



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

**Request to Extend Limitation Period to Request a Review Pursuant to Section 61  
RI-21-001  
Re: Department of Agriculture and Land**

**Prince Edward Island Information and Privacy Commissioner  
Denise N. Doiron**

**February 9, 2021**

**Summary:** An Applicant requested a review of the Public Body's decision in relation to an access to information request more than 60 days after the Applicant had been notified of the Public Body's decision. The Commissioner declined to allow an extension of time, pursuant to subclause 61(2)(a)(ii) and refused the request for review.

**Statutes Cited:** *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01 (the "FOIPP Act"), ss. 10, 60, 61

[1] The Applicant made a request for access to information to the Department of Agriculture and Land (the "Public Body") on March 16, 2020. In June 2020 the Applicant clarified their request. The clarified request was for:

"All documents and records, including: letters, notes, texts, emails, briefing notes, meeting memos/notes and minutes and records of decision, Presentation's, Leases,

Purchase/Sale's, Private Public Partnership, License, Operating Expense, Agreement's and Purchase/Sale Offer's (key word examples listed below):

"[Company Name] Presentation" (2014-2020),  
"[Company Name] Lease Agreement" (2014),  
"[Company Name] Purchase/Sale Agreement" (2014),  
"[Company Name] Private Public Partnership" (2015-2018),  
"[Company Name] License Agreement" (2016),  
"[Company Name] Projected Operating Expenses" (2018),  
"Agreement" (November, 2016 to Present),  
"[Company Name] Contractor Service Agreement", including License (2018 to Present),  
"[Company Name] Purchase/Sale Offer" (December 2019 to Present),  
[Name of Individual], [Name of Individual], [Name of Individual], [Name of Individual]  
and [Name of Individual]

To include records to and from Agriculture and Land and to specifically include the following employees and officials:

[13 Named Government Officials/Employees]

Time Period: January 1, 2014 to March 26, 2020"

The company name in all instances was the same, or a different iteration of the same company name, and the individual names were different iterations of the same individual's name.

- [2] On June 29, 2020, the Public Body issued a fee estimate of \$215.00 to process the request. The Applicant paid a deposit of \$107.50 and the request was processed.
- [3] By decision letter dated August 7, 2020, the Public Body notified the Applicant that the Public Body decided to waive the remaining balance of the fee estimate and provided 54 pages responsive to the Applicant's request. As all public bodies are required to do, pursuant to subclause 10(1)(a)(iii) of the *FOIPP Act*, the decision letter also notified the Applicant of the opportunity to request a review of the Public Body's decision, in writing, within 60 days of the date of notification of the decision, and provided the mailing address for our office.

[4] By letter dated December 22, 2020, delivered to our office by email on the same date, the Applicant requested a review of the Public Body's decision. Although not specifically stated, from the context of the written request, the Applicant was seeking a review based on adequacy of search and the Public Body's duty to make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely [section 8, *FOIPP Act*].

[5] The primary basis for the request was the Applicant's assertion that "it is impossible for me to believe, that over a period of six years, only a handful of records (54 pages) referencing [*Company Name*] exist, many of which are repeated." The Applicant provided some examples of records he had been expecting to receive but did not, primarily emails for several named individuals, and notes, agendas, etc. about meetings he believed should have occurred.

[6] Section 61 of the *FOIPP Act* permits someone who has made an access to information request to request a review of the public body's decision, but also sets out a limitation on the time within which that request for review must be made. Section 61 states:

61. (1) To ask for a review under this Division, a written request shall be delivered to the Commissioner.

(2) A request for a review of a decision of the head of a public body must be delivered to the Commissioner

(a) If the request is pursuant to subsection 60(1),(3) or (4), within

(i) 60 days after the person asking for the review is notified of the decision; or

(ii) any longer period allowed by the Commissioner;

...

[7] Our office received the Applicant's written request for review on December 22, 2020, 137 days after the Applicant was notified of the Public Body's decision, and more than twice as long as the statutory time limitation for requesting a review set out in subclause 61(2)(a)(i) of the *FOIPP Act*.

- [8] I notified the Applicant that the request for review was delivered to our office outside of the statutory time limitation, but provided them the opportunity to provide submissions respecting why they believed a longer time for requesting a review in this instance should be allowed. I did not request submissions from the Public Body on this matter, as it is an applicant's responsibility to demonstrate their request for an extension is reasonable. I am not aware if the Public Body has a position.
- [9] By letter dated January 16, 2021, received by email on January 18, 2021, the Applicant sought to be allowed to request a review of the Public Body's decision after the expiry of the 60 day time limitation. The Applicant advised that after they received the Public Body's decision letter and responsive records, they had several questions they wished answered. The Applicant contacted the Access and Privacy Services Office ("APSO") to ask these questions, but the APSO representative the Applicant spoke to was unable to answer the Applicant's questions and suggested the Applicant make an access to information request to the Department of Education and Lifelong Learning, and the Archive Office. The Applicant explained that they requested a contact name in the Archive Office, and waited for the APSO representative to call them back.
- [10] The Applicant submitted that "while I waited for [APSO's] response the 60-day time period to request a review lapsed". This was the only basis the Applicant provided for seeking permission to request a review beyond the time period required in the legislation. The Applicant did not provide any explanation as to why they waited another 3 months after the 60-day time period lapsed to make a request for review.
- [11] There are no specific criteria set out in the *FOIPP Act* for allowing an extension to the time for requesting a review. I must make a decision on whether to allow an extension based on reasonableness. I must also take into consideration procedural fairness to both the Applicant and the Public Body, as the intent of the legislation is not only to provide

applicants with a right to request a review, but also to provide some degree of finality or closure around requests for access to information. Therefore, I must be persuaded that there is reasonable justification for the Applicant to have not made the request within the statutorily required time period.

[12] I am not persuaded that an extension of time for requesting a review in this matter is reasonable. The Applicant did not provide any real basis for not making the request for review within 60-days of being notified of the Public Body's decision, nor did they provide any explanation as to why they did not seek a review sooner, even after the time lapsed. The only reason given was that they were waiting for APSO to provide them with a contact name to make another request, which they never received.

[13] It is not reasonable that the Applicant was waiting for answers to questions before they made a request for review in this matter. Even if the Applicant had questions they wanted answers for, the Applicant provided no information to substantiate that answers to those questions would have affected the Applicant's ability to request a review one way or another.

[14] Simply waiting for a contact name to make an access to information request to a different public body is not sufficient reason to wait to make a request for review of the Public Body's decision. This should not have prevented the Applicant from making a request for review.

[15] The Applicant offered no evidence or explanation of any factor that prevented the Applicant from meeting the statutory time limitation, and the Applicant has provided no other reason for not having made the request for review within the require time period. The Applicant has therefore not substantiated that an extension of that time is warranted.

[16] For the reasons outlined herein, I decline to allow an extension of the time for requesting a review pursuant to subclause 61(2)(a)(ii) of the *FOIPP Act*, and I hereby refuse the request for review as it is outside the time required in subclause 61(2)(a)(i) of the *FOIPP Act*.

All of which is respectfully submitted this 9<sup>th</sup> day of February, 2021 by

**Signed:** *Denise N. Doiron*

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Denise N. Doiron  
Information and Privacy Commissioner