



Prince Edward Island
Legislative Assembly

*Information and
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Île-du-Prince-Édouard
Assemblée législative

*Commissaire à l'information et
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Matthew B. MacFarlane
MLA for District 19 Borden-Kinkora
Leader of the Third Party
Office of the Third Party, Legislative Assembly of PEI
4th Floor, Hon. George Coles Building
175 Richmond Street
Charlottetown, PE C1A 7N8

November 7, 2025

VIA EMAIL

Dear Matt MacFarlane,

**Re: *An Act to Amend the Prince Edward Island Lands Protection Act (No.2)*
(Consultation Draft 3)**

Thank you for the opportunity to give our feedback on the Consultation Draft of the *Act to Amend the Prince Edward Island Lands Protection Act* you indicated you intend to introduce in the Legislature during the Fall 2025 session.

Currently, section 12 of the *Lands Protection Act* permits the Island Regulatory and Appeals Commission (IRAC) to request information and authorize an investigation to be conducted in order to determine whether a person or corporation has contravened the *Lands Protection Act* or its Regulations, and requires IRAC to do so if directed by the Minister. Upon completion of such an investigation, the person conducting the investigation is required to provide a full report and supporting documents to IRAC. Currently, IRAC is only required to provide copies of both the report and supporting documents to the Minister if the investigation was undertaken at the direction of the Minister.

The proposed amendment would require a copy of the report, and supporting documents, to be provided to the Minister for every investigation undertaken about whether a person or corporation has contravened the *Lands Protection Act* or its Regulations, whether the investigation was initiated by IRAC or was at the direction of the Minister. The amendment would also require the Minister to then submit to the Legislative Assembly a copy of the full report and supporting documents for every such investigation.

You have publicly stated that the intent of this amendment is to foster increased transparency and accountability in the application and enforcement of the *Lands Protection Act*. I understand the intent. We encourage public bodies to proactively disclose records in the interests of increased transparency and accountability. But, the right to know must be balanced with the right to privacy.

In this instance, I am concerned that requiring all reports and supporting documentation to be laid before the Legislative Assembly, effectively making them public records, without any discretion to withhold certain information may have a disproportionate impact on personal privacy.

There is no standard content for the reports or supporting documents in either the *Lands Protection Act* or the amendment. Under the *Lands Protection Act*, IRAC has a broad discretion in what information it gathers for the purposes of an investigation, which can potentially include various types of personal information, the disclosure of which would otherwise be considered an unreasonable invasion of personal privacy.

The *Freedom of Information and Protection of Privacy Act* (“*FOIPP Act*”), requires a public body, such as IRAC or the Minister, to withhold information that would be an unreasonable invasion of an individual’s personal privacy if such information were to be disclosed. If the proposed amendment goes forward as presented, I am concerned that the lack of direction on what can or should be included in a report or supporting documents, and the lack of authority for the Minister to withhold certain personal information would be contrary to the principles of personal privacy set out in the *FOIPP Act*, and could have a disproportionately negative impact on the privacy of individuals.

A few potential examples include:

- The *FOIPP Act* would ordinarily protect a bank account number. Under the proposed amendment, if a supporting document is a cheque that includes a bank account number, along with other identifying information of individuals (e.g. the name of a joint account holder, home address, home phone number), there is no opportunity to sever this information under this proposed provision.
- The *FOIPP Act* would ordinarily protect an individual’s specific racial or ethnic origin, religious or political beliefs or associations. There is no way to sever such information under this proposed provision.
- The *FOIPP Act* would ordinarily protect the identity of a confidential informant, but confidential informants may not be possible under this proposed provision.

People may not generally be aware of the types of information that can be included in investigation reports and supporting documents. However, it is foreseeable that such personal information could be included in investigation reports and/or supporting documents under the *Lands Protection Act*. In fact, we have seen personal information appear in reports and supporting documents before.

There may be some situations where this kind of information is relevant to the determination of whether the *Lands Protection Act* has been complied with, and disclosure of the information may be relevant to achieving the purposes of transparency and accountability.

But there are also many situations where disclosure of this kind of information, whether it was gathered as supporting documentation and/or included in an investigation report, would unduly and unreasonably infringe upon the personal privacy of individuals. This risk is heightened due to the broad investigatory discretion and lack of direction of what kinds of information are to be/not to be included in investigation reports or as supporting documents for a *Lands Protection Act* compliance investigation.

In addition to being an unreasonable invasion of personal privacy, disclosure of more sensitive information, such as banking or other similarly sensitive personal information, could result in putting individuals at risk, either financially or personally, or both. For this reason, I am concerned that the amendment requiring the Minister to lay before the Legislature the full investigation report and supporting documents, without any discretion to withhold certain information, would result in a negative impact on individuals disproportionate to the purpose the amendment is trying to achieve.

Further, as you are likely aware, without this amendment, it is unlikely that the *FOIPP Act* would authorize disclosure of these types of documents if the investigation is into the actions of an individual or individuals. I cannot speak in absolutes because every instance must be assessed in the circumstances. However, section 15(2)(b) of the *FOIPP Act* deems disclosure of personal information that is part of a law enforcement matter to be an unreasonable invasion of personal privacy, except for the purpose of prosecuting an offence or once the law enforcement matter has been concluded. Investigation reports and supporting documents in the circumstances of enforcement of the *Lands Protection Act* are likely to be a part of a law enforcement matter.

I recommend that if such an amendment were to go forward, that there be included an express authorization to disclose personal information in certain circumstances, which would include the purpose(s) for the disclosure, along with specified limitations on certain information from being disclosed, such as the kinds of information set out in the *FOIPP Act* that are presumed to be an unreasonable invasion of personal privacy if disclosed. My suggestion would be to give this obligation to the Minister before any report or supporting documents are laid before the Legislature because, once a record is laid before the Legislature, for all intents and purposes, its contents become a matter of public record and are accessible to all.

Further, any authorized disclosure of personal information within the reports or supporting documents should also be balanced by minimization principles, such as prohibiting the disclosure of personal information if other information will serve the purpose, or prohibiting the disclosure of more personal information than is reasonably necessary to meet the stated purpose. Any limitations on disclosure could be specifically required to be severed from the document(s) rather than result in the withholding of the full document. This would mitigate the risk of over-withholding, and still foster the principles of transparency and accountability.

I would also recommend that consideration be given to the purposes of section 15(2)(b) of the *FOIPP Act* in protecting the privacy of individuals during law enforcement matters. If any amendment to the *Lands Protection Act* goes forward which would require the Minister to lay

before the Legislature reports and supporting documents relating to compliance with or enforcement of the *Lands Protection Act*, my recommendation is that you consider making the requirement to do so not be effective until such time as the investigation and enforcement proceedings, if any, are completed. This will protect the personal privacy of individuals who may be subject to the law enforcement activities, but will also maintain transparency and accountability relating to the enforcement of the law.

It is unclear whether the proposed amendment is intended to apply on a go-forward basis, affecting only reports that are issued after the amendment is proclaimed, or whether the intent is for it to apply to past reports in the Minister's possession. For clarity, I also recommend that the proposed amendment state whether it applies to all past reports in the Minister's possession, or whether it applies on a go-forward basis.

In the spirit of openness and transparency, I will be posting a copy of this letter to our website. We would be pleased to answer any questions you, your co-workers, or other members may have.

Sincerely,

A handwritten signature in blue ink, reading "Denise N. Doiron". The signature is fluid and cursive, with the first name "Denise" being the most prominent part.

Denise N. Doiron
Information and Privacy Commissioner