



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 08, 2023

SENT VIA EMAIL

Dear [REDACTED]

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

Public Body: Department of Agriculture and Land

Public Body's file reference: AL 2022-307

Our file reference: FI-22-502

We received your request for review on December 13, 2022, and your follow-up email setting out what information you consider to be at issue. Thank you for your additional information. I also confirm that we received the signed authorization to designate you to represent your client, [REDACTED].

Not all requests for review proceed to an inquiry. Under section 64.1 of the *FOIPP Act* I have the option to refuse to conduct a review if the circumstances do not warrant a review. Upon careful consideration of this matter, including your request for review, the additional information you have provided, and the Public Body's processing file, it is my opinion that the circumstances do not warrant conducting a review in this matter. The reasons for my decision are set out below.

Your client does not want the Department of Agriculture and Land (the "Public Body") to release any of the information in the records. A public body may only withhold information if the *Freedom of Information and Protection of Privacy Act* (the "*FOIPP Act*") authorizes them to withhold it. A public body must review records on a line-by-line basis to determine if any exceptions apply to the information. Even if an exception to disclosure applies to some information on a page, the applicant has a right to the rest of the information. It is clear that the *FOIPP Act* does not authorize the Public Body to withhold all the information in the responsive records. For this reason, there is no reasonable possibility of success in relation to you/your client's request that the Public Body withhold all the information in the records.

Your client has requested, in the alternative, that the Public Body withhold the following information under section 15 of the *FOIPP Act* [disclosure of personal information would be an unreasonable invasion of personal privacy]:

- a) descriptions of the house zones (kids wing/master wing) pages 22/51 and 25/51, and floor plans 44/51;
- b) names in bullets 1 and 5 at pages 33/51 and 39/51; and
- c) bullets 2 and 3 at pages 33/51 and 39/51.

Where your client opposes the Public Body's decision to disclose information and is seeking to have it withheld under section 15 of the *FOIPP Act*, your client would have the initial burden to show that the information at issue is their personal information. If the information is not your client's personal information, the analysis stops there as section 15 of the *FOIPP Act* [unreasonable invasion of personal privacy] does not apply, and there is no reasonable possibility of success.

For the reasons set out below, I am not persuaded that the information at issue is your client's personal information.

a) Descriptions of the house zones, and floor plans at pages 22, 25, and 44

Section 15 [unreasonable invasion of personal privacy] only applies to personal information. Subsection 1(i) provides a definition of "personal information". Under the *FOIPP Act*, personal information is defined to mean recorded information about an identifiable individual. Section 15 does not apply to non-individuals, such as businesses, property, or corporations.

This issue has been considered previously by this office and was confirmed by the Supreme Court of Prince Edward Island on judicial review. In Order FI-10-007, *Re: Island Investment Development Inc.*, 2010 CanLII 97253 (PE IPC), (found at <https://canlii.ca/t/fqmr8>), at page 24, Acting Commissioner Judith Haldemann wrote:

It is necessary to determine to whom or what the definition of "personal information" in clause 1(i) of the *FOIPP Act* applies. This clause includes a carefully chosen word, which vitiates the Public Body's argument. Personal information means recorded information about an identifiable individual. An "individual" is, in common usage, a single person or item as distinct from a group. In my opinion, the word "individual" means a single human being rather than a company, which is a group of persons. A company is a person by definition under the *Interpretation Act*, but a company is not an individual. Section 15 of the *FOIPP* does not apply to the Third Parties in this case because they are all companies. I will not be considering further argument by any of the parties on section 15. Further elaboration on section 15 of the Act as it relates to individuals can be found at P.E.I. Order No. FI-10-001, at page 10.

The Supreme Court of Prince Edward Island considered, and upheld, the Commissioner's comments from Order FI-10-007 in *CBC v. Privacy Commissioner & IIDI*, 2012 PESC 32 (CanLII), (found at <https://canlii.ca/t/ftlnf>), at paragraph 21.

Decisions from other jurisdictions are not determinative but may be relevant, as well. When assessing whether the descriptions of the house zones and the floor plans are personal information, I also considered the remarks in Order MO-4108, *Re: City of Vaughan*, 2021 CanLII 98536 (ON IPC),

(found at <https://canlii.ca/t/jilqf>), at paragraph 29, that “drawings, plans and notations about proposed alterations or additions to a property in the context of a building permit application did not qualify as personal information because it was about the property.” In your matter, the descriptions of house zones and floor plans are about the property, not an individual. The same comments as set out in that decision from Ontario apply here, as well.

The descriptions and floor plans are information of the property, not recorded information about an identifiable individual, and the property is owned by a corporation ([REDACTED]), not an individual. The information you are asking to have withheld is not information that is “personal information”. Therefore section 15 of the *FOIPP Act* does not apply.

b) Names in bullets 1 and 5 at pages 33 and 39

The Access and Privacy Services Office have indicated to our office that the individuals’ names appearing in all the bullets on pages 33 and 39 were intended to be redacted and not redacting them was an oversight. They have confirmed that if pages 33 and 39 are to be disclosed, the names will be redacted prior to disclosure to the applicant. In this circumstance, we consider the concern you expressed regarding the names in bullets 1 and 5 to be resolved.

c) Bullets 2 and 3 at pages 33 and 39

You have requested that we review the Public Body’s decision to disclose this information and want bullets 2 and 3 on pages 33 and 39 withheld in their entirety, based on unreasonable invasion of personal privacy under section 15. However, the information in those bullets is not personal information about your client. As such, section 15 of the *FOIPP Act* does not apply.

Conclusion

For all of the reasons set out above, it is my opinion that the circumstances warrant refusing to conduct an inquiry. Therefore, pursuant to clause 64.1(b) of the *FOIPP Act*, I am refusing to conduct an inquiry into this matter.

As I have refused to conduct an inquiry in this matter, the Public Body is free to release the information, subject to the additional redactions discussed above.

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner

c: APSO (via email)