PRINCE EDWARD ISLAND LEGISLATIVE ASSEMBLY

Speaker: Hon. Francis (Buck) Watts

Published by Order of the Legislature

Standing Committee on Communities, Land and Environment

DATE OF HEARING: 14 MARCH 2017

MEETING STATUS: PUBLIC

LOCATION: COMMITTEE ROOM, J. ANGUS MACLEAN BUILDING, CHARLOTTETOWN

SUBJECT: BRIEFING ON FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

COMMITTEE:

Kathleen Casey, MLA Charlottetown-Lewis Point [Chair]
Dr. Peter Bevan-Baker, Leader of the Third Party, MLA Kellys Cross-Cumberland
Richard Brown, MLA Charlottetown-Victoria Park
Bush Dumville, MLA West Royalty-Springvale (replaces Hon. Heath MacDonald, Minister of Economic Development and Tourism)
Sidney MacEwen, MLA Morell-Mermaid
Hal Perry, MLA Tignish-Palmer Road
Bradley Trivers, MLA Rustico-Emerald

COMMITTEE MEMBERS ABSENT:

Hon. Heath MacDonald, Minister of Economic Development and Tourism
Hon. Pat Murphy, Minister of Rural and Regional Development

MEMBERS IN ATTENDANCE:

James Aylward, MLA Stratford-Kinlock

GUESTS:

Information and Privacy Commissioner (Karen A. Rose)

STAFF:

Emily Doiron, Clerk Assistant (Journals, Committees, and House Operations)

Edited by Parliamentary Publications and Services

The Committee met at 10:00 a.m.

Chair (Casey): Good morning, everybody. Welcome to the meeting of the Standing Committee on Communities, Land and Environment. I would just ask you all to make sure that your devices are on silent. My dead phone in the corner over there is charging so hopefully it is on silent.

The agenda is before you and I'm looking for adoption of the agenda.

An Hon. Member: So moved.

Chair: Thank you.

I would also like to welcome Bush Dumville to the table today. He is replacing the hon. Heath MacDonald, who is a new member of this committee. Next on your agenda, I would like to welcome Karen Rose, the Information and Privacy Commissioner –

Karen Rose: Thank you.

Chair: − who is here to do a presentation at your request. I will now turn the floor over to Karen Rose to start her presentation and welcome.

Karen Rose: Thank you very much, Ms. Casey.

First of all before I begin, Danielle, if you need me to speak louder just let me know. Okay?

I guess I should start by saying what my understanding of my role is today. Today I'll be providing you with an overview of the *Freedom of Information and Protection of Privacy Act* and then my understanding is that at a later date, I will be providing you with a proposal for the recommendations from our office for potential amendments to the *Freedom of Information and Protection of Privacy Act.* That is a task that we have already started to do some work on but is not completed. We're still deliberating on some of those potential amendments.

The second thing that I would like to point out is that we are reviewing legislation today, which although, the three people upstairs in my office find it incredibly exciting, it's still a review of legislation and I've tried to make the slideshow as interesting as possible. I have tried to make my comments as interesting as possible, but I think to make it even more interesting, I'm asking you to interrupt me with your questions at any time and so it won't then seem like we're talking about: Section 14, section 22, section 77. It might make it a little bit more interesting for everyone.

Having said that, the underlying principles of this legislation are something that we stand behind very strongly and feel very passionate about in my office.

I'm going to start off with a little bit of history of PEI's FOIPP act and some of you may be familiar with this. The idea of freedom of information legislation was first brought up in our Legislature in the 1970s. In the mid-1970s there was a private members' bill called the Access to Public Business Act, and a couple of years later a government bill called the Access to Public Documents Act which was brought forward, but both of those bills ended up – what do they say? Dying on the order table?

I find that pretty astonishing because in the 1970s, there really wasn't much freedom of information legislation at all in our country. Quebec might have been the only province. PEI started talking about this early and we continued talking about it in earnest during the 1990s, when a House committee was struck to look at the possibility of freedom of information legislation. The committee recommended that we draft freedom of information legislation and three more bills died on the order table until the spring of 2001, when our current act was enacted. When I say our current act, we have had two subsequent amendments to the act since the spring of 2001, a minor, important, yet fairly minor amendment.

I wanted to just point out two things to you, two comments which were made during the public hearings in 2001 related to freedom of information legislation. The committee said that two common views were presented during those hearings:

(1) that personal information must be absolutely protected so that our personal information of citizens held by government must be absolutely protected and;

(2) that an attitude of maximum disclosure on the part of government will be required.

As I present to you on this legislation, you will see that those are the two core values of the freedom of information legislation.

Our *Freedom of Information and Protection of Privacy Act* and all similar FOIPP acts across the country are really two pieces of legislation combined into one. Federally, we have a privacy act and an access to information act. But what the provinces have done and what the territories have done is combined those sentiments and the provisions of those two pieces of legislation into one act because these two issues are inextricably entwined.

On the access side – and I know you've heard this many times – the policy behind the access provisions of this legislation are that government is accountable to the public and that government should be open and transparent. Neither of those things is actually stated in the legislation, but they are underlying policies and I think they reflect the public commentaries, but also these underlying principles have been noted by our Supreme Court of Canada.

I want to give you a quote from Gerard LaForest, a former Supreme Court of Canada justice.

Mr. Justice LaForest stated: "The overarching purpose of access to information legislation is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry."

Despite the fact that those words are not actually included in the *Freedom of Information and Protection of Privacy Act*, I think it's safe to say that they are implied.

Chair: Mr. Trivers.

Mr. Trivers: Brad Trivers here.

Chair: Excuse me. Just come through the Chair, just so it doesn't get – I appreciate that. Thanks.

Brad Trivers, you have the floor.

Mr. Trivers: I was wondering, do you think that's one of the recommendations you'll make that those statements be actually included in the act, even though they're implied now just to be very clear and concise?

Karen Rose: That's a very good point and something I've never considered. I think they are implied. One of the things that our office has looked at and your committee may look at it differently, is trying to minimize the number of recommendations that we make that we think aren't absolutely necessary. I've gone through the legislation (Indistinct) far on a section by section basis and I've looked at things.

For instance, this section may say 'must'; well perhaps it could say 'shall'. I'm not going to recommend that 'shall' replaces 'must', and our office is not going to recommend something that we think is already there. Our interpretation – and it has been in many orders that our office has issued – our interpretation has been that because of section 2 of the act, because of the provision – section 2 is the purposes of the act. Because of the provision that says that any person has a right to access to public bodies, the records and the custody and control of public bodies, we think that strongly relates to the accountability and transparency of government.

Chair: Brad Trivers.

Mr. Trivers: I think that's an interesting approach to take. I would like to think about that a little bit more, but it seems to me that if a 'shall' should be changed to a 'must' or a 'must' to a 'shall', that is important to me. But I just wanted to state that for the record.

Thank you.

Karen Rose: On the access side, those underlying principles which relate to access to public documents are one thing, but the act also recognizes that government holds a lot of our personal information and therefore the act provides for a right of access to our own personal information so that any citizen, any Islander, can apply to a public body to find out what personal information a public body holds about them.

On the privacy side of the legislation and this is under part two of the legislation, there are three main principles.

First: That public bodies are required to keep our personal information secure. Once public bodies collect our information they are required to keep it safe.

Also, that public bodies should control the collection, use and disclosure of our personal information. I will be defining that a little bit later in my presentation. I'll be defining these words: Collection, use and disclosure. We hear it over and over again and they are the three separate things that public bodies do with our personal information and there are rules associated with each of those three separate actions that public bodies do with our personal information.

Finally: That citizens must be aware of what information public bodies are collecting, what they are using it for and who they are disclosing it to.

Public body is defined in section one of the FOIPP act, and also there is a list of public bodies under schedule one of the regulations and there are more than 100 public bodies in Prince Edward Island. These include: The line departments, which with all of you are quite familiar, but also boards, commissions and agencies. I include the Workers Compensation Board and Health PEI there as two common examples because our office has worked very often with both of those public bodies which are not line departments but which are listed in schedule one of the legislation.

The act also defines what is not a public body. As you are likely aware, the offices of the Speaker of the Legislative Assembly and offices of the members of the Legislative Assembly are not considered public bodies under the legislation, and neither are the courts. This is common throughout the country. This is nothing unique. What is not common throughout the country is that in our province neither municipalities nor post-secondary educational institutions are covered by the legislation. Every other province in Canada covers both of these bodies as public bodies under their freedom of information legislation.

In Saskatchewan, municipalities do not include police forces. In every other province, municipalities include local police forces, but in Saskatchewan it does not. Although, the Saskatchewan commissioner has recommended that local police forces be included as public bodies under the legislation in light for general reasons, but also he has stated that in light of the new Hub model, which some of you may be familiar with, we call it the bridge agreement here in Prince Edward Island. It's a recent model where various organizations come together to determine people at risk in our community and to provide services to them.

What the Saskatchewan commissioner has said is that: Given that HUB model and that local police services are often involved in it, there really is a gap in the privacy protections and access protections under the act and therefore, they should be provided.

Now having said that, the territories do not include municipalities. None of the three territories include municipalities as public bodies under their legislation. Northwest Territories and Nunavut do not include post-secondary educational institutions. But, Yukon does include its college, Yukon College. They include Yukon College as a public body.

Mr. Aylward: Chair?

Chair: James Aylward.

Mr. Aylward: Thank you, Chair.

Karen, just with regards to that and before we move past this slide, First Nations or Aboriginal self-governments: Where do they fall into this?

Karen Rose: That's a very good point. I recently did a comparison of the sections of the Alberta legislation with the sections of the Prince Edward Island legislation and the two – you may not realize this and I forgot to mention it, but our legislation is remarkably similar to the Alberta legislation. I wouldn't say that it's identical because we have Aboriginal nations − are an example of things that are in the Alberta legislation but not in the Prince Edward Island legislation.

But, as (Indistinct) side, one of the large benefits of adopting the Alberta legislation back in 2002 was that the Alberta legislation had already been in effect since 1995, and therefore, that usual difficult adjustment period for a new piece of legislation was made a lot easier in Prince Edward Island because we had seven years of interpretation of that legislation from another province. That has been very beneficial.

In Alberta there is a section – our section 19 is a section that deals with information – it's an exception under the act and I'll be talking about a couple of other exceptions, and exception to disclosure is information that does not have to be provided by a public body.

Under section 19, that's the exception for intergovernmental relations and not only are provincial, territorial and federal governments included under that section, but also Aboriginal governments. The Aboriginal nation is seen as a separate government under that section, which means that if there is a communication between our province and any territory, federal government, provincial government or Aboriginal nation and that Aboriginal nation does not consent to providing the information then our public body cannot provide that information. That's true for provincial – let me clarify this.

If we have an applicant, for an example, who requests information related to communications between Prince Edward Island, and I won't use an Aboriginal nation − I'll use it as our section stands right now – request information – we had a recent case. I issued an order on this a year or two ago, where an applicant requested information that involved communications between our province and several other provinces. What our public body does in that case is notify the other provinces or territories and ask them: Do you consent to the release of this information? If even one of those provinces does not consent, then the public body on Prince Edward Island is not permitted to disclose that information under section 19, and it's to protect intergovernmental deliberations and discussions. In that particular case, it was relating to maintenance enforcement.

Chair: James Aylward.

Mr. Aylward: Thank you. Thanks, Karen, for that.

My next question would be: Not a public body. We know currently that the student union for the last number of years at UPEI has been lobbying and advocating for more openness and FOIPP ability at that facility. I guess I'd like to know or have an explanation as to why it's not considered a public body, particularly with the amount of money that is given to post-secondary institutions from the taxpayers.

Karen Rose: Well, I don't have an answer to that because it's not up to me to draft the legislation or recommend changes. That's something that I think your committee should consider and it's definitely something that our office is considering as far as a recommendation goes.

In fairness to the post-secondary educational institutions in this country and also in this province, and also the municipalities in this province, I am aware that they do have their own privacy policies and their own access policies. I have seen the access policies of the group of PEI municipalities and they reflect almost word-for-word the sections of our FOIPP act.

However, what is missing in those policies is oversight and what the FOIPP act provides is oversight by an independent commissioner so that – and that's not to say that a post-secondary educational institution or a municipality or any public body is not making good decisions because if you check the orders that come out of our office, in many cases we confirm the decisions of those public bodies. But, it does provide a sense of comfort, I think, to our citizens to know that when any of these bodies make a decision relating to their personal information, that there is some independent oversight of those decisions. That would be the issue that our office has with those bodies not being considered public bodies under the FOIPP act.

Mr. Aylward: Thank you.

Chair: Bush Dumville.

Mr. Dumville: Considering that our municipalities are under review in certain ways in regards to their size and everything,

and Saskatchewan is the only one that's out and all of the rest of the provinces had them in, is there going to be any recommendations that we follow the rest of Canada except Saskatchewan with municipalities?

Karen Rose: Yes, I think that's definitely something we are considering in our office and I think it is likely that that will be part of our formal recommendations to this committee. On that point, I'd also like to point out that when our FOIPP act was enacted, when it was proclaimed in November 2002, there were two public bodies which were not immediately public bodies: The health regions, as they then were, and the school boards, as they then were, were not considered public bodies at that time. They were given an extra one-year and they did not become public bodies until November 2003 and presumably, these are bodies that hold a great deal of personal information and also a great deal of records, and they needed that extra year to make sure that administratively they were ready to handle the legislation.

If, for example, your committee made a decision to include either municipalities or post-secondary educational institutions, that could be something that you could also consider that if you did make a decision to recommend that, that you could also recommend a waiting period so that those public bodies would have some time to become ready for the processes under the legislation.

Mr. Dumville: Thank you.

Thank you, Chair.

Chair: Thank you.

Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you, Chair.

Karen, I really appreciate the historical context that you gave us at the beginning of your presentation and also, you just mentioned that a couple of departments, health and education, were brought in as time went on; they weren't originally under the act.

My question relates to the bodies that are not currently designated as public bodies, the municipalities and post-secondary educations, and post-secondary education, were they ever – a couple of questions: Were they ever covered under the act in this province and in other provinces, historically, were they always covered or have they been sort of added on as the years have gone by?

Karen Rose: Mr. Bevan-Baker, they have never been covered by our legislation and I would – I can't give you an informed answer on whether in every province they were always covered. I know that in some provinces, local public bodies is what they call them, for instance in the Alberta act. Local public bodies were always brought under the Alberta FOIPP act, but I can definitely undertake to get back to you to let you know whether some jurisdictions brought in the local public bodies later or whether they had that.

When our FOIPP act was proclaimed, we were the second last province to have such legislation proclaimed. Newfoundland's legislation was proclaimed, I think, the year after ours. But as I said, Alberta's was around since 1995. Quebec's has been around for 40 years, I think. It's been around for quite some time and then the rest were somewhere – usually in the 1950s; Ontario, in the 1980s. I will look into it and get back to you.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you, Chair.

Given the evolution of such acts, as with all acts, is there a compelling reason why we should not include municipalities and post-secondary institutions in your opinion?

Karen Rose: There is no compelling reason from the perspective of my office. I will tell you that from the perspective of public bodies, during the time of public hearings, the main concern in the 1990s was the cost of coming under this legislation. These processes usually require human resources, which is an additional cost because you need to have someone who coordinates records – access requests, and it requires legal interpretations. The only thing that I can think of, aside from the fact that perhaps such bodies feel that they are already protecting the privacy of their personal information and also providing access, is

that it's costly to deal with the administrative requirements of the FOIPP act.

Dr. Bevan-Baker: Thank you.

Thank you, Chair.

Chair: Thank you.

Brad Trivers.

Mr. Trivers: Thank you, Chair.

I'm just looking at the definition of a public body in the legislation and included in that in the second point is public body means: "… an agency, board, commission, corporation, office or other body designated as a public body in the regulations." It seems to me that any of the entities we've talked about, everything from indigenous peoples to the municipalities, post-secondary institutions, could be deemed a public body just by changing the regulations. Is that correct?

Karen Rose: Yes.

Mr. Trivers: That would not require any legislative changes at all?

Karen Rose: I don't know that the Aboriginal nation would be included under any of those commissions, etc. I think that might be a governmental – they'd be considered an Aboriginal government so I don't know if you could include the Aboriginal nation, but yes, any other. If you look at schedule one like I said, there are more than 100 and some of them very small committees that perhaps only meet once a month. Yes, it would be that easy.

Mr. Trivers: Thank you.

Chair: Thank you.

The floor is back to you, Ms. Rose.

Karen Rose: The four key – first of all, access applies in our legislation to records, the records in the custody or control of public bodies. Those records can be electronic records or physical copies of records and they include: Notes, images, videos, maps, drawings, letters and emails.

There are four principles of access that our FOIPP act reflects.

First of all, that we, as citizens, as Islanders, have a right to access two records but there are exceptions to that right and I'll be talking about those in a few minutes, and there are good reasons for all of the exceptions under the act. There is a cost to exercising that right and I'll be explaining that in the next slide. We also have access to our own personal information, under the legislation, that is in the custody or control of public bodies. We also have the right to correct – to apply to a public body to correct our personal information.

In the event that we believe that there is an error in our personal information held by a public body, we can ask the public body to correct that information.

Finally, the act provides for an independent review of decisions of public bodies relating to access by an information and privacy commissioner.

I've put the slide up regarding the access process, and some of you may be familiar with the process because you may have made an access request before. The main point I want to show you with this slide is that this is not an immediate process. You don't apply for records generally and get them that day. There are time limits set out in the legislation. Section 9 states that: A public body is required to respond to an access request within 30 days. But, section 12 states that: A public body can take up to an additional 30 days if there is a large number of records; if they require more detail; or if they need to consult with third parties.

Now, I can tell you that our access and privacy services office, which we refer to as APSO, the provincial side of the FOIPP act, that's the centralized office that deals with all of the access requests. They do their very best to ensure that they respond within that 30 days, even when there are a large number of records because they recognize that applicants – that this is a fairly lengthy process and applicants want to get their information as soon as possible. But, if third party information is involved and they have to consult with third parties, then that does lengthen the process.

The second part of the slide talks about the fees. There is a $5 initial fee, not to apply for your own personal information, that's free, but to apply for public documents, public records, and there are also additional fees if a public body spends more than two hours in locating and retrieving a record and preparing and handling it for disclosure.

What the orders of our office have done is define what is locating and retrieving and what is preparing and handling. What I can tell you generally is that locating and retrieving is the process of going to the filing cabinet, going to the email records, and the time required to find the information and take it out of the system in an efficient record keeping system, so that applicants are not penalized if the record keeping system is less than efficient.

Preparing and handling a record for disclosure tends to refer to the severing required. If there is third party personal information, for instance, or third party business information in a record that needs to be severed, then applicants may be charged for the time required – if it's more than two hours – to sever those documents.

Applicants are also charged for photocopying of the records, but it is – orders of our office have made the costs fairly low, the photocopying costs.

Chair: Brad Trivers and then Peter Bevan-Baker.

Mr. Trivers: Thank you, Chair.

In the definition of record, I'm thinking about the cases in the United States where, for example, an external email server was used for correspondence. It's really easy right now to go and get relatively inexpensive document management systems like Office 365 from Microsoft or Google Docs, Gmail. I was wondering if you have any access to records stored in those that might have information that is needed for a FOIPP request.

Karen Rose: I think I have a two-part answer to that. The first is: Under the legislation, the commissioner has access to all of their records, so has the right to access all of their records for review under section 53 of the legislation. If the commissioner does not get a copy of those records, they can issue an order to produce to the public body and get a copy of those records. That access may mean actually going in and accessing it and not necessarily having the paper copies.

But the second part of my answer is that that has never been necessary. We get copies of all emails, and unfortunately for public bodies that often means that we end up with copies of the same emails over and over again because several people were involved in the conversation and each of their systems had a copy of the email trail.

I hope that answers it.

Chair: Brad Trivers.

Mr. Trivers: (Indistinct) a follow-up point to that. So for example, say the Minister of Rural and Regional Development decided they were going to use a personal Gmail account to conduct business. Would you have access to that or is that allowed?

Karen Rose: I think that's a question for Archives and Records. My presumption is that policies would keep that from happening. However, occasionally we have had personal email addresses, we have seen personal email addresses being used for public body business, which means those records were provided to us and the only thing that we have severed is the personal email address of the person who sent it. So in the event that someone inadvertently uses the wrong email address, our experience has been those records have been provided to us as well.

Mr. Trivers: Okay, thank you.

Chair: Thank you.

Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you, Chair.

My questions, Karen, relate to the costs involved here; and when it comes to accessibility, it's not just being able to get the documents but making sure that there are no unnecessary financial barriers for ordinary Islanders to do that.

You mentioned that if it takes more than two hours, there is an additional fee. I can imagine for some FOIPP requests there might be considerable amount of time involved in collecting the records required. Once you get past two hours, is that a set fee or is it so much per hour, and could that amount to something quite considerable?

Karen Rose: I should have mentioned that. Thank you. That's a great question.

It's $20 per hour. It's set out in the legislation as $10 per half hour, so it is $20 per hour. I don't think I've seen a fee above $1600; $1600 is a huge amount. I recall in the first time that I was Information and Privacy Commissioner back in 2003 or 2004, I do recall seeing an estimate in that range. In other provinces I've seen much larger fee estimates.

You may know that even fees get reviewed by our office. What we do is we look at: Okay, is the applicant being penalized here for a less than perfect record keeping system? But I'll tell you what the public bodies often do. A public body may, at the end of their location, retrieval, preparation and handling discover: We've spent 40 hours on this access request. My experience has been that public bodies will say: But this applicant won't be able to afford these 40 hours, and therefore they have reduced – there is provision in the legislation for them to reduce the fee. But yes, in some cases, the hours spent can be considerable.

Having said that, there is also a provision in the act that says: If your access request would interfere substantially with me conducting the work of my public body, then I can apply to the commissioner to refuse it – especially if you were being less than reasonable. For instance, if you wanted everything for a 20-year period and I am saying: Well, if you ask for a five-year period, then it would be considerably less – that sort of thing – if you're not narrowing your request to make it a little less burdensome for my public body.

So there are provisions that cover probably almost every situation – I hope every situation.

Dr. Bevan-Baker: Thank you.

Thank you, Chair.

Chair: Karen, we'll turn the floor back to you.

Karen Rose: Thanks, those are great questions.

Finally, the review to my office: If an applicant applies for information, the applicant has 60 days to ask for a review for my office. If a third party is notified by a public body that their personal information or business information or whatever information applies to the third party is going to be released to an applicant, a third party only has 20 days to apply to my office for a review.

That's because the policy behind that is that an application should not be waiting an entire 60 more days for their records. If during a 20-day period they are notified that they can't get the records because a third party has asked for a review, then it comes to my office and we try to deal with it as expeditiously as possible. There's no fee to ask for a review by my office.

As I mentioned, there are several exceptions to disclosure under the FOIPP act. All of these exceptions are well-reasoned exceptions which are common throughout the country. There are two types of exceptions, so I thought I would provide a slide on each of them. There are mandatory exceptions to disclosure, and there are discretionary exceptions to disclosure.

Under a mandatory exception, which usually means section 14 or 15, the public body has no choice but to withhold the information from an applicant if a mandatory exception applies. If it's a discretionary exception, then the public body has a choice. I'll talk about that in the next slide.

Section 15, the other key mandatory exception, is the exception for personal information, the disclosure of which would be an unreasonable invasion of the personal privacy of a third party. That one is fairly self-explanatory.

Section 14 is one that we have seen quite frequently in our office, and it's the mandatory exception where a third party believes, or a public body believes, that the

disclosure of this information would be harmful to third party business interests, and it's mandatory.

What often happens with mandatory exceptions is caution is used by public bodies because they certainly do not want to release information that is subject to a mandatory exception. I brought up section 14 because it has been in our office quite often and because I think there is sometimes a general misunderstanding about section 14. Section 14 protects business information, but it does not protect all business information.

There is a three-part test which is a fairly stringent test, so to reflect the fact that – back in 1980, this was looked at very comprehensively and a report from Ontario, entitled Public Government for Private People, was issued in 1980 prior to the coming into force of the Ontario FOIPP act. That report stated that: we can't withhold all third party business information because if public bodies withheld all third party business information it would really affect public bodies' accountability and their transparency.

Not only does the public – should the public have a right to access to some third party business information, but other businesses would like to have access to information related to third party businesses so that they can ensure that, for instance, regulations are beings applied by public bodies in an even-handed manner among businesses.

These sections are all drafted with, generally, the same three, four part test across the country. What the test does is it limits the type of information that can be withheld. The business information must either be trade secrets or commercial information, financial information, labour relations information or scientific or technical information. Those are the types of information that can be withheld, but there are further requirements. There must be proof from a third party or the public body that the information was supplied either explicitly or implicitly in confidence.

Finally, and this is often the biggest challenge for public bodies or third party businesses, they must show that the disclosure of this particular type of third party business information is reasonably expected to cause harm. There are four described harms in the subsection. All three of those parts of the test must be satisfied in order for that mandatory exception to apply.

I can tell you that in many cases orders of our office have determined that section 14 does not apply to third party business information especially in relation to contracts between public bodies and third party businesses. However, we have certainly found that there are instances where third party business information must be protected under that section.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you, Chair.

Of course, I'm just like everyone else around the table we're thinking about the Aliant contract that was recently given to us unredacted. Section 14 was used repeatedly prior to that full disclosure to protect the bits that were initially redacted.

My question is: Why did we go from a situation where it was deemed that that information was proprietary or needed to be protected to a situation where we had full disclosure? Was that you office that made that decision?

Karen Rose: I'm not sure if we're talking about the same thing, but my office did recently issue a decision relating to a contract of a public body, which is on our website. I can't comment on any of the decisions because my reasons are within the decision.

However, I will hearken back what I said at the beginning of this slide and that is that: Public bodies must be very cautious in applying sections 14 and 15 of the legislation because they are mandatory exceptions.

Public bodies do usually get legal advice. The legal advice will either presumably recommend that section 14 does apply or section 14 doesn't apply. Public bodies in good faith make those assessments and then due to the independent oversight of our office, we sometimes reassess and disagree with the decisions of the public body or the third party as it were.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: Just to clarify that, Karen. With previous FOIPP requests for the Aliant contract, for example, if the government deemed independently with legal advice or whatever, that some parts of that contract would fall under section 14, then they unilaterally could decide not to release that information.

Karen Rose: Yes they could, but that's why we have oversight. If an applicant refused that information – public bodies equally make decisions that they will release third party business information and then the third parties will often ask a review from our office. I honestly can't remember what the situation was in that particular order, whether it was a third party asking me for a review because a public body said, we want to release it, and I think it was. Or, sometimes, a public body is saying: No, we're not going to release it because the public body is convinced that section 14 applies.

The happy result is that there is an independent review of either a decision of a third party or – of a decision of a public body relating to either disclosing the information or withholding the information. Our independent reviews are not just based on previous decisions of our office, but also previous decisions and court cases across the country.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you.

One final question related to what you just said, Karen. We were talking earlier about the municipalities and post-secondary education too, with their own freedom of information and privacy regulations and rules do not have the oversight of your office. It strikes me that without that oversight there's a large gap in the true accessibility. Would you agree with that?

Karen Rose: I would agree with that. Yes, that is the key missing element when a body, which hold personal information of people, and also which provides access to records can make those decisions without having anyone look independently at them afterwards, if requested.

Dr. Bevan-Baker: Thank you.

Thank you, Chair.

Chair: Thank you.

Back to you, Ms. Rose.

Karen Rose: Thank you.

There are many more discretionary exceptions under the act than mandatory. A discretionary exception is an exception that, if it is found to apply, a public body has the discretion to either withhold the information or provide it.

Whereas, in a mandatory exception the public body must withhold it under the discretionary exceptions, which are most of them, the public body can still disclose the information even if this exception applies, but the public body must exercise its discretion in a balanced and judicious way. The public body has to look at: Okay, the purpose of the act to provide records in our custody and control to any person who requests. But at the same time, they also have to look at the reasons this particular exception exists and whether the disclosure of the information would undermine that reason. They have to take a very balanced approach in exercising that discretion.

I've used section 22 as an example because I think it's a – well, first of all, it has been considered by our office several times, but also, because I think it's a fairly logical exception, as they all are. I'll read to you, verbatim, subsection 22 (g) of our FOIPP act and then I'll explain the underlying rationale for it.

22. (1) "The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

"(g) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council…"

An applicant may request information and a public body may realize or decide that that some of the information within the records reveals advice that was given within the public body. If this section is applied

judiciously it is meant to protect the deliberate of the process, so that, if I am providing frank and open advice that will lead to a frank and open discussion within my public body to – which ultimately will go to the decision-maker.

The decision itself is not exempt, but that deliberative process, protecting the deliberative process, means that we will be able to have that open discussion without fear that someone will see my advice. Because what tends to happen in these cases is that during consultations and deliberations and the process of advice, people will be much freer to give their ideas even if the idea might appear a little out there or a little stupid, if they know that there is protection under the legislation for providing that. There's a very good reason for this section because it does encourage better decision-making because you'll get all of the best ideas, even the ones that initially appeared to be a little whacky. It permits the open discussions so that well reasoned decisions can be made.

What a public body does is, if they receive an access request that they believe is reasonably expected to reveal advice, then they still may decide – and I've seen public bodies decide this – to release the information. But one of the considerations that they will make is: Will this affect the future deliberations in that public body? So, will Karen Rose be less likely to give her recommendations the next time because the last time her recommendations were revealed to an applicant. That's the reason for that exception, it is discretionary.

What our office asked the public body to do is show us how they exercise. First, show us how this information satisfies section 22, and then show us how you exercised your discretion in a balanced and judicious way. If the public body can show both of those things, the commissioner can do nothing. If the public body can show that section 22 applies, but they do not show that they exercise their discretion in a balanced and judicious way, the commissioner can order them to re-exercise their discretion and reconsider it. What our orders often do is include a recommendation that the public body consider particular circumstances that have arisen during the evidence of a review.

Chair: Richard Brown.

Mr. R. Brown: Thank you.

Excellent presentation, Karen, and I read your opinions all the time and they're well done.

Karen Rose: Thank you.

Mr. R. Brown: I have one concern, but also if there is a study or something that's done in a public body that is going to affect someone's health or safety or something like that, that document shouldn't have to be waited to be FOIPPed by someone to say: There was a study done, so therefore I want a copy of the study. What compels the public body to ensure that that document is released right away? Let's say there's an environmental issue, there's a health issue or there's some community care facilities, the health of people are at jeopardy here, so therefore that should be made public.

Karen Rose: Section 30 of our act permits disclosure information such as exactly what you're talking about, Mr. Brown. Also, there's a form in our regulation to notify people that, despite the fact that your personal information is involved in this, this is an issue of environment, safety, etc. So, section 30 should cover that.

The second part of my answer which is related; is that public bodies have – since the proclamation of this legislation, public bodies have been a lot more forthright with many of the documents in their custody and control. Many times advocates will contact a public body and say: I'd like to make a request for access. The public body responds: You don't have to make a formal request for access; we will automatically give you that information. Each public body has a list of documents that they will automatically give, that they do not have to go through a deliberative process. An advocate does not have to pay to apply for it.

Am I late?

Chair: No, they're just doing a tour with one of our legislative employees.

Karen Rose: Oh good, I thought they were leaving because I was taking up too much time.

Chair: No, carry on.

Mr. R. Brown: I just want to make sure. If there's documentation that says there's an issue, would the FOIPP coordinator in that department be allowed to say: Look, this has to go out? Or, how does it get out if nobody notices it?

Karen Rose: First, I'll let you know what section 30 says and I want to make sure that we're singing from the same hymn book. I want to make sure that I'm answering what you're asking.

Section 30. (1) "Whether or not a request for access is made…" It doesn't matter whether the request is made. "…the head of a public body shall…" So it's mandatory. "… without delay, disclose to the public, to an affected group of people, to any person or to an applicant

(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant;

(b) or information the disclosure of which, is for any other reason, clearly in the public interest.

It doesn't necessarily have to be health safety or environment as long as it's clearly in the public interest; a public body can do that. I think we can –

Mr. R. Brown: So what consequences are in place if they don't do it?

Karen Rose: Anyone who willfully violates the *Freedom of Information and Protection of Privacy Act* is subject to a fine of $25,000?

Mr. R. Brown: Or 10.

Karen Rose: It might be $10,000.

Dr. Bevan-Baker: (Indistinct)

Karen Rose: $10,000, yeah. Forgive me.

Mr. R. Brown: (Indistinct)

Karen Rose: Forgive me, as you will see in the subsequent slide I have been looking at –

Mr. R. Brown: No, I wasn't.

Karen Rose: I have been looking at fines in other provinces a lot lately so –

Mr. R. Brown: Good, thanks.

Karen Rose: Yes, subject to a fine of up to $10,000. But, I think it is safe to assume and presume that a public body who thinks that there is immediate risk to Islanders will disclose that information.

Most of that was about access, the access side of the act. Part two of the FOIPP act deals with the privacy side. So again, those three words: Collection, use and disclosure of personal information. But, also the security of personal information is handled by this part of the act.

I did not put this slide on so that you can memorize what constitutes personal information. I put it on there to make the point that personal information is defined as recorded information about an identifiable individual. All of those examples are just examples. Those are examples of things that are for sure personal information under the act.

However, there could be other types of information that are not listed there that are still personal information because they satisfy the definition of information about an identifiable individual and I'll give you a couple of examples. When I did my section review of our act compared to Alberta's act, I discovered that there was an amendment to the Alberta act, that after your finger prints, it says: Or other biometric information. It also adds genetic information.

Mr. R. Brown: Great.

Karen Rose: Their definition added two other examples. Having said that, I think I can say with confidence that both of those examples would also fall under that general definition of information about an identifiable individual. Okay?

Chair: Richard Brown, you had a question?

Mr. R. Brown: That's good because there's a debate in Ottawa now over DNA testing and I support that that information remain private with the individual because that's

their genetic blueprint. What's more personal than your genetic blueprint?

Karen Rose: Yes.

Mr. R. Brown: Does our act include that right now? Can an insurance company compel somebody to have a DNA test and given to them? Do we have protection now for that person?

Karen Rose: Okay, we have no oversight for insurance companies. They're in the private sector. Although –

Mr. R. Brown: But we could define them as a public body.

Karen Rose: They are actually covered by the *Personal Information Protection and Electronic Documents Act*, I believe, which is the federal legislation that has the same effect as ours. That is a really big question and I think too big of a question to answer in this –

Mr. R. Brown: Today.

Karen Rose: Right, because there are interests on both sides.

Mr. R. Brown: Yeah, but you said other provinces have DNA test.

Karen Rose: Oh yes, and it would definitely be defined as – I can say with confidence that that genetic information would be considered personal information under our legislation, and under any legislation.

Mr. R. Brown: Would we consider genetic information, private information under the current legislation?

Karen Rose: Yes.

Mr. R. Brown: Good.

Karen Rose: Absolutely.

We're going to start with collection. Before a public body has your personal information, it needs to collect it and it usually collects it on a form. It can collect your personal information online. There are various methods of collecting it, but there are rules associated with that collection. A public body can't just collect all of your personal information or any of your personal information. The information that a public body collects must either be authorized by law, so there's a statute that says that the public body can collect it, be for law enforcement or – and this is the one that we interpret most frequently: Relate directly to and be necessary for a program or activity of the public body. The public body can only collect your information if it's associated with the service that it's providing to you and it's necessary to provide that service.

The public body also has to explain the purpose and authority for collecting, and that's why there are those blurbs at the bottom of forms that say: We are collecting this information in accordance with this particular piece of legislation. Or, if you wait in a waiting room of a public body office you may see a sign that says: Any personal information we collect is under this particular legislation.

To give you a couple of examples of the types of breaches that we see in collection, the first type is collecting too much information. An early decision of our office involved the disability support program, where at the intake stage, the form that potential clients of the disability support program were to fill out asked for their social insurance number. The order of our office was that the public body should not be collecting the social insurance number. It was not necessary. Again, it did not relate directly to, and it was not necessary for the public body to provide that service at that time.

But another, unfortunately, more common collection of personal information that information and privacy commissioners are seeing across the country is the taking of photographs. Everyone has a phone now and if you were born with one you tend to take photos with it all the time and this –

An Hon. Member: (Indistinct)

Karen Rose: I raise that distinction because I got a phone late in life and I've taken three pictures with it.

Mr. Aylward: (Indistinct) you referring to the prime minister.

Some Hon. Members: (Indistinct)

Karen Rose: Breaches involving – I'm going to give you a couple of examples from British Columbia.

In the BC health sector between 2013 and 2015, there were four incidences – and British Columbia is a large province – there were four incidents of health authority staff posting photos of patients on Facebook or Instagram and this is usually not malicious. But for many people their phone has become an appendage and taking photos is just a natural thing for them and it's usually not malicious, but if you're posting it that means you collected it and it's an unauthorized collection under the legislation.

There were also three incidents of physicians, nurses or LPNs taking photos of patients on their own mobile devices and one of them shared the photo with a colleague.

The asking for too much information that does not relate directly to or is necessary for your program, or usually taking photos in the workplace setting that collects someone's personal information. Those are the types of breaches that come up under the collection side of the legislation.

Chair: Richard Brown has a question before we move on.

Mr. R. Brown: There was an incident up west where somebody took a picture of somebody and posted it on Facebook. Do you have the authority to go in and investigate that without a complaint?

Karen Rose: Yes.

Mr. R. Brown: Good, did you investigate that?

Karen Rose: This is what I will say: I dealt with that file on an access to information basis and there is an order on our website relating to that. On the investigation side, the section of our act which permits me to start an investigation, which is section 50, it's discretionary. If I do not have a complaint – if I have a complaint I am required to investigate. If I do not have a complaint and the evidence is that the public body dealt with the incident in a full way, then I will not exercise my discretion to investigate. If I don't have a complaint and the evidence leads me to conclude that a public body did not deal with the incident in a full and complete manner, then I will exercise my discretion to investigate.

Mr. R. Brown: So in that case, was there a fine levied?

Karen Rose: I did not investigate that matter from a privacy perspective; I investigated it from an access perspective.

Mr. R. Brown: Oh, but you could investigate it from a privacy –

Karen Rose: I definitely have the power to exercise my discretion to investigate.

Mr. R. Brown: So why didn't you?

Karen Rose: I think I – just answered that. I can't –

Mr. R. Brown: I'll have to read the minutes.

Karen Rose: Yes, okay. I can't give you an answer, Mr. Brown, relating to a specific case, but I can tell you exactly why I would exercise my discretion to investigate and exactly why I would not.

Mr. R. Brown: I know you, Karen and I know you would use the full power of your legislation to do that.

Chair: Thank you.

We'll turn the floor back over to Karen Rose.

Mr. MacEwen: (Indistinct)

Chair: Oh, sorry. Sidney MacEwen, I didn't see you there.

Mr. MacEwen: No, it's okay. While we're on that subject of the fines, have there been fines levied?

Karen Rose: No. Our office does not have the power to levy the fine. What we would do is work with the Crown's office. If during an investigation we concluded that the legislation was willfully – what is the wording? I want to say it perfectly – violates – just a second. Well, I don't have it right here, but let's say the legislation was

willfully violated. If we conclude that during an investigation or during a review, then we would pass that information along to the Crown's office, and work with the Crown. This is what other provinces do, and they work with the Crown. The Crown would decide, just like the Crown does in all police matters, whether there is enough investigation to lay – enough evidence, excuse me, to lay a charge. We have never found ourselves, after 14 years, found ourselves in a position that we concluded that the legislation was willfully violated.

Chair: Sidney MacEwen.

Mr. MacEwen: Thank you.

Karen, you have obviously followed the AG report into e-gaming closely, I suspect. I know we've had some correspondence back and forth on a request for an investigation. Going back to the answer you gave Richard about, if there is a public body investigation, which this would have been with the AG looking into that, you're monitoring that to see if there is anything that you need to follow-up with, with a fine or with a potential violation of the act?

Karen Rose: I have read the AG's report, as you know, and the AG conducted a very thorough investigation and made recommendations relating to recorded information management, which is an area of great interest to my office, because in order for us to do our jobs there need to be records for us to review.

I was very satisfied with the recommendations made by the AG and I continue to follow-up to ensure that those recommendations are implemented. I will continue to do so, and if I am satisfied that they are implemented, then we will continue as usual.

Chair: Sidney MacEwen.

Mr. MacEwen: Thank you, Chair.

Yeah, I mean the recommendations going forward are good and they're solid and hopefully they bring about change. I know a number of the recommendations were just, follow the rules, that are currently in place, too.

If you seen a place where the act was broken or say a Treasury Board guideline was not followed, do you have the ability to go in and recommend a fine for a consequence?

Karen Rose: No. I only have the ability to recommend a fine if there is a willful violation of my legislation, the legislation under which I work, which is the legislation which controls me.

I would have had to – and if I found that there was a violation of my legislation and a willful violation, then, yes, I would. But, for instance, Treasury Board policies are not something that comes under my legislation.

Mr. MacEwen: Thank you.

Chair: Brad Trivers.

Mr. Trivers: Thank you, Chair.

I had a couple of questions. I think this is a good point to ask them.

Given the work that is being done by PARO and ITSS to come up with a new records management system, an electronic records management system, are you working closely with them to provide requirements input to make sure they make a system that is going to meet your needs?

Karen Rose: Yes and no. The Archives and Records Office does consult with us when they have a question relating to, maybe, retention and disclosure of records relating to the FOIPP act. For example, there is a provision in the FIOPP act that says: If a public body makes a decision that affects an individual, they are required to keep that information for at least one year. So that's a records management issue that comes up in our FOIPP act.

We are consulted with regard to anything that's associated with our legislation, but if it's beyond our legislation, of course, we're not consulted.

Chair: Brad Trivers.

Mr. Trivers: Do you feel satisfied that you've had enough input into the requirements for a new electronic document management system or do you have – would you proactively go to PARO and ITSS to

say: We want to review your requirements document, make sure all of our needs would be met.

Karen Rose: Yes, it's something that we are monitoring, and if I found that there was something missing that does not satisfy our legislation, then I feel completely comfortable that our opinions would be listened to and possibly implemented. We are consulted fairly frequently by public bodies on all sorts of matters, and given the opportunity to provide input. More often than not, the recommendations that we make are implemented by those public bodies.

Chair: Brad Trivers.

Mr. Trivers: I just want to say I think it's really important that you're engaged and have input into this, the requirements gathering process and then the testing and the implementation of the system to make sure that the right system is implemented because you are one of the key users.

My next question was, it had to do with cloud computing. Again, I mentioned earlier how we've got systems like Office 365 by Microsoft or Google Docs, which is Gmail, by Google that store information on servers in the United States. There is the US Patriot Act that has been cited as being a reason why we can't implement these systems in Canada because the US Patriot Act allows the United States government to access information on their servers when they want to.

Do you feel that the PEI government using cloud computing would cause violation of any of our privacy information or legislation? Pardon me.

Karen Rose: I'm sorry, Mr. Trivers, does cloud computing mean that somehow information would pass onto the jurisdiction of the United States?

Mr. Trivers: No.

Karen Rose: Okay.

Chair: Brad Trivers.

Mr. Trivers: Well, the way I understand it is for example, you open up a Gmail account, we'll use that as an example, because it's one that people are familiar with. Then you go in and you create a document using one of their tools. Then the contents in that document may be stored on a server that's located in the United States.

Karen Rose: Okay.

Mr. Trivers: Because that server is located in the United States, the US Patriot Act says: the United States government can and look at it if they think they need to.

Karen Rose: Yes. When the US Patriot Act was first enacted I was information and privacy commissioner of this province and I know, at that time, I had serious concerns, and my counterparts across the country had serious concerns, about sending any information to the United States because of that broad power of the US.

I am not familiar enough with the amendments to that act since that time. That was probably back in 2003 after 9/11, which was the reason the Patriot Act was enacted. Before I could answer, give you an informed answer, I would need to look at what amendments have been made to the Patriot Act and whether it still has that same broad power.

Chair: Brad Trivers.

Mr. Trivers: I just want to follow-up. I think it's a really important question we get an answer to because I think there could be significant savings if we were able to use cloud computing –

Karen Rose: Yes.

Mr. Trivers: – with products that potentially stored our information on servers outside of Canada. I'd just like to bring that to your attention and make sure it's somewhere on your great big list of to-dos.

Thank you.

Karen Rose: Thank you for raising that.

Okay, so once your personal information is –

Chair: Sorry, Karen. Sidney MacEwen would like to ask a question before we move on.

Mr. MacEwen: Thank you, Chair.

Sorry, just before you move on, I just wanted to confirm with the AG report on e-gaming. Just to confirm: When you reviewed it, you didn't feel there was any violation of the FOIPP act as it stands right now?

Karen Rose: That's correct.

Mr. MacEwen: Chair?

Chair: Sidney MacEwen.

Mr. MacEwen: If something came to light in the future, whether it was a media report or more information, you'd be willing to investigate that based on a violation of FOIPP act for an investigation into a potential fine?

Karen Rose: Well, when it comes to media reports I would probably contact a public body to find out –

Mr. MacEwen: Confirm.

Karen Rose: – more reliable information –

Mr. MacEwen: Right.

Karen Rose: – but yes, as –

Some Hon. Members: (Indistinct)

Karen Rose: As more information comes to light, I'm always very aware of my discretion under section 50, so therefore yes, that is something that I would definitely consider

Mr. MacEwen: Thank you.

Thank you, Chair.

Chair: Thank you.

Karen, the floor's back to you.

Karen Rose: Thank you.

Once information is validly collected, there are two big rules to understand: Public bodies can use that same information again for its original purpose or a consistent purpose – I say again, because it comes up a little later, sorry.

On the next slide I'm going to be talking about snooping, because snooping is considered to be the biggest violation of the use provisions of FOIPP legislation. Snooping is just a common term we use, and I'll explain it. It's the unauthorized access of personal information. It is usually a rogue employee, who, because they have access to personal information at their fingertips, they access it without actually needing to access it. It has become a growing issue, a growing breach under FOIPP legislation, so that's why I've devoted a slide to it.

The other obligation that public bodies have is to keep the personal information in their custody and control secure. What the violations, the breaches which come up under section 35 are usually lost or stolen records. As examples, in that BC report I mentioned, the health report, someone carried a document with personal information in their pocket and it fell out of their pocket somewhere and they lost it; someone left a laptop in their car and it was stolen out of their car and it had unencrypted personal information on it.

So that violates the security provisions of the legislation, and public bodies therefore, have to be very careful to keep the personal information secure. It usually means the basic things such as put documents containing personal information away in a locked filing cabinet in a locked office at the end of the day. But unfortunately, because the world is changing and we use electronic records so much more, there are additional ways to make our electronic information secure to avoid it being lost or stolen.

Snooping − I would say the first case of snooping under FOIPP legislation was probably about 15 years ago, I think in Alberta. It is considered pretty well an automatic willful violation of the FOIPP act. What happens in snooping cases is, as I mentioned, usually a rogue employee who has access to personal information will start scrolling through that personal information.

Very often it's for benign reasons such as curiosity or boredom. It's not usually for malicious reasons, but that does not matter. It's an unauthorized access of personal information. It has become such a problem that the consequences for snooping are growing. We have not had a case of

snooping that my office has had to deal with, but I have been following this in other jurisdictions.

Currently, snooping leads to discipline, termination and fines under FOIPP legislation. But because it has become such a problem in some jurisdictions, those fines are increasing.

For example, in Saskatchewan, Bill 30, which has not been enacted yet, but on the recommendation of the Saskatchewan Information and Privacy Commissioner, the fine has gone from a maximum of $1000 to $50,000, and the possibility of imprisonment.

The Saskatchewan commissioner has gone even further to say that the names of those who snoop should be revealed, because in the Saskatchewan commissioner's opinion – and this was an order that, sorry, the Saskatchewan commissioner does not issue orders, they issue recommendations. He recommended two years ago that snoopers have a diminished expectation of privacy.

I'm just going to sort of explain to you where he's – I first read that order and thought: No, everyone has an entitlement to privacy. But let me give you an example: Let's say I work for a public body and I call Mr. Bevan-Baker and I say: Mr. Bevan-Baker, I am very sorry to tell you that we have just discovered that one of the employees in our public body has accessed your personal information on our database thirty times in the last three months. What would your first question be to me?

Chair: Who is it?

Karen Rose: Who? And I would have to say to you: Despite the fact that this employee violated your privacy 30 times in the last several months, I am required to protect their privacy and you are not entitled to know who it was.

So you live with that, wondering who was it, why did they do it? If the Information and Privacy Commissioner finds out about it, because the Information and Privacy Commissioner, there is no requirement under our legislation, under this legislation, to report breaches. But if I find out about it, I would investigate, and even if I investigated, I would disclose the reasons, I would disclose everything that I found in my investigation, but I am obligated to protect the privacy of that employee as well because of the provisions of our FOIPP act.

It'll be interesting to watch that and see if it changes over time, because the Saskatchewan commissioner – usually when these recommendations are made they get legs and they may grow or they may just go away, so it'll be interesting to watch that.

Another consequence that has occurred from snooping, a quite serious consequence, is the incidence of lawsuits relating to snooping. A few years ago there is a new tort called, intrusion upon seclusion. This tort came about – and I won't waste too much time on it – but this tort came about because an employee of a bank accessed a client who happened to be the new love interest of her ex-spouse, accessed the client's banking information some crazy amount of times, 120 times over a two-year period or something like this, and the court responded by saying: This is an actionable tort, we're going to call it intrusion upon seclusion, and you are going to be entitled to damages as a result. They were awarded damages, somewhere between 10 and $25,000.

But the reason this is a rather frightening phenomenon is because the incidence of class action lawsuits have also increased in Canada, and there have been the beginnings already of class action lawsuits relating to snooping cases. There has been some approval but they haven't made their way through the court process – in cases where the organization is being sued because there is – I want to use the correct term – because of the systemic nature. In other words, if the organization has made it easy for their employees to snoop, then there may, or may not, be some obligation on behalf of the organizations.

So that's snooping – related to use. That's considered a breach of the use provisions of the legislation. How are we doing for time?

Some Hon. Members: Don't look at the clock behind you. (Indistinct)

Karen Rose: That's good, because I think I only have two slides left.

Chair: We're good.

Karen Rose: Similarly, disclosure and use have the same rules. You disclose information for the original purpose that you've collected it, or for a consistent purpose. So again, for that provision of service, you can disclose someone's personal information.

You disclose it to fulfill the promised service, but it's still on a need-to-know basis. Within your public body, everyone does not need to know Karen Rose's personal information; only the people who are involved in providing Karen Rose with the service. Her personal information should not move beyond that circle. In health care, we call it the circle of care. So beyond the circle of care, the other people don't need to know that information, so there are limits on the disclosure.

The breaches that we see are often inadvertent disclosure. In fact, I've never seen an intentional disclosure of someone's personal information; it's always inadvertent. A good example is a couple of years ago former commissioner Maria MacDonald issued an order relating to the Queen Elizabeth Hospital where personal information was available for people in the ER to see on large monitors. So the commissioner ordered the public body to deal with that situation and the public body did.

Other examples of disclosure breaches – which again I got from trusty British Columbia – were a nurse commenting on Facebook regarding the personal health information of another person. That would be a clear disclosure, and an intentional disclosure.

Chair: Brad Trivers, did you have a question? Sorry.

Mr. Trivers: Yes I do. I wanted to get this in here and I wanted to talk about disclosure.

I think having open data from government would be a really good thing and in this case, of course, it's about removing personal identifiers, but allowing people to aggregate the data in different ways so that you can build reports. It's snooping, but not to a personal level. You're trying to find out exactly – well, to answer a different question by aggregating the data.

I wanted to find out your opinion on open data and what needs to happen so that information that's collected can be opened up to the public for this sort of reporting without personal identifiers.

Karen Rose: I'm a big supporter of open data. It satisfies the access provisions of our legislation and the underlying principles of accountability, transparency and openness and it really – to bring it even further, it's an opportunity for government to have people who are truly interested in digging down into the data and drawing conclusions that government may not have realized nor had the resources to look into. I'm a supporter of open data for that reason.

My experience has been, thus far, the type of open data that has been provided by some governments has not involved personal information, and if it did it would absolutely have to be protected. That would either mean a rigorous de-identification which would be potentially resource-heavy for a public body to do that.

I think we're probably a distance away from opening up data that involves personal information of individuals; but yes, I'm highly supportive of it.

Mr. Trivers: Okay.

Chair: Thank you.

Karen Rose: Finally, final slide. The role of our office is that we provide independent reviews of access decisions and also privacy decisions, but really more response to privacy complaints and occasionally we begin our own – we have a discussion to begin our own investigations and we have done that.

We are also authorized to resolve complaints, and some of you may or may not be aware that we've recently created a new position in our office, the case review officer, and she started in January and it's former – the person in the role is former commissioner Maria MacDonald. I must say that she is doing a really fantastic job of resolving complaints at an early stage already and we're only in March.

Ms. MacDonald worked in Alberta for a year doing this very thing and we established a process when she came in so that, especially with privacy complaints, when they first come in to try to work with both parties to see if they can – to see if the complainant – if the public body can do something for the complainant so that the complainant is satisfied that their privacy has been protected, but also in access reviews because sometimes in access reviews there are many issues that we need to deal with and that's why I end up issuing a 45-page order.

What the case review officer can do is narrow those issues, so resolve some of those issues so that, yes, it still comes to my office for deliberation and further investigation, deliberation, and in order but it comes in a much more narrowed way.

The largest benefit of resolving complaints, of course, is that it saves resources for public bodies and it makes complainants and applicants a lot happier because they're not – it's not out of their hands. They're involved in the process.

Both the privacy complaint process and the access review process may result in an order under section 66, and in those orders I will either confirm the decision of the public body, order disclosure of information or order a public body not to disclose the information, or ask a public body with a discretionary exception to please reconsider, to re-exercise their discretion.

I can tell you that public bodies have − when I recently asked a public body sometime in the last year to re-exercise their discretion and they had previously wanted to withhold a record, I asked them to re-exercise their discretion and when they re-exercised it they decided to disclose the record. It's not just an empty recommendation.

On the privacy side of things, the order can require the public body to stop collecting information that it's collecting that's contrary to the act, to stop using information contrary to the act, to stop disclosing personal information in violation of the act or to destroy personal information that was collected in violation of the act.

Chair: Bush Dumville has a question.

Mr. Dumville: Karen, great presentation. I'm so glad I got to substitute today. You'd make an excellent teacher.

Karen Rose: Thank you.

Mr. Dumville: The obligation that all entities, including government, have with evolving services over the years now and everything, you did talk about snooping and − but what about like – I kind of sometimes considered – it's a very costly exercise. It's a time-consuming exercise and is broad fishing – you never talked about fishing, but like broad fishing – do you find people are looking for information or maybe asking for too much?

Now, I know cost may be a deterrent, like $5 up front is not that much but it could be quite involved and could be quite costly as you had said in regards to people, but is that enough of a deterrent?

Is there an unreasonable scope to the requests, both from a financial point of view, wasted financial resources, and/or human resources?

Karen Rose: Yes. That's a good question and actually, it's one of the reasons I think it's – I'm very supportive of the fee structure that we have under the FOIPP act.

Sometimes I have heard it said that there should be no fees. I think one of the effects of the fee structure is that it's a reasonable fee structure, but if you do inundate − if there is a rare applicant who might inundate a public body with requests for – on fishing expeditions, like you say, then the fees may deter them or at last encourage them to narrow their requests to something that is more manageable.

On top of that, there is the provision that permits a public body to ask the commissioner to permit them not to consider a request. If, for instance, if it's frivolous and vexatious. When you talk fishing expeditions, if the request is determined to be frivolous or vexatious then there is a provision in the act so that the commissioner can say: No, you don't have to consider this frivolous and vexatious request.

I think we have issued one order quite a number of years ago; it might be up to 10

years ago, relating to a series of requests which we found to be frivolous and vexatious and allowed the public body not to consider them.

Mr. Dumville: Is there a method where you keep an eye on the credibility of the body or person that's asking and what they're asking, and whether it's all reasonable, say, for your frontline workers?

Karen Rose: I think the access and – that is a very good question because one of the principles, underlying principles, that happens when someone requests access to a request is that if Karen Rose requests information from a public body, the public body should not know that it's Karen Rose. The APSO office just says to the public body: We have a request and it's for this. So that the public body does not have any bias.

Perhaps Karen Rose is annoying. She's asked a lot of – she's had a lot of access requests. Perhaps a public body might be tired of dealing with Karen Rose so the APSO office just says we have a request and this is what it is.

Who the requester is should not matter, but what the requester requests definitely matters. If it's too broad of a request then that definitely is something that's considered and the APSO office works hard talking to applicants to narrow their requests to say: Okay, you've asked for this – and often applicants don't know what kind of records public bodies have so: Okay, Mr. Dumville, you have asked for this. We don't actually hold that type of records, but we do have this. Is this what you'd be interested in? Because – and you've asked for it for 10 years, but what if – would you be willing to consider five years? Take a look at those and if you're satisfied then you may not want all 10 years. They have those conversations back and forth that help save the applicant money and save the public body the resources that it would have to expend managing (Indistinct)

Chair: Thank you. Sidney MacEwen.

Mr. Dumville: Oh, can I just –

Chair: Sorry, did you have a follow-up?

Mr. Dumville: Just one more, yeah.

Chair: Just come through the Chair when you have – if you have more questions.

Mr. Dumville: I thought I was still on –

Chair: Go ahead.

Mr. Dumville: – in the line. Sorry about that, Chair.

Are you backed up now, or do you have enough staff or are you backed up now like are you finding it getting harder to – as you become more into this?

Karen Rose: We are seeing the light at the end of the tunnel. We have been working since my appointment in June, 2015, so almost two years ago. We have been working to reduce the backlog and we have a schedule right now. If nothing crazy happens in the next several months, by the end of August we will have no files that pre-date 2016.

Having said that, we still have files as old as 2011, but according to our schedule – basically, our office had a choice; we could ignore all the current files and just deal with the old files, but there are very good reasons not to handle the backlog that way. One of them being we want the public to have confidence in our office that we are going to issue decisions in a timely manner. We know that we have lost a lot of that confidence.

What we tend to do, and if you check the orders that we have issued I think you'll find this, is that on any given month we will issue an order from an old − from a very old file, but that same month we'll issue an order that was requested only last year. We're trying to deal with the current files and the old files at the same time.

Yes, I am incredibly grateful to have an extra person in the office. I think we have needed an extra person for a long time. The Health Information Act will be proclaimed at some point this year. One of the jobs of the case review officer will be dealing with the breach reports under the Health Information Act because there is a mandatory requirement for breach reports. I think we can handle it.

Chair: Mr. Dumville.

Mr. Dumville: Mr. Brown just said: You're not having any problem with the statue of limitations in any way.

Karen Rose: There is none.

Mr. R. Brown: Good.

Karen Rose: There is none under our legislation.

Chair: I have Sidney MacEwen and James Aylward on the list.

Mr. MacEwen: Thank you, Chair.

Following up on Bush's question there about, you answered with, a public body should never know who the applicant is. If a minister of the department found out about that − say, it was a request from the public, say it was a request from the media, say it was a request from a MLA, what are the consequences for that minister finding out?

Karen Rose: Okay, first of all, I think I misspoke. They have a practice of – okay, it does not matter who the applicant is. It is not an unreasonable invasion of the applicant's personal privacy for a public body to know the applicant's identity. It's not contrary to the act for a public body to know an applicant's identity.

Mr. MacEwen: Okay.

Karen Rose: It's just that their identity should not matter to – so a public body should and does respond to requests no matter who the applicant is, and respond to that request the same way whether Sidney MacEwen makes it, Karen Rose makes it or Kathleen Casey makes it.

While it is the practice it is not necessary under the FIOPP act and public bodies are certainly entitled to know the identity of applicants who apply for records.

Chair: Sidney MacEwen.

Mr. MacEwen: Thank you, Chair.

Karen, so is that consistent across the country, too?

Karen Rose: Yes, that it should − it's consistent that it has been held that the identity of the applicant should not make a difference in how the request is responded to.

Chair: Sidney MacEwen.

Mr. MacEwen: Thank you.

Is it appropriate for the public body to reach out to the applicant in the middle of a FOIPP request?

Karen Rose: Yes.

Mr. MacEwen: After being made aware of the FOIPP request?

Karen Rose: Absolutely.

Mr. MacEwen: That's okay?

Karen Rose: Because that is what we encourage because there needs – in order for a public body to fulfill its duty to assist under section eight of the act, it should communicate with the applicant. When it doesn't that's when problems occur.

Early on in the legislation what I found is, especially if it was a media request, some public bodies seemed reluctant to pick up the phone and call the media person and narrow their request or find out more. Because it was a media person, they were perhaps afraid of saying the wrong thing, the coordinator involved.

It's much better to have an open conversation with the applicant about the request. It's usually the FOIPP coordinator who does that, which for all of the line departments is the APSO office, but for the other public bodies there are other designated FIOPP coordinators.

Mr. MacEwen: One more.

Chair: Sidney MacEwen.

Mr. MacEwen: Thank you.

There is no way that an applicant can request to not be made known to that public body; it's the right of that public body to know who that applicant is –

Karen Rose: (Indistinct)

Mr. MacEwen: – where you say, in practice –

Karen Rose: Yes.

Mr. MacEwen: – for the most part we know there are instances where it has happened, but – in practice, but it is the public body's right to know who made that application and there is no way that that applicant can ask to be anonymous so to speak.

Karen Rose: That's a good question. I think that would be a policy question. For instance we have had privacy complainants in our office who have asked to remain anonymous and we have complied with that request. There is no requirement in our legislation. There is no provision in the legislation that even permits that to happen, but we respect, we have respected of that request. We have conveyed it to the public bodies. The public body has said: That's fine with me. I don't need to know the name of the complainant, and the public body has never found out the name of the complainant. That is now quite a frequent – the first time a complainant made that request to me I was not sure how to respond. It was probably back in 2003-2004, but now we do that as a matter of course fairly frequently. It's probably more the rule now than it is the exception.

Mr. MacEwen: I appreciate the clarification. Thank you.

Chair: James Aylward.

Mr. Aylward: Thank you very much, Chair.

Karen, I wasn't aware that you had a case review office in place now. It sounds like it's a great addition to help expedite the process and that Maria MacDonald is back in your office. Just out of curiosity, you had mentioned that some of the files − some of the complaints reach back as far as 2011.

How many would we be talking about that currently are on your docket? I know –

Karen Rose: Yeah.

Mr. Aylward: – if everything stays on track and there's nothing explodes or goes whacky, on your own words from previous –

Karen Rose: Yes.

Mr. Aylward: − that you see the light at the end of the tunnel –

Karen Rose: Yes.

Mr. Aylward: – around August.

Karen Rose: Yes.

Mr. Aylward: But, how many of those complaints would you still be dealing with?

Karen Rose: From the old? From pre-2016?

Mr. Aylward: Right.

Karen Rose: I'm going to estimate 10, but it could be eight and it could be 12.

Mr. Aylward: Okay.

Karen Rose: I can give you an exact number after I get back to my office.

Mr. Aylward: Okay.

Karen Rose: I didn't bring those numbers with me, but I'm going to estimate that 10 pre-date 2016.

Mr. Aylward: Okay, Chair?

Chair: James Aylward.

Mr. Aylward: Thank you, Chair.

There is one in particular that I'm curious about and I don't remember ever seeing a decision coming out on it. It pertained to, I think, three civil service employees back in 2011 where their email accounts or emails had been shared or made public just prior to the provincial election. Are you familiar with the complaint –

Karen Rose: Yes.

Mr. Aylward: – I'm referring to?

Karen Rose: Yes.

Mr. Aylward: Has that decision ever been finalized or –

Karen Rose: No.

Mr. Aylward: No?

Karen Rose: That would be in the numbers that I just told to you. That would be included in as one of the investigation reports, which should be completed by the end of August.

Mr. Aylward: Okay, thank you.

Karen Rose: I believe that file was 2011.

Mr. Aylward: Yeah, thank you.

Chair: Sidney MacEwen and then I have Brad Trivers on the list.

Mr. MacEwen: Thank you, Chair.

Karen, recently there was a national investigation of unfounded sexual assaults in Canada. Locally in PEI the RCMP and the Summerside Police released data on exactly that. The Charlottetown and Kensington police forces did not release any data on the unfounded sexual assaults.

Would bringing the municipalities into the act force those police departments to reveal the unfounded sexual assault data?

Chair: Good question.

Karen Rose: If I compare it, I can't give you a for-sure answer to that, but if I compare it, for instance to a couple of decisions that our office issued either last year or the year before relating to suicide data and school discipline data then I would say, yes. That that type of data would come probably. If local police forces were public bodies under our legislation then that type of data would likely be accessible, but I can't say.

When something comes before me for the first time I have to weigh all of the evidence, look at the record itself. See whether it contains third party information so I can't say for sure, but if I compared it to that type of data then yes, it's likely that it would be for sure subject to an access request.

Mr. MacEwen: Okay, thank you.

Chair: Thank you.

Brad Trivers.

Mr. Trivers: Thank you, Chair.

I want to thank you for your presentation, as well. I think your concerns were unfounded about it being interesting because I certainly found it very interesting.

In terms of the priority of FOIPP requests you said that you basically set the priority based on how long they have been in there, try and find a balance. I was wondering if there are – do public bodies or elected officials have any influence over the priority in which the FIOPP requests are filled, or is that just you and your –

Karen Rose: None whatsoever.

Mr. Trivers: – department?

Karen Rose: That arises from the independence of our office. Not only do they have no influence, no public body has ever attempted to influence my office to issue a decision sooner, and I would not expect them to.

Mr. Trivers: Okay, thank you. I just wanted to clarify –

Karen Rose: We make our decisions based on – since I arrived in the office a couple of years ago we have issued orders based on, generally in bunches, based on the sections of the act that they – because in my mind it's much easier for me to consider four section 14 decisions all at the same time when section 14 is very fresh in my mind. Therefore, it's the most efficient use of my time writing the order. That tends to be the main driving force in which orders are issued.

The other thing that I would add is that privacy investigation reports are not issued as quickly as access orders because when someone is seeking access to information time is of the essence. If someone's privacy has been violated that bell has already been rung. Yes, a report has to be investigated and a report has to be issued especially for remedial reasons, but we do take those two – and we continue to issue those reports. Access requests, we consider, much more likely that time is of the essence for that reason.

Chair: Thank you.

Richard Brown.

Mr. R. Brown: On Sidney's point there, the request for information, the minister is the head of the public body?

Karen Rose: Yes.

Mr. R. Brown: Yeah.

Karen Rose: The deputy is under our act the – yes, the official head of the public body is the minister. We correspond with the deputy.

Mr. R. Brown: Yeah. I think that you know if a lot of the situations would be rectified pretty quick if the minister was notified and said, look, you have a request here for information. I think the minister could say, look, release it, a lot quicker.

I think our protection of the request is inhibiting the release of information.

Mr. MacEwen: It's like written questions.

Mr. Aylward: It didn't work for the Bell contract.

Chair: Thank you.

I have Brad –

Mr. R. Brown: No, it did. It –

Chair: – I have –

Mr. R. Brown: – did work for the Bell contract.

Chair: – Brad Trivers on the list, next.

Thanks.

Mr. Trivers: Thank you, Chair.

I was just wondering what would be the sort of number one thing that you could get in terms of resources or help or whatever that would allow you to improve the way you guys are able to do your jobs?

Karen Rose: I have just gotten that number one thing that I needed, which was an extra person in the office who could resolve. Because even though our FOIPP act stated that I could resolve complaints, in actuality, I couldn't. I could not attempt to resolve a complaint and then issue an order on it because those two ideas come in conflict with one another because in order to attempt to resolve I have to make some pre-judgments. In order to make an order I can't make any pre-judgments.

Despite the fact – all other jurisdictions in the country have adjudicators to resolve issues, but I had no adjudicator. So this addition of the case review officer in my office has been, I think will be an amazingly effective tool in keeping – in preventing us from getting a backlog again.

Chair: Brad Trivers.

Mr. Trivers: Are there any other high priority items on your wish list per say that you would want to bring to the –

Karen Rose: There are currently no other high priority things on my wish list.

Mr. Trivers: Wow, amazing.

Chair: Thank you, on behalf of the communities, land and environment standing committee. Thank you for the most informative presentation. I think everybody around the table, by their questions that they asked; I think were impressed with the thoughtful presentation that you gave on the most exciting topic.

Karen Rose: Thank you very much.

Chair: Perfect, and also, committee, I just want to remind you that the information and privacy commissioner is coming back in the future with recommendations to the FOIPP act.

Karen Rose: Yes.

Chair: So she'll be coming back again, and we look forward to that.

Karen Rose: What I will likely do is send a formal report before that so that you all can take a look at it before I come in to talk about it.

Chair: Great.

Karen Rose: Yes, so we'll talk about timing, I guess, at a later date.

Chair: Great thank you for your presentation.

Karen Rose: Thank you for having me.

Chair: We enjoyed it.

Mr. R. Brown: Great work.

Chair: Thank you.

All right members we'll direct you back to our agenda.

Karen Rose: Can I get out of here without setting off an alarm?

Chair: Sure. You can.

Mr. R. Brown: So if you do (Indistinct) get in here (Indistinct)

Chair: There you go.

Back to number four. That was an impressive presentation. Approval of the Human Rights Commission ads, I'm going to turn the floor over to Emily, our clerk, to bring us up to date.

Clerk Assistant (Doiron): Thank you, Madam Chair.

At the last meeting we had had the Human Rights Commission in to talk about their roles and the committee had agreed that they would like to put some ads in newspapers to look for more commissioners for the Human Rights Commission. There are four appointments that are coming up that will expire in May, 2017.

After the agenda you will see two different ads, sorry, they are the same ad, on is in French and one is in English. If they are approved they could be ready to go for this Saturday in the dailies and then next Wednesday in the weekly papers. Then, the French version would be going in La Voix.

Additionally, after the ads there is a Human Rights Commission appointment information. This is basically based off of the commissioner profile that was given to us by the Human Rights Commission. It outlines the duties of the commissioner and the qualifications that are required to be a commissioner on the Human Rights Commission.

With the agreement of the committee the idea would be to post the ads in the papers, as well as the website for the Legislative Assembly and the social media for the Legislative Assembly. Then, to post the appointment information on the website that people could be referred to, to look at the duties of the commissioners and qualifications needed. Also, as the committee had discussed at the last meeting this information could be sent to Engage PEI so anyone that has indicated that they're interested in Engage PEI to serve on a Human Rights Commission, they would have the information to know where to apply. Then, all the applications will come into the office here and then the committee would deliberate, at a later time, on the appointments to the commission.

Chair: Great. Thanks, Emily.

Richard Brown, you had a question?

Mr. R. Brown: Thank you, Madam Chairman.

I would – section four: Proficiency in English, both oral, written is essential. Proficiency in French is an asset. I think we should have at least one commissioner that is fluent, fully bilingual in order – if they hear a case that the person can be judged, or put their case forward in the language of their choice; being French, being the other official language of Canada. I know it's not the official – the other official language of the province. I think, human rights, there should be at least one or two on the commission that is fully bilingual in order to hear complaints or cases.

Chair: Thank you.

Mr. R. Brown: Thank you.

Chair: Any further questions? Are we okay to go ahead with the ads?

Brad Trivers.

Mr. Trivers: I was just curious as to what the estimated costs of the ads are, if you have that information?

Clerk Assistant: I don't have that information. I have to bring it back to the committee.

Mr. Trivers: I would be interested to know that, always looking at the bottom line.

Mr. R. Brown: Unforeseen cost.

Mr. MacEwen: Buy local.

Mr. Dumville: One less FOIPP request.

Mr. Trivers: Smaller government.

Mr. R. Brown: You'd have no government in your (Indistinct)

Chair: Members, just to follow-up on that. All of these ads that go through are part of the Legislative Assembly budget. The Legislative Assembly has a line item for advertising. It would be included in the budget that Charles MacKay is responsible for.

Mr. Trivers: Okay. I'm just curious as to how much we're spending on it –

Chair: Okay, perfect.

Clerk Assistant: Sure.

Mr. Trivers: – that's all.

Chair: We can find that out for you.

Mr. Dumville: Why wouldn't they just automatically do it?

Chair: What do you mean?

Mr. Dumville: Automatically, just if it's a requirement to get this filled why wouldn't they just automatically –

Chair: Oh, I think (Indistinct) –

Mr. Dumville: – put these in without –

Chair: – (Indistinct) come back (Indistinct) –

Mr. Dumville: – committee approval?

Mr. Trivers: I'm not saying that we should hold it up. I'm –

Chair: You're just curious.

Mr. Trivers: I'm just curious. (Indistinct)

Chair: Yeah, we'll get that price for you. That's not a big deal.

Clerk Assistant: Perhaps I can mention that these would be the ads that have been used in previous advertisements for this role.

Mr. Dumville: Yes.

Clerk Assistant: So it's just a – with a little bit of updated, the name of the committee and what not.

Chair: Perfect, thanks.

Brad Trivers.

Mr. Trivers: So you had mentioned that you're going to send it through the Legislative Assembly social media presence. Are you planning to do a paid ad on any of the social media?

Mr. R. Brown: Good point.

Clerk Assistant: If it's something that the committee would like to do, we can look into the costs associated with that and – there would be kind of a –

Mr. Trivers: I personally would like to see that. I think that the costs would be significantly lower, in fact, than the print ad would be.

Mr. R. Brown: Genius.

Chair: We can look into that. Thank you for that suggestion.

An Hon. Member: Chair –

Mr. MacEwen: Can we just make a motion to do it?

Mr. R. Brown: Yes. (Indistinct)

Mr. MacEwen: (Indistinct) come back to us, just do it.

Chair: Okay, sure.

Mr. MacEwen: Is that okay with you guys?

An Hon. Member: Yes.

Mr. R. Brown: Yes.

Mr. MacEwen: Just do it?

Mr. R. Brown: Yes.

Chair: Thank you.

Mr. MacEwen: (Indistinct), you're okay with that?

Chair: Brad Trivers.

Mr. Trivers: Now I know that the Legislative Assembly has a significant social media reach, but the PEI government has an even more substantial reach, and what I would like to see is it go out through government social media as well, not just Legislative Assembly social media.

An Hon. Member: (Indistinct)

Mr. Trivers: No, they didn't say you can't; and it doesn't say in the legislation you can't, either.

Mr. R. Brown: (Indistinct) crazy. It could go out through bradtrivers.com.

Some Hon. Members: (Indistinct)

Mr. Trivers: I would be willing to post it on bradtrivers.com.

Some Hon. Members: (Indistinct)

An Hon. Member: All party approval.

Some Hon. Members: (Indistinct)

Mr. Dumville: All party approval?

Mr. Trivers: With my extensive reach.

Mr. R. Brown: (Indistinct)

Mr. Dumville: All party approval.

Mr. R. Brown: We don't need the ad in the paper.

Chair: Committee, when we tweet out or however we do this, we may even have the government re-tweet, or we could do that.

Mr. Trivers: As long as it goes out through their reach. They also have an email list that they can send to as well.

Chair: Sure.

Mr. Trivers: I highly recommend it goes out through there.

Chair: Okay.

Mr. Trivers: I think it would –

Chair: Thank you.

Mr. Trivers: – reach a lot more people.

Chair: Thank you.

Richard, do you have a question?

Mr. R. Brown: No, that's it.

Chair: No? Great.

All right. Thank you, everybody. We'll get on with that.

We're also going to bring you up to date, and we have a discussion on upcoming meetings. Emily, do you want to talk about that?

Clerk Assistant: Yes. So there had been some emails circulating about organizing an evening meeting, which had been discussed at the original committee's work plan meeting, on the topic of the waste facility on Baldwin Road in St. Teresa's.

There was quite a bit of back and forth between the Chair and I, and even with the committee members, to try to find a date that had worked, and we were working around the school review meetings that were happening in the evenings.

Electoral boundaries commission is also meeting very frequently this winter, and then there was some weather also associated with why certain meetings of the reviews had been cancelled and then they were rescheduled and all that. At this juncture now, there's not – the electoral boundaries commission is meeting every Tuesday, Wednesday, Thursday except for March break, basically until the first of April.

So I'm just wondering how the committee would like to proceed on that with an evening meeting, if they would like to have one at the same night that the electoral boundaries commission are meeting, there's just kind of those extra items to consider.

Chair: Sure.

Clerk Assistant: I'm just wondering what the committee's feel on that is.

Chair: Thanks.

Sidney MacEwen?

Mr. MacEwen: Thank you.

I'm quite okay with meeting the same night as what's going on.

Clerk Assistant: Okay.

Mr. MacEwen: I'm fairly confident that we can find – you know, sometimes the MLA if it's in their neck of the woods they like to be at the commissioner's meeting, but we should be able to find a couple of options where that meeting's not being held near a constituency of ours if an MLA felt − I know time was a bit of a factor with this, too. I would put forward if we're really struggling that we go with substitutes, like if we can't find a date for this. I think they were under – they had a certain window before this was coming back, and I know we had sent a letter to the minister asking him to hold back.

I'm not sure if he's holding back for us or not, but we did ask him to hold it, so we shouldn't make him wait forever. I think we can't satisfy everybody on the committee, and if we need to put a substitute in there or not, but I don't think we should hold back from the boundaries commission.

Clerk Assistant: So would we be looking at the last week of March, and not over March break?

Chair: Okay.

Clerk Assistant: Probably wait till that last week of the 27th to the 31st is the last week in March.

Chair: And what dates do we have available?

Clerk Assistant: Well, there – the evenings are available that last week in March.

Mr. R. Brown: I want Friday night.

Clerk Assistant: Is there a preferred evening?

Chair: Do you want to try the Tuesday?

Some Hon. Members: (Indistinct)

Clerk Assistant: Tuesday?

Some Hon. Members: (Indistinct)

Chair: What about Tuesday the 28th of March?

Mr. R. Brown: (Indistinct)

Chair: And we have to make sure the facility is available, and we do know even when we tried to set the meeting up originally, we were trying to have it the next week –

Mr. MacEwen: Yeah, yeah. (Indistinct)

Chair: – and then they, the –

Mr. MacEwen: The presenters.

Chair: – the people who were presenting –

Mr. MacEwen: Yeah.

Chair: – made a request that they wanted somebody at that meeting, so they couldn't have it at the date we proposed at first.

Clerk Assistant: On the 28th, the electoral boundaries commission is meeting in Montague. Is that too close a day?

Dr. Bevan-Baker: I would suggest we pick another evening. That's –

Chair: Okay.

Dr. Bevan-Baker: – about as close to Baldwin Road as you can get for the boundaries commission.

Chair: Right.

Clerk Assistant: The 30th, they're meeting –

Mr. Perry: That's Westisle.

Clerk Assistant: Yes, the 30th is in Westisle. The 29th is in Ellerslie? That would be a Wednesday.

Dr. Bevan-Baker: Okay.

Chair: And would you be going to either one of those?

Mr. Perry: Westisle for sure.

Chair: You won't be going to both, right?

Mr. Perry: (Indistinct) Westisle for sure.

Chair: Okay. Let's try, then, the night of the 29th –

Dr. Bevan-Baker: (Indistinct)

Chair: It's in Ellerslie. So that's further enough away, and if we had to bring a substitute in – we'll make sure that, see if the facility's available.

Clerk Assistant: Yeah. I'll check with the facility and presenters.

Chair: We even had one night, we had booked into the facility and it turned out to Ash Wednesday so it didn't work for the parish.

Some Hon. Members: (Indistinct)

Chair: All right. Are we good to go? We'll try that. We'll send out a notice.

Any further business? Emily, do you have anything else?

Mr. R. Brown: Adjourn?

Chair: Any further business?

Sid MacEwen.

Mr. MacEwen: Do we have a Kathryn Dickson on the invited list for our review of FOIPP, the manager of access and privacy services? She was the one that manages the office that Karen puts the request into. She's the one from government.

Clerk Assistant: (Indistinct)

Chair: (Indistinct)

Clerk Assistant: (Indistinct)

Mr. MacEwen: And do we have any other witnesses (Indistinct)? I think the motion that we put forward says: Instruct the legislative committee on Communities, Land and Environment to conduct a review of FOIPP through expert witness and public testimony and report back. I'm wondering if we should get her side of things.

Chair: Emily has an update on that.

Mr. MacEwen: Sure.

Clerk Assistant: Yes. So at the work plan meeting, the committee –

Mr. MacEwen: You did talk about that?

Clerk Assistant: We did talk about that, yes.

Mr. MacEwen: Okay, good.

Clerk Assistant: And I had actually been in contact with her office just to kind of give her a heads up, and they are very interested in coming in and they are ready to present to the committee –

Mr. MacEwen: Okay, great.

Clerk Assistant: – on the work that they do in that office there.

Mr. MacEwen: So that'll come in the next coming weeks I think, so –

Clerk Assistant: Yes.

Chair: At our next meetings.

Clerk Assistant: Yeah.

Mr. MacEwen: Thank you.

Chair: All right. Any further business?

Thank you for your input and your interest and have a great day.

Mr. MacEwen: Thank you.

Chair: Thank you.

We're adjourned.

The Committee adjourned