

**ANNUAL REPORT
2017**

**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**

2017



Prince Edward Island **Île-du-Prince-Édouard**
Legislative Assembly **Assemblée législative**

*Information and
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October 26, 2018

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 2017 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2017 to December 31, 2017. This is the fifteenth 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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Commissioner's Message

2017 brought genuine and welcome change to the OIPC, as we adapted to the proclamation of the *Health Information Act*, engaged in a review of the *Freedom of Information and Protection of Privacy Act* (the *FOIPP Act*), and enjoyed an addition to our staff.

Health Information Act

In anticipation of the coming into force of the *Health Information Act*, on July 1, 2017, we developed guidelines, including *Health Information Act At a Glance*, *Privacy Breach Reporting Guidelines*, guidelines for *Privacy Impact Assessments*, and a *Privacy Breach Reporting Form*. These resources have proved helpful for custodians of personal health information, whether they are reporting a privacy breach, providing a privacy impact assessment for our review, or responding to a request for personal health information.

In 2017, seven privacy breaches were reported to the OIPC by custodians, as required by the *Health Information Act*. Final reports relating to some of these breaches have already been posted to our website, and will be summarized in the 2018 Annual Report. In addition, we received one privacy impact assessment in 2017, for our review and comment. We also conducted one access review, which was resolved.

FOIPP Act Review

In 2017, I presented to the Standing Committee on Communities, Land and Environment on two occasions, first to provide some history and overview of the *FOIPP Act*, and then to present our recommendations for amendment to our then 15-year-old legislation. A recommendation that was not adopted was in relation to solicitor-client privilege, which is discussed further at pages 6 and 7 of this report.

After a public consultation process, *An Act to Amend the Freedom of Information and Protection of Privacy Act* was given Royal Assent during the spring session, 2018, of the Legislative Assembly.

Changes to the *FOIPP Act* will include two crucial recommendations from the OIPC: bringing post-secondary institutions and municipalities under the *FOIPP Act*. The post-secondary institutions affected by the changes include UPEI, Holland College and College de L'Île. Municipalities will include Charlottetown, Summerside, Stratford and Cornwall. These changes will take effect in April, 2019.

Addition to Staff

As a result of the workload of the office, a new staff position was established in 2017, that of Case Review Officer. Maria MacDonald has been an invaluable addition. Due to the small size of the OIPC, and Ms. MacDonald's breadth of experience, her duties are many, and have included resolving privacy complaints, reviewing privacy impact assessments, and assisting with investigations and reviews.

FOIPP Act Access and Privacy

As always, the office was heavily occupied this year with reviews relating to access requests. In 2017, we addressed 26 new access reviews, one new privacy investigation, and seven voluntary breach reports.

In relation to the backlog of reviews, at the end of 2017, there remained four reviews which predate 2016. Of the orders issued in 2017, three were initiated in 2011, one was initiated in 2012, one in 2013, one in 2014, two in 2015, three in 2016, and one in 2017. A summary of orders may be found at pages 13 to 19 of this report. In addition, seven access reviews were resolved without the necessity of a formal order. One access review, initiated in 2016, was resolved after the issuance of an interim order. An interim order was issued pertaining to another access review, initiated in 2016, and is currently under judicial review.

The backlog of privacy investigations was eliminated in 2017. Two Orders were issued, initiated in 2011 and 2016. A summary of these privacy investigations may be found at pages 20 to 21 of this report. In addition, six privacy complaints were resolved without the necessity of a formal report. A privacy complaint initiated in 2017 was also resolved the same year.

Outreach

We continue to raise awareness via public speaking engagements, media interviews, and posting Orders, Reports and other information to our website. In 2017, I made our annual presentation to the records management students at Holland College campus, and presented to the ARMA PEI chapter, relating to privacy issues.

It has been an honour, for another year, to carry out the duties of Information and Privacy Commissioner.

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.*

The Commissioner's responsibilities are similarly reflected in the purposes of the *Health Information Act*.

Staff

The Commissioner

The position of Information and Privacy Commissioner is designated as an 80% position.

Administrative Support

The office has a full-time administrative support position. Ms. Kimberley Johnston fills many roles in the office including receptionist duties, providing administrative support, performing file process management duties, keeping the Commissioner informed as to the status of the reviews and privacy complaints, word processing, editing, preparation of case profile reports, reviewing and summarizing written submissions, conducting research, compiling statistics and purchasing office supplies. Ms. Johnston continues to develop her skills by taking French classes and has taken part in introductory Lean Six Sigma training.

Case Review Officer

In addition to her role in resolution discussed at page 12 of this Annual Report, the Case Review Officer works closely with the Commissioner conducting legal and procedural research, and providing advice and recommendations on matters related to files, such as issues to be considered, appropriate procedures for inquiries, and assessment of evidence and arguments.

The Case Review Officer assists the Commissioner to promote, educate and inform the public and stakeholders about access and privacy matters.

Mandate

The Information and Privacy Commissioner provides independent oversight of decisions of public bodies relating to the *FOIPP Act*.

The *Health Information Act* (“the *HIA*”) was proclaimed in force on July 1, 2017. The Office of the Information and Privacy Commissioner is also designated as the oversight body under the *HIA*, to ensure that individuals’ personal health information is handled by custodians in compliance with the legislation.

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.

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, custodians, 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 the OIPC.

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

As of July 1, 2017, the Commissioner is responsible for overseeing that personal 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. It balances 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 – Solicitor-Client Privilege

What is solicitor-client privilege?

The courts have given broad protections to records created when someone (including a public body) seeks legal advice. These protections are based on the public policy objective of encouraging people to be forthright with their lawyers when they are seeking legal advice; legal advice is optimal if the lawyer has all of the relevant information.

How the FOIPP Act protects solicitor-client privilege

Section 25 of the *FOIPP Act* permits a public body to refuse to disclose to an applicant information that is the subject of legal privilege. Solicitor-client privilege is specified as one type of legal privilege.

The Challenge

As with any claimed exception to disclosure, if a public body relies on section 25 to refuse to disclose information to an applicant, and a review is requested by the applicant, the Commissioner must decide whether the public body has properly applied section 25 to the information. The Commissioner requires adequate evidence to make this determination, which usually requires ordering production of the record containing the information over which the exception is claimed.

The Supreme Court of Canada has stated that the current wording of the *FOIPP Act* does not give the Commissioner authority to require the public body to produce records containing solicitor-client privileged information, to the Commissioner.

The lack of statutory authority to order production of records containing information over which a public body has claimed solicitor-client privilege, poses a challenge for the Commissioner to properly perform her oversight function.

OIPC Recommendation

In relation to the *FOIPP Act* Review, the OIPC made the following recommendation:

It is the recommendation of the OIPC that the *FOIPP Act* be amended to explicitly state:

- The Commissioner may require public bodies to produce records containing information over which solicitor-client privilege is claimed; and
- Solicitor-client privilege is not waived when the solicitor-client privileged records are provided to the Commissioner.

Outcome

The above recommendation was not followed. As a result, public bodies have not produced to the Commissioner records containing information over which they claim solicitor-client privilege.

The OIPC has been working with public bodies so that they may provide adequate evidence of solicitor-client privilege, while not producing the records. As these claims move through the review process, the OIPC will report further in next year's Annual report.

In addition to its submissions which were provided to the Applicant, the Public Body made in camera submissions, to the Commissioner only. This process is permitted by subsection 64(3) of the FOIPP Act. If the in camera submissions were provided to the Applicant, they might identify the contents of the records at issue. These submissions were essential to my determination of whether solicitor-client privilege applies. A determination of solicitor-client privilege, including the question of whether the records constitute communications between the Public Body and its solicitor, would have been very challenging without the background evidence provided by the Public Body...

- Commissioner Karen A. Rose, Order No. FI-17-004 at para 18

The Public Body points out, correctly, that solicitor-client privilege belongs to the client. Thus, it is essential, in an analysis of the first element of the Solosky test, to determine whether the Public Body is, indeed, the client, for each of the records at issue.

- Commissioner Karen A. Rose, Order No. FI-17-004 at para 20

Privacy Update - Workers Compensation Board

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.

In the 2016 Annual Report, the progress of the WCB was reported upon, at pages 8 and 9.

The WCB has provided all four reports, which have been detailed and comprehensive, and which have included:

1. A focus on staff education and employee engagement in privacy protection;
2. Changes to information handling practices to reduce use of personal information;
3. Recognizing the vulnerability of workers, including
 - updated electronic file procedures to strengthen the security of personal and sensitive information.
 - including notice on letters to injured workers and employers to advise them about biannual surveys.
5. Enhancements to the plan for privacy breach prevention, including new workspace design and a privacy audit of physical spaces, and reorganization of sensitive records.
6. Development of a culture of privacy protection through
 - performance evaluation, including promoting personal accountability and collaborative problem solving; and
 - website content.

The four reports provided by the WCB have demonstrated that management and staff are actively engaged in the protection of worker information privacy. The WCB has fulfilled all recommendations of IR-15-001.

As the Public Body has already remedied the unauthorized disclosure of the Complainant's personal information, no order will result from this investigation. However, based on the findings summarized above, I have recommended, below, that the Public Body report to me every six months for two years with a detailed summary of improvements made to the processes and policies that will help to prevent future privacy breaches, and encourage a culture of privacy protection throughout the Public Body.
- Commissioner Karen A. Rose, Order No. IR-15-001 at para 70

Voluntary Breach Reports, FOIPP Act

There is no provision in the *FOIPP Act* that provides for mandatory reporting of privacy breaches. However, some public bodies voluntarily notify the OIPC of investigations pertaining to same. In the event of a breach, the OIPC offers advice and guidance to the public bodies who have reported the breach.

The OIPC reviews the breach management procedures of public bodies in an attempt to ensure that appropriate measures have been put in place to prevent a similar breach in future. The following summaries reflect privacy breach reports closed in 2017.

BRF-16-002 - Department of Justice and Public Safety

The Public Body reported a privacy breach involving records of the Coroner's office. Twenty-three Coroner's Reports and invoices from December 2015 to March 2016 were reported missing. The reports were left at the designated internal government mail drop point.

A search for the files was unsuccessful, but copies were available. The Public Body notified next of kin by telephone to inform them of the loss of personal information belonging to the deceased referred to in the reports.

The Public Body made the following changes to avoid a similar loss in future:

- A locked mail box was added to the Chief Coroner's office door providing a secure and permanent mail drop point.
- Coroners have been instructed to use the secure mail box and to provide advance notice to the Chief Coroner when they are planning to drop off reports.

BRF-17-006 - Department of Transportation, Infrastructure and Energy

A staff person at an Access PEI office provided a copy of Driver Vehicle System information relating to a particular vehicle that a client was interested in purchasing. The DVS output contained personal information of the vehicle owner, including the following:

- Full name
- Date of birth
- Drivers License Number; and
- Information regarding ownership/lease of the vehicle.

The Public Body indicated that when the client presented at the Access PEI counter with the record, an employee recognized it as a record he should not have, and recovered it from the client. The client had one copy of the record, and did not indicate he had shared it. He handed over the record at the request of Access PEI and named the employee who had provided it to him.

The Public Body stated that all new employees are required to undergo a one-week classroom style orientation at the time of hire in which the Director attends and personally speaks to privacy. The Public Body stated many of the items covered also include a privacy component, in particular, a policy about Release of Information. The Public Body provided a copy of the policy and orientation agenda.

The Public Body further stated that, as a result of this incident, they have decided to add Privacy as a standing agenda item to all Access PEI staff meetings, which take place in every Access PEI office bi-monthly. The Public Body committed to have conversations that would address a different aspect of privacy at each meeting.

BRF-17-007 - Department of Family and Human Services

A privacy breach arose when a staff person at the Public Body intended to send an internal email relating to a client, but sent it to someone with a similar name at another public body, Health PEI, instead. The email contained personal information of the client, including the following:

- The client's name
- The type of support the client was requesting.

The Health PEI employee was notified immediately, and asked to destroy the email. She complied with the request. Family and Human Services contacted, by telephone, the affected individual to explain the error and offer an apology.

The Public Body stated that, since this incident, a note about the breach had been made to the client's file. The Public Body has revised the Public Body employee's email address to minimize mistakes in future and supervisors have reminded staff to be cautious in relation to collection, use, and protection of personal information and particularly when using email.

The OIPC commended the staff person who immediately realized their error, and acted promptly to remedy, and report the breach. The supervisor was also commended by the OIPC for providing a safe environment to report such errors.

The OIPC further recommended that the public body send a reminder email to staff of the sensitivity of the information in their custody and control, and to double-check the names and email addresses of recipients of their emails, before sending.

BRF-17-009 - Department of Justice and Public Safety

A privacy breach arose when an employee of the Access and Privacy Services Office (APSO) was notified by an email recipient that an Applicant's personal information was mistakenly emailed to the recipient, a third party.

The Third Party was being notified, as a third party in an access request, that records pertaining to them were being considered for disclosure. The records were responsive to a request submitted by the Applicant.

Upon notification of the breach, APSO asked the email recipient to destroy the information belonging to the Applicant; the recipient confirmed they had done so. On July 14, 2017, APSO spoke with the Applicant, the affected individual, by telephone to advise of the incident, and to apologize.

The Public Body stated that, since this incident, APSO employees have been reminded to be cautious in relation to the collection, use, and protection of personal information, particularly when using email.

The OIPC noted that our experience with APSO is that the employees of the office are particularly vigilant regarding collection, use, disclosure and security of personal information, especially when using email, a medium which the office uses frequently. The OIPC stated its satisfaction that APSO responded immediately to the breach, contained it, and will take steps to ensure that the risk of a future breach of this nature would be avoided; this was an inadvertent error and a similar incident is unlikely to occur.

Comments of the OIPC

The OIPC encourages public bodies to be proactive in reporting privacy breaches to the Commissioner. The OIPC is able to assist by providing guidance or advice to reduce the chance of similar breaches occurring in future.

Resolution

The Commissioner assigns some files to the Case Review Officer to attempt to resolve disputes between parties. In these files, the CRO conducts investigations, issues an opinion to the parties, and makes recommendations to the custodian or public body. The following are examples of privacy complaints which were resolved in 2017, following this process.

Health PEI/WCB

Personal information was disclosed by Health PEI to WCB, on the Complainant's request, to support an application for benefits. Health PEI did not use a form the WCB had created for this purpose, but rather disclosed the personal information by disclosing an internal record from a health chart. Historically, the WCB accepted this format. There was some information on the internal record from the health chart that was not necessary for WCB to process the application for benefits. Upon recommendation, Health PEI agreed to sever this information in the future.

Health PEI

An individual received a letter from Health PEI in an envelope that had not been sealed. Although it would be impossible to assess whether a breach of privacy had occurred, concerns were raised about whether Health PEI had adequate security arrangements in place. Health PEI has mail sealing equipment, and on their own initiative, they modified their procedures to additionally manually check the letters sealed by the equipment.

WCB

An individual's personal information was visible when an employee did not close a client file on their computer. The public body's computer had a screen saver, but it was not password protected. An unsupervised member of the public moved the mouse, and the personal information of an individual was disclosed. Although notification to the Affected Individual is not required by the FOIPP Act, the Public Body has a formal and thorough breach notification procedure and as part of good privacy practice, they advised the affected individual. As a result of this incident, on their own initiative, the public body amended their administrative and technical security measures to prevent a similar breach in future. All of the computers have a password-protected screensaver, which times out after five minutes. The public body added signage, and reminded all staff to close client files.

Commissioner's Decisions, *FOIPP Act*

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. Fourteen such orders were issued by the Commissioner in 2017.

FI-17-001, January 16, 2017

Re: Department of Economic Development and Tourism

An applicant sought a review of a request for access to a consultant's report on the future development of a recreational property, and all government records in response to the report. The head of the Public Body denied the applicant access under sections 14, 22, 15, and 23.

The Commissioner found that none of the exceptions to disclosure relied upon by the Public Body, applies to the consultant's report. The Commissioner ordered the head of the Public Body to provide the applicant with access to the report.

FI-17-002, January 23, 2017

Re: Department of Finance

An applicant requested access to a detailed inventory of all government issued cellular telephones, identifying the service package, and monthly costs. The third party service provider objected to disclosure of pricing and billing information, based on subsection 14(1) (harm to third party business interests). The head of the Department of Finance decided to provide the applicant with access to the requested records, in their entirety. The third party asked for a review of the Department's decision.

The Commissioner confirmed the Department's decision.

The Statement of Monthly Spends is information of the Public Body, totaling its expenditures for a particular service. In my view, such public expenditures are a key type of government information to which the FOIPP Act is intended to provide access.

- Commissioner Karen A. Rose, Order No. FI-17-002 at para 15

FI-17-003, February 8, 2017

Re: Department of Economic Development and Tourism

An applicant requested access to records relating to loans provided by the Department of Economic Development and Tourism, to a named company (“the Third Party”). The Department made the decision that disclosing certain information in the records to the applicant, would be harmful to the business interests of the Third Party, under section 14, and harmful to the economic interests of the Department, under section 23. The applicant requested a review.

The Commissioner confirmed the decision of the Department. As the information at issue would be withheld under section 14(1), it was not necessary for the Commissioner to consider the requirements of section 23 of the *FOIPP Act*.

In my view, the head of the Public Body approached the analysis of section 14 of the FOIPP Act in precisely the way expected of it. The Public Body’s submissions indicate that it was aware, at all times, of the purposes of the FOIPP Act, in particular subsection 2(a), and that it balanced its obligation of accountability to the public, with the limited and specific exception of section 14. As a result of its analysis, it decided to disclose the details of the loans to the Applicant, as set out at paragraph [3] herein. Its decision to withhold the information at issue, is required by section 14 of the FOIPP Act.
- Commissioner Karen A. Rose, Order No. FI-17-003 at para 33

FI-17-004, March 8, 2017

Re: Public Schools Branch

An applicant sought a review of a decision about a request for access to all records regarding the applicant held by the Public Schools Branch. The Public Schools Branch refused to disclose 61 records to the Applicant, based on section 25 (solicitor-client privilege). The Public Schools Branch also claimed section 22.

The Commissioner found that the Public Schools Branch properly applied clause 25(1)(a). It was not necessary for the Commissioner to consider section 22 of the *FOIPP Act*.

FI-17-005, April 21, 2017 *(This decision is under judicial review)*

Re: Health PEI

An applicant sought a review of a decision about a request for access to a report of a systemic review at the Queen Elizabeth Hospital. Health PEI refused the Applicant access to the report on the basis that it is quality improvement information. Section 30 of the *Health Services Act* states no person has a right of access to quality improvement information. The issue in this interim order is whether section 53 of the *FOIPP Act* gives the Commissioner the power to examine the record to assess whether it is quality improvement information.

The Commissioner determined that the Commissioner has the authority to examine the responsive record and ordered Health PEI to produce a copy of this record to the Commissioner.

I received and reviewed submissions of the Public Body and am persuaded that a quality improvement activity occurred, but I am not able to assess whether the content of the Record at Issue is only quality improvement information. The Health Services Act definition of quality improvement information expressly excludes certain information under section 26(g). I require the production of the Record at Issue, not only to determine whether it satisfies the definition of quality improvement information, but also to confirm whether any information in the Record at Issue falls under the exclusions.

- Commissioner Karen A. Rose, Order No. FI-17-005 at para 25

FI-17-006, April 25, 2017

Re: Department of Family and Human Services

In this review of a request for access to records, the Commissioner ordered the Department of Family and Human Services to provide the Applicant access to some records, and some personal information which the Commissioner found would not constitute an unreasonable invasion of a third party's personal privacy, if disclosed. The Commissioner confirmed the decision of the Department to withhold some records, and some personal information.

The Commissioner found that the Public Body had not satisfied its duty to assist, but had remediated its obligations so that no further recommendations were necessary. The Commissioner also found that some records are subject to the prevailing provisions of the *Child Protection Act*, and as such, the Commissioner does not have jurisdiction to review the Public Body's decision relating to those records

I am also mindful that the Public Body did not initially provide sufficient explanation to the Applicant regarding the exceptions it claimed in order to withhold information from the Applicant. This indicates a failure by the Public Body to respond to the Applicant openly, accurately, and completely. However, I also note that the head of the Public Body has made efforts to correct any deficiencies in its duty to assist, including providing a detailed decision letter to the Applicant, and conducting an exhaustive search for records. Given these efforts, there is nothing more for me to recommend to the head of the Public Body, in order to fulfill her section 8 obligations to the Applicant.

- Commissioner Karen A. Rose, Order No. FI-17-006 at para 48

FI-17-007, May 26, 2017

Re: Department of Justice and Public Safety

In this interim Order, the Commissioner found that the Department of Justice and Public Safety was correct in assessing that sections 14 and 15 may apply, and that notice to third parties under section 28(1) of the *FOIPP Act* is thus required. This is not a finding that sections 14 and 15 of the *FOIPP Act* actually apply.

During the processing of his access request, the Public Body advised the Applicant about section 28 and its obligation to consult with third parties. The Public Body and the Applicant re-negotiated the access to information request and, at least objectively, the Applicant appeared to agree he was not asking for third party information. However, as is always the case, the Applicant did not have the advantage of knowing precisely what information the records at issue contain. He may not have understood that the records at issue may contain his personal information and third party business information, or third party personal information, at the same time. Sometimes personal information of more than one individual, and

business information, is so intermingled that it is not possible to sever only that information which relates to third parties.

- Commissioner Karen A. Rose, Order No. FI-17-007 at para 25

FI-17-008, May 26, 2017

Re: Department of Education, Early Learning and Culture

An applicant sought a review of a decision about a request for access to all records relating to a particular meeting of the Department of Education, Early Learning and Culture. The Department refused to disclose information in 2 records to the Applicant, based on subsection 25(2) of the FOIPP Act, relating to solicitor-client privileged information.

The Commissioner found that the Department properly applied subsection 25(2) to information in the records at issue, and that information was required to be withheld by the Department.

The Applicant points out that, based on the information which was provided by the Public Body to the Applicant, issues relating to the Applicant were a topic of the meeting described in the records at issue. It is the Applicant's position that the records at issue may contain the Applicant's personal information, and that the Applicant is thus entitled to this information. I note that, pursuant to subsection 2(c) of the FOIPP Act, an individual's right to access to their own personal information is subject to limited and specific exceptions as set out in the FOIPP Act. Subsection 25(2) of the FOIPP Act is such an exception.

- Commissioner Karen A. Rose, Order No. FI-17-008 at para 20

FI-17-009, June 29, 2017

Re: Health PEI

An applicant made a request to Health PEI to correct his personal information in a one-page health record resulting from a hospital emergency department visit. Health PEI refused to make the correction on the basis that the information in the record was opinion, but annotated the applicant's request to the record instead. The applicant requested a review. The Commissioner found that the record at issue contained opinion information, and Health PEI properly refused to correct that information, pursuant to section 34 of the FOIPP Act. The Commissioner also found that the record at issue contained facts. However, there was a dispute regarding the facts, and therefore, Health PEI properly exercised its discretion to refuse to correct the personal information in the record.

I am left with a factual dispute between the Applicant and the Public Body relating to the personal information in the record at issue. I have reviewed the employee's notes in the record at issue, and the employee's statement during an interview with the Public Body approximately seven months later. I find the two statements to be consistent. I have also reviewed the Commissionaire's log, which indicates that the Commissionaire asked a man in the waiting room to quiet down. The log provides very general and limited information. The Applicant's request to correct, and his submissions, indicate no aggressive behavior on his part. However, based on the record, and the Public Body's investigation, it is reasonable for the Public Body to conclude that there is a dispute regarding the facts in the record at issue.

- Commissioner Karen A. Rose, Order No. FI-17-009 at para 28

FI-17-010, July 7, 2017

Re: Department of Justice and Public Safety

An applicant requested access to information related to a response to a Request for Proposal. The Department provided partial access to the responsive records. The applicant sought a review.

The Department withheld information in one record, pursuant to clause 19(1)(b) of the *FOIPP Act* (intergovernmental relations), as the information originated from another provincial government, was provided in confidence, and that provincial government did not consent to disclosure of the information. The Commissioner found that the Department properly applied clause 19(1)(b).

The Department withheld information in two records, pursuant to clause 22(1)(a) (advice from officials). The Commissioner found that the Department properly applied this clause.

The Department also withheld information from the remaining records on the basis of section 14 of the *FOIPP Act*, as disclosure would harm the business interests of a third party. The Commissioner found that section 14 applied to some of the withheld information, and ordered the Department to provide access to some information, as section 14 did not apply.

The Third Party submits that the records at issue were provided by it in confidence. I accept the Third Party's evidence of confidentiality. Responses to RFPs are part of a competitive process, and all responders expect their responses to be kept in confidence, so that the other competitors cannot obtain access to their responses during the competitive process. However, we are no longer in the midst of the competitive process, as the successful bidder has been chosen, and the contract negotiated.

- Commissioner Karen A. Rose, Order No. FI-17-010 at para 54

FI-17-011, July 13, 2017

Re: Department of Communities, Land and Environment

An applicant requested access to information related to wetlands issues. The Department provided partial access to the responsive records. The applicant sought a review, and claimed that the Department did not fulfill its duty to assist the applicant.

The Commissioner found that the Department fulfilled its duty to assist the applicant in most respects, but did not conduct a timely search of an email archive, and did not fulfill its duty to communicate openly with the applicant with regard to the email archive.

The Department withheld information from 8 records on the basis of section 14 of the *FOIPP Act*, as disclosure would harm the business interests of a third party. The Commissioner found that section 14 did not apply to the withheld information, and ordered the Department to provide access to it.

FI-17-012, August 31, 2017

Re: Public Schools Branch, and Department of Education, Early Learning and Culture

This Order dealt with an access issue (request to correct) as well as protection of privacy issues. Two applicants question the information handling practices of two public bodies relating to their personal information in a consultant's report which was disclosed internally, to the media, from one public body to the other, and was tabled in the Legislative Assembly.

The Commissioner found that the PSB collected and used the applicants' personal information in accordance with the *FOIPP Act*, and both public bodies had reasonable safeguards in place to keep the applicants' personal information secure. However, the Commissioner also found that the public bodies failed to conduct an investigation of the disclosure to the media, contrary to their duty to make reasonable security arrangements for personal information. The Commissioner also found that the Department did not collect or use the personal information in the consultant's report in conformity with the *FOIPP Act*, and both public bodies disclosed the applicants' personal information contrary to Part II of the *FOIPP Act*.

The Commissioner made recommendations to avoid such unlawful collection, use and disclosure of personal information in future.

The applicants also made a request to the public bodies to correct their personal information in the consultant's report. The public bodies refused to make the correction on the basis that the information in the report is opinion information.

The Commissioner agreed that the consultant's report contains opinion information, and the public bodies properly refused to correct that information, pursuant to section 34 of the *FOIPP Act*. The Commissioner also found that the consultant's report contains facts which are in dispute. Therefore, the public bodies properly exercised their discretion to refuse to correct the personal information in the report.

The Commissioner ordered the public bodies to annotate the applicants' request for correction to all copies of the consultant's report, pursuant to subsection 34(2) of the *FOIPP Act*.

I agree with the Department that the Minister's act of dissolving the Board of Trustees is a decision which should be scrutinized by Islanders. However, I do not find that such scrutiny necessitates disclosing the personal information of individual trustees. The Complaint from senior staff which led to the hiring of the consultant referred to the Board as a whole, and the Ministers' decision also referred to the Board as a whole. While disclosure of the Report, without the trustees' names, might be desirable for the public to scrutinize the Department's decision, and promote transparency, disclosure of the trustees' names would not.

- Commissioner Karen A. Rose, Order No. FI-17-012 at para 111

If these disclosures had not already been made, I would order the Public Bodies to sever the names of the Applicants from the Report, and from the Letter, before disclosing the remainder of the information in these records. However, I cannot now undo what was already done. At this time, the only effective resolution would be to make recommendations to the Public Bodies, to avoid such unlawful disclosures in future.

- Commissioner Karen A. Rose, Order No. FI-17-012 at para 149

FI-17-013, October 31, 2017

Re: Department of Justice and Public Safety

An Applicant requested copies of the responses to a request for proposals. One of the proponents requested a review of the public body's decision that subsection 14(1) (harm to business interests) does not apply to the information in the responses. The Commissioner confirmed the decision of the public body that subsection 14(1) does not apply to the information.

FI-17-014, December 15, 2017

Re: Health PEI

An applicant requested a copy of an incident report in relation to a suicide death at Hillsborough Hospital which occurred in February, 2010, as well as a copy of any investigation or review conducted with respect to the matter. Health PEI found two documents to be responsive to the request, an incident report and an investigation report. The head of Health PEI granted the Applicant partial access to the records, severing information pursuant to Section 15 of the *FOIPP Act* (unreasonable invasion of personal privacy).

The Commissioner found that some of the information was personal information the disclosure of which would be an unreasonable invasion of personal privacy. However, the Commissioner also found that disclosure of some personal information would not constitute an unreasonable invasion of personal privacy because it was already publicly available. Further, the Commissioner found that circumstances, including goals of public scrutiny and public health and safety, rebutted the presumption of unreasonable invasion of privacy for some information in the investigation report.

The Commissioner ordered Health PEI to provide the Applicant with access to some of the information in the records, and otherwise confirmed the decision of Health PEI.

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 2017:

PP-17-001, July 24, 2017

Re: Department of Workforce and Advanced Learning

A complainant questioned the information handling practices of the Department of Workforce and Advanced Learning, relating to his personal information. The Commissioner found that the Department collected the complainant's personal information in compliance with Part II of the *FOIPP Act*. With regard to the disclosure of the complainant's personal information to a community organization, the Commissioner found that the disclosure was not reasonably required. The Commissioner ordered the Department to provide education to staff regarding their obligations under Part II of the *FOIPP Act*.

This is not a situation wherein I would order the head of the Public Body to stop disclosing a Complainant's personal information, as the circumstances of this review show that this was a one-time disclosure of personal information, for a specified purpose. It is, however, essential, that such a disclosure does not occur in future.

-Commissioner Karen A. Rose, Order No. PP-17-001 at para 44

IR-17-001, December 5, 2017

Re: Department of Economic Development and Tourism; Department of Justice and Public Safety; Executive Council Office; Office of the Premier

Following the publication of two emails of a former employee of the provincial government in the media, attributed to the Liberal Party of PEI, the Information and Privacy Commissioner launched an investigation. The investigation revealed that the Deputy Minister of Economic Development disclosed the emails to the Office of the Premier, and the Executive Council Office, earlier on the same day, along with a copy of government's response to a Human Rights complaint, and personnel files relating to three former employees of Economic Development. The emails had also been disclosed to Justice and Public Safety.

The Commissioner found that all the records contain personal information. She further found that the personal information was collected and used by each public body in conformity with the *FOIPP Act*, and that it was properly disclosed by Economic Development to the other public bodies, and within those public bodies.

With regard to the disclosure to the Liberal Party of PEI, the Commissioner found that Economic Development and/or the Office of the Premier and/or the Executive Council Office violated Part II of the *FOIPP Act*, either by disclosing the emails, and personal information from the HR Complaint Response and the Personnel Files, to the Liberal Party of PEI, or permitting this personal information to be disclosed via their failure to implement reasonable security arrangements. The Commissioner found no violation by Justice.

With regard to the public bodies' duty to protect personal information, the Commissioner found that Economic Development, the Office of the Premier and the Executive Council Office failed in their duty to make reasonable security arrangements, which includes a failure to respond adequately to an alleged privacy breach.

The Commissioner recommended that Economic Development, the Office of the Premier and the Executive Council Office establish regular, required education and training, to their management and staff, relating to proper personal information handling practices when collecting, using, and disclosing personal information, and about their obligations to protect personal information under Part II of the *FOIPP Act*. She further recommended that such education and training include a focus on the obligations of those employees who also have roles within the governing political party.

The Commissioner further recommended that the heads of Economic Development, the Premier's Office, and the Executive Council Office develop a breach management policy and procedure, which should include a requirement to respond promptly with an investigation, when deliberate, unauthorized disclosures of personal information in their custody or control, occur.

Leaks of government information to the media are an age-old activity. Such leaks, however, take on a much more serious tone when they involve the disclosure of personal information. The Public Bodies in this investigation have all confirmed that they did not authorize the disclosure of the personal information in the Emails, the HR Complaint Response, and the Personnel Files to the Liberal Party of PEI. However, the lack of action in getting to the bottom of this particular leak causes me concern.

-Commissioner Karen A. Rose, Order IR-17-001 at para 108

When an unauthorized disclosure of personal information occurs, an immediate investigation is necessary. The purposes of such investigations are not only to contain and resolve the particular breach at issue, but, importantly, to prevent future privacy breaches. If the basis of the privacy breach is not remediated, it may recur. If they recur, a serious result is that citizens will, understandably, lose their confidence that government can and will safeguard the personal information that is entrusted to them. This result is no small matter, as it undermines one of the key purposes of the FOIPP Act, to ensure government protects citizens' privacy. By failing to conduct adequate investigations of privacy breaches, government fails in its duty under section 35 of the FOIPP Act.

-Commissioner Karen A. Rose, Order IR-17-001 at para 109

A common circumstance wherein personal information may be put at risk, which is reasonably foreseeable by public bodies, is during election campaigns, when some government employees may also have concurrent roles with the governing political party. The duty of these employees to understand privacy protection obligations is especially important in this province's statutory environment, wherein political parties do not have legislated responsibilities to protect personal information.

-Commissioner Karen A. Rose, Order IR-17-001 at para 95

Financial Information:

Budget:

This annual report covers activities of the office during the calendar year of 2017 in all respects except the budget. The reporting period of the budget is from April 1, 2017 to March 31, 2018.

¹

	2017-2018 Budget Forecast	2017-2018 Budget Estimate	2017-2018 Expenditures
Administration	4,900.00	4,900.00	3,373.00
Materials, Supplies and Services	1,600.00	1,600.00	178.00
Professional Services	17,000.00	17,000.00	31,064.00*
Salaries	187,500.00	187,500.00	188,104.00
Travel and Training	5,000.00	5,000.00	4,022.00
Total	216,000.00	216,000.00	226,741.00

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 and staff's expenses, please refer to our website under "Proactive Disclosure".

* This expenditure reflects legal fees associated with two judicial reviews.

To put it simply, Mr. Speaker, the folks who pay the bills should be able to see where their money's going. We are not suggesting for one second that you open the door wide open and that everything is, is open and accessible. Because there are obvious situations where privacy of certain groups or individuals or certain types of information have to be protected. And that is why the former government chose to name its proposed legislation, The Freedom of Information and Protection of Privacy Act, to make, to discern between the two.

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

¹ This information is reproduced from page 149 of the *Prince Edward Island Estimates of Revenue and Expenditures 2017-2018*, at

https://www.princeedwardisland.ca/sites/default/files/publications/2018_budget_estimates_consolidation.pdf

Statistics – Summary of Privacy Complaints
January 1, 2017 – December 31, 2017
Protection of Privacy

Public Body	Carried over from previous years	2017 Complaints	Resolved in 2017 without Investigation Report/ Order/ Decision	Withdrawn in 2017 without Investigation Report/ Order/ Decision	Refusals in 2017	Investigation Report/ Order/ Decision issued in 2017	Carried forward to 2018
Education, Early Learning and Culture	1 [overlaps with PSB below]	0	0	0	0	1 [overlaps with PSB below]	0
Health PEI	4 [1 overlaps with WCB file below]	1 [overlaps with JPS file below]	4 [*1 overlaps with JPS file] [*1 overlaps with JPS file]	0	0	1	0
Justice and Public Safety	0	0 [+1 overlaps with JPS file]	0 [+1 overlaps with HPEI file above]	0	0	0	0
Public Schools Branch	0 [+ 1 overlaps with EELC file above]	0	0	0	0	0 [+1 overlaps with EELC file above]	0
Transportation, Infrastructure and Energy	1	0	1	0	0	0	0
Workers Compensation Board of PEI	2 [+1 overlaps with HPEI file above]	0	2 [+1 overlaps with HPEI file above]	0	0	0	0
Workforce and Advanced Learning	2	0	0	0	0	2	0
TOTAL	10	1	7 (+ 2 files)	0	0	3 (+1 file)	0

**Statistics – Summary of Requests for Review
January 1, 2017 – December 31, 2017
Access to Information**

Public Body	Carried over from previous years	2017 requests	Resolved in 2017 without order/ decision	Withdrawn in 2017 without order/ decision	Refusals in 2017	Order/Decision issued in 2017	Carried forward to 2018
Agriculture and Fisheries	0	1	0	0	0	0	1
Communities, Land and Environment	1	1	0	0	0	1	1
Economic Development and Tourism	4	4	3	0	0	2	3
Education, Early Learning and Culture	1	0	0	0	0	1	0
Family and Human Services	1	0	0	0	0	1	0
Finance	1	3	1	0	0	1	2
Health and Wellness	0	1	0	0	0	0	1
Health PEI	2	1	1	0	0	1	1
Justice and Public Safety	3	2	1	0	0	2	2
Office of the Premier	0	1	0	0	0	0	1
Public Schools Branch	4	2	1	0	0	1	4
Rural and Regional Development	0	2	1	0	0	0	1
Transportation, Infrastructure and Energy	0	4	0	0	0	0	4
Workers Compensation Board of PEI	0	3	0	0		0	3
Workforce and Advanced Learning	1	1	0	0	0	0	2
TOTAL	18	26	8	0	0	10	26

List of Public Bodies

The foregoing tables 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.

The Executive Council Office is not listed in the regulations but it is specifically named in the definition of "public body" in the *FOIPP Act*.

Part II of Schedule 1 also lists over 100 designated public bodies which are included under the *FOIPP Act*.

Table A sets out the number of access requests made to Part I public bodies in 2017. These statistics were provided by the Access and Privacy Services Office (APSO).

Table B sets out the number of access requests made to Part II designated public bodies in 2017. The statistics for Table B were provided by the designated public bodies.

Both tables, A and B, set out the number of requests for reviews received by the OIPC in 2017, for each of the public bodies referenced.

It should be noted the requests for review to the OIPC in 2017 are not necessarily related to the same access requests recorded by a public body in 2017, as some may be reviews of 2016 decisions of public bodies. Further, the tables on the following pages do not include informal responses to requests for access to information.

Table A: Schedule 1, Part I public bodies

Public Body	Requests to access records, 2017	Requests for Review to OIPC, 2017
Agriculture and Fisheries	For general information – 9 For personal information- 0	1 access review
Communities, Land and Environment	For general information – 19 For personal information- 0	1 access review
Economic Development and Tourism	For general information - 42 For personal information- 0	4 access reviews
Education, Early Learning and Culture	For general information - 28 For personal information- 1	0
Executive Council Office	For general information - 9 For personal information- 0	0
Family and Human Services	For general information - 6 For personal information- 7	0
Finance	For general information – 38 For personal information- 0	3 access reviews
Health and Wellness	For general information – 22 For personal information- 0	1 access review
Intergovernmental Affairs	0	0
Justice and Public Safety	For general information – 21 For personal information- 6	2 access reviews 1 privacy complaint, with Health PEI
Office of the Premier	For general information – 17 For personal information- 2	1 access review
Public Service Commission	For general information – 1 For personal information- 0	0
Rural and Regional Development	For general information - 8 For personal information- 0	2 access reviews
Transportation, Infrastructure and Energy	For general information -11 For personal information- 3	4 access reviews
Workforce and Advanced Learning	For general information – 9 For personal information- 1	1 access review
TOTAL	260	19 access reviews 1 privacy complaint, with Health PEI

Table B: Schedule 1, Part II public bodies

Public Body	Requests to access records, 2017	Requests for Review to OIPC, 2017
Elections PEI	Requests for general information - 1 Requests for personal information - 0	0
Fathers of Confederation Buildings Trust	Requests for general information - 1 Requests for access to personal information - 1	0
Health PEI	Requests for general information - 19 Requests for personal information - 23 Requests for correction of personal information - 0	1 access review 1 privacy complaint (with Justice and Public Safety)
Island Waste Management Corporation	0	0
Human Rights Commission	0	0
Workers Compensation Appeal Tribunal	Requests for general information - 1 Requests for personal information - 0	0
French Language School Board	Requests for general information - 2 Requests for personal information - 0	0
Island Regulatory and Appeals Commission	Requests for general information - 1 Requests for personal information - 0	0
Police Commissioner	0	0
PEI Liquor Control Commission	Requests for general information - 3 Requests for personal information - 0	0
Public Schools Branch	Requests for general information only - 17 Requests for personal information and general information - 2 Requests for access to personal information only - 1	2 access reviews 0 privacy complaints
Workers Compensation Board	Requests for general information - 2 Requests for access to personal information only - 1	3 access reviews 0 privacy complaints
TOTAL	75	6 access reviews 1 privacy complaint involving HPEI and Justice and Public Safety.