



OFFICE OF THE  
INFORMATION and PRIVACY COMMISSIONER  
for Prince Edward Island

Decision No.	D-26-009
OIPC File No.	C/25/00126
Public Body	Department of Education and Early Years
Public Body Ref. No.	2025-179, 27652 LI
Statute	<i>Freedom of Information and Protection of Privacy Act</i>
Decision-Maker	Maria C. MacDonald, Deputy Commissioner
Date of Decision	June 15, 2026

**Summary**

An individual asked for access to information related to resources for students with autism. The Public Body estimated the fees to be \$180.00. The Applicant asked the Public Body to excuse them from paying processing fees based on public interest. The Public Body agreed that the records relate to a matter of public interest under s. 76(4)(b) of the *FOIPP Act* and waived half of the fees. The Applicant wanted a full fee waiver and asked our office to review the Public Body’s decision. The Deputy Commissioner confirmed the Public Body’s decision to excuse the Applicant from paying half of the estimated fee and did not further reduce the fee.

**Background**

[1] An individual (the “Applicant”) made a multi-part access request to the Department of Education and Early Years (the “Public Body”). The Public Body advised the Applicant that they may have responsive records to a portion of their access request and recommended the Applicant submit their request to the Public Schools Branch. The portion of the access request at issue in this review is:

Any documents, reports, or communications that outline the resources (human, financial, or material) allocated specifically to support autistic students within the Public Schools Branch. This may include, but is not limited to, budgets, staffing allocations (e.g., educational assistants), or specialized equipment. Records, logs, communications or decisions regarding the allocation of these resources to students with ASD.

Time Period: January 1, 2019 to June 11, 2025

- [2] The Public Body prepared a fee estimate. They estimated it would take nine hours to locate and retrieve records and waived the first three hours. Based on the maximum allowable rate, the Public Body's fee estimate was \$180.00 (\$15.00 per ½ hour X 6 hours). The Public Body did not include any costs for the time to photocopy or handle the records for disclosure.
- [3] The Applicant asked the Public Body to excuse them from paying the fees claiming the records relate to a matter of public interest, under section 76(4)(b) of the *Freedom of Information and Protection of Privacy Act* (the "FOIPP Act"). The Public Body agreed that the records relate to a matter of public interest and waived half of the fees, for a revised fee estimate of \$90.00.
- [4] The Applicant wanted a full fee waiver and asked the Commissioner to review the Public Body's decision. The Commissioner asked for and exchanged submissions and delegated the matter to me to complete the review.

### **Issues**

- [5] Fees waivers are not automatically granted when the records relate to a matter of public interest. A public body may choose to charge or waive all or part of the fees but has to exercise this discretion fairly.
- [6] The issues under review are whether the Public Body properly exercised their discretion, and whether I should confirm or reduce the fee under section 66(3)(c) of the *FOIPP Act*.

### **Analysis**

- [7] When considering whether to waive fees, the head of a public body should balance the circumstances that favour a fee waiver, with those that do not. It is helpful to consider the following questions when deciding whether to charge or waive all or part of the fees:
  1. Is there a reasonable expectation that the public could benefit from disclosure of the records?
  2. Would waiving the fee for service shift an unreasonable cost burden from the applicant to the public body?
  3. Would the records contribute to debate on or resolution of a matter of public interest?
  4. During the request for access process:

- (a) Was the public body timely in responding to the request, and did it fulfill its duty to assist?
- (b) Viewed reasonably, did the applicant cooperate or work constructively with the public body, including narrowing or clarifying the access request where it was reasonable to do so? and
- (c) Did the applicant unreasonably reject a proposal by the public body that would reduce the costs of responding to the access request?

[8] These factors are intended to provide guidance, and the weight of each factor may vary depending on the circumstances. These factors should be considered in the context of two overarching principles of the *FOIPP Act*:

- (i) public access to public information; and
- (ii) user pays for access, but not as a cost recovery mechanism.

***1. Is there a reasonable expectation that the public could benefit from disclosure of the records?***

[9] The Public Body agreed that the public could benefit from information in the requested records about how resources are allocated and that the information may be desirable to scrutinize the activities of the Public Body and Government support for autistic students.

[10] The Applicant remarks that the Public Body placed cost recovery ahead of the transparency needed to serve public interest, and states that:

If the fee is not waived entirely, information that the Department itself recognizes as valuable to public discussion will remain out of reach simply because the applicant cannot absorb the cost of seeking accountability.

And further states:

If the fee prevents access to information that is essential for assessing systemic compliance, then the fee itself functions as a barrier to human rights accountability.

[11] The Public Body had advised the Applicant that they could request a fee waiver if they could not afford to pay the fee. The Applicant did not request a fee waiver on that basis, and I have no evidence that the Applicant cannot afford the remaining \$90.00 fee, or the remaining fee would be a barrier to human rights accountability as the Applicant alleges.

- [12] I find that it is reasonable to expect that the public will benefit from the disclosure of some of the responsive records. I am not persuaded that the public will benefit from the disclosure of all of the responsive records. I have not seen the responsive records, but I considered what information could be in the responsive records based on the text of the access request.
- [13] The scope of the access request is broad, and includes every record related to resources, including every communication or decisions regarding the allocation of these resources to students with ASD, over a six-year period. The 2026 Operating Budgetary Handout indicates that the Public Body currently has over a dozen employees employed in autism services. The Applicant says that they asked for records over a six-year period to identify any systemic issue.
- [14] The Applicant's access request is not the only avenue to assess the Public Body's autism resources. PEI has an Autism Coordinating Committee under the *Autism Coordination Act* which includes deputy ministers of four government Departments, and the secretary to the Treasury Board. The Autism Coordinating Committee's objectives and purposes include overseeing autism-related services. Additionally, the Child and Youth Advocate's powers include reviewing services the Public Body provides to children, youth, or their families. Both the Applicant and the Public Body note that the Child and Youth Advocate issued an Advisory Statement in 2024 related to children with complex support needs (including autism).
- [15] I am not persuaded that taxpayers should pay the remainder of the fee for the Applicant to study the records to look for a potential systemic issue. It is unlikely that the public will benefit from disclosure of every record related to resources. I consider the benefit to the public from disclosure supports the Public Body's decision to waive part of the fees but does not weigh in favour of further reducing the fee.

***2. Would waiving the fee for service shift an unreasonable cost burden from the Applicant to the public body?***

- [16] The Applicant's position is that the public interest outweighs the cost burden. The Applicant did not give evidence or elaborate on the degree or level of public interest. I consider the weight of the public interest to be neutral when considering whether to further reduce the fee.
- [17] The Public Body considered it fair to share the cost burden with the Applicant, stating:

However, given the breadth of the records requested and other considerations discussed earlier in these submissions, the Public Body believes that it is unreasonable to shift the entire cost burden to the Public Body. It is important to remember that the fee before the partial

waiver does not cover the actual cost of responding to the request. The Public Body believes that it is fair to share the cost burden with the Applicant. As such, the Public Body submits that it exercised its discretion fairly and judiciously by partially reducing the fee by fifty percent.

[18] I accept the Public Body's remark that the initial estimated fee does not cover the actual cost to the Public Body to respond to the access request. I cannot quantify the exact amount, but the Public Body, hence the taxpayer, is already bearing the cost burden of more than \$180.00, or more than double the revised fee estimate to the Applicant.

- The Public Body waived the first three hours before giving the Applicant their fee estimate, which at the maximum allowable fee would be \$90.00,
- On the Applicant's request for a fee waiver, the Public Body waived half of the remaining fee estimate representing another \$90.00,
- The Public Body did not comment on this, but based on the text of the access request, I expect the records will include personal information of students, parents and others. The Public Body did not intend to charge the Applicant for the time to sever information from the responsive records, and
- The employees conducting the search cost the Public Body more than the maximum amount allowed under the regulations under the *FOIPP Act*.

[19] Considering the costs the Public Body intended to accept, I find that waiving the remainder of the fee would shift an unreasonable cost burden onto the Public Body for responding to the access request. Accordingly, this factor weighs against further reducing the fee.

### ***3. Would the records contribute to debate on, or resolution of, a matter of public interest?***

[20] In July of 2024, the Child and Youth Advocate made five recommendations to the Public Body related to absenteeism and education gaps for children with complex support needs, including autism. I accept that the recommendations indicate a potential debate on a matter of public interest. It is possible that a subset of the responsive records may relate to the recommendations of the Child and Youth Advocate and disclosure of this subset may contribute to any debate about these recommendations.

[21] The Public Body accepted that the matter of public interest was about resources to support students with autism, which may be a vulnerable population. The Public Body stated that although they are aware of the recommendations of the Child and Youth Advocate, they were not aware of any ongoing public debate related to the subject matter of the request (resources for students with autism). The Public Body states that they

considered the fact that the *FOIPP Act* is intended to foster open, accountable, and transparent government.

[22] Other than the recommendations of the Child and Youth Advocate, I am not aware of any other issue under debate. Some of the records may contribute to debate or resolution of an issue arising from the recommendations of the Child and Youth Advocate. But I do not have a reasonable expectation that all the responsive records will contribute to debate or resolution of a matter of public interest. The potential contribution to public debate or resolution of a matter of public interest supports the Public Body's decision to waive part of the fees. But this factor does not weigh in favour of further reducing the fee.

**4. *During the request for access process:***

- a) Was the public body timely in responding to the request, and did it fulfill its duty to assist?***
- b) Viewed reasonably, did the applicant cooperate or work constructively with the public body, including narrowing or clarifying the access request where it was reasonable to do so?***
- c) Did the applicant unreasonably reject a proposal by the public body that would reduce the costs of responding to the access request?***

[23] There are no concerns about the Public Body's timeliness or whether the Public Body fulfilled their duty to assist. From the processing records, it appears that both the Applicant and the Public Body were cooperative. Both worked constructively together to narrow the scope of the request. This factor weighs neither for nor against further reducing the fee.

***Other considerations***

[24] The Public Body remarked that at least two employees would need to search for records. The Applicant argued that record keeping inefficiencies should not be transferred to an applicant. The Applicant stated that the "data on how human and financial resources are allocated to students with ASD should be readily available for routine internal planning".

[25] Respectfully, the Applicant's remarks about the records being readily available do not accurately reflect the scope of their access request. The Applicant asked for six years of records, including reports, communications, budgets, staffing allocations (e.g., educational assistants), specialized equipment, records, logs, communications, or decisions relating to allocation of these resources to students with ASD. I do not agree with the Applicant that these records would already be assembled for routine internal planning.

- [26] Our office has remarked in the past that applicants are sometimes unaware of the work and time involved in retrieving records and are quite surprised to learn the efforts necessary to respond to their access request. This appears to be the case here.
- [27] I have no reason to question the efficiency of the Public Body's record-keeping. I find that this is not a relevant consideration when assessing whether the fee should be further reduced.

### ***Conclusion Regarding Fee Waiver***

- [28] Considering both that the *FOIPP Act* is intended to foster open, accountable, and transparent government, and that the person seeking the records should pay, the Public Body's partial fee waiver recognizes the potential public interest in the records while balancing it against the fact that the request is broad in both scope and duration and will require the Public Body to expend time and resources to process.
- [29] I find that the Public Body exercised their discretion reasonably when they decided to excuse the Applicant from paying half of the fees. The circumstances do not warrant me exercising my discretion to further reduce the fee.

### **Conclusion**

- [30] Under section 66(3) of the *FOIPP Act*, I confirm the Public Body's decision to excuse the Applicant from paying half of the estimated fees and I will not order the Public Body to further reduce the fee.



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Maria C. MacDonald  
Deputy Commissioner