



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

Interim Decision No.	D-26-010
OIPC File No.	C/26/00016
Public Body	Public Schools Branch (PSB)
PSB file No.	2025-36 PSB
Statute	<i>Freedom of Information and Protection of Privacy Act, RSPEI 1988, c F-15.01, the “FOIPP Act”, section 4(1)(b)</i>
Decision-Maker	Maria C. MacDonald, Deputy Commissioner
Date of Decision	July 16, 2026

Summary

An applicant requested a review of the PSB’s decision to refuse access to information. The Deputy Commissioner Maria C. MacDonald identified a preliminary jurisdictional issue of whether the records fall outside the scope of the *FOIPP Act* under section 4(1)(b) of the *FOIPP Act*. Deputy Commissioner MacDonald found that, except for one email, the records at issue fall outside of the scope of the *FOIPP Act*. The Office of the Information and Privacy Commissioner does not have the jurisdiction to review the PSB’s decisions relating to giving or refusing access to records created when the members of the Hearing Committee were acting in a quasi-judicial capacity but has the jurisdiction to review the PSB’s decision to withhold two lines from an email.

Background

- [1] Among other requests, a student’s parent (the Applicant) asked a school principal to remove three employees from the student’s support team. With written reasons, the Principal agreed to remove one employee, but not the others. Under the PSB Concerns and Resolutions Operational Procedure¹, the Applicant escalated their request to the PSB Student Services Director who upheld the Principal’s decision with written reasons. The

¹ Public Schools Branch, Operational Procedure, Concerns and Resolutions, Policy Number 102.1, Effective Date August 20, 2016, https://psb.edu.pe.ca/sites/psb.edu.pe.ca/files/2022-05/102.1_Concerns_and_Resolutions.pdf

Applicant escalated their request to the PSB Assistant Director who also upheld the Principal's decision.

- [2] A student or their guardian/parent can appeal decisions of an education authority to a Hearing Committee. The *Education Act*, RSPEI 1988, c E-0.2, and *Student Regulations*, PEI Reg EC531/16, outline the basic procedures and the powers of Hearing Committees. Among the short list of decisions that may be appealed is a decision that significantly affects the education, health, or safety of a student.
- [3] The Applicant submitted a Request for Student Appeal to the Hearing Committee to appeal the Principal's decision to refuse to remove two staff members from the student's support team. The Applicant also asked for four employees to be placed on administrative leave with pay. The Applicant amended their request and asked for two more employees to be placed on administrative leave, that the six employees be placed on unpaid administrative leave, and asked for "the removal of PSB leadership". The Hearing Committee denied the Request for Student Appeal with written reasons. The Hearing Committee found that the Request for Appeal does not meet the criteria required for a hearing under the *Education Act* because the decision does not significantly affect the education, health, or safety of a student.
- [4] Under the *FOIPP Act*, the Applicant requested access to records that mention the student. The PSB provided responsive records and withheld some information. The Applicant has no concerns about the PSB's decisions to withhold personal information but asked the Commissioner to review the PSB's decisions to withhold information under section 22(1)(a) of the *FOIPP Act*, which applies to consultations and deliberations.
- [5] Commissioner Denise N. Doiron delegated this matter to me. On review of the records, I identified a preliminary jurisdictional issue. The withheld information appears in records that may be exempt from the *FOIPP Act*. If these records are exempt, the Office of the Information and Privacy Commissioner does not have the jurisdiction to review the PSB's decisions to withhold information under section 22. As these records may not be subject to the *FOIPP Act*, I did not request submissions from the parties related to section 22 of the *FOIPP Act*.

Records at Issue

- [6] The Hearing Committee gave the Applicant written reasons for refusing the Request for Student Appeal. The records at issue are 22 pages (including duplicates) of emails and draft decisions from which the PSB withheld information under section 22 of the *FOIPP Act*. Most of these records were created prior to issuing the decision with one exception. The PSB withheld two lines from an email chain on page 49 which was created after the Hearing Committee's decision to deny the Request for Student Appeal.

Preliminary Issue

- [7] Section 4(1)(b) of the *FOIPP Act* excludes from the *FOIPP Act* “a personal note, communication or draft decision created by or for a person who is acting in a judicial or quasi-judicial capacity”. All the records at issue are communications and drafts of the decision.
- [8] The preliminary issue is whether the Hearing Committee was acting in a quasi-judicial capacity when they created the records at issue. If so, the Office of the Information and Privacy Commissioner does not have jurisdiction to consider the PSB’s decisions to withhold this information.
- [9] The Applicant does not agree with the Hearing Committee’s decision. For clarity, my role does not include reviewing the Hearing Committee’s procedure or decision. My role on this preliminary issue is only to decide whether the records are subject to the *FOIPP Act* and whether the Office of the Information and Privacy Commissioner has jurisdiction to review the PSB’s decisions.

The parties’ positions

- [10] I will not repeat all the PSB’s or the Applicant’s submissions, but I confirm that I have reviewed and considered them all.
- [11] The Applicant accepts that the Hearing Committee has the authority to act in a quasi-judicial capacity but argues that having this power does not necessarily mean that they were exercising this power when they created the records at issue. The Applicant contends that the Hearing Committee’s decision to deny their Request for Student Appeal was an administrative screening process rather than a quasi-judicial adjudication. The Applicant’s position is that since the Hearing Committee denied their Request for Student Appeal, they did not enter the adjudicative stage.
- [12] The PSB’s position is that the Hearing Committee’s decision met all the hallmarks of a quasi-judicial function. The PSB states the *Education Act*, *Student Regulations*, and the Board’s Governance Policies make the Hearing Committee responsible for determining whether an appeal will proceed. The PSB states that determining whether the Hearing Committee has jurisdiction to hear a matter is a legal, adjudicative step within the statutory scheme, and the fact that there was not a full hearing did not change the nature of the Hearing Committee’s function

Analysis

[13] In addition to the Applicant and the PSB's submissions, I considered the content of the records, the statutory and common law, and surrounding context.

[14] In *Minister of National Revenue v. Coopers and Lybrand*, 1978 CanLII 13 (SCC), [1979] 1 SCR 495, at page 504, (*Coopers and Lybrand*) the Supreme Court of Canada addressed considerations in assessing whether someone is acting in a quasi-judicial capacity. This decision remains the current law, and sets out the following factors that may be considered:

- a) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
- b) Does the decision or order directly or indirectly affect the rights and obligations of persons?
- c) Is the adversary process involved?
- d) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

[15] First, I will consider the records created before the Hearing Committee made their decision to deny the Request for Student Appeal. Then I will consider the record at page 49 that was created after the Hearing Committee denied the Request for Student Appeal.

Records created before the Hearing Committee's decision

(a) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?

[16] I reviewed the *Education Act* and Student Regulations, the PSB Policy on Student Appeals², and the PSB's Terms of Reference for the Hearing Committee³ which outline the Student Appeal procedures and the powers of Hearing Committees. The Terms of Reference for the Hearing Committee include the function of determining whether to hear a student appeal, but do not comment on whether a hearing will be held before this determination.

² Public Schools Branch, Board Governance Policy, Student Appeals, Policy Number FP 11, Effective date June 20, 2017, https://psb.edu.pe.ca/sites/psb.edu.pe.ca/files/GP_11_student_appeal.pdf

³ Public Schools Branch, Board Governance Policy, Hearing Committee Terms of Reference, Policy Number GP 8d, Effective Date September 19, 2016, https://psb.edu.pe.ca/sites/psb.edu.pe.ca/files/psb_governance_policies.pdf

- [17] I also considered whether the general context suggests a hearing is contemplated. This standard falls short of requiring a hearing. Sometimes tribunals receive complaints that do not fall within their jurisdiction. Tribunals must consider whether a complaint falls within the scope of their jurisdiction. I considered whether this context suggests that a hearing is contemplated before the Hearing Committee decides whether they have jurisdiction.
- [18] In this matter, the Hearing Committee did not have a hearing. The Hearing Committee had the Principal and Assistant Director's written decisions, and the Applicant's Request for Student Appeal and addendums. Without further submissions from the Applicant or the PSB, the Hearing Committee considered whether the PSB employees' decisions significantly affected the education, health, or safety of a student, that is, if they had jurisdiction.
- [19] I find the general context suggests a hearing was contemplated when the Hearing Committee was deciding whether the Request for Student Appeal fell within their jurisdiction. If the Hearing Committee had any doubt about whether they had jurisdiction to hear the Request for Student Appeal, the Hearing Committee could have had a hearing.
- [20] This criterion supports a finding that the members of the Hearing Committee were acting in a quasi-judicial capacity when they created the records prior to the decision to deny the Request for Student Appeal.

(b) Does the decision or order directly or indirectly affect the rights and obligations of persons?

- [21] Both the Applicant and the PSB accept that a determination of whether an appeal can be heard affects the rights and obligations of the student. This criterion supports a finding that the members of the Hearing Committee were acting in a quasi-judicial capacity when they created the records prior to the decision to deny the Request for Student Appeal.

(c) Is the adversary process involved?

- [22] The *Black's Law Dictionary*, 7th ed. (1999), does not define the term "adversary process", but defines the terms "adversary proceeding" as "[a] hearing involving a dispute between opposing parties" and "adverse party" as "[a] party whose interests are opposed to the interests of another party to the action." I agree that an "adversary process" involves opposing parties and a contested or opposed issue.
- [23] The Hearing Committee is a neutral adjudicator, and the opposing parties are the Applicant and the PSB. The Hearing Committee raised the issue of their jurisdiction and made a decision based on the Request for Student Appeal and addendums which included the Principal and Director of Student Services decisions. The Hearing Committee's decision was not made in a vacuum, but they did not request or receive submissions from the PSB or the Applicant. In this instance, the issue of jurisdiction was not contested.

[24] Although there were opposing parties, the issue of the Hearing Committee's jurisdiction was not contested. I am not satisfied that the adversarial process was involved. This criterion weighs against a finding that the members of the Hearing Committee were acting in a quasi-judicial capacity when they created the records prior to the decision to deny the Request for Student Appeal.

(d) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

[25] In Order 99-025, *Re: Alberta Justice*, 1999 CanLII 19663 (AB OIPC), at paragraph 23, the Office of the Information and Privacy Commissioner of Alberta said, "Substantive rules are that part of the law that create, define and regulate rights and duties of parties". I accept this definition and would add that substantive rules may come from enactments or from common law.

[26] The Hearing Committee cannot hear an appeal if they do not have jurisdiction. I accept the substantive rules include assessing whether the stated basis for the appeal relates to a matter that triggers the Hearing Committee's jurisdiction. The Hearing Committee assessed whether the PSB's decision fell within the criteria of significantly affecting the education, health, or safety of a student.

[27] The Applicant characterizes the Hearing Committee's decision as an administrative screening decision as opposed to an adjudicative decision. Some statutes create a two-stage complaint process in which an administrator decides whether to dismiss a complaint or refer it to a tribunal. However, that is not the statutory structure of the Hearing Committee. There is no pre-screening process. The Hearing Committee is responsible for interpreting the *Education Act* criteria, and for deciding whether a Request for Student Appeal triggers their jurisdiction.

[28] I am satisfied that in every case, the Hearing Committee is obliged to determine whether they have jurisdiction, and that this is an obligation to apply a substantive rule.

[29] The fact that the Hearing Committee was applying a substantive rule that would apply to many cases, weighs in favour of a finding that the Hearing Committee was acting in a quasi-judicial capacity when they created records relating to whether the subject of the Request for Student Appeal was about a decision that significantly affected the education, health or safety of a student.

Summary related to records created before the Hearing Committee's decision

[30] Considering the four benchmarks set out in *Coopers and Lybrand*, I find that the Hearing Committee was acting in a quasi-judicial capacity when they created communications and

draft decisions leading up to their decision that the Request for Student Appeal did not trigger the Hearing Committee's jurisdiction.

- [31] I find that the communications and draft decisions created in a quasi-judicial capacity, before the Hearing Committee issued their final decision, are exempted from the scope of the *FOIPP Act* under section 4(1)(b) of the *FOIPP Act*. The Office of the Information and Privacy Commissioner does not have jurisdiction to review the PSB's decisions to withhold information from the records created prior to issuing their decision.

Record created after the Hearing Committee's decision (Page 49)

- [32] The two lines the PSB severed from page 49 were among emails created after the Hearing Committee's decision to deny the Request for Student Appeal. The withheld information is a potential response to the Applicant's complaint about the Hearing Committee's decision. When the author created this information, they were wearing both of their hats as a member of the Hearing Committee, and as a member of the Board of Trustees.
- [33] Based on the content of the withheld information, and *Coopers and Lybrand* considerations, I find that the author was not acting in a quasi-judicial capacity when they created the record. No hearings were contemplated, the adversary process was not involved, the decision did not affect the rights or obligations of persons, and there was no obligation to apply substantive rules to many individual cases.
- [34] I find that the record at page 49 was not created in a quasi-judicial capacity, and the record is not exempted from the scope of the *FOIPP Act* under section 4(1)(b) of the *FOIPP Act*. The Office of the Information and Privacy Commissioner has the jurisdiction to review the PSB's decision to withhold the two lines from an email on page 49 under section 22 of the *FOIPP Act*.

Findings

- [35] Based on the content of the withheld information, and the *Coopers and Lybrand* considerations, I find that the Hearing Committee was acting in a quasi-judicial capacity when they created records prior to issuing their decision and were not acting in a quasi-judicial capacity in the records created records after their decision was issued.
- [36] The communications and draft decisions of the Hearing Committee, created when the members were acting in a quasi-judicial capacity, fall within the exclusion of section 4(1)(c) of the *FOIPP Act*. The Applicant does not have a right of access to these records, and the Office of the Information and Privacy Commissioner has no jurisdiction to consider the PSB's access decisions relating to these documents.

[37] The author was not acting in a quasi-judicial capacity when they created the email at page 49, and this record is not excluded from the *FOIPP Act*. The Office of the Information and Privacy Commissioner has the jurisdiction to review the PSB's decision to withhold the two lines at page 49.

Conclusion

[38] The Commissioner delegated this matter to me, but I do not have jurisdiction to review the PSB's decisions to withhold information from communications and draft decisions that the Hearing Committee created in a quasi-judicial capacity. I cannot make any finding about whether the PSB was authorized to withhold information from these records.

[39] However, I have jurisdiction to review the PSB's decision to withhold two lines on page 49. The PSB withheld this information under section 22(1)(a) of the *FOIPP Act*, which relates to consultations or deliberations among officers or employees of a public body. I have not yet requested or received submissions from parties on this issue, so cannot address this decision to withhold information from page 49. I remain seized of this issue, meaning the review is still open, and I will continue the review related to the PSB's decision to withhold information on page 49, as needed.



Maria MacDonald