

**ANNUAL REPORT  
2016**

**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**

**2016**



# Prince Edward Island Île-du-Prince-Édouard

## Legislative Assembly

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

## Assemblée législative

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

September 25, 2017

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

Honourable Speaker:

I am pleased to present to you the enclosed 2016 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2016 to December 31, 2016. This is the fourteenth 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

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**OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER**

## **Commissioner's Message:**

2016 was a productive year for our office, as we continued to address two key purposes of the *Freedom of Information and Protection of Privacy Act* (the *FOIPP Act*): providing for Islanders' rights of access to provincial government information, and protecting the privacy of Islanders' personal information held by the government of Prince Edward Island.

### *Reviews:*

In 2016, we continued to focus on the backlog of reviews, making considerable progress in doing so, while also addressing the 22 new reviews requested over the course of the year. In 2017, we expect to have completed all reviews which predate 2016. I issued 11 orders relating to 12 access reviews in 2016, three of which were initiated in 2012, one in 2013, four in 2014, two in 2015, and two in 2016. A summary of orders resulting from these reviews may be found at pages 10-15 of this report. In addition, seven access reviews were resolved without the necessity of a formal order.

With regard to privacy complaints, I released three investigation reports in 2016, one of which was initiated in 2007, one in 2013, and one in 2014. A summary of these investigations may be found at pages 16-18 of this report. In addition, one privacy complaint was resolved without the necessity of a formal report.

### *Breach Reporting:*

Our office continues to approach privacy in a positive and proactive way. In 2016, six privacy breaches were voluntarily reported by public bodies. In these circumstances, our role has been to provide guidance to public bodies relating to optimal breach management to help ensure that such breaches do not recur. All reported breaches were inadvertent and, although the public bodies notified the individuals whose personal information was compromised, in all cases, no complaints were made to our office relating to these breaches.

### *Outreach:*

Our office continues to post our decisions on our website at [oipc.pe.ca](http://oipc.pe.ca). In addition, on our homepage, we post regular announcements entitled "Did you Know That...". These are quick summaries of timely topics relating to information and privacy, or *FOIPP Act* interpretations. The website contains other helpful resources as well. In addition, we continue to educate the public via public speaking engagements. In 2016, I made our annual presentation to the records management students at Holland College campus, presented to the Law Society of Prince Edward Island relating to privacy issues, and was interviewed by CBC Compass and CBC radio relating to the advent of the *Health Information Act*.

## The Year Ahead

### *Staff Changes:*

In January 2017, a case review officer, Ms. Maria MacDonald, joined our team. Ms. MacDonald is a former Information and Privacy Commissioner for PEI and has worked as a senior information and privacy manager in Alberta. The addition of the case review officer position will aid us to address the backlog of reviews in the office, and also to provide a mediation approach to new reviews, which will help to address the risk of future backlogs. Individuals who request an access review, or make a privacy complaint, have already enjoyed this less formal approach to addressing their concerns, quickly and professionally. I will be reporting on our first year of experience with this resolution process in the 2017 Annual Report.

### *FOIPP Act Review:*

In early 2017, the Standing Committee on Communities, Land and Environment began a review of the *FOIPP Act*. I was invited to provide an overview of the *FOIPP Act* to the Standing Committee in March, 2017, and will be providing a formal proposal to the Committee, later in 2017. This office welcomes the analysis of the Standing Committee, who may make recommendations to the Legislative Assembly. After 15 years of operating under the *FOIPP Act*, we are in an informed position to identify potential changes which would improve this important legislation.

### *Proclamation of Health Information Act:*

On July 1, 2017, the *Health Information Act* ( "the *HIA*" ) was proclaimed in force. The *HIA* will bring a host of changes to the health care sector, and also to the responsibilities of this office. In preparation, we have posted resources to our website, including:

- *HIA* at a glance
- Privacy Impact Assessment Guidelines;
- Breach Reporting Guidelines; and
- Breach Reporting form.

Health custodians, and all Islanders, should benefit from these succinct resources, to garner an understanding of the *HIA*. I look forward to reporting on our experiences relating to the *HIA* in next year's annual report.

Karen A. Rose,  
Information and Privacy Commissioner

## 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 reflected by 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:

#### *The Commissioner*

The position of Information and Privacy Commissioner is designated as part-time, but was increased to an 80% position in November, 2016.

#### *Administrative Support*

The office has a full-time administrative support position. However, 2016 brought changes to administrative support. In December, 2015, the office had been provided with further administrative support, on a part-time basis, to assist in meeting the office's goal of addressing the backlog of reviews and complaints. Ms. Kimberley Johnston continued in that role until August of 2016. Ms. Mary-Lynn Smith, the full time Administrative Officer, left to pursue other opportunities in August 2016, and Ms. Johnston now fills the full-time position of administrative assistant. We will miss Ms. Smith's extensive knowledge and experience in the fields of access and privacy, and wish her the best in her new role. We are already reliant on Ms. Johnston's organizational skills and innovative ideas.

#### *Case Review Officer*

In November, 2016, the position of full-time case review officer was created for the office. A competition and interviews were held in December, 2016, and approximately 130 applications were received. The position was filled in January, 2017. Ms. Maria MacDonald has already made a significant difference in the efficiency of the office. I will report more fully on her position, and its impact on the office, in the 2017 Annual Report.

**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 was proclaimed in force on July 1, 2017. Previously, 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' personal health information is protected by custodians in compliance with the legislation.

**Mission:**

In addition to fulfilling the purposes of the *FOIPP Act* and the *HIA*, 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* and the *HIA*;
- 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 provincial public bodies and health information custodians who foster a culture of openness, transparency and respect for personal privacy, and value the security of the personal information they hold.

**Values:**

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



## **Legislative Responsibility:**

### *Freedom of Information and Protection of Privacy Act*

Under the *FOIPP 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 an individual'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*

Beginning July 1, 2017, the Commissioner is responsible for overseeing that health information of Islanders is dealt with by custodians in a manner consistent with the provisions of the *HIA*.

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 – Duty To Assist

A Public Body's Duty to Assist, located at section 8 of the *FOIPP Act*, is an integral part of the access to information process. In every review this office conducts, the Duty to Assist of the Public Body is examined, to ensure that the Applicant is responded to openly, accurately, and completely. In 2015 and 2016, several decisions were issued by this office, addressing a public body's duty to assist, and making findings related thereto.

Over the past two years, with more than a decade of experience to draw from, public bodies have generally met the reasonable standard for their duty to assist applicants. However, issues still occasionally arise relating to key responsibilities. The most common issues which have been addressed are the following:

- Communicating openly with applicants, including to help them narrow or clarify their requests;
- Conducting an adequate search for responsive records;
- Applying exceptions carefully, and explaining the rationale to applicants; and
- Timely response.

Underlying all of these responsibilities is an organized and efficient recorded information management system, which makes records straightforward to search and retrieve, as demonstrated in the excerpts from Orders, set out below.

#### Fulfilling the Duty to Assist:

*The documents provided by the Public Body for the purposes of this review are ample evidence that the Public Body fulfilled its duty to assist the Applicant under subsection 8(1) of the FOIPP Act, by responding to the Applicant openly, accurately and completely. The Public Body responded within established timelines, conducted a thorough search for records and communicated openly with the Applicant. The head of the Public Body also revisited his decision during this review, reducing the amount of information that was severed from the Records. I commend this action by the head of the Public Body, which was not required by this office, but which demonstrates a genuine desire to assist the Applicant and to resolve the issues of the review.*

- Commissioner Karen A. Rose, Order No. FI-16-007 at para 10

#### Open Communication:

*By not considering the Applicant's request broadly, and by not seeking clarification from the Applicant, the Public Body unilaterally narrowed the scope of the information the Applicant was looking for, and, in turn, failed in its duty to assist the Applicant.*

- Commissioner Karen A. Rose, Order No. FI-15-006 at para 44

**Open Communication:**

*... the Applicant has waited four years for a decision in this matter. During the processing of the Applicant's requests, no suggestion was made by the Public Body at any time that it had custody of similar documents not related to the specific parcel number, nor that it could process these documents. Although I recently inquired of the Public Body whether the Applicant had made a new access request, I wish to make it clear that the Applicant was not required to do so. The Applicant had already made two access requests to the Public Body for the same records. An expectation for a third request would have shifted the responsibility of providing access from the Public Body to the Applicant. This would be contrary to the letter and spirit of the FOIPP Act.*  
- Commissioner Karen A. Rose, Order No. FI-15-006 at para 51

**Open Communication/Reasonable Search:**

*The head of the Public Body states that if the Applicant had contacted the Public Body with his concern, then it could have worked with him to conduct a further search . . . Although the duty to assist is borne only by the public body, communication requires both parties.*  
- Commissioner Karen A. Rose, Order No. FI-15-013 at paras 38- 40

**Timeliness:**

*In failing to be more timely in its disclosure of Record 10 to Applicant Two, I find that the head of the Public Body failed in a duty to assist Applicant Two under section 8 of the FOIPP Act. In future, and especially in view of the existence of APSO, a centralized access and privacy services office, public bodies should immediately release to all applicants, responsive public records that have already been released to one applicant.*  
- Commissioner Karen A. Rose, Order No. FI-16-004 at para 60.

And I believe everyone in this House today would recognize that being able to access information as it relates to the Government and public institutions should be a fundamental right of a democratic society.

Prince Edward Island, Legislative Assembly, *Hansard*, 60th Leg, 1st Sess, (15 April 1997) at 693-694  
(Pat Mella, Leader of the Opposition, Progressive Conservative)

The benefit, of course, is that this kind of legislation provides the electorate and the people of this province with information that keeps them informed and up-to-date as to what government is doing and why it's doing it. What's the rationale for, for any decision that one might want to put on the table. I think the electorate, the people of this province, are entitled to have access to that kind of information so that they can make a meaningful judgment as to the adequacy of the decision making of cabinet and of government.

Prince Edward Island, Legislative Assembly, *Hansard*, 60th Leg, 1st Sess, (15 April 1997) at 700  
(Paul Connolly, MLA, Liberal)

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

In Investigation Report IR-15-001, regarding the information handling practices of the Workers' Compensation Board ("the WCB"), the Commissioner made recommendations 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.

The WCB provided its first 6-month report in April, 2016, which is summarized in our 2015 Annual Report. On October 28, 2016, the WCB provided its second 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 them. Additional actions taken by the WCB, as of October 28, 2016, are summarized below:

1. **Focus on Staff Education**
  - Information sessions on the WCB's privacy breach management procedure are attended by all staff.
  - Privacy best practice tips are shared in the biweekly staff newsletter, and on the WCB staff intranet.
  - FOIPP Coordinator attended a maritime privacy conference, reporting back to the organization on emerging privacy issues and potential solutions.
2. **Changes to Information Handling Practices to Reduce Use of Personal Info**
  - Amount of claimant personal information minimized in reports to employers.
  - Employer account statements are provided online, with electronic security features.
  - Privacy breach records are maintained separately from claim files.
3. **Recognizing the vulnerability of workers**
  - The address block on correspondence is now shaded grey, limiting the ability to read text behind the first page in a windowed envelope.
  - To reduce the risk that claim conversations may be overheard by visitors in the lobby, the WCB promotes the use of its meeting rooms for walk-in clients, installed a television in the lobby to muffle sound, and posted confidentiality signage.
  - The WCB enhanced its processes for verification of identity prior to disclosure of claim information, revising two access to information procedures.
4. **Enhancements to Plan for Privacy Breach Prevention**
  - Additional job aids in the mail room when sealing envelopes.
  - Making employer number a required field in the Employer's Report, to ensure employees are always matched with the correct employer.
  - A comprehensive review of claims support processes.
  - An examination of redaction processes in worker claim file releases.

5. **Develop a Culture of Privacy Protection Through Performance Evaluation**
  - Engaging all staff in identifying potential risks and possible solutions.
  - Incorporating a review of confidentiality obligations into the annual performance management process.
  
6. **Develop a Culture of Privacy Protection Through Website Content**
  - Revised privacy statement to set out the WCB's overall commitment to privacy.
  - Established dedicated email account for questions about the WCB's privacy practices.

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

1. In collaboration with a University of Prince Edward Island researcher, the WCB enhanced the privacy protection component of a study on concussions to ensure that participant information is anonymous and confidential.
2. The WCB's Information Technology experts investigated the security and privacy features of a diagnostic system used by a service provider to ensure that confidential data is adequately protected.
3. The WCB took the opportunity during the looming postal strike to strengthen the protection of worker payment information through the promotion of direct deposit over mailed cheques.
4. The WCB has enhanced the privacy protection requirements of its contracted research company to ensure that written verification is submitted to the WCB as proof of data sample destruction following stakeholder surveys.

The second six-month report demonstrates that management and staff of the Workers Compensation Board continue to be actively engaged in protection of worker privacy. All recommendations in the report have been implemented and are ongoing.

We would encourage all public bodies to embrace protection of privacy, fair information practices, and breach management as fully as the WCB has done. We are particularly impressed that many suggestions for improvements to fair information practices have come from employees' input. Management has empowered employees to contribute to a culture of privacy protection, and staff have proven that they are up to the challenge.

## Commissioner's Decisions, 2016:

### Orders resulting from Access to Information Reviews

If an individual is not satisfied with the decision of a 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. Eleven such orders were issued by the Commissioner in 2016.

**FI-16-001, February 18, 2016,**

***Re: Department of Economic Development and Tourism***

An applicant requested access to loan and grant information relating to a third party. The public body provided the applicant access to a letter of offer to finance, severing information from one page, relying on section 14 (harmful to business interests of a third party). The Commissioner ordered the public body to disclose the information.

*It has been well-established by an abundance of decisions over the past decade what level of detailed evidence is required to meet the standard of proof under section 14 of the FOIPP Act. Orders of this office have repeated, time and again, that bald assertions of harm will not suffice.*

- Commissioner Karen A. Rose, Order No. FI-16-001 at para 44

**FI-16-002, March 7, 2016,**

***Re: Department of Justice and Public Safety***

An applicant requested access to information regarding a shooting range approval and resulting recommendations made about a privately-owned shooting range. The public body decided to release two inspection reports, with limited severing, based on sections 14 (harmful to business interests of a third party) and 15 (personal information of a third party). A third party asked for a review by the Commissioner, arguing that the records at issue should be withheld in full, as disclosing them would be harmful to its business interests. The Commissioner upheld the decision of the public body to disclose the two reports to the applicant, but without severances.

*The standard of proof for a reasonable expectation of harm was recently discussed ... The standard moves along the continuum toward probability, and beyond a mere possibility. While it is not necessary for the Third Party to prove that the harm will definitely occur, speculating or merely stating it, is not sufficient to satisfy this clause. The evidence must be detailed and convincing.*

- Commissioner Karen A. Rose, Order No. FI-16-002 at para 53

**FI-16-003, April 8, 2016,  
Re: English Language School Board**

An applicant requested records from a public body, relating to her son. The public body disclosed responsive records with severed information, relying on sections 15 (personal information of a third party) and 22 (advice from officials). The public body withheld other information, pursuant to the *Child Protection Act*.

The Commissioner agreed the public body was required to sever all information that revealed the identity of a person who has made a report to the Director of Child Protection. Information that did not reveal the identity of such persons was not subject to the prevailing sections of the *Child Protection Act*. It was also found that section 22 did not apply to the records at issue, and that section 15 applied to some information severed from nine records.

*In this review, the Applicant has been required to endure a lengthy and complex process, and, in the result, her desired access has been hindered by other statutory goals. While the right to access to records is a key goal of the FOIPP Act, it is sometimes thwarted by the equally important goal of protection of the personal privacy of third parties, or the prevailing provisions of other legislation, such as the Child Protection Act. Throughout this decision, I have attempted to find the optimal balance of competing objects.*

- Commissioner Karen A. Rose, Order No. FI-16-003 at para 126

**FI-16-004, April 29, 2016,  
Re: Department of Communities, Land and Environment**

Two applicants requested access to a report of an environmental advisory council relating to deep water wells, and one applicant also requested all related documents, emails or correspondence. The public body granted partial access to responsive records, relying on advice from officials [section 22].

With respect to clause 22(1)(g) of the *FOIPP Act*, the Commissioner found that most of the information withheld by the public body fit squarely within the meaning of this clause. For one record, the Commissioner found that clause 22(1)(g) applied only to one page of severed information. The head of the public body was not entitled to withhold the remaining pages.

For nine records, the Commissioner found that the head of the public body properly exercised discretion to withhold information. With respect to a further record, the Commissioner found that, on one page, the head of the public body failed to consider a relevant circumstance in making the decision. The Commissioner then required the head of the public body to re-exercise discretion, taking into consideration the relevant circumstance. (It is notable that, subsequent to this Order, the head of the public body re-exercised their discretion in favour of disclosure to the Applicant.)

One applicant raised section 30 (public health and safety) in support of their argument that the public body must disclose the records at issue. The Commissioner found that the circumstances of this review were not appropriate to apply section 30.

*I agree that advisory bodies require "deliberative space" and an assurance that their dialogue remains confidential in some circumstances, but not in every circumstance. Discretion must be exercised on a case-by-case basis. While the purpose of section 22 is to protect this "deliberative space", this does not mean that advice and recommendations will always be withheld by a public body. The head of a public body must, in every case, exercise their discretion in a judicious manner, taking into consideration all relevant circumstances.*

- Commissioner Karen A. Rose, Order No. FI-16-004 at para 43

*In the review before me, it is clear that the issue of the use of our province's ground water, and the potential of lifting a moratorium protecting its groundwater, holds "the interest of the public in the sense of an interest in a current political issue". I acknowledge that decisions relating to the future use and preservation of this natural resource are of grave importance to the citizens of Prince Edward Island. I do not find, however, that the issue satisfies the urgency required by section 30 of the FOIPP Act. It is not a situation, for example, where our waters have been contaminated and a public warning is required to notify citizens to immediately refrain from drinking it.*

- Commissioner Karen A. Rose, Order No. FI-16-004 at para 52

**FI-16-005, May 31, 2016,  
Re: Health PEI**

An applicant requested a review of a public body's decision relating to his application for access to ambulance response times for all calls in the Souris area for a six-month period. The Commissioner found that the public body has custody and control of records, namely patient care reports, to which the applicant had a right of access. The Commissioner further found that the public body is not obliged to create a record, as the original information is not in electronic form, and the requirements of subsection 8(2) have not been met. Finally, the Commissioner found that, pursuant to section 52 [authorizing public body to disregard request], retrieving and preparing responsive records to the applicant's request would not unreasonably interfere with the operations of the public body to the extent that the Commissioner may authorize the public body to disregard the request. However, the Commissioner pointed out that the public body has the discretion to charge fees to the applicant for preparation of the records at issue, which fees may be substantial in these circumstances. The Commissioner provided a time estimate for location and retrieval, and for preparation, to guide the parties.

*It is important to note that section 52 of the FOIPP Act requires more than an unreasonable interference with a public body's operations in order to result in an authorization by the Commissioner to disregard an access request...*

*The Public Body has provided no evidence that the Applicant's access request is either repetitious or systematic in nature. Therefore, clause 52(a) of the FOIPP Act cannot be invoked to apply to this access request.*

*I find that the Public Body has records in its custody and control that are responsive to the Applicant's access request, which records are PCR's, and that I cannot authorize the Public Body to disregard the Applicant's access request pursuant to section 52 of the FOIPP Act.*

- Commissioner Karen A. Rose, Order No. FI-16-005 at para 52-54.



**FI-16-006, June 17, 2016,  
Re: Department of Justice and Public Safety**

An applicant sought a review of a request for access to a series of emails from 2010. The public body provided partial access to the responsive emails, but withheld some information on the basis of clause 19(1)(b) of the *FOIPP Act* [harmful to intergovernmental relations], as the information originated from other provincial governments, was provided in confidence, and those provincial governments did not consent to disclosure of the information.

The Commissioner found that the public body properly applied clause 19(1)(b) to sever the content of the email messages, and upheld the decision of the department to withhold this information from the applicant. However, the Commissioner found that the email addresses and certain salutations severed from the emails, were not properly withheld under clause 19(1)(b), as the email addresses were not provided in confidence.

**FI-16-007, July 8, 2016,  
Re: Health PEI**

An applicant requested a review of a decision of a public body to give the applicant partial access to records requested, excluding information it determined to be third party personal information, pursuant to section 15 [unreasonable invasion of personal privacy]. The Commissioner found that not all of the information the public body severed from the records at issue was personal information as defined in the *FOIPP Act*, and that, of the information that is personal information, the disclosure of certain information would not constitute an unreasonable invasion of third parties' personal privacy, pursuant to section 15. The Commissioner ordered the public body to provide some of the withheld information to the applicant.

*I also acknowledge the Public Body's concern regarding the possible ability to identify individuals when information is disclosed about an incident occurring in a small community with a limited number of residents and employees. I appreciate the Public Body's commitment to the protection of privacy, and its attempt to accurately and efficiently sever information that it believes would, by association, unreasonably invade a third party's personal privacy, if disclosed.*

- Commissioner Karen A. Rose, Order No. FI-16-007 at para 19

*I agree with the Applicant that residents of community care facilities are vulnerable, a statement which is also made at page 5 of the Investigation Report. There is a public interest in investigations relating to resident care, as disclosure of the substance of this investigation helps to hold the Public Body accountable for the operation of its community care facilities. Disclosing this type of information enables the public to identify whether there are issues that may need to be addressed, and, if so, how they are being addressed. However, not all of the personal information in the Records is necessary to meet this objective. Once again, a careful balance must be maintained between accountability and personal privacy of third parties.*

- Commissioner Karen A. Rose, Order No. FI-16-007 at para 56

*Revealing the consequences of staff wrongdoing without revealing the name of the staff member increases the transparency of the Public Body and does not constitute an unreasonable invasion of privacy for those staff members.*

- Commissioner Karen A. Rose, Order No. FI-16-007 at para 62

**FI-16-008, August 2, 2016,**

***Re: Department of Communities, Land and Environment***

The public body disclosed responsive records to an applicant's request, severing information that constituted an unreasonable invasion of personal privacy of a third party in accordance with section 15, and constituted advice from officials in accordance with section 22.

The Commissioner found that severing two personal email addresses from the records on the basis of section 15 was required, as disclosure would constitute an unreasonable invasion of the personal privacy of a third party. However, the Commissioner further found that the remainder of the information severed by the department did not satisfy section 15, and ordered it to be disclosed.

The Commissioner found that the department was authorized under clause 22(1)(g) to sever partial information from two of the three records, as the information constitutes advice from officials. However, the Commissioner also found that the department had not demonstrated that it had properly exercised its discretion to withhold the severed information. Therefore, the Commissioner ordered the head of the public body to re-exercise their discretion with regard to the information identified in the two records at issue.

*In order to show that that the head of the Public Body has properly exercised discretion, it must be shown that all relevant factors were considered, both for and against access, including the objects and purposes of the FOIPP Act. It must also be demonstrated that discretion was exercised in a balanced and judicious manner. I agree with the Applicant that I have been provided with little information relating to how the head of the Public Body has exercised discretion, and, therefore, I am not satisfied that the head of the Public Body properly exercised discretion.*

- Commissioner Karen A. Rose, Order No. FI-16-008 at para 74

**FI-16-009, November 24, 2016**

***Re: Health PEI***

An applicant made an access request for all incident reports submitted to a public body by an ambulance services company for a two-year period. The public body decided to release the records with severing of certain personal information, in accordance with section 15 [unreasonable invasion of personal privacy].

The Commissioner found that the public body properly applied section 15 of the *FOIPP Act* to the personal information of patients and patients' family members in three records at issue. The Commissioner also found that disclosure of most names of staff and representatives of the ambulance services company carrying on their professional or work duties, would not constitute an unreasonable invasion of the personal privacy of the staff and representatives.

The Commissioner ordered this information to be disclosed. However, the Commissioner found that two records at issue contain employee names, the disclosure of which would constitute an unreasonable invasion of those employees' personal privacy. The Commissioner confirmed the decision of the public body to withhold this personal information from the applicant.

The Commissioner found that one record at issue contains employment history of a third party, the disclosure of which would constitute an unreasonable invasion of privacy for the third party to whom the information relates. The Commissioner ordered Health PEI to withhold most of the information in this record from the applicant, but ordered the disclosure of non-identifying information which would describe the incident.

*Revealing incidents without revealing the identity of the individuals involved promotes transparency of the Public Body without constituting an unreasonable invasion of privacy for the individuals to whom the personal information relates.*

- Commissioner Karen A. Rose, Order No. FI-16-009 at para 88

**FI-16-010, December 13, 2016**

***Re: Department of Justice and Public Safety***

An applicant requested access to a copy of the birth certificate of the applicant's father. The head of the public body decided that the birth certificate was excluded from access under the *FOIPP Act*, as it would fall under the authority of the *Vital Statistics Act*. The Commissioner found that a copy of a birth certificate is a record made from information in the office of a division registrar, and in the office of the Director of Vital Statistics, and is excluded from the application of the *FOIPP Act*, pursuant to clause 4(1)(h)(iv). Therefore, the Commissioner has no jurisdiction over the applicant's access request. The Director of Vital Statistics has discretion to issue birth certificates, but the *FOIPP Act* does not give an applicant a right to obtain a birth certificate.

**FI-16-011, December 21, 2016**

***Re: Department of Economic Development and Tourism***

An applicant requested access to an agreement, signed in 2008, between the public body and a third party, to expand broadband internet access. The public body decided to disclose the agreement to the applicant on the basis that disclosure would not be harmful to the business interests of the third party, pursuant to subsection 14(1). The third party asked for a review of this decision.

*Government's commitment to openness is the foundation of the access provisions of the FOIPP Act. In previous orders of this office, it has been stated that disclosure of the details of contracts entered into by our provincial government, is an example of the very type of information for which the FOIPP Act was drafted. The goals of transparency and accountability would be futile if public bodies were permitted to form contracts whose terms were kept secret from Islanders. For this vital reason, exceptions to disclosure are specific, and limited.*

- Commissioner Karen A. Rose, Order No. FI-16-011 at para 56

## **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.

Three investigation reports were issued by the Commissioner resulting from privacy complaints in 2016:

**IR-16-001, January 28, 2016,**

***Re: Department of Justice and Public Safety; Prince Edward Island Liquor Control Commission; Executive Council Office; Office of the Premier; Department of Health and Wellness***

The complainant questioned the information handling practices of five public bodies when processing access requests the complainant had submitted. The complainant claimed that the public bodies grouped and interconnected the access requests, reported to a centralized public body, and unnecessarily disclosed his name, phone number, e-mail address, mailing address, and the substance of his access requests to other public bodies.

The Commissioner found that the complainant's personal information was collected by the Department of Justice and Public Safety, and disclosed to that public body by other public bodies, contrary to Part II of the *FOIPP Act*. The Commissioner noted that, due to changes in centralizing the Access and Privacy Services Office, this finding currently applies only to those public bodies that have maintained their own autonomous access process. As the Department of Justice and Public Safety, on its own initiative, had stopped collecting the information, an order was unnecessary.

*Before summarizing my findings below, I wish to point out that throughout this investigation all public bodies have demonstrated a commitment to protection of personal information of applicants during the freedom of information process. While I have found a violation of the FOIPP Act by all public bodies, it is my belief that this violation was inadvertent, which is borne out by the public bodies' quick action to change their reporting procedure to the central APSO office.*

*- Commissioner Karen A. Rose, Order No. IR-16-001 at para 71*

**IR-16-002, May 31, 2016**

***Re: Health PEI***

The complainant questioned the information handling practices of the public body resulting from his attendance at the Emergency Department of the Queen Elizabeth Hospital, and subsequent admission.

The Commissioner found that the complainant's personal information was disclosed to two employees of the Workers Compensation Board, contrary to Part II of the *FOIPP Act*. With regard to the disclosure of the complainant's personal information to a police agency, the Commissioner found that this disclosure was authorized by clause 37(1)(o) of the *FOIPP Act* [disclosure to law enforcement to assist in an investigation].

The Commissioner recommended that the head of Health PEI create a detailed record of any personal information of clients or patients that Health PEI discloses to third parties. In accordance with subsection 33(a), the Commissioner also recommended that the head of the public body be mindful of the public body's obligation to make reasonable efforts to ensure the accuracy and completeness of facts used to make decisions that directly affect an individual. Accuracy includes keeping a record of the reasons for disclosure of an individual's personal information, and completeness includes creating a detailed record of any personal information of clients or patients which the public body discloses to third parties.

*I wish to make it clear that, by finding that the Public Body was not authorized to disclose the Complainant's personal information to employees of the Workers Compensation Board, I am not questioning the professional judgment of the psychiatrist who made the disclosure. Indeed, this is not my role. I am simply concluding that, based on the combination of the particular facts of this investigation and the regulatory framework as it currently stands in Prince Edward Island, there was no authority to do so.*

- Commissioner Karen A. Rose, Order No. IR-16-002 at para 40

**IR-16-003, October 3, 2016,**

**Re: Department of Finance (To be referenced in conjunction with Order PP-08-002)**

A complainant submitted that their personal information was disclosed by the Department of the Provincial Treasury, as it then was, to a mortgage specialist, in a manner that contravenes Part II of the *FOIPP Act*. The complainant also questioned the information handling practices of the online information system Geolinc Plus.

An issue of jurisdiction arose at the outset, and the Acting Commissioner issued an interim order on April 30, 2008. The Acting Commissioner found that the use and disclosure of personal information in records of the Office of the Registrar of Deeds are not subject to the jurisdiction of the *FOIPP Act*. However, the collection of personal information by the Office of the Registrar of Deeds is subject to the jurisdiction of the *FOIPP Act*.

In compliance with Interim Decision PP-08-002, the Commissioner found that she does not have jurisdiction to investigate this particular complaint, as it arises as the result of disclosure of information by the Office of the Registrar of Deeds, in the normal course of the activities of the Office of the Registrar of Deeds.

Despite her lack of jurisdiction to investigate this complaint, the Commissioner exercised her discretion to provide commentary on the Geolinc Plus system, a program of the public body, pursuant to clause 50(1)(d) of the *FOIPP Act*. She compared the information available via Geolinc Plus, with the information available through manual search at the Office of the Registrar of Deeds, and the tax assessment roll. She concluded that, although the search capabilities are similar, Geolinc Plus permits a broader search, and the very nature of online registries increases the accessibility of personal information. However, given the limited public use of Geolinc Plus, and the limited growth of such use over a six year period, and based on all of the information provided by the public body, the Commissioner concluded that the Geolinc

Plus system, to date, has appropriate controls for the use and disclosure of personal information in its custody and control. The Commissioner recommended that the head of the public body regularly review the information disclosed by Geolinc Plus, to determine its implication on the personal privacy of real property owners.

*It is important to note that every public registry, manual or electronic, requires a balance between public access and personal privacy, which balance is imperfect.*

-Commissioner Karen A. Rose, Order IR-16-003 at para 54.

#### Did You Know That...

In 2012, the Ontario Court of Appeal recognized a tort in Canada relating to personal privacy which has now been adopted by common law. PEI's Court of Appeal had predicted such a change 16 years earlier.

It would seem to me the courts in Canada are not far from recognizing a common law right of privacy if they have not already done so. It is also clear that Canadian courts do not hesitate to protect privacy interests under some recognized tort.

*Carruthers, C.J., Dyne Holdings Ltd. v. Royal Insurance Company of Canada,*  
1996 CanLII, 3672 (PE SCAD)

## Financial Information:

### Budget:

This annual report covers activities of the office during the calendar year of 2016 in all respects except the budget. The reporting period of the budget is from April 1, 2016 to March 31, 2017.

<sup>1</sup>

	<b>2016-2017 Budget Forecast</b>	<b>2016-2017 Budget Estimate</b>	<b>2016-2017 Expenditures</b>
Administration	6,400.00	6,400.00	3,590.00
Materials, Supplies and Services	1,600.00	1,600.00	2,350.00
Professional Services	1,000.00	1,000.00	4,245.00
Salaries	129,600.00	115,600.00	120,147.00
Travel and Training	5,000.00	5,000.00	2,208.00
<b>Total</b>	<b>143,600.00</b>	<b>129,600.00</b>	<b>132,540.00</b>

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.

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

Public access to a broad range of high quality information is vital to engagement and to working together. Such access expresses trust and respect; it provides knowledge and information upon which to base good decisions and informed opinions; and, it saves both Islanders and public servants time and money.

Premier Wade MacLauchlan,  
Speech From the Throne, Prince  
Edward Island, June 3, 2015

<sup>1</sup> This information is reproduced from page 149 of the *Prince Edward Island Estimates of Revenue and Expenditures 2016-2017*, at [https://www.princeedwardisland.ca/sites/default/files/publications/estimates2017\\_web.pdf](https://www.princeedwardisland.ca/sites/default/files/publications/estimates2017_web.pdf)

**Statistics – Summary of Privacy Complaints**  
**January 1, 2016 – December 31, 2016**  
**Protection of Privacy**

<b>Public Body</b>	<b>Carried over from previous years</b>	<b>2016 Complaints</b>	<b>Resolved in 2016 without Investigation Report/ Order/ Decision</b>	<b>Withdrawn in 2016 without Investigation Report/ Order/ Decision</b>	<b>Refusals in 2016</b>	<b>Investigation Report/ Order/ Decision issued in 2016</b>	<b>Carried forward to 2017</b>
Education, Early Learning and Culture	1	0	0	0	0	0	1
Executive Council Office	1	0	0	0	0	1	0
Finance	1	0	0	0	0	1	0
Health and Wellness	0	0	1	1	0	0	0
Health PEI	3	2	0	0	0	1	4
Justice and Public Safety	0 [part of file of ECO and PEILCC]	0	0	0	0	0 [part of Order of ECO cited above]	0
PEI Liquor Control Commission	0 [part of file of ECO and JPS]	0	0	0	0	0 [part of Order of ECO cited above]	0
Public Schools Branch	0 [part of file of EELC]	0	0	0	0	0	0 [1 file combines with EELC above]
Transportation, Infrastructure and Energy	1	1	1	0	0	0	1
Workers Compensation Board of PEI	0	2 [1 file combines with HPEI file above]	0	0	0	0	2 [1 file combines with HPEI file above]
Workforce and Advanced Learning	1	1	0	0	0	0	2
<b>TOTAL</b>	<b>8</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>10</b>



**Statistics – Summary of Requests for Review  
January 1, 2016 – December 31, 2016  
Access to Information**

<b>Public Body</b>	<b>Carried over from previous years</b>	<b>2016 requests</b>	<b>Resolved in 2016 without order/ decision</b>	<b>Withdrawn in 2016 without order/ decision</b>	<b>Refusals in 2016</b>	<b>Order/Decision issued in 2016</b>	<b>Carried forward to 2017</b>
Communities, Land and Environment	4	0	0	0	0	2 [1 order involved 2 reviews]	1
Economic Development and Tourism	1	4	0	0	0	1	4
Education, Early Learning and Culture	2	0	1	0	0	0	1
Family and Human Services	2	0	1	0	0	0	1
Finance	0	1	0	0	0	0	1
Health and Wellness	0	2	1	1	0	0	0
Health PEI	3	4	2	0	0	3	2
Justice and Public Safety	4	3	1	0	0	3	3
Public Schools Branch	5	0	0	0	0	1	4
Workforce and Advanced Learning	2	0	0	0	0	1	1
<b>TOTAL</b>	<b>23</b>	<b>14</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>12</b>	<b>18</b>

## 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 not listed in the regulations but it is specifically named in the definition of "public body" in the Act.

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 2016. The statistics relating to Schedule 1, Part I public bodies were provided by the Access and Privacy Services Office. 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 2016, for each of these same public bodies.

It should be noted the requests for review to the OIPC in 2016 are not necessarily related to the same access requests recorded by a public body in 2016, as some may be reviews of 2015 decisions of public bodies. Further, the statistics on the following pages do not include informal responses to requests for access to information.

## Appendix A: Schedule 1, Part I public bodies

Public Body	Requests to access records, 2016	Requests for Review to OIPC, 2016
Agriculture and Fisheries	4	0
Communities, Land and Environment	8	0
Economic Development and Tourism	8	4 access reviews
Education, Early Learning and Culture	14	0
Justice and Public Safety	32	3 access reviews
Executive Council Office	1	0
Family and Human Services	9	0
Finance	11	1 access review
Health and Wellness	20	2 access reviews
Office of the Premier	6	0
PEI Public Service Commission	2	0
Transportation, Infrastructure and Energy	10	0 1 privacy complaint
Workforce and Advanced Learning	2	1 privacy complaint
<b>TOTAL</b>	<b>127</b>	<b>10 access reviews 2 privacy complaints</b>

## Appendix A: Schedule 1, Part II public bodies

Public Body	Requests to access records, 2016	Requests for Review to OIPC, 2016
Elections PEI	0	0
Fathers of Confederation Buildings Trust	0	0
Health PEI	Requests for access to information (general info) - 34 Requests for access to personal information - 21	4 access reviews 2 privacy complaints (1 of the 2 privacy complaints also involve WCB)
Island Waste Management Corporation	0	0
Human Rights Commission	0	0
Workers Compensation Appeal Tribunal	0	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	Requests for access to information (general info) - 3 Requests for access to personal information - 0	0
Public Schools Branch	Requests for access to information (general info) - 3 Requests for access to personal information - 0	0
Workers Compensation Board	Requests for access to information (general info) - 3 Requests for access to personal information - 1 Requests for access to personal information and general info- 2	3 privacy complaints (1 of the 3 privacy complaints also involve HPEI)
<b>TOTAL</b>	<b>68</b>	<b>4 access reviews 3 privacy complaints 1 privacy complaint involving HPEI and WCB.</b>