



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

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

Commissaire à l'information et  
à la protection de la vie privée  
C.P. 2000, Charlottetown PE  
Canada C1A 7N8

PRIVATE AND CONFIDENTIAL

April 29, 2024



Via Email

Dear [REDACTED],

**Re: Request for Review under the *Freedom of Information and Protection of Privacy Act***  
**Public Body: Department of Economic Development, Innovation and Trade**  
**Public Body File No.: 2023-346 EDIT**  
**Our File No.: C/24/00122 (formerly FI-23-545)**

Thank you for your request for review of November 13, 2023. We reviewed all the material you provided, including appendices A-K. We also requested and reviewed a copy of the processing file of the Department of Economic Development, Innovation and Trade (the "Public Body").

In your access request 2023-346 EDIT, you asked for any records associated with the employee removal form for [REDACTED]'s records. The Public Body did not provide any responsive records, not even the employee removal form. You already have a copy of the employee removal form dated July 29, 2011, as you attached it to your request for review, so I consider the Public Body's failure to provide this record to be a moot point.

You have not questioned the adequacy of the Public Body's search, rather you ask us to investigate the destruction of this employee's records. Specifically, you asked that we investigate how their records were deleted if the ITSS instructions on the Employee Removal Form were not to delete them. In 2020 you raised these concerns to former Commissioner Karen Rose, which Commissioner Rose addressed in our file FI-20-334. In that matter, the Public Body explained the events which led to the deletion of the email account, and a description of the ITSS process in place at the time (2011). For your ease of reference, we attach a copy of the Public Body's letter of April 8, 2020 in FI-20-334. That matter was closed as resolved in June 2020. I considered whether to re-open this matter, but I have decided not to do so.

Clause 50(1)(a) of the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act") authorizes the Commissioner to investigate to ensure compliance with rules relating to the destruction of records. However, I must consider whether the circumstances warrant an inquiry.

The most relevant circumstance in considering whether an inquiry is warranted is that the province's records management and destruction of some records from 2011-2012, the relevant time period in access request 2023-346 EDIT, has already been the subject of intense public scrutiny, investigations and analysis. These included investigations by the Auditor General and former Information and Privacy Commissioner Karen Rose, both independent officers of the Legislative Assembly, and was also the subject of a special committee of the Legislature, the Special Committee on Government Records Retention.

In 2016, the Auditor General made some findings and recommendations about the destruction of records of some key senior government officials. The Auditor General found that some public bodies did not comply with requirements related to records retention and disposition schedules under the *Archives and Records Act* in force at the time<sup>1</sup>. Among other things, the Auditor General recommended that the Minister responsible for the *Archives and Records Act*<sup>2</sup> take necessary action to enforce compliance. This report was also the subject of several meetings of the Public Accounts Committee in 2017. As a result of these processes, and as you outlined, the province developed and implemented a broad and comprehensive plan to improve records management, including hiring more staff, training all employees of the government, and amendments to the *Archives and Records Act*.

In Order FI-20-007<sup>3</sup>, former Commissioner Karen Rose made a finding that the EGTC had failed to comply with rules relating to the destruction of records of Brad Mix under the *Archives and Records Act*. This order and the Auditor General's report, and the circumstances they addressed and issues they raised, were subject to a thorough, and public, investigation and review by the Legislature's Special Committee on Government Records Retention.

Neither of the investigations of the independent officers of the Legislative Assembly, nor the investigations by the Legislature, address the destruction of ██████'s records specifically. However, given the extensive investigation by these various entities that has already been conducted in relation to government records during the time period relevant to your access request, I find that our Office could not expand on their conclusions, recommendations or the subsequent actions of the province. The provincial government has made genuine and focused efforts to improve recorded information management. I see no compelling purpose in conducting another investigation of essentially the same circumstances that have already been thoroughly investigated.

In my opinion, the circumstances do not warrant an investigation into the destruction of records of ██████ ██████ "to ensure compliance . . . with rules relating to the destruction of records" under clause 50(1)(a) of the *FOIPP Act*. Therefore, pursuant to subsection 64.1(b) of the *FOIPP Act*, I am refusing to conduct an inquiry.

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<sup>1</sup> Report of the Auditor General of Prince Edward Island "Special Assignment: Government Involvement with the E-gaming Initiative and Financial Services Platform" October 4, 2016, paragraph 7.1, <https://www.assembly.pe.ca/sites/www.assembly.pe.ca/files/e-gaming-and-finicial-services-platform.pdf>

<sup>2</sup> Auditor General's 2016 report, Recommendation 7.14. The Minister of Education was the minister responsible at the time

<sup>3</sup> Order FI-20-007, *Re: Department of Economic Growth Tourism and Culture*, 2020 CanLII 43897 (PE IPC) at paragraph 83 <<https://canlii.ca/t/j8i01>>

## Other Comments/Issues

In your request for review, you made comments or raised other issues that were not directly related to your request for a review of the Public Body's decision on your access request 2023-346 EDIT.

### *1. Archives and Records Act*

You stated that under the *Archives and Records Act*, only the provincial archivist is authorized to delete records. This is not an accurate description of the law or practice. As noted in our office's recent order, OR-24-002, the provincial archivist is not the only person who can delete a government record. It would not be reasonable to expect one person (or their office or delegates) to be the sole employee(s) responsible for deleting records. Public bodies are not required to keep every record they receive or create, and employees are authorized to delete transitory records. If a public body has a retention schedule, they would be entitled to delete records pursuant to the retention schedule.

You also remark that records are to be retained "indefinitely". This is not accurate. Generally, only historically relevant records are retained indefinitely. All other records are retained according to records retention and disposition schedules as approved by the Public Records Committee.

### *2. Investigate the Actions of an Administrative Assistant*

You allege that an administrative assistant has been intentionally misleading you since 2019. You would like her to be investigated and excluded from participating in any of your access requests.

In support of this, you enclosed as Appendix J to your request for review a copy of a decision letter related to access request 2019-09 EGTC (our file FI-19-286). The EGTC response to 2019-09 EGTC was reviewed by former Commissioner Karen Rose in Order FI-20-007, who found that the EGTC took reasonable steps to identify and locate responsive records, and that areas searched were appropriate.

Further, in Order FI-20-007, Karen Rose held that the Public Body did not fulfill their duty to be open, accurate and complete when responding to the Applicants, because they did not explain why very few responsive records were found. Commissioner Rose did not identify anything in this review that warranted a referral to the Attorney General, and I have insufficient information to persuade me that another investigation is warranted.

My authority under the *FOIPP Act* is to ensure a public body is meeting their obligations under this legislation. It does not permit me to conduct investigations into the actions of a specific employee within a public body. If there appears to be an issue with a public body's response, I can make orders and give directions and recommendations to the public body. It is then up to the public body to take any employee-specific action they consider warranted in the circumstances.

In relation to your allegations about the administrative assistant, I do not have authority to direct a public body to disallow a specific employee from participating in searches for records responsive to access requests. Even if I did have such authority, I would not exercise it in this instance, as there is insufficient evidence to support your allegations.

### 3. Other Access Requests

You raised some concerns about, and made comments about, the Public Body's responses on other access requests. The access requests you mentioned, one of which was not your access request, were from 2019, and are significantly beyond the limitation period for seeking a review of those decisions. Previous decisions of a public body for which the review period has lapsed, and a review was not undertaken, cannot be reviewed incidentally to a review of a subsequent decision that is within its time limitation.

It may be that you mentioned these access requests for the purposes of attempting to illustrate patterns of behaviour of the Public Body in previous access requests. However, I would point out that in these previous access requests you mentioned, the requests were for access to records of Brad Mix, not [REDACTED]. I would not expect the Public Body to have searched records of [REDACTED] when responding to an access request for records of Brad Mix.

### Conclusion

In summary, I am refusing to conduct an inquiry in relation to your access request 2023-346 EDIT, pursuant to clause 64.1(b) of the *FOIPP Act*, and we are closing our file.

Sincerely,



Denise N. Doiron  
Information and Privacy Commissioner

cc: APSO

Enclosure: copy of EGTC letter, dated April 8, 2020, re file FI-20-334 (2 pages)