



# Prince Edward Island Île-du-Prince-Édouard

## Legislative Assembly

Information and  
Privacy Commissioner  
PO Box 2000, Charlottetown PE  
Canada C1A 7N8

## Assemblée législative

Commissaire à l'information et  
à la protection de la vie privée  
C.P. 2000, Charlottetown PE  
Canada C1A 7N8

August 30, 2024

Jamie MacDonald  
Deputy Minister  
Department of Housing, Land and Communities  
Shaw Building North, 2<sup>nd</sup> Floor  
95 Rochford Street  
Charlottetown, PE C1A 3T5

VIA EMAIL

Dear Deputy Minister MacDonald,

**Re: Request for Advice under the *Freedom of Information and Protection of Privacy Act***  
**Public Body: Department of Housing, Land and Communities**  
**Our File Reference: C/24/00161 (formerly FI-24-583)**

I write further to your letter of March 20, 2024, received March 21, 2024, and a discussion I had with Cheryl Paynter, CEO of the PEI Housing Corporation (PEIHC) earlier on March 20, 2024, during which we discussed potential privacy concerns about disclosing the civic addresses of social housing units.

### **Background**

During the 2024 Spring sitting of the Legislative Assembly, questions were raised about social housing in Prince Edward Island. The Minister of Housing, Land and Communities (the Minister) requested PEIHC to consult with my office to make sure they were meeting the requirements of the *FOI/PP Act* with respect to both access to information and the protection of personal privacy of the various individuals involved.

On March 20, 2024, Cheryl Paynter, called me about the Opposition Party's request to table information in the Legislative Assembly about social housing units under the ownership of the PEIHC, including the specific civic addresses of these units. Although they had not asked for the names of the tenants, she was concerned that the tenants could potentially still be identified and that including the civic addresses in the tabled information would disclose personal information about them, such as that they were receiving the benefit of social housing and that their income fell below the maximum income threshold to qualify for this benefit. She also provided me with a spreadsheet of information about social housing units that had already been provided in the Legislative Assembly.

Subsequent to my discussion with Cheryl Paynter, you forwarded a letter to my office, dated March 20, 2024, requesting that I provide formal advice and recommendations in this matter, pursuant to section 51 of the *Freedom of Information and Protection of Privacy Act* (the “FOI/PP Act”), which states:

51. (1) The head of a public body may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.
- (2) The Commissioner may in writing provide the head with advice and recommendations that
  - (a) state the material facts either expressly or by incorporating facts stated by the head;
  - (b) are based on the facts referred to in clause (a); and
  - (c) may be based on any other considerations the Commissioner considers appropriate.

The advice and recommendations contained herein are based on the facts set out below, as provided in your letter of March 20, 2024, and my conversation and emails with Cheryl Paynter. If any of the facts that are set out are inaccurate, please advise immediately, as this may alter my advice and recommendations.

### **Material Facts**

During the 2024 Spring session of the Legislative Assembly, the topic of social housing was raised. During discussions, multiple requests were made to the Minister to table information about properties purchased by the PEI Housing Corporation. The Minister tabled some information, but members of the Opposition requested more detail.

In mid-March 2024, the Minister tabled in the Legislative Assembly a spreadsheet of properties acquired by the PEIHC as of December 31, 2023, with the following information included:

- the fiscal year in which each property was acquired by PEIHC
- the community where the property was located
- appraised values (where available)
- purchase price
- number of units
- cost per unit
- the seller of the property, and
- the realtor company, where a realtor handled the sale.

At least one member of the Opposition asked the Minister to add to the spreadsheet the civic addresses of the properties held or acquired by the PEIHC, and the names of the real estate agents who handled the transactions.

You indicate that the Public Body intentionally chose to list only the communities in which the purchases were made, not specific addresses, as the income qualifications for provincial social housing are easily

accessible on the government's website, and disclosing the addresses could potentially jeopardize tenants' personal privacy.

From my discussion with Cheryl Paynter, I understand the Opposition took the position that they were not asking for personal information because they were not looking for names of people living in the units, just the civic addresses of each housing unit. In your letter, you indicate the Opposition asserted that disclosure of the civic addresses was necessary for the purposes of the Opposition being able to hold government to account on the value of government spending of public funds.

The PEIHC and Department took the position that disclosing the names of the real estate agents would not be an unreasonable invasion of their personal privacy as this was business information. Also, real estate agents publicly advertise their services and the properties they are selling. However, they were concerned that tabling the civic addresses of the social housing units, which would mean making them publicly available, could be considered an unreasonable invasion of the personal privacy of the tenants who were living in the social housing units.

The income qualifications (i.e. maximum income thresholds) and other criteria required to be eligible to be approved for tenancy in a social housing unit is information that the Public Body publishes on their website.

The Registrar of Deeds records transfers of property and it is possible that a diligent researcher could potentially identify some of these properties by searching properties held by the provincial government or owned by PEIHC. However, it takes some expertise to search the public records.

Some, but not all, properties held by the PEIHC or owned and operated by the Government of Prince Edward Island are either publicly known to be social housing, or are publicly identified as such with signage (e.g. some seniors housing units).

When information is tabled in the Legislative Assembly, that information becomes available to the general public.

### **Advice Requested**

You are requesting my advice and recommendations about whether disclosing the civic addresses of the social housing units would be an unreasonable invasion of personal privacy of the tenants living in the social housing units.

### **Advice**

Some may believe that they are not disclosing personal information if people are not identified by name. However, it is more complicated than this.

When looking at whether disclosing certain information would or could be an unreasonable invasion of an individual's personal privacy, there is more to it than simply disclosing or withholding the names of individuals. A public body also has to look at the information to assess whether the identity of an individual could be reasonably ascertained through the information that is being requested. In addition,

there needs to be an assessment of whether the information is “personal information” and, if so, if disclosing it would be an unreasonable invasion of personal privacy.

The *FOIPP Act* defines personal information, which includes much more than just an individual’s name, such as home or business address, educational, employment or financial history, among other things. If information is about an identifiable person, then the public body has to assess whether granting access to that information would be an unreasonable invasion of an individual’s personal privacy. Subsection 37(1) of the *FOIPP Act* lists several circumstances when a public body may disclose personal information. The provision at issue here is clause 37(1)(a.1), which authorizes a public body to disclose personal if it is not an unreasonable invasion of their personal privacy. Clause 37(1)(a.1) refers to section 15 of the *FOIPP Act*, which sets out when disclosure of personal information is presumed to be an unreasonable invasion of personal privacy and when it is not.

Here, the people whose personal privacy may be affected are the tenants of the social housing units. With respect to the tenants, simply withholding their names is not sufficient to protect their identity because some people are still identifiable by their address.

In this scenario, the civic addresses being made public would reveal financial and other information about the tenants. Social housing units are only available to individuals and families who have low household income levels, were living in poor housing conditions or other special circumstances. Tenants must have annual incomes below specified thresholds to qualify, and size/type of housing units are associated with specified annual income thresholds. Other financial information is ascertainable from this, as well, such as how much of the tenant’s income goes to rent, heat and electricity. All of the qualification criteria and threshold income information is publicly available on the government’s website.

Making the civic addresses of the social housing units publicly available would reveal financial and social circumstances information about the tenants occupying the units. More particularly, it would identify that the tenants living in the units were low-income earners and recipients of social housing, and would reveal their financial information because not only would their incomes have to be below the eligibility thresholds, they could be more closely identified by virtue of the type of social housing unit they occupy. Further, the percentage of income they are required to spend on rent, heat and electricity would be disclosed, as well as their social circumstances. All of this information is considered sensitive personal information and, as such, disclosure of this kind of personal information would be presumed to be an unreasonable invasion of personal privacy under subsection 15(4) of the *FOIPP Act*.

Although disclosure of certain personal information is presumed to be an unreasonable invasion of personal privacy, this presumption is rebuttable, and a public body must consider all circumstances before deciding to release or withhold the information. Although not exhaustive, subsection 15(5) of the *FOIPP Act* provides some relevant circumstances that must be considered. One of these is whether the disclosure is desirable for the purpose of subjecting the activities of government or a public body to public scrutiny. This is the premise under which the Opposition requested the specific addresses of the social housing units to be disclosed.

While public scrutiny is a relevant circumstance that could serve to rebut a presumption of unreasonable invasion of personal privacy, in this case, I do not see where disclosure of the civic addresses of the social

housing units would further this purpose, particularly given the level of detail already disclosed in the tabled information.

The information contained in the tabled spreadsheet, more specifically the assessed value of the properties acquired and the price PEIHC paid to purchase them, should be sufficient information to allow the Opposition to hold the government to account for their spending in relation to the purchase of the housing units identified in the spreadsheet. There does not appear to be any discernible benefit to making the civic addresses public, or that doing so would in any way assist in holding government to account, given the level of detail already made publicly available. I would not consider this to be sufficient to rebut the presumption of unreasonable invasion of personal privacy if the specific civic addresses of the social housing units were to be made public by tabling them in the Legislature. I see no other circumstances that would rebut this presumption either.

From all of the information provided, it appears that your Public Body has reasonably and appropriately assessed whether disclosing the additional requested information would be an unreasonable invasion of the personal privacy of the individuals involved.

### **Recommendation**

Based on all of the facts presented, and upon reviewing the *FOIPP Act* provisions, I recommend that in this scenario the Minister/Department continue to withhold the specific civic addresses of the social housing units under the ownership of PEIHC.

### **Conclusion**

Thank you for bringing this matter forward. I recognize that each party is trying to do their job here. Subjecting the activities of government and a public body to public scrutiny is an important role of the Opposition but, to do so, they require access to information in the custody and control of government. Government has a responsibility to provide sufficient information for this purpose, but also has a responsibility to handle personal information of citizens in a way that protects their right to personal privacy. There is a delicate balance between ensuring sufficient information is available for the Opposition to fulfill its role, while also making sure that they do not unreasonably invade the personal privacy of individuals to whom that information might relate. I commend both your Public Body and the Opposition for treating these roles and responsibilities seriously.

If you require any clarification contained herein, please let me know at your earliest opportunity.

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner

c. Cheryl Paynter, CEO, PEIHC (via email)