OIPC Office of the Information & Privacy Commissioner of PEI

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October 13, 2026

VIA EMAIL

Dear Acting Deputy Minister Dowling,

Re: Proposed new *Correctional Services Act* (Consultation Draft)
OIPC Reference: C/26/00185

It has come to my attention that the Department of Justice and Public Safety has proposed a new *Correctional Services Act*, which is intended to replace the current legislation. I understand this legislation was offered for public consultation, but our office was not invited to consult on the proposed draft.

Section 50 of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01 (the "*FOIPP Act*") specifies that the Information and Privacy Commissioner may comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies [s. 50(1)(d)]. It is further to this authority that I am providing this letter.

I have obtained a copy of the proposed new *Correctional Services Act* and have reviewed it. I have concerns about the proposed draft and its implications for the protection of personal privacy of individuals who are inmates or police prisoners as defined in the proposed legislation.

More specifically, the proposed section 26 substantially removes the privacy rights of a deceased individual for no apparent reason. This section is inconsistent with the Department's obligations under the *FOIPP Act*. It is not clear what challenge section 26 is intended to address that is not more fulsomely and fairly addressed under the *FOIPP Act*. For the reasons outlined herein, I recommend section 26 be removed from the draft proposed *Correctional Services Act*.

FOIPP Act

The Department is a public body under the *FOIPP Act* and, as such, is required to comply with the requirements of the *FOIPP Act* relating to the protection of personal information in its custody and control.

"Personal information" is defined within the *FOIPP Act*, and the legislation sets out what a public body can and cannot do with personal information in its custody and control.

My concern is section 26 of the proposed new legislation. Section 26 states that the Director of Correctional Services *"…may make a directive respecting the disclosure of personal information of an inmate or a police prisoner who has died while committed to a correctional centre."* Subsection 26(2) of the draft proposed legislation goes on to specify types of information that the Centre Manager may disclose through such a directive, and ends with a broad catch-all of "…*other personal information that may be specified in the regulations*."

Section 26 is contrary to the purposes of the *FOIPP Act* and the obligations of the Department to protect personal information.

The proposed section 26 appears intended to authorize the proactive disclosure of personal information without regard to whether such disclosure would constitute an unreasonable invasion of personal privacy. However, the mere enactment of section 26 does not alter the Department's obligations under the *FOIPP Act* to protect personal information in its custody or control. Nor does it, on its own, provide lawful authority for the Department to disclose personal information, whether proactively or in response to an access request.

Before disclosing personal information, a public body must ensure that it is authorized to do so. In each instance, a public body must consider if there are any provisions of the *FOIPP Act* or other legislation that prohibit the disclosure or authorize disclosure. The most likely consideration is whether disclosure would be an unreasonable invasion of an individual's personal privacy.

Section 26 essentially circumvents the requirement that the Department consider whether disclosure of the specified personal information would be an unreasonable invasion of the inmate/police prisoner's personal privacy, but without corresponding clear authority to do so. Simply putting a provision into the proposed legislation authorizing the Director to issue a directive to disclose personal information of an individual is insufficient to give the Department authority to disclose that information. It does not remove the Department's obligation to make an assessment, in each instance, of whether disclosure would be an unreasonable invasion of the individual's personal privacy, and whether the Department has authority to actually disclose the information, before disclosing the information.

While some may assume that a person's right to privacy ends upon death, this is not the case. The *FOIPP Act* expressly protects personal information held by a public body for 25 years after an individual's death [s.15(2)(i)].

As a result, an inmate or police prisoner who dies in custody continues to have their privacy interests recognized and protected by the *FOIPP Act*. The Department remains subject to the same statutory obligations respecting the disclosure of that individual's personal information as it would if the individual were alive, including the obligation to not disclose information where disclosure would constitute an unreasonable invasion of personal privacy.

The *FOIPP Act* sets out certain types of information that are presumed to be an unreasonable invasion of personal privacy if disclosed. For example, disclosure of medically-related information [s. 15(4)(a)] or a person's name associated with other personal information about the person or if the name itself would reveal personal information about the person [s. 15(4)(g)] are presumed to be an unreasonable invasion of personal privacy.

The types of personal information set out in section 26 are presumed to be an unreasonable invasion of personal privacy if disclosed. Therefore, the Department would be prohibited, on the face of it, from disclosing that information.

While a public body is required to consider all relevant circumstances in making a determination that a disclosure would constitute an unreasonable invasion of personal privacy, including those set out in subsection 15(5) of the *FOIPP Act*, none of those circumstances apply to section 26 of the draft proposed legislation.

Section 26 does not include a purpose for disclosure. If it is for public scrutiny, section 26 is unnecessary as the *FOIPP Act* [s. 15(5)(a)] would authorize disclosure if the disclosure was necessary to subject the Department to public scrutiny. However, it is the head of the public body who must make the assessment and has the authority to make the decision about disclosure for public scrutiny, not the Director.

Further, that purpose is accomplished through means other than the disclosure of personal information. More specifically, the *Coroner's Act* (section 18) requires a coroner to hold an inquest into the death of a person who dies while in custody, unless the coroner is satisfied that the death was due entirely to natural causes and was not preventable.

On an assessment of the Department's authority under the *FOIPP Act* to disclose the types of personal information indicated in the proposed section 26, there is no provision that would authorize a disclosure of personal information of a deceased inmate or police prisoner that would otherwise be considered an unreasonable invasion of personal privacy if disclosed.

Although clause 15(2)(c) of the *FOIPP Act* does indicate disclosure of personal information would not be an unreasonable invasion of personal privacy if an enactment of Prince Edward Island authorizes it, this is not

what section 26 of the draft proposed legislation is doing. Rather, it authorizes the Director of Corrections to issue a directive, which is contrary to the obligations of the Department under the *FOIPP Act*.

I also reviewed subsection 28(c) of the draft proposed legislation, which purports to grant protection from legal proceedings to those acting under a directive made under section 26. This protection, however, does not and cannot excuse the Department, as a public body, from complying with its statutory obligations under the *FOIPP Act*.

The *FOIPP Act* also contains a paramountcy provision that expressly provides that, where there is a conflict or inconsistency between the *FOIPP Act* and any other enactment, the *FOIPP Act* prevails. Accordingly, to the extent that the proposed section 26 authorizes a disclosure that would otherwise be prohibited under the *FOIPP Act*, the disclosure authority created by section 26 would be inoperative, and the requirements of the *FOIPP Act* would continue to apply.

In summary, the proposed section 26 is inconsistent with the continuing privacy protections recognized under the *FOIPP Act*. Its apparent purpose is to override these privacy protections by authorizing disclosures that would otherwise not be permitted under the *FOIPP Act*. As a result, this provision would significantly diminish the privacy protection rights and interests of deceased inmates and police prisoners that the *FOIPP Act* is intended to protect.

Health Information Act

Although my comments thus far have been directed toward the Department's duties and obligations under the *FOIPP Act*, I am also concerned that the proposed section 26 is contrary to obligations the Department has under the *Health Information Act*, R.S.P.E.I. 1988, Cap. H-1.41 (the "*HIA*"). It is not clear if this was considered when the draft proposed legislation was being created but, where the Department provides health services to individuals, the Department is also considered to be a health information custodian under the *HIA*. As such, the Department is also required to comply with the *HIA* in relation to information in its custody and control that meets the definition of "personal health information" under the *HIA*.

In some circumstances, the information described in the proposed section 26 may also be "personal health information" under the *HIA*. The *HIA* limits when a custodian is permitted to disclose personal health information and to whom that information can be disclosed, much more so than the *FOIPP Act* does. For instance, a person does not have a right to personal health information of someone else, except in limited and specific circumstances outlined in the *HIA*. None of those limited and specific circumstances applies to the disclosure set out in section 26 of the proposed legislation. In addition, the *HIA* does not give a custodian the discretion to disclose personal health information if it's authorized in another Act and does

not permit disclosure of personal health information in the circumstances or for the purposes contemplated by section 26 of the draft proposed *Correctional Services Act*.

For these reasons, where the information is personal health information, section 26 would be contrary to the legal obligations of the Department under the *HIA*. As with the *FOIPP Act*, section 28 would not absolve the Department of its obligations of a health information custodian under the *HIA*.

Regulations

Although I am not aware of what specific types of personal information may be included in any potential regulations referred to in subsection 26(2) of the draft proposed legislation, the concerns I raised in relation to the information specified within section 26 and the Department's obligations would also apply to any personal information, or information that would be considered personal health information, that would be included in regulation.

Conclusion and Recommendation

For the reasons set out above, we are opposed to the inclusion of a provision in this proposed draft legislation that allows the Department, or a delegate of the Department such as the Director of Correctional Services, to proactively disclose personal information about inmates or police prisoners who have died while committed to a correctional centre.

We strongly recommend that section 26 of the proposed new *Correctional Services Act* be removed.

We would be pleased to answer any questions you may have about our concerns or recommendations. Please do not hesitate to contact our office.

In the spirit of openness and transparency, I will be posting a copy of this letter to our website.

Sincerely,



Denise N. Doiron
Information and Privacy Commissioner

cc. Online Consultation (justicepolicy@gov.pe.ca)