



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

Order No. FI-22-008

Re: Department of Fisheries and Communities

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

November 1, 2022

Summary: A Third Party asked the Commissioner to review the Public Body’s decision to disclose records. When asked, the Third Party would not advise the Commissioner what information is at issue and indicated that they would not be participating further. In these circumstances, the Commissioner refused to conduct an inquiry.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01, sections 6, 64.1.

I. BACKGROUND

[1] An individual whom I will refer to as the “Third Party” talked to the media about complaints they had made to the Department of Fisheries and Communities (the “Public

Body”) about the financial administration of a municipality. An applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “*FOIPP Act*”) for records relating to these complaints.

- [2] The Public Body found and retrieved 110 pages of responsive records. The Public Body reviewed the information in the responsive records and determined that 67 of the 110 pages might contain personal information of the Third Party which possibly could be an unreasonable invasion of the Third Party’s personal privacy if they disclosed it to the applicant. If that were so, section 15 of the *FOIPP Act* requires the Public Body to refuse access to the applicant.
- [3] As required by the legislation, before the Public Body made their decision about whether section 15 applied and whether they could give the applicant access to the responsive records, the Public Body notified the Third Party. They told the Third Party that the Public Body was considering disclosing the records and gave the Third Party a brief description of section 15 of the *FOIPP Act*. The Public Body gave the Third Party the opportunity to consent to disclosure or make representations to the Public Body explaining why they felt disclosure would be an unreasonable invasion of their personal privacy.
- [4] The Third Party consented to disclosure of four pages, but opposed the Public Body disclosing the rest of the records to the applicant. The Third Party did not tell the Public Body what information in the remaining records they thought was personal information and would be an unreasonable invasion of their personal privacy if disclosed. The Third Party simply made a blanket assertion that all of the records were a confidential matter and disclosure would hurt their reputation.
- [5] The Public Body considered the Third Party’s representations and decided that it would be an unreasonable invasion of the Third Party’s personal privacy to disclose some personal information, namely part of the Third Party’s email address, a phone number,

and an opinion. However, the Public Body decided it would not be an unreasonable invasion of the Third Party's personal privacy if they disclosed most of the remainder of the content of the responsive records. Because of this, the Public Body decided it was not permitted under section 15 of the *FOIPP Act* to withhold the rest of the information in the records from the applicant.

[6] It should be noted here that subsection 6(2) of the *FOIPP Act* states:

6(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

This means that, if a Public Body decides that some information in a record is excepted from disclosure and other information in the record is not, the Public Body is required to redact (sever/black out) the excepted information and disclose the remainder of the record to an applicant.

[7] Pursuant to the processes under the *FOIPP Act*, before disclosing the information to the applicant, the Public Body advised the Third Party of their decision and intention to disclose the responsive records. The Third Party requested that I review the Public Body's decision.

II. CLARIFICATION SOUGHT

[8] I reviewed the records, but it is not obvious what information the Third Party wanted me to review. I wrote to the Third Party and explained that I needed to determine if the information at issue is the Third Party's personal information before I could decide whether the circumstances warranted conducting a review. To ensure that we did not misunderstand what personal information was at issue, I asked the Third Party to review the responsive records and highlight what information is about them, and that they

believe would be an unreasonable invasion of their personal privacy if it was disclosed. I stated, in part:

In your request for review, you say you do not want the Public Body to disclose your “personal emails”. Using an email address that is not from [identifying information] does not, in and of itself, exclude the contents of the email from an access request under the *FOIPP Act*. I must consider whether any information is about you, and whether it is your “personal information”. The information in the emails appears only to relate to you in your capacity as a [identifying information]. This information may not be personal in nature but could possibly be more appropriately described as being related to your responsibilities as [identifying information].

To ensure that we have not misunderstood what personal information is at issue, please review the responsive records and highlight the information that you feel is about you, and that you assert would be an unreasonable invasion of your personal privacy if it was disclosed. You are welcome to provide any explanation of why you believe it is your personal information and why it would be an unreasonable invasion of your personal privacy if it was disclosed. You may find subsection 1(i) [definition of personal information] and 15 [personal privacy] of the *FOIPP Act*, which is available on the provincial government website, to be helpful.

[9] The Third Party asked for clarification and my assistant responded. The Third Party wrote back but did not identify the information they were claiming to be their personal information. The Third Party expressed frustration with the process, and stated, in part: “Do what you want with the emails as I am not writing any more reasons to ask to not release them.”

[10] As the Third Party still had not identified the information in the records that they considered their personal information, I was concerned the Third Party had not understood my request. In case the Third Party misunderstood my request, I sent another email to the Third Party with a further explanation of what I was looking for, and why.

[11] The Third Party confirmed that they would not be responding further, stating in part:
I wrote my reasons why I am asking your office to not release my emails and paperwork.

If you feel that my reasons are not good enough then do what you have to.

[12] As it was possible that the Third Party was still misunderstanding my request, I emailed the Third Party again with more explanation of what I was looking for, and why. My email stated, in part:

. . . I feel like we're not connecting, so I thought I'd try one more time in case I was not clear in my letter and in our earlier emails to you in this matter...

I understand that you do not want to give us any more reasons about why you don't want your personal information disclosed to the Applicant. However, before I can consider your reasons, I need to know what information is at issue. That is, what information specifically in the records do you consider to be your personal information and that you believe would be an invasion of your personal privacy if the Public Body were to disclose it to the Applicant.

[13] The Third Party responded, in part:

I did not want this stuff to come out in the public but seeing how it already has I see no more effort needed to try and stop it.

[14] The Third Party continued to assert that the records in their entirety should be withheld, despite several explanations that only personal information about them qualifies for potential exemption under section 15 of the *FOIPP Act*, not the full records themselves, and several requests for them to identify what information in the records they considered their personal information.

[15] There is an expectation that a party seeking a review of a Public Body's decision by our office will meaningfully participate in the process. Despite several attempts at receiving clarification, I have been unable to determine what information the Third Party considers to be their personal information that they believe, if disclosed, would be an unreasonable invasion of their personal privacy, and the Third Party has not cooperated in that process.

III. CONCLUSION

- [16] Not every request for a 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, or if the circumstances warrant.
- [17] The Third Party has not told us what information they want us to review. I considered whether it would be appropriate to review the entire record, but my preliminary assessment is that most of the content does not relate to the Third Party in their personal capacity. Although we do not know the full scope of information the Third Party disclosed publicly themselves, we are aware that the Third Party has discussed the content of these records in the public sphere and with the media, and the Third Party does not appear to consider this disclosure to be an unreasonable invasion of their personal privacy. Further, the Third Party appears to acknowledge that the information in the responsive records is public.
- [18] The Third Party came to us to review the Public Body's decisions. For us to do this, we need to know what decisions the Third Party disagrees with and wants us to review. We need the person requesting a review to provide adequate information and cooperate with our office. Although the Third Party asked for this review, they have not responded to reasonable requests to identify the information at issue. They further suggest that they are not willing to participate in the review any further. I reviewed the records and am not able to ascertain what information the Third Party could consider to be their personal information that, if disclosed, would be an unreasonable invasion of their personal privacy.
- [19] In these circumstances I refuse to conduct an inquiry pursuant to subsection 64.1(b) of the *FOIPP Act*. To clarify, I am not making any finding about whether section 15 of the *FOIPP Act* applies.

[20] As I am refusing to conduct an inquiry, subject to the judicial review period, the Public Body is free to act upon its decision regarding access and release the records to the applicant pursuant to their original decision.

Signed: *Denise N. Doiron*

Denise N. Doiron
Information and Privacy Commissioner