

**ANNUAL REPORT**

**2014**

**OFFICE OF THE  
INFORMATION AND PRIVACY  
COMMISSIONER**

**PROVINCE OF PRINCE EDWARD  
ISLAND**





# 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

June 10, 2015

The Honourable Francis (Buck) Watts, MLA  
Speaker of the Legislative Assembly  
Province of Prince Edward Island  
P.O. Box 2000  
Charlottetown, PE  
C1A 7N8

Dear Honourable Watts :

I am pleased to present to you the enclosed 2014 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2014 to December 31, 2014. This is the twelfth 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



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

**2014**

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## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### Commissioner's Message:

Heading into 2014, the Office of the Information and Privacy Office (the "OIPC") had 30 open review files and received 25 new complaints during the year. Eleven files were resolved. Two public bodies changed their positions and these two files were closed. Through an initiative of the Executive Council, public bodies re-visited their position on many open reviews. Two files were resolved thanks to a public body's decision to disclose records it had initially decided to withhold. Early resolution by active negotiation between the Commissioner and the parties closed an additional four review files. Five decisions were issued: two orders and three refusals to proceed to an inquiry based on a preliminary investigation. At the end of 2014, the OIPC had 44 open review files.

The *Freedom of Information and Protection of Privacy Act* is a complex law, and administering it on a day-to-day basis requires expertise. For a number of years, Commissioners were observing less FOIPP expertise at the public body level. In October, the province restructured their service delivery model for processing access to information requests to a centralized service. This restructuring at the government level does not affect the open files before the OIPC, but I am optimistic that it will increase the sophistication in responses from the province, both at the initial interaction with applicants and, subsequently, with reviews. An applicant who understands why information is withheld will be less likely to request a review of a public body's decision. Applicants will not be satisfied all of the time, but if additional time and resources are directed to front end services, it will better serve the public. If the level of service improves at the public body level, the public's faith in the access to information law and government as a whole will improve

The *Health Information Act* received royal assent on May 14, 2014, and awaits proclamation. The Information and Privacy Commissioner will be the oversight body under the health information law when enacted.

Maria C. MacDonald,  
Information and Privacy Commissioner

The Honourable Mr. Justice Ritter of the Court of Appeal of Alberta discussing the Alberta *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*:

"... Both FOIPPA and PIPA are complex pieces of legislation. Sections in each refer to other sections and when those sections are scrutinized they refer to yet more provisions. Each act is a web, or more accurately a maze, which makes them difficult to interpret. Their enactment has resulted in an entire new area of law requiring specialists who traverse their intricacies. To suggest that they are user unfriendly is an understatement."

**From Alberta (Information and Privacy Commissioner) v. Alberta (Freedom of Information and Protection of Privacy Act Adjudicator), 2011 ABCA 36 at para 15.**

## Overview:

- Mandate:** The Commissioner’s office is an independent, quasi-judicial body, generally responsible for monitoring how public bodies administer the *Freedom of Information and Protection of Privacy Act*. The Commissioner conducts investigations and inquiries, provides advice and recommendations, issues orders, comments on proposed programs and informs the public about the *Act*.
- Vision:** Effective, independent oversight and review of public bodies that stimulates strong access to information and protection of privacy practices.
- Mission:** To provide vigilant oversight of the administration of access to information and protection of privacy practices of public bodies. To investigate complaints thoroughly, attempt to resolve them and to adjudicate fairly and independently.
- Values:** Fairness, Openness & Transparency, Respect for Privacy and Excellence
- Office:** The office makeup includes the Commissioner’s position, which is a part-time position (60% or 22.5 hours per week) and one full-time administrative officer position.
- Commissioner:** The Information and Privacy Commissioner is appointed by the Legislative Assembly under section 42 of the *Freedom of Information and Protection of Privacy Act* for a five-year term and reports at least annually to the Legislative Assembly. The Commissioner is independent of the government to ensure impartiality.
- Law:** The *Freedom of Information and Protection of Privacy Act*, SPEI 2001, c F-15.01, came into force in 2002 and is generally referred to by the acronym “the *FOIPP Act*”.
- Purpose:** The best description of the intention of the *FOIPP Act* is found at section 2 of the *FOIPP Act*:
2. *The purposes of this Act are*
- (a) *to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act;*

- (b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information;*
- (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body;*
- (d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body; and*
- (e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.*

**Legislative  
Responsibility:**

The Commissioner performs independent reviews of decisions by public bodies about access to information or correction of personal information, and investigates complaints that personal information has been collected, used or disclosed in violation of the *FOIPP Act*.

The Commissioner's other functions include:

- 50. (1) In addition to the Commissioner's functions under Part IV, with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may*
- (a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records set out in any other enactment of Prince Edward Island;*
  - (b) make an order described in subsection 66(3) whether or not a review is requested;*
  - (c) inform the public about this Act;*
  - (d) comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies;*
  - (e) comment on the implications for protection of personal privacy of using or disclosing personal information for record linkage;*
  - (f) authorize the collection of personal information from sources other than the individual the information is about;*
  - (g) bring to the attention of the head of a public body any failure by the public body to assist applicants under section 8; and*
  - (h) give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under this Act.*
- (2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that*
- (a) a duty imposed by section 8 has not been performed;*
  - (b) an extension of time for responding to a request is not in accordance with section 12;*
  - (c) a fee required under this Act is inappropriate;*
  - (d) a correction of personal information requested under subsection 34(1) has been refused without justification; and*
  - (e) personal information has been collected, used or disclosed by a public body in violation of Part II.*

## Year in Review:

During 2014, the OIPC received 25 new requests for review, increasing the total reviews of the office to 55. The new reviews included three privacy complaints and 22 requests to review a decision of a public body on access to information requests. The Commissioner issued five decisions in 2014: three refusals to conduct an inquiry (RI-14-001, RI-14-002 and RI-14-003) and two orders about freedom of information (FI-14-001 and FI-14-002), which are briefly summarized below.

As part of the Commissioner's mandate to inform the public about the law, the Commissioner attended at Holland College to speak with Journalism students on the process for requesting access to information.

As part of the Commissioner's mandate to comment on proposed legislative schemes or programs of public bodies, the Commissioner shared her privacy perspective with public bodies, the public and journalists. She continued her review of drafts of the *Health Information Act*, including providing recommendations to the Department of Health and Wellness.

As a cost-cutting measure, the government cut back on its mail delivery service and ceased Monday mail delivery, including to the OIPC. This decision negatively impacts the parties to a review under the *FOIPP Act*. Third parties are most affected by this change, as the *FOIPP Act* has a rigid 20-day time limit for third parties to request a review. Third parties are individuals or businesses who did not request records, but may be affected if information about them contained in records is disclosed. A third party review cannot be anticipated, and the Commissioner has no discretion to extend the 20-day deadline. These concerns were raised with Communications PEI, but Monday mail delivery was not reinstated for the OIPC. In consideration of the cost of a post office box and the daily trip for pick up, it was decided that the OIPC pick up the mail at the provincial postal administration centre on Mondays to ensure that someone's right to a review is not thwarted by a government mail delivery policy.

Excerpt from the invitation by the Minister of Health and Wellness to the public for comments on the draft *Health Information Act*

*“There is no information that is more sensitive and in need of protection than personal health information. This is information about our bodies and our minds. Yet the health sector relies on the unfettered flow of personal health information between health care providers in order to diagnose, treat and care for Islanders. Currently, personal health information flows freely between the public and private sectors without any clear set of rules governing the management and control of this information. The proposed legislation sets out uniform requirements and one arbiter to protect the personal health information of Islanders while concurrently serving their health care needs. The proposed legislation is intended to balance protecting the personal privacy of Islanders with the need to appropriately share personal health information so that Islanders receive the best possible health care outcomes.*

*The Department invites your comments on the proposed legislation. This Consultation Paper will be the focus of consultations with stakeholders. The Department plans to introduce the new personal health information legislation in the spring 2014 sitting of the Legislative Assembly. However, before any legislation is implemented, the Department and Health PEI will provide training and education sessions for all interested stakeholders with respect to the duties and obligations provided in the proposed legislation.”*

**Honourable Doug Currie**  
**Minister of Health and Wellness**



The Commissioner attended the 2014 Federal/Provincial/ Territorial Conference of Information and Privacy Commissioners and Ombudsmen, held in Ottawa, ON. The conference concluded with a joint resolution calling upon the federal government to adopt an evidence-based approach to the need for new legislative proposals granting additional powers for intelligence and law enforcement agencies, and to ensure that effective oversight be included in any legislation that establishes additional powers for intelligence and law enforcement agencies.

The Commissioners also joined in a joint resolution to encourage governments to review and modernize their information management frameworks. Specific recommendations include:

1. Embedding privacy and access rights into the design of public programs and systems;
2. Creating a legislative duty requiring government employees to document matters related to material deliberations, actions and decisions;
3. Adopting administrative and technological safeguards to
  - prevent the loss or destruction of information;
  - guarantee that digital records are adequately stored in designated repositories and retained for prescribed periods of time, so that they can be easily retrieved when required;
  - mitigate the risks of privacy breaches, which are becoming more frequent and severe;
  - ensure that governments collect and share only that personal information strictly necessary to achieving the objectives of given programs or activities.
4. Establishing clear accountability mechanisms for managing information at all steps of the digital information lifecycle (collection, creation, use, disclosure, retention and disposal) to meet privacy and access obligations, including proper monitoring and proper sanctions for non compliance;
5. Training all government employees involved in managing information at any stage of its lifecycle in order for them to know their roles and responsibilities, including their obligation to protect privacy and access rights, and to continue to meet those obligations in the face of new technologies;
6. Proactively releasing digital information on government activities on an ongoing basis in accordance with open government principles.

The Commissioner joined other Commissioners of the Maritimes in a roundtable discussion at the Maritime Connections Conference, the *2014 Access, Privacy, Security, Records Management & Health IM Conference*, held in Halifax, NS. The Commissioner and Administrative Officer joined employees of the Nova Scotia Review Board, the Newfoundland Office of the Information and Privacy Commissioner and the New Brunswick Office of the Information and Privacy Commissioner for a one-day workshop to share experiences with an outlook for improving common practices. Both the Commissioner and the Administrative Officer continued French language courses with Collège l'Acadie Î.-P.-É..

## Decisions and Rulings

### **Refusal to Conduct an Inquiry:**

*64.1 The Commissioner may refuse to conduct an inquiry pursuant to section 64 if, in the opinion of the Commissioner,*

*(a) the subject matter of a request for a review under section 60 has been dealt with in an order or investigation report of the Commissioner; or*

*(b) the circumstances warrant refusing to conduct an inquiry.*

The Commissioner issued three refusals to conduct an inquiry during 2014.

#### **RI-14-001, Re: *Health PEI***

A public body did not respond to an applicant's access request for personal health information within the statutory time frame. When advised of the oversight, the Public Body took the matter seriously and processed the request at no charge. The Applicant complained there was no index of records and that records may be missing, claiming the Public Body had a systemic processing problem. As the Applicant did not claim or identify any records or information that were missing, nor provide sufficient evidence to support his claim of a systematic processing problem, the circumstances did not warrant an inquiry.

#### **RI-14-002, Re: *Health PEI***

A third party claimed that subsection 14(1) of the *FOIPP Act* required a public body to withhold records from an applicant because the disclosure would be harmful to its business interests. The Applicant had asked for procurement and purchase records about medical waste disposal services. Before making a decision on whether to conduct an inquiry, the Commissioner asked the Third Party to provide more information. As the Third Party declined to provide any further evidence about the conditions of subsection 14(1), the circumstances did not warrant an inquiry.

#### **RI-14-003, Re: *Island Regulatory and Appeals Commission***

A complainant alleged that a public body breached her privacy by leaving a phone message for her at a third party organization. The Complainant sent an application by fax to the Public Body from a third party organization, but did not include an important document that the Public Body required. As the matter was time-sensitive and the Complainant's fax did not include an e-mail address or phone number, the Public Body called the establishment from where the fax was sent and left a phone message for the Complainant. The Complainant was not willing or able to provide any evidence to rebut the Public Body's evidence and version of events. A public body may use and disclose personal information for a purpose consistent with the purpose for which the information was collected. The Commissioner determined that the use and disclosure of the personal information was limited, necessary and directly connected to the purpose of processing the Complainant's application. The Commissioner found that the circumstances warranted refusing to conduct an inquiry.

## **Orders on Access to Information:**

The Commissioner issued two orders about access to information in 2014.

### ***FI-14-001, Re Department of Transportation and Public Works***

An applicant requested access to personal information held by a public body. The Public Body refused to disclose some records under section 18 of the *Freedom of Information and Protection of Privacy Act* (the “*FOIPP Act*”), claiming that disclosure would interfere with a law enforcement matter. The Commissioner found that section 18 of the *FOIPP Act* did not apply to the records at issue.

*“It is the Public Body’s burden to persuade me that disclosure could reasonably be expected to interfere with a law enforcement matter. It is not enough to fear that disclosure could cause people to not come forward in future investigations or, if they do come forward, that the information provided would not be accurate. . . . I do not dismiss the potential of a chilling effect out of hand, but just saying it, does not necessarily make it so. Without any evidence beyond the bald statement, I do not accept that disclosure of the handwritten notes could reasonably be expected to interfere with a law enforcement matter.”*

- Commissioner Maria C. MacDonald, Order FI-14-001 at para 19-20.

### ***FI-14-002, Re Department of Health and Wellness***

An applicant requested access to expense documents of a public body senior official for a two-year period. The Public Body did not respond to the Applicant within the legislated time limits, and the Applicant requested a review. During the course of the review, the Applicant received a decision letter and fee estimate from the Public Body and subsequently received records. The Applicant received the records two months after the second extension had expired, which was five months after the request. The Commissioner invited the Public Body to provide submissions, but it did not do so more than three months after the Commissioner’s request for submissions. The Commissioner found that the Public Body’s failure to meet the statutory time limit to respond to the Applicant warranted a full refund of fees.

*“The Public Body did not respond to the Applicant within the statutory time limit. In consideration of the delays in responding to the Applicant, and without any further explanation or submissions from the Public Body to consider, I find the circumstances of failing to meet the statutory time limit to respond to an applicant warrants ordering a full refund of the fees.”*

- Commissioner Maria C. MacDonald, Order FI-14-002 at para 11.

## Financial Information:

49. (1) *The Commissioner shall submit to the Standing Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Information and Privacy Commissioner in that fiscal year.*

(2) *The Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee shall transmit the estimate to the Minister of Finance, Energy and Municipal Affairs for presentation to the Legislative Assembly.*

I annually submit a budget estimate to the Standing Committee on Legislative Management. The *Health Information Act* was passed in the 2014 spring session of the Legislative Assembly. It designates the Information and Privacy Commissioner as the oversight body. The *Health Information Act* will apply to a large group of individuals and companies with health information, including government organizations, private health care facilities, nursing homes, pharmacists, optometrists, doctors, dentists and other health practitioners in private practice. Newfoundland and Labrador recently proclaimed its health information law. Its research on other jurisdictions that have been working with personal health information for a number of years indicates that approximately 40% of the work of those oversight offices deal with personal health information. In my 2014 budget estimate, I suggest that it would be prudent for the OIPC to prepare for the expected increase in workload. I requested additional resources to increase the Commissioner's position to full-time and add an additional full-time employee for the position of an investigator. The Standing Committee on Legislative Management remains unconvinced the requested increase in resources is required.

### **Budget:**

This annual report covers activities of the OIPC during the calendar year of 2014 in all respects except the budget. The reporting period of the budget is from April 1, 2014 to March 31, 2015. <sup>1</sup>

	<i>2014-2015 Budget Estimate</i>	<i>2014-2015 Expenditures</i>
Administration	4,900.00	2,529.00
Materials, Supplies and Services	1,600.00	77.00
Professional and Contract Services	1,000.00	0.00
Salaries, benefits and contributions	108,100.00	110,598.00
Travel and Training	5,000.00	2,184.00
<b>Total</b>	<b>120,600.00</b>	<b>115,388.00</b>

<sup>1</sup> The budget estimate information is found at page 145 of the *Prince Edward Island Estimates of Revenue and Expenditures 2014-2015*, at [http://www.gov.pe.ca/photos/original/fema\\_budestim14.pdf](http://www.gov.pe.ca/photos/original/fema_budestim14.pdf)

The OIPC budget is almost 2.4% of the Legislative Assembly budget. Its major expense is salaries, being 96% of the total expenditures of the office. The OIPC budget does not give the whole picture of its operating expenses, as some supplies and services the office receives is shared with other departments of the provincial government, including ITSS, Public Works and the Legislative Assembly (e.g. office space and utilities, photocopy paper, accounting services, printing services and IT support) and the costs are not reflected. For example, the office received updated hard-drives and a new multi-purpose printer as part of a project of the whole Legislative Assembly, so these equipment costs do not appear in our budget.

# Statistics

## Summary of Reviews January 1, 2014 – December 31, 2014

Public Body	Access to Information		Protection of Privacy		Resolved in 2014 (without an order)	Order issued in 2014	Carried Forward to 2015
	<i>carried over from previous years</i>	<i>2014 requests</i>	<i>carried over from previous years</i>	<i>2014 requests</i>			
Agriculture and Forestry	1	1	0	0	0	0	2
Commission scolaire de langue française	0	0	0	0	0	0	0
Community Services and Seniors	2	1	0	0	1	0	2
English Language School Board	6	0	1	0	0	0	7
Education and Early Childhood Development	2	0	1 <i>[overlaps with above-noted ELSB file]</i>	0	0	0	2 <i>[+ 1 overlaps with above-noted ELSB file]</i>
Elections PEI	0	0	0	0	0	0	0
Environment, Labour and Justice	3	6	0	1	0	0	10
Executive Council Office	0	1	0	1 <i>[overlaps with above-noted EL&amp;J file]</i>	0	0	1 <i>[+ 1 overlaps with above-noted EL&amp;J file]</i>
Fathers of Confederation Buildings Trust	0	0	0	0	0	0	0
Finance, Energy and Municipal Affairs	1	2	2	0	1	0	4
Fisheries, Aquaculture and Rural Development	0	0	0	0	0	0	0
Health and Wellness	1	1	1 <i>[overlaps with above-noted FEMA file]</i>	0	0	1	1 <i>[+ 1 overlaps with above-noted FEMA file]</i>
Health PEI	3	5	3	0	2	2	7

Public Body	Access to Information		Protection of Privacy		Resolved in 2014 (without an order)	Order issued in 2014	Carried Forward to 2015
	<i>carried over from previous years</i>	<i>2014 requests</i>	<i>carried over from previous years</i>	<i>2014 requests</i>			
Innovation and Advanced Learning	2	1	1	0	0	0	4
Island Regulatory and Appeals Commission	0	0	0	1	0	1	0
Island Waste Management Corporation	0	0	0	0	0	0	0
Office of the Premier	0	2	0	0	0	0	2
PEI Liquor Control Commission	0	1	0	1 <i>[overlaps with above-noted EL&amp;J file]</i>	0	0	1 <i>[+1 overlaps with above-noted EL&amp;J file]</i> 0
PEI Public Service Commission	0	0	0	0	0	0	0
Tourism and Culture	0	0	0	0	0	0	0
Transportation and Infrastructure Renewal	1	1	0	0	1	1	0
Workers Compensation Board of Prince Edward Island	0	0	1	1	1	0	1
Workers Compensation Appeals Tribunal	0	0	0	0	0	0	0
<b>TOTAL</b>	22	22	8	3	6	5	44

