



Legislative Assembly

Information and
Privacy Commissioner
PO Box 2000, Charlottetown PE
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Assemblée législative

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

Det/Sgt Patrick Daley
Major Crime Unit
Summerside Police Services
270 Foundry Street
Summerside, PE
C1N 1G1

April 9, 2025

Via Email

Dear Det/Sgt Patrick Daley,

Regarding the VAW Advocate Case Review Program

Thank you for reaching out to us about this initiative. I have a few comments, but none of them are an order, direction, or finding of our office. Our objective when someone asks us to comment on a program is to consider whether the project complies with the *Freedom of Information and Protection of Privacy Act* (the "FOI/PP Act"), to help identify privacy risks, and if possible, suggest ideas to mitigate any risks.

My focus was whether the *FOI/PP Act* authorizes you to disclose personal information to the VACR review committee in this proposed model. Subsection 37(1) of the *FOI/PP Act* lists several circumstances when a public body may disclose personal information without the individual's consent, even if disclosure would otherwise be an unreasonable invasion of personal privacy. The draft memorandum of understanding says you are relying on clause 37(1)(b) as an authority to disclose personal information to the VACR review committee because it is for a purpose consistent with the purpose of collecting, which was for law enforcement.

Section 38 of the *FOI/PP Act* guides how to assess a consistent purpose. The purpose of disclosure must meet two conditions to be considered a consistent purpose:

- a) It must have a reasonable and direct connection to the purpose of collection; and
- b) It must be necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

I will repeat the purposes of disclosure and address these two conditions.

Purpose of disclosure

You say that the purpose of the disclosure is to ensure that your investigations meet the community's needs by:

- Identifying trends and patterns
- Ensuring transparency and complete investigations
- Adopting the latest and up to date victim/survivor-centered approach
- Identifying training gaps
- Collaboration amongst service providers

I am going to summarize these purposes of disclosure as ensuring that the police are meeting standards to conduct fair and quality investigations into complaints of sexual assault.

a) Is there a reasonable and direct connection between the purpose of collection and the purpose of disclosure?

I accept that the purpose of ensuring that the police are meeting standards has a reasonable and direct connection to the original law enforcement purpose of collection.

b) Is the purpose of disclosure necessary for performing statutory duties or for operating a legally authorized program of the public body that uses or discloses the information?

There are two possibilities in the second condition: either it is necessary for a statutory duty or is necessary for a legally authorized program.

I am not sure this purpose is necessary to perform a statutory duty. The second recital in the draft memorandum of understanding refers to the *Police Services Act*, but on PEI we have the *Police Act*. I reviewed the *Police Act* but have not found any provision that mirrors the language in this recital. I did not do an exhaustive search and there may be a statutory duty that I am not aware of.

While I am confident that ensuring that police are meeting standards to conduct fair and quality investigations into complaints of sexual assault could be a part of the legally authorized program of the Summerside Police, I do not have enough information to assess whether *external reviews* of the Summerside Police are “necessary”. I would encourage you to consider whether this purpose is necessary.

Because I am not sure if the second condition of a consistent purpose has been satisfied, I cannot say whether the *FOIPP Act* authorizes disclosure. I still reviewed the materials, and made a few observations which I numbered for ease of reference.

1. I read that Halifax Police received advice that they were not authorized to disclose personal information to a VACR review committee in this model¹, and are working with the RCMP in a different model. I am not familiar enough with the statutes of Nova Scotia to formulate an opinion. They may not tell you what legal advice they got, but if you have a relationship with that agency, you could ask them if this is accurate, and if so, about their concerns.
2. The documents are silent about the possibility that someone, including an officer, victim, or accused person, may request access to information created by the VACR review committee. The *FOIPP Act* may authorize Summerside Police to withhold the information, but each access request must be considered on its merits. I mention this only to remind you that you cannot give blanket assurances to the VACR review committee that their recommendations or other opinions about the officer, accuser, or person accused will never be disclosed to those individuals.
3. The draft memorandum of understanding says at paragraph 5.2 that the records will only be redacted subject to any redactions required by law, then has as examples, pursuant to the *Youth Criminal Justice Act* or by court order. Subsection 37(2) of the *FOIPP Act* authorizes you to only disclose what is reasonably required under subsection 37(1). It is foreseeable that some information in an investigation file is not reasonably required for the VACR review committee's purposes. For example, a medical record may refer to an unrelated medical condition or prior injury. I encourage you to review each file before the disclosures to the VACR review committee.
4. Section 35 of the *FOIPP Act* requires every public body to make security arrangements, and this model has several strong physical and administrative safeguards, including confidentiality agreements. Some public bodies periodically review or renew these agreements with their employees. An option could be to briefly remind the VACR review committee members of their confidentiality agreements as part of your introductory remarks when you are disclosing personal information to them.
5. I recommend that you periodically review your foundation documents and practices to consider whether you should address any changes in the scope of the use or disclosure, advancements in technology, or evolving risks that need to be proactively addressed.

The following are not requirements or comments under the *FOIPP Act*, but some observations.

6. Paragraph 3.3 of the memorandum of understanding says that VACR review committee members will be subject to a criminal background check. I encourage you to consider, in advance, how you will use this information. For example, it is possible that a candidate

¹ Suzanne Rent, "Expert disappointed Halifax police dropped sexual assault case review model", *Halifax Examiner*, (July 23, 2024), online <<https://www.halifaxexaminer.ca/policing/expert-disappointed-halifax-police-dropped-sexual-assault-case-review-model/>>

would have a criminal history that would not impact on their ability or credibility to participate in the reviews.

7. Paragraph 8.1 of the memorandum of understanding says any differences arising from the agreement will be resolved through friendly consultations. It is foreseeable that you may not be able to resolve all differences through friendly consultation and that you will need more to enforce the agreement. Some agreements say parties will first try to resolve differences through friendly consultations. Then they go on to set out particulars of another dispute resolution mechanism (e.g. mediation or arbitration) if the matter is not resolved by friendly consultations.
8. The Review Team Selection Criteria, at Appendix A, states at paragraph 1, that the participants must have "daily, on-going communication with sexually assaulted persons" and at paragraph 7 that they "deal directly with sexual assault trauma every day". You may wish to consider the limited pool of candidates in PEI who would have such daily work. There may be people in PEI whose experience or expertise would be helpful, but their work is not daily.

Thank you for the opportunity to review this material. It is obvious that the project has been thoroughly and thoughtfully considered. If you have any comments or questions about my letter, please feel free to call or write.

Sincerely,



Maria MacDonald
Deputy Commissioner