



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

Public Body	Health PEI
OIPC File No.	C/24/00040 (formerly FI-21-406)
Statute	<i>Freedom of Information and Protection of Privacy Act</i>
Decision #	D-25-006
Decision-Maker	Maria C. MacDonald, Deputy Commissioner
Date of Decision	June 6, 2025

SUMMARY

An Applicant requested access to records related to COVID-19 rapid tests, and asked Health PEI to waive the fees because of inability to pay, and public interest in the records. Health PEI declined, and the Applicant requested a review. The Deputy Commissioner finds the fee estimate is reasonable and that Health PEI is not required to waive the fee.

BACKGROUND

The Applicant requested access to records of a single employee, over a 4.5-month period related to COVID-19 rapid testing equipment. Health PEI consulted with the Applicant, but they were not able to agree on how to reduce the scope of the access request. Health PEI estimated that the fees would be \$722.

The Applicant requested a waiver of the fees because of inability to pay, and public interest in the records. Health PEI did not waive the fees, but offered to provide electronic copies of the records which would reduce the fee to \$680 as follows:

Locating and retrieving records	5 hours X \$30.00/hour	150.00
Preparing and handling records for disclosure	17.5 hours X \$30.00/hour	530.00
Total:		680.00

ISSUES

Issue 1: Is the fee estimate reasonable?

Issue 2: Should Health PEI waive the fee?

ISSUE 1: IS THE FEE ESTIMATE REASONABLE?

The regulations of the *FOIPP Act* set out the maximum allowable fees for various potential costs to process an access request. The two that are relevant to this review are the costs to locate and retrieve records, and the costs to prepare and handle the records for disclosure, both of which are based on the estimated time involved.

Costs to locate and retrieve records

The employee named in the access request was changing jobs and moved out of the province. They did a preliminary search and searched through their emails from the previous 30 days but could not remotely access emails that were over 30-days old. The preliminary search took six hours which included an unspecified time to work with IT Shared Services about remotely accessing archived emails. Someone else from Health PEI would have to complete the rest of the search. Considering that this other person would not be familiar with the records, and based on the preliminary search, Health PEI estimated that it would take another five hours to complete the search, for a sum of 11 hours. Health PEI's fee estimate is based on five hours to locate and retrieve records. Health PEI's custom is to waive the first three hours, but it appears that they deducted it twice.

The Applicant remarked that "I do not believe calculations of time spent on retrieving records should penalize applicants due to cumbersome technical difficulties related to remote access or accessing unfamiliar structures of an e-mail account." I consider the fact that Health PEI waived over 50% of the time to conduct the search should adequately address the Applicant's concerns about the efficiency of the searches.

Health PEI used the maximum allowable rate of \$15.00 per half hour (\$30.00/hour). Based on their professional qualifications, I expect the individual who did the preliminary search costs more than the maximum allowable rate. We do not know the hourly cost of the second employee, but it is foreseeable that it is \$30.00 per hour or more. I remind Health PEI that they may not charge the Applicant more than the actual cost to Health PEI. I have no concerns about Health PEI using the maximum allowable rate for this estimate.

Cost to prepare and handle the records for disclosure

Estimating the time to prepare and handle the records for disclosure depends on how many responsive pages there are, and how much severing is expected. Health PEI found seven hundred pages in their preliminary search, and estimated there would be another four hundred pages, for a

sum of about 1,100 pages of records. But Health PEI estimated that there would be 530 pages of records when they removed duplicate emails.

Health PEI expected that several provisions would apply because the records involved other public bodies, other jurisdictions, manufacturers, suppliers, and clinical/technical experts. Health PEI expected that they would have to prepare and handle all the pages for disclosure. Based on an estimate of two minutes per page, Health PEI estimated that it would take them 17.5 hours to prepare and handle the records for disclosure. Our office has accepted two minutes per page is a reasonable guideline to estimate the time to prepare and handle records when the public body expects a few severances per page.

Health PEI used the maximum allowable rate of \$15.00 per half hour (\$30.00/hour). The people who do this work are likely access and privacy analysts, who are not the same people who searched for responsive records. The hourly cost to Health PEI would be more than the maximum allowable rate, and I have no concerns about Health PEI using the maximum allowable rate for their estimate.

Conclusion Regarding Fee Estimate

Health PEI based their estimate on a test search and considered relevant circumstances that could impact on the time and costs. I am satisfied that Health PEI's estimate is reasonable.

ISSUE 2: FEE WAIVER

Subsection 76(4) of the *FOIPP Act* says a public body may excuse a fee when:

- (a) the applicant cannot afford the payment or for any other reason it is appropriate to excuse payment; or
- (b) the record relates to a matter of public interest, including the environment or public health or safety.

I changed the sequence, and I paraphrased, but the Applicant requested a waiver because:

- The Applicant made a similar access request for records of the Chief Public Health Officer, but the Department of Health and Wellness did not charge any fees,
- The Applicant says the records relate to a matter of public interest, and
- The Applicant's employer cannot afford the fees.

Inconsistent application of fee waivers

The Applicant made a similar access request for the Chief Public Health Officer's records. The Department of Health and Wellness did not charge a fee, even though there were a similar number of responsive pages. When the Applicant asked Health PEI about their fee waiver policies, Health PEI told the Applicant that they would consider charging a fee if the processing time is over three hours,

and that they address requests to waive fees on a case-by-case basis. The Applicant is concerned that Health PEI does not have a written policy, and there are different practices between Health PEI and the Department of Health and Wellness.

I understand why the Applicant wants consistency. The *FOI/PP Act* and regulations have a detailed fee structure, including the option to request a waiver, and our office has outlined considerations when exercising discretion¹. I do not see a need for further policy development.

The fact that another public body decided not to charge fees for a different access request is not a reason for Health PEI to waive the fees in this matter. I do not accept that it is an appropriate reason to waive the fees.

Do the records relate to a matter of public interest?

The Applicant says the information relates to matters of public interest, including:

- Rapid testing relates to the public health response to the COVID-19 pandemic,
- The federal government paid for the rapid COVID-19 tests, but PEI did not use them, and
- The rapid testing became a key component to opening travel restrictions.

In their decision to refuse to waive the fees, Health PEI remarked that although the COVID-19 pandemic is a matter of significant public interest, they were not persuaded that the records of this employee about the rapid testing equipment are a matter of public interest.

The Applicant referred to several articles about the rapid tests and says: "One element frequently cited in many of these stories has been the lack of data and information from public health officials detailing exactly how many rapid tests have been used, as well as why the uptake has taken so long." But these articles include PEI's Chief Public Health Office's and Health PEI's answers to these questions about PEI.

I am not persuaded that records relating to the rapid testing equipment relate to a matter of public interest.

Can the Applicant afford the fees?

We usually try not to identify an Applicant unless it is necessary. It is relevant to say that the Applicant is a journalist. The Applicant says the fee is beyond the budget for a medium-sized newsroom and is a barrier for access for journalists. Health PEI was not explicit about this, but it appears that they accepted that the Applicant's employer could not afford the fees. The Applicant's employer has been open about their financial struggles, we do not have the particulars, but I accept that the Applicant could not afford the fees.

¹ Including decision cited by the Applicant Order FI-13-001, *Re: Health PEI*, 2013 CanLII 89281 (PE IPC)

Fee waivers are discretionary, and a public body may still charge fees to an applicant even when they cannot afford the fees. Health PEI did not think the Applicant gave enough information to show that Health PEI should waive the fees. When considering the exercise of a public body's discretion our office has said public bodies should consider the following:

1. Is there a reasonable expectation that the public could benefit from disclosure of the record?

We are not aware of any benefit to the public from these records and are not aware of any reason to think the employee of Health PEI would have records that would benefit the public. As noted, representatives from PEI responded to journalists' questions, and the Applicant has records from the Chief Public Health Officer about the same subject matter. This factor is not relevant to a decision to waive some or all the fees.

2. Would waiving the fee for service shift an unreasonable cost burden from the applicant to the public body?

Health PEI says the Applicant's employer is a commercial operation, and excusing fees would transfer the costs from a commercial operation to a publicly funded entity. The Applicant did not think this was relevant, but our office has been consistent that it is a relevant consideration. The Applicant quoted this list of considerations when they asked Health PEI for the fee waiver.

The Applicant is concerned that fees will discourage requests and weaken accountability. The *FOI/PP Act* fee system recognizes that access requests have a cost and that applicants should pay for some of these costs. Journalists play an important role in educating and informing the public, and they make access requests more frequently than an average citizen. However, on its own, this does not make it reasonable to shift the costs from the journalist to taxpayers.

I consider shifting the cost burden from the Applicant to Health PEI to be unreasonable, which weighs against waiving fees.

3. Would the records contribute to debate on, or resolution of, a matter of public interest?

Although news agencies discussed use or lack of use of the rapid tests, representatives from PEI answered journalists' questions about how many tests they had, how many they used, and why or why not. I am not aware of any debate. This factor is not relevant to a decision to waive some or all the fees.

4. During the request for access process:

- (a) Was the public body timely in responding to the request, and did it fulfill its duty to assist?

There are no concerns about the Public Body's timeliness or whether they fulfilled their duty to assist. This factor is not relevant to a decision to waive some or all the fees.

- (b) Viewed reasonably, did the applicant cooperate or work constructively with the public body, including narrowing or clarifying the access request where it was reasonable to do so?

Health PEI approached the Applicant about narrowing the date range of their access request. They did not reduce the scope of the access request, but both parties were cooperative. This factor is not relevant to a decision to waive some or all the fees.

- (c) Did the applicant unreasonably reject a proposal by the public body that would reduce the costs of responding to the access request?

As noted, there was a proposal to narrow the date range of the access request, but the parties acted cooperatively. This factor is not relevant to a decision to waive some or all the fees.

When we review a public body's exercise of discretion, our role is to ensure that they properly exercised their discretion, they considered all relevant factors, and did not consider irrelevant factors. I have no concerns about how Health PEI exercised their discretion when refusing to waive the fee.

Conclusion Regarding Fee Waiver

I find that Health PEI's determination that the records do not relate to a matter of public interest was reasonable. I find that the Applicant is not able to afford the fees, but that Health PEI exercised their discretion reasonably when they refused to waive the fees.

CONCLUSION

I find that Health PEI's fee estimate, and assessment that the records do not relate to a matter of public interest is reasonable. Although the Applicant cannot afford to pay, I find that Health PEI reasonably exercised their discretion when they declined to waive the fees. I confirm Health PEI's decisions regarding the fee estimate and I will not order Health PEI to reduce or waive the fee.



Maria C. MacDonald
Deputy Commissioner

POSTSCRIPT

On receipt of this decision, the Applicant asked us to include some dates. The Applicant requested a fee waiver on April 15, 2021. Health PEI responded to that request on May 15, 2021. The Applicant asked the Commissioner to review this decision on July 2, 2021.