

**THE MUNICIPAL GOVERNMENT FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT**

A REQUEST FOR REVIEW of a decision of the **TOWN OF KENTVILLE** to deny access to the results of an investigation into a complaint made against two police constables.

REVIEW OFFICER: Darce Fardy

REPORT DATE: March 28, 2002

ISSUE: Whether a report on an investigation into the actions of two police officers can be denied under the protection of privacy provisions of the **Act**.

In a Request for Review, under the **Municipal Freedom of Information and Protection of Privacy Act**, dated January 16, 2002, the Applicant asked that I recommend to the Town of Kentville (the Town) that it provide him with the document he is looking for.

The Applicant, on behalf of his son, requested a copy of the written report prepared after an investigation of a complaint his son made against two police constables.

In accordance with s.482(1) of **Part XX** of the **Municipal Government Act** the Town notified who it considered to be appropriate third parties to inform them of the Application and invite them to consent to the disclosure or provide reasons why the report should not be disclosed.

Two of the third parties objected to the disclosure of the report. One gave two reasons why the report should be denied: it contains the personal information of witnesses; and it contains an assessment and evaluation of two police constables.

The second objection came from a solicitor for one of the constables. The solicitor argued that the information should be denied because it is identified as part of an investigation into a possible violation of the law. He also said the report should be denied because disclosure would harm law enforcement and is exempt under s.475(1)(g).

After hearing back from the third parties, the Town decided that the report should be denied only under s.480(1) and s.480(3)(b)(d) and (g).

Section 480(1) is a mandatory exemption which requires the Town to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. **Section 480(3)** lists the kinds of information which, if disclosed, would be presumed to be an unreasonable invasion of privacy, including:

- (b) the information is identified as part of an investigation into a possible violation of the law;
- (c) the information relates to employment history;
- (g) the information consists of personal recommendations or evaluations, character references or personnel evaluations.

The Town's Chief of Police, following the investigation and report, provided the Applicant's son with a standard "Form 11", "Disposition of Public Complaints", which notified him that the Chief had considered the recommendations of the investigating officer and

concluded that the complaint was unfounded. He was told that he could initiate a review of the decision to the Nova Scotia Police Review Board and this was done.

Conclusions:

For exemptions under s. 480 to stand the information must meet the definition of “personal information” found in Section 461(f): “‘Personal information’ means recorded information about an identifiable individual” including names, address, telephone numbers, etc.

With respect to s.480(3)(b) this exemption does not apply to the entire report because only portions of it contain personal information. Severing, in accordance with Section 465(2), can be applied.

Section 480(3)(d) does not apply because, in my view, the report does not contain the employment history of the two police constables. In my Review, FI-01-100, I cited *Dickie v. Department of Health* (1999) NSJ No. 116, in which the Nova Scotia Court of Appeal said the words “employment history” “suggest that the ordinary meaning of the words in the employment context is intended. In the employment context, employment history is used as a broad and general term to cover individual’s work record.” In the same Review I provided an interpretation of “employment history” used by the British Columbia Information and Privacy Commissioner in Order No. P-1180: what individuals did in the workplace, such as research projects and related activities.

In my Review, FI-99-05, with reference to s.480(3)(g), I stated that “personal recommendations” and “evaluations” are generally offered by a supervisor in managing staff.

They are, in my view, part of the results of an investigation. In my review FI-01-100 I cited *Dickie* in which the court said that the terms personal recommendations, evaluations, character references and personnel evaluations “relate to types of documents which are common in the hiring and ongoing evaluation of employees” and do not “contemplate disciplinary investigations or recommendations made as a result of them”.

With respect to severing, it would be difficult to apply this to the witness statements because the statements could reasonably be expected to reveal their identities. However, other parts of the report would not identify individuals and should be released.

The Town must look to the purpose of the **Act** to hold public bodies fully accountable for their actions. In my Review FI-01-102 I said that complaints against police officers are a matter of public interest. Nova Scotians need to be assured that the police are always acting in the best interests of the citizens.

Recommendation:

That the Town sever the investigating officer’s report and disclose:

- (a) the Conclusions after severing the names in the third sentence of the second paragraph of the conclusions on page 8 of the Report.
- (b) the Recommendations.

Section 493(1) requires a public body to make a decision on the Review Officer’s recommendations within thirty days of receiving them; and to give written notice of that decision to the Review Officer and those who were sent a copy of the Review.

Dated at Halifax, Nova Scotia, March 28, 2002.

Darce Fardy, Review Officer