

ANNUAL REPORT

2010

**OFFICE OF THE
INFORMATION AND PRIVACY
COMMISSIONER**

PROVINCE OF PRINCE EDWARD ISLAND





**REPORT OF THE
INFORMATION AND PRIVACY COMMISSIONER
FOR THE
PROVINCE OF PRINCE EDWARD ISLAND**

2010



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

Information and
Privacy Commissioner
PO Box 2000, Charlottetown PE
Canada C1A 7N8

Commissaire à l'information et
à la protection de la vie privée
C.P. 2000, Charlottetown PE
Canada C1A 7N8

February 13, 2012

The Honourable Carolyn Bertram, MLA
Speaker of the Legislative Assembly
Province of Prince Edward Island
P.O. Box 2000
Charlottetown, PE
C1A 7N8

Dear Honourable Madam Bertram:

I am pleased to present to you my second annual report. The enclosed 2010 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2010 to December 31, 2010, is the eighth report from this office and is submitted to you pursuant to subsection 59(1) of the *Freedom of Information and Protection of Privacy Act*.

Respectfully,

Maria C. MacDonald
Information and Privacy Commissioner

enclosure

MCM/ms

TABLE OF CONTENTS

	Page
Commissioner's Message	1
Overview of the Office of the Information and Privacy Commissioner	3
Administrative Procedures	3
Website and Resources	3
Proactive Disclosure	4
Judicial Reviews	4
Travel	5
2010 Budget	5
Right to Know Week 2010	6
Update to 2009 Annual Report	8
Legislative Overview of the <i>FOIPP Act</i>	8
Judicial Review of Order PP-08-001	8
Summary of Selected Orders	9
Request to Disregard	9
Access to Information	10
Protection of Privacy	13
Judicial Reviews	13
Statistics: Summary of Requests to Review	15



OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Commissioner's Message:

During the first half of 2010, the office was busy under the leadership of Judy Haldemann as Acting Commissioner. In the first five months she completed seven orders about access to information and one order about protection of privacy. This is an admirable pace for a part-time position.

In June of 2010, I began my five-year appointment in the role as Commissioner. I expected to come in and start making big decisions and contribute right from the start. I quickly discovered that I needed time to get my bearings by reviewing the files and learning the legislation and procedures of our office. It soon became apparent that I also needed to learn the procedures of the provincial government and policies and legislation particular to individual departments. At the time, I estimated that there was a two-year backlog of files; however, my estimate did not include the workload involved in two judicial reviews that had just started before my arrival. I do not attribute the existing backlog to inefficiencies of the office or delays of the provincial public bodies. I attribute the backlog to the consequence of having the position of Commissioner limited to a part-time basis and to limited resources, having only one full-time employee with the responsibility of every other aspect of the office.

My mandate is quite broad for a part-time position. In addition to investigations and reviews, the Commissioner is generally responsible for monitoring how the *Freedom of Information and Protection of Privacy Act* (the "*FOIPP Act*") is administered to ensure that its purposes are achieved. Previous acting commissioners chose to temporarily set aside the task of raising awareness and understanding of the legal rights and obligations that fall under the *FOIPP Act*. In my opinion, these were quite reasonable decisions given the limitations of time and resources provided the position. Even though there is a real thirst for education of the *FOIPP Act*'s issues and procedures in both the public and private sectors, it is a challenge to balance my two objectives of carrying out reviews and promoting the *FOIPP Act*.

When the *FOIPP Act* was introduced, I understand that there was a "traveling road show" led by the Access and Privacy Manager of the provincial government. It included persons who were knowledgeable of the *FOIPP Act* and it had the assistance of the Commissioner. This "implementation team" (as they were labeled) informed employees of the provincial government and other organizations that the team felt would be prime players about the *FOIPP Act*. Only a few of those employees who received this initial education are still working in the area of access to information and protection of privacy. Although there is a great desire by employees of the

provincial government for training in access and privacy matters, it is not within my mandate, nor is it feasible for me to provide such training.

The head of each public body of the provincial government may designate someone as a FOIPP Coordinator, whose job is to administer the *FOIPP Act* on their behalf. The province's Access and Privacy Manager oversees this group. I welcome Kathryn Dickson, who took on the role of Access and Privacy Manager in late 2010. I acknowledge her optimism in facing the many challenges before her, and I look forward to her systematic contributions and successes. I also take this opportunity to thank Frieda MacLaren, the previous manager, and acknowledge her leadership and passion in both areas of access to information and protection of privacy. Frieda was involved since the beginning of the province's development of the access and privacy regime, and she played an integral part in the implementation team's activities leading up to the *FOIPP Act*'s proclamation in November 2002. Our interactions with her were always outstanding. Her extensive understanding of the procedures and legal framework are excellent and she can easily boil down complex requests to their core. Frieda joined a new team and is now working with the province's Information Technology Shared Services Division. She lends her experience and expertise in access and privacy to the related field of security and protection of information on the digital stage. We wish Frieda much success with her new endeavors.

Maria C. MacDonald,
Information and Privacy Commissioner

FOIPP Quote: *"Information is the current that charges accountability in government."* Denis Desautels, former Auditor General of Canada

Overview of the Office of the Information and Privacy Commissioner:

Administrative Practices: I reviewed the administrative practices of the office and I made a few modest changes to the procedures. For example, the general practice on initiation of a review was to direct all communications of the parties to the Information and Privacy Commissioner's office. The complainant or applicant and public body were prohibited from communicating with each other. One of the best pieces of advice I ever received was to keep the lines of communication open in a dispute. The review procedure can be an adversarial process, but stopping communication between the parties restricts the opportunity for the parties to make any progress in the resolution of the dispute on their own.

Website and Resources: In 2010, we added a few new resources to the website, including a search engine for our orders, a manual of FOIPP guidelines and practices, and explanatory notes from our office.

Orders from this office are provided to CanLII.com (Canadian Legal Information Institute), a non-profit, online, legal search database funded by lawyers. CanLII.com provides free internet access to Canadian case law and statutes. In 2010, with the help of IT Services, a search engine was added to our website, www.oipc.pe.ca. People can now search orders specific to this office by keywords. We are providing this tool to facilitate searches for legal rules that have been applied in prior orders issued from this office. We are confident this search engine will be helpful to those involved in access requests and in reviews by this office.

FOIPP Fact: From the enactment of PEI's *Freedom of Information and Protection of Privacy Act* in November 2002, to December 31, 2010, this office has issued 47 orders on reviews of access requests, 3 section 52 authorizations to disregard an access request and 18 orders resulting from privacy complaints.

Although the province has a manual of FOIPP guidelines and practices, it is not available to the public. Our *FOIPP Act* is modeled closely after the Alberta Act, and so too is our guidelines and practices manual. A link to the Alberta FOIP Guidelines and Practices Manual 2009 can now be found on our website under "Forms and Resource Materials". It is our hope that this resource will provide a comprehensive understanding of the components and complexities of the *FOIPP Act*.

Explanatory notes are prepared by the Office of the Information and Privacy Commissioner to assist persons in using our *FOIPP Act*. The office issued its first note in June of 2010 in response to some confusion surrounding legislated time limits. Explanatory notes are intended to provide additional advice and clarification on issues that arise during the course of our investigations and where discussion is found within the content of our orders.

Proactive Disclosure: Many Canadian jurisdictions aggressively promote proactive disclosure. On September 1, 2010, all of the federal, provincial, and territorial Information and Privacy Commissioners made a joint resolution endorsing and promoting open government principles to enhance transparency and accountability. To demonstrate our commitment to a culture of openness, our office started voluntarily posting our expense claims on our website. If I am going to talk to the talk, I need to walk the walk.

2010 Joint Resolution of the Information and Privacy Commissioners of Canada

1. To endorse and promote open government as a means to enhance transparency and accountability which are essential features of good governance and critical elements of an effective and robust democracy.
2. To call on the federal and all provincial and territorial governments to declare the importance of open government, including specific commitments for stronger standards for transparency and participation by the public.
3. Governments should build access mechanisms into the design and implementation stages of all new programs and services to facilitate and enhance proactive disclosure of information.
4. Through ongoing consultations with the public, governments should routinely identify data sources and proactively disclose information in open, accessible and reusable formats. Public access to information should be provided free or at minimal cost.
5. In implementing open government policies, the federal and all provincial and territorial governments should give due consideration to privacy, confidentiality, security, Crown copyright and all relevant laws.

Judicial Reviews: In addition to one ongoing judicial review carried over from 2008, two judicial reviews were started in 2010. Our judicial system is a “checks and balances” system. A judicial review is like an appeal: the court is asked to rule on the appropriateness or reasonableness of an order of this office. Although we joke that it is unpleasant to be accused of being “unreasonable”, we welcome these judicial reviews, as they result in concrete direction on the interpretation of our *FOIPP Act*. A judicial review is another level of review of a potential series of levels to a decision. In a simplified outline, the potential levels of appeal are:

- You make a request for access to information to a public body of the province. The public body makes a decision about your request;
- If you believe the public body's decision is wrong, you may ask the Information and Privacy Commissioner to review it. The Information and Privacy Commissioner makes a decision;
- If you believe the Information and Privacy Commissioner's decision is wrong, you may ask the Supreme Court of PEI to judicially review it. The Supreme Court of PEI makes a decision;
- If you believe the Supreme Court of PEI's decision is wrong, you may appeal to the Appeal Division of the Supreme Court of PEI to review it. The Appeal Division of the Supreme Court of PEI makes a decision;

- If you believe the Appeal Division of the Supreme Court of PEI’s decision is wrong, you may appeal to the nation’s top court, being the Supreme Court of Canada, for a final ruling. There is no appeal to a decision of the Supreme Court of Canada.

FOIPP Quote: “No matter how well crafted a freedom of information law may be, it will not be effective unless the Leader of Government and the Head of the Public Service have the courage to embrace openness.” The Honourable John M. Reid, former Information Commissioner of Canada

Travel: Shortly after I started working at the office, I had the pleasure of joining my fellow colleagues at the Federal/Provincial/Territorial Commissioners Summit in Whitehorse, Yukon. Not only was it beneficial for me to meet my national counterparts within a relatively short period of time after becoming PEI’s Commissioner, it also gave me an avenue to familiarize myself with the pressing issues and the challenges that all of our offices share individually and as a whole. It was quite interesting to discover that besides the sizes of our offices (obviously relative to the size of each province) our commonalities far outweigh our differences.

My assistant traveled to Edmonton, Alberta, in October of 2010, to represent PEI at a Canada Health Infoway (CHI) Pan Canadian Privacy Forum on e-health records in my stead. Travel, accommodations and meal costs were covered by CHI. Although these joint meetings of oversight and medical offices have been ongoing since 2006, this was the first instance that every province had an oversight representative at the table. It was important that our office hear first hand what stage the electronic health records initiative is at and where it is going.

Budget: There is no change to the office’s budget for the 2011/12 year from the 2010/2011 budget.¹

	2011-2012 Budget	2010-2011 Budget
Administration	4,900.00	4,900.00
Materials, Supplies and Services	1,600.00	1,600.00
Professional and Contract Services	1,000.00	1,000.00
Salaries, benefits and contributions	95,800.00	95,800.00
Travel and Training	<u>5,000.00</u>	<u>5,000.00</u>
Total	108,300.00	108,300.00

Although our office has managed to somewhat maintain its expenditures within the budget of past years, the professional and contractual services exceeded our budgeted \$1,000.00 allocation in 2010. Judicial reviews are beneficial, but they are also extremely expensive. Legal costs for judicial reviews in 2010 were close to \$40,000.00.

¹ This information is taken from page 159 of the Prince Edward Island *Estimates of Revenue and Expenditures 2010* as found at: <http://www.gov.pe.ca/budget/2010/estimates.pdf>.

Right to Know Week 2010

FOIPP Quote: *“It is a question of power and we all know that those who have information are those who wield real power. But in a democracy such as ours, power and information must be widely shared ... [Government] information belongs to the people of Canada, unless there is a very specific and fundamental reasons for keeping it secret.”* The Right Honourable Joe Clark

Coming up on the heels of the 2010 Joint Resolution of the Information and Privacy Commissioners for an open government, and one of transparency and accountability, Right to Know Week 2010 was held from September 27 to October 1, 2010. Our office took a new approach to raising the awareness of Islanders of their right to access information held by our provincial government offices. With the assistance of the provincial government and

members of Island media, we had an eventful week.

It started off on Monday with Honourable Doug Currie, then Attorney General, proclaiming September 27 to October 1, 2010 as Right to Know Week in Prince Edward Island.

On Wednesday, Right to Know Day, I joined with some of Canada’s other Commissioners and participated in the “Chat with Commissioner” sessions organized by the federal office. Each day, at a scheduled time, a commissioner would have a live, online chat with Canadians for an hour. Although my chat had technical problems, the experience was quite interesting.

On Thursday evening we hosted a public forum at the Holland College Lecture Theatre to raise public awareness to the strides the provincial government has made in the area of access, while remaining open to areas requiring improvement. The forum was entitled "Policies and Procedures to Access: Success Stories and Areas for Improvement". Joining me on the panel were two representatives from Island media, counsel from Legal Services, and a representative for the provincial access and privacy team.

On Friday we ended the week with a workshop for provincial FOIPP coordinators, focusing on best practices and available resources. Presenters included me, the solicitor of Legal Services responsible for access and privacy issues, the manager of Records Management, and a representative of the Canadian Association of Professional Access and Privacy Administrators (CAPAPA).

In addition to participating in a brief radio interview on a morning talk show, promotional advertising for Right to Know week was placed in the Guardian newspaper, including an editorial and a daily quote attached to the national Right to Know logo. The PEI Public Service Commission Community Newsletter published an article we submitted, and we posted a multiple-choice Access to Information Quiz and a Right to Know Fact Sheet on our website. Bookmarks reflecting quotes on access to information made by notorious Canadians were created and distributed. These quotes have been placed throughout this report.

The creation of the Grace-Pépin Access to Information Award was announced during the 2010 Right to Know Week. Introduced by the Office of the Information Commissioner of Canada in collaboration with provincial and territorial counterparts, the Grace-Pépin Access to Information Award is presented in memory of John Grace (1927-2009), former Information Commissioner of Canada, and Marcel Pépin (1942-1999), president and founder of the Commission d'accès à l'information du Québec. These two public figures contributed significantly to the development and promotion of access to information principles in Canada. The award recognizes the efforts of an individual, group or organization that contributes in a significant way to promoting and supporting the principles of transparency, accountability and the public's right to access information held by public institutions. Following a candidate assessment conducted by a selection committee comprising of federal, provincial and territorial experts, the first award was presented during the International Conference of Information Commissioners in Ottawa on October 3, 2011.



Update to 2009 Annual Report

Legislative Overview of the FOIPP Act:

In 2009, I reported on a comprehensive review of the *FOIPP Act* that was carried out by the Standing Committee on Community Affairs and Economic Development. The Committee endorsed 16 recommendations brought forward by Acting Commissioner Judy Haldemann. Since that reporting, and by letter dated March 15, 2011, the Acting Deputy of the former Department of Justice and Public Safety confirmed that the department will not be recommending any amendments to the FOIPP legislation at this time.

FOIPP Quote: *“The overarching purpose of access to information legislation - is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”* The Honourable Mr. Gerard La Forest, former Judge of the Supreme Court of Canada

Judicial Review of Order No. PP-08-001:

Two judicial reviews filed against the 2008 Order PP-08-001 have come to a close. The decision in Order PP-08-001 found that the Eastern School District was authorized to disclose certain personal information of the Complainant, but that it improperly attempted to collect certain personal information of the Complainant. Both parties to the review applied to have the order judicially reviewed. In 2009, I reported on the outcome of the judicial review applied for by the Eastern School District. Since that time, the Complainant, who claimed an error in the ruling on the authority of the Public Body to disclose personal information, filed a Notice of Discontinuance dated December 6, 2010. The matters of this order and its judicial reviews are now considered complete.

Summary of Orders

Request to Disregard: In 2010, the Office of the Information and Privacy Commissioner received one application to disregard a request for access to information. The Applicant was requesting access to information relating to a re-election made under subsection 473(1) of the *Criminal Code of Canada*. This part of the Criminal Code allows an accused person to consent to be tried without a jury. The former Department of Justice and Public Safety argued that: (i) the Applicant did not state his purpose for the request; (ii) the Department had received twenty requests over the past five years from the same Applicant; (iii) there was an extensive pattern of related requests by the Applicant; (iv) the requests are systematic in nature; and (v) processing such a volume of records for a second time would result in an unreasonable expenditure of the Department's human resources.

52. If the head of a public body asks, the Commissioner may authorize the public body to disregard any request made under subsection 7(1), if the request

(a) would unreasonably interfere with the operations of the public body or amount to an abuse of the right to access, because of the repetitious or systematic nature of the request; or
(b) is frivolous or vexatious.

Acting Commissioner Judy Haldemann found that an applicant's motive for requesting access to information is irrelevant, because freedom of information is a right given to all persons, regardless of intentions. She stressed that public bodies must avoid focusing on the purposes of an applicant's access request and concentrate more on its own duties under the *FOIPP Act*.

Acting Commissioner Haldemann further found that the Applicant's twenty requests were not all related. She noted that the initial disclosure of documents made under the *Criminal Code* at the criminal trial stage could not be considered as a use of human resources in the context of FOIPP, or of an access request previously processed at no charge.

The Acting Commissioner authorized the former Department of Justice and Public Safety to disregard the access request in accordance with clause 52(a) of the *FOIPP Act* on the grounds that it would unreasonably interfere with the operations of the public body. The decision is posted on our website and referenced as AU-10-003.

FOIPP Fact: By focusing on the interpretation of the relevant provisions of the *FOIPP Act*, parties can achieve the purposes of the Act as it was crafted.

Access to Information:

In 2010, eight orders were issued from this office resulting from requests to review decisions of public bodies on access to information requests. Summaries of the resulting direction given in the orders to some of these reviews are described below.

FOIPP Quote: “We have information rights because access to information is essential for the realization of basic civil and political rights. ... Yet none of these basic rights can be realized if access to certain kinds of information is denied. In short, there is a right to information implicit in our acknowledgment of these other basic human rights.” Alasdair Roberts, Jerome L. Rappaport Professor of Law and Public Policy, Suffolk University Law School, Author

Order No. FI-10-001 - The PEI Lending Agency denied a request for access to records relating to a third party’s business dealings with the Agency, namely, the amounts of loans and grants given to the third party over a specified time period. The Agency claimed the information was exempted from the *FOIPP Act* under subsection 14(1), because it was confidential, commercial or financial information, and its disclosure could cause harm to the third party.

In her order, Acting Commissioner Haldemann provides explanatory detail on the three-part requirement to withholding information under subsection 14(1), and draws attention to a detail that is often overlooked: information described at clause 14(1)(b) is information that is supplied, explicitly or implicitly, in confidence, by a third party to a public body, but the information described at clause 14(1)(b) does not include information of a decision of a public body based on the information supplied [emphasis added].

The Agency relied on the third party personal information exemption found under section 15. The Acting Commissioner draws our attention to the definition of “personal information” at subclause 1(i)(i) of the *FOIPP Act*, taking note that it is “recorded information about an identifiable individual”. She makes the distinction that a corporate body is not an individual and points out that although the *Interpretation Act* defines “person” as including “a corporation” [s. 26(o.1)], the ordinary, colloquial usage of the word “person” means a “human being”. She reasons that the definition of personal information uses the word “individual” because an individual person means a human person. She concludes, therefore, that a company, not being an individual, does not have personal information as defined in section 1 of the *FOIPP Act*, and that the safeguards provided in the *FOIPP Act* for personal information do not apply to a company. The Acting Commissioner ordered the PEI Lending Agency to release the information, including the dates, the amounts and, pertaining to the loans, the interest rates.

FOIPP Fact: Personal information is defined in clause 1(i) of the *FOIPP Act* as it relates to an individual. Since a company is not an individual, a company does not have personal information.

76. (4) The head of a public body may excuse an applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is appropriate to excuse payment; or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

Order No. FI-10-002 – The Department of Environment, Energy and Forestry refused an applicant’s request for a fee waiver. The Applicant’s grounds for requesting a fee waiver was based on public interest. The Applicant was seeking access to all warnings and fines given out by enforcement officers during a one-year period. The Department refused to waive the fees under subsection 76(4) of the *FOIPP Act*, as it did not agree that disclosure of the records would be in the public interest.

FOIPP Fact: Criteria to be considered in determining if records are of public interest:

1. Does the subject of the records relate directly to the environment, public health or safety?
2. Has the subject of the records been a matter of recent public debate?
3. Do the records disclose how the public body is allocating financial or other resources?
4. Will the records contribute to the public understanding of an important issue?
5. Will disclosure add to public research on the operation of Government?
6. Has access been given to similar records at no cost?
7. Have there been persistent efforts by the applicant or others to obtain the records?

The decision of the Acting Commissioner speaks to the issue of public interest and to the criteria to consider when formulating a decision on (i) whether the records are of public interest, and (ii) whether to allow a fee waiver based on public interest. The Acting Commissioner reminds us that an applicant is not required to justify a need or reason for wanting access to records. An identified need or reason is not a factor to be considered by a public body when making its decision in respect to a fee waiver request.

FOIPP Fact: Guidelines to be considered in deciding a fee waiver for records of public interest:

1. Is there a reasonable expectation that the public could benefit from disclosure of this record?
2. Would waiver of the fee shift an unreasonable cost burden for responding from the applicant to the public body?
3. Would the records contribute to debate on or resolution of the matter of public interest?
4. During the request for access process,
 - (a) Did the public body make a timely response to the access request and did it fulfill its duty to assist?
 - (b) Did the applicant, viewed reasonably, cooperate or work constructively with the public body, where the public body so requested, during the processing of the access request, including narrowing or clarifying the access request where it was reasonable to do so? and
 - (c) Has the applicant unreasonably rejected a proposal by the public body which would reduce the costs of responding to the access request?

In her ruling, Acting Commissioner Haldemann points out that each page, or every part of each record, does not have to be scrutinized with the public interest test, so long as the overall record falls within the scope of the public interest. She ruled in favor of the Applicant in this case. It is in the public interest to provide information on enforcement measures taken by a public body with enough detail to encourage public debate on the effectiveness of such enforcement. The Department was ordered to excuse the Applicant from paying the fees for the access request.

1. (i)(l) “record” means a record of information in any form **and includes notes**, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records [emphasis added]

Order No. FI-10-004 – The Department of Innovation and Advanced Learning provided an applicant with partial access to information respecting the use of compost generated by a government facility for growing mushrooms. Some of the information not provided to the Applicant included notes made to files. The Acting Commissioner considered whether notes on documents, or notes placed in a file, are records within the meaning of the *FOIPP Act*. She found that a note, even if ungrammatical or unfinished, is a record in itself, because a note falls within the definition of “record” under subclause 1(i)(l) of the *FOIPP Act*.

It was found that handwritten notes on documents are not exceptions to disclosure merely because such notes do not have any sentence structure, or are not complete sentences, or may appear to be random words. Acting Commissioner Haldemann also found that a note cannot be excluded from a document merely because it is not in the same format, or not as formal as the document itself. The note has to be looked at in the same manner as any other record under the *FOIPP Act* in order to determine whether the note and the document to which it pertains should be disclosed. A public body might sever a note, but it must have a valid reason to do so under the *FOIPP Act*.

FOIPP Fact: A note by itself is a record, and a note added to any record becomes part of that record.

Order No. FI-10-008 – The PEI Public Service Commission (PSC) denied an applicant’s request for access, by way of examination, to all records and information collected by the PSC in relation to the Applicant’s participation in an employment competition. The PSC, having exercised its discretion to redact the information under section 24 of the *FOIPP Act*, provided photocopies of the records with much of the information redacted, claiming it related to testing procedures. The PSC’s submissions also included arguments to support clause 4(1)(e), that the *FOIPP Act* does not apply to a question that is to be used on an examination or test, and to support section 17, that the severed information is confidential evaluations.

Commissioner Maria C. MacDonald found that clause 4(1)(e) of the *FOIPP Act* applies to the actual interview questions, falling outside of the Commissioner’s jurisdiction to review.

Commissioner MacDonald also found that the discretion under section 17 to permit a public body to refuse to disclose certain personal information does not apply to the case at hand, as the severed information was not “personal information”, but formed part of the PSC’s pre-prepared forms. With regard to the discretion under section 24, which permits a public body to refuse to disclose testing and auditing information, the Commissioner found that section 24 does not apply to the case at hand, because the PSC did not meet its burden of proof that the severed information was part of a test or audit, nor that a disclosure of the severed information would prejudice the PSC’s future use of it in job interviews.

Protection of Privacy: Only one order pertaining to protection of privacy was issued in 2010, namely, Order PP-10-001. This order concerns appeal tribunals and the online posting of its decisions on its website. Order PP-10-001 is currently under judicial review.

Judicial Reviews: Of the nine orders issued from this office in 2010, two are being judicial reviewed. The first order deals with access and the second order deals with privacy, both of which are detailed below.

Order No. FI-10-007 –Four applicants made access to information requests to Island Investment Development Inc. (IID) about various aspects of the Provincial Nominee Program (PNP). IID refused to disclose any information in all four instances, relying on subsections 14(1), 15(1) and 15(4) of the *FOIPP Act*. All four applicants requested a review by the Acting Information and Privacy Commissioner, who, in turn, addressed all four reviews in one order. Submissions were received from the applicants, from IID and from hundreds of third party companies.

The Acting Commissioner found that section 15 of the *FOIPP Act*, which deals with personal privacy, did not apply to companies. She further found that all of the conditions required under the three-part test to subsection 14(1) were met and, as such, that IID was correct in its decision to refuse the applicants access to the information they had each requested. She ordered IID to:

- (i) provide the aggregate amounts of application fees paid to IID for each month in the calendar years 2007 and 2008;
- (ii) review the submissions of the third parties who consented to disclose some information; and
- (iii) not release the PNP records, the list of names of individuals/companies who applied for PNP units, the list of names of individuals/companies who received PNP units, the names of directors of the companies, the amount of money each received, the number of units each received, and the nature of the businesses.

This order is ‘stayed’ (suspended) until the application for judicial review is dealt with by the court.

Order No. PP-10-001 – This order concerns a privacy complaint about the Island Regulatory and Appeals Commission’s (IRAC) practice of publishing its orders on its website and disclosing the names of the parties. The Acting Commissioner found that IRAC is a quasi-judicial tribunal and its proceedings are open to the public. She found that IRAC was not breaching the protection of privacy provisions of the *FOIPP Act* by naming the parties in its orders; however, she recommended that the Public Body consider following the guidelines issued by the Saskatchewan Information and Privacy Commissioner, entitled *Electronic Disclosure of Personal Information in the Decisions of Administrative Tribunals*.

The Acting Commissioner also found that the Public Body was not justified in publishing the names of non-party witnesses in its orders, and that the personal information of non-party witnesses must be severed from any of the Public Body’s orders that are published by any method.

FOIPP Quote: “Democratic progress requires the ready availability of true and complete information. In this way people can objectively evaluate their government’s policy. To act otherwise is to give way to despotic secrecy.” The Right Honourable Pierre E. Trudeau

STATISTICS

Summary of Requests for Review

January 1, 2010 - December 31, 2010

Public Body	Access to Information		Protection of Privacy		Resolved in 2010 (without an order)	Order issued in 2010	Carried Forward to 2011
	<i>carried over from previous years</i>	<i>2010 requests</i>	<i>carried over from previous years</i>	<i>2010 requests</i>			
Agriculture	1	0	0	0	0	0	1
Commission scolaire de langue française	0	0	0	0	0	0	0
Community Services, Seniors and Labour	0	0	0	0	0	0	0
Eastern School District	0	0	2	0	1	0	1
Education and Early Childhood Development	1	0	0	0	0	1	0
Elections PEI	0	0	0	0	0	0	0
Environment, Energy and Forestry	2	1	0	0	2	1	0
Executive Council Office	0	0	0	0	0	0	0
Fathers of Confederation Buildings Trust	0	0	0	0	0	0	0
Finance and Municipal Affairs	2	0	1	0	0	1	2
Fisheries, Aquaculture and Rural Development	0	0	0	0	0	0	0
Health and Wellness	2	0	0	0	1	0	1
Health PEI	0	1	1	2	1	0	3

Public Body	Access to Information		Protection of Privacy		Resolved in 2010 (without an order)	Order issued in 2010	Carried Forward to 2011
	<i>carried over from previous years</i>	<i>2010 requests</i>	<i>carried over from previous years</i>	<i>2010 requests</i>			
Innovation and Advanced Learning	6	3	0	0	0	3	7
Island Regulatory and Appeals Commission	0	0	0	1	0	1	1
Island Waste Management Corporation	0	0	0	0	0	0	0
Justice and Public Safety	0	1	0	0	0	1	0
Office of the Premier	1	0	0	0	0	1	0
PEI Liquor Control Commission	0	0	0	0	0	0	0
PEI Public Service Commission	1	0	0	0	0	1	0
Tourism and Culture	0	1	0	0	0	0	1
Transportation and Infrastructure Renewal	2	0	0	0	1	0	1
Western School District	0	0	0	0	0	0	0
Workers Compensation Board of Prince Edward Island	0	0	2	1	1	0	2
Workers Compensation Appeals Tribunal	0	0	<i>2 overlap with the 2 above-noted WCB files</i>	0	<i>1 overlaps with the above-noted WCB file</i>	0	<i>1 overlaps with the 2 above-noted WCB files</i>
TOTAL	18	7	6	4	7	10	20