



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

Order No. OR-24-001

**Re: Office of the Police Commissioner
(OIPC File No. FI-23-527)**

**Prince Edward Island Information and Privacy Commissioner
Denise N. Doiron**

January 25, 2024

Summary: An applicant asked the Office of the Police Commissioner to correct information in a ruling issued by a former Police Commissioner, pursuant to section 34 of the *Freedom of Information and Protection of Privacy Act*. The Office of the Police Commissioner refused to correct the information. The applicant was not satisfied with the response by the Office of the Police Commissioner and requested the Office of the Information and Privacy Commissioner to review the decision. The Information and Privacy Commissioner agreed that the information the applicant asked the Office of the Police Commissioner to correct was not their own personal information. In the circumstances, the Information and Privacy Commissioner refused to conduct an inquiry, pursuant to clause 64.1(b) of the *Freedom of Information and Protection of Privacy Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01, clause 1(i), section 34, section 64.1.

I. BACKGROUND

- [1] The events leading to this request for review arise from a series of events going back to 2019, stemming from a decision of the Alberta Court of Queen's Bench in March 2019. I do not have authority in relation to the decision of the Alberta Court of Queen's Bench. I mention it only as background for the events giving rise to the matter before me.
- [2] In August 2019, the Applicant filed a complaint with the Prince Edward Island Office of the Police Commissioner (the "Public Body"), concerning the conduct of an officer of the Charlottetown City Police Services in deciding not to lay criminal charges against a PEI media outlet for publishing an article about the Alberta Court of Queen's Bench decision.
- [3] On June 11, 2020, the former Police Commissioner issued their ruling (the "Ruling"), concluding there was no factual basis to support a finding that the police officer had breached the Code of Conduct and Professional Discipline.
- [4] The Applicant sought a judicial review of the Ruling, which was dismissed by the Supreme Court of PEI. The Applicant then appealed the Supreme Court's decision to the PEI Court of Appeal, which refused the appeal. I am relating these facts as background to the complaint the Applicant has made to our office, and because they provide relevant context for my decision.
- [5] On May 13, 2023, the Applicant requested the Public Body to correct the Ruling, pursuant to section 34 of the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act"). The Public Body did not respond to the Applicant's request for correction within the 30 days set out in the *FOIPP Act*. The Applicant requested a review of this failure to respond, which was informally resolved.
- [6] On July 27, 2023, the Public Body issued its decision in relation to the Applicant's request for correction pursuant to the *FOIPP Act*, refusing to correct the Ruling, but offering to link the Applicant's request to correct to the Ruling posted on the Public

Body's website. The Applicant asked the Information and Privacy Commissioner to review the Public Body's decision of July 27, 2023 regarding their request to correct.

II. JURISDICTION

- [7] Under section 60 of the *FOIPP Act*, an applicant may request the Information and Privacy Commissioner (the "Commissioner") to review a decision of a public body made pursuant to the provisions of the *FOIPP Act*.
- [8] The PEI Office of the Police Commissioner is a public body as defined within the *FOIPP Act*. The Applicant requested the Public Body to correct a document in the custody and control of the Public Body, and the Public Body made a decision in relation to that request, pursuant to the provisions of the *FOIPP Act*.
- [9] I am satisfied I have jurisdiction in this matter.

III. RECORD AT ISSUE

- [10] The record at issue is the decision of the Public Body, dated July 27, 2023, refusing to correct the Ruling.

IV. ISSUE

- [11] Although applicants have a right to request a review, not every request for review proceeds to an inquiry. Section 64.1 of the *FOIPP Act* gives the Commissioner the discretion to refuse to conduct an inquiry if the subject matter has been dealt with in an order of the Commissioner before, or if the circumstances warrant refusing to conduct an inquiry.

[12] The only issue I address in this decision is whether I will conduct an inquiry into the Public Body's decision to refuse to correct the Ruling.

V. ANALYSIS

[13] The *FOIPP Act* gives an applicant a right to request a review and section 64 requires the Commissioner to conduct an inquiry if a review is requested, unless the matter is settled before inquiry or if section 64.1 applies. Section 64.1 of the *FOIPP Act* gives the Commissioner the discretion to refuse to conduct an inquiry in two instances. Subsection 64.1(b) of the *FOIPP Act* states:

64.1 Refusal to conduct an inquiry

The Commissioner may refuse to conduct an inquiry pursuant to section 64 if, in the opinion of the Commissioner,

- (a) the subject matter of a request for a review under section 60 has been dealt with in an order or investigation report of the Commissioner; or
- (b) the circumstances warrant refusing to conduct an inquiry.

[14] Subsection 64.1(a) does not apply as the subject matter of the Applicant's request for review has not been dealt with in an order or investigation report previously. Therefore, in order to determine whether section 64.1 applies, I will consider whether the circumstances warrant refusing to conduct an inquiry.

[15] In order to exercise the discretion permitted under subsection 64.1(b), I must be satisfied that it is clear there is no arguable case that merits an inquiry. Some potential reasons for exercising discretion to review to conduct an inquiry could include:

- That the matter is moot, the public body is adequately addressing the issue, and no purpose will be served to conduct an inquiry;
- Situations where it is plain and obvious that a public body properly applied a provision of the *FOIPP Act*;
- Situations where it is plain and obvious that we do not have jurisdiction and an issue is outside the scope of the *FOIPP Act*;

- The principles of abuse of process, *res judicata*, or issue estoppel apply; or
- The request for review does not contain sufficient evidence and the applicant or complainant has not responded to reasonable questions or requests for further information.

[16] To make this analysis, I need to refer to section 34 of the *FOIPP Act* because the Applicant requested the Public Body to correct information in a record within the Public Body's custody and control, pursuant to section 34, and the Public Body made a decision under that section.

[17] Section 34 of the *FOIPP Act* permits individuals to request that a public body correct their personal information when they believe that there is an error or omission in their personal information. The portions of section 34 relevant to this matter are:

34. Right to request correction of personal information

(1) An individual who believes there is an error or omission in the individual's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

Opinions not to be altered

(1.1) The head of a public body shall not, under this section, correct or otherwise alter an opinion included in personal information, including a professional or expert opinion.

Annotation

(2) If no correction is made in response to a request under subsection (1), or if no correction is permitted under subsection (1.1), the head of a public body shall annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.

[...]

[18] For this provision to apply, there must be an error or omission, and the error or omission must be in relation to personal information of the individual requesting the correction. There is no entitlement in the *FOIPP Act* to request a public body to correct information that is not personal information.

- [19] Here, the Applicant requested the Public Body to correct the Ruling, pursuant to section 34 of the *FOIPP Act*, stating:

Please accept this formal request to correct the content of the following PEI Police Commissioner decision or include the following sections below each statement. The evidence of falsity were already provided to your office in the lead up to the decision AND during the [sic] your Office's evidence of consciousness of guilt decision to act without jurisdiction to maliciously and sadistically defraud mandatory judicial review rights in order to cover up deliberate ongoing s289 Criminal Code falsehoods by your office: [weblink to decision]

- [20] The Applicant then set out 15 paragraphs, which they called "annotations", claiming these annotations were to correct what the Applicant believed to be incorrect statements in the Ruling. The requested annotations were not plainly written, often appearing nonsensical, and did not relate to the statements from the Ruling identified by the Applicant. For example, the first annotation the Applicant requested was:

Applicant Annotation 1: S380(1) Criminal Code "Deceit" page 3 para 2 "Code Of Conduct ..is Only Matter Before Me" is contrary to the Commissioner duty to educate the police that there is no discretion to refuse to charge an ongoing indictable criminal code offence AND where a media outlet refused to publish a rebuttal that proves that the content of a court order is false, that refusal can be charged as s298 Criminal Code "libel" or s341a Criminal Code "fraudulent concealment" or s380(1a) defrauding a "service" AND it is not a crime to publish a false court order & media comments on the falsehoods, it is a crime to refuse to publish in quotes rebuttal evidence of the falsity so as to prevent own media (or other media outlet) readers from making their own falsity decisions AND the crime did not start when the court order or media comments were published, it started when the target of the story requested a mandatory service re publication of a rebuttal evidence that the court order or media comments are false. [capitalization and emphasis in original]

- [21] The remainder of the annotations were very similar in nature. In four of the annotations requested, the Applicant described the identified statements from the Ruling as "s380(1) Criminal Code "Deceit"...". In the other 11 annotations, the Applicant described the identified statements as "s380(1) Criminal Code "Falsehood"...".
- [22] The Applicant did not request corrections to their personal information. They provided partial quotes of statements in the Ruling and annotations they wanted inserted in the

Ruling document as corrections. The requested corrections were essentially the Applicant's disagreement with statements in the Ruling, and the Applicant's interpretations of or commentary on various matters, both related to and unrelated to the Ruling.

- [23] The Public Body assessed the Applicant's request to correct and determined that the information was not the Applicant's personal information. The Public Body then decided that section 34 of the *FOIPP Act* did not apply, and therefore refused to make any corrections to the Ruling. However, in their decision to refuse to correct, the Public Body stated:

Notwithstanding our Office's view that you are not statutorily entitled to any of the remedies provided by section 34 of the FOIPPA, in an effort to be reasonable and respectful of the sentiments contained in your request, we propose that a link to your May 13, 2023 request together with this response be placed under the Link to the Decision. Please confirm whether this is an agreeable approach.

- [24] In their request for review to our office, the Applicant objected to both the Public Body's decision not to correct the Ruling, and the offer to link their May 13, 2023 request and the Public Body's decision letter to the Ruling on their webpage.
- [25] The Applicant's email to our office seeking a review of the Public Body's decision included a 42-page attachment outlining why they disagreed with the Public Body's decision not to correct the Ruling. A few days later, the Applicant provided a follow-up email with a 104-page attachment they indicated had been mistakenly left out of the initial request for review documentation. I note that there were 6 additional attachments contained in the Applicant's initial 42-page attachment, which we were not able to access. However, I did not need to review those six attachments for the purposes of making this decision.
- [26] It is hard to summarize the Applicant's submissions in relation to their request for review of the Public Body's decision under section 34 of the *FOIPP Act*. The Applicant's request for review was difficult to read, is lengthy, rambling, repetitive, and often makes

little sense. The request for review documents contain multiple references to the Criminal Code of Canada, various statutes in other provinces and other countries, and quote numerous decisions of courts from other jurisdictions, publications from a wide variety of sources, and include many hyperlinks to sites and documents on the internet.

- [27] Much of the content of the request for review does not pertain to the Applicant's request for correction under section 34 of the *FOIPP Act*, and much of what is argued is not within my authority under the *FOIPP Act*. A large portion of the information appears to be the Applicant's dissatisfaction with the March 2019 decision of the Alberta Court of Queen's Bench, their umbrage with various statements made by the Alberta judge, and stories about that court decision published in the media. There are also countless inflammatory and antagonistic assertions the Applicant makes relating to their own interpretations of, and views about, various statements in both the decision of the Court of Queen's Bench and the Ruling by the former Police Commissioner. On several pages, the Applicant simply posed questions, which they attempted to relate to a variety of statutes and caselaw that are not relevant to the matter before me. The 104-page document that the Applicant provided separately is also unrelated to the *FOIPP Act* or the Applicant's request to correct the Ruling.
- [28] While clearly important to the Applicant, all of these issues are outside the jurisdiction of the PEI *FOIPP Act* and beyond my authority as Information and Privacy Commissioner.
- [29] The only statements in the Applicant's request for review documents that address the Public Body's decision under section 34 of the *FOIPP Act* appear to be the Applicant's position that the excerpts they identified from the Ruling should be considered personal information as defined under clause 1(i)(viii) "anyone else's opinions about the individual".
- [30] Much of the information the Applicant claims are opinions about them are contained in long, convoluted statements referring to various sections of the Criminal Code or other authorities. Most of the Applicant's claims that a statement was an opinion of someone

else consisted of an identified passage from the Ruling, followed by the statement, or variations of the statement:

...is personal information because it is PEIPC "(viii) *anyone else's opinions about the individual*" that [the Applicant] is too black and stupid to understand white mans' law... [emphasis in original]

- [31] On the face of it, the specific statements the Applicant took issue with were not opinions of the former Police Commissioner, or anyone else, about the Applicant. For clarity, nowhere in the Ruling does it say or describe the Applicant as black or stupid. Rather, what the Applicant was presenting as "opinions" about them were actually the Applicant's own opinions and interpretations of what they believed the former Police Commissioner's statements to mean, not opinions of the former Police Commissioner or others.
- [32] The Applicant also made assertions to the effect that there is a presumption that the Public Body has violated the *FOIPP Act*, and that the Public Body is required to correct the Ruling as requested by the Applicant unless the Public Body can prove that the requested annotations are false.
- [33] At page 13 of the 42-page attachment to their request for review, the Applicant states:

Presumption Of Violation Of FOIPPA "33(A) Ensure That The Information Is Accurate And Complete" So As To Profit From Stereotypes That Blacks Are Liars, Mentally Ill, Criminals, Too Stupid To Understand White Canadian Law, Lie About Racism To Steal Political Jobs From Whites, So As To Protect The Racist White Privileged Justice Thomas That Lied That [Applicant]'s Elections Act Racism Constitutional Question Is Evidence Of Mental Illness.

The Police Commissioner has only raised ONLY one defence that "*The information ... you are seeking to ... annotate is not personal information' as contemplated by the FOIPPA*" AND they propose to fraudulently conceal evidence of falsity through a link. The PEI Police Commissioner is not alleging that the annotations are false. If that is not the case, they need to tell the Commissioner which statement in the Annotation is false. Until then and with all due respect, the Information Commissioner is required to proceed on the assumption that the PEI Police Commissioner is admitting that they are violating FOIPPA "33(a) *make every reasonable effort to ensure that the information is accurate and complete*".

[emphasis, capitalization and formatting in original]

- [34] Respectfully, the Applicant's interpretation of the *FOIPP Act* is not accurate. There is no presumption that a public body violated the *FOIPP Act*, and a public body does not have to consider annotations to be false before they can refuse to annotate a record.
- [35] Section 34 of the *FOIPP Act* only provides an individual a right to request a correction to their personal information. A public body is not required to correct personal information, but if a public body declines to make a requested correction to personal information, they are required to annotate or link the personal information in the record with that part of the requested correction that is relevant and material to the record in question.
- [36] Section 34 of the *FOIPP Act* applies to "personal information" as defined within the *FOIPP Act*. The information the Applicant requested the Public Body to correct was not personal information. It was findings of fact and a decision of the former Police Commissioner made after conducting a review. This is not "personal information" about the Applicant, as defined in the *FOIPP Act*.
- [37] Even if the Applicant were able to substantiate that the information they wish to be corrected was "anyone else's opinions about the individual", subsection 34(1.1) of the *FOIPP Act* specifically prohibits a public body from correcting or otherwise altering an opinion included in personal information. Therefore, even if there were any basis for the Applicant's assertions that the identified statements in the Ruling were the former Police Commissioner's opinions about the Applicant, the Public Body would be statutorily barred from altering the opinion.
- [38] While the Applicant may disagree with the findings of fact and decision of the former Police Commissioner set out in the Ruling, seeking a correction to the Ruling under the *FOIPP Act* is not the appropriate forum to address their disagreement. Section 34 of the *FOIPP Act* cannot be used by an applicant to contest a finding of fact made by a public body or tribunal, or to contest a decision based on that finding of fact. To do so is essentially an attempt to appeal a decision with which the applicant does not agree. If

the Applicant did not agree with the former Police Commissioner's decision set out in the Ruling or disputed any of the findings of fact made by the former Police Commissioner in reaching that decision, the appropriate way to address that disagreement was to seek a judicial review of the Ruling.

[39] The Applicant did apply to the Supreme Court of PEI for a judicial review of the Ruling, but it was not successful. The Applicant then appealed the Supreme Court of PEI's decision in relation to their judicial review application, which was also unsuccessful.

[40] The Applicant's request for the Public Body to correct the Ruling, and request for review to our office appear to be an attempt to accomplish through other means what they were unable to do through the court system. However, the *FOIPP Act* is not an appropriate alternative method to achieve the desired result. The *FOIPP Act* can only be applied if the matter falls within the *FOIPP Act* provisions.

[41] Section 34 of the *FOIPP Act* permits individuals to request a public body to correct their personal information. The Applicant did not ask the Public Body to correct their personal information, as that is defined within the *FOIPP Act*. The Applicant did not have a right to correction of, and the Public Body did not have authority to correct, the findings of fact and conclusions contained in the Ruling, as requested by the Applicant.

[42] It is plain and obvious that the Public Body properly applied section 34 of the *FOIPP Act* when refusing to correct the Ruling, as section 34 only applies to personal information and the information the Applicant requested to be corrected was not their personal information. On the face of it, there is no issue to review. I must conclude that the circumstances do not warrant conducting an inquiry in this matter.

VI. DECISION

[43] Subsection 64.1(b) of the *FOIPP Act* permits me to refuse to conduct a review in a matter if, in my opinion, the circumstances warrant refusing to conduct an inquiry.

[44] Based on all of the above, in my opinion the circumstances warrant refusing to conduct an inquiry in this matter.

[45] Therefore, pursuant to clause 64.1(b) of the *FOIPP Act*, I am refusing to conduct a review of the Public Body's decision to refuse to correct the former Police Commissioner's Ruling dated June 11, 2020.

VII. ORDER

[46] As I have refused to conduct a review, I make no order to the Public Body in this matter.

[47] Pursuant to section 67 of the *FOIPP Act*, this decision is final.

Signed: *Denise N. Doiron*

Denise N. Doiron
Information and Privacy Commissioner