NOVA SCOTIA COURT OF APPEAL

Citation: *Raymond v. Nova Scotia (Information and Privacy Commissioner)*, 2019 NSCA 1

Date: 20190111
Docket: CA 472465
Registry: Halifax

Between:

Michele Hovey Raymond

Appellant

v.

Office of the Information and Privacy Commissioner, Halifax Regional Municipality, Attorney General of Nova Scotia

Respondents

Judge: The Honourable Justice Anne S. Derrick

Appeal Heard: December 10, 2018, in Halifax, Nova Scotia

Subject: **Administrative law. Judicial Review. Office of the Information and Privacy Commissioner. application for information, not records.**

Summary: The Office of the Information and Privacy Commissioner (Commissioner) declined to review the appellant's two access to information requests which had been denied at first instance by the Halifax Regional Municipality ("HRM") pursuant to Part XX of the *Municipal Government Act*, S.N.S. 1998, c. 18 (*MGA*). Through her access to information requests the appellant had sought to obtain answers to questions she had about discussions at *in camera* meetings of the HRM Council. She explicitly indicated to HRM and the Commissioner she was not seeking access to any record. The appellant sought judicial review of the Commissioner's determination that she had no jurisdiction to review HRM's denial of the appellant's requests. The reviewing judge

concluded it was reasonable for the Commissioner, relying on the relevant provisions of the *MGA*, to have declined to review HRM's denial of the appellant's requests.

Issues:

(1) Did the reviewing judge apply the appropriate standard of review when addressing the merits of the Commissioner's decision?

(2) Should the Commissioner's decision be upheld?

Result:

Appeal dismissed. The reviewing judge identified the appropriate standard of review (reasonableness) and applied it correctly. The reviewing judge properly concluded that it was reasonable for the Commissioner, relying on the relevant portions of the *MGA*, to have declined to review HRM's denial of the appellant's requests. The Commissioner, noting that the appellant had expressly requested access to information, not records, reasonably concluded that she had no jurisdiction to conduct a review of HRM's denial. As the reviewing judge and the Commissioner found, the *MGA* provides for access to information contained in a record. The appellant's application for information and not records was not a valid application under the *MGA*.

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Respondents

Judges:	Bryson, Van den Eynden and Derrick, JJ.A.
Appeal Heard:	December 10, 2018, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Derrick, J.A.; Bryson and Van den Eynden, JJ.A. concurring.
Counsel:	Appellant in person Jason T. Cooke, for the respondent, Office of the Information and Privacy Commissioner Karen E. MacDonald, for the respondent, Halifax Regional Municipality Edward A. Gores, Q.C., for the respondent, Attorney General of Nova Scotia, not participating

Reasons for judgment:

[1] Michele Raymond has appealed the decision of Justice D. Timothy Gabriel dismissing her application for judicial review of a decision by the Office of the Information and Privacy Commissioner ("Commissioner"). The Commissioner declined to review Ms. Raymond's two access to information requests which had been denied at first instance by the Halifax Regional Municipality ("HRM") pursuant to Part XX of the *Municipal Government Act*, S.N.S. 1998, c. 18 ("*MGA*").

[2] I have carefully examined Justice Gabriel's reasons and am satisfied he identified the appropriate standard of review in this case (reasonableness) and applied it correctly.

[3] There is no basis for a correctness review in this case. I do not accept Ms. Raymond's submission that her applications raise issues of importance to democracy. The statement from the Supreme Court of Canada in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 reflects my view: "…there is no question of law of central importance to the legal system as a whole, let alone one that falls outside the Commission's specialized area of expertise" (para. 28).

[4] The reviewing judge properly reached this same conclusion, stating that: "The Commissioner, in her deliberations, was not resolving a question of central importance to the legal system as a whole" (2017 NSSC 322, para. 27).

[5] Through her access to information requests Ms. Raymond sought to obtain answers to questions she had about discussions at *in camera* meetings of the HRM Council. She indicated she would be satisfied with a confirmation or denial that a certain "topic" was discussed. The reviewing judge noted she had explicitly indicated to HRM and the Commissioner that she was not seeking access to any record.

[6] In her submissions before the reviewing judge, Ms. Raymond acknowledged she had been well aware that a request for access to the records of *in camera* discussions of HRM Council would be denied in accordance with section 473(1) of Part XX of the *MGA*. As a result, Ms. Raymond framed her access to information requests as requests for information not records. I find the reviewing judge committed no error in determining that the Commissioner's treatment of Ms.

Raymond's requests as requests for information, rather than requests for records was reasonable.

[7] The reviewing judge also properly concluded that it was reasonable for the Commissioner, relying on the relevant provisions of the *MGA*, to have declined to review HRM's denial of Ms. Raymond's requests.

[8] The Commissioner, noting that Ms. Raymond expressly requested access to information, not records, reasonably concluded that she had no jurisdiction to conduct a review of HRM's denial. Ms. Raymond's application to HRM for access to information was not a valid application under the *MGA*. As the reviewing judge observed, the *MGA* provides for access to information contained in a record. Access is to the record, unless it is an exempted record such as the record created of *in camera* Council discussions.

[9] I am satisfied the reviewing judge properly concluded that the Commissioner's interpretation of the applicable provisions of the *MGA* was reasonable. Indeed, I am satisfied it was the only reasonable interpretation (*McLean*, supra, para. 38).

[10] The reviewing judge aptly set out his analysis and conclusions and there is no need to repeat them.

[11] Before us, Ms. Raymond characterized her appeal as a debate about whether a public body has the right not to disclose the existence of records. She cast the determinations of HRM and the Commissioner as "a new device for refusing to disclose information." She sought to construct her application as an application for "personal information" as defined in section 461(f) of the *MGA*. She argued that being entitled to know she was the subject of discussion at an *in camera* Council meeting should "trump" the confidentiality protections that apply to such meetings.

[12] It is necessary to remember that Ms. Raymond knows the records exist – they are the Minutes for *in camera* Council meetings. The existence of these records has not been "concealed" as Ms. Raymond alleges. She was well aware that there is no entitlement to such records and accordingly framed her application as a request for information, not records. As I have noted, her application did not constitute a valid request under the applicable legislation. Despite Ms. Raymond's attempts to suggest otherwise, there is nothing nefarious about the determinations made by the OIPC and the reviewing judge. Furthermore, it is questionable

whether what she is interested in knowing even constitutes "personal information" according to the legislated definition.

[13] There is no basis for appellate intervention in this case. The appeal is dismissed without costs to any party as none were sought.

Derrick, J.A.

Concurred in:

Bryson, J.A.

Van den Eynden, J.A.