



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

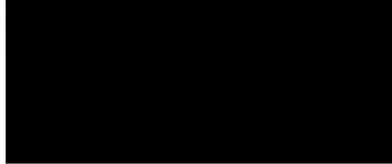
Information and
Privacy Commissioner
PO Box 2000, Charlottetown PE
Canada C1A 7N8

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

March 22, 2023



Sent Via Email

Dear [REDACTED]

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

Public Body: Department of Health and Wellness

Public Body's file reference: HW 2022-151

Our file reference: FI-22-491

You had asked the Department of Health and Wellness for access to the following:

Please provide the dataset, in any form (excel, csv, PDF) containing the following details of COVID-19 deaths in P.E.I. linked to long-term (Nursing Home) or community care facilities: Date of each death linked to COVID-19 and name of LTC/CC home in which each individual was a resident, by date, between January 1 and June 14, 2022. Note: I do not require identifying information such as names or specific details about residents.

The Public Body decided to give you access to some information but refused access to the date of each death and name of LTC/CC home in which each individual was a resident, by date. The Public Body refused access to this information under section 15(1) of the *FOIPP Act*.

Preliminary Issue

You submitted your request for review more than 60 days after receiving the Public Body's decision, and asked that we extend the 60-day request for review period set out in the *Freedom of Information and Protection of Privacy Act* (the "*FOIPP Act*"). For procedural fairness reasons, we asked the Public Body for their position in relation to an extension of time to request a review. The Public Body has advised that they are not taking a position on this issue.

In consideration of the widespread disruption after hurricane Fiona, when the legislated time for requesting a review expired in this matter, I am extending the time for you to request a review, as authorized under subclause 61(2)(b)(ii) of the *FOIPP Act*.

Review

I have extended your time to request a review. However, I do not need to accept every request for review we receive. Under section 64.1 of the *FOIPP Act*, I may refuse to conduct a review if the subject matter has been the subject of another order, or if the circumstances warrant. I have decided not to conduct a review in this matter, for the following reasons.

Your access request was for information about COVID-19-related deaths at long-term care (nursing home) or community care facilities. You indicated you did not want identifying information about the individuals, but asked for the date of death and name of the facility where each individual was a resident. The Public Body decided to refuse to give you specific dates of death and facilities where the deceased individuals were resident, as they considered this identifying information. You do not agree with the Public Body that this information would identify the deceased people.

I share the Public Body's assessment that the date of the death of an individual, together with their last residence in a specific care facility, is enough to identify the individuals. It is often easy, particularly in Prince Edward Island, to identify someone with their date of death and their last known residence. This subject has been considered by our office in previous orders. For example, in Order FI-16-007, *Re: Health PEI*, 2016 CanLII 48833 (PE IPC), which can be found here: <https://canlii.ca/t/gsr8z>, the Commissioner accepted the public body's observation that the date of death, combined with the location of the incident (in that case suicidal death), could be used to search the online death notice archive www.inmemoriam.ca to identify the individual. The same applies to the information you have requested. I am satisfied that the date of death coupled with the name of the facility in which the deceased individual was resident at the date of their death is identifying information. It is also apparent that this issue has been dealt with in a previous order of this office.

You also remarked that the Public Body has been providing location-specific data regarding residents and staff who have COVID-19 during reported outbreaks. The information that you requested, the date of death and the facility of these individuals, differs from the outbreak information that the Department of Health and Wellness discloses. The outbreak information is not specific enough to potentially identify individuals who have tested positive for COVID19 and who live or work at a named facility. Date of death from COVID19 and facility of residence at time of death is more unique to a specific individual and, therefore, would be considered identifiable.

When a person is identifiable in these circumstances, you will know their health information. More specifically, that they had, and died of, COVID-19. Clause 15(4)(a) of the *FOIPP Act* says disclosing personal information related to a medical condition is presumed to be an unreasonable invasion of that person's personal privacy.

The presumption of unreasonable invasion of personal privacy is rebuttable. If disclosing personal information is presumed to be an unreasonable invasion of a person's privacy, the

burden is on the applicant seeking access to that information to provide sufficient information to persuade me that the information should still be disclosed. To determine whether to conduct a review, I examined whether there was a reasonable possibility of success that this presumption could be rebutted.

I considered your observation that this information may promote public health and public safety. Clause 15(5)(b) of the *FOIPP Act* does provide for a consideration of whether disclosure of personal information is likely to promote public health and safety when considering if disclosure would be an unreasonable invasion of personal privacy. I considered this factor, but do not see a reasonable chance that disclosing the identifiable personal information you have requested would promote public health and safety, or, if it does, that it would do so to such a degree that it would outweigh the individuals' right to personal privacy.

The examples that you gave were about making determinations about adequate infection control practices, the impact of aging facilities, or the practice of sharing rooms. I reviewed some of the information that the Public Body discloses publicly, including the "COVID-19 Testing and Case Data", and the "Outbreaks in long-term care and community care facilities", together with outbreak summaries. I am not persuaded that the date of death of individuals by facility would provide any additional or different insight into the issues you provided as examples than this publicly reported information provides. In particular, I am not persuaded that the examples you have given provide any reasonable basis for belief that the presumption of unreasonable invasion of personal privacy would be rebutted.

You also referred to clause 30(1)(b) of the *FOIPP Act*, sometimes called the public interest override provision. I also considered whether there was a reasonable chance of success on this basis. However, I am not persuaded there is a reasonable possibility that the public interest would override the individuals' personal privacy in this matter. As previous decisions of our office have held, section 30 must be interpreted narrowly, and in urgent circumstances. Although I agree that COVID-19 outbreak information is a matter of public interest, I am not persuaded that the date of death of people who die of COVID-19 by facility will further the public interest.

If you are trying to assess whether a facility has adequate infection control practices, the impact of aging facilities, or the practices of sharing rooms, as you have submitted as your basis for the public interest factor, I am not persuaded you could make these assessments from the dates of death by facility. But, if you could, it would be just as easy to make these associations with the outbreak data that is publicly reported.

Because the subject matter of your request for review has been dealt with in a previous order of this office, and because there are insufficient grounds to persuade me that there is a reasonable possibility of success in rebutting the presumption of unreasonable invasion of personal privacy if the information you are seeking is disclosed, and I am not persuaded the disclosure of this information is clearly in the public interest, in my opinion the circumstances warrant refusing to conduct an inquiry in this matter. Therefore, I am refusing to conduct an

inquiry, pursuant to clauses 64.1(a) and 64.1(b) of the *Freedom of Information and Protection of Privacy Act*.

Sincerely,

A handwritten signature in blue ink, appearing to read "Denise N. Doiron". The signature is fluid and cursive, with the first name "Denise" being more prominent.

Denise N. Doiron

Information and Privacy Commissioner

c: APSO (via email)