



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

**Order No. OR-26-002
(file C/24/00069, formerly FI-22-446)**

Re: Executive Council of PEI

**Maria C. MacDonald
Deputy Commissioner**

January 16, 2026

Summary:

The Applicant asked for a review of the Executive Council of PEI's response to their request for records about the Applicant and their business. The Deputy Commissioner confirmed the Public Body's decisions to withhold information under sections 22(1)(g) [advice from officials], and 25(1)(a) [solicitor-client privilege].

The Deputy Commissioner found that section 15 [unreasonable invasion of personal privacy] required the Public Body to withhold the personal information except for one word.

The Deputy Commissioner found that section 18(1)(k) [security of a computer system] authorizes the Public Body to withhold a web address but did not authorize the Public Body to withhold partial pathways and ordered the Public Body to disclose the partial pathways to the Applicant.

Statutes cited:

Freedom of Information and Protection of Privacy Act, RSPEI 1988, c F-15.01, sections 15, 18(1)(k), 22, and 25(1)(a)

Cases Considered:

Merck Frosst Canada Ltd. v. Canada (Health), 2012 SCC 3 (CanLII)

Order FI-19-005, *Re: Dept of Workforce and Advanced Learning*, 2019 CanLII 32855 (PE IPC)

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

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

Order F2021-34, *Re: Justice and Solicitor General*, 2021 CanLII 86246 (AB OIPC)

Order F14-45, *Re: Ministry of Health*, 2014 BCIPC 48 (CanLII)

Order PA18-100, *Re: Ministry of Health*, 2023 CanLII 39540 (ON IPC)

Order F21-50, *Re: Ministry of Health*, 2021 BCIPC 58 (CanLII)

Order F25-67 *Re: Ministry of Attorney General*, 2025 BCIPC 77 (CanLII).

I. BACKGROUND

[1] An individual (the "Applicant") made a business proposal to the Government of PEI. The Applicant asked the Executive Council of PEI (the "Public Body") for records about the Applicant and the Applicant's business over a 21-year span. The Public Body found 282 pages and withheld some information under the following sections of the *Freedom of Information and Protection of Privacy Act* (the "FOIPPA Act"):

- 15(1) – unreasonable invasion of personal privacy,
- 18(1)(k) – security of an electronic system,
- 22(1)(g) – advice from officials, 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 the Public Body's decisions to withhold information. The Applicant's

concerns about the adequacy of the search related to email attachments. These concerns were resolved. 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: Section 15 – would disclosing a third party’s personal information be an unreasonable invasion of their personal privacy?

Issue 2: Section 18(1)(k) – did the Public Body properly determine that disclosing information would risk the security of an electronic system?

Issue 3: Section 22(1)(g) – did the Public Body properly determine that disclosing information would reveal advice, proposals, recommendations, analyses, or policy options? and

Issue 4: Section 25(1)(a) – did the Public Body properly claimed solicitor-client privilege?

III. BURDEN OF PROOF

[4] Both the Applicant and the Public Body have a burden of proof, depending on the issue. Section 65(1) of the *FOIPP Act* says a public body has the burden to show that they properly applied a provision if they withheld information from an applicant. 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 it would not be an unreasonable invasion of the third party’s personal privacy under section 15 of the *FOIPP Act*.

[5] In this review, the Public Body has the burden to show that they properly applied sections 18(1)(k) [security of an electronic system], 22(1)(g) [advice, proposals, recommendations analyses or policy options], and 25(1)(a) [solicitor-client privilege] of the *FOIPP Act*, and

the Applicant has the burden to show that disclosing a third party's personal information would not be an unreasonable invasion of their personal privacy.

IV. ANALYSIS

Issue 1 – would disclosing a third party's personal information be an unreasonable invasion of their personal privacy?

- [6] The Public Body withheld information on pages 96 and 97, and pages 132 to 137 under section 15 of the *FOI/PP Act*, which would prohibit a public body from disclosing personal information if disclosure would be an unreasonable invasion of someone's personal privacy.
- [7] Among the responsive records is a table of access requests to the Executive Council and the Premier's Office over a six-month period in 2020. The record is responsive because the table includes the wording of the Applicant's access requests. The Public Body disclosed the names of government employees, officials, and other public figures, but withheld an individual's name in two places on pages 96 and 97. The name and access requests are not related to the Applicant or their business.
- [8] When reviewing section 15, we first consider whether it is a third party's "personal information" as defined in the *FOI/PP Act*. We confirmed to the Applicant that the third party's name is their personal information.
- [9] Commissioner Doiron gave the Applicant a copy of section 15 of the *FOI/PP Act* and described how to approach an analysis of whether disclosure would be an unreasonable invasion of personal privacy. The approach to analyzing section 15 is well-established in prior orders of this office and I will not repeat it here. The Commissioner asked the Applicant for their submissions.

[10] The Applicant gave submissions but did not address the withheld name. I considered the context of the record. None of the circumstances listed in either sections 15(2) or 15(4) apply. Therefore, the focus is whether there are any relevant factors to consider either for or against disclosure under section 15(5) of the *FOIPP Act*.

[11] It appears that this person asked for records about themselves. This weighs in favour of finding that disclosure would be an unreasonable invasion of the third party's personal privacy.

[12] I am not aware of any other circumstance that is relevant to an assessment of whether disclosure would be an unreasonable invasion of third party's personal privacy.

[13] I reviewed the information and find that the Public Body properly applied section 15 to the name. I confirm the decision of the Public Body to withhold a third-party's name from pages 96-97.

[14] The Public Body withheld personal information from pages 132 to 137 which is a table entitled "Premier's Economic Forum RSVPs". This record was also responsive to another access request of the Applicant to the Office of the Premier. The Office of the Premier also decided to withhold the same personal information under section 15. The Applicant requested a review of the Office of the Premier's decision, which was addressed in Order OR-26-001.

[15] The Applicant gave the same submissions and there are no additional considerations. I will not repeat the analysis here but have relied on the analysis described in Order OR-26-001. I make the same finding that section 15 of the *FOIPP Act* required the Office of the Premier to withhold personal email addresses but did not require them to withhold one word that the Public Body described as "educational history".

Issue 2 – Did the Public Body properly determine that disclosing information would risk the security of an electronic system?

[16] Section 18(1)(k) of the *FOIPP Act* states:

18(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system;

...

[17] The Public Body withheld small portions of information under section 18(1)(k) of the *FOIPP Act*, specifically:

- a) a link to a document sharing website at page 82 (duplicate at page 222), and
- b) partial pathnames in email footers at pages 160, 217-221, and 223-229.

[18] When requesting submissions, the Commissioner told the Public Body that they must show a clear and direct connection between disclosing the information and a reasonable expectation of the alleged harm(s). A public body does not have to prove that the harm(s) will occur but must show that it is something beyond a mere possibility (see *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII), [2012] 1 SCR 23, at paragraph 197).

[19] There have been attempts to attack government's computer systems and the consequences of an attack could be serious. This Public Body would have sensitive records about the strategic leadership of the province. The Applicant confirmed that they wanted our office to review the Public Body's decision to withhold this information but did not give any response submissions about section 18 of the *FOIPP Act*. Although the Public Body's evidence is unchallenged, I must nevertheless determine whether the Public Body properly applied section 18(1)(k) of the *FOIPP Act*.

[20] I will address the web address, then the partial pathnames in the email footers.

a) Web address

[21] The Manager of Security Services from the province's Information Technology Shared Services (ITSS) gave affidavit evidence that the disclosure of the web address would risk the security of the system because a hacker can use the website address to devise attacks on the Government's computer system. The alleged harm is that bad actors could gain unauthorized access to sensitive documents.

[22] The Manager of Security Services did not address their security measures but describes it as a "secured site". The website is still active on the provincial intranet. I did not attempt to login but saw that it requires an email address and password. Revealing the web address alone does not give anyone access to the records on this site.

[23] The ITSS' position is that the web address together with publicly available email addresses could be used by bad actors to devise attacks on Government's computer system. I accept this evidence. If a bad actor was on the intranet, with the web address and email addresses, the information would only be protected with passwords, which may not be enough to protect the sensitive information.

[24] I confirm that section 18(1)(k) of the *FOIPP Act* authorizes the Public Body to withhold the web address but recommend that the Public Body ensure that their sensitive documents on shared sites be secured with more than just email addresses and passwords.

b) Partial pathnames in the email footers

[25] When provincial employees printed an email using the old email system, it automatically included a partial path and file name in the footer. Without revealing the pathnames, they include the directory/subdirectory/sub-subdirectory/etc. The last part of the pathnames is a string of letters and numbers and ends in an ellipsis (. . .). ITSS

recommends public bodies withhold these partial pathnames. On this advice the Public Body disclosed the content of the emails but withheld the partial pathnames in the footers.

[26] The Manager of Security Services gave affidavit evidence that disclosure would risk the security of the system because a hacker can use partial pathways to devise attacks on the Government's computer system. Neither the Public Body nor ITSS say they are concerned about the Applicant hacking into the province's computer system. The *FOIPP Act* does not govern or restrict what an applicant does with the records they receive, so disclosures to any applicant are considered disclosure to the world. If an applicant makes the partial pathnames known, e.g., post it online, ITSS fears that hackers could use this information to attack the government computer system.

[27] The Public Body referred us to decisions from Alberta and British Columbia that accepted that similar provisions authorized public bodies to withhold pathnames and other information¹. But there are also decisions in which the adjudicators did not accept that disclosure of file and pathnames could reasonably be expected to compromise the security of a computer system or allow unauthorized individuals to infiltrate the computer systems². I did not find a uniform consensus among other provinces about whether disclosing pathnames could allow unauthorized individuals to infiltrate the computer system.

[28] Employees from the provincial information technology services are concerned about bad actors using the partial file pathways to access the Public Body's computer system and cause significant harm. Neither the Public Body nor ITSS explained how bad actors could use the pathway information. I asked the Public Body and ITSS several questions. ITSS

¹ Order F2021-34, *Re: Justice and Solicitor General*, 2021 CanLII 86246 (AB OIPC) and Order F14-45, *Re: Ministry of Health*, 2014 BCIPC 48 (CanLII).

² Order PA18-100, *Re: Ministry of Health*, 2023 CanLII 39540 (ON IPC), Order F21-50, *Re: Ministry of Health*, 2021 BCIPC 58 (CanLII), and Order F25-67 *Re: Ministry of Attorney General*, 2025 BCIPC 77 (CanLII).

responded on an *in-camera* basis, meaning I agreed to not share their response with the Applicant or include it in this decision. I am not persuaded that disclosing the partial pathways could reasonably be expected to harm the security of government's computer systems.

[29] I find that the Public Body did not properly apply section 18(1)(k) of the *FOIPP Act* to the partial file pathnames in the footers at pages 160, 217-221, and 223-229, and the *FOIPP Act* does not authorize the Public Body to withhold this information.

Issue 3 – whether disclosure could reasonably be expected to reveal advice, proposals, recommendations, analyses, or policy options

[30] The Public Body withheld a paragraph from pages 22 and 77 (duplicate copies are at pages 78 and 92) under section 22(1)(g) of the *FOIPP Act*, which states:

22(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

...

(g) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;

...

[31] The analysis of section 22 involves assessing:

- whether any of the circumstances listed at section 22(1) applies; and, if so,
- whether any of the circumstances listed at section 22(2) applies; and, if not,
- whether the head of the Public Body properly exercised their discretion to withhold the information.

[32] Page 22 is an email from a *FOIPP* analyst to the head of the Public Body. The withheld information is four options under the heading "options" for the head of the Public Body to consider. Page 77 and duplicates is a draft memo entitled "Executive Council Office Policy Review Committee". Initially the Public Body withheld four paragraphs under the

heading "Recommendation", but during this review they changed their position and disclosed three paragraphs and continued to withhold the fourth paragraph.

[33] On review of the withheld information, I confirm that the information the Public Body withheld on page 22 is advice and analyses, and the withheld information on page 77 is a recommendation.

[34] Previous decisions of our office have held that the criteria for section 22(1)(g) of the *FOIPP Act* are that the advice or recommendation is:

- a) Sought or expected or part of the responsibility of a person by virtue of that person's position,
- b) Directed toward taking an action, including making a decision, and
- c) Made to someone who can take or implement the action.

[35] The work responsibilities of the authors included giving advice and recommendations. The advice and recommendations were directed toward making an action and were made to people who could take or implement the action. I find that section 22(1)(g) of the *FOIPP Act* applies to the information the Public Body withheld at pages 22 and 77.

[36] Section 22(2) of the *FOIPP Act* limits the scope of the exceptions to disclosure listed at section 22(1). As the Commissioner previously told the parties, none of the provisions of section 22(2) apply in these circumstances.

[37] Section 22(1) of the *FOIPP Act* says that the head of a public body *may* refuse to disclose information to an applicant. The head of the Public Body has discretion to provide access or withhold information. I will also consider whether the head of the Public Body exercised their discretion reasonably. The head of a public body must show that all relevant factors for and against access were considered in a balanced and judicious manner when making their determination. For a list of potentially relevant considerations

see for example, Order FI-19-005, *Re: Department of Workforce and Advanced Learning*, 2019 CanLII 32855 (PE IPC), at paragraphs 70 to 74.

[38] With respect to the information the Public Body withheld on both pages 22 and 77, the Public Body submitted that they “acted in a balanced and judicious manner as it took all such relevant factors into consideration” and considered the following:

- The general purposes of the exception and the Act, including the purpose of making information available to the public;
- The goal of promoting candid discussion among and advice from those tasked with providing advice to officials;
- The fact that the advice, proposals or options are considered by the Public Body to be sensitive;
- The fact that the information consists of advice, proposals or options concerning dealing with multiple and concurrent access to information requests submitted by the Applicant;
- The fact that the Applicant may be interested in how their access to information requests were processed;
- The Public Body's historical practices;
- The fact that the Public Body exercised their discretion pursuant to subsection 22(1) sparingly when responding to request EX 2021-409 with the intent to disclose as much as possible to the Applicant;
- Past orders issued by [the Office of the Information and Privacy Commissioner of PEI];
- The fact that public confidence in the operation of the Public Body is not likely to be impacted by disclosure of this information;
- The fact that the Applicant has made allegations and threats against Government.

Taking all facts and circumstances into account, the Public Body determined that the factors weighing against disclosure outweighed those favoring disclosure and exercised its discretion to protect this information on page 22 of the responsive records.

[39] The Public Body had additional submissions about this provision and advised that they also considered:

- The interest that the Applicant has in the record; and

- The Public Body's historical practice not to disclose recommendations of this nature.

[40] I asked the Public Body for more information about allegations and threats. The Applicant strongly advocated their business proposal, but I did not see any threats among the responsive records. The Public Body says the allegations are the Applicant's recital of past dealings with the province, and the threat is that the Applicant advised that they planned to take legal action against Government. The Applicant confirmed that they were considering commencing legal action but also says that this is the acceptable and appropriate mechanism for resolving a dispute. The Applicant did not threaten to harm or injure someone.

[41] I considered whether a potential legal action is an appropriate consideration when assessing whether to withhold or disclose information. As previous orders have remarked, one of the purposes of the section 22 exception is to provide a deliberative space to encourage employees to give candid analysis or recommendations. I accept that the threat of legal action is a relevant consideration that may weigh in favour of withholding information to protect the decision-making process.

[42] The Public Body listed relevant considerations, particularly the purposes of the *FOIPP Act*, the exemption at issue, the interests that this exemption seeks to protect, and that the Public Body applied section 22 conservatively and only withheld the substance of the proposals or recommendation.

[43] I find that the information the Public Body withheld at pages 22 and 77 meets the criteria of section 22(1)(g) of the *FOIPP Act*, and the head of the Public Body exercised their discretion reasonably.

[44] Based on the foregoing, and upon my review of the withheld information, I find that the head of the Public Body properly applied section of the *FOIPP Act*.

Issue 4 - whether solicitor-client privilege applies

[45] The Public Body refused access to 49 pages under section 25(1)(a) of the *FOI/PP Act*, claiming they are subject to solicitor-client privilege. Section 25(1)(a) states:

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;

...

[46] Solicitor-client privilege protects the confidential relationship between a client and their lawyer. In *Solosky v. The Queen*, 1979 CanLII 9 (SCC), the Supreme Court of Canada set out three 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.

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

[48] As a public body is permitted to do, the Public Body elected not to give us a copy of the records they claim are subject to solicitor-client privilege. Instead, they gave us affidavit evidence about their claim. 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.]

[49] The Public Body's affidavit evidence is that these records consist of:

- a. confidential communications between a lawyer and a public body in the course of giving or seeking of legal advice; or,

- b. communications made within the framework of the solicitor-client relationship and forming part of the continuum of communication in the giving or seeking of legal advice that were intended to be confidential; or,
- c. records containing internal discussions about solicitor-client communications or share confidential legal advice between a solicitor and a public body in the course of giving or seeking of legal advice that were intended to be confidential.

[50] Appended to the affidavit is a table with descriptions of the records. There are eight documents which appear to relate to two types of solicitor-client relationships: one involving an internal lawyer, and the other involving an external lawyer.

[51] I will address each of these solicitor-client relationships.

a. Solicitor-client relationship between the Public Body and an internal lawyer

[52] There are four documents representing 39 pages that relate to a solicitor-client relationship between the Public Body and an internal lawyer. I have enough evidence in the affidavit and appended descriptions to recognize all the elements of solicitor-client privilege set out in *Solosky, supra*.

b. Solicitor-client relationship between an external lawyer and the Government

[53] There are four documents representing 10 pages (including duplicates) that relate to a solicitor-client relationship between an external lawyer and Government.

[54] The Public Body affidavit evidence is that they have not waived their privilege, stating, in part:

To the best of my knowledge, the Public Body has not waived privilege; and, the records have not been made public and have only been shared internally when access to them was required to satisfy employment or contractual obligations.

[55] This contradicts the descriptions of these records which say that legal instructions, and legal advice was “discussed or shared” with an employee of another office from within government. I am not aware of any employment or contractual obligations that would warrant a public body disclosing privileged information to another office. I asked the Public Body for further explanation.

[56] The Public Body gave a supplementary affidavit confirming that the Public Body only shared the information internally within Government, and advised in part, that:

The reference to internally was meant to refer to internally within Government. In the case of those privileged records in this matter where solicitor-client communications were shared or discussed with an employee of another office in Government, circumstances were such that more than one office within Government was involved with the related dispute and legal counsel.

This is not surprising given the fact that the Applicant has made attempts to make an agreement by contacting more than one public body within Government. . . .

[57] A lawyer may represent the entire provincial Government, or more than one public body together. As set out in section 3 of the *Executive Council Act*, the Executive Council is responsible for the executive government of the province, and I expect they could be involved in decisions about the legal position of Government.

[58] With respect to the four documents that relate to the solicitor-client relationship between Government and an external lawyer, I have enough evidence to recognize all the elements of solicitor-client privilege.

Summary of solicitor-client privilege claims

[59] The Public Body satisfied their burden to prove that the information that the Public Body withheld from the Applicant and from our office in the withheld records is subject to

solicitor-client privilege. I am satisfied that the Public Body properly applied section 25(1)(a) of the *FOIPP Act* to withhold information from the Applicant.

V. FINDINGS

[60] I find that:

- a. section 15 of the *FOIPP Act* requires the Public Body to withhold the third party's name from pages 96-97, and the third parties' personal email addresses from pages 132-137.
- b. section 15 of the *FOIPP Act* did not allow the Public Body to withhold one word on page 133 that the Public Body described as "educational history".
- c. section 18(1)(k) of the *FOIPP Act* authorizes the Public Body to withhold the web addresses at page 82.
- d. section 18(1)(k) of the *FOIPP Act* does not allow the Public Body to withhold the partial file pathnames in the footers at pages 160, 217-221, and 223-229.
- e. section 22 of the *FOIPP Act* authorizes the Public Body to withhold the analyses and recommendations from pages 22 and 77 (and duplicates).
- f. section 25(1)(a) of the *FOIPP Act* authorizes the Public Body to withhold 49 pages of solicitor-client privileged information.

VI. RECOMMENDATION

[61] I recommend that the Public Body augment the security for sensitive documents of the Executive Council on shared website(s).

VII. CONCLUSION

[62] I confirm the decisions of the Public Body to withhold the following information from the following provisions of the *FOIPP Act*.

- a. the individual's name on pages 96-97 under section 15;
- b. the third parties' personal email addresses from pages 132-137 under section 15;
- c. the web address at page 82 under section 18(1)(k);
- d. analyses and recommendations at pages 22 and 77 (and duplicates) under section 22; and
- e. 49 pages of solicitor-client privileged information under section 25(1)(a) of the *FOIPP Act*.

[63] I order the Public Body to disclose the one word they described as “educational history” on page 133, and the partial pathways in the footers at pages 160, 217-221, and 223-229.

[64] In accordance with section 67 of the *FOIPP Act*, this order 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.



Maria C. MacDonald
Deputy Commissioner