



**OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for
Prince Edward Island**

ORDER NO. OR-24-004

**Re: Department of Environment, Energy and Climate Action
(OIPC file No. C/24/000119, formerly FI-23-542)**

**Denise N. Doiron
Information and Privacy Commissioner**

April 15, 2024

Summary:

An Applicant made an access request to the Department of Environment, Energy and Climate Action, who extended their time to respond to the Applicant, pursuant to section 12 of the *Freedom of Information and Protection of Privacy Act*. The Applicant objected to the Department extending the time to respond and requested the Commissioner to review the decision. The Commissioner found the Department was authorized to extend their time to respond to the Applicant.

Statutes cited:

Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, Cap. F-15.01, sections 7, 9, 12, 14 and 28

Cases Considered:

Order FI-17-007, *Re: Department of Justice and Public Safety*, 2017, CanLII 49929 (PE IPC)

SUMMARY DECISION

[1] An individual (the “Applicant”) made an access request to the Department of Environment, Energy and Climate Action (the “Public Body”), pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01 (“*FOIPP Act*”) for:

Records of disbursements re. wind turbine assessments and repairs at Hermanville Wind Farm

Time Period: July 1, 2022 – October 3, 2023

[2] Prior to the Public Body’s time limit for responding to the Applicant’s access request having expired, the Public Body notified the Applicant that they were extending their time for response for 30 days, and explained that they needed more time to consult with other parties before they could process the request.

[3] The Applicant did not agree that the Public Body should need extra time to process their request and provide a response and asked me to review for the Public Body’s decision to extend their time to respond to the access request.

[4] More specifically, the Applicant stated:

I disagree that a time extension is needed. The information requested should be readily available. If there are records of amounts paid and the recipients of those amounts then I should receive those records without delay. I accept that if there are no records then I should be advised of that. I do not understand why consultation is required to determine if a disbursement has been made.

[5] While the Applicant referred only to records of amounts paid and the recipients of those amounts, that is not all the Applicant was asking for in their access request. They asked for records related to disbursements about wind turbine assessments and repairs. That is more than just amounts and recipients of the amounts. I would expect responsive records to include third party business information, based on the wording of the access request submitted by the Applicant.

- [6] I did not request submissions from the Public Body on this, as the issue was whether the Public Body was authorized to extend their time to respond to the Applicant. The Public Body confirmed that consultations were sent to three third-party businesses.
- [7] Section 9 of the *FOIPP Act* indicates that a Public Body is required to respond to a request without delay and must make every reasonable effort to respond to a request not later than 30 days after receiving it, unless the time limit is extended under section 12 of the *FOIPP Act*. Clause 12(1)(c) permits the head of a public body to extend their time for responding to an access request for up to 30 days if more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record.
- [8] In this matter, the Public Body extended their time to consult with third party businesses. Section 14 applies to third party business information, and is a mandatory exception to disclosure if the factors set out in this section apply to information in responsive records. This means that a public body must consider whether the factors in section 14 of the *FOIPP Act* apply because, if they do, the public body is required to refuse access to that information.
- [9] Section 28 of the *FOIPP Act* requires public bodies to consult with third parties if the public body is considering disclosing records to an applicant that may contain information that affects the interests of a third party under section 14. Because section 14 is a mandatory exception, a public body is required to conduct these consultations to decide whether section 14 of the *FOIPP Act* applies before they can make a final decision about access to the records.
- [10] As stated by former Commissioner Karen Rose in Order FI-17-007, *Re: Department of Justice and Public Safety*, 2017 CanLII 49929 (PE IPC), at paragraph 16: "...section 28 of the *FOIPP Act* provides a very low threshold for requiring notice to third parties."
- [11] In other words, a public body only needs to form an opinion that a record being considered for disclosure may contain information subject to section 14 before their

obligation to consult under section 28 is engaged.

- [12] It is reasonably foreseeable, based on the wording of the Applicant's access request, that responsive records might contain financial information about third parties. Respectfully, the Applicant's argument that the information should be readily available and they should get it without delay ignores the legislative provisions regarding mandatory exceptions to disclosure or the Public Body's legal obligation to consult with third parties before making a decision on access to records that may contain financial information about a third party business.
- [13] The Public Body confirmed that there were three third-party businesses whose business information might be subject to section 14 of the *FOIPP Act*. As the Public Body was considering giving the Applicant access to these records, section 28 of the *FOIPP Act* required the Public Body to consult with these third parties before deciding whether to grant the Applicant access to the records.
- [14] The Public Body notified the Applicant that they were conducting consultations with third party businesses before making a decision on access, and were extending their time in order to meet this obligation. The Public Body extended their time by 30 days for the purpose of meeting their consultation obligations under section 28 of the *FOIPP Act*, which was allowed under clause 12(1)(c) of the *FOIPP Act*.
- [15] Therefore, I find that the Public Body was authorized to extend their time to respond to the Applicant's access request for 30 days, pursuant to clause 12(1)(c) of the *FOIPP Act*.

Signed: 

Denise N. Doiron
Information and Privacy Commissioner