

**ANNUAL REPORT
2018**

**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
2018



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

Information and
Privacy Commissioner
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Commissaire à l'information et
à la protection de la vie privée
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October 22, 2019

The Honourable Colin LaVie, 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 2018 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2018 to December 31, 2018. This is the sixteenth 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:

2018 was a year of adjustment for our office. In addition to our responsibilities under the *Freedom of Information and Protection of Privacy Act (FOIPP Act)*, which we have carried out since November 2002, we now review privacy breaches, access requests, and privacy impact assessments from health care custodians, pursuant to the *Health Information Act (HIA)*, proclaimed in mid-2017.

In 2018, we opened 72 files, including 31 access reviews and 12 privacy investigations under the *FOIPP Act*, and 29 files under the *HIA*. We closed 47 files, and carried 51 files forward to 2019. In relation to our backlog, at the end of 2018, there were still two reviews which predate 2016. A detailed summary may be found on three tables at pages 17-19 of this report.

Our office posts our decisions on our website at oipc.pe.ca. Our website contains other helpful resources as well.

We also continue to educate the public via public speaking engagements. In 2018, we made presentations to the records management students at Holland College campus, and Recorded Information Management coordinators with the provincial government. We also presented to diagnostic imaging professionals, FOIPP Coordinators, and Directors of the provincial government. We presented to the College of Physiotherapists in relation to the *HIA*, and to the Bar Admissions Course on emerging privacy issues. At a Small Jurisdictions Conference in Halifax, Nova Scotia, we gave presentations in relation to surveillance and breach reporting to our access and privacy counterparts in other jurisdictions.

Beginning April 1, 2019, changes to the *FOIPP Act* bring post-secondary institutions and four municipalities under the *FOIPP Act*. The post-secondary institutions affected by the changes include UPEI, Holland College and College de L'Île. Municipalities include Charlottetown, Summerside, Stratford and Cornwall. I look forward to reporting on our experiences relating to these new public bodies 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 these 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.*

and these purposes of the *HIA*:

- *to establish a set of rules for custodians regarding the collection, use, disclosure, retention and secure destruction of personal health information that protects the confidentiality of personal health information and the privacy of the individual to whom the personal health information relates;*
- *to enable personal health information to be shared and accessed, where appropriate, for the better provision of health services and the planning and management of the health care system;*
- *to provide an individual with the right to examine and receive a copy of the individual's personal health information maintained by a custodian, subject to limited and specific exceptions, as set out in this Act;*
- *to provide an individual with the right to request the correction of or amendment to the individual's personal health information maintained by a custodian, as set out in this Act;*
- *to establish mechanisms to ensure the accountability of persons having custody or control of personal health information and to safeguard the security and integrity of the personal health information in their custody or control;*
- *to provide for an independent review of decisions made by custodians and the resolution of complaints made with respect to custodianship of personal health information; and*
- *to provide effective remedies for contraventions of this Act.*

Staff:

We are a three-person office. The position of Information and Privacy Commissioner is designated as part-time, at 80%. In November 2018, the position of Case Review Officer was reclassified to Adjudicator. This position has taken on responsibility for all new reviews and complaints relating to the *HIA*. The office has one administrative support position.

Mandate:

The Information and Privacy Commissioner provides independent oversight of decisions of public bodies under the *FOIPP Act* and custodians under the *HIA*. 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 or custodian. 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, health care 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 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

Since July 1, 2017, the Commissioner has been 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 for health care custodians to permit Islanders access to their own personal health information, and to balance the protection of their personal privacy with the need to appropriately collect, use and disclose their personal health information.

Commissioner's Decisions, 2018:

Decisions under the FOIPP Act

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 investigate and issue an order or investigation report. Five of the 12 privacy complaints made in 2018 were resolved in the same year. No orders or investigation reports were issued by the Commissioner from privacy complaints in 2018.

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, and there is no fee.

Section 66 of the *FOIPP Act* authorizes the Commissioner to issue orders relating to access to information reviews. Thirteen such orders were issued by the Commissioner in 2018. In addition, the Commissioner decided not to conduct an inquiry in three instances.

FI-18-001, January 5, 2018

Re: Public Schools Branch

An applicant requested access to a record submitted to the Public Schools Branch as part of the School Review Process. The Public Schools Branch withheld the record based on clause 22(1)(a) [consultations and deliberations involving employees], and clause 22(1)(g) [advice to officials] of the *FOIPP Act*. The Commissioner confirmed that most of the information in the record satisfies both clauses, but that neither clause applies to certain factual information which did not reveal the substance of the advice.

The Commissioner also found that the Public Schools Branch did not take into account all relevant factors in exercising discretion to withhold the record from the applicant. The Commissioner ordered the Public Schools Branch to reconsider their decision, taking into consideration all relevant factors.

FI-18-002, January 24, 2018

Re: Department of Transportation, Infrastructure and Energy

An applicant requested access to information related to tow calls by the Department of Transportation, Infrastructure and Energy, including the names of tow companies and the cost of tow services, over a 6 year period. One third party tow service provider objected to disclosure of

information relating to it, based on harm to third party business interests, pursuant to subsection 14(1) of the the *FOIPP Act*. The head of the Department decided to provide the applicant with access to the requested information, on the basis that the requirements of subsection 14(1) of the *FOIPP Act* had not been met. The third party asked for a review of the Department's decision.

The Commissioner found that the information in the requested records does not meet the requirements of clauses 14(1)(a),(b), or (c) of the *FOIPP Act*. The Commissioner confirmed the decision of the Department to provide the applicant with access to the requested information.

The Third Party also states that, without knowing who the Applicant is, the Third Party cannot predict the harm which may come to them. With regard to the Third Party's latter point, it is not necessary for the Public Body to consider, nor does clause 14(1)(c) require, the identity of an applicant, in order to assess significant harm or interference. Disclosure to any applicant may be considered disclosure to a member of the public.

- Commissioner, Order No. FI-18-002 at para 23

FI-18-003, February 6, 2018

Re: Department of Finance

An applicant requested access to the successful bid response, for the 2017-2018 printer cartridge RFQ. After seeking input from the third party, and receiving none, the Department decided to give the applicant access to the records in full.

The third party requested a review. The third party had no objection to disclosure of the total bid price, but objected to the disclosure of the unit pricing information, including the extension pricing, on the basis of subsection 14(1) of the *FOIPP Act*, that disclosure of the information would be harmful to the third party's business interests.

The Commissioner found that the third party had not satisfied its burden to prove that subsection 14(1) of the *FOIPP Act*, applies to the pricing information. The Commissioner confirmed the decision of the head of the Department to provide the Applicant access to the responsive records, in their entirety.

It has been stated many times, in Orders of this office, that the ideals which underpin subsection 2(a) of the FOIPP Act, are those of openness, transparency, and accountability of provincial public bodies. Whether the applicant is a competitor of the Third Party, or a curious citizen, matters not in the analysis of the exceptions to subsection 2(a). Each person has an equal opportunity to seek records from public bodies.

- Commissioner, Order No. FI-18-003 at para 53

FI-18-004, February 22, 2018

Re: Charlottetown Area Development Corporation

An applicant requested access to records relating to proposals submitted to the CADC. CADC provided the applicant with access to some information, but withheld some information on the basis of section 22 of the *FOIPP Act*, advice to officials. The applicant sought a review.

The Commissioner found that, although the withheld information met the criteria of clause 22(1)(e) of the *FOIPP Act*, CADC did not exercise its discretion properly in refusing to provide access. CADC considered an irrelevant factor, and failed to consider relevant factors. Therefore, the Commissioner ordered CADC to reconsider its decision.

FI-18-005, March 23, 2018

Re: Office of the Premier

An applicant requested records held by the Office of the Premier relating to one school involved in the 2016-2017 school review. The Office refused to disclose some information in one record, on the basis that the record is not subject to the *FOIPP Act*, pursuant to subsection 4(1). The Office refused to provide access to some information in other records, on the basis of subsection 22(1), advice to officials. The applicant requested a review.

The Commissioner confirmed the decision of the Office of the Premier.

FI-18-006, April 3, 2018

Re: Department of Economic Development and Tourism

An applicant requested access to records regarding a 2011 Request for Proposals (RFP) seeking qualified parties to act as authorized agents for the Prince Edward Island Provincial Nominee Program. The applicant requested the RFP responses, the evaluations of agents, and the quota allocated to each agent for the years 2011, 2012, 2013 and 2014. The public body refused the applicant access to the records pursuant to sections 14, 15 and 22 of the *FOIPP Act*. The applicant sought a review of the public body's decision.

During the course of the review, the public body reconsidered its original decision, and decided to provide the applicant with access to the RFP responses, severing information pursuant to sections 14 and 15 of the *FOIPP Act*. Three third parties requested a review of this decision, and the public body provided the applicant with access to the RFP responses of the other eight businesses.

In 2016, the same applicant made a similar request for extension agreements, and the quota allocated to each agent for the years 2014, 2015, and 2016. The public body decided to provide the applicant with the responsive records, in their entirety. Two of the three third parties who requested a review in relation to the applicant's 2014 access request, also requested a review of this decision of the public body.

The Commissioner confirmed the decision of the public body that subsections 14(1) and 15(1) of the *FOIPP Act* do not apply to the quota letters, the extension agreements, or those portions of the RFP responses that the Public Body was prepared to provide. With respect to section 22, the Commissioner found that some information in the evaluations satisfies the requirements of clause 22(1)(a), but as there was no evidence before the Commissioner regarding how the head of the public body exercised their discretion, the Commissioner ordered the head of the public body to reconsider their decision. The Commissioner ordered the head of the Public Body to provide the Applicant with access to that part of the evaluations to which clauses 22(1)(a) and (g) do not apply.

As stated in previous orders of this office, disclosing the details of government contracts is an example of the very type of information for which the FOIPP Act was drafted. Secrecy in contracting undermines the goals of transparency and accountability expressed by subsection 2(a) of the FOIPP Act. Based on these previous decisions, it is my expectation that businesses who enter into government contracts understand this responsibility of public bodies to provide access to information.
- Commissioner, Order No. FI-18-006 at para 41

FI-18-007, April 16, 2018

Re: Department of Workforce and Advanced Learning

An applicant requested access to records relating to major junior hockey. The Department sought input from three third party businesses, all of which asked that the records relating to them be withheld from the applicant, in their entirety. The Department decided to give the applicant access to the records in full.

The third parties requested a review on the basis of subsection 14(1) of the *FOIPP Act*, that disclosure of the information would be harmful to their business interests.

Following mediation, two of the third parties requested an inquiry by the Commissioner. The Commissioner found that some of the information in the records at issue satisfies subsection 14(1) of the *FOIPP Act*. The Commissioner required the Department to withhold this information from the applicant. The Commissioner confirmed the decision of the Department to disclose the remaining information to the applicant.

FI-18-008, May 23, 2018 (interim order)

Re: Department of Transportation, Infrastructure and Energy

An applicant sought access to records relating to a pilot program of the Department of Transportation Infrastructure and Energy. The Department retrieved the records which it determined were responsive to the request. After considering the input of a third party business, the Department decided to provide the applicant with partial access to the records, withholding some information based on subsection 14(1) of the *FOIPP Act* (disclosure harmful to business interests).

The third party business sought a review of the Department's decision, and the Commissioner assigned the file to a case review officer, to investigate and attempt to resolve the issues of the

review. At the end of the case review process, it was discovered by the third party business that the Department had retrieved an incorrect record. The Department replaced the incorrect record, with the correct record, and decided to disclose all responsive records to the applicant, in their entirety. As the Department had not sought input from the third party business before making its decision relating to the correct record, the Commissioner advised the Department to do so. Once the Department's consultation process was completed, it decided to disclose the correct record to the applicant, in its entirety. The third party business sought a review of this decision, submitting that subsection 14(1) applies.

Before proceeding further, the Commissioner sought representations from the parties regarding issues of procedural fairness, which had been raised by the third party business. The Commissioner found that the head of the Department did not have a closed mind in making his decision to provide the applicant with access to the correct record. The Commissioner further found no reasonable apprehension of bias in the Commissioner's ability to conduct an inquiry.

*Procedural fairness requires that the Third Party has an impartial decision maker, free from bias.
- Commissioner, Order No. FI-18-008 at para 22*

FI-18-009, June 1, 2018

Re: Department of Transportation, Infrastructure and Energy

An applicant requested access to proposals submitted to the Department, in response to an RFP related to an Atlantic Provinces centralized system to issue driver licences and voluntary identification cards. The Department decided that subsection 14(1) of the *FOIPP Act* [harm to third party business interests] applied to pricing information, but did not apply to the rest of content of the proposals. The Department decided to provide the applicant with access to the proposals, with the exception of the pricing information and some personal information.

Two third party businesses requested a review of the Department's decision, claiming that subsection 14(1) applies to information the Department had decided to disclose.

The Commissioner found that subsection 14(1) applies to the audited financial statements of one of the third parties, but does not apply to any other information in the responsive records, including the pricing information. The Commissioner ordered the Department to provide the applicant with access to the pricing information, and to withhold the audited financial statements. The Commissioner confirmed the Department's decision to provide the applicant with the remaining records.

FI-18-010, June 1, 2018

Re: Department of Transportation, Infrastructure and Energy

An applicant requested access to records related to an RFP for an Atlantic Provinces centralized system to issue driver licences and voluntary identification cards. The Department decided that

subsection 14(1) of the *FOIPP Act* [harm to third party business interests] applied to withhold some pricing information, but decided to provide access to the rest of the responsive records.

Two third party businesses requested a review, claiming that subsection 14(1) applies to information the Department had decided to disclose.

The Commissioner found that subsection 14(1) does not apply to any information in the responsive records, including the pricing information. The Commissioner ordered the Department to provide the applicant with access to the pricing information, and confirmed the Department's decision to provide the applicant with the remainder of the responsive records.

FI-18-011, June 5, 2018

Re: Health PEI

An applicant requested access to a consolidated usage report for all items purchased from a third party business by Health PEI. Health PEI sought input from the third party business, which objected to disclosure of the report.

Health PEI decided to give the applicant access to the report. The third party requested a review on the basis of subsection 14(1) of the *FOIPP Act*, harm to the third party's business interests.

The Commissioner found that the third party had not satisfied its burden to prove that subsection 14(1) of the *FOIPP Act* applies to the report. The Commissioner confirmed the decision of Health PEI to provide the Applicant with access to the report, in its entirety.

It is up to a business whether to respond to an RFQ, knowing that, if selected, they may be required to submit a usage report subject to public access. The Third Party may certainly exercise their discretion not to respond to an RFQ. However, they can also exercise their discretion to respond. The trend in government procurement is towards further transparency. This trend is consistent with a stated purpose of the FOIPP Act, to provide access to records of public bodies.
- Commissioner, Order No. FI-18-011 at para 65

FI-18-012, June 23, 2018

Re: Department of Health and Wellness

An applicant requested access to emails sent and received by a former Minister of the Department, and a named company. The Department provided the applicant with access to most responsive records. However, the Department decided to withhold some records, on the basis of clause 4(1)(h.1) of the *FOIPP Act*, that the *FOIPP Act* does not apply to personal record or a constituency record of an elected or appointed member of a public body. The Public also severed information from some records, on the basis of subsection 15(1) of the *FOIPP Act*, unreasonable invasion of personal privacy. The applicant requested a review.

The Commissioner confirmed the application of clause 4(1)(h.1) of the *FOIPP Act* to 6 records, as these are constituency records of an elected member of a public body. The Commissioner also confirmed the decision of the Department to sever information from 3 records, pursuant to section 15 of the *FOIPP Act*.

In reviewing the information in the Records at Issue, I observed that the Public Body's obligation to sever personal information, although certainly necessary, was partially avoidable. Because the access request was for all emails, with no particular subject matter identified, non-work related personal messages were also caught by the request. Representatives and staff of public bodies should strive, wherever possible, to avoid including personal information in email correspondence. It is advisable for Public Bodies to include this counsel in education and training to all staff and executive, relating to the FOIPP Act.

- Commissioner, Order No. FI-18-012 at para 33

FI-18-013, September 28, 2018

Re: Office of the Premier

An applicant requested records held by the Office of the Premier relating to polling information from January 2015 to May 2016. The Premier's Office refused to disclose some information in two records, on the basis that the record is not subject to the *FOIPP Act*, pursuant to subsection 4(1). They refused to provide access to some information in other records, on the basis of subsection 15(1) [unreasonable invasion of a third party's personal privacy] and 22(1) [advice to officials]. The applicant requested a review of the decision of the Premier's Office.

The Commissioner confirmed that subsection 4(1) applies to one entire record and part of another. During the review, the Premier's Office decided to provide additional information to the applicant, which they had previously withheld under section 15. The remainder of the information withheld under section 15 was found to no longer be at issue.

With regard to section 22(1), the Commissioner found that the Premier's Office properly applied this exception to information in the two remaining records.

The Public Body has taken leadership in establishing and implementing recorded information management policies and procedures over the past two years. If the Public Body does not already have a policy related to the use of personal email accounts to conduct government business, in conformity with the FOIPP Act, it is advisable for the Public Body to consider adopting such a policy.

- Commissioner, Order No. FI-18-013 at para 38

Refusals to conduct an Inquiry

As noted on page 5, the Commissioner exercised discretion not to conduct an inquiry relating to three separate requests, in 2018. The circumstances of each decision are summarized in the boxes below.

An applicant requested salaries of individual employees of a public body. As this issue had previously been decided in 2003, resulting in Order 03-004, confirmed by the PEI Supreme Court, and in the absence of submissions from the applicant, the Commissioner exercised discretion to refuse to conduct an inquiry under section 64.1(a) of the *FOIPP Act*, which states:

64.1 The Commissioner may refuse to conduct an inquiry pursuant to section 64 if, in the opinion of the Commissioner,
(a) the subject matter of a request for a review under section 60 has been dealt with in an order or investigation report of the Commissioner; ...

An applicant requested that the Commissioner undertake an investigation into the destruction of government records by a former Premier, specifically relating to e-gaming. The Commissioner exercised discretion not to conduct an investigation of records management relating to e-gaming, as an extensive investigation had already been completed by the Auditor General, government is following recommendations to improve records management, and further investigation is not necessary to ensure compliance with rules relating to records management.

An applicant requested that the Commissioner investigate potential offences under the *FOIPP Act*, relating to a 2016 review which resulted in Order FI-16-001. The Commissioner exercised discretion not to conduct an investigation as the Commissioner was satisfied that the public body complied with the *FOIPP Act* in handling this request.

Commissioner's Decisions, 2018:

Decisions under the *Health Information Act*

Access Reviews:

Under the *Health Information Act*, if an individual is not satisfied with the decision of a custodian relating to their request for access to their own personal health information, the individual may request a review by the Commissioner. There were no decisions in relation to *HIA* access reviews in 2018. Three access reviews were opened, and all three were resolved.

Privacy Complaints:

If an individual believes that their personal health information has been breached by a custodian, they may complain to the Commissioner. No decisions resulted from such privacy complaints in 2018. Two privacy complaints were opened; one was resolved, and one was brought forward to 2019.

Mandatory Breach Reporting:

Section 64 of the *HIA* authorizes the Commissioner to issue orders relating to mandatory breach notifications by custodians. Eighteen breach notifications were provided to the Commissioner by custodians in 2017-2018, and five resulted in Breach Reports by the Commissioner in 2018. Table C sets out these statistics in detail.

HI-18-001, June 19, 2018

Re: Health PEI

Health PEI received a complaint that an employee had inappropriately accessed and disclosed personal health information from an electronic database. Health PEI conducted an investigation, and concluded that it had adequate evidence to support the complaint of unauthorized access, but not the complaint of unauthorized disclosure. Health PEI concluded that the employee had accessed the complainant's personal health information once without authority. In addition, Health PEI concluded that there were two other incidents of unauthorized access of personal health information, of two other individuals. The Commissioner agreed with Health PEI's conclusions, and found that Health PEI responded reasonably to the breaches.

Health PEI demonstrated that it understands the serious consequences of unauthorized access to patients' electronic health records. Such invasions of patient privacy inevitably lead to loss of trust in health care providers, and in the health care system. The actions of Health PEI in responding to this breach, will help to prevent the erosion of that essential trust.

- Commissioner, Order No. HI-18-001 at para 52

HI-18-002, June 27, 2018

Re: Health PEI

Health PEI received a complaint about unauthorized disclosure of personal health information in a closed Facebook group created and managed by employees for the purpose of work-related communication. Health PEI investigated the matter, the post was removed, and the closed Facebook group was taken down.

The Commissioner agreed with Health PEI that the facts supported a finding of disclosure of personal health information to unauthorized persons. The Commissioner found that Health PEI responded reasonably to the breach.

The disclosure of the Resident's personal health information was an error by the Employee who posted it, whose intention was to de-identify the Resident by using initials. "Oops" moments such as these must be avoided, when dealing with the personal health information of residents, patients or clients of Health PEI. Adherence to this part of Health PEI's Social Media Policy is necessary to avoid such errors.
- Commissioner, Order No. HI-18-002 at para 37

HI-18-003, June 27, 2018

Re: Canadian Blood Services

A donor attending the Charlottetown clinic of the Custodian, scanned their donor identification card at a kiosk computer tablet to confirm their registration information. Another donor's identification number, name and date of birth appeared on the screen. No other personal health information was visible to the donor.

The Custodian immediately removed the tablet from service and conducted an investigation. The Custodian concluded that this disclosure of personal health information occurred when a previous donor scanned their donor identification card without completing the next step in the process, which is to confirm name and date of birth when prompted by the tablet.

The Custodian instituted a software enhancement which will remove the kiosk screen content containing a donor's identification number, name and date of birth, after a three minute timeout occurs. In addition, the Custodian decided to revise existing kiosk signage to include instructions to donors to contact Custodian staff if they are unable to complete, or must leave the kiosk before completing the process.

The Commissioner found that disclosure of an individual's personal health information to an unauthorized person occurred, raising clause 36(1)(c)(iv) of the *Health Information Act*. The Commissioner further found that the Custodian responded reasonably to the breach.

HI-18-004, October 31, 2018

Re: Health PEI

Health PEI received a complaint about unauthorized access and disclosure of personal health information. Of the four allegations made, Health PEI concluded that one of the allegations was supported by the evidence.

The Commissioner confirmed Health PEI's conclusions, that personal health information was accessed by an unauthorized person. The Commissioner found that Health PEI responded reasonably to the breach.

HI-18-005, December 12, 2018

Re: Health PEI

During a regular audit process, a Health PEI manager investigated further, and discovered that an employee had inappropriately accessed personal health information on the Clinical Information System database (the CIS). The Commissioner agreed with Health PEI's conclusion that there were unauthorized accesses to personal health information of 353 individuals (snooping).

With regard to breach prevention, the Commissioner found that Health PEI had established reasonable information practices to prevent snooping. However, the Commissioner found that the scope of personal health information accessed by the breaches would have been less, if established information practices had been implemented by Health PEI relating to user access credentials. The employee's user access credentials should have been changed from that of an LPN to that of a PCW. The Commissioner found that Health PEI has taken reasonable steps to remediate this shortcoming, to avoid such a failure to implement in future.

This type of unauthorized access to personal health information of patients, is often described as "snooping". For some individuals, the accessibility of others' personal health information is too great a temptation to resist. Although the policies against accessing electronic databases for anything other than work purposes are clear, and although there are penalties for unauthorized access, a small percentage of individuals will snoop anyway. For this reason, it is important to limit the access that employees may have, to only what they need to carry out their duties of employment.

- Commissioner, Order No. HI-18-005 at para 45

In this case, once the breach was discovered, the Employee did not immediately offer an explanation for their snooping. However, other snoopers, in other jurisdictions, often state that they snooped because they were bored, or simply curious. To the victims of a privacy breach, such reasons provide no comfort. The Employee was entrusted with access to personal health information, and the Employee abused that trust. Health PEI understands that such actions are not acceptable, which is why it expends such effort implementing the preventative information practices described above.

- Commissioner, Order No. HI-18-005 at para 52

Financial Information:

Budget:

This annual report covers activities of the office during the calendar year of 2018 in all respects except the budget. The reporting period of the budget is from April 1, 2018 to March 31, 2019.¹

	2018-2019 Budget Forecast	2018-2019 Budget Estimate	2018-2019 Expenditures
Administration	4,900.00	4,900.00	4,965.00
Materials, Supplies and Services	1,600.00	1,600.00	81.00
Professional Services	17,000.00	17,000.00	48,154.00
Salaries	191,000.00	191,000.00	198,357.00
Travel and Training	5,000.00	5,000.00	3,266.00
Total	219,500.00	219,500.00	254,823.00

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.

The OIPC exceeded its budget for professional services for the 2018-2019 fiscal year by more than \$30,000. All expenditures were due to legal fees resulting from judicial reviews.

For information regarding Commissioner and staff expenses, which are included in the above list of expenditures, please refer to our website under "Proactive Disclosure". In future, due to planned website changes, we will post this information under the heading "Transparency and Accountability".

¹ This information is reproduced from page 145 of the *Prince Edward Island Estimates of Revenue and Expenditures 2019-2020*, at https://www.princeedwardisland.ca/sites/default/files/publications/estimates_2019.pdf

Statistics

**TABLE A, Summary of Privacy Complaints and Investigations, FOIPP Act
January 1, 2018 – December 31, 2018**

Public Body	Carried over from previous years	2018 Complaints	Resolved in 2018 without Investigation Report/ Order/ Decision	Withdrawn in 2018 without Investigation Report/ Order/ Decision	Refusals in 2018	Investigation Report/ Order/ Decision issued in 2018	Carried forward to 2019
Economic Development and Training	0	1	1	0	0	0	0
Education, Early Learning and Culture	0	1	1	0	0	0	0
Elections PEI	0	1	0	0	0	0	1
Family and Human Services	0	1	0	0	0	0	1
Health PEI	0	2	1	0	0	0	1
Island Regulatory and Appeals Commission	0	1 (overlaps with WCB file below)	0	0	0	0	1 (overlaps with WCB file below)
Justice and Public Safety	0	1	1	0	0	0	0
No jurisdiction	0	1	1	0	0	0	0
PEILCC/ Cannabis PEI	0	1	0	0	0	0	1
Transportation, Infrastructure and Energy	0	2	0	0	0	0	2
Workers Compensation Board of PEI	0	1 (+ 1 file overlaps with IRAC file above)	1	0	0	0	0 (+ 1 file with IRAC)
TOTAL	0	13 (1 file combines WCB and IRAC)	6	0	0	0	7 (1 file involves WCB and IRAC)

Statistics

**TABLE B – Summary of Requests for Review (Access to Information), FOIPP Act
January 1, 2018 – December 31, 2018**

Public Body	Carried over from previous years	2018 requests	Resolved in 2018 without order/decision	Withdrawn in 2018 without order/decision	Refusals in 2018	Order/Decision issued in 2018	Carried forward to 2019
Agriculture and Fisheries	1	1	1	1	0	0	0
Communities, Land and Environment	1	3	0	0	0	0	4
Economic Development and Tourism	4	4 (1 file combines with ECO below)	0	0	1	2 [1 order combined two files]	4 (1 file combines with ECO below)
Education, Early Learning and Culture	0	3	0	0	0	0	3
Executive Council Office	0	2 (+1 file combines with EDT above)	1	0	0	0	1 (+1 file combines with EDT above)
Family and Human Services	0	1	0	0	0	0	1
Finance	2	1	0	0	0	1	2
Health and Wellness	1	1	0	0	0	1	1
Health PEI	1	3	1	0	0	1	2
Justice and Public Safety	2	4	1	0	0	0	5
Office of the Premier	1	4	1	0	1	2	1
Public Schools Branch	4	0	1	0	0	1	2
Rural and Regional Development	1	0	0	1	0	0	0
Transportation, Infrastructure and Energy	4	0	0	0	0	3 (+1 interim order)	1
Workers Compensation Board of PEI	3	3	0	3	1	0	2
Workforce and Advanced Learning	1	1	0	0	0	1	1
TOTAL	26	31	6	5	3	12 (+1 interim order)	30

Statistics

**TABLE C – Summary of Reviews, Health Information Act
July 1, 2017 – December 31, 2018**

Custodian	Breach Reporting 2017-2018 (BRH)	Access to Information Reviews (HIA)	Privacy Complaints (HIP)	Privacy Impact Assessment (PIA)	Resolved in 2018	Refusals in 2018	Report or Order issued in 2018	Carried forward to 2019
Physician	0	1 [2017]	0	0	1 HIA	0	0	0
Canadian Blood Services	3 [2018]	0	0	1 [2017] 1 [2018]	1 PIA 1 BRH	0	0	1 PIA 1 BRH
Health PEI	4 [2017] 6 [2018]	1 [2018]	2 [2018]	2 [2018]	3 BRHs 1 HIA 1 HIP		4 BRHs	3 BRHs 1 HIP 2 PIAs
Private care facility	1 [2017]	0	0	0	1 BRH	0	0	0
Pharmacy	1 [2017]	0	0	0	0	0	0	1 BRH
Dental Services	1 [2017]	0	0	0	0	0	0	1 BRH
Physician	0	1 [2018]	0	0	1 HIA	0	0	0
Department of Education and Lifelong Learning	0	0	0	1	0	0	0	1 PIA
Emergency services	0	0	0	1	0	0	0	1 PIA
Physician	1	0	0	0	0	0	0	1 BRH
Physio service	1	0	0	0	0	0	0	1 BRH
TOTAL	18	3	2	6	10 3 HIAs 1 PIA 5 BRHs 1 HIP	0	5 5 BRHs	14 5 PIAs 8 BRHs 1 HIP

Statistics of Public Bodies:

A list of public bodies and entities subject to the *FOIPP Act* can be found in Schedule 1, at pages 6 to 9 of the general regulations to the *FOIPP Act*. 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*.

Appendix A sets out the number of access requests made to Part I public bodies in 2018. These statistics were provided by the Access and Privacy Services Office (APSO). The third column lists the number of reviews conducted by the OIPC for each public body, which information is also provided in Tables A and B on the previous pages.

Appendix B sets out the number of access requests made to Part II designated public bodies in 2018. The statistics for Appendix B were provided by the designated public bodies and by APSO. Once again, the third column lists the number of reviews conducted by the OIPC for each public body, which information is also provided in Tables A and B on the previous pages.

It should be noted the requests for review to the OIPC in 2018 are not necessarily related to the same access requests recorded by a public body in 2018, as some may be reviews of 2017 decisions of public bodies. Further, the Appendices do not include informal responses to requests for access to information.

Appendix A: Schedule 1, Part I public bodies – Access Requests and Reviews

Public Body	Requests for access to records from public body, 2018*	Requests for Review to OIPC, 2018
Agriculture and Fisheries	6	1
Communities, Land and Environment	34	3
Economic Development and Tourism	32	4
Education, Early Learning and Culture	13	3
Executive Council Office	16	2 [+ 1 review with Economic Development and Tourism]
Family and Human Services	15	1
Finance	25	1
Health and Wellness	19	1
Intergovernmental Affairs	1	0
Justice and Public Safety	24	4
Office of the Premier	13	4
PEI Public Service Commission	1	0
Rural and Regional Development	2	0
Transportation, Infrastructure and Energy	29	0
Workforce and Advanced Learning	7	1
TOTAL	237 access requests to public bodies	25 access reviews to OIPC

*These statistics have been provided by the Access and Privacy Services Office

Appendix B: Schedule 1, Part II public bodies - Access Requests and Reviews

Public Body	Requests for access to records from public body, 2018 *	Requests for Review to OIPC, 2018
Cannabis PEI	Requests for access to information (general info) - 2	0
Elections PEI	Requests for access to information (general info) - 2	0
Fathers of Confederation Buildings Trust	Requests for access to information (general info) - 1	0
Health PEI	Requests for access to information (general info) - 9 Requests for access to personal information - 8 Requests to correct personal information - 3	3
Island Waste Management Corporation	Requests for access to information (general info) - 2	0
Human Rights Commission	Requests for access to information (general info) - 1	0
Workers Compensation Appeal Tribunal	0	0
French Language School Board	Requests for access to information (general info) - 7 Requests for access to personal information - 1	0
Island Regulatory and Appeals Commission	Requests for access to information (general info) - 3	0
Police Commissioner	Requests for access to information (general info) - 2	0
PEI Liquor Control Commission	Requests for access to information (general info) - 2	0
Public Schools Branch	Requests for access to information (general info) - 16 Requests for access to personal information - 2	0
Workers Compensation Board	Requests for access to information (general info) - 5	3
TOTAL	52 access requests to public bodies (general info)	6 access reviews

* These statistics have been provided either by the respective public bodies or by the Access and Privacy Services Office.