



Prince Edward Island
Legislative Assembly

*Information and
Privacy Commissioner*
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Île-du-Prince-Édouard
Assemblée législative

*Commissaire à l'information et
à la protection de la vie privée*
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Michele Cudmore
Chief Access and Privacy Officer
Access to Information and Privacy Office
University of Prince Edward Island
550 University Avenue
Charlottetown, PE C1A 4P3

June 12, 2025

VIA EMAIL

Dear Michele Cudmore,

Re: Feedback on Application Fee Waiver Pilot Project

Thank you for your invitation to provide feedback on a pilot project the University of Prince Edward Island ("UPEI") is considering implementing, with a view to potentially making it a permanent policy.

As I understand it, the intention is to implement a trial period of UPEI instituting a blanket waiver of the \$5.00 application fee for all access to information requests for general information. After the trial period has ended, UPEI plans to analyze the results and determine whether to permanently waive the \$5.00 application fee. The idea behind this project is to see whether, by eliminating the requirement for an application fee, UPEI will be "...removing access barriers, promoting transparency and improving the efficiency of our internal processes for handling information requests."

I applaud UPEI for trying to remove potential barriers to access to information, promoting transparency and improving the efficiency of your internal processes. These are all good things. It seems logical that waiving the \$5.00 application fee would be a good first step in accomplishing these goals.

However, after thinking long and hard about this proposal and reviewing the applicable provisions in the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act") and its Regulations, in my opinion public bodies do not have the authority to waive this application fee requirement. Let me explain.

An application fee is not chargeable for an access to information request for the individual's own personal information. However, the Regulations require an applicant to pay a fee for access to other types of information, and this initial application fee is not included in a public body's authority to waive fees.

Section 6 of the *FOIPP Act* states that the right of access to a record is subject to the payment of any fee required by the Regulations. Subsection 9(2) of the Regulations states: "An applicant is required to pay an initial fee of \$5". The use of the word "required" means this is a mandatory provision, not a

discretionary one. So, a public body does not have the authority to decide not to charge it, regardless of the circumstances.

Also, subsection 9(3) specifically states that processing of a request cannot start until that initial fee has been paid. And subsection 12(3) of the Regulations excludes the initial fee from being refunded when the amount paid by an applicant for a fee estimate exceeds the actual fees required to be paid. These provisions support the mandatory nature of the initial application fee.

Although section 76 of the *FOIPP Act* provides authority for a public body to waive fees if an applicant cannot afford the payment or the record relates to a matter of public interest, this authority only applies to the discretionary fees a public body can charge as set out in sections 9, 11 and Schedule 2 of the Regulations. These discretionary fees do not include the initial \$5 application fee.

I know this is not what you were hoping for as feedback, but I do not see how UPEI would be able to implement this project and remain in compliance with the *FOIPP Act*.

Having said this, though, the *FOIPP Act* is currently under review and this is an issue that UPEI could bring forward as a possible amendment. The Standing Committee on Health and Social Development is currently accepting submissions on potential amendments, and I am sure they would welcome hearing UPEI's perspective on this issue for their consideration.

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner