



OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for Prince Edward Island

Order No. OR-25-002

Re: Health PEI
OIPC file No. C/25/00229
(Public Body Ref. No. HPEI 2025-155 re: access request 2025-083)

Denise N. Doiron
Information and Privacy Commissioner

December 15, 2025

Summary:

An applicant asked Health PEI for access to records. Health PEI did not issue a decision within the prescribed time limit. The Commissioner found that Health PEI had not met its duty to respond and ordered Health PEI to issue a final access decision with responsive records, subject to any exceptions authorized under the *Freedom of Information and Protection of Privacy Act*.

Statutes Cited:

Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, Cap. F-15.01, sections 8, 9, 12, 50, and 67.

Interpretation Act, R.S.P.E.I. 1988, Cap. I-8.1, section 33.

I. BACKGROUND

- [1] On August 1, 2025, the Applicant asked Health PEI for access to records about expenditures (including travel, accommodation expenses, etc.) versus the budgeted costs

for several specified leadership positions. The Applicant paid the \$5.00 application fee on August 11, 2025.

- [2] On August 18, 2025, Health PEI asked the Applicant for clarification about the records they were requesting, which the Applicant provided on August 21, 2025.
- [3] On September 18, 2025, the Applicant had not received a response to their access request and asked Health PEI to clarify when the 30-day due date for a response to their access request began. The same day, Health PEI responded that they considered the access request to have been received on August 21, 2025, the date the Applicant clarified their access request.
- [4] Health PEI did not respond to the Applicant's access request within 30 days of August 21, 2025. The Applicant followed up with Health PEI more than once. A representative for Health PEI advised the Applicant that Health PEI did not have a response ready and could not provide a specific date they would respond by. The representative also apologized for the delay and told the Applicant they had a right to ask the Commissioner for a review.
- [5] On October 16, 2025, the Applicant requested a review of Health PEI's lack of response.

II. JURISDICTION

- [6] Health PEI is a public body under the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act") and has duties and responsibilities under that legislation.
- [7] I have authority to review a public body's response, or lack of a response, to an access request, monitor how the *FOIPP Act* is administered to ensure that its purposes are achieved, make orders, and specify any terms or conditions in an order.
- [8] I am satisfied that I have jurisdiction in this matter.

III. ISSUE

- [9] The issue in this matter is whether Health PEI has met its statutory duties to respond to the Applicant within the time required in the *FOIPP Act*, and to do so openly, accurately and completely, as required under sections 8 and 9 of the *FOIPP Act*.

IV. BURDEN OF PROOF

- [10] A public body bears the burden of proof to establish that they have met their statutory duties under the *FOIPP Act*.

V. ANALYSIS

- [11] Section 8(1) of the *FOIPP Act* says that the head of a public body has a duty to make every reasonable effort to respond to an applicant “openly, accurately, and completely”.
- [12] Section 9(1) of the *FOIPP Act* says a public body must respond to an access request “without undue delay and in any event make every reasonable effort to respond to a request not later than 30 days after receiving it”. This requirement is subject to any extensions under section 12.
- [13] In the present matter, Health PEI advised the Applicant they considered the access request to have been received on August 21, 2025, the date the access request was clarified. Health PEI had a duty under section 9(1) of the *FOIPP Act* to respond to the Applicant’s access request within 30 days of that date, unless the time limit for response was extended.
- [14] If Health PEI considered the Applicant’s access request to have been received on August 21, 2025, under section 9(1) of the *FOIPP Act*, Health PEI was required to respond to the Applicant’s access request by September 22, 2025, unless that time was extended. It should be noted that the actual date of response was September 20, 2025, but because September 20, 2025, was a Saturday, as set out in section 33 of the *Interpretation Act* the date for response moves to the next business day, which was September 22, 2025.
- [15] Section 12 permits a public body to extend their time for response for up to 30 days, under four conditions, and may request authorization from the Commissioner to extend their time longer than 30 days, under the same conditions plus one other. If a public body’s time is extended under section 12, subsection 12(4) requires the public body to notify the applicant that the time has been extended, the reason for the extension, when a response can be expected, and the applicant’s entitlement to make a complaint to the Commissioner.
- [16] Health PEI did not extend their time under section 12, nor did they request the Commissioner to authorize an extension to their time to respond. This means Health PEI

was not authorized to extend their time to respond to the Applicant's access request. If I accept that Health PEI received the access request on August 21, 2025, Health PEI was statutorily required to respond by September 22, 2025.

- [17] Health PEI did not respond to the Applicant by September 22, 2025, and provided no reasonable explanation for why they did not respond. The only reason Health PEI gave to the Applicant for the delay was that the file was with the CEO for final approval or verification. This is not an authorized reason for extending a public body's response time and is not a valid reason for not responding by the statutory deadline. Public bodies have a duty to ensure their internal processes do not interfere with their statutory obligations. Further, Health PEI did not provide a date by which the Applicant could expect a response, despite several requests from the Applicant and our office to do so.
- [18] Section 9(2) of the *FOIPP Act* says the failure of the head of a public body to respond to an access request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record. We call this a deemed refusal. When a public body is in a deemed refusal position, we generally request an explanation as to why the public body has not responded and attempt to resolve the matter so that the applicant receives a decision. Often, a public body will issue a decision shortly after they are notified of a request for review for a deemed refusal.
- [19] After we advised Health PEI of the request for review, we asked Health PEI on more than one occasion to confirm if they had responded to the Applicant yet and explained that if there was a response we would consider the matter resolved. Health PEI confirmed no decision letter had been sent to the Applicant but provided no further information.
- [20] On November 20, 2025, our office emailed Health PEI to follow up again. That email explained that the only remedy for deemed refusal is for the public body to process the access request and provide the applicant with the records. We asked for an expected date as to when the access request will be processed and a decision provided to the Applicant. That email also explained that deemed refusals are handled in two ways: either by a consent order in which both parties mutually agree on a date by which the access request will be fulfilled, or an order of the Commissioner, directing the public body to fulfill the access request by a specific date, and asked to discuss the matter further. Health PEI did not respond to this email.
- [21] Our office contacted Health PEI again on December 11, 2025, to follow up as we had received no response to our previous email, and the Applicant had confirmed they had not received a decision to their access request. In that email, we also advised Health PEI that

we would be moving forward with issuing an order. Later that day, a representative of Health PEI responded to our email and advised “the response is not yet ready to go out to the Applicant and unfortunately I don’t have an expected date of completion to provide you with.”

- [22] As of the date of this Decision, it is almost four months after Health PEI considered the Applicant’s access request to have been received, and three months beyond the date they were required to provide a response. Health PEI still had not responded to the Applicant and has not provided any further explanation for the delay.
- [23] Health PEI has provided no reasonable explanation as to why they have not responded to the Applicant, have failed to provide either the Applicant or our office with a date by which they will respond, and have not committed to respond to the Applicant.

VI. FINDINGS

- [24] I find that Health PEI was not authorized to extend their time to respond to the Applicant beyond 30 days from August 21, 2025.
- [25] I find that Health PEI has failed to meet their statutory duty under section 9 of the *FOIPP Act*.
- [26] Health PEI has acknowledged that it has not responded to the Applicant’s access request. They apologized for the delay, but have not provided a reasonable explanation for the delay and have not committed to a date by which they will respond. I find that Health PEI has not met their duty under section 8(1) of the *FOIPP Act* to respond to the Applicant openly, accurately, and completely.

VII. ORDER

- [27] I order Health PEI to issue a final access decision to the Applicant regarding access to the records in accordance with the *FOIPP Act* by **January 9, 2026**, including disclosure of all responsive records, subject to any exceptions to disclosure permitted or required under the *FOIPP Act*.
- [28] For clarity, this time for response is inclusive of any time required for third-party consultations or notifications.

[29] For further clarity, Health PEI's response to the Applicant, including disclosure of all responsive records, shall be without cost to the Applicant.

[30] I also order Health PEI to refund the \$5.00 application fee to the Applicant.

[31] In accordance with section 67 of the *FOIPP Act*, this decision is final. However, an application for judicial review of the Order may be made pursuant to section 3 of the *Judicial Review Act*, R.S.P.E.I. 1988, Cap. J-3.



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