

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Pottie v. Nova Scotia (Community Services)*, 2024 NSSC 181

**Date:** 20240628

**Docket:** No. 529869

**Registry:** Port Hawkesbury

**Between:**

Adam Pottie

*Appellant*

v.

The Minister of Community Services

*Respondent*

**APPEAL DECISION**

***Freedom of Information and Protection of Privacy Act***

**Judge:** The Honourable Justice Scott C. Norton

**Heard:** June 19, 2024, in Port Hawkesbury, Nova Scotia

**Decision:** June 28, 2024

**Counsel:** Adam Pottie, self-represented Appellant  
Agnes MacNeil, KC, for the Respondent

## **By the Court:**

### **Overview**

[1] Adam Pottie appeals from a decision of the Department of Community Services in response to his Application for Access to Records submitted made on December 4, 2023, pursuant to Nova Scotia's Freedom of Information and Protections of Privacy legislation. This request, except for portions of documents within a 57-day date range, overlaps completely with prior requests.

[2] The legislation provides a mechanism for judicial review of a public body's decision in response to a request for records and any redacted information. Its purpose is to allow independent review of the decisions to ensure that the public body is compliant with its obligations under the legislation.

[3] Mr. Pottie's appeal raises two issues: (1) whether the Minister 'altered' Mr. Pottie's requests such that they did not respond to the requests by the Minister's refusal to duplicate disclosures previously given or sought; and (2) whether the Minister properly severed portions of the records provided to Mr. Pottie, as they were an unreasonable invasion of personal privacy.

[4] The appeal is dismissed. Mr. Pottie did not establish that the Minister "altered" his request. The decision which is under appeal appropriately responded to the request made. Further, all the redactions made to the documents provided to Mr. Pottie were appropriately made.

### **Standard of Review**

[5] The *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c.5 ("Act") provides a mechanism for the appeal of a decision to be heard *de novo* and for judicial review of any redacted information. Its purpose is to allow independent review of the decision and any redacted material to ensure that the public body is compliant with its obligations under the Act. This standard of review was explained by Justice Gogan in *Stewart v. Nova Scotia (Community Services)*, 2023 NSSC 231.

[6] In keeping with this mechanism, the Minister provided three copies of the record: (1) the version provided to the Appellant (the "Disclosed Copy"); (2) a version that is unredacted (the "Unredacted Copy"); and (3) a version with the

redacted information highlighted (the “Highlighted Copy”). These three versions assist the Court in the process of judicial review of the redactions.

**ISSUE 1: THE MINISTER’S REFUSAL TO DUPLICATE DISCLOSURES PREVIOUSLY GIVEN OR SOUGHT DID NOT “ALTER” THE REQUEST**

[7] There has been no alteration of Mr. Pottie’s request. Mr. Pottie made multiple overlapping requests for the same information. The specifics of each request were set out in the Minister’s pre-hearing brief. A summary of the requests and associated date ranges is below:

| Request number   | Start date of Range | End date of Range  |
|------------------|---------------------|--------------------|
| 2022-10023-COM   | December 31, 2020   | January 13, 2022   |
| 2022-10469-COM   | Beginning of Time   | August 25, 2022    |
| 2023-10591-COM*  | July 22, 2020       | October 2, 2023    |
| 2023-10595-COM** | January 1, 2018     | October 6, 2023    |
| 2023-10729-COM   | January 1st, 2018   | December 3rd, 2023 |

\* re Nevaeh Pottie only

\*\* re every division of the Department of Community Services

[8] The Minister provided its decision dated January 31, 2024, in response to request 2023-10729-COM which is the request on appeal. A detailed breakdown of how numerous pieces of the request before this court overlapped with other requests was set out in the decision letter. The response to request 2023-10595-COM which covered every part of the Department of Community Services over an almost five-year period for Mr. Pottie and his three children was said to be still in process to the extent it was not covered by prior requests.

[9] The remaining records not covered by the other requests involved records between October 7, 2023, to December 3, 2023. These were provided to Mr. Pottie with redactions for third party personal information under s. 20 of the *Act*.

[10] The *Act*, as reflected by the name itself, provides for a balancing between transparency of government records and protection of privacy. The purpose of the

Act is central to its interpretation. It has three objectives: (1) public accountability, (2) full disclosure, and (3) protection of individual privacy.

[11] There is a broad right of access to government records and specifically a broad right of access by an individual to their personal information. However, the language throughout the *Act* focuses on “a copy” of records.

[12] Under the Act, the burden of proof rest with the Minister when refusing access to all or part of a record:

Burden of proof

45 (1) At a review or appeal into 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 that the applicant has no right of access to the record or part.

[13] The difficulty with this aspect of the appeal is that there has been no refusal to provide Mr. Pottie with the records he requested and to which he is entitled under the Act. Section 45 therefore has no application in relation to Mr. Pottie’s allegation that the Minister altered his request.

[14] The Minister has either provided the records or information requested or has advised that they are working on it and will produce them.

[15] Mr. Pottie has filed multiple overlapping requests that cover a date range between the beginning of time and December 3, 2023. Mr. Pottie making multiple requests has resulted in delay, as the Minister’s employees must parse and cross-reference to determine if Mr. Pottie’s request has already been complied with in other requests. If that approach is not taken, then the Minister’s employees would be forced to duplicate the same searches in multiple requests made months apart.

[16] One of the main purposes of the legislation is to allow citizens to obtain access to the records and information that the government retains about them. The purpose is transparency and to allow a citizen to correct any information the government has about them that is incorrect. There is no need to obtain duplicate or triplicate copies of a document to achieve this purpose. One copy is sufficient.

[17] Further, Mr. Pottie acknowledges that he already brought one of his requests (2023-10595-COM) before the Office of the Information and Privacy Commissioner (“OIPC”). It appears Mr. Pottie is attempting to request production of some additional documents from this Court that are already under review by the OIPC.

[18] The OIPC made the following comments on continual requests for the same information: *Nova Scotia Public Service Long Term Disability Trust Fund (Re)*, 2013 CanLII 78680 (NS FOIPOP):

I find that the constant and repeated Applications for Access to a Record and Requests for Review about the same information have not, between 2004 and 2013, had any desirable results for this Applicant. I find that these repeated Applications and Requests negatively impact resources for both NSPS LTD and the Review Office and amount to a misuse of the access to information process.

...

... The Office of the Review Officer has very limited resources and cannot afford to tolerate a repeat of this misuse of process.

[19] Bringing multiple large overlapping requests is a misuse of the Act and is creating delay in producing the documents Mr. Pottie is seeking.

[20] I repeat, there has been no alteration of Mr. Pottie's request. This aspect of Mr. Pottie's Appeal is dismissed.

**ISSUE 2: THE MINISTER PROPERLY SEVERED PORTIONS OF THE RECORDS PROVIDED TO MR. POTTIE**

[21] Mr. Pottie only requested information about him and his children. Therefore, information belonging to any other person is not contained within his request.

[22] The burden of proof with respect to the redactions for personal information rests with Mr. Pottie (s. 20(3)).

[23] Section 20 of the Act requires the public body to refuse to disclose personal information to an applicant if it would be an unreasonable invasion of a third party's personal privacy to disclose it and explains the relevant circumstances the head of the public body must consider.

[24] The Act is set up to allow citizens to "hold the government accountable, and to create transparency" in its dealings. On the other hand, where the government has collected someone's personal information for the purposes of a particular department's work, it has an obligation to protect their privacy. This explains why the onus shifts to the applicant to explain why they should be given a third party's personal information.

[25] This is an unusual case in that most access to information cases involving personal information relate to the appellant seeking someone else's personal information. That is not the case here.

[26] I find with respect to each redaction that the information redacted is not Mr. Pottie's personal information. Accordingly, this ground of appeal is denied.

## **CONCLUSION**

[27] Mr. Pottie has not established that the Minister "altered" his request. The decision which is under appeal appropriately responded to the request made. Further, all the redactions made to the documents provided to Mr. Pottie were appropriately made under s. 20 of the *Act*.

[28] The Appeal is dismissed.

[29] The Minister did not seek costs and so costs are not awarded.

Norton, J.