



REPORT OF THE
INFORMATION AND PRIVACY COMMISSIONER
FOR THE
PROVINCE OF PRINCE EDWARD ISLAND
2015



Prince Edward Island

Legislative Assembly

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

Île-du-Prince-Édouard

Assemblée législative

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

September 12, 2016

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

I am pleased to present to you the enclosed 2015 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2015 to December 31, 2015. This is the thirteenth report from this office and is submitted to you pursuant to subsection 59(1) of the *Freedom of Information and Protection of Privacy Act*.

Yours sincerely,

Karen A. Rose
Information and Privacy Commissioner

enclosure

KAR/kj

TABLE OF CONTENTS

Page

I. Commissioner's Message.....	1-2
II. Overview of the OIPC	3-4
Staff	3
Mandate	3-4
Mission	4
Vision	4
Values	4
III. Legislative Responsibility	5
<i>Freedom of Information and Protection of Privacy Act</i>	5
<i>Health Information Act (not yet proclaimed)</i>	5
IV. Year in Review	6-9
Freedom of Information Focus – Section 14	6
Protection of Privacy Focus – Workers Compensation Board of PEI.....	7-8
Informal Resolution Focus – Vital Statistics.....	9
V. Commissioner's Decisions	10-16
Refusals to Conduct Inquiries	10
Orders resulting from Access to Information Reviews	11-15
Investigation Reports resulting from Privacy Complaints	16
VI. Financial Information	17
Budget	17
VII. Statistics.....	18-20
Summary of Privacy Complaints	18
Summary of Requests for Review.....	19
List of Public Bodies	20
Appendix A	21-22



**OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER**

Commissioner's Message:

This annual report provides a brief summary of the activities of the office over the past year. I was appointed Information and Privacy Commissioner for the Province of Prince Edward Island on June 22, 2015. I am grateful to my predecessor, former Commissioner Maria MacDonald, and to Mary-Lynn Smith, our former administrative officer, for their organizational skills, which permitted me to assume the duties of Commissioner almost seamlessly.

There is much work for this office to do in properly fulfilling its mandate, the duties of which are set out in the *Freedom of Information and Protection of Privacy Act* ("the *FOIPP Act*"). Ultimately, our goal is to inform all citizens of P.E.I. about the *FOIPP Act*, and instill a respect for its two key purposes: providing for a right of access to government information, and protecting the privacy of personal information held by government.

The most pressing challenge of our office is to complete reviews and investigations, and issue decisions, in a timely manner. Timely reviews of access decisions of public bodies, in particular, are essential to ensuring applicants receive the information they are entitled to, while the information is relevant. This office's key objective of 2015, which will also be paramount in 2016, was to address the backlog of reviews and investigations. I issued 12 orders relating to 14 access review files in the latter half of 2015, four of which were initiated in 2010, three in 2011, six in 2014, and one in 2015.

Privacy complaints also deserve timely treatment. Although an individual's loss of privacy cannot be given back to them, the decisions, policies, and procedures established by this office, and by public bodies, help prevent future privacy breaches from occurring. Our office approaches information privacy in a positive and proactive way. The backlog of privacy complaints is less substantial but still pressing. Former Commissioner MacDonald issued a decision in January, 2015, relating to a privacy investigation begun in 2008. I released a decision in October, 2015 regarding a 2010 complaint concerning the Workers Compensation Board, which is referred to in further detail later in this report.

Like any quasi-judicial body, a primary tool to achieve our mandate is through detailed decisions. Our access and privacy decisions not only resolve individual complaints and requests for review, but also establish guidelines for the interpretation of various sections of the *FOIPP Act*. These decisions help public bodies and those who seek reviews to have consistent expectations of the review process. A summary of the decisions issued by our office in 2015 may be found at Part V of this report, at pages 10-16, and the full decisions are available on our website at www.oipc.pe.ca. For 2016, continuing to address the backlog of access requests and privacy investigations will require the most efficient use of all our resources.

While decisions relating to protection of privacy, and access to information, have been a key focus of this office, they have certainly not been the only focus. We have had some success at resolving complaints on an informal basis, and continue to refine our procedure. An example of informal resolution may be found at page 9 of this report. In addition, there are a number of projects we would like to address, but have not been able to, due to our focus on the backlog. Continued additional human resources will assist us in accomplishing the tasks we've been meaning to perform, and to help us to prepare a strategic plan for the future. These tasks include developing protocol, practices and procedures so that public bodies and citizens may have clear guidance, completing our Records Information Management process, and fulfilling the education and promotion part of our mandate through public speaking engagements and other community outreach initiatives.

APSO

In October, 2014, this province restructured its model for processing access to information requests, to a centralized service. Since then, the Access and Privacy Services Office ("APSO") has provided government-wide policy advice, service and support in the administration of the *FOIPP Act* and its regulations. The APSO office has three staff members, including a provincial manager of Access and Privacy Services, a FOIPP coordinator, and an administrative assistant. I have been impressed with the overall quality of submissions and other communications from public bodies since the establishment of the APSO office, and trust that this trend will continue.

Karen A. Rose,
Information and Privacy Commissioner



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

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Overview of the OIPC:

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly, appointed on the recommendation of the Standing Committee on Legislative Management. The appointment is for a term of five years, by resolution of the Legislative Assembly, supported by at least two-thirds of the members present. The Commissioner's oversight responsibilities are grounded in the purposes of the *FOIPP Act*:

- *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;*
- *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;*
- *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;*
- *to allow individuals a right to request corrections to personal information about themselves that is held by a public body; and*
- *to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.*

Staff:

Since its inception in 2002, the position of Information and Privacy Commissioner has been designated as part-time. It was originally a 40% position, but evolved into a 60% position. In 2006, our one staff position, that of administrative officer, changed from part-time to full-time.

In December, 2015, the office was provided with further administrative support, on a part-time basis. The purpose of the additional administrative support is to assist in meeting the office's goal of addressing the backlog of reviews and complaints. Ms. Kimberley Johnston has been a welcome addition to our small office.

Although there is a division of functions between staff within the office, many responsibilities are shared. For example, dealing with inquiries from the public sometimes depends upon who is available to answer the telephone. Ms. Smith, our administrative officer, wore many hats. Her duties began with administrative support, and included educating the public, resolving complaints, providing advice, and maintaining and updating the website for the office.

Mandate:

The Information and Privacy Commissioner provides independent oversight of decisions of public bodies relating to the *FOIPP Act*. The independence of the office is vital for the proper fulfillment of the Commissioner's duties. The Commissioner is sworn to conduct the affairs of the office with an impartial approach. The Commissioner does not "take sides" between a given applicant or complainant and a public body. Rather, the Commissioner's role is to conduct an investigation to determine the facts, request submissions, and make findings in an impartial manner.

The *Health Information Act* ("the *HIA*") received royal assent on May 14, 2014, and awaits proclamation. On May 13, 2016, amendments to the *HIA* were made. The Office of the Information and Privacy Commissioner has been designated as the oversight body under the *HIA*, to ensure that Islanders' health information is protected by custodians in compliance with the legislation.

Mission:

In addition to fulfilling the purposes of the *FOIPP Act*, the mission of the office also includes the following goals:

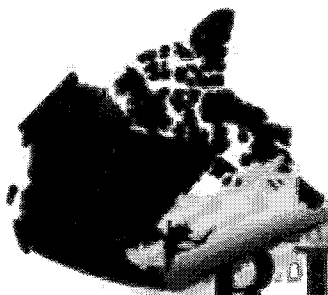
- To educate public bodies and citizens regarding the principles of information access and privacy standards and rights established by the *FOIPP Act*;
- To operate the office in a fiscally responsible manner, and to manage and conduct the office with respect, honesty and integrity; and
- To provide staff with a healthy work environment, and a challenging and flexible workplace that recognizes resourcefulness and dedication.

Vision:

The vision of the office is of a provincial government that fosters a culture of openness, transparency and respect for personal privacy, and values the security of the personal information it holds.

Values:

Fairness, openness, transparency, and a respect for privacy are the broad values which guide the activities of this office.



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

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Legislative Responsibility:

Freedom of Information and Protection of Privacy Act

The Information and Privacy Commissioner is responsible for monitoring how public bodies administer the *FOIPP Act*, and for performing other duties to ensure that the purposes of the *FOIPP Act* are achieved.

The Commissioner's primary duties are to perform independent reviews of decisions of public bodies respecting access to information requests and requests for correction of personal information, and to investigate complaints that a person's personal information has been collected, used, or disclosed by a public body in violation of the *FOIPP Act*.

In addition to the Commissioner's functions relating to reviews, the Commissioner performs other duties to ensure that the *FOIPP Act's* purposes are achieved, including:

- *conducting investigations to ensure compliance with any provision of the FOIPP Act or compliance with rules relating to the destruction of records set out in any other enactment of Prince Edward Island;*
- *making an order described in subsection 66(3) whether or not a review is requested;*
- *informing the public about the FOIPP Act;*
- *commenting on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies;*
- *commenting on the implications for protection of personal privacy of using or disclosing personal information for record linkage;*
- *authorizing the collection of personal information from sources other than the individual the information is about;*
- *bringing to the attention of the head of a public body any failure by the public body to assist applicants under section 8; and*
- *giving advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under the FOIPP Act.*
- *giving advice and recommendations to the head of a public body on any matter respecting any rights or duties under the FOIPP Act.*

Health Information Act

Once the *HIA* is proclaimed, the Commissioner will also be responsible for overseeing that health information of Islanders is dealt with by custodians in a manner consistent with the provisions of the legislation.

The *HIA* sets out uniform requirements to protect the personal health information of Islanders while concurrently serving their health care needs. The intent of the proposed legislation is to balance the protection of personal privacy of Islanders, with the need to appropriately collect, use and disclose personal health information so that Islanders receive the best possible health care outcomes.

Year In Review:

Freedom of Information Focus – Section 14, Third Party Business Interests

On August 31, 2015, Commissioner Rose issued four orders, all of which dealt primarily with subsection 14(1) of the *FOIPP Act*, an exception to disclosure, applied by a public body when disclosure would be harmful to business interests of a third party. In each case, the Commissioner found that the information at issue did not satisfy the required elements of subsection 14(1) to warrant a refusal to access information.

Section 14 of the *FOIPP Act* is a mandatory exception to disclosure. If all three elements of clause 14(1) (a), (b), and (c) are met, a public body is required to withhold the relevant record, or part of a record, from disclosure. If, however, any of the three requirements of section 14(1) are not met, a public body has no legal right to refuse disclosure under this subsection.

The three stringent requirements of clauses 14(1) (a), (b) and (c) place limits on the business information exemption, in order to create a proper balance between the exception, and the public's right of access to government information. Deliberating upon this necessary balance, in Orders FI-15-002 and FI-15-003, the Commissioner quoted from the report, *Public Government For Private People*, (Ontario Commission on Freedom of Information and Personal Privacy, 1980, vol. 2, ch. 14, at pp. 312-314) as follows:

It is accepted that a broad exemption for all information relating to businesses would be both unnecessary and undesirable. Many kinds of information about business concerns can be disclosed without harmful consequence to the firms. Exemption of all business-related information would do much to undermine the effectiveness of a freedom of information law as a device for making those who administer public affairs more accountable to those whose interests are to be served.

Thus, while the exception for third party business interests is necessary, it is clear that much information relating to firms who do business with government is accessible to our citizens, as a vital part of government accountability. Following the issuance of the four orders noted above, provincial public bodies and third party businesses are better informed as to the type of information which may or may not be exempt under the section 14 exception.

It is my expectation that public bodies will review the findings of this decision, and Order Nos. FI-15-003, Department of Family and Human Service, Re, FI-15-004, Health PEI, Re, and FI-15-005, Department of Health and Wellness, Re, released concurrently with this decision, as a further guide to help determine the types of business information that section 14 of the FOIPP Act is meant to protect.
- Commissioner Karen A. Rose, Order FI-15-002 at para 81.

Protection of Privacy Focus – Section 37, Workers Compensation Board of PEI

On October 30, 2015, Commissioner Rose issued Investigation Report IR-15-001, regarding the information handling practices of the Workers' Compensation Board ("the WCB"). The report arose from a complaint that the WCB disclosed an injured worker's personal information to a third party, without the worker's knowledge or consent. The WCB inadvertently disclosed the worker's personal information to a third party, unaware that a one-page document containing the Complainant's personal information was included in an envelope addressed and mailed to a third party. The WCB attributed the mistake to human error. In an attempt to minimize harm from disclosure and prevent further similar incidents in the future, the WCB established a detailed database to track reported instances of privacy breaches, and developed an internal procedure on Privacy Breach Management. Five years subsequent to the initial complaint, the WCB reported that 47 further privacy breaches had been reported at the WCB between October 7, 2011, and August 5, 2015.

The Commissioner found that the disclosure of the worker's personal information by the WCB was a violation of Part II of the *FOIPP Act*. The Commissioner concluded that the preventative actions of the WCB, while reflective of a genuine concern for workers' personal privacy, were not sufficient to protect the personal information of its clients. The Commissioner made recommendations to improve the WCB's privacy breach response, and to promote a culture of privacy protection at the WCB. The Commissioner recommended that the WCB follow up every six months, for two years, with a report to the Commissioner of improvements made.

Injured workers, by definition, are already at a disadvantage, and, as noted above, are in a vulnerable position in relation to the Public Body. To launch a privacy complaint under such circumstances takes initiative, and a belief that improvements can be made. It is now up to the Public Body to demonstrate to workers, including the Complainant, that it is committed to a culture of privacy protection.

-Commissioner Karen A. Rose, Order IR-15-001 at para 75.

Subsequent to the issuance of Investigation Report IR-15-001, the WCB responded to the report, concurring with the Commissioner's findings. On April 29, 2016, the WCB provided its first six-month report. The Commissioner has advised the WCB that she is satisfied that it is meeting the recommendations in her report, and, in some respects, exceeding those expectations. The actions taken by the WCB, to date, summarized below, include the following:

1. Focus on Staff Education
 - a. An information session was given by the centralized Access and Privacy Services Office
 - b. On Data Privacy Day, privacy protection reminders and facts sheets were distributed
 - c. Privacy Best Practices are a focus of the weekly staff newsletter
2. Recognizing the vulnerability of workers

- a. Amendments were made to the Workers Claim Files policy, so that there is a requirement for verification of identification before disclosure of claim information is given
 - b. Security envelopes are used in all departments
 - c. Amendments were made to the processing claims procedure, to limit access to staff claim information
3. Strengthen Privacy Breach Management Procedure
- a. Records are recovered following a breach
 - b. Actions to contain a privacy breach are now specified
 - c. Harms test is expanded to include the risk of identity theft and impacts on health care
 - d. Notification of privacy breach includes more detailed information
 - e. Notification of privacy breach includes apology
 - f. Notification procedure is implemented unless there is no harm
4. Focus on Privacy Breach prevention
- a. A Privacy Clean-Up Day was held, so that work stations were examined by staff to maximize privacy protection
5. Privacy Breach Management Committee
- a. This Committee was established, including high-level management and a representative from each division
 - b. This Committee holds bi-weekly meetings

The Workers Compensation Board has taken additional initiatives, not specifically recommended in IR-15-001, for the purposes of privacy breach prevention:

- 1. Established a Security and Privacy Committee related to IT modernization
- 2. Senior Leadership Team meetings include privacy breach management on agenda
- 3. Staff are encouraged to make suggestions for improvement, and have, which contributions are recognized in the weekly staff newsletter
- 4. If changes in process or technology are under consideration, the Privacy Breach Management Committee is consulted.

Overall, the initial six-month report demonstrates that management and staff of the Workers Compensation Board continue to be concerned about worker privacy, and have embraced the recommendations set out in Investigation Report IR-15-001. The response of the WCB is worthy of emulation by other public bodies. All but two of the many recommendations in the Report have been implemented, with a goal that the remaining two recommendations will be a focus in the coming months. Updates relating to this investigation report will be available on our website at oipc.pe.ca.

Informal Resolution Focus – Vital Statistics

Not all complaints and reviews of this office result in formal orders. The *FOIPP Act* permits the Commissioner to authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review. However, due to the office size, formal conflict resolution is sometimes not a viable option, while maintaining the Commissioner's neutrality in performing adjudicative functions. As such, the office has begun to implement informal conflict resolution techniques to resolve complaints and reviews. In June, 2015, the office sought and received informal conflict resolution procedures and guidelines from the Office of the Information and Privacy Commissioner for Nova Scotia, to assist in developing our own procedures and guidelines. The office will continue to develop informal conflict resolution techniques to achieve the best and most timely outcomes for applicants, complainants and public bodies.

There are many examples of the success of conflict resolution in our office. One such example involves a privacy complaint received about an individual's address being included in a Notice of Change of Name published in the Royal Gazette. The Complainant stated that the Royal Gazette posted the address online. The Complainant asked that the address be removed from the internet.

Publishing a Notice of Change of Name in the Royal Gazette is required by law, in accordance with the *Change of Name Act*, RSPEI 1988, c C-3.1, but the requirements regarding the content of the Notice of Change of Name do not include publishing the individual's address. The Director of Vital Statistics, who is responsible for processing requests for change of name, agreed that the practice of publishing the person's address is not an authorized disclosure, and is not in compliance with the *FOIPP Act*.

The Director of Vital Statistics acted promptly in response to the complaint. She advised the Queen's Printer that the practice of including address information on all future Notices of Change of Name would be discontinued, and asked that the Complainant's address be removed from the online version of the Royal Gazette. The Complainant's address was removed from the Royal Gazette. Notices of Change of Name no longer include a person's address.



Information is the current that charges accountability in government.

- Denis Desautels, former Auditor General of Canada

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Commissioner's Decisions, 2015:

Refusals to Conduct Inquiries:

Section 64(1) of the *FOIPP Act* permits the Commissioner to refuse to conduct an inquiry if, in the opinion of the Commissioner,

- 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
- the circumstances warrant refusing to conduct an inquiry.

Four refusals to conduct an inquiry were issued by former Commissioner MacDonald in 2015:

RI-15-001, February 12, 2015, Re: *Island Investments Development Inc.*

The public body received a request from an applicant to access an offer to finance between the public body and the third party. It was found that, since one of the three requirements for subsection 14 was not met and the legal test for a subsection 14(1) exception to disclosure under the *FOIPP Act* had been dealt with in previous orders, the circumstances warranted refusing to conduct an inquiry.

RI-15-002, February 23, 2015, Re: *Health PEI*

The public body provided an applicant partial access to records and refused to disclose others regarding a request to access documents referring to a specific patient at a healthcare institution over a given time period. The public body claimed the majority of the remaining records were categorized as quality improvement information, which is not mentioned in the *FOIPP Act* but is broadly defined in the *Health Services Act*. Beyond ensuring the records at issue are quality improvement information, the Commissioner had no jurisdiction under the *FOIPP Act* to review the public body's decision.

RI-15-003, March 17, 2015, Re: *The Department of Innovation and Advanced Learning*

The public body received a request from an applicant to access information about loans and grants between the public body and the third party. Upon reviewing the records, the Commissioner found they were not subject to solicitor-client privilege under Section 25 of the *FOIPP Act*, and clause 14(1) was not substantiated by the third party.

RI-15-004, April 21, 2015, Re: *Department of Agriculture and Forestry*

A public body advised an applicant it would take at least a year to respond to the applicant's formal access request regarding specific calculations and categorizations of wetland areas from a pre-existing inventory. The applicant claimed the public body could create a record of the different classes of wetland using its normal hardware, software and technical expertise. The Commissioner was satisfied the public body conducted a reasonable and adequate search and made every reasonable effort to assist the applicant as required under section 8 of the *FOIPP Act*.

Orders resulting from Access to Information Reviews

If an individual is not satisfied with the decision of the public body relating to their request for access, the individual may request a review by the Commissioner within 60 days of receiving the decision of the public body. Alternatively, a third party who is not satisfied with the decision of a public body to disclose information to an applicant, may request a review by the Commissioner within 20 days of receiving notice of the decision. The request for review must be in writing to the Office of the Information and Privacy Commissioner. There is no fee associated with the request for review.

Section 66 of the *FOIPP Act* authorizes the Commissioner to issue orders relating to access to information reviews. Thirteen orders were issued by the Commissioner in 2015:

FI-15-001 (Interim order), January 20, 2015,

Re: Atlantic Lottery Corporation Inc. and Prince Edward Island Lotteries Commission

This was an interim order issued by Commissioner MacDonald. The applicant sought a review of a decision of the Atlantic Lottery Corporation Inc. A preliminary issue in this matter was whether the Information and Privacy Commissioner has jurisdiction to review decisions made by the ALC under the *FOIPP Act*. The Commissioner found that the ALC is not a public body for the purposes of the *FOIPP Act*, and is not authorized to act on behalf of the PEILC. The Information and Privacy Commissioner does not have jurisdiction to review the decisions of the ALC. After the interim order was issued, the parties resolved the matter.

FI-15-002, August 31, 2015,

Re: Department of Economic Development and Tourism (Island Investment Development Inc.)

An applicant requested records related to the Provincial Nominee Program. The head of the public body refused access to one record, based on sections 14 and 15 of the *FOIPP Act*. It was found that section 15 does not apply, as the information disclosed by the record does not satisfy the definition of personal information under the *FOIPP Act*, and the requirements of section 14 were not met. The Commissioner ordered that the record be disclosed.

FI-15-003, August 31, 2015,

Re: Department of Family and Human Services

An applicant requested access to documents regarding a request for proposal for the redevelopment of a seniors housing complex, and all sales records related to the land upon which the seniors housing complex was situated. The head of the public body decided to release the records to the applicant, with limited severing of third party personal information, relying on section 15 of the *FOIPP Act*. Two third party companies requested a review by the Commissioner, arguing that disclosure of the information would be harmful to their business interests. It was found that subsection 14(1) did not apply to the information in any of the three

records at issue, as all three clauses of subsection 14(1) had not been satisfied. The Commissioner confirmed the public body's decision.

**FI-15-004, August 31, 2015,
Re: Health PEI**

An applicant requested access to a ten-year agreement between the Department of Health and a third party, signed in 2006. The third party argued that disclosing the agreement would be harmful to its business interests. The head of the Department of Health and Wellness decided to disclose the agreement to the applicant. The third party asked for a review of this decision. It was found the information did not meet the required elements of section 14. The Commissioner confirmed the decision of the head of the Department of Health and Wellness.

The Public Body in this review applied the provisions of the FOIPP Act, and concluded that the information at issue should be disclosed. I expect that in making its decision, the Public Body kept in mind the careful balance between its legislated obligation of openness and transparency of government information, and its duty to protect third party business interests. It is my expectation that this Public Body, and others, will continue to apply section 14 of the FOIPP Act in such a careful manner.

- Commissioner Karen A. Rose, Order FI-15-004 at para 83.

**FI-15-005, August 31, 2015,
Re: Department of Health and Wellness**

An applicant requested access to an inspection report and other records, relating to a long-term care facility. The long-term care facility made representations to the public body that disclosing the report would be harmful to its business interests, and would be an unreasonable invasion of the personal privacy of various individuals. The head of the public body decided to disclose the report. The third party asked for a review of the decision. It was found that the information contained in the report did not meet the requirements of subsection 14(1). It was further found that disclosure of the names and titles of the individuals named in the report would not be an unreasonable invasion of their personal privacy and that disclosure of a third party client's name and medical history would not be an unreasonable invasion of the client's personal privacy. The Commissioner confirmed the decision of the head of the public body.

**FI-15-006, September 30, 2015,
Re: Department of Agriculture and Fisheries (Farm Practices Review Board)**

An applicant requested access to information about rules, practices and procedures of the Farm Practices Review Board and decisions and approvals made by the FPRB concerning codes of practice. The applicant made the same request to a separate provincial government department. The public body provided records to the applicant, but did not disclose records of the FPRB that the applicant had received from the second department in response to its other request. The applicant asked the Commissioner to review the public body's decision. The applicant claimed that, by withholding information and documentation responsive to the request, the public body did not fully comply with the access request. The Commissioner found

that the public body did not fulfill its duty to assist the applicant, and that it would have been reasonable for the public body to communicate more openly with the applicant when processing the request.

No order was necessary, however, as prior to the issuance of this decision, the head of the public body made an offer to the applicant to process the additional records at issue. The Commissioner recommended that, in future requests for access, the head of the public body respond to applicants openly, accurately and completely, by avoiding the errors described in this order, by endeavouring to interpret access requests broadly enough to assist applicants in obtaining the records they are seeking, and by providing an explanation to applicants in circumstances where no responsive records are found.

It was incumbent on the Public Body to review the Applicant's entire access request, including the submitted access request form, the cover letter, and the initial request to the FPRB attached to the form. It is also worthy of note that if the FPRB had fulfilled its duty to assist, the initial request would have been the only request to be processed.
- Commissioner Karen A. Rose, Order No. FI-15-006 at para 36

FI-15-007, September 30, 2015,

Re: Department of Economic Development and Tourism (Island Investment Development Inc.)

An applicant requested access to information related to the Provincial Nominee Program. The head of the public body provided the applicant with a fee estimate of \$193.75 to process the records. The applicant questioned the fee estimate, and requested a fee waiver based on the applicant's submission of his inability to pay, and that the records relate to a matter of public interest. The head of the public body denied the fee waiver, and confirmed the appropriateness of the fee.

The Commissioner reduced the fee estimate to \$120.20. With regard to the applicant's request for a fee waiver based on his inability to pay, the Commissioner found that the applicant had not provided sufficient evidence. However, the Commissioner found that the records do relate to a matter of public interest, and allowed a full fee waiver.

FI-15-008, October 20, 2015,

Re: Department of Finance

An applicant sought a review of a request for access to an email record held by the public body. The public body provided the applicant with a copy of the email, severing third party personal information. During the course of the review, the public body decided to disclose some further information in the email, as disclosure would not constitute an unreasonable invasion of a third party's personal privacy. The name and email address of a third party remained severed from the email. The Commissioner found that the name and personal email address of the third party are personal information of the third party, and disclosure would constitute an unreasonable invasion of the third party's personal privacy, in accordance with section 15 of the *FOIPP Act*. The decision of the head of the public body was confirmed.

**FI-15-009, October 27, 2015,
Re: Department of Health and Wellness**

An applicant asked the public body for access to investigation reports of public and private community care facilities. Before a review was requested, the public body had been working with the applicant to help reduce the fee estimate, after which the public body provided a fee estimate to the applicant in the total amount of \$210, approximating 1000 pages of records as being responsive to the applicant's request. The applicant requested a fee waiver on the basis that the records relate to a matter of public interest. The public body granted the applicant a 50% fee waiver. During the processing of the request, however, the fee estimate increased substantially, as the public body estimated 2000 pages of records were actually responsive to the request. The Commissioner concluded that the fee estimate was excessive and reduced the fee from \$1,100 to \$330. The Commissioner granted the applicant a fee waiver for search and preparation, as the records satisfied the criteria for a finding that they relate to a matter of public interest, and the circumstances warranted a fee waiver. The Commissioner also granted the applicant a partial fee waiver for photocopying, allowing 1000 pages of records to be photocopied free of charge. The Commissioner confirmed that the Public Body had fulfilled its duty to assist the applicant by responding openly, communicating with the applicant throughout the process, and meeting its timelines.

**FI-15-010, November 30, 2015,
Re: Department of Justice and Public Safety**

An applicant requested access to information relating to suicides that have occurred in any publicly funded health facility over the past ten years, broken down by year of death, type of health facility, name of health facility, and city or town. The public body disclosed the number of suicides, and the name of the health facility at which they occurred, withholding the year of the deaths, claiming that disclosure of that detail could reasonably identify the individuals involved, and thus constitute an unreasonable invasion of their personal privacy. The applicant requested a review of the public body's decision. The Commissioner found that disclosure of the year of suicide, combined with the name of the publicly funded health facility, is not personal information. In the alternative, if it were personal information, the Commissioner found that disclosure would not constitute an unreasonable invasion of a third party's personal privacy. The Commissioner further found that the public body had fulfilled its duty to assist the applicant in every respect except one: the public body had interpreted the applicant's request too narrowly. The Commissioner ordered the public body to provide the applicant with access to the year of death for the two suicides identified.

**FI-15-011, November 30, 2015,
Re: English Language School Board**

An applicant requested a review of a decision of the English Language School Board refusing access to certain statistical information related to suspensions of students in grades 10 to 12, at

six high schools, during a three school-year period: 2008/2009; 2009/2010; and 2010/2011. The applicant also asked that the fee estimate be reviewed.

The Commissioner found that the statistical information in the records at issue was not personal information, and that, if it were, the disclosure of the information would not constitute an unreasonable invasion of third parties' personal privacy. The Commissioner ordered the head of the public body to provide the withheld information to the applicant. Further, the Commissioner reduced the fee estimate, and confirmed the 60% fee waiver, which the public body had exercised its discretion to apply. The Commissioner found that the public body had fulfilled its duty to assist the applicant commendably.

FI-15-012, December 31, 2015,

Re: Prince Edward Island Liquor Control Commission; Executive Council Office; Office of the Premier

An applicant requested a review of the decisions of three public bodies, regarding access to expense claim information of specific individuals within the three public bodies. For each request, the applicant questioned the fee estimate, and requested a fee waiver on the basis that the records relate to a matter of public interest. The head of the public body denied each fee waiver request. In all three reviews, the Commissioner reduced the fee estimate. Further, the Commissioner found that most of the records at issue relate to a matter of public interest, and allowed a partial fee waiver for all three reviews. The Commissioner found that the head of the Prince Edward Island Liquor Control Commission did not fulfill his duty to assist the applicant, as the request was subjected to unjustified delays. Therefore, the Commissioner waived the fee of the Prince Edward Island Liquor Control Commission in full.

FI-15-013, December 31, 2015,

Re: Office of the Premier

An applicant sought a review of a request for access to information held by the public body for e-mails sent or received by Office of the Premier staff that contained the applicant's name, including those e-mails that originated with the applicant and were forwarded by staff to others. The public body determined that no records were responsive to the applicant's request. The applicant argued that the Office of the Premier had not conducted an adequate search for records. It was found that the public body had conducted an adequate search in the circumstances. It was further found that the public body had sufficiently informed the applicant of how it had satisfied its duty to search for records, as the standard is not one of perfection. No order resulted from the findings, although the Commissioner recommended that the public body follow its established search documentation procedures fully in the future.

I note that all public bodies are held to the same standard, that being one of reasonableness. In the circumstances of this review, I find that the Public Body has met this standard. However, I also note that this public body, the Office of the Premier, may be regarded as the leader of our public administration, and an example for the rest to follow.

- Commissioner Karen A. Rose, Order No. FI-15-013 at para 42

Investigation Reports resulting from Privacy Complaints:

An individual who believes that their privacy rights are not being protected by a public body, may make a written complaint to the Commissioner's office. The Commissioner is authorized to attempt to resolve such complaints. If the complaint cannot be resolved, the Commissioner will either dismiss the complaint, issue an order requiring the public body to stop collecting, using or disclosing personal information in violation of the *FOIPP Act*, or requesting the public body to destroy personal information collected in violation of the *FOIPP Act*, or issue an investigation report. One order and one investigation report were issued by the Commissioner resulting from privacy complaints in 2015:

PP-15-001, March 12, 2015, Re: Health PEI

Complaints were received about the privacy of personal information at the Emergency Department of the Queen Elizabeth Hospital. Due to the frequency and similarity of the complaints, the Acting Commissioner initiated an investigation. Coincidentally, the hospital was scheduled to undergo major renovations and construction began one month after the investigation was initiated. Based on a tour of the renovated facilities, the Commissioner found that the renovations adequately addressed most of the privacy concerns. However, the Commissioner found that the public body's use of large-screened monitors to display personal information in the corridors of the treatment area is an unreasonable invasion of personal privacy and not authorized under the *FOIPP Act*. The Commissioner further found that the public body had not met its obligation to take reasonable measures to protect personal information. The Commissioner ordered the public body to stop disclosing the personal information of patients and recommended that the public body consider location and content of the disclosure of personal information.

I am not ordering the Public body to limit visitors or to cease using the tracking board as a health care communication and management tool, but to use the tracking board in a manner that respects and protects the personal privacy of the patients.

- Commissioner Maria C. MacDonald, Order PP-15-001 at para 57.

IR-15-001, October 30, 2015, Re: Workers Compensation Board

While this Investigation Report is summarized at pages 7-8, above, the following quote also illustrates the challenges raised in the Investigation Report:

As noted above, the Public Body has been responsible for 47 privacy breaches since late 2011. The Public Body points out the volume of clients and correspondence it deals with. It notes that, in 2014, for example, it sent 29,471 pieces of correspondence to workers, and 4,021 pieces of correspondence to employers, for a total of 33,492 pieces of correspondence. These pieces of correspondence were sent to a total of 4,961 workers, and 2,036 employers. In this context, some might say that 47 reported breaches are not excessive. In my view, they are excessive if the breach is preventable.

-Commissioner Karen A. Rose, Order IR-15-001 at para 51.

Financial Information:

Budget:

This annual report covers activities of the office during the calendar year of 2015 in all respects except the budget. The reporting period of the budget is from April 1, 2015 to March 31, 2016.

¹

	2015-2016 Budget Forecast	2015-2016 Budget Estimate	2015-2016 Expenditures
Administration	4,900.00	4,900.00	2,843.00
Materials, Supplies and Services	1,600.00	1,600.00	169.00
Professional Services	1,000.00	1,000.00	0.00
Salaries, Benefits	110,200.00	108,100.00	113,747.00
Travel and Training	5,000.00	5,000.00	228.00
Total	122,700.00	120,600.00	116,988.00

It is very worthy of note that the OIPC budget does not reveal all the operating expenses of the office, as some supplies and services the office receives are 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 these costs are not reflected.

A key example is the additional administrative support we have benefited from since December, 2015. The salary and benefit expense associated with this position has been allocated out of the budget of the Legislative Assembly.

For information regarding the Commissioner's expenses, please refer to our website under "Proactive Disclosure".



The right of access to information is precious. No government should ever oppose it or impede it on the basis that it is too expensive, too time consuming or only the 'trouble-makers' use it. Accountable governments are better governments.

- Frank Work, former Alberta Information and Privacy Commissioner, 2005

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¹ This information is taken from page 148 of the *Prince Edward Island Estimates of Revenue and Expenditures 2015-2016*, at <http://www.gov.pe.ca/photos/original/estbudget2015.pdf>

**Statistics – Summary of Privacy Complaints
January 1, 2015 – December 31, 2015
Protection of Privacy**

Public Body	Carried over from previous years	2015 Complaints	Resolved in 2015 without Investigation Report/ Order/ Decision	Withdrawn in 2015 without Investigation Report/ Order/ Decision	Refusals in 2015	Investigation Report/ Order/ Decision issued in 2015	Carried forward to 2016
Education, Early Learning and Culture	1	0	0	0	0	0	1
English Language School Board	0	0	0	0	0	0	0
Executive Council Office	1	0	0	0	0	0	1
Finance	2	0	1	0	0	0	1
Health and Wellness	0	0	0	0	0	0	0
Health PEI	3	1	0	0	0	1	3
Justice and Public Safety	0	0	0	0	0	0	0
PEI Liquor Control Commission	0	0	0	0	0	0	0
Transportation, Infrastructure and Energy	0	1	0	0	0	0	1
Workers Compensation Board of PEI	1	0	0	0	0	1	0
Workforce and Advanced Learning	1	0	0	0	0	0	1
TOTAL	9	2	1	0	0	2	8

**Statistics – Summary of Requests for Review
January 1, 2015 – December 31, 2015
Access to Information**

Public Body	Carried over from previous years	2015 requests	Resolved in 2015 without order/ decision	Withdrawn in 2015 without order/ decision	Refusals in 2015	Order/Decision issued in 2015	Carried forward to 2016
Agriculture and Fisheries	2	0	0	0	1	1	0
Communities, Land and Environment	4	0	0	0	0	0	4
Economic Development and Tourism	0	1	0	0	0	0	1
Education, Early Learning and Culture	2	0	0	0	0	0	2
English Language School Board	6	0	0	0	0	1	5
Executive Council Office	1	0	0	0	0	1 [order included files from OotP and PEILCC]	0
Family and Human Services	2	1	0	0	0	1	2
Finance	2	0	1 [Resolved by parties following an interim order]	0	0	0 [+1 interim order which led to a resolution by the parties]	0
Health and Wellness	1	2	0	1	0	2	0
Health PEI	4	1	0	0	1	1	3
Intergovernmental and Public Affairs	0	1	0	1	0	0	0
Justice and Public Safety	5	0	0	0	0	1	4
Office of the Premier	2	0	0	0	0	1 [+ 1 order issued for OoTP, ECO and PEILCC files]	0
PEI Liquor Control Commission	1	0	0	0	0	0 [+ 1 order issued for OoTP, ECO and PEILCC files]	0
Workforce and Advanced Learning	3	3	0	0	2	2	2
TOTAL	35	9	1	2	4	14	23

List of Public Bodies:

The foregoing graphs relate to the public bodies about which reviews and complaints have been filed. A list of public bodies and entities subject to the *FOIPP Act* can be found in Schedule 1 of the *FOIPP Act*, at pages 6 to 9 of the general regulations. The public bodies in Part 1 of Schedule 1 are departments, branches and offices of the provincial government. They are listed in Schedule 1 as follows:

Department of Agriculture and Fisheries,
Department of Communities, Land and Environment,
Department of Economic Development and Tourism,
Department of Education, Early Learning and Culture,
Department of Family and Human Services,
Department of Finance,
Department of Health and Wellness,
Department of Justice and Public Safety,
Department of Transportation, Infrastructure and Energy,
Department of Workforce and Advanced Learning,
Intergovernmental and Public Affairs,
Office of the Premier.

The Executive Council Office is a public body but is specifically named in the definition of "public body" in the Act. As a result, Executive Council Office is not listed in the regulations.

Part II of Schedule 1 also lists designated public bodies which are included under the *FOIPP Act*. There are over 100 designated public bodies listed under the *FOIPP Act*. Some of those designated public bodies include but are not limited to Commission scolaire de langue française, Elections PEI, English Language School Board, Fathers of Confederation Buildings Trust, Health PEI, Island Regulatory and Appeals Commission, Island Waste Management Corporation, PEI Liquor Control Commission, Workers Compensation Board of Prince Edward Island, and the Workers Compensation Appeal Tribunal.

Appendix A to this report sets out the number of access requests made to public bodies in 2015. The statistics relating to Schedule 1, Part I public bodies were provided by APSO. The statistics relating to Schedule 1, Part II public bodies were provided by those individual public bodies. Appendix A also sets out the number of requests for reviews received by our office in 2015, for each of these same public bodies.

It should be noted the requests for review to the OIPC in 2015 are not necessarily related to the same access requests recorded by a public body in 2015, as some may be reviews of 2014 decisions of public bodies.

Appendix A: Schedule 1, Part I public bodies

Public Body	Requests to access records, 2015	Requests for Review to OIPC, 2015
Agriculture and Fisheries	4	0
Communities, Land and Environment	8	0
Economic Development and Tourism (formerly Innovation and Advanced Learning)	8	1
Education, Early Learning and Culture	14	0
Justice and Public Safety (formerly Environment, Labour and Justice)	32	0
Executive Council Office	1	0
Family and Human Services (formerly Community Services and Seniors)	9	1
Finance	11	0
Health and Wellness	20	2
Intergovernmental and Public Affairs (formerly Intergovernmental Affairs)	1	1
Office of the Premier	6	0
PEI Public Service Commission	2	0
Transportation, Infrastructure and Energy	10	0
Workforce and Advanced Learning	2	3
TOTAL	128	8



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 reason for keeping it secret.

- The Right Honourable Joe Clark

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Appendix A: Schedule 1, Part II public bodies

Public Body	Requests to access records, 2015	Requests for Review to OIPC, 2015
Elections PEI	0	0
Fathers of Confederation Buildings Trust	Requests for access to information (general info) - 1 Requests for access to personal information - 0	0
Health PEI	Requests for access to information (general info) - 24 Requests for access to personal information - 35	1
Island Waste Management Corporation	0	0
Human Rights Commission	0	0
Workers Compensation Appeal Tribunal	0	0
English Language School Board	Requests for access to information (general info) - 0 Requests for access to personal information - 3	0
French Language School Board	0	0
Island Regulatory and Appeals Commission	Requests for access to information (general info) - 1 Requests for access to personal information - 0	0
Police Commissioner	0	0
PEI Liquor Control Commission	0	0
Workers Compensation Board	Requests for access to information (general info) - 2 Requests for access to personal information - 0	0
TOTAL	66	1



Democratic process 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

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