



OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for Prince Edward Island

Public Body	University of Prince Edward Island (UPEI)
OIPC File No.	C/24/00104 (formerly FI-23-521)
Statute	<i>Freedom of Information and Protection of Privacy Act</i>
Decision #	D-25-12
Decision-Maker	Maria C. MacDonald, Deputy Commissioner
Date of Decision	December 15, 2025

SUMMARY

An Applicant asked for a review of UPEI's decision not to waive the fees to process their access request. The Deputy Commissioner found that the records do not relate to a matter of public interest, and a fee waiver is not warranted.

BACKGROUND

- [1] In late 2021, UPEI issued a statement that an independent third party would investigate a complaint of workplace misconduct by the former president of UPEI. About a month later, in early January 2022, UPEI announced that a firm called Rubin Thomlinson, LLP, would conduct a comprehensive review into whether UPEI had created a safe, respectful, and positive environment, and UPEI published the terms of reference for this investigation.
- [2] Before the review was completed, the Applicant asked UPEI for (as amended in April 2023):

All electronic records (including electronic: correspondence, emails, memos, minutes, briefing notes, interim/draft reports) to or from the following members of university administration: President and Chair of the Board of Governors regarding the review by Rubin Thomlinson LLP.

Date range: December 6, 2021 - August 9, 2022. Documents which focus on the distribution of the Rubin Thominson survey, or which are solicitor-client privileged, can be excluded from the materials. If possible, please provide records in electronic format, via email.

- [3] UPEI's revised fee estimate is \$660.00. Before the third-party investigation was completed, the Applicant asked UPEI to waive the fee under section 76(4)(b) of the *FOIPP Act* which authorizes a public body to excuse an applicant from paying all or part of the fees if the records relate to a matter of public interest. UPEI did not waive the fee because they did not agree that the requested records relate to a matter of public interest.
- [4] In their request for review, the Applicant mentioned that they could not afford the payment, which is a potential reason a public body could waive a fee under a different provision – section 76(4)(a) of the *FOIPP Act*. The procedure outlined in the *FOIPP Act* is that the Commissioner can review the public body's decision, but applicants ask a public body for a waiver first. The Applicant did not ask UPEI to waive the fees based on their inability to pay, and UPEI did not decide whether section 76(4)(a) of the *FOIPP Act* applied. We can review a public body's decision, but do not have the authority to consider or grant a fee waiver independently¹. I am not reviewing whether section 76(4)(a) of the *FOIPP Act* applies.
- [5] The Third-Party's investigation report is dated June 6, 2023, and UPEI posted a redacted copy in mid-June. A few weeks later, in early July 2023, the Applicant asked us to review UPEI's decision to not waive the fees.

ISSUES

- Do the records relate to a matter of public interest?
- If so, should UPEI excuse the Applicant from paying all or part of the fee estimate?

ANALYSIS

- [6] Our office has accepted two questions to guide an assessment of whether the responsive record(s) relate to a matter of public interest [see Order FI-19-016, *Re: Public Schools Branch, Department of Transportation, Infrastructure and Energy*, 2019 CanLII 128994 (PE IPC)]. I will address each question.

¹ See for example, C/25/00117, *Re: Department of Education and Early Years*, 2025 CanLII 71479 (PE IPC), <https://canlii.ca/t/kddz1>

Question 1: Will the records contribute to the public understanding of, or debate on, or resolution of a matter or issue that is of concern to the public, or a sector of the public, or that would be if the public knew about it? The following factors may be relevant:

- **Have others besides the Applicant sought or expressed an interest in the records?**
- **Are there other indicators that the public has or would have an interest in the records?**

[7] The Applicant did not pay the fee estimate and UPEI did not finish processing the access request. So, we do not have the responsive records. In addition to the parties' submissions, I considered the Applicant's access request, and request for review, and the documents UPEI posted on their website including UPEI's statements, the terms of reference for the investigation, and the Third-Party's report (UPEI severed the personal information).

[8] When the Applicant asked for the fee waiver, they told UPEI:

... There are clearly serious questions which have been put forward regarding how the university has managed issues of sexual harassment, about university funds paid to people who came forward with complaints as part of [non-disclosure agreements], and about how the board of governors continued to extend the contract of the former president despite input from the community advising the university not to do this.

[9] UPEI responded to the Applicant, in part, that "Disclosure of information prior to the conclusion of the investigation will not contribute to public understanding of, or debate, on or resolution of the investigation while it is ongoing."

[10] I considered whether records of the Interim President and Chair of the Board about the independent third-party investigation would contribute to the public understanding, debate, or resolution of any issues, including the matters described by the Applicant in their request for the fee waiver.

[11] I have no evidence about the roles of these two individuals in the third-party investigation. The final report states the third-party investigators consulted with the University regarding the logistics of the distribution of the survey to University community members, but the Applicant excluded such records from their access request. If these two leaders of the Public Body sought or received legal advice, the Applicant also excluded these records from their access request.

[12] UPEI's fee estimate includes time and cost to prepare and handle records for disclosure, which suggests that UPEI expected that there would be responsive records. But I have no evidence or reason to believe that the requested records would relate to any matter of public interest including the Applicant's concerns about how the University managed sexual harassment issues, non-disclosure agreements, and extending the contract of the former President.

[13] With respect to the potentially relevant sub-questions, I am not aware of anyone else looking for records of the Interim President or Chair of the Board about this investigation during this period, or other indicators that the public would have an interest in these records.

[14] I do not see how the requested records would contribute to the public's understanding of, or debate on, or resolution of a matter or issue that is of concern to the public. I also considered the fact that UPEI has posted the terms of reference and copy of the Third-Party investigator's report (with personal information severed). I conclude that the disclosure of the records of the Interim President and Chair of the Board of Governors could not reasonably be expected to yield a public benefit, or further public debate on or contribute to the public's understanding any matters or issue of concern to the public or a sector of the public.

Question 2: If the records are about the process or functioning of government, will they contribute to open, transparent, and accountable government? The following may be relevant:

- ***Do the records contain information that will show how the Government of PEI or a public body reached or will reach a decision?***
- ***Are the records desirable for the purpose of subjecting the activities of the Government of PEI or a public body to scrutiny?***
- ***Will the records shed light on an activity of the Government of PEI or a public body that has been called into question?***

[15] UPEI stated in their decision dated May 31, 2023, (a week before third-party investigator's report) that "The requested records do not concern the process or functioning of UPEI, and they do not, at least at this time, contribute to open, transparent and accountable government."

[16] Based my review of the publicly available information, it is possible that the responsive records may show how UPEI selected the Interim President and third-party investigators and decided on the content of these public statements or terms of reference. The Applicant did not express any concerns about these activities, nor am I aware of any need to scrutinize these processes, or that they were called into question.

[17] I have no reason to think that the records will contribute to open, transparent, and accountable administration of the Public Body.

CONCLUSION

[18] I find that it was reasonable for UPEI to determine that the records of the Interim President and Chair of the Board of Governors for the nine months after the complaint was made, and ten months before the independent third-party investigator's report was issued, do not relate to a matter of public interest.

[19] UPEI also gave submissions about exercising discretion under section 76(4) of the *FOIPP Act*, but as I do not find that the records relate to a matter of public interest, a fee waiver was not warranted. I will not order UPEI to reduce or waive the fee estimate.



Maria C. MacDonald
Deputy Commissioner