



# 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

February 3, 2023

SENT VIA EMAIL

Dear [REDACTED],

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

**Public Body: Department of Transportation and Infrastructure**

**Public Body file references: TI 2022-227 and TI 2022-228**

**Our file references: FI-22-500 and FI-22-501**

Thank you for your email of December 13, 2022. You 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.

After careful review of your request for review, the public body's processing files, and the responsive records from your two requests, I have decided that the circumstances do not warrant reviews in either matter.

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

- a. there were no records from prior to 2022 for request TI-2022-227 (access request for environmental impact assessments, analysis or reporting for [REDACTED] Road), and no records for 2018 for request TI-2022-228 (access request for records for any roadwork done or planned for the [REDACTED] Road, including tenders or invoices);
- b. there were no records related to road work in the summer of 2021 (TI-2022-228);
- c. there were no invoices for the work conducted in the summer of 2022 (TI-2022-228);
- d. there were no estimates of the cost of the work conducted in the summer of 2022 (TI-2022-228); and
- e. there were no records relating to reviewing the road classification (TI-2022-228).

I will address each of these concerns below.

a. No responsive records from some years

With respect to access request TI-2022-227, although your request was for records from January 2018 - August of 2022, the Public Body did not provide any records from before 2022. We reviewed a copy of the Public Body's processing file, which includes their search notes. As part of their processing notes, the *FOIPP* coordinator observed in September 2022, when processing your access request, that there were no records from 2018 to 2021 and checked with the person who conducted the search. The Public Body's employee who searched for records confirms that they searched back to 2018, and there are no responsive records between 2018 and 2021.

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. The Public Body's search notes illustrate that an employee searched records of two environmental officers who work in Queens County, which is appropriate considering the wording of your request.

Similarly, with respect to access request TI-2022-228, although your request was for records from January 2018 - August of 2022, there were no responsive records from 2018. The Public Body's search notes illustrate that four employees searched their records, two of whom are managers and one is a director. They are involved in Highway Maintenance, Traffic Operations and Traffic Data Collection and Analysis. These appear to be appropriate employees to search for records responsive to your request.

I have considered the above noted correspondence, search records, and the examples that you gave of your belief that there were missing records. I am not persuaded that these examples lead to a reasonable belief that there are other responsive records.

b. Records regarding work conducted in the summer of 2021

In your request for review you referred to road work conducted in the summer of 2021. You referred us to pages 3 and 8 of 29, of access request TI-2022-228. On page 3 is an email dated January 7, 2021 at 10:16 a.m. from an employee of the Public Body to someone who had requested upgrades to the road. The employee states:

"I have added this to our request list. As I have stated on the phone, we cannot guarantee any work will be done to the road but we will take it into consideration when we start to prioritize our summer maintenance program."

The email says the Public Body will consider upgrades, but the employee did not commit to do any work on the road.

On page 8 is an email dated February 15, 2022 at 12:22 p.m. between two employees of the Public Body about a person who had requested snow blowing or plowing. The person had observed the road was partly plowed, and requested the road be plowed for another 500 ft. The email states: "There was some work done on the road but needs more." In the context of this email, it appears the author or the person who was requesting snow removal was referring to snow removal work. This email does not appear to refer to upgrade work.

I reviewed these pages and do not agree that they refer to work conducted by the Public Body in the summer of 2021. This not a finding that there was no road work conducted in the summer of 2021, but I have insufficient evidence to reasonably believe that there were any records responsive to request TI-2022-227 (environmental impact assessments or environmental analysis/reporting). Similarly, if there was road work in 2021, I have insufficient evidence to reasonably believe that this work was conducted under the direction of the Public Body resulting in any plans, tenders, bills, or cost estimates responsive to access request TI-2022-228.

c. Invoice(s) for road work in August of 2022

The Public Body explained that they had not yet received an invoice from the contractor who performed the road work in August of 2022. This is a reasonable explanation for why there were no invoices, and I am not persuaded that there is a reasonable basis for belief that any such records existed at the time of your request. It may be that such records will be in existence in the future, but that would require you to make another access request for those records.

d. Estimates of the cost of the work conducted in the summer of 2022

The Public Body advises that they did not issue a tender for the work conducted on [REDACTED] Road. You believe that someone should have created a record to assess an estimate of the road work to determine whether a tender was required. I understand your position. Someone must have formulated an opinion about whether the project would require a tender. However, there is no requirement to create such a record of the estimated costs. The Public Body did not provide any submissions to this effect, but I am satisfied that this could have been done without creating a record of the estimated costs.

I do not have enough evidence to reasonably believe that the Public Body has records relating to cost estimates for the work conducted in 2022.

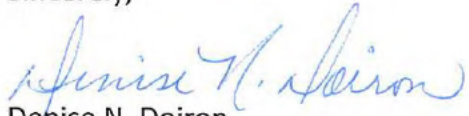
e. There were no records relating to road classifications

You mention in your notes the comments of the Minister of Transportation and Infrastructure on November 9, 2022 in the Legislature. I reviewed the House records and see that the Minister confirms that the Public Body hired someone to go through the thousands of roads, and that "it's going to take a bit of time. . ." I have insufficient evidence to reasonably believe that there are any records relating to reviewing the classification of the [REDACTED] Road specifically, based on the general comments made by the Minister in the Legislature on November 9, 2022.

Conclusion

Not every request for a review proceeds to an inquiry. Subsection 64.1(b) of the *FOIPP Act* gives us the discretion to refuse to conduct a review if the circumstances warrant. I am not persuaded that I have enough evidence to reasonably believe that the Public Body has other responsive records. In these circumstances, I have decided not to conduct a review of either TI 2022-227 (FI-22-500) or TI 2022-228 (FI-22-501).

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner

c: APSO (via email)