



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

**Order No. OR-26-001
(file C/24/00068, formerly FI-22-445)**

Re: Office of the Premier

**Maria C. MacDonald
Deputy Commissioner**

January 16, 2026

Summary:

An applicant asked for a review of the Premier's Office's response to their request for records related to them and their business. During the inquiry, the Public Body found more responsive records which were disclosed to the Applicant. The Deputy Commissioner found that, although the initial search was inadequate, it was rectified by additional searches.

The Deputy Commissioner found that the Premier's Office properly applied section 15 of the *FOIPP Act* [disclosure would be an unreasonable invasion of personal privacy] to all the information they withheld, except one word. The Deputy Commissioner confirmed the Public Body's reliance on section 25(1)(a) of the *FOIPP Act* [solicitor-client privilege].

Statutes cited:

Freedom of Information and Protection of Privacy Act, RSPEI 1988, Cap. F-15.01, sections 8(1), 15, and 25(1)(a)

Cases Considered:

Order OR-24-009, *Re: Department of Economic Development, Innovation and Trade*, 2024 CanLII 128611 (PE IPC)

Order FI-16-008, *Re: Department of Communities, Land and Environment*, 2010 CanLII 101628 (PE IPC)

Order F16-52, *Re: Office of the Premier*, 2016 BCIPC 58 (CanLII)

Solosky v. The Queen, 1979 CanLII 9 (SCC)

Order FI-22-003, *Re: Department of Transportation and Infrastructure*, 2022 CanLII 19199 (PE IPC)

I. BACKGROUND

- [1] An individual (the "Applicant") made a business proposal to the Government of PEI. The Applicant asked the Office of the Premier (the "Public Body") for records about the Applicant and the Applicant's business over a 21-year period. The Public Body found 375 pages of responsive records, and withheld some information under the following sections of the *Freedom of Information and Protection of Privacy Act* (the "FOIPP Act"):
- 15 -- disclosure of personal information is prohibited if disclosure would be an unreasonable invasion of a third party's personal privacy; and
 - 25(1)(a) -- solicitor-client privilege.
- [2] The Applicant asked Commissioner Denise N. Doiron to review the adequacy of the Public Body's search, and of the Public Body's decisions to withhold information. The Applicant had a few other concerns which were resolved, or which Commissioner Doiron did not accept. Commissioner Doiron requested and exchanged submissions from both parties and delegated this matter to me to complete.

II. ISSUES

[3] The issues in this review are:

Issue 1 – Did the Public Body conduct an adequate search?

Issue 2 – Was the Public Body allowed to withhold personal information under section 15 [unreasonable invasion of third parties' personal privacy]?

Issue 3 – Was the Public Body allowed to withhold information under section 25(1)(a) [solicitor-client privilege]?

III. BURDEN OF PROOF

[4] Both the Applicant and the Public Body have a burden of proof, depending on the issue.

Our office has held that a public body must give their evidence and argument to show that they searched adequately. A public body's search does not have to be perfect, but they must show that they have made every reasonable effort to locate responsive records. Although the burden of proof is on a public body, it is helpful for an applicant to give reasons to show why they believe that a public body did not conduct an adequate search [see for example Order OR-24-009, *Re: Department of Economic Development, Innovation and Trade*, 2024 CanLII 128611 (PE IPC), at paragraph 10].

[5] Under section 65(1) of the *FOIPP Act*, a public body has the burden to show that the public body properly applied a provision when they withhold information from an applicant. The Public Body has the burden to show that the records are protected by solicitor-client privilege, and they properly applied section 25(1)(a) of the *FOIPP Act*.

[6] Section 65(2) of the *FOIPP Act* states that when the withheld information is a third party's personal information, an applicant has the burden to show that disclosing the personal information would not be an unreasonable invasion of the third party's personal privacy under section 15 of the *FOIPP Act*.

- [7] In summary, the Public Body has the burden to show that they adequately searched, and that they properly applied section 25(1)(a) of the *FOIPP Act* [solicitor-client privilege]. The Applicant has the burden to show that it would not be an unreasonable invasion of personal privacy under section 15 of the *FOIPP Act* for the Public Body to disclose someone else's personal information to the Applicant.

IV. ANALYSIS

Issue 1 – Did the Public Body conduct an adequate search?

- [8] The Applicant had concerns about enclosures to emails which were resolved in the initial stages of the review. The Applicant also stated:

I am in possession of emails between myself and [a former Chief of Staff]. The fact that no emails were provided following a search using the search terms [keywords that would identify the Applicant] raises concerns that emails not in my possession were not located and not disclosed.

- [9] The Public Body found and disclosed records of the former Chief of Staff, but as the Applicant noted, initially there were no emails between the Applicant and the former Chief of Staff among the responsive records.
- [10] When asked twice, the Applicant declined to give more information. However, during the review we found evidence that there were emails between the Applicant and a former Chief of Staff. When we told the Public Body about this evidence, they searched again in the same email account, and the email account of another former Chief of Staff. The Public Body found an additional 45 pages of responsive records. The keywords they used in the initial electronic search appear in the additional 45 pages of responsive records. The Public Body has the burden to show that they conducted an adequate search but had no explanation for why they did not initially find these emails in this account. Without any

explanation about how these records were missed in the first search, I find that the initial search was inadequate.

[11] Although the initial search was inadequate, I have no evidence or other reasonable basis to believe that further searches would locate other responsive records. There is no need to order the Public Body to search again. I am satisfied that the Public Body rectified the initial inadequate search, and in the end, the Public Body's searches were adequate.

Issue 2 – Was the Public Body allowed to withhold personal information under section 15 [unreasonable invasion of third parties' personal privacy]?

[12] Section 15 of the *FOIPP Act* prohibits public bodies from disclosing personal information if disclosure would be an unreasonable invasion of someone's personal privacy.

[13] Commissioner Doiron asked the Applicant for their submissions and described how to approach section 15 of the *FOIPP Act*. Her letter included, in part:

Under subsection 65(2) of the *FOIPP Act*, you have the burden to show why disclosure would not be an unreasonable invasion of personal privacy.

I enclose a copy of section 15. The process is, first, to consider whether any of the circumstances listed in subsection 15(2) are applicable. Subsection 15(2) lists circumstances when personal information is deemed not to be an unreasonable invasion of a third party's personal privacy if disclosed. If any information is determined to satisfy any of the provisions of subsection 15(2), the information will not qualify for the section 15 exception to disclosure, and the analysis ends there. In this matter, we have no expectation that any of the provisions of subsection 15(2) are applicable. However, we will consider any submissions you may make on this point.

If no provisions of subsection 15(2) apply, then we turn next to subsection 15(4), which lists circumstances when personal information is presumed to be an unreasonable invasion of a third party's personal privacy if disclosed. In this matter, we expect section 15(4)(d) to be relevant as it addresses employment history.

Finally, we consider subsection 15(5), which lists relevant factors for consideration both for and against disclosure. The list in subsection 15(5) is not exhaustive, and there may be other relevant circumstances to consider. We are not aware of any relevant circumstances and encourage you to advise us if there are any reasons you should have the names, email addresses, employment information or opinion information.

[14] The Commissioner wrote to the parties and confirmed that the information the Public Body withheld under this provision is personal information. I will review whether disclosure would be an unreasonable invasion of personal privacy, under the headings of each type of personal information that Commissioner Doiron described as follows:

- a) the names and the identifying part of email addresses in emails from citizens to the Premier at pages 215, 241, and 242 of 408;
- b) email addresses from pages 401-407. These pages are part of a table entitled "Premier's Economic Forum RSVPs". The table lists 159 people and their email addresses. The Public Body disclosed individuals' names, but withheld almost 30 of the 159 email addresses;
- c) opinions about someone other than the Applicant at page 360 of 408; and
- d) educational history of one individual from page 403 of 408, which is part of the above noted table entitled "Premier's Economic Forum RSVPs".

a) Names and identifying parts of email addresses in two emails to the Premier

[15] A few citizens emailed the Premier supporting the Applicant's proposal. The Public Body disclosed the content of the emails but withheld the names of the authors and the parts of the email address that would identify the authors.

[16] The citizens used their personal email addresses. In Order No. FI-16-008, *Re: Department of Communities, Land and Environment*, 2010 CanLII 101628 (PE IPC), former Commissioner Karen A. Rose held that use of personal emails weighs in favour of finding that disclosure would be an unreasonable invasion of personal privacy for two reasons. The first reason was because it suggested the information was submitted in confidence under section 15(5)(f) of the *FOIPP Act*, and the second reason was because it would

expose third parties unfairly to harm under section 15(5)(e) of the *FOIPP Act*. The fact that they are citizens' personal email addresses weighs in favour of finding that disclosing them would be an unreasonable invasion of their personal privacy [see also Order F16-52, *Re: Office of the Premier*, 2016 BCIPC 58 (CanLII), at paragraphs 80 and 81.]

[17] The Applicant mentioned section 15(5)(a) of the *FOIPP Act* which says a public body should consider whether disclosure is desirable to subject the activities of the public body to public scrutiny. The Applicant did not explain, nor is it clear from the context, how the withheld personal information relates to any government activities. I find that section 15(5)(a) is not relevant to considering whether disclosure would be an unreasonable invasion of the third parties' personal privacy.

[18] The Applicant also mentioned section 15(5)(c) of the *FOIPP Act*, which says a public body should consider whether the withheld personal information is relevant to a fair determination of an applicant's rights. The Applicant states:

When the creator of a communication expresses a specific and relevant knowledge or expertise in the subject matter in dispute, I submit that the "disclosure" of personal information "*name, email and educational history*" is relevant to a fair determination of the applicant's rights [*brief description of the Applicant's dispute*].

[19] None of the withheld personal information relates to "a specific or relevant knowledge or expertise in the subject matter in dispute". The withheld personal information does not relate to a fair determination of the Applicant's rights. I find that section 15(5)(c) is not relevant to considering whether disclosure would be an unreasonable invasion of the third parties' personal privacy.

[20] I considered whether there were any other factors that would weigh for or against finding that disclosure would be an unreasonable invasion of the citizens' personal privacy. The authors do not say whether their opinions are their personal or their professional opinion,

or if they represent any organization or business. I see nothing else that is relevant to this assessment of whether disclosure would be an unreasonable invasion of third party's personal privacy.

[21] The Applicant has not met their burden of proof, and I find that disclosing the names and identifying parts of personal email addresses would be an unreasonable invasion of the third parties' personal privacy under section 15 of the *FOIPP Act*. I confirm that the Public Body is required to withhold third parties' names and the identifying parts of the email addresses at pages 215, 241, and 242 of 408.

b) Email addresses

[22] One of the records is called the "Premier's Economic Forum RSVPs" and is a list of attendees and their email addresses. The Public Body disclosed the names of all the people and the professional email addresses but withheld the private email addresses.

[23] As noted above, Order No. FI-16-008, *supra*, held that if the information is personal email addresses, it weighs in favour of finding that disclosure would be an unreasonable invasion of personal privacy. The Applicant mentioned sections 15(5)(a) [public scrutiny], and 15(5)(c) [fair determination of rights], but neither is applicable to the withheld personal email addresses.

[24] The Applicant has the burden of proof under section 65(2) of the *FOIPP Act*, but their submissions do not address the personal email addresses. I see nothing else that is relevant to this assessment of whether disclosure would be an unreasonable invasion of third party's personal privacy.

[25] I find that the Applicant has not met their burden of proof, and that disclosing these personal email addresses would be an unreasonable invasion of the third parties'

personal privacy under section 15 of the *FOIPP Act*. I confirm that the Public Body was required to withhold third parties' personal email addresses from the table labelled "Premier's Economic Forum RSVPs" pages 401-407 of 408.

c) Opinions

[26] The Public Body withheld opinions from two paragraphs on page 360 of 408. The opinions are not about the Applicant, their business, or their proposal.

[27] The Applicant mentioned sections 15(5)(a) [public scrutiny], and 15(5)(c) [fair determination of rights], but neither is applicable to the withheld opinions. I considered whether there were any relevant circumstances under section 15(5) of the *FOIPP Act*. Section 15(5)(f) of the *FOIPP Act* says a relevant circumstance to consider when deciding whether disclosure would be an unreasonable invasion of personal privacy is if it was supplied in confidence. The author labeled the email *confidential* in the subject line. The fact that the opinions were supplied in confidence weighs in favour of finding that disclosure would be an unreasonable invasion of personal privacy under section 15(5)(f) of the *FOIPP Act*.

[28] The Applicant has the burden of proof under section 65(2) of the *FOIPP Act*, but their submissions do not address the opinions. I see nothing else that is relevant to this assessment of whether disclosure would be an unreasonable invasion of third party's personal privacy.

[29] I find that the Applicant has not met their burden of proof, and that disclosing the opinions would be an unreasonable invasion of the third party's personal privacy under section 15 of the *FOIPP Act*. I confirm that the Public Body is required to withhold the third party's opinions on page 360 of 408.

d) Educational history

[30] Page 403 of 408 is part of the above noted list called the "Premier's Economic Forum RSVPs". In addition to the personal email addresses, the Public Body withheld one word after one person's name, which the Public Body says is their educational history.

[31] The Applicant did not identify the information or pages at issue, but states:

I submit that the "disclosure" of personal information "*name, email and educational history*" (credentials identifying an individual as a "subject matter expert") provided by citizens to a government public body where the submission contains relevant critical information on a matter of public importance, poses a minimal risk of harm while ensuring the free flow of informed idea or opinion while promoting public confidence through transparency in government operations.

[32] The Applicant referred to "credentials identifying an individual as a "subject matter expert"", but we could not identify any such credentials. The Applicant does not know what information was withheld and may have believed that the information that the Public Body described as educational information of an attendee were their credentials.

[33] I confirm that the information is the personal information of an individual, but I also considered whether it is their "educational history" as the Public Body describes. If so, section 15(4)(d) of the *FOIPP Act* presumes disclosing someone's educational history is an unreasonable invasion of their personal privacy. The word does not disclose a level of education or a field of education. It relates to education, but I do not agree that the withheld word is "educational history". I find that the presumption at section 15(4)(d) of the *FOIPP Act* does not apply.

[34] As noted above, the Applicant mentioned sections 15(5)(a) [public scrutiny], and 15(5)(c) [fair determination of rights], but neither is applicable to the withheld information.

[35] I considered whether disclosure would be an unreasonable invasion of personal privacy without considering section 15(4)(d) [educational history]. Without disclosing the information at issue, a provision of section 15(2) may apply, which deems disclosure of this information is not an unreasonable invasion of personal privacy. Also, this individual has publicly disclosed this information about themselves. I find that it would not be an unreasonable invasion of this person's personal privacy to disclose this word.

[36] As it would not be an unreasonable invasion of a third party's personal privacy to disclose the word described as educational history at page 403 of 408, I find that the Public Body did not properly apply section 15 of the *FOIPP Act*.

Issue 3 – Was the Public Body authorized to withhold information under section 25(1)(a) [solicitor-client privilege]?

[37] The Public Body claims 266 pages are subject to solicitor-client privilege, and refused access under section 25(1)(a) of the *FOIPP Act* which states, in part:

25. (1) The head of a public body may refuse to disclose to an applicant
(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege;

...

[38] In *Solosky v. The Queen*, 1979 CanLII 9 (SCC), the Supreme Court of Canada set out a three-part test for determining if a document meets the criteria for solicitor-client privilege, namely:

- a) there must be a communication between a solicitor and their client;
- b) the communication must entail the seeking or giving of legal advice; and
- c) the communication must be intended to be confidential by the parties.

[39] There have been other decisions since then on the parameters of solicitor-client privilege, including confirming that this privilege applies to internal documents discussing legal advice, if the client is not waiving their privilege.

[40] The Public Body elected not to give us a copy of the records they claim are subject to solicitor-client privilege, as they are permitted to do. The Public Body gave affidavit evidence about the records. Our role is to assess whether we can recognize the presence of the elements of solicitor-client privilege from the evidence [Order FI-22-003, *Re: Department of Transportation and Infrastructure*, 2022 CanLII 19199 (PE IPC), at paragraph 11.]

[41] For each document, the Public Body confirms that the withheld information is communications between their Public Body and external legal counsel, regarding legal advice, and that they intended the communications to be confidential. I have enough evidence to recognize all the elements of solicitor-client privilege set out in *Solosky, supra*. The Public Body satisfied their burden to prove that the information that the Public Body withheld is subject to solicitor-client privilege. I find that section 25(1)(a) of the *FOIPP Act* applies and authorizes the Public Body to withhold 266 pages.

V. SUMMARY OF FINDINGS

[42] Although initially the Public Body's search was inadequate, I find that the Public Body fulfilled its duty to assist the Applicant by conducting an adequate follow-up search for records.

[43] I find that disclosure of the following information would be an unreasonable invasion of the third parties' personal privacy, and that section 15 of the *FOIPP Act* required the Public Body to withhold this information:

- a) The names and the identifying part of email addresses in emails from citizens to the Premier at pages 215, 241, and 242 of 408,
- b) People's private email addresses on a list of people invited to an economic forum, at pages 401-407, and
- c) Opinions about someone other than the Applicant at page 360 of 408.

[44] I find that one word withheld from the list of people invited to an economic forum at page 403 of 408 is not “educational history” of an individual as the Public Body claimed. I further find that it would not be an unreasonable invasion of this person’s personal privacy to disclose this word. I find that section 15 of the *FOIPP Act* did not allow the Public Body to withhold this information.

[45] I find that the Public Body properly applied section 25(1)(a) of the *FOIPP Act* [solicitor-client privilege], and that they were authorized to withhold these pages from the Applicant.

VI. CONCLUSION

[46] For the reasons given above, I make the following order under section 66 of the *FOIPP Act*:

- a) I confirm that the Public Body’s searches were adequate.
- b) Subject to item (c) below, I confirm the Public Body’s decisions to withhold personal information under section 15 of the *FOIPP Act*.
- c) The Public Body was not allowed under section 15 of the *FOIPP Act* to withhold the one the one word at page 403 of 408 that the Public Body described as “educational history”. I order the Public Body to give the Applicant access to this information.
- d) I confirm the decisions of the Public Body to withhold solicitor-client privileged information.

[47] In accordance with section 67 of the *FOIPP Act*, this order is final. However, a party may apply for a judicial review of this Order under the *Judicial Review Act*, RSPEI 1988, Cap J-3.



Maria C. MacDonald
Deputy Commissioner