



# 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 20, 2023

Sent via email

Dear [REDACTED],

**Re: Your request for a fee waiver under the *Freedom of Information and Protection of Privacy Act***

**Public Body: Department of Health and Wellness**

**Public Body's file: HW 2022-156**

**Our file: FI-22-497**

On November 18, 2022 you asked us for a fee waiver of the fees estimated by the Public Body in the above-noted access request. We requested and reviewed a copy of the Public Body's processing file.

Initially, we assumed you had requested the Public Body to waive the fees, and the Public Body made a decision not to do so, and you were seeking a review of that decision by our office. However, upon receiving and reviewing the Public Body's processing files, we discovered that the records show that in your correspondence with the Access and Privacy Services Office ("APSO"), you indicated that you would be asking our office directly for a fee waiver under subsection 76(4) of the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act").

An applicant cannot apply directly to the Commissioner for a fee waiver. While subsection 76(4) of the *FOIPP Act* does authorize the waiving of some, or all, of a fee for an access request, the legislation only gives that authority to the head of a public body. I do not have the authority to waive fees myself. The original version of the *FOIPP Act* said that the Commissioner could make a decision about a fee waiver, but the Legislature removed that power in 2005, to clarify the procedure.

Under subsection 76(4.1), if an applicant has requested the head of a public body to excuse the applicant from paying all or part of a fee and the public body has refused the applicant's request, the applicant may ask the Commissioner to review this decision. However, that is not the case here. You opted not to ask the head of the Public Body for a waiver or reduction in fees.

The Public Body, through APSO, advised you that the FOIPP Act provides limited situations where fees may be reduced or waived, if you could not afford to pay, or if the records relate to a matter of public interest. The Public Body invited you to let them know if you believed these circumstances apply. In an email to an employee of the Access and Privacy Services, you mentioned that you would ask the Commissioner for a fee waiver, on the basis that your request "relates to a matter of significant public interest" [email Thursday, July 14, 2022 12:39 p.m.]. APSO, on behalf of the Public Body, wrote to you the following day and advised you that they were able to consider a request to waive fees, and set out the information they would require from you to make a decision on fee waiver. They gave you accurate information about what they need to assess whether the records relate to a matter of public interest. You did not respond to their letter.

After you requested that we review the matter, the Public Body responded to your access request and in the cover email, they advised you that they waived the balance of the fee. However, it does not appear that they did this under section 76 of the *FOIPP Act*.

Under section 60(2) of the *FOIPP Act*, you may request a review of a public body's actions and decisions, including a decision about whether to grant a fee waiver. However, you did not ask the Public Body for a fee waiver. For me to be able to review a fee waiver issue, the Public Body had to first make a decision regarding one.

Because you did not ask the Public Body for a fee waiver, I do not have the authority to order a refund of the fees on the basis of a fee waiver that you believe should have been granted under section 76 of the *FOIPP Act*. I also decline to send the matter back to the Public Body for it to consider whether there should be a fee waiver, because you did not ask the Public Body to waive the fees when you were given the opportunity to do so.

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner

C: APSO (via email)