



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

Order No. PP-21-002

Re: Department of Transportation and Infrastructure

**Maria MacDonald
Adjudicator**

September 29, 2021

Summary: The Complainant made an access to information request, and on review of the responsive records saw their name included in a couple of emails. The Complainant alleges that these instances are a breach of their privacy. One email is between employees of the Public Body who were working on the same matter. The Complainant's name was already known by the employees, so the adjudicator found that the employee of the Public Body did not "disclose" the personal information to their co-worker.

In the other email, the Complainant's name and an employee's opinion about the Complainant were disclosed to a private citizen. In the circumstances, the adjudicator found that disclosure of the personal information was not an unreasonable invasion of the Complainant's personal privacy, and the Public Body was authorized to disclose the personal information pursuant to clause 37(1)(a.1) of the *FOIPP Act*.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, section 15, clauses 37(1)(a.1), and 37(1)(g)

Decisions Cited: Order FI-17-012, *Re: Department of Education, Early Learning and Culture*, 2017 CanLII 79792 (PE IPC)

I. BACKGROUND

[1] An individual (the “Complainant”) owns property in PEI, and had an opinion about the location and status of a road. The Complainant took some actions based on their beliefs, including installing a fixture. Several people complained about these actions to the Department of Transportation and Infrastructure, formerly known as the Department of Transportation, Infrastructure and Energy, or TIE (the “Public Body”). The Public Body investigated and made a decision about the location and status of the road, which contradicts the Complainant’s opinion.

[2] This privacy complaint arose after the Complainant reviewed records they received on an access to information request. A few emails include parts of the Complainant’s name, and the Complainant alleges that these disclosures were contrary to the *Freedom of Information and Protection of Privacy Act* (the “FOIPPA”). The Complainant states:

Violations of FOIPPA occurred when TIE disclosed of my identity and name. See 4/10/19 email from [family name of an employee of the Public Body] to [name] (a private citizen). See pages 101, 201 and 204.

[3] Former Commissioner Karen Rose delegated this matter to me to investigate, and if necessary, conduct an inquiry and issue an order.

[4] In the context of another review related to the above-noted access to information request, the Public Body provided a copy of the responsive records. The Complainant refers to some of these pages, and the content of some of these records are relevant to assessing the facts and circumstances in this matter.

II. INFORMATION AT ISSUE

[5] One of the people who had complained to the Public Body about the Complainant’s actions emailed the Public Body asking if there was any update on the status of the road. Pages 101, 201, and 204 include this email.

[6] At page 204 an employee forwarded the request for an update to a co-worker in the same Public Body to ask who would respond: “. . . or do you want to handle the contact with him, same as [Complainant’s first name].” There is no other personal information in the email at page 204. The information at issue at page 204 is the Complainant’s first name.

- [7] In the Public Body's response to the person who requested an update, the employee of the Public Body includes the Complainant's honorific (e.g. Mr., Mrs., Ms., Dr., etc), and their family name, and expresses an opinion about an action of the Complainant. I will refer to the person who requested and received the update as the "Recipient". The information at issue is the Complainant's name and the opinion about the Complainant.
- [8] Pages 101 and 201 both include the Public Body's response to the Recipient. I will only refer to page 101 and my findings regarding the information at page 101 are equally applicable to the same information at page 201, and any other duplicates.

III. ISSUES

- [9] The issues of this review are:
- a. Whether the Public Body disclosed personal information at page 204, and if so, whether the Public Body was authorized to do so, and
 - b. Whether the Public Body is authorized by clause 37(1)(a.1) of the *FOIPP Act* to disclose the information on page 101.

IV. ANALYSIS

- [10] On review of pages 101 and 204, and before receiving submissions from the Public Body, I wrote to the Complainant and advised that the *FOIPP Act* does not completely forbid a public body from ever disclosing an individual's personal information, and referred to two clauses of the *FOIPP Act* that authorize a public body to disclose personal information. One of the clauses I referred to is clause 37(1)(a.1) of the *FOIPP Act*, which authorizes a public body to disclose personal information if it would not be an unreasonable invasion of someone's personal privacy. I invited the Complainant to provide further information. In another letter of the same date, I gave the Complainant a brief description, and a copy of section 15 of the *FOIPP Act*, which addresses how to assess whether disclosure would be an unreasonable invasion of someone's personal privacy.
- [11] The Complainant's position remains that disclosure of personal information must be with the individual's consent, and any further analysis is unnecessary. With respect, this view is inconsistent with the *FOIPP Act*.

Issue a: did the Public Body "disclose" personal information at page 204? And if so, was the Public Body authorized to do so?

- [12] The Complainant alleges the information at page 204 was disclosed to the Recipient, but the evidence does not reflect that it was disclosed to the Recipient. I advised the Complainant that the email is between two employees. The Complainant did not give any

submissions specifically related to page 204. But, in the interests of completeness, I will address whether the Public Body disclosed the Complainant's name to the co-worker, and if so, whether it would be authorized by the *FOIPP Act*.

[13] The Public Body acknowledges the information at issue is the Complainant's personal information. Although the Complainant's name was included in the email, the Public Body's position is that their employee did not "disclose" the Complainant's name to their co-worker as the personal information was not disclosed to a third party. The Public Body states: "Page 204 does not contain information being shared by the Public Body with a third party".

[14] Clause 37(1)(g) of the *FOIPP Act* authorizes a public body to disclose personal information to an employee within the public body if the information is necessary for the performance of their duties. The *FOIPP Act* does not authorize a public body to provide personal information to an employee who has no operational need to have that information for their job. The Public Body is not claiming it, and I am not considering whether clause 37(1)(g) of the *FOIPP Act* authorizes disclosure in this review. I mention this provision to illustrate that the Legislature did not intend all employees of a public body to be automatically entitled to receive personal information in their employer's custody or control.

[15] I agree that the personal information was not "disclosed", but for a slightly different reason than claimed by the Public Body. Among the responsive records to one of the Complainant's access requests are emails from both employees to the Complainant. Both employees were working on the issues, and both knew the Complainant's first name. The *FOIPP Act* does not define "disclose", or "disclosure", but ordinary grammatical meanings of the expressions includes making information known or available. In these circumstances, I find that the employee who used the Complainant's first name did not "disclose" the Complainant's personal information.

[16] As I have found that the employee of the Public Body did not disclose the Complainant's personal information to their co-worker, it is not necessary to assess whether a disclosure was authorized.

Issue b: Does clause 37(1)(a.1) of the FOIPP Act authorize the Public Body to disclose the information on page 101?

[17] The Public Body acknowledges that personal information was disclosed at page 101, but claims that disclosure was authorized. The Public Body's position is that this disclosure is not an unreasonable invasion of the Complainant's personal privacy, because the Complainant and the Recipient knew each other. Their position is that disclosure is authorized under section 37(1)(a.1) of the *FOIPP Act*.

[18] One of the circumstances enumerated at subsection 37(1) of the *FOIPP Act* that authorizes a public body to disclose personal information, is if disclosure would not be an unreasonable invasion of that individual's personal privacy. This authorization is set out at clause 37(1)(a.1) of the *FOIPP Act*, and states:

37(1) A public body may disclose personal information only

...

(a.1) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 15;

[19] Clause 37(1)(a.1) incorporates section 15 by reference. The process to consider section 15 of the *FOIPP Act* is set out in many previous orders of this office, and may involve the deeming and presumption subsections. An example of the procedure is set out in Order FI-17-012, *Re: Department of Education, Early Learning and Culture, 2017 CanLII 79792* (PE IPC), at paragraph 94:

[94] The analysis of whether disclosure of the personal information would constitute an unreasonable invasion of personal privacy, may involve the other subsections of section 15 of the *FOIPP Act*, and requires the following steps:

- a. If a party wishes to raise subsection 15(2), it should be dealt with first. This is a deeming provision, so that certain circumstances are deemed not to be an unreasonable invasion of a third party's personal privacy. If one of the exceptions in subsection 15(2) is found to apply, the analysis is at an end, and the information should be disclosed.
- b. The next analysis involves subsection 15(4), and is only reached if subsection 15(2) does not apply. Subsection 15(4) contains examples of circumstances that are presumed to be an unreasonable invasion of privacy. If one or more of the presumptions listed in subsection 15(4) applies to the information at issue, then disclosure of that information is presumed to constitute an unreasonable invasion of privacy of the third party to whom the information relates. Despite any presumptions, however, a factor under subsection 15(5), or a combination of factors, including the other circumstances listed below, may rebut the presumption(s), and lead to disclosure of the information.
- c. In all cases, even if no presumptions of subsection 15(4) apply, all relevant factors favouring disclosure must be balanced against those favouring nondisclosure, pursuant to subsection 15(5), so that a decision can be made regarding whether disclosure would constitute an unreasonable invasion of a third party's personal privacy.

[20] There are two types of personal information on page 101. I will address first the Complainant's name, and then I will address the opinion about the Complainant.

The Complainant's name

[21] The Complainant refers to a few clauses of subsections 15(2) of the *FOIPP Act*, to assert that none applied. The Public Body did not raise any provisions of subsection 15(2) of the *FOIPP Act*, nor have I identified any that apply.

[22] Neither the Complainant nor the Public Body has raised any provisions of subsection 15(4) of the *FOIPP Act*, nor have I identified any that apply. Under subsection 15(5) of the *FOIPP Act*, when making a decision, one must consider all relevant factors in favour of disclosure and balance them against those favouring nondisclosure.

[23] The Public Body states that the Recipient knows the Complainant's name. The Complainant does not believe that this is a relevant factor to consider. I will first consider if prior knowledge is a relevant circumstance in assessing whether disclosure would be an unreasonable invasion of the Complainant's personal privacy.

[24] Referring to Order PP-19-001, *Re: Elections PEI*, 2019 CanLII 32854 (PE IPC), the Complainant position is that it is irrelevant if the Recipient knows their identity from some other source, stating:

. . . In addition, this reasoning is contrary to OIPC's prior ruling in Order No. PP-19-0001, RE Election PEI, OIPC where records of voters who had voted was sought. The requester argued the lists of voters should be disclosed under FOIPPA because the identity of voters could be secured from another source -- recognizing them at the polls. OIPC rejected this argument and ruled this "other source" argument did not justify disclosure of the voters' identity, requiring or allowing production of the records requested.

[25] In Order PP-19-001, *supra*, former Commissioner Rose does not make a finding that it is irrelevant if a recipient knows a voter's identity from some other source.

[26] Some Canadian jurisdictions have held that prior knowledge is a relevant consideration to assess whether disclosure would be an unreasonable invasion of personal privacy. See for example a recent order from the Office of the Information and Privacy Commissioner of British Columbia, Order F21-35, *Re: Ministry of Children and Family Development*, 2021 BCIPC 43 (CanLII), which states at paragraph 207:

[207] Previous OIPC orders have found that it would not be an unreasonable invasion of personal privacy under s. 22 to disclose third party personal information already known to the applicant. An applicant's knowledge of the personal information at issue may be a factor that weighs in favour of disclosure where there is evidence, or the circumstances indicate, that an access applicant likely knows or does know the information at issue.

[27] I find that prior knowledge is a relevant circumstance in assessing whether disclosure is an unreasonable invasion of personal privacy. Each situation must be assessed on its own merits, and this factor must be weighed against any presumptions or other relevant factors. Next, I will consider if the Recipient knew the Complainant's name already.

[28] The Recipient had referred to the Complainant as their neighbour, and I had repeated that description in correspondence to the Complainant. The Complainant objects to any reliance on the Recipient's reference to the Complainant as their neighbour. I will not address what constitutes a "neighbour", but will consider whether the Recipient knew the Complainant's name already.

[29] The Public Body's position is that the Recipient knew the Complainant already. I considered the following circumstances in assessing whether the Recipient knew the Complainant's name:

- a) Among the responsive records of an access to information request, made by the Complainant, is a record that predates page 101 that includes a brief summary of the Public Body's conversation with the Recipient. This summary includes the Complainant's name, which indicates that the Recipient already knew the Complainant's name.
- b) The Complainant met the Recipient on the road and they exchanged their respective views about the status of the road.
- c) The Recipient was very interested in the Public Body's investigation into the status and location of the road, including the following activities that pre-date the email at page 101:
 - asked the Public Body to make a determination on these issues,
 - went to the site to take photographs to give to the Public Body, and gave other evidence to the Public Body about the Complainant's actions on the road,
 - went door-to-door to collect names in a petition opposing the actions of the Complainant,
 - participated in social media discussion, and media reports on the issue of the location and status of the road, and
 - requested an update from the Public Body, to provide to others who were inquiring.
- d) Among the responsive records of an access to information request made by the Complainant is a social media post, in which the Recipient describes the Complainant by their nationality and their home jurisdiction.
- e) Other people in the social media discussion referred to the Complainant by their first name.
- f) Media reports, the social media page, and the petition all refer to the fixture and to the name of the road.
- g) There was province-wide attention to the issue of the status and location of the road. The petition included almost 500 names.

- h) On Prince Edward Island, property ownership documents are public records, and one can inspect the records at a Registry of Deeds, or tax office. This was mentioned in a social media post, after which the Recipient responds including some remarks on the content of the Complainant's Deed, and that they have done "some digging".
- i) The Complainant rents the property as a tourism accommodation and their name, as the contact person, is a public record.

[30] In consideration of the above-noted factors, I am persuaded that the Recipient knew the Complainant's name before the employee sent the email at page 101.

[31] The fact that the Recipient knew the Complainant's name weighs in favour of a finding that disclosure would not be an unreasonable invasion of their personal privacy. This is only one circumstance to consider in assessing whether disclosure of the Complainant's name would be an unreasonable invasion of the Complainant's personal privacy.

[32] The Complainant lists the following circumstances as relevant in the assessment of whether disclosure of their name is an unreasonable invasion of their personal privacy. One of which is:

"Whether [the Complainant] would be exposed unfairly to financial harm. [the Recipient] was trying to and succeeded in getting TIE to [decision of the Public Body regarding the location and status of the road], thereby reducing its value and our acreage; adversely impacting our use and quiet enjoyment of our property. . . ."

[33] The Public Body's decision regarding the status of the road predates the email at page 101. I am not persuaded that disclosure of the Complainant's name would cause the reduction in the value and acreage of their property, or adversely impact their use and quiet enjoyment of their property.

[34] Other circumstances that the Complainant believes are relevant are:

- a) The Recipient's "enmity towards us and his conduct, threats, libels and slanders against us.";
- b) "Whether [the Complainant] would be exposed unfairly to financial harm... and adversely impacting our financial interests by encouraging boycotts of renting our house.";
- c) That disclosure would expose the Complainant to harm including, (referencing the Recipient) "himself or by others he encouraged resulting in additional trespassing on our private property, or by having the [fixture] torn down by TIE or by the marauding vigilantes he encouraged"; and
- d) Disclosure may unfairly damage their reputation.

[35] The Public Body responds to these comments as follows:

While it appears that these matters have been distressing for the [Complainant], the Public Body disagrees that use of their name in an email has exposed or will expose the [Complainant] or anyone or anything else to the harms described by the [Complainant] in their submissions, including exposure to property damage; exposure to financial harm; impact on the use and enjoyment of land; or, damage to anyone's reputation. There is no evidence to substantiate any connection between the use of the [Complainant]'s name and any alleged harm.

[36] The Complainant lists several incidents which the Complainant calls "threats" to their property. The evidence does not support a connection between disclosure of their personal information with any of the Complainant's grievances. For example, a garbage truck drove on their lawn, and when they repaired it, the Complainant alleges that they did not use suitable fill. Most of the incidents are framed by the Complainant's unwavering opinion about the location and status of the road, which does not align with other people's opinions, including the Public Body.

[37] I reviewed the pages of social media discussions that were responsive to the Complainant's request, and that the Complainant provided. The Complainant attributes several statements of other individuals to the Recipient. The Recipient does not threaten the Complainant or the Complainant's rental business as alleged. On the contrary, the Recipient repeatedly encourages others in the discussion group to wait for the Public Body's review of the status and location of the road, and to not take the law into their own hands.

[38] It is not within our jurisdiction to make a determination about whether any statements of the Recipient are defamatory (libelous or slanderous). But for the purposes of assessing whether disclosure is an unreasonable invasion of the Complainant's personal privacy, I am not aware of the Recipient having defamed the Complainant.

[39] I am not persuaded that the Complainant's claims of harms to their safety or their property, or unfair damage to their reputation, are consequences of the Public Body disclosing their last name to the Recipient. In these circumstances, I do not consider these to be a relevant circumstance in assessing whether disclosure would be an unreasonable invasion of the Complainant's personal privacy.

[40] I am not persuaded that the Complainant's claims of unfair exposure to any financial harm, or any other harm, are consequences of the Public Body disclosing the Complainant's last name to the Recipient. In this matter, I do not consider these to be relevant circumstances in assessing whether disclosure would be an unreasonable invasion of the Complainant's personal privacy.

[41] I am satisfied that when the Public Body disclosed the name of the Complainant to the Recipient, it was not an unreasonable invasion of the Complainant's personal privacy, and the Public Body was authorized to disclose the Complainant's name pursuant to clause 37(1)(a.1) of the *FOIPP Act*, in these circumstances.

Opinion information

[42] The author of the email at page 101 also expressed an opinion about a recent action of the Complainant, which is the Complainant's personal information. I had described the opinion information as complimentary, which the Complainant claims is irrelevant.

[43] A public body is not authorized to disclose opinion information for the sole reason that it is complimentary. However, it is relevant to assess whether disclosure would have any impacts which could be a relevant consideration. For example, it should not unfairly damage the reputation of the Complainant, or unfairly cause any financial or other harm. I find that disclosure is not reasonably expected to result in any harm, which weighs in favour of a finding that disclosure would not be an unreasonable invasion of personal privacy.

[44] The personal information is expressed as an opinion, not a fact, and it does not reveal anything meaningful, confidential or sensitive about the Complainant. I find that this weighs in favour of a finding that disclosure would not be an unreasonable invasion of personal privacy.

[45] I am not aware of any other circumstances that are relevant to assess whether disclosure of this opinion would be an unreasonable invasion of the Complainant's personal privacy.

[46] I am satisfied that when the employee of the Public Body expressed their opinion to the Recipient, it was not an unreasonable invasion of the Complainant's personal privacy. As such, the Public Body was authorized to express this opinion pursuant to clause 37(1)(a.1) of the *FOIPP Act*, in these circumstances.

Subsection 37(2) – information reasonably required

[47] The Complainant further asserts that the Public Body disclosed more information than was reasonably necessary, contrary to subsection 37(2) of the *FOIPP Act*, which states:

37(2) Only information that is reasonably required may be disclosed under subsection (1), (1.1) or (1.2).

[48] The Complainant states:

. . . Voluntarily telling [the Recipient] [information about the fixture] is one thing, but the inclusion of my name is unnecessary, not required or allowed under

FOIPPA. My identity was collected by TIE for the purpose of communicating with me. TIE's disclosure of my personal information to [the Recipient] went beyond the purpose for which it was collected (to communicate with me); was done without my consent; and went beyond the extent necessary for the public body to carry out the purpose of communicating with [the Recipient]. As such this disclosure by TIE violated FOIPPA Section 36(1)(a), (b), and (2) and Section 37(2).

[49] In these circumstances, I found that the Public Body was authorized to disclose part of the Complainant's name, and the employee's opinion about the Complainant. The purpose of disclosure was to update the Recipient about the status of the road. The personal information has a direct and logical connection to the update, and I find therefore that it was reasonably required to respond to the Recipient. I am satisfied that the Public Body disclosed the minimum amount of personal information, and has complied with clause 37(2) of the *FOIPP Act*.

V. FINDINGS

[50] In summary, I find that:

- a. Page 204, when one employee emailed another employee, using the Complainant's first name, it was not a disclosure of the Complainant's personal information, and
- b. The inclusion of the Complainant's name and an opinion about the Complainant, in an email at page 101 is not an unreasonable invasion of the Complainant's personal privacy, and the disclosure was authorized pursuant to clause 37(1)(a.1) of the *FOIPP Act*.

VI. CONCLUSION

[51] In consideration of these findings, I make no recommendations, and make no orders.

SGD MARIA MACDONALD

Maria MacDonald,
Adjudicator