



**OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for Prince Edward Island**

Decision No.	D-25-013
OIPC File No.	C/24/00124 (formerly FI-23-548)
Public Body	Department of Finance
Public Body Ref. No.	2023-366
Statute and Sections for Review	<i>Freedom of Information and Protection of Privacy Act</i> Sections: 8(2) [open, accurate and complete] 64.1 [refusal to conduct inquiry]
Decision-Maker	Denise N. Doiron Information and Privacy Commissioner
Date of Decision	December 19, 2025

Summary:

The Applicant requested a review of the Public Body's compliance with their duty to respond to an applicant openly, accurately, and completely, under subsection 8(1) of the *Freedom of Information and Protection of Privacy Act*. The Commissioner refused to conduct an inquiry, pursuant to section 64.1 of the *Freedom of Information and Protection of Privacy Act*.

Access Request and Response:

- [1] In November 2023, the Applicant made an access to information request to the Department of Finance (the "Public Body") for:

All records in any format, electronic or otherwise (including text messages, BBM messages, paper notes) with sent to/or received by [R.C., an employee of the Public Body] that make mention of [B.M., a former employee of the Public Body] or [P.W., a third party] or [P.J., a third party]
Time Period: June 1, 2011 – December 15, 2011

- [2] The Public Body's decision letter to the Applicant indicated they did not find any records responsive to the access request. The Public Body's letter stated that they had conducted an electronic search of a shared directory, as well as a physical search of file cabinets. They advised that R.C. did not have a government-issued cell phone. They also advised they were unable to conduct a search of R.C.'s email account because R.C.'s email account had been removed in 2014, nine years before the Applicant made their access request, "in accordance with their standard operating procedure in place at the time".

Request for Review:

- [3] The Applicant was not satisfied with the Public Body's response and requested a review by our office. The request for review was four pages long. In summary, the Applicant alleged that the Public Body did not meet their duty to respond openly, accurately, and completely, under section 8 of the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act") and asked us to review the Public Body's response, and to order them to comply with section 8 of the *FOIPP Act*.

Analysis:

- [4] Not every request for review proceeds to inquiry. The *FOIPP Act* permits the Commissioner to refuse to conduct an inquiry if, in the opinion the Commissioner, the subject matter of a request for review has been dealt with in an order or investigation report of the Commissioner [ss. 64.1(a)], or the circumstances warrant refusing to conduct an inquiry [ss.64.1(b)]. Therefore, I must assess the request for review and see whether, in my opinion, an inquiry is warranted.
- [5] I asked the Public Body for their processing records, which I reviewed as part of this assessment. I did not ask the Public Body for submissions as the Applicant's request for review, with enclosures, and the Public Body's processing records provided sufficient information for me to make my assessment about whether the matter should proceed to an inquiry.
- [6] The Applicant asserts that the Public Body did not meet their section 8 duty to respond openly, accurately, and completely because they did not tell the Applicant who signed an ITSS Removal form authorizing the removal of R.C.'s email account in 2014. The Applicant stated:

i am asking you to have the Public Body comply with Section 8 of the *FOIPP Act* and *fulfill their duty to be open, accurate and complete* when responding to the Applicant, me. Deputy Minister Fleming needs to tell me who authorized the ITSS Removal form for [R.C.] without retaining any records. Who ever deleted these records must be held accountable. [emphasis in original]

[8] Subsection 8(1) of the *FOIPP Act* states:

8. Duty to assist applicants

- (1) The head of a public body shall make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[9] Previous decisions of our office have set out that the duty to respond to an applicant openly, accurately and completely includes informing applicants where they searched, and identifying and explaining any limitation on their ability to search for requested records.

[10] Because the Applicant is the one who is asking for an inquiry to be conducted, it is the Applicant who must show at least a *prima facie* case that an inquiry is warranted.

[11] The Applicant is asserting that the Public Body did not meet their duty to respond to the Applicant openly, accurately and completely, so the Applicant must provide sufficient information to show there is reason to believe that the Public Body's response may be lacking in openness, accuracy or completeness.

[12] The Applicant has not provided any information about how the Public Body may not have been accurate in their response to the access request. Their assertion appears to be about the openness and completeness of the response. The materials provided by the Applicant offer no support for their assertion that the Public Body did not respond to them openly, accurately or completely, nor is there anything in the Public Body's processing records that raises a possible question or concern about the Public Body's response to the Applicant.

[13] The Public Body explained in their decision letter that they searched for the requested records in a shared directory of the Public Body and physical filing cabinets. They also advised the Applicant that there were limitations on their search and why. Specifically, they explained that:

- a) R.C. did not have a government-issued cell phone. This means they would not have searched for text messages or BBMs (Blackberry Messenger messages)

sent to or received from R.C., as the Applicant had included in their access request; and

- b) they were unable to search R.C.'s email account because it was no longer in existence, as R.C. was no longer an employee of the Public Body and their email account had been removed in 2014. They also explained this was their standard practice at the time.

- [14] Based on the access request, the areas searched by the Public Body were reasonable. The Public Body was also open with the Applicant in advising that there were areas they were not able to search, and provided the Applicant with an explanation of why they did not, or could not, search for responsive records in those areas. These explanations were also reasonable. More specifically, if R.C. did not have a government-issued cell phone, it is reasonable that the Public Body did not search for text messages or BBMs sent to or from R.C. as the Applicant had requested. Further, if R.C.'s email had been removed back in 2014, it could not be searched for records responsive to the access request.
- [15] Therefore, the Public Body appears to have conducted a reasonable search and responded to the Applicant openly, accurately, and completely.
- [16] The Applicant asserts that the Public Body had a duty to tell them who signed a form authorizing the removal of R.C.'s email account in 2014. In support of this assertion, the Applicant:
- refers to the *Archives and Records Act* (*Archives and Records Act*, R.S.P.E.I. 1988, Cap. A-19.1);
 - referred to and provided an excerpt from the Provincial Government Treasury Board Manual, Section 5;
 - quoted from, and provided a copy of, a 2007 policy on electronic records management from the Public Archives and Records Office; and
 - provided an excerpt from the transcript of testimony before the Legislative Assembly's Special Committee on Record Retention from September 2020.
- [17] The Applicant claims there is only one person authorized under the *Archives and Records Act* to delete records (the Provincial Archivist), and only one person designated in each public body who is "legally authorized" to provide records to the Provincial Archivist for disposition. However, this is not an accurate description of the law or practice.

- [18] In Order No. OR-24-002, *Re Office of the Premier*, 2024 CanLII 24560, the same Applicant had alleged the public body in that case had not conducted an adequate search and had not responded to them openly, accurately and completely, and made the same assertions about the *Archives and Records Act*. In that decision, Deputy Commissioner Maria MacDonald, who was delegated the authority to make a decision, disagreed with the Applicant's interpretation of the *Archives and Records Act*. To paraphrase the comments of Deputy Commissioner MacDonald about the Applicant's assertions in relation to the *Archives and Records Act*, it is neither reasonable nor feasible to expect one person, or their office or delegates, to be the sole employee(s) responsible for deleting records.
- [19] The Applicant referred to the Provincial Government's Treasury Board Policy Manual, Section 5, to support their assertions that there is only one person in each public body authorized to provide records to the Provincial Archivist and only the Provincial Archivist is legally authorized to destroy records. Treasury Board Policy Section 5 is the general government policy on records and information management. This section of the Treasury Board Policy Manual was revised in 2023, following substantial changes to the *Archives and Records Act* in 2017 and several inquiries about government's information management practices. It appears the Applicant was quoting from a previous version of this policy, which they did not provide, and I was unable to locate.
- [20] Despite this, the Applicant's assertions of what this policy says are also inaccurate. While the quote the Applicant provided indicates that there should be someone with responsibility for recorded information management functions within a public body, it does not state that there is only one person "legally authorized" to provide records to the Provincial Archivist for disposition.
- [21] The Applicant referred to, and quoted from, a policy document called "Record Information Management: Managing Electronic Mail", which was a policy of the Public Archives and Records Office from March 2007. The Applicant included a copy of this with their request for review. While it does indicate that Senior Records Managers and Records Management Liaison Officers are responsible and accountable for records, it also talks about department administrators, individual employees, records managers, information technology managers and server administrators sharing responsibility for managing electronic records. I note that this is not a current policy.
- [22] The excerpt from the Special Committee testimony in 2020 does not relate to the Applicant's assertions that the Public Body did not respond to their access request

openly, accurately or completely. Rather it is an explanation that while IT Shared Services is the caretaker of data on the government servers, they have no authority in relation to the data. It is the departments who own the records and files on the government servers, and they self-manage their own data.

- [23] None of the materials provided or referred to by the Applicant in their request for review or the attachments raise a reasonable concern that the Public Body failed to respond openly, accurately and completely to their access request.
- [24] Further, while the Applicant may believe the Public Body should have told them who authorized the removal of R.C.'s email account in 2014, this is also not accurate. The access request was specifically for records of communications to or from R.C. that make mention of three named individuals. An ITSS Removal form was not within the scope of the records requested by the Applicant in this access request and was not responsive to the access request.
- [25] The Public Body had no obligation to advise the Applicant who authorized the removal of R.C.'s email account after they were no longer an employee of the Public Body. The Public Body's obligation was to respond to the access request in relation to the records that were requested by the Applicant, conduct a reasonable search for the requested records, and tell the Applicant if there were any areas they were unable to search and why. The Public Body did all of this in their decision letter. The Applicant has provided nothing that suggests that the Public Body did not respond openly, accurately or completely to their access request.
- [26] The Applicant's chief reason for requesting a review is their belief that "whoever deleted these records [the email account of R.C.] must be held accountable". However, as has been pointed out to the Applicant and others in several previous decisions of our office, government's information practices from that time period in question have been closely examined on several occasions.
- [27] Numerous public inquiries have been conducted in the past several years regarding the government's information handling practices during the time period covered by this access request, with findings and recommendations made by the Auditor General (2016), the Information and Privacy Commissioner (2020) and a Special Committee of the Legislative Assembly (2020-21). There also have been multiple changes to government's information practices since that time, including substantial changes to the *Archives and Records Act* in 2017, and updates to the Treasury Board Policy on

information practices in 2023. The issue of government's information practices during the time period of the records the Applicant asked for in access request 2023-366 FIN, have been the subject of intense public scrutiny, investigations and analysis and therefore has been thoroughly examined.

Decision:

[28] In my opinion, the subject matter of the request for review in access request 2023-366 FIN (OIPC File C/24/124) has been dealt with in an order of the Commissioner, as provided for in clause 64.1(a) of the *FOIPP Act*.

[29] Further, in my opinion, the circumstances do not warrant conducting an inquiry in this matter, as provided for in clause 64.1(b) of the *FOIPP Act*, because:

(a) an ITSS Removal form authorizing the removal of R.C.'s email account back in 2014, if it exists, was outside of the scope of the access request and the Public Body's required response, because it was not among the records the Applicant asked for in this access request;

(b) the Public Body does not have an obligation to advise the Applicant who signed an ITSS Removal form authorizing the removal of R.C.'s email account back in 2014, if one exists, only that the email account could not be searched and why, which they did;

(c) an assessment of the information provided by the Applicant and the processing records provided by the Public Body does not, on the face of it, provide any support to the Applicant's assertion that the Public Body did not respond to the Applicant openly, accurately and completely; and

(d) the issue of government's information practices during the relevant time period has already been thoroughly investigated and many changes have been made since that time.

[30] For these reasons, I am refusing to conduct an inquiry, pursuant to clauses 64.1(a) and 64.1(b) of the *FOIPP Act*.


Denise N. Doiron
Information and Privacy Commissioner