

4. The relevant provisions of the *Right to Information Act* are as follows:

“identifiable individual” means an individual who can be identified by the contents of information because the information

- (a) includes the individual’s name,
- (b) makes the individual’s identity obvious, or
- (c) is likely in the circumstances to be combined with other information that includes the individual’s name or makes the individual’s identity obvious;

“personal information” means information about an identifiable individual;

4(2) Where a portion of a document contains some information that is information referred to in section 6, and that portion is severable, that portion of the document shall be deleted and the request with respect to the remaining portion of the document shall be granted.

6. There is no right to information under this Act where its release

...

- (b) would reveal personal information concerning another person;

5. On October 27, 2008 I delegated Jennifer Murray from my Office to attend and review *in camera* the documents relating to this file. The responsive records consisted of two types: (1) eight emails between the applicant and employees of the Department, with names and other identifying information severed and (2) five incident reports, four of which were severed entirely and one which had several sentences severed.

Exemption 6(b) – personal information

6. The first group of emails between the applicant and employees of the Department were released with the names of the employees severed. In NBRIOR-2006-06 I found that names of departmental officials, in their employment capacity should not be withheld from the petitioner as the 6(a) and (b) exemptions had no application. My recommendation in that case was overturned by Justice Riordon in *Barnett v. New Brunswick (Family & Community Services)* (2006), 311 N.B.R. (2d) 242 in which he found that the name of the person who authorized settlements of a claim for the Department of Family & Community Services was personal information and therefore not subject to disclosure under the Act. The disparity between the two decisions will hopefully be addressed by the legislature in the near future. In this instance I find that the Department is abiding by the court’s decision in severing the names of employees within the Department.
7. The second group of documents are Incident Reports which are on a standard form provided by the Department of Public Safety. The Incident Reports discuss an incident that occurred between the applicant and a fellow employee. All of the information written by the individuals making the report

8. As I have mentioned in previous recommendations, any assessment of the validity of a 6(b) exemption concerning a refusal to disclose information must be carefully conducted, with due regard to the balancing of the interests in play. After reviewing the documents I have determined that some of the information contained therein can be classified as personal information under the Act. The rest of the information could be classified as personal information concerning the applicant as the incident being reported occurred between the applicant and another employee.
9. This situation is similar to *Goodwin v. NB (Minister of Finance)* 1999 CanLII 9409 (NBQB) in which the applicant was requesting either a complete or edited a copy of an investigator's report into a harassment complaint. In that case the court determined that the report was so brief that deletion of names would not adequately protect those individuals. This is comparable to this fact situation as the incident reports in question each consist of only one handwritten paragraph. After deleting the personal information as well as the identifying information, there is little information remaining.
10. I believe in this instance, the Department in addition to citing section 6(b) should have cited section 6(b.1)(i) which states 'There is no right to information under this Act where its release would reveal personal information concerning the applicant that was provided by another person in confidence or is confidential in nature.'
11. In previous decisions I have raised concerns about situations in which government departments fail to cite the appropriate grounds for their refusal to disclose information (NBRIOR-2006-18 and NBRIOR-2007-03). If I were solely to base my recommendation on the section 6(b) I would find that further, yet very limited, disclosure would be the result. However, in the spirit of privacy legislation and in situations in which the harm may be to the privacy of a third party and not the Department itself, I feel compelled to consider whether recommending release would be a violation of the Act. As was the case in NBRIOR-2006-01 I feel it would be prudent of me to take a few precautions in order to keep confidential any personal information that the witness may have wanted to provide on a confidential basis.
12. As mentioned above, the information contained in the incident reports can be classified as the personal information of the applicant. The question then is whether or not it was 'provided in confidence' or is 'confidential in nature'. As I summarized in NBRIOR-2006-14 where privacy interests and access to information interests are in conflict it is appropriate to balance those interests one against another.

13. The reports in question are specific individuals' recollection of the events surrounding the incident and the actions of the two parties involved in the incident. There needs to be a balance between the applicant's right to information and the individual's privacy. There is no question in my mind that the individuals providing the information did so in confidence as would be required to insure the information would be forthcoming from the witnesses. These statements were provided in confidence and therefore protected by the Act. While there are still questions regarding whether or not the applicant was treated with procedural fairness under Adult Institutional Policy B7, the petition process will not assist him in finding those answers.
14. These findings are consistent with the purpose and application of the *Right to Information Act* but are without prejudice to the petitioner's claim to have access to the records, a portion of them or a summary of them as a matter of administrative fairness in relation to any aspect of his employment.
15. **In conclusion, I find that portions of the record were properly exempted from release under 6(b) and the remainder of the documents would be exempt from release under 6(b.1)(1).**

Dated at Fredericton, New Brunswick this 15th day of December, 2007.

Bernard Richard, Ombudsman