



OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for Prince Edward Island

Decision No.	D-26-005
OIPC File No.	C/24/00105 (formerly FI-23-522)
Public Body	University of Prince Edward Island (UPEI)
Public Body Ref. No.	AR #41
Statute	<i>Freedom of Information and Protection of Privacy Act</i>
Decision-Maker	Maria C. MacDonald, Deputy Commissioner
Date of Decision	March 4, 2026

SUMMARY

An Applicant asked us to review UPEI's estimated fee to process their access request, and UPEI's decision to refuse to waive the fee. The Deputy Commissioner found that the estimated fee falls within a reasonable range. The Deputy Commissioner also found that the records do not relate to a matter of public interest, so the Applicant is not entitled to a fee waiver.

BACKGROUND

[1] In 2021-2023, UPEI hired a lawyer(s) to assist them in collective bargaining with unions. The Applicant advised that they are a member of one of these Unions. The Applicant's access request was for the following records related to collective bargaining services between January 1, 2021, to March 24, 2023:

- 1. University of Prince Edward Island's notice seeking tenders/proposals to provide collective bargaining services to the University of Prince Edward Island with respect to all of its bargaining units;*
- 2. Copies of all tenders/proposals submitted to the University of Prince Edward Island in response to this notice;*
- 3. A copy of the contract between the University of Prince Edward Island and the successful applicant;*

4. An itemized list of all expenses incurred by the University of Prince Edward Island under this contract, and any related expenses;
5. An explanation of all billing codes used by the successful candidate that may appear on invoices.

[2] UPEI estimated the fee to process the access request would be \$180.00, as follows:

<i>Time (to nearest quarter hour)</i>				
<i>Time required for searching for, locating and retrieving records:</i>	4.5	x \$30	=	\$135.00
<i>Time required for preparing and handling records for disclosure:</i>	4.5	x \$30	=	\$135.00
<i>Credit for 3 hours</i>	3	x \$30	=	(\$90.00)
<i>Pages</i>				
<i>Total number of pages copied</i>	0	.08	=	-
<i>Total</i>				180.00

This is a preliminary estimate. We have reduced our fee estimate by not charging for photocopying and instead will be scanning the pages to be produced electronically.

[3] The Applicant asked UPEI to waive the fee under section 76(4)(b) of the *Freedom of Information and Protection of Privacy Act* (the "FOI/PP Act") claiming that how UPEI spent public funds was a matter of public interest. UPEI did not excuse the Applicant from paying all or part of the fee. UPEI gave the Applicant their reasons why they did not agree that the requested records relate to a matter of public interest. In case they were mistaken about whether the records relate to a matter of public interest, UPEI also gave the Applicant their reasons why they would not have waived all or part of the fee.

ISSUES

[4] The Applicant asked for a review of the fee estimate and UPEI's decision not to waive the fee. There are two issues in this review:

Issue 1: Is UPEI's fee estimate reasonable? and

Issue 2: Should UPEI excuse the Applicant from paying all or part of the fee?

Issue 1: Is UPEI's fee estimate reasonable?

[5] The Applicant did not pay the deposit, UPEI did not process the access request, and we do

not know exactly how long it will take, or how much it will cost to process the access request. No one expects a fee estimate to be exact. UPEI must show that their fee estimate is reasonable.

- [6] I considered UPEI's estimated time and cost to (a) search for records, and (b) prepare and handle the records for disclosure.

(a) Estimated time to search for records – four and a half hours

- [7] UPEI's processing records show that they based their estimate on two senior employees conducting the search: a half hour for one employee, and four hours for the other. When asked, UPEI confirmed that:
- the employees have knowledge of the relevant records, and record-keeping practices,
 - the employees earn more than the maximum allowable fee in the Regulations under the FOIPP Act of \$15 per ½ hour, and
 - UPEI did not include in the fee estimate the time and cost for anyone to review the records to consider whether an exception to disclosure applied.
- [8] We gave a copy of UPEI's submissions to the Applicant, who did not respond to UPEI's comments about how UPEI had calculated this part of the fee estimate.
- [9] This is a five-part access request over a 28-month period. Considering the scope of the access request, I find that UPEI's estimate of four and a half hours to search for records is plausible and falls within a reasonable range.

(b) Estimated time to prepare the record for disclosure – four and a half hours

- [10] UPEI's processing records show that they estimated there would be 400 responsive pages. UPEI estimated that one employee would take two and a half hours to prepare and handle records for disclosure, and the other would take two hours. UPEI also advised that the bulk of the time relates to two of the five parts of the access request.
- [11] UPEI advised that responding to part four [lists of expenses] involves severing solicitor-client privileged information from monthly invoices. UPEI advises they typically receive "a number of invoices from this law firm every month".
- [12] UPEI advised that responding to part five [explanation of the billing codes] involves manually reviewing every invoice to determine what billing codes were used for each entry to provide and create the requested explanation.
- [13] We gave a copy of UPEI's submissions to the Applicant, and they did not respond to UPEI's comments about how UPEI had calculated this part of the fee estimate.

[14] I considered the estimated number of responsive records, that UPEI would be severing privileged information to respond to part four of the access request (list of expenses), and that UPEI intended to manually review every invoice to create a record to respond to part five (explanation of billing codes). I find that UPEI's estimate of four and a half hours to prepare and handle records for disclosure is plausible and falls within a reasonable range.

Summary of findings on UPEI's fee estimate

[15] I find that UPEI's fee estimate is reasonable, and I am not prepared to interfere with UPEI's estimated time and cost to process the access requests.

Issue 2: Should UPEI excuse the Applicant from paying all or part of the fee?

[16] The Applicant asked UPEI to be excused from paying all or part of the fee because the Applicant says the records relate to a matter of public interest under section 76(4)(b) of the *FOIPP Act*.

[17] Assessing whether to excuse an applicant from paying all or part of the fee under section 76(4)(b) of the *FOIPP Act*, has two steps:

Step 1: Do the records relate to a matter of public interest?

Step 2: If so, should the Applicant be excused from paying all or part of the fee?

Step 1: Do the records relate to a matter of public interest?

[18] The expression "public interest" is not defined in the *FOIPP Act*. In 2011, our office modified the test for assessing whether responsive records relate to a matter of public interest from seven questions to two questions¹. In addition to the two-question test, the Applicant addressed the seven questions set out in earlier decisions. The two-question test is not exhaustive and the weight to attribute to each of the considerations depends on the circumstances in each case. I considered the Applicant's position but will not repeat it all and will address the Applicant's position under the two-question structure.

Question a: *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?***

¹ Order No. FI-11-002, *Re: Department of Agriculture*, 2011 CanLII 91841 (PE IPC), at paragraph 72.

[19] In their decision letter, UPEI stated in part, that “the requested records will not contribute to the public understanding of, or debate on, or resolution of a matter or issue that is of concern to the public”.

[20] The Applicant had two main points. They referred us to public comments and to another access request for a contract and legal fees.

[21] The Applicant provided links to public comments. Referring to a 2022 independent third-party investigation report on UPEI’s workplace policies and practices on harassment and discrimination, the Applicant states:

The Report generated extensive media interest, questions and statements in the provincial legislature, and public outrage about the public body’s use of legal services.

[22] These comments respond to the investigation report, and do not mention the procurement process, contract, or the cost or use of legal services for collective bargaining. These public comments do not indicate that there is any issue of concern.

[23] One of the potentially relevant sub-questions is whether anyone other than the Applicant has sought or expressed an interest in the records. The Applicant advises that there was an access request for the successful proposal for collective bargaining services and the funds paid to the contracted firm for an earlier period. The Applicant has these responsive records and states that their access request expands on this earlier access request.

[24] The fact that there has been another request for similar information may weigh in favour of a finding that the records relate to a matter of public interest. In this case, I attribute a small amount of weight to this consideration because the Applicant has not identified any issue of concern.

[25] I have no evidence that the records will 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.

Question b: *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?***

[26] In their decision letter to the Applicant, UPEI stated in part that “The requested records will not show how decisions have been reached in a matter that is necessary to examine the functioning of UPEI”.

[27] The Applicant says they want the information to assess the procurement process and to ensure UPEI used public funds responsibly. The Applicant does not point to any improprieties in the procurement process or say that UPEI has not used public funds irresponsibly.

[28] The Applicant asked for an itemized list of expenses incurred under the contract and any related expenses (part four). These records would show what UPEI spent on each element of collective bargaining services. Records that include a public body’s financial information do not automatically mean the records relate to a matter of public interest. Most activities of public bodies involve spending tax dollars². What each element of the collective bargaining services costs may be of some interest or curiosity to some people, but there is no evidence to find that it relates to a matter of public interest.

[29] The Applicant states they want to assess UPEI’s procurement process, and to assess whether UPEI responsibly used public funds for legal or collective bargaining services. Wanting to assess a public body’s activities does not show that there is any concern about UPEI’s procurement process or how they use public funds for legal or collective bargaining services. Under a provision similar to PEI’s section 76(4), Alberta’s Office of Information and Privacy Commissioner held that although the public might benefit from oversight, this is not the test for determining whether a fee waiver on the grounds of public interest is warranted³. The Applicant’s purposes, to assessing whether a public body has complied with the procurement procedure and is spending responsibly, when neither of these things have been called into question, does not indicate that the records relate to a matter of public interest.

[30] I find that the responsive records do not likely contain information that would:

- a. show how UPEI reached or will reach a decision,
- b. help subject the activities of any public body to scrutiny, or
- c. shed light on any activity of any public body that has been called into question.

[31] I find that the requested records do not relate to a matter of public interest, and a fee

² Order FI-13-001, *Re: Health PEI*, 2013 CanLII 89281 (PE IPC), at paragraph 59.

³ Order F2021-22, *Re: City of Spruce Grove*, 2021 CanLII 59466 (AB OIPC), at paragraph 37.

waiver was not warranted.

Step 2: Should the Applicant be excused from paying all or part of the fee estimate?

[32] UPEI gave submissions about exercising discretion under section 76(4) of the *FOIPP Act*, but the Applicant is not entitled to a fee waiver because I find that the records do not relate to a matter of public interest. I do not need to consider the second part of this test.

CONCLUSION

[33] I confirm UPEI's fee estimate falls within a reasonable range.

[34] I confirm UPEI's assessment that the requested records do not relate to a matter of public interest and confirm UPEI's decision not to excuse the Applicant from paying all or part of the fee.



Maria C. MacDonald
Deputy Commissioner

