



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

Public Body	Department of Education and Early Years
Public Body Ref. No.	2025-179 EEY
OIPC File No.	C/25/00117
Statute and Sections for Review	<i>Freedom of Information and Protection of Privacy Act</i> Sections: 64.1 [refusal to conduct inquiry] and 76 [fees]
Decision #	D-25-008
Decision-Maker	Denise N. Doiron Information and Privacy Commissioner
Date of Decision	July 14, 2025

Summary:

An applicant requested access to records and the Department of Education and Early Years (the "Department"). The Department issued a fee estimate to the Applicant and explained that the Applicant could ask for a fee reduction or fee waiver if the Applicant was unable to pay or the records related to a matter of public interest. The Applicant did not ask the Department for a fee reduction or waiver, but asked the Commissioner to waive the fees. The Commissioner refused to conduct an inquiry because the Applicant had not first requested a fee waiver from the Department.

Access Request and Response:

On June 13, 2025, the Applicant asked the Department for access to certain records, spanning a time period from January 1, 2019 to June 11, 2025. The Public Body decided to charge the Applicant a fee relating to the search, retrieval and processing of the requested records, and issued a fee estimate of \$180.00.

On July 2, 2025, the Department issued a letter advising the Applicant of the fee estimate, and requested a 50% deposit to continue processing the access request. The Department's letter advising the Applicant of their fee estimate stated:

Section 76(4) of the Act provides limited situations where fees may be reduced or waived entirely. These include: you cannot afford to pay, or the record relates to a matter of public interest. If you believe any of these circumstances apply, please bring this to my attention.

The letter then went on to advise the Applicant that they could ask the Commissioner to review this decision.

Request for Review:

On July 10, 2025, the Applicant submitted a request for review to our office. The request for review relates to the Applicant wanting a fee waiver. The Applicant made extensive submissions as to why they believe the records relate to a matter of public interest, and why the fee should be waived in full.

The Applicant confirmed that they did not ask the Department for a fee waiver. They made their request for a fee waiver directly to our office, stating that they were unaware they could ask the Department for a fee waiver.

Analysis:

Not all requests for review proceed to an inquiry. Section 64.1 of the *FOIPP Act* gives the Commissioner the authority to refuse to conduct an inquiry if, in the opinion of the Commissioner: (a) the subject matter of a request for a review has been dealt with in an order or investigation report of the Commissioner, or (b) the circumstances warrant refusing to conduct an inquiry.

The issue of whether an applicant can ask our office directly to waive a fee being required by a public body was reviewed by former Commissioner Maria MacDonald in 2013¹. In that decision, Commissioner MacDonald found amendments made to the *FOIPP Act* in 2005 required an applicant to make their request for a fee waiver directly to the head of the public body, not to the Commissioner. Prior to 2005, an applicant could ask either the head of a public body or the Commissioner for a fee waiver. However, the 2005 amendments removed the Commissioner's authority to grant a fee waiver independently, without the head of the public body having made a decision on a request for a fee waiver first.

Here, the Applicant did not ask the Department for a fee waiver, or make any submissions to the Department about why they believe the records relate to a matter of public interest. Instead, the Applicant made that request and their supporting submissions directly to our

¹ Department of Finance, Energy and Municipal Affairs, 2013 CanLII 89279 (PEI IPC), paras 37-40

office, as a request for review. However, I do not have the authority to make an initial decision on whether a fee waiver is warranted. That is the authority of the Department. Further, as the Applicant did not make their request to the Department, the Department did not have the opportunity to make a decision on it. Therefore, there is no decision to review.

Under the *FOIPP Act*, the Applicant is required to write to the Department and ask them for a fee waiver and explain why they believe the records relate to a matter of public interest. If the Applicant asks for a fee waiver and the Department refuses, then the Applicant can ask our office to review that decision. Until that happens, I do not have authority to review the Applicant's request for a fee waiver.

Decision:

The issue of whether an applicant can directly ask the Commissioner for a fee reduction or fee waiver without first asking the public body has already been considered by our office in a previous decision. Because the Applicant did not ask the Department for a fee reduction or fee waiver, there is no decision by the Department to review.

For these reasons, I am refusing to conduct an inquiry, pursuant to clauses 64.1(a) and 64.1(b) of the *FOIPP Act*.

I do not fault the Applicant for misunderstanding the Department's letter about their options. The letter was not as clear as it could have been about who they should have asked for a fee waiver if they felt one was warranted in the circumstances. The Applicant may still ask the Department for a fee waiver, and is free to use the submissions they compiled for us if they choose to pursue the issue of a fee waiver with the Department.

Signed:  Denise N. Doiron

Denise N. Doiron
Information and Privacy Commissioner