCTION:

[1] On October 31, 2011 an applicant applied for access to records relating to the granting of a specific building permit by the Halifax Regional Municipality ("Municipality"). After providing notice to a third party business, the Municipality determined that it would provide partial access to the requested records. The third party was notified of the Municipality's decision and, in response, filed this request for review citing the need to protect confidential business and personal information.

ISSUES:

[2] There are two issues raised by this review request:

a) Was the Municipality required by s. 480 of the *Municipal Government Act* ("*MGA*") to refuse access to the record or any part thereof?

b) Was the Municipality required by s. 481 of the *MGA* to refuse access to the record or any part thereof?

DISCUSSION:

Background

[3] In October 2011 the applicant sought access to all correspondence relating to the application and subsequent granting of a building permit for a specific property including related communications between the property owner and/or the developer and the Municipality. The Municipality identified 23 pages of responsive records. The Municipality then provided notice of the access request to the third party. The notice included copies of s. 480 (personal information), s. 481 (business information) and s. 477 (financial or economic interests of the Municipality). The third party did not respond to the notice.

[4] On December 15, 2011 the Municipality advised the third party that partial disclosure of the record would be granted to the applicant. The Municipality cited s. 480(1) of the *MGA* (personal information) as authority for withholding a portion of the records. The Municipality determined that s. 481 did not apply to the records.

[5] On January 4, 2012 the third party filed a request for review of the Municipality's decision and asked that, "the Review Officer not give access to any part of the records requested in the Application for Access to a Record that contains information the disclosure of which may affect the interests or invade the personal privacy of the Third Party."

[6] Via email dated January 9, 2012 the Municipality advised the original access applicant that the third party had filed a request for review and so no records would be released. However, during the course of discussing the third party review with this office, the Municipality determined that it could release a copy of the permit. A partially redacted copy of the permit was disclosed to the original access applicant on March 6, 2012.

[7] This request for review was assigned to an investigator in this office in January, 2015. As part of our informal resolution process and in keeping with our obligations under s. 490(2) of the *MGA* the investigator contacted all parties – including the Municipality, the applicant and the third party, clarified the issues and sought submissions from each regarding the application of s. 480 and s. 481 of the *MGA* to the requested records.

[8] In addition, the investigator determined that the third party had never been provided with a copy of the records at issue and so was objecting to a disclosure of information that the third party had not seen. The Municipality agreed to provide a copy of the redacted documents to the third party and did so on April 13, 2015. The responsive records consist of 23 pages made up of correspondence in relation to the building permit.

[9] The investigator's attempt to resolve the matter informally was unsuccessful and so, the matter proceeded to formal review.

Relevant Statutory Provisions

[10] Section 480 of the *MGA* states:

> **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
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the municipality to public scrutiny;
> (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;
> (c) the personal information is relevant to a fair determination of the applicant's rights;
> (d) the disclosure will assist in researching the claims, disputes or grievances of aboriginal people;
> (e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;
(g) the personal information is likely to be inaccurate or unreliable; and
(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. 258 municipal government

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

(a) relates to a medical, dental, psychiatric, psychological or other health-care history, diagnosis, condition, treatment or evaluation;
(b) 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;
(c) relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;
(d) relates to employment or educational history;
(e) was obtained on a tax return or gathered for the purpose of collecting a tax;
(f) describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
(g) consists of personal recommendations or evaluations, character references or personnel evaluations;
(h) indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations; or
(i) consists of the third party's name together with the third party's address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(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 this Part;
(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a municipality;
(f) the disclosure reveals the amount of taxes or other debts due by the third party to the municipality;
(g) the disclosure reveals financial and other similar details of a contract to supply goods or services to a municipality;
(h) the information is about expenses incurred by the third party while travelling at the expense of a municipality;
(i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a municipality, not including personal information supplied in support of the request for the benefit; or

(j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a municipality, not including personal information that is supplied in support of the request for the benefit or that relates to eligibility for or the level of income assistance or social service benefits.

(5) On refusing to disclose personal information supplied in confidence about an applicant, the responsible officer 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, and may allow the third party to prepare the summary of personal information. 1998, c. 18, s. 480.

[11] Section 481 of the *MGA* states:

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,
(ii) result in similar information no longer being supplied to the municipality when it is in the public interest that similar information continue to be supplied,
(iii) result in undue financial loss or gain to any person or organization, or
(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour-relations dispute.

(2) The responsible officer shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax, unless the third party consents.

(3) The responsible officer shall disclose to an applicant a report prepared in the course of inspections by an agency that is authorized to enforce compliance with an enactment. 1998, c. 18, s. 481.

Burden of Proof
[12] This review was filed by the third party. Section 498(3) of the *MGA* provides that in the case of third party confidential information as described in s. 481, it is the third party who bears the burden of proof and in the case of personal information as set out in s. 480, it is the applicant who bears the burden of proof:

498(3) At a review or appeal into a decision to give an applicant access to all or part of a record containing information that relates to a third party

(a) in the case of personal information, the burden is on the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy; and

(b) in any other case, the burden is on the third party to prove that the applicant has no right or access to the record or part.

Was the Municipality required by s. 480 of the *MGA* to refuse access to the record or any part thereof?

General Approach

[13] The Nova Scotia Court of Appeal in *O'Connor v. Nova Scotia,* 2001 NSCA132 highlighted the uniqueness of the purpose provisions in Nova Scotia's *Freedom of Information and Protection of Privacy Act* ("*FOIPOP")*. The court emphasized the need for public bodies (and municipalities) to be fully accountable and highlighted that any limitations on full disclosure must be limited and specific. Section 480 is therefore a limited and specific exemption. It contemplates that personal information may be disclosed, it even contemplates that such disclosure may be an invasion of third party personal privacy. What it prohibits is a disclosure that would result in an "unreasonable invasion of personal privacy".[1]

[14] Section 480 of the *MGA* is virtually identical to s. 20 of *FOIPOP*[2] and for that reason, cases discussing the principles set out in s. 20 of *FOIPOP* are relevant to an examination of the application of s. 480 of the *MGA.* It is well established in Nova Scotia that a four step approach is required when evaluating whether or not s. 480 of the *MGA* requires that a municipality refuse to disclose personal information.[3] The four steps are:

1. Is the requested information "personal information" within s. 461(f)? If not, that is the end. Otherwise, I must go on.
2. Are any of the conditions of s. 480(4) satisfied? Is so, that is the end.
3. Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 480(3)?

---

[1] The authority to disclose personal information is set out in s.485(2) of the *MGA* which provides in s. 485(2)(a) that a municipality may disclose personal information only in accordance with *Part XX* of the *MGA* or as provided pursuant to any other enactment. Based on s. 485(2)(a) municipalities are authorized to disclose third party personal information in response to access to information requests as set out in s. 480 of the *MGA.*

[2] The main difference between s. 20 of *FOIPOP* and s. 480 of the *MGA* is the reference to municipalities instead of public bodies, reference to responsible officer rather than head of the public body, a slight change in the wording of s. 480(3) to avoid repetition of the words "personal information" and one additional ground for determining that a disclosure is not an unreasonable invasion of the third party's personal privacy. The additional ground is s. 480(4)(f) which provides that it is not an unreasonable invasion of a third party's personal privacy to disclose the amount of taxes or other debts due by the third party to the municipality.

[3] See for example *House (Re),* [2000] N.S.J. No. 473, and, *Sutherland v. Dept. of Community Services,* 2013 NSSC 1. This approach has been consistently followed by former Review Officers. See for example FI-08-107 and FI-09-29(M). More recently I also followed this approach in Review Report FI-10-19.

4. In light of any s. 480(3) presumption, and in light of the burden upon the appellant established by s. 498(3)(a), does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

Position of the parties

[15] No written submissions were received from any of the parties. All of the oral submissions focussed on the application of s. 481 discussed later in this report.

1. Is the requested information personal information?

[16] Section 461(f) provides a non-exhaustive definition of the term "personal information":

> (f) "personal information" means recorded information about an identifiable individual, including
>
> (i) the individual's name, address or telephone number,
> (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
> (iii) the individual's age, sex, sexual orientation, marital status or family status,
> (iv) an identifying number, symbol or other particular assigned to the individual,
> (v) the individual's fingerprints, blood type or inheritable characteristics,
> (vi) information about the individual's health-care history, including a physical or mental disability,
> (vii) information about the individual's educational, financial, criminal or employment history,
> (viii) anyone else's opinions about the individual, and
> (ix) the individual's personal views or opinions, except if they are about someone else;

[17] The Municipality applied s. 480 to the following types of information:

1. Names of:
    - an employee/representative of a third party business;
    - two experts retained by the third party;
    - government employee;
    - third party business.
2. Addresses and other contact information:
    - business email address and business phone and fax numbers of an employee of a third party business;
    - address of a third party business;
    - business address, email address, phone and fax numbers of two experts retained by the third party business;
    - email address of a government employee;
3. Signature of third party, third party expert and employee of a public body; and,
4. Three licence plate numbers visible in a photograph supplied by the applicant.

[18] I have thoroughly reviewed the records and could find no other information to which s. 480 might apply particularly given that the application for the building permit was made by a business and not an individual.[4]

[19] Personal information is defined in s. 461(f) of the *MGA* as recorded information about an identifiable individual including a non-exhaustive list of information captured by that definition.

[20] **Names:** The definition of "personal information in s. 461(f) of the *MGA* makes it clear that an individual's name qualifies as personal information even when the name is disclosed only in a business context. Therefore the name of the third party employee, government employee and experts retained by the third party all qualify as personal information within the meaning of the definition. This does not, of course, mean that the information must be withheld under s. 480. I will examine below whether or not the disclosure of this information would be an unreasonable invasion of a third party's personal privacy.

[21] The Municipality also withheld the name of a business citing s. 480 as authority. The *MGA* defines personal information as including an "individual's name". The term "individual" is not defined in the *MGA*, *FOIPOP* or the Nova Scotia *Interpretation Act*.[5] Black's Law Dictionary defines "individual" as follows:

> As an adjective, "individual" means pertaining or belonging to, or characteristic of, one single person either in opposition to a firm, association, or corporation, or considered in his relation thereto.[6]

[22] The Canadian Oxford Dictionary[7] defines "individual" as follows:

> *adj*. **1** single, separate. **2** particular, special; not general. **3** having a distinct character. **4** characteristic of a particular person. **5** designed for use by one person.
> *n.* a single human being as distinct from a family or group.

[23] I conclude that the definition of personal information and in particular the use of the word "individual" in the definition is meant to apply only to human beings and not to business entities.

---

[4] In *BC Order* F09-14 at para. 14, the British Columbia Information and Privacy Commissioner considered an application for access to building plans used in support of a development permit application by an individual. In that case the adjudicator considered whether or not the building plans qualified as "personal information" within the meaning of the B.C. Act. The adjudicator concluded that, with the identity of the individual third party removed from the plans the remaining information about the exterior design of the house was not information about an identifiable individual.

[5] *Interpretation Act*, RSNS 1989, c 235.

[6] *Black's Law Dictionary* (5th Edition) (West Group Co.: St. Paul, Minn., 1979).

[7] Canadian Oxford Dictionary, 2nd ed. Edited by Katherine Barber. Don Mills, Ont.: Oxford University Press, 2001.

[24] As former Commissioner Linden stated with respect to the similarly worded definition in the Ontario law:

> The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear.[8]

[25] I note that in two early Ontario Information and Privacy Commissioner decisions the Commission determined that where a building permit contains the name of a natural person as opposed to a business, the name of the natural person on the building permit fell within Ontario's equivalent to s. 481.[9] Therefore, the name of a business does not qualify as personal information within the meaning of the *MGA*. I find that s. 480 does not apply to the name of the business withheld at page 2 of the records.

[26] **Addresses and other contact information:** Business address information of three individuals was withheld under s. 480. I include in this category email addresses (so long as they do not reveal name), phone and fax numbers and mailing or street addresses. It appears that two of the three individuals run small businesses and that it is possible (although no evidence was supplied to this effect) that the addresses for the business also happen to be the home mailing address of the individuals. However, the *MGA* definition clearly states that it is "individual's name, address or telephone number" that qualifies as personal information.

[27] Unlike several other Canadian jurisdictions, Nova Scotia's access and privacy laws do not specifically exclude business contact information from the definition of personal information. Business contact information typically includes name, position name or title, business telephone number, business address, business email or business fax number of the individual.[10]

[28] I find that the address and other business contact information satisfies the definition of personal information. Once again this does not mean that the information must be withheld under s. 480. I will examine below whether or not the disclosure of this information would be an unreasonable invasion of a third party's personal privacy.

[29] **Signatures:** Three signatures were withheld under s. 480. In this case the names of these individuals have not been disclosed and so since the signatures obviously reveal the names and, as noted above, the withheld names qualify as personal information the signatures then also qualify as personal information within the definition.

---

[8] As cited in Ontario Order M-197 at p. 2.
[9] Order M-197 at p. 4 and Order M-138 at p. 3.
[10] See for example British Columbia's *Freedom of Information and Protection of Privacy Act*, Schedule 1, or Ontario's *Freedom of Information and Protection of Privacy Act,* RSO 1990, c F.31, s. 2(3).

[30] **Licence plate numbers:** Three licence plate numbers have been withheld under s. 480. The s. 461 definition of personal information includes "an identifying number, symbol or other particular assigned to the individual". The Alberta Court of Appeal examined the question of whether or not licence plate numbers qualify as personal information in the context of Alberta's private sector privacy law. In *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*[11] a majority of the Court decided that licence plate numbers were not personal information under the Alberta *Personal Information Protection Act.*[12] A furniture store was collecting the licence plate numbers of individuals who picked up furniture in its loading dock. The purpose of the collection was to prevent fraud by maintaining a record that could be used if the wrong person picked up a piece of furniture. In deciding that licence plate numbers did not qualify as personal information in this case the court stated:

> [49] The adjudicator's conclusion that the driver's licence number is "personal information" is reasonable, because it (like a social insurance number or a passport number) is uniquely related to an individual. With access to the proper database, the unique driver's licence number can be used to identify a particular person: *Gordon v. Canada (Minister of Health)*, 2008 FC 258 (CanLII), 324 F.T.R. 94, 79 Admin. L.R. (4th) 258 at paras. 32-4. But a vehicle licence is a different thing. It is linked to a vehicle, not a person. The fact that the vehicle is owned by somebody does not make the licence plate number information about that individual. It is "about" the vehicle. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal information, but that is not determinative. The appellant had no access to that database, and did not insist that the customer provide access to it.
>
> [50] It is also contrary to common sense to hold that a vehicle licence number is in any respect private. All vehicles operated on highways in Alberta must be registered, and must display their licence plates in a visible location: *Traffic Safety Act*, R.S.A. 2000, c. T-6, ss. 52(1)(a) and 53(1)(a). The requirement that a licence plate be displayed is obviously so that anyone who is interested in the operation of that vehicle can record the licence plate. The fact that the licence plate number might be connected back to personal information about the registered owner is obvious, but the *Traffic Safety Act* nevertheless requires display of the licence plate. Control of that information is provided by controlling access to the database. It makes no sense to effectively order, as did the adjudicator, that everyone in the world can write down the customer's licence plate number, except the appellant.

[11] *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner),* 2011 ABCA 94 (CanLII).
[12] *Personal Information Protection Act*, SA 2003, c P-6.5.

[31] The Information and Privacy Commissioner of British Columbia declined to follow the *Leon's* decision because, in the case before the B.C. Commissioner, it was the police who were collecting license plate numbers for the express purpose of identifying the driver. The police had access to a database that contained information connecting the license plate number to the driver/owner of the vehicle.[13]

[32] As noted above, the Alberta Court of Appeal compared license plate numbers with street addresses and determined that neither qualified as personal information because they identify a property not a person. However, the *MGA* clearly contemplates that addresses will qualify as personal information as set out in s. 461. Further, while access to the license plate database is one way to associate a licence plate number to an individual, the fact is that in smaller towns and neighbourhoods it is quite likely that more than a few people know the identity of an individual by their license plate number. Context is, of course, very important. I conclude for the purposes of this exercise that license plate numbers can qualify as personal information. I will examine below whether the disclosure of license plate numbers in this case constitutes an unreasonable invasion of a third party's personal privacy.

[33] In summary I find that information that does qualify as "*personal information*" is: names (including email addresses that disclose names), address and other contact information, signatures and license plate numbers. The name of a third party business does not qualify as "personal information" within the meaning of *FOIPOP*.

[34] I will now examine whether disclosing any of the personal information would be an unreasonable invasion of personal privacy as set out in s. 480(1).

2. Are any of the conditions of s. 480(4) satisfied?

[35] On page 1 of the records the Municipality withheld the name and email address of an employee of a public body. Section 480(4)(e) provides that a disclosure of personal information is not an unreasonable invasion of personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a Municipality. The record at page 1 was clearly created in the context of the individual's employment by a public body. His name, qualification and email address all form part of a regular business communication. In my view this information simply identifies the individual's position and functions and as such s. 480(4) applies. I find therefore, that s. 480 does not apply to the name and email address of the public body employee on page 1 of the record.

3. Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 480(3)?

[36] I can find no provision in s. 480(3) that applies to the remaining names, signatures or license plate numbers in the records at issue here.

[13] BC OIPC Investigation Report 12-04 at para. 2.2.

4. Does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[37] In my view, none of the enumerated circumstances set out in s. 480(2) are relevant here. In order to assess other relevant circumstances it is helpful to consider what interests are being protected by s. 480. Section 462(c) sets out one of the purposes of *Part XX* of the *MGA*:

> 462 The purpose of this Part is to
> (c) protect the privacy of individuals with respect to personal information about themselves held by municipalities and to provide individuals with a right of access to that information.

[38] The purpose section emphasizes that the interest being protected is the privacy of individuals with respect to personal information about themselves.

[39] **Individual names and business addresses:** With respect to the names and business addresses withheld under s. 480, in each case the names and addresses were provided to the Municipality in a business context. In each case the Municipality proposes to release the identity of the business but not the identity of the individual writing as an employee and/or representative of the business. In all three cases the individuals are publicly identified on the websites of the companies with which they are associated. In my opinion the identity of individuals as employees or representatives of businesses in this case lacks a distinctly personal dimension. Further, where email addresses or mailing addresses are provided, they are provided as the address of the business or as the business contact for the individual. The correspondence consists entirely of straightforward business communications.

[40] In Order F08-03 former British Columbia Commissioner Loukidelis agreed that disclosure of the names of casino employees who had completed reporting forms in the course of their workplace duties was not an unreasonable invasion of personal privacy because such information lacks a distinctly personal dimension.[14] In other jurisdictions the courts have determined that this type of information does not even qualify as personal information because it is not "about" the individual. The Federal Court of Appeal used this analysis to determine that records or transcripts of air traffic control communications did not contain personal information about the employees.[15]

[41] As noted by Commissioner Loukidelis in Order F08-03, the common thread is that, regardless of whether the information is characterized as not being "about" an identifiable individual or as personal information that lacks a distinctly personal dimension, release of this information would not constitute an unreasonable invasion of personal privacy.[16]

---

[14] BC Order F08-03 at para. 87.
[15] *Canada (Information Commissioner) v. Canada (Canadian Transportation Accident Investigation and Safety Board)* 2006 FCA 157, leave to appeal denied [2006] S.C.C.A. No. 259. See also: Ontario MO 2362.
[16] BC Order F08-03 at para. 87.

[42] It is important again to note that the *MGA* permits invasions of privacy, what it does not permit is unreasonable invasions of personal privacy. In the context of these records, and in these circumstances, I find that the disclosure of the names of employees and their business contact information, including mailing and email addresses and work phone numbers, would not be an unreasonable invasion of their personal privacy as required by s. 480 of the *MGA*.

[43] **Signatures:** There are two types of signatures at issue here. Signatures of non-public body employees and one signature of a public body employee. The Ontario, Alberta and Saskatchewan Information and Privacy Commissioners take the view that the disclosure of signatures of individuals acting in a business capacity do not qualify as "personal information" within the meaning of their statutes or that the disclosure of the signatures in a work-related capacity does not constitute an unreasonable invasion of the personal privacy of those employees. Typical of these decisions is Alberta Order F2008-028. Section 17 of the Alberta Act discussed below is equivalent to s. 480 of Nova Scotia's *MGA*:

> In many of the records at issue, the Public Body applied section 17 of the Act to the names, job titles and/or signatures of individuals who sent or received correspondence, or who acted in some other way, in their capacities as politicians, employees of the Public Body, other government officials, or representatives of other bodies, businesses and organizations…
>
> I find that section 17 does not apply to the foregoing names, job titles and signatures. First, in the case of government officials and employees (although not individuals associated with other organizations and businesses), section 17(2)(e) indicates that disclosure of their job titles and positions (i.e., employment responsibilities) is expressly not an unreasonable invasion of their personal privacy (Order F2004-026 at para. 105). Second, many previous orders of this Office have made it clear that, as a general rule, disclosure of the names, job titles and signatures of individuals acting in what I shall variably call a "representative", "work-related" or "non-personal" capacity is not an unreasonable invasion of their personal privacy. I note the following principles in particular:
>
> - Disclosure of the names, job titles and/or signatures of individuals is not an unreasonable invasion of personal privacy where they were acting in *formal* or *representative* capacities [citations omitted].
> - Disclosure of the names, job titles and/or signatures of individuals acting in their *professional* capacities is not an unreasonable invasion of personal privacy [citations omitted].
> - The fact that individuals were acting in their *official* capacities, or signed or received documents in their capacities as public officials, weighs in favour of a finding that the disclosure of information would not be an unreasonable invasion of personal privacy [citations omitted].
> - Where third parties were acting in their *employment* capacities, or their personal information exists as a consequence of their activities as *staff performing their*

> *duties* or as a *function of their employment*, this is a relevant circumstance weighing in favour of disclosure [citations omitted].[17]

[44] In a recent decision the Newfoundland Information and Privacy Commissioner considered whether or not the disclosure of a signature would result in an unreasonable invasion of personal privacy. He said:

> In respect of the signatures, in Report A-2009-004 at paragraph 60 I found that: "*The signature* […] *constitute the personal information of an identifiable individual pursuant to paragraph (i) of section 2(o) of the ATIPPA and should not be disclosed to the Applicant*." Consequently, the signatures which have been severed by CNA have been properly withheld as personal information in accordance with section 30 of the *ATIPPA*. An individual's signature is an identifying symbol or particular. Signatures are commonly used to confirm an individual's identity and to disclose this information to another individual may open a door for improper and even malicious uses.[18]

[45] In evaluating whether or not the disclosure of signatures in this case would be an unreasonable invasion of personal privacy I considered the following factors:

- Signatures are commonly used to confirm an individual's identity and to disclose this information to another individual may open a door for improper and even malicious uses;
- The official who signed the building permit has likely signed more than one building permit and so the disclosure of that signature may be fairly common in practice but no evidence was provided to confirm this;
- In all five instances where the signatures appear it is clear that the signatures are provided in a work-related context;
- The records clearly identify the individual who signed each of the documents in question and so, with the disclosure of the type-written or printed name recommended above, the applicant will know the identity of the individual supplied in a business context without the risks associated with the disclosure of a signature.

[46] I am satisfied in the circumstances of this case and on the balance of probabilities that the disclosure of the signatures could result in an unreasonable invasion of personal privacy and so I find that the signatures must be withheld pursuant to s. 480.

[47] **Licence plate numbers:** The Municipality proposes to withhold three license plate numbers that are visible in a photograph supplied by the applicant. The fact that the applicant has the original photograph in his possession and supplied the information to the Municipality weighs in favour of the disclosure. While some time has passed since the photo was supplied,

---

[17] Alberta Order F2008-028 at paras. 52 & 53, cited with approval in Alberta Order F-2011-014, Saskatchewan Review Report LA-2014-002, and *Mount Royal University v. Carter*, 2011 ABQB 28 . The B.C. Information and Privacy Commissioner has also determined that the disclosure of the signature of public body employees given in a work context would not constitute an unreasonable invasion of personal privacy – see for example BC Order 01-25, *Workers' Compensation Board, Re*, 2001 CanLII 21579 (BC IPC) at paras. 52-53.

[18] *College of the North Atlantic (Re)*, 2012 CanLII 74517 (NL IPC),A-2012-011 at para. 25.

the context of the photo is benign – it was intended to illustrate a property placement in relation to water frontage. For those reasons, in my view, it would not be an unreasonable invasion of personal privacy to disclose the licence plate numbers to this applicant. I find that s. 480 does not apply to the license plate numbers.

[48] In summary I find that s. 480 applies only to the five signatures contained in the records. Section 480 does not apply to any of the other information withheld by the Municipality.

Was the Municipality required by s. 481 of the *MGA* to refuse access to the record or any part thereof?

General approach

[49] Earlier I described the purposes of the *MGA* as set out by the Nova Scotia Court of Appeal in *O'Connor*. So how does the third party business exemption fit into the scheme of access legislation? Former Review Officer Dwight Bishop considered the *O'Connor* decision's influence on the interpretation of s. 481 and said this:

> While recognizing some specific and limited exemptions, an obligation is placed on the public body to favour the concepts of openness, accountability and accessibility.[19]

[50] In examining the federal *Access to Information Act*[20] third party business exemption, the Supreme Court of Canada determined that:

> (...The Act strikes this balance between the demands of openness and commercial confidentiality in two main ways. First, it affords substantive protection of the information by specifying that certain categories of third party information are exempt from disclosure. Second, it provides procedural protection. The third party whose information is being sought has the opportunity, before disclosure, to persuade the institution that exemptions to disclosure apply and to seek judicial review of the institution's decision to release information which the third party thinks falls within the protected sphere.[21]

[51] The Alberta Court of Appeal recently considered the application of Alberta's third party business exemption to a remediation agreement. The court noted the two protections identified by the Supreme Court of Canada but also highlighted a public interest in protecting third party business information:

> …when the information at stake is third party, confidential commercial and related information, the important goal of broad disclosure must be balanced with

[19] For example, see: NS Review Reports FI-06-13(M) at p. 5 and FI-06-37(M) at p. 5.
[20] RSC 1985, c A-1.
[21] *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 SCR 23, 2012 SCC 3 (CanLII) at para. 23.

the legitimate private interests of third parties and the public interest in promoting innovation and development.[22]

[52] The Nova Scotia Supreme Court considered the meaning and application of third party confidential information in *Atlantic Highways Corp. v. Nova Scotia*.[23] *Atlantic Highways* dealt with s. 21 of *FOIPOP* which is the *FOIPOP* equivalent to s. 481 of the *MGA*.

[53] The court in *Atlantic Highways* determined first that the three requirements in s. 21 of *FOIPOP* must be read conjunctively not disjunctively and secondly that the third party has the burden under that section to satisfy the court:

(a) that the disclosure of the information would reveal trade secrets or commercial, financial, labour relations, scientific or technical information of a third party;

(b) that the information was supplied to the government authority in confidence either implicitly or explicitly; and,

(c) that there is a reasonable expectation that the disclosure of the information would cause one of the injuries listed in s. 21(1)(c).[24]

Position of the parties

[54] As noted earlier, no written submissions were received from any of the parties. In the course of our investigation into this matter each party provided some information. The third party stated that he believed the release would harm his business and the property in question and that there would be a financial impact from the disclosure because he had invested time and effort into the rezoning application. He expressed concerns with the further use that might be made of the records.

[55] The access applicant expressed frustration with his inability to access this information which he believed should be public because he had made a rezoning application and had had to disclose this type of material during the course of the public hearings into the development of the property.

[56] The Municipality advised that it would not be providing any formal representations because this type of information is now made available through routine disclosure. The Municipality further clarified this point by advising that the publically available routine disclosure plan for the Planning & Development business unit was not up to date. It currently lists "building permits (with personal information redacted)" as being routinely available. The Municipality advised that it now routinely releases development permits, development applications and inspection reports in addition to building permits.

---

[22] *Merck Frosst* at para. 23, as cited in *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner),* 2014 ABCA 231 at para. 67.
[23] *Atlantic Highways Corp. v. Nova Scotia (1997)*, 1997 CanLII 11497 (NS SC), 162 N.S.R. (2d) 27 (*Atlantic Highways*).
[24] *Atlantic Highways* at paras. 28-29.

(a) Reveal trade secrets or commercial, financial, labour relations, scientific or technical information of a third party

[57] I discussed the meaning of commercial and financial information in Review Report FI-10-59(M):

> [20] The terms "commercial" and "financial" are not defined in the *MGA*. Former Review Officers McCallum, Fardy and Bishop adopted definitions set out in early Ontario Information and Privacy Commission decisions.[25] More recently, it has been generally accepted that dictionary meanings provide the best guide and that it is sufficient for the purposes of the exemption that information relate or pertain to matters of finance, commerce, science or technical matters as those terms are commonly understood.[26]
>
> [21] The *Canadian Oxford Dictionary*, (Toronto: Oxford University Press, 1998) provides the following definitions:
>
> > Commercial: of, engaged in, or concerned with commerce…of, relating to, or suitable for office buildings etc. (commercial land)
> >
> > Financial: of or pertaining to revenue or money matters
>
> [22] In addition, in order to constitute financial or commercial information, "the information at issue need not have an inherent value, such as a client list might have for example. The value of information ultimately depends upon the use that may be made of it, and its market value will depend upon the market place, who may want it and for what purposes, a value that may fluctuate widely over time".[27]

[58] Ontario Order P-454 and BC Order F09-14 considered the meaning of "technical information" and based on provisions similar to our own determined:

> [T]echnical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.[28]

[59] BC Order F09-14 considered whether or not plans that showed the exterior design and dimensions of a house qualified as technical information and concluded that they did.[29]

---

[25] See for example: NS Review Reports FI-06-13(M) at p. 5, FI-03-37(M) at p. 7 and FI-07-38 at p. 11.
[26] *Air Atonabee Ltd. v. Canada (Minister of Transport)* (1989), 37 Admin. L.R. 245 (FCTD) at 268 cited with approval in *Merck Frosst* at para. 139.
[27] *Merck Frosst* at para. 140 (citing *Air Atonabee*, at pp. 267-68).
[28] Ontario Order P-454 [1993] O.I.P.C. No. 112 (as quoted in B.C. Order F09-14 at para 27).
[29] BC Order F09-14 at para. 28.

[60] Neither the Municipality nor the third party specifically identified any information that would qualify as trade secrets, commercial, financial, labour relations, scientific or technical information of a third party.

[61] There are seven types of documents at issue here which I will discuss below. The documents types are:

- correspondence from the applicant,
- correspondence from two experts retained by the third party,
- correspondence from an employee of a public body to the third party,
- site plan,
- application for a building permit,
- building permit,
- one email internal to the Municipality, and
- correspondence between the Municipality and the third party.

[62] Correspondence from the applicant: Four pages of records in the response package consists of correspondence from the applicant when he was making inquiries regarding setback requirements. These records do not qualify as the commercial, financial or technical information of the third party because they contain no information about the third party.

[63] In my opinion, the remaining documents in the file all qualify as the commercial and/or technical information of the third party.

[64] The following three documents qualify as technical information:

- Correspondence from two experts hired by the third party: This correspondence includes the identity and opinions of two experts hired by the third party. The experts have particular technical expertise and provide information or opinions in their areas of expertise about the third party's property.
- Correspondence from an employee of a public body: An employee of a public body sent an email to the third party regarding the third party's property. The public body employee is also a technical expert giving an opinion on a technical area of expertise.
- Site plan. The site plan was prepared by a site surveyor and, consistent with the B.C. Order noted above, I conclude that it therefore qualifies as technical information.

[65] In my opinion the following four document types qualify as commercial or financial information because they reveal business plans of the third party. In particular, a plan to seek a building permit discloses expansion or renovation plans of a business. Financial consequences must inevitably ensue from this decision and, based on the fairly broad interpretation of the terms "financial and commercial" discussed above, I am of the view that such information falls within this category.

- The application for a building permit,
- The building permit,

- One email internal to the Municipality discussing the third party's permit application, and
- Correspondence between the Municipality and the third party. The correspondence qualifies as third party commercial, financial or technical information only because that correspondence reveals the fact that the third party made a building permit application. The content of the correspondence itself does not reveal any third party business information because it consists of explanations of general requirements for obtaining building permits.

[66] Of course this is just the first stage in the analysis of the application of s. 481. All three parts of the s. 481 test must be satisfied for the exemption to apply.

(b) Supplied implicitly or explicitly in confidence

[67] To obtain the protection of s. 481(1)(b) the third party must also establish that the technical, commercial or financial information was supplied implicitly or explicitly in confidence. There are two elements that must be established:

1. That the information was supplied by the third party; and
2. That the information was supplied in confidence.

"Supplied"
[68] The Supreme Court of Canada in *Merck Frosst* has said that the governing legal principles for the application of provisions such as s. 481(1)(b) are:

> [155] The first is that a third party claiming the s. 20(1)(b) exemption must show that the information was supplied to a government institution by the third party.
>
> [156] A second principle is that where government officials collect information by their own observation, as in the case of an inspection for instance, the information they obtain in that way will not be considered as having been supplied by the third party…
>
> [157] A third principle is that whether or not information was supplied by a third party will often be primarily a question of fact.

[69] It is clear from the record that the third party supplied four documents to the Municipality:
- correspondence from two experts retained by the third party,
- correspondence from an employee of a public body to the third party,
- site plan, and
- application for a building permit.

[70] All of this information appears to have been required by the Municipality as a regular part of the building permit application process.

[71] The building permit is a document prepared by the Municipality. It is not information supplied by the third party but it reveals information supplied by the third party – that is the fact that the third party had development plans for a property that required a building permit.

[72] There are a series of emails between the third party and the Municipality in which the Municipality explains the general requirements for obtaining building permits and seeks additional information from the third party. This correspondence reveals the fact that the applicant sought a building permit and this fact was supplied by the third party.

[73] One document is an email response to the applicant's question regarding approvals for building permits. The email is between municipal employees. The information is supplied by a municipal employee and not the third party but it also reveals the fact that the applicant sought a building permit and this fact was supplied by the third party.

[74] In summary, I am satisfied that the following information contained in the requested records qualifies as supplied by or revealing information supplied by the third party:

- correspondence from two experts retained by the third party,
- correspondence from an employee of a public body to the third party,
- site plan,
- application for a building permit,
- building permit,
- one email internal to the municipality, and
- correspondence between the municipality and the third party.

"In Confidence"

[75] Section 481 requires that the information must be supplied in confidence. The Alberta Court of Appeal in *Imperial Oil v. Alberta (Information and Privacy Commissioner)* recently determined that the requirement that the information was "supplied, explicitly or implicitly, in confidence" is substantially a subjective test; if a party intends to supply information in confidence, then the second part of the test is met.[30]

[76] In interpreting this requirement, the Nova Scotia Court of Appeal in *Chesal v. Nova Scotia (Attorney General)* ("*Chesal*") relied in part on a list of factors developed by the British Columbia Privacy Commissioner in Order 331-1999.[31] Likewise former Review Officer MacCallum adopted that list in her review of the application of s. 21 of *FOIPOP* to a request for a copy of a number of winning proposals.[32] Keeping in mind the fact that the use of the term "supplied" means that it is necessary to focus on the intention of the supplier, I am of the view that the following factors from *Chesal* and BC Order 331-1999 are relevant to considering whether information is supplied in confidence:

---

[30] *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner),* 2014 ABCA 231 (CanLII) (*Imperial Oil*) at para. 75.
[31] *Chesal v. Nova Scotia (Attorney General) et. al.,* 2003 NSCA 124 at paras. 71 - 72.
[32] NS Review Report FI-07-12.

1. What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the supplier or recipient?

2. Was the record prepared for a purpose that would not be expected to require or lead to disclosure in the ordinary course?

3. Was the record in question explicitly stated to be provided in confidence? (This may not be enough in some cases, since other evidence may show that the recipient in fact did not agree to receive the record in confidence or may not actually have understood there was a true expectation of confidentiality.)

4. Was the record supplied voluntarily or was the supply compulsory? Compulsory supply will not ordinarily be confidential, but in some cases there may be indications in legislation relevant to the compulsory supply that establish confidentiality. (The relevant legislation may even expressly state that such information is deemed to have been supplied in confidence.)

5. Was there an agreement or understanding between the parties that the information would be treated as confidential by its recipient?

6. Do the actions of the public body and the supplier of the record - including after the supply - provide objective evidence of an expectation of or concern for confidentiality?

7. What is the past practice of the recipient public body respecting the confidentiality of similar types of information when received from the supplier or other similar suppliers? [33]

[77] The *Nova Scotia Building Code Regulation* ("*Code*") provides that a building permit is required if work regulated by the *Code* is to be done.[34] The *Building Code Act* states that the purpose for the *Code* is to establish minimum construction requirements.[35] The *Code* lists required information for all permits and potential additional information requirements. Depending on the particular situation, the permit will not be issued until approval has been given for such things as proper sewage, electrical, approved access and heritage related issues. Permits must be conspicuously posted on the construction site during the entire execution of the work.[36]

[78] The third party has provided no evidence as to whether or not, at any stage in the process, the third party supplied any information with the expectation that it would be kept confidential. In addition, as noted in the list above, the fact that the information is compulsory will not ordinarily support a claim of confidentiality. The *Code* provides:

1.4.1.3. Required Information

(1) Every *building permit* application as a minimum shall

(a) identify and describe in detail the work and *occupancy* to be covered by the *permit* for which application is made,

[33] BC Order 331-1999 at para. 37, cited with approval in *Chesal* at para. 72 and NS Review Report FI-07-38 at p. 13.

[34] *Building Code Regulations*, NS Reg 209/2003, s. 1.4.1.1 (1).

[35] *Building Code Act*, RSNS 1989, c 46, s. 4(1).

[36] *Building Code Regulations*, NS Reg 209/2003, s. 2.1.1.4.

(b) describe the land by including where Nova Scotia property mapping exists the unique Parcel Identifier (PID) or where this mapping does not exist the assessment account number, and a description that will readily identify and locate the *building* lot,
(c) include plans and specifications as required by Division C, Subsection 2.2.2. of the *Code*,
(d) state the valuation of the proposed work and be accompanied by the required fee,
(e) state the names, addresses and telephone numbers of the *owner*, architect, *professional engineer*, or other *designer*, *constructor* and any inspection or testing agency that has been engaged to monitor the work or part of the work,
(f) describe any special *building* systems, materials and *appliances*, and
(g) such additional information as may be required by the *authority having jurisdiction.*

[79] The *Code* also lists a number of other requirements that may be imposed by the Municipality as part of the permit approval process. In this case, several of the records are prescribed forms simply signed by the third party's expert. In addition, information from both the third party experts and from the public body employee both appear to be information required as part of the building permit process. The Municipality did not provide any evidence on this point.

[80] Once the building permit is issued, as noted above, the permit must be conspicuously posted on the construction site and further, the obvious fact that construction is being undertaken makes the fact of a building permit public. Therefore, certainly once the building permit is issued, any expectation of confidence with respect to the fact that a permit application was made and with respect to content of the building permit itself ends.[37] The Municipality takes the view that building permits should be routinely released. I agree.

[81] The third party bears the burden of proof when the third party seeks a review of a decision of a Municipality. It would be a rare case where that burden is satisfied with no evidence and little argument as in this case. Our investigation revealed that the third party alleged some harm from the disclosure and it is only from that fact that I infer that the third party believed it had supplied some information in confidence. However, it appears that the information supplied by the third party in support of its building permit application was supplied as mandated by the *Code*.

[82] In the absence of any evidence from the third party and on the balance of probabilities I cannot find that any information was supplied in confidence. However, in case I am wrong on this point I will complete the s. 481 analysis.

[37] Consistent with this view s. 480(4)(i) of the *MGA* provides that it is not an unreasonable invasion of personal privacy to disclose the details of a permit, not including personal information supplied in support of the permit.

(c) Reasonable expectation of harm

[83] The burden of proof lies with the third party applicant to prove the harm he alleges. In the course of our investigation the third party indicated that he feared a financial impact from the disclosure because he had put time and effort into the rezoning application and he stated a concern about the possible misuse of the information. The Municipality provided no submission on this point.

[84] I recently examined the test for "reasonable expectation of harm" in s. 481(1) in Review Report FI-10-59.[38] I have applied that test to the facts of this case.

[85] In this case, aside from vague allegations of harm by the third party, there is no evidence and very little argument that any harm will occur. The burden of proof lies on the third party applicant to establish that the harm test has been met. It is unclear to me how the disclosure of a small amount of technical information regarding the third party's plans, now long since completed, could possibly cause any harm to the third party. Experts gave opinions within their areas of expertise regarding compliance, standard forms were completed and a survey submitted. Without some evidence or argument from the third party as to how this specific information might cause harm I am unable to find any basis for concluding that harm will result from the disclosure.

[86] I find that s. 481 of the *MGA* does not apply to these records.

General approach to giving third party notice

[87] I have noted previously that s. 481 of the *MGA* is worded in such a way that municipalities often mistakenly believe that the place to start is by seeking the consent of third parties. In fact, the place to start is to first determine whether or not s. 481 applies to the record or a portion of the record. This approach is made clearer by s. 482 of the *MGA* which describes when and how third party notice is to be given. In particular, s. 482 makes clear that notice is to be given: "When a responsible officer receives a request for access to a record that contains or may contain information of or about a third party that cannot be disclosed."

[88] To be clear, the notice should only be issued when a municipality has reason to believe the disclosure of the record might be contrary to the obligation set out in s. 481 not to disclose the record.

[89] In order to determine whether the record "contains or may contain" third party information, it is necessary to first evaluate whether or not s. 481 applies to the record. There must be some basis for believing that the record "contains or may contain" information that must be withheld. If, upon examination of the record the Municipality concludes that there is no reason to believe that the information might fall within the exemption under s. 481, third party notice is unnecessary. The requirement for third party notice has a low threshold. Observing a

[38] See Review Report FI-10-59(M) paras. 60 - 65 for a full discussion of the 'reasonable expectation of harm' test.

low threshold for third party notice ensures procedural fairness and reduces the risk that exempted information may be disclosed by a mistake.[39]

[90] In this case the records included five pages supplied by the applicant. These pages could in no way satisfy s. 481 and so should not have been included in the third party notice and should have been disclosed to the applicant at the outset.

[91] Notices sent to third parties must include the information set out in s. 482(1). Practically such notices should always include a copy of the record at issue with any notations from the Municipality indicating those portions of the record to which s. 481 might apply. Failing to provide a copy of the relevant record generally guarantees that the third party will not consent to the disclosure since it is not in a position to know exactly what information is at stake and what the Municipality proposes to disclose.

[92] The third party is in a unique position in terms of its specific knowledge of its own confidential business information and its ability to provide evidence of potential harm to its business interests from the disclosure. Further, whether the information is confidential cannot be determined without representations from the third party. Upon receipt of this information the Municipality can make a final decision as to whether or not the three part test set out in s. 481 has been satisfied.

FINDINGS & RECOMMENDATIONS:

[93] I find that the Municipality is required under s. 480 to withhold five signatures and that s. 480 does not apply to any of the remaining information at issue.

[94] I find that s. 481 does not apply to any of information at issue.

[95] **Recommendation #1**: I recommend that the Municipality continue to withhold five signatures under s. 480 of the *MGA.*

[96] **Recommendation #2**: I recommend that the Municipality release the remainder of the withheld information.

August 6, 2015

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

[39] *Merck Frosst* at para. 80.