



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

Order No. FI-22-002

Re: Executive Council Office

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

January 24, 2022

Summary: The Public Body requested authorization to extend the time for responding to the Applicant's access to information request pursuant to clauses 12(1)(b) and 12(1)(c) of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01, and sought an extension to November 30, 2022. This was not the first request for extension in this matter. The Commissioner found that the Public Body had not substantiated that the length of the extension was reasonable. The Commissioner authorized an extension of the Public Body's time to respond to the Applicant's access request, pursuant to clauses 12(1)(b) and 12(1)(c) of the *FOIPP Act*, but for a shorter period than had been requested by the Public Body, and specified certain terms and conditions, pursuant to subsection 66(4) of the *FOIPP Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01, sections 7, 9, 12, and 66.

SUMMARY DECISION

- [1] An applicant (the “Applicant”) made an access to information request to the Executive Council Office (the “Public Body”), pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01 (the “*FOIPP Act*”), referred to by the Public Body as file EX-2018-222, which involved a large number of records spanning a period of approximately 28 years.
- [2] This matter has been on-going for over three years. The history of this access request is long and complicated. It is not necessary to review the history for the purposes of this Order.
- [3] After many hours of search efforts, the Public Body located and retrieved 34,747 pages of potentially responsive records. The Public Body asserts, and I accept, that the review of the retrieved pages is complex and there are multiple third parties and other governments that the Public Body intends to consult prior to the Public Body making a decision on access.
- [4] The Public Body initially extended its time to respond to this request by 30 days, as they are permitted to do pursuant to section 12 of the *FOIPP Act*. The Public Body then made multiple successive requests to the Commissioner for authorization to extend their time to respond to this request, and extensions of various lengths were authorized pursuant to clauses 12(1)(b) [large number of records and unreasonable interference with the operations of the public body] and 12(1)(c) [consultations with others] of the *FOIPP Act*. Some of the extension authorizations had specified conditions.
- [5] On November 30, 2020, I authorized a lengthy extension to the Public Body’s time limit to respond to this access request, to November 30, 2021. In October 2021, as the end of the last extension period was approaching, the Public Body again sought authorization to extend their time to respond, asking to extend the time for response

until November 30, 2022, citing, among other challenges, a large number of records still to be processed and multiple third party consultations still to be completed. The Applicant opposed the Public Body's request for authorization to further extend the time to respond.

[6] I had insufficient information from the Public Body to make a determination, so authorized an interim extension to January 24, 2022, and requested the Public Body to provide further information in relation to their extension request. On January 13, 2022, the Public Body provided additional submissions, along with a work plan.

[7] I am satisfied on the information provided to me by the Public Body that a large number of records was requested and responding within the period set out in section 9 of the *FOIPP Act* would unreasonably interfere with the operations of the Public Body, and also that more time is needed to consult with third parties or other public bodies before deciding whether or not to grant access to records.

[8] Therefore, pursuant to clauses 12(1)(b) and 12(1)(c) of the *FOIPP Act*, I authorize an extension of the Public Body's time to respond to the Applicant's request.

[9] However, I find that the Public Body has not substantiated that an extension until November 30, 2022 is reasonable. Pursuant to clause 66(3)(b) of the *FOIPP Act*, I am reducing the time the Public Body requested, and authorize an extension to the Public Body's time to respond to the Applicant's access request until August 31, 2022, with specified terms and conditions.

[10] Pursuant to subsection 66(4) of the *FOIPP Act*, this Order is subject to the following terms and conditions:

- a) if the Public Body chooses to have legal counsel review the records first to identify records that may be subject to legal privilege, this is to be completed no later than May 31, 2022, with decisions of the Public Body

regarding privilege being made periodically throughout that time. Any records for which privilege is not being claimed will be provided to the Access and Privacy Services Office ("APSO) for processing and disclosure;

- b) the Public Body will continue to disclose records to the Applicant periodically, at a minimum of once per month, and more often if able;
- c) the Public Body shall complete its full and final response to the Applicant's request on or before August 31, 2022;
- d) on or before August 31, 2022, the Public Body will provide the Applicant and our office with an affidavit sworn by a lawyer, providing a detailed description of each record being withheld for privilege, the type of privilege being claimed over each record, and confirmation that the lawyer has reviewed each record and confirms each record over which legal privilege is claimed meets the legal test for the type of privilege claimed; and
- e) the Public Body will provide monthly reports to our office by the end of the first full week of each month, commencing the first full week of February 2022, with an update on the progress made on responding to this request for the previous month, and a detailed plan of the work expected to be accomplished in the upcoming month. The Public Body will copy the Applicant on all such reports.

[11] I thank the parties for their submissions in this matter.

[12] In accordance with section 67 of the *FOIPP Act*, the Commissioner's 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.

Signed: Denise N. Doiron

Denise N. Doiron
Information and Privacy Commissioner