



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

Private and Confidential

January 25, 2023

Dear [REDACTED],

Re: Request for Review under the *Freedom of Information and Protection of Privacy Act*

Public Body: City of Charlottetown

Our file reference: FI-22-481

Public Body's file reference FOIPP – PIR 2022-06-0006

We received the Applicant's letter you provided, authorizing you to act on their behalf. In this correspondence, I will refer to you both, collectively, as "you".

After we received your request for review, we asked the City of Charlottetown (the Public Body) for a copy of their processing file, which we received and reviewed. The FOIPP Coordinator also assisted with responding to a few of the questions in the request for review. You believe some records are missing and asked us to review the adequacy of the Public Body's search, which is a part of a public body's obligations under section 8 of the *Freedom of Information and Protection of Privacy Act* (the "FOIPP Act") to respond to an applicant openly, accurately and completely.

Not every request for a review proceeds to an inquiry. Subsection 64.1(b) of the *FOIPP Act* gives me the discretion to refuse to conduct a review if the circumstances warrant. After careful review of your request for review, the Public Body's responses to your follow up questions, and the responsive records, I have decided that the circumstances do not warrant conducting a review.

In your request for review, you set out several concerns, as follows:

- a. There were no written notes from a verbal complaint from a retiree (likely in early May 2022);
- b. There were no notes of one of the employees involved in a phone conversation referred to in an email dated May 5, 2022, 3:16 pm, at page 31;

- c. In your follow up questions of July 12, 2022, you asked for a copy of a “no hire policy” and the policy regarding “the restriction from entrance to any City of Charlottetown workplaces/facilities”, and records relating to how these policies were applied to you; and
- d. You seek confirmation that the public body did not search only emails, and that the records of the human resources department were searched.

I will address each of these concerns separately below.

- a. **There were no written notes from a verbal complaint from a retiree (likely in early May 2022)**

This is slightly different than one of the follow up questions for a copy of the complaint (item 1 in the letter dated July 12, 2022). We followed up with the Public Body. One of the FOIPP coordinators for the Public Body advises us that they spoke to the employee who was the Assistant Manager of Public Works at the time, and who received the complaint. He confirms that he did not write down the verbal complaint.

Public bodies are not held to a standard of perfection, but a reasonable search is one in which an employee who is experienced in the subject matter makes a reasonable effort to locate records which are reasonably related to the request. I consider the Public Body’s efforts to locate records to be reasonable and have insufficient evidence to reasonably believe that any other responsive records exist.

- b. **There were no notes of one of the employees involved in a phone conversation referred to in an email dated May 5, 2022, 3:16 pm, at page 31**

You remark that this employee has taken detailed notes of other phone calls and offer this as a basis for your belief that other records must exist. The FOIPP coordinator advised you that they checked, and no written notes exist. I am satisfied that the physical and electronic records of this employee were searched. The fact that this employee took notes in another conversation is insufficient evidence to reasonably believe that the employee created notes during the phone call of May 5, 2022.

- c. **In your follow up questions of July 12, 2022, you asked for a copy of a “no hire policy” and the policy regarding “the restriction from entrance to any City of Charlottetown workplaces/facilities”, and records relating to how these policies were applied to you**

You advised that an employee of the Public Body told your employer that you were subject to a no hire policy. The Public Body confirms that they referred you to the HR manager to discuss this issue, but was not suggesting that their searches were incomplete.

The FOIPP coordinator had referred you to stipulations in the letter of termination, which includes, in bold lettering, the following sentences:

. . . You are terminated from your employment effective July 24th, 2019 and are considered unsuitable for re-hire.

. . .

You are additionally restricted from entrance to any City of Charlottetown workplaces/facilities.

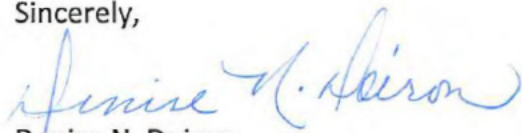
The stipulations set out in the letter of termination are clear. You may have been expecting a record with a broader set of guidelines, procedures or roles used as a basis to make decisions to address a common or anticipated issue. However, there is no indication that these decisions were based on any particular policy of the Public Body. I am not persuaded that the employee's purported use of the word "policy" during a phone call with a third party leads to a reasonable belief that other records exist.

- d. You seek confirmation that the public body did not search only emails, and that the records of the human resources department were searched**

The Public Body provided copies of their search notes, which confirm that electronic and physical records were searched. This is further supported by the fact that the responsive records provided to you contain copies of physical non-electronic records. I have insufficient evidence to reasonably believe that the Public Body did not do an adequate search or that there are other records.

I am not persuaded that there is any reasonable basis for me to conclude that the Public Body did not conduct an adequate search or that I have enough evidence to reasonably believe that the Public Body has other responsive records. For these reasons, it is my opinion that the circumstances do not warrant conducting an inquiry, and I therefore refuse to conduct a review, pursuant to clause 64.1(b) of the *FOIPP Act*.

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner

C: FOIPP coordinators (City of Charlottetown)