

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

**A REQUEST FOR REVIEW** of a decision of the **HALIFAX REGIONAL MUNICIPALITY** to refuse access to some documents related to the Halifax Harbour Solutions Project.

**REVIEW OFFICER:** Darce Fardy

**DATE:** **February 13<sup>th</sup>, 2003**

**ISSUE:** Whether the Municipality can deny access to documents under the exemption found in **section 477** - harm to the interests of the Municipality.

In a Request for Review under the **Municipal Government Freedom of Information and Protection of Privacy Act (Part XX of the M.G.A)**, dated November 4, 2002, the Applicant asked that I review the decision of the Halifax Regional Municipality (HRM) on his application for access to documents related to the harbour cleanup, and recommend the documents be disclosed to him.

Specifically, the Applicant requested:

1. With respect to the evaluation teams and sub-committees:
  - (a) the evaluation criteria;
  - (b) changes to the criteria;
  - (c) the evaluation teams' application of the criteria to the proponents' submissions;
  - (d) all presentations and reports submitted by the evaluation teams to the various HRM committees and teams and the HRM Council; and
  - (e) a comprehensive index of the file maintained by the particular evaluation team.

2. A list of the questions submitted to the Question Review Panel, including those asked of the proponents.
3. A copy of the staff report of March 19, 1998 referred to in the HRM minutes of April 28, 1998.
4. A copy of any report detailing the engineering cost breakdown of the estimated additional capital cost of the proposed Woodside Ocean Industrial Park site and the proposed Shearwater site.

HRM responded to each part of the application:

- 1.(a) HRM is willing to disclose in full for a fee of \$310.00.
  - 1.(b) No records exist.
  - 1.(c) Access denied, in full, at this time. Exemption cited: **Section 477(a), (b), (c) and/or (e)**.
  - 1.(d) No records exist.
  - 1.(e) No records exist.
2. HRM denies access under the same exemptions as in 1.(c).
  3. HRM disclosed this record at no charge because it was already in the public domain.
  4. No “additional costs breakdown” exists.

The exemption cited reads:

- 477(1) The responsible officer may refuse to disclose to an applicant information, the disclosure of which, could reasonably be expected to harm the financial or economic interests of the municipality, another municipality or the Government of the Province or the ability of the Government of the Province to manage the economy and, without restricting the generality of the foregoing, may refuse to disclose the following information:
- (a) trade secrets of the municipality, another municipality or the Government of the Province;

- (b) financial, commercial, scientific or technical information that belongs to the municipality, another municipality or the Government of the Province and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management or personnel of or the administration of the municipality or another municipality and that have not yet been implemented or made public;
- (e) information about negotiations carried on by or for the municipality or another municipality or the Government of the Province.

**Section 498** of the Act places the burden of proof on HRM to prove that the harm alleged is reasonably likely to occur. In its submission to support its decision, HRM said negotiations with the Halifax Region Environmental Partnership (HREP) are ongoing even though a project agreement had been signed with that proponent.

HRM provided some helpful background. In May of 2000, HRM issued a Request for Proposals (RFP) for a public-private partnership to implement a sewage treatment system for Halifax Harbour. There were two proponents and HREP was chosen as the “Selected Proponent”. This selection was followed by negotiations for a binding agreement which are still continuing. The RFP itself indicated that the project agreement with the selected proponent would not be binding. HRM maintained the right to negotiate changes, amendments and modifications to the agreement and those negotiations are still going on.

HRM says it has gone to great lengths to ensure that neither proponent is aware of the terms of the other’s proposal because revealing the details could negatively impact on HRM’s bargaining position in the course of its negotiations with the Selected Proponent. HRM says it would be premature at this time to disclose the Technical Scoring Material and the questions asked of the proponents and their responses.

Continuing its submission to the Review, HRM said that in the spirit of openness and accountability, there was public disclosure and debate of significant components of each of the proposals. Copies of the draft project agreements approved by Council on July 9, 2002, are available for review with the exception of that which it described as sensitive financial, commercial, scientific or technical information.

The records at issue are:

- 1.(c) The Evaluation Teams' scoring; and
2. Questions and answers to the Question Review Panel.

In accordance with **Section 491** I have been provided with copies of all records related to the application.

**Conclusions:**

Although the denied documents contain technical, commercial and financial information provided by the two proponents, HRM did not cite the third party exemption (Section 481) because HRM has the contractual right "to use any concept or approach suggested in any proposal including its use in negotiating an agreement with the Selected Proponent or any other Proponent". This is made clear in the Request for Proposals.

For that reason I accept HRM's argument under s.477(1)(a) and (b) because the denied documents contain technical information that belongs to it. Furthermore, since the information will assist HRM in reaching a satisfactory final agreement, it has monetary value.

The documents can also be denied under s.477(1)(e) because they contain information about negotiations underway between HRM and HREP.

The effect disclosure would have on the management or personnel of HRM is, in my view, too remote to claim as an exemption under s.477(1)(c). Only one of the parts need apply for the exemption to stand.

I am satisfied that HRM has borne the burden of proof that disclosing the information “could reasonably be expected to harm” its financial interests.

**DATED** at Halifax, Nova Scotia this 13<sup>th</sup> day of February, 2003.

---

Darce Fardy, Review Officer