

**ANNUAL REPORT  
2020**

**OFFICE OF THE  
INFORMATION AND PRIVACY  
COMMISSIONER**

**PROVINCE OF PRINCE EDWARD  
ISLAND**





Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

Information and  
Privacy Commissioner  
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Commissaire à l'information et  
à la protection de la vie privée  
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November 3, 2021

The Honourable Colin LaVie, MLA  
Speaker of the Legislative Assembly  
Province of Prince Edward Island  
P.O. Box 2000  
Charlottetown, PE  
C1A 7N8

Honourable Speaker:

I am pleased to present to you the enclosed 2020 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2020 to December 31, 2020. This is the eighteenth 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,

Signed: *Denise N. Doiron*

Denise N. Doiron  
Information and Privacy Commissioner

Enclosure

DND/kj

# TABLE OF CONTENTS

Page

I. Commissioner’s Message .....	2-4
II. Overview of the OIPC .....	5-6
Staff .....	6
Mandate .....	6
Mission .....	6
Vision .....	6
Values .....	6
III. Legislative Responsibility .....	7
<i>Freedom of Information and Protection of Privacy Act (“FOIPP Act”)</i> .....	7
<i>Health Information Act (“HIA”)</i> .....	7
IV. Commissioner’s Decisions .....	8-18
Decisions under the <i>FOIPP Act</i> .....	8-17
1. Decisions resulting from access reviews .....	8-13
2. Decisions resulting from privacy complaints .....	13-14
3. Voluntary breach reports.....	15-17
Decisions under the <i>HIA</i> .....	18
1. Decisions resulting from access reviews .....	18
2. Decisions resulting from privacy complaints .....	18
3. Decisions resulting from mandatory breach reporting.....	18
V. Privacy Impact Assessments.....	19-20
VI. Financial Information .....	21
Budget .....	21
VII. Statistics.....	22-24
Table A: Requests for Review, <i>FOIPP Act</i> .....	22
Table B: Privacy Complaints, <i>FOIPP Act</i> .....	23
Table C: Reviews, <i>HIA</i> .....	24
Statistics of Public Bodies .....	25
Appendix A: Part I Public Bodies, Access Requests and Reviews .....	26
Appendix B: Part II Public Bodies, Access Requests and Reviews .....	27
Appendix C: Part III Public Bodies, Access Requests and Reviews .....	28



**OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER**

## **Commissioner's Message:**

This is my first annual report for the Office of the Information and Privacy Commissioner. I was given the privilege of being appointed Information and Privacy Commissioner for a 5-year term, beginning in June 2020, taking over from Commissioner Karen Rose.

Before going further, I would like to take this opportunity to acknowledge the many contributions of Commissioner Rose, who has been a veritable constant in this office since its inception in 2002, acting as the first Information and Privacy Commissioner for PEI, and coming back on and off over the years as interim, acting, and supernumerary Commissioner, before being appointed to her latest 5-year term that ended in June 2020.

Commissioner Rose has been an unwavering champion for access to information and protection of privacy in our province over the past two decades and has been integral to many of the advances made in access to information and protection of privacy in Prince Edward Island. I thank her for her dedication and many years of service to this office and the people of Prince Edward Island.

In early 2020 there were two major unexpected circumstances that arose which impacted the work of our office and government in general: a malware attack and the COVID-19 pandemic.

In February 2020, a malware attack was launched against PEI government information systems. Like many other users of the government information technology systems, our ability to access our electronic records was impacted while IT Shared Services (ITSS) responded to the attack and secured its systems, which in turn impacted our ability to function effectively during that time. Fortunately, the attack was discovered very early and steps were taken immediately to contain the breach and prevent the attack from progressing further. Throughout the response it was clear that government took the breach seriously and had the protection of sensitive information at the forefront. ITSS kept in contact with our office, updating us on their progress, and seeking our advice and recommendations.

March 2020 saw the declaration of the COVID-19 pandemic and a worldwide public health crisis, which continues presently. Thankfully, Prince Edward Island and its citizens have been diligent in following the advice and recommendations of public health officials and government, and the pandemic has had less of an impact on our province as a whole than virtually anywhere else in Canada, or around the world.

Unlike many of our counterparts across the country who have been out of their offices and away from their teams since March 2020, and continue to work remotely, we have been fortunate enough to have experienced less disruption to our office and its work. While there were some

challenges and resulting delays, the work of this office continued throughout. Despite some drawbacks, some positives have resulted as well.

Once such positive is in the technology available to our office. Early attempts at working from home at the beginning of the pandemic brought to light some challenges with outdated equipment, and inability to access our electronic files remotely. There was also no ability to meet remotely with each other, or others. Over the summer of 2020, our equipment was updated, and all staff now have laptop computers with secure VPN access to our systems, and videoconferencing capability, so everyone can work from home if required. Hopefully, we will not have to experience a shutdown again but, if it does happen, we are confident we can carry on the work of our office with minimal disruption.

We have continued to encourage Islanders to bring their privacy complaints and requests for review to us, even in the midst of crisis. It appears the unexpected events of 2020 did not prevent people from exercising their rights, as requests to public bodies and health information custodians continued, albeit with some delays in response. We do not keep statistics on public inquiries, but we have noted a significant increase in the volume of informal public inquiries made to our office via telephone and email. The number of formal requests submitted to our office for reviews of access to information and privacy complaints has also increased.

In 2020, we opened 80 new files, consisting of 63 files under the *Freedom of Information and Protection of Privacy Act (FOIPP Act)*, and 17 files under the *Health Information Act (HIA)*. On top of the 80 newly opened files, 51 files were carried over from 2019, for a total of 131 active files in 2020. We closed 67 files in 2020, but the new and continuing files exceeded the number we were able to close. As a result, at the end of 2020, 64 files were carried over to 2021. These file counts do not include work and decisions we made, often several times a week, when public bodies ask for our authorization to extend the time they have to respond to an access request. These such requests have also been increasing in number.

In addition to the increase in numbers of files, the complexity of issues has also increased. Public bodies have similarly reported an increase in both number and complexity of access requests. This requires more time spent up front to identify and clarify the issues, and more time and effort in deliberation and decision-making.

Further, there has been an increase in the amount of time and effort required per file, for us to obtain adequate information to meet our obligations. Many applicants are unfamiliar with legislative requirements, and are inexperienced in making submissions to a tribunal, necessitating more explanation and assistance from our office and more time to make their submissions. New public bodies and many health information custodians are still unfamiliar with their legislative obligations and our review processes, requiring more explanation and assistance from our office to make submissions, and often more time is requested to make their submissions. Experienced public bodies are also increasingly seeking more time to make submissions due to more complex arguments and competing obligations.

All of these factors together have resulted in a significant increase in workload, and longer times required to complete files. Regrettably, the human resources allocated to our office have not been sufficient to keep up with the increasing demand, resulting in more files being carried over each year, and producing an increasing backlog of files awaiting deliberation and decision.

There have been small improvements, such as the addition of a Case Review officer in 2017 (reclassified to an Adjudicator in 2018), and the increase of the Commissioner's position from part time to full time in June 2020. However, this has not been enough to keep up with the increased responsibilities of the office. In July 2017, the *HIA* was proclaimed, countless numbers of health information custodians came under the oversight of this office, and then in April 2019 seven new public bodies (four municipalities and three post-secondary educational institutions) were also added to the oversight responsibilities under the *FOIPP Act*. The number of new files coming into our office annually more than doubled between 2017 and 2020, and that trend is expected to continue. At the time of issuing this Annual Report, the number of new files in 2021 has already surpassed the 100 mark, with two months left to go in the reporting year.

The amount of work required has become too overwhelming for our office to adequately manage anymore. I am proud of the fact that the office has done so much with the resourcing it has had over the years, but unfortunately we have reached the point where it is no longer possible to keep up with the demand on the status quo resourcing, and the backlog will only continue to increase. Therefore, in 2021, we will be examining what steps can be taken to address the backlog and keep up with the increasing demand, so as to continue to meet our important responsibilities in as timely a manner as possible, so that citizens of Prince Edward Island can be assured their rights of access to information and privacy are being adequately protected.

In closing, a big thank you goes to the staff of the OIPC, Maria MacDonald, our Adjudicator, and Kimberley Johnston, our Administrative Officer. Both offered a warm welcome and open, friendly atmosphere, eager to make me feel comfortable in the new role and offer whatever assistance they could. I thank them very much for their kindness and understanding in a year of challenge and change. Their knowledge and assistance were invaluable. Their efforts made the transition much easier, and I am grateful for their support.

Denise N. Doiron,  
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 Assembly Management. The appointment is for a term of five years, by resolution of the Legislative Assembly, supported by at least two-thirds of the members present. The Commissioner's oversight responsibilities are grounded in these purposes of the *Freedom of Information and Protection of Privacy Act* ("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 *Health Information Act* ("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 Information and Privacy Commissioner, the Adjudicator and the administrative assistant.

**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.

## Decisions under the FOIPP Act

### Decisions Resulting from Access 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, and there is no fee.

Section 66 of the *FOIPP Act* authorizes the Commissioner to issue orders relating to access to information reviews. Eight such orders were issued by the Commissioner in 2020. Table A, on page 22, sets out the above statistics in detail.

#### **FI-20-001, January 22, 2020**

##### ***Re: Department of Economic Growth, Tourism and Culture***

An applicant made an access to information request to the Department of Economic Growth, Tourism and Culture, for records between a former Deputy Minister and another individual, covering a period of five months in 2012.

The Department provided the applicant with full disclosure of 48 pages of records, four months after the access request was made. The Applicant requested a review in relation to delay.

The Department provided reasons for the delay in processing the access request. The Commissioner found that, while part of the delay was authorized, the Department did not meet all of their obligations under sections 9 and 12 of the *FOIPP Act*, which relate to response periods and time extensions.

The Commissioner found that there were mitigating factors in the Department's late response to the Applicant, including a challenging records search due to the nature of the access request, and the quantity of access requests being processed by the centralized Access and Privacy Services Office.

Despite these factors, the Commissioner ordered the Department to refund the Applicant their access request fee.

The Commissioner also found that the Department did not adequately advise the Applicant of the nature of their initial consultation with another public body, which is contrary to clause 12(4)(a) of the *FOIPP Act*.

*While I have found mitigating circumstances, the fact remains that the Public Body extended the time for responding to the Applicant, without authorization under the FOIPP Act. While the Applicant*

*submitted a challenging request, and while the Applicant has submitted numerous requests, once the Public Body accepted and began processing those requests, they were bound by the time limits outlined in the FOIPP Act. The Applicant should not be made to bear the responsibility for a public body's unauthorized delay.*

- Former Commissioner, Order No. FI-20-001 at para 29

### **FI-20-002, February 18, 2020**

#### ***Re: Department of Agriculture and Land***

An applicant requested access to records held by the Department of Agriculture and Land related to a plan to subdivide a parcel of land. In a second access request, the same applicant requested any records that the subdivision officer used to approve the subdivision and rezoning, and any information pertaining to the final approval for two parcels of land.

In both requests for access, the Department disclosed some records in their entirety, and withheld some information pursuant to exceptions under the *FOIPP Act*.

The applicant sought a review of the Department's decision, but not in relation to the excepted information. The applicant had concerns with the Public Body's handling of the request for access, the adequacy of their search, and the content of the responsive records. The applicant submitted the Department did not fulfill their duty to assist, pursuant to section 8 of the *FOIPP Act*.

The Commissioner found that, considering all of the circumstances, the Department had fulfilled their duty to assist the applicant, and to respond to the applicant openly, accurately and completely under section 8 of the *FOIPP Act*.

*Although the Applicant complains that some records are irrelevant or "basic off the shelf information", it is not the duty of a Public Body responding to an access request, to make unilateral decisions as to which records will be of interest to an Applicant. I accept, and encourage, the Public Body's process of providing the Applicant with all those records responsive to the wording of the Applicant's request. If the Public Body had approached the request too narrowly, they may have been abrogating their duties under section 8 of the FOIPP Act. I find that the Public Body has taken an approach consistent with section 8 of the FOIPP Act, by considering the entirety of the case files to be responsive to the Applicant's requests.*

- Former Commissioner, Order No. FI-20-002 at para 34

### **FI-20-003, February 24, 2020**

#### ***Re: Health PEI***

An applicant requested access to all records exchanged between the former board members of Health PEI, and between the board members and the Minister of Health and Wellness, over a three-week period. Health PEI provided the Applicant with responsive records, severing information on the basis of sections 15 (unreasonable invasion of personal privacy), 22 (advice to officials) and 25(1)(a) (solicitor-client privilege) of the *FOIPP Act*. The Applicant requested a review.

The Commissioner found that Health PEI properly applied the exceptions to disclosure when making their decision to withhold information from the responsive records.

During the review, the applicant raised section 30 of the *FOIPP Act*, which requires a public body to disclose information, without delay, if disclosure is clearly in the public interest. The Commissioner found that section 30 does not apply to the information in the responsive records.

*It may be that the resignation of the board of directors of the Public Body is a matter of interest to the public. However, clause 30(1)(b) of the FOIPP Act requires me to examine the records at issue themselves to determine whether there is a clear or compelling public interest in their disclosure. Based on my review of all of the withheld information in the records at issue, and based on all relevant factors, I am not persuaded that disclosure of the withheld information within them is “clearly in the public interest”.*

- Former Commissioner, Order No. FI-20-003 at para 86

**FI-20-004, March 10, 2020**

***Re: Public Schools Branch***

An applicant requested access to the report of a workplace harassment investigation from the Public Schools Branch. The Applicant was the complainant in relation to the investigation.

The Public Schools Branch provided a copy of the responsive record to the Applicant, severing some information on the basis that disclosure would be an unreasonable invasion of third parties' personal privacy, pursuant to section 15 of the *FOIPP Act*. The applicant sought a review.

The Commissioner found that disclosure of most of the withheld information from the investigation report would constitute an unreasonable invasion of personal privacy for the individuals to whom the personal information relates. However, the Commissioner also found that some of the withheld information was not personal information, and some of the withheld information was personal information the disclosure of which would not constitute an unreasonable invasion of personal privacy of a third party.

The Commissioner ordered the Public Schools Branch to provide the applicant with access to this information, but otherwise confirmed the decision of the Public Schools Branch.

*Although I empathize with the desire of the Applicant to have the PSB disclose all information gathered during the investigation, I do not find that disclosure of the withheld personal information in the Report is relevant to a fair determination of the Applicant's rights.*

- Former Commissioner, Order No. FI-20-004 at para 48

**FI-20-005, April 2, 2020**

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

An applicant asked the Department of Justice and Public Safety for access to correspondence relating to the applicant and their business over a ten-year period. The Department provided access to some information, but withheld some information based on exceptions under the *FOIPP Act*. The applicant requested a review.

In the course of the review, the parties resolved some issues. The only remaining issues were whether the Department had properly applied clause 22(1)(g) [advice to officials] to one paragraph, and whether they had properly applied clause 25(1)(a) [solicitor-client privilege] to 23 pages.

The Commissioner ordered the Department to re-exercise their discretion related to the one paragraph withheld pursuant to clause 22(1)(g), and confirmed the decision of the Department related to clause 25(1)(a) of the *FOIPP Act*.

*The Public Body has the burden of proof, and they must show the Commissioner, on a balance of probabilities, that the record is subject to solicitor-client privilege. The risk of not providing enough evidence is that the public body might not persuade the Commissioner that they have properly claimed solicitor-client privilege. It may be advisable, in some circumstances, for a public body to provide more evidence to the Commissioner, including further particulars, or severed copies of the responsive records, without disclosing the information that is subject to solicitor-client privilege. This is particularly so if the Commissioner advises a public body that they require further evidence.*  
- Former Commissioner, Order No. FI-20-005 at para 37

#### **FI-20-006, May 6, 2020**

##### ***Re: Department of Economic Growth, Tourism and Culture***

An applicant asked the Department of Economic Growth, Tourism and Culture for access to records related to a grant of financial assistance that the Department had provided to a company in 2010. The Department provided the applicant with access to some responsive records, but withheld some records on the basis that they are subject to solicitor-client privilege relating to another person.

The applicant requested a review of whether the Department had properly applied solicitor-client privilege to withhold 47 pages of records.

The Commissioner found that the 47 pages of records are subject to solicitor-client privilege, and they relate to a person other than the Department, pursuant to subsection 25(2) of the *FOIPP Act*. The Commissioner confirmed that the Department is required to refuse to provide the applicant with access to the 47 pages.

*I find that the records at issue are the subject of solicitor-client privilege, and relate to a person other than a public body, the Affected Party. I further find that the Affected Party has not waived their privilege. As such, I find that the Public Body has properly applied subsection 25(2) of the FOIPP Act with respect to the records at issue.*  
- Former Commissioner, Order No. FI-20-006 at para 37

**FI-20-007, June 9, 2020**

**Re: Department of Economic Growth, Tourism and Culture**

Two applicants requested reviews of five decisions of the Department of Economic Growth, Tourism and Culture (EGTC), regarding access to information from a named government employee's emails in 2011. In each review, the applicants questioned whether the EGTC had fulfilled their duty to assist the applicants by conducting a reasonable search. The applicants also questioned whether the EGTC had been open, accurate and complete in their responses to the applicants, as the EGTC had not advised the applicants that emails of the government employee, during the period requested, were missing and not recoverable.

In all reviews, the Commissioner found that the EGTC had conducted a reasonable search, but that they had not responded to the applicants openly, accurately and completely. The Commissioner ordered the EGTC to refund the applicants their fees paid.

*I am at a loss to explain the motivation of the EGTC in withholding such key information from the Applicants. I have overseen many access reviews since November, 2002, and have observed that public bodies are forthright in their dealings with applicants, even when the information the public body must provide is embarrassing, or does not place the public body or a given employee in the best light. In such circumstances, public bodies prioritize their duty to respond openly, accurately and completely. Why the EGTC chose to keep the fact of missing emails from the Applicants remains a mystery, even after multiple submissions to the Commissioner by the EGTC in these reviews.*

- Former Commissioner, Order No. FI-20-007 at para 48

*I find that the EGTC has failed to comply with rules relating to the destruction of records set out at section 15 of the Archives and Records Act, which was in force at the relevant time. Every public body has a duty to retain government records, including emails, in accordance with their retention and disposition schedules. By the loss of non-transitory email records, without having printed and retained paper copies, the EGTC, via the named employee, failed in this important duty.*

- Former Commissioner, Order No. FI-20-007 at para 83

**FI-20-008, June 18, 2020**

**Re: Department of Environment, Water and Climate Change**

An applicant asked the Department of Environment, Water and Climate Change for access to various records relating to the applicant and their business over a nine-year period. The Department provided the applicant with access to some records but withheld others. The applicant sought a review.

In the course of the review, the parties resolved most issues. The remaining issues are whether the Department properly applied section 22 (advice to officials), and 25 (solicitor-client privilege) of the *FOIPP Act* to some records.

The Commissioner found that the Department properly applied section 22 of the *FOIPP Act* to the information in the records. The Commissioner confirmed the Department's decision not to provide the applicant with access to the information.

The Commissioner further found that the Department properly applied section 25 of the *FOIPP Act* to withhold records which are subject to solicitor-client privilege.

*The FOIPP Act of Prince Edward Island is not written the same way as it is written in Ontario. There is no provision equivalent to section 19 of Ontario's legislation. Clause 25(1)(a) of the FOIPP Act refers to "legal privilege", which imports the principles of common law, one of which is that litigation privilege lapses when litigation ends. By using the common law expression, the Legislature of PEI incorporates common law principles of legal privilege as opposed to creating a separate statutory exception. I find that, in PEI, the common law time limits apply to litigation privilege, including Crown work product privilege.*

- Former Commissioner, Order No. FI-20-008 at para 44

### **Decisions 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 investigate and issue an order or investigation report. One privacy complaint from 2019 was brought forward to 2021. Four of the seven privacy complaints made in 2020 were resolved the same year. Two orders were issued by the Commissioner from privacy complaints in 2018 and 2019. Three privacy complaints from 2020 were brought forward to 2021. Table B, on page 23, sets out the above statistics in detail.

#### **Order No. PP-20-001, April 22, 2020**

#### **Re: Cannabis Management Corporation**

The Commissioner commenced an investigation of Cannabis PEI, following public concerns regarding electronic scanning of customers' identification cards. Although Cannabis PEI halted the process of scanning identifications, the Commissioner examined their practices relating to personal information.

In their in-person retail setting, the Commissioner found that Cannabis PEI collects personal information of individuals, including video images, and basic personal information for incident reports, complaints, inquiries, and merchandise returns. The Commissioner found that Cannabis PEI is authorized to collect, use and disclose such personal information for the limited purposes reported. With respect to video surveillance, the Commissioner made recommendations to Cannabis PEI regarding their obligation to notify the public of their purpose, authority, and contact information.

In their online setting, the Commissioner found that Cannabis PEI collects personal information of individuals, including for order and delivery purposes. The Commissioner found that Cannabis PEI

is authorized to collect, use and disclose such personal information for the limited purposes reported.

The Commissioner also examined the security arrangements made by Cannabis PEI to protect the personal information in their custody and control. The Commissioner found, based on the available information, that Cannabis PEI is using reasonable security measures to protect personal information. However, as the security of online sales and electronic databases is an ever-evolving risk, the Commissioner recommended that Cannabis PEI incorporate proactive measures, including periodic and comprehensive reviews and testing of their security measures.

*Communication with customers, and transparency of information practices, is key to addressing customers' well-founded concerns, as is ongoing attention to cybersecurity risks.*

-Former Commissioner, Order No. PP-20-001 at para 77

*Despite the Public Body's safeguards, I recognize that the risks of online privacy breaches, including malware, are in continuous evolution. The security of online platforms will diminish over time if development stagnates. I therefore recommend that the Public Body incorporate proactive measures into their safeguards, including periodic and comprehensive reviews and testing of their online security measures, taking into consideration known and developing online risks.*

-Former Commissioner, Order No. PP-20-001 at para 91

#### **Order No. PP-20-002, June 17, 2020**

##### **Re: City of Charlottetown (Police Services)**

A complainant expressed concerns regarding an Automated License Plate Reader (ALPR) system used by the City of Charlottetown Police Services. The Commissioner investigated whether the Charlottetown Police is authorized to use the ALPR system under the *FOIPP Act*.

The Commissioner found that the Charlottetown Police's collection, use, and disclosure of personal information in their ALPR system is authorized under the *FOIPP Act*. While the Charlottetown Police was open about their use of the ALPR system, the Commissioner recommended that they provide detailed information on their website about the ALPR, so that citizens are fully aware of the collection of their personal information, and how it is handled.

The Commissioner found that the Charlottetown Police's staff training, and use of an in-house database, reduces the risk of unauthorized access, use or disclosure of personal information. These are key factors in the Commissioner's finding that reasonable security arrangements are in place to protect the personal information associated with the ALPR system.

*I find that the Charlottetown Police's use of the ALPR is necessary to enable them to carry out their law enforcement purpose in a reasonable manner, and that the Charlottetown Police is authorized to use the personal information collected by the ALPR system, in the manner they are using it.*

-Former Commissioner, Order No. PP-20-002 at para 80



## ***Voluntary Breach Reports***

### ***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 2020. In all cases, the individuals affected by the breaches were notified by the public body.

#### **BRF-19-019 - Department of Justice and Public Safety**

[Note: This breach appeared in our 2019 annual report but was actually closed in 2020].

In this inadvertent breach, a page from the print job of one employee of the Maintenance Enforcement Program (MEP) was retrieved unnoticed with the print job of another employee, and mailed to a client. The page contained the personal information of another client. To avoid similar breaches in future, the Public Body reminded MEP staff to review all documents that are scanned, printed and copied to ensure multiple pages are not mixed in error. The Public Body also introduced a “secure print” policy, to ensure staff have control over when documents are printed.

#### **BRF-19-020 – Child and Family Services (Social Development and Housing)**

In relation to an alleged privacy breach brought forward from a member of the public, the public body provided a report in which they determined there was no privacy breach. The former Commissioner found the investigation to be reasonable and satisfactory.

Despite the investigators’ conclusion that no privacy breach occurred in this instance, the public body’s report indicated they have made significant recommendations for improvement to their privacy policies and workplace culture. They took this opportunity to consider important issues such as policy updates and staff training.

#### BRF-20-020 – Office of the Police Commissioner

A letter was inadvertently mailed to an incorrect mailing address, as a result of an incorrectly addressed letter. The letter set out the public body's findings to a complainant in relation to an alleged violation of the Code of Conduct of Charlottetown Police Services. The letter was addressed to another person with the same last name, in error.

The public body has taken steps to avoid a recurrence of this type of privacy breach in future. The key change they have made is that they are no longer using the label making application. Instead, when drafting letters, they will obtain the correct name and address from the actual file. They also plan to check all mailed and emailed documents before sending, to ensure that addresses match those in the file. Further, they will send future correspondence of this nature by Registered Mail, in order to track delivery. They also discussed their adherence to the principle of using as little personal information as possible in mailed or emailed correspondence, so as not to put personal information at risk.

#### BRF-20-021 – Department of Finance (ITSS)

The Public Body learned that some files containing personal information and business information of Government clients had been accessed by an external source as a result of a malware attack. When IT Shared Services (ITSS) began investigating the impacts of the malware attack, the assessment had identified a minimal number of core Government servers had been affected. Some personal information of affected individuals had been disclosed on the internet by the malware attacker.

The Public Body was proactive and immediately made efforts to contain the breach. The Public Body advised affected individuals of the details of the investigation in a transparent manner and steps they took to contain the breach. The Public Body offered affected individuals two years of credit monitoring, and encouraged them to activate the service. The Public Body also provided affected individuals with advice on how they could protect their personal information and monitor their accounts and credit card activity.

The Public Body addressed the breach in an efficient manner, and have taken steps to ensure that the circumstances giving rise to the breach do not recur in future.

#### BRF-20-023 – Department of Economic Growth, Tourism and Culture

An applicant to the online Emergency Income Relief for the Self-Employed program (EIR Program) notified the public body that they were able to view another's void cheque on the platform. The public body shut down the EIR Program platform immediately after being notified of the breach, and safeguarding the personal information from further access or disclosure. The public body made changes to the online EIR Program as a result of this breach, to prevent this type of breach in future. They re-tooled the online application site for the EIR Program on an in-house basis, and were confident in its security. In addition, the original third party vendor cooperated to conduct

the investigation which ultimately identified both the underlying problem and the potential affected individuals.

BRF-20-024 – Department of Economic Growth, Tourism and Culture

A member of the public posted personal information of shareholders, including the number and type of shares they owned of a named company, on Facebook. The individual appeared to have obtained unauthorized access to a Treasury Board Memorandum which contained this and other financial information of the shareholders. It also appeared, based on a media request from the local CBC, and information contained in an article on January 6, 2020, that CBC may have obtained a copy of the same Memorandum.

The Public Body was not able to identify how the Memorandum was disclosed or who had disclosed it. The CEO of Innovation PEI held a staff meeting with all staff of IIDI and Finance PEI, to discuss this particular privacy breach, and to review their obligations to protect personal information under the *FOIPP Act*.

BRF-20-025 – Department of Justice and Public Safety (Access and Privacy Services Office)

APSO, in error, disclosed to an applicant two emails containing personal information about two authors of the emails, which had not been redacted. These emails were among 797 pages of potentially responsive records located by the Public Body (Department of Health and Wellness) in response to a Freedom of Information (FOI) request.

APSO determined the disclosure was the result of human error. It is usually APSO's practice to review all files twice before disclosing. APSO staff were reminded of the importance of at least two analysts reviewing each file prior to disclosure and the need to ensure two reviews.

BRF-20-028 – Department of Justice and Public Safety

An autopsy report was inadvertently mailed to an incorrect mailing address, as a result of the person who had requested the autopsy report not updating their address information. The requester had moved after they requested the autopsy report, but did not notify the Public Body or provide an updated mailing address. The Public Body discussed possible actions to prevent similar breaches in future, including calling requesters to confirm their address in advance of mailing reports, or requiring requesters to pick up their documents in person. The Public Body noted that, while the pandemic is still active, the first option is the preferred method.

***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.

## **Decisions under the *Health Information Act***

### **Decisions resulting from access reviews**

Under the *Health Information Act*, (*HIA*), if an individual is not satisfied with the decision of a custodian relating to their request for access to their own personal health information (PHI) or related to their request to correct their own PHI, the individual may request a review by the Commissioner. No decisions resulted in relation to a *HIA* access review in 2020. Two access reviews were opened in 2020; one review was resolved and the other was refused.

### **Decisions resulting from privacy complaints**

If an individual believes that their personal health information has been breached by a custodian, they may complain to the Commissioner. One decision resulted from such privacy complaints in 2020. Five privacy complaints were opened. Of the five files opened, one review was ordered; two were resolved, one was refused and one was brought forward to 2021.

### **Decisions resulting from mandatory breach reporting**

Section 64 of the *HIA* authorizes the Commissioner to issue orders relating to mandatory breach notifications by custodians. Two breach notifications were provided to the Commissioner by custodians in 2020. Of the two breach notifications, one was resolved and the other was brought forward to 2021. Of the four breach notifications brought forward from 2019, three were resolved in 2020 and one was brought forward to 2021.

Table C, on page 24, sets out the above statistics in detail.

### **Order No. HI-20-001, November 17, 2020**

#### ***Re: Physician***

An individual alleged that their physician disclosed two types of personal health information to their mother without their consent. The Adjudicator found that the physician had not disclosed one of the types of personal health information. The physician acknowledged disclosing the other type of personal health information, but claimed that they did so out of concern for the health and safety of the individual.

The Adjudicator accepted the physician's explanation, and found that, in the circumstances, subsection 24(1) of the *Health Information Act* authorized the physician to disclose this information to reduce or prevent the risk of serious harm to the Complainant's health or safety.

*There is no suggestion that the Custodian was acting in bad faith or for an improper purpose, or that they considered any irrelevant considerations, or failed to consider relevant circumstances. I am satisfied that the Custodian properly exercised their discretion in these circumstances.*

- Adjudicator, Order No. HI-20-001 at para 39

## **Privacy Impact Assessments**

As technology advances, there are ever more available and varied opportunities for organizations to utilize technological solutions to assist them with efficiencies in their work and customer service. Further, as technology has become so ingrained into our everyday lives, most people have become accustomed to its use and increasingly expect public bodies and custodians to offer online and other digital services, which are easily accessible at the consumer's own convenience. As a result, it has become much easier to collect, store, access, use, and disclose huge amounts of personal information. With the increasing expectations of the population to be able to easily and conveniently access services, the advancements in technology, and the vast amounts of personal information that can be collected by public bodies and custodians, it is more important than ever to assess the potential privacy risks of an organization's information practices.

A privacy impact assessment (PIA) is a process which helps an organization in identifying and managing the privacy risks arising from new projects, initiatives, technology systems, processes, strategies, policies, etc., including screening for factors that have potential for a widespread or serious impact on individuals, identifying and guiding the use of personal information across the organization, and identifying and mitigating potential information technology security risks. Done properly, and ideally before launching a new initiative, whether technological or otherwise, a PIA can help ensure that an organization is meeting its legal requirements and that potential privacy impacts are identified and either addressed or minimized before a problem occurs.

### **Health Information Act**

Under section 25 of the *HIA*, it is mandatory for a custodian to prepare a PIA and submit it to the Commissioner for review and comment:

- (a) for the new collection, use or disclosure of personal health information (PHI) or any significant change to the collection, use or disclosure of PHI;
- (b) for the creation of, or significant modification to an existing, health information system or PHI communication technology; or
- (c) if a custodian performs data matching with PHI collected by it or with any PHI held by another custodian or another person.

In 2020, our office received 8 PIAs from custodians. We believe there were many more PIAs that should have been conducted and submitted to our office in 2020, particularly given the move by many health services providers to offer alternatives to in-person service delivery during the pandemic, and implementation of a variety of technological assists for this purpose. Most of these "pivots" would have resulted in new collection or use of PHI and/or new or significant modification to existing communication technology, requiring a PIA to be conducted and submitted to our office for review and comment. As a result of our concern that PIAs were not being conducted as required, in late 2020 we reached out to various professional licensing bodies to encourage them to remind their members of their obligations. We expect compliance to increase as awareness increases. We have already seen an uptick in PIAs coming in from custodians since this outreach, but are aware there is still some work to do in this area.

### Freedom of Information and Protection of Privacy Act

PIAs are not mandatory under the *FOIPP Act*, but some public bodies conduct PIAs and voluntarily submit them to our office for review and comment. In 2020, our office received 4 voluntary PIAs from public bodies under the *FOIPP Act*.

Although not mandatory, we do strongly encourage public bodies to conduct a PIA any time they are undertaking a new initiative, implementing new technology, making significant changes to their existing technology, or engaging in a new or significant change to the collection, use or disclosure of personal information. We are also happy to review and comment on a PIA from a public body, if they choose to voluntarily submit it to our office. The process of conducting a PIA will assist a public body in identifying the impacts its programs and activities will have on individuals' privacy, identifying and effectively managing privacy risks, ensuring it is meeting its legal obligations, and is adhering to the basic principles of privacy protection.

## Financial Information:

### Budget:

This annual report covers activities of the office during the calendar year of 2020 in all respects except the budget. The reporting period of the budget is from April 1, 2020 to March 31, 2021. <sup>1</sup>

	<b>2020-2021 Budget Forecast</b>	<b>2020-2021 Budget Estimate</b>	<b>2020-2021 Expenditures</b>
Administration	4,900.00	4,900.00	6,491.00
Materials, Supplies, and Services	1,600.00	1,600.00	214.00
Professional Services	18,800.00	18,800.00	0.00
Salaries	287,000.00	287,000.00	283,029.00
Travel and Training	5,000.00	5,000.00	424.00
<b>Total</b>	<b>317, 300.00</b>	<b>317,300.00</b>	<b>290,158.00</b>

The OIPC budget does not reveal all the operating expenses of the office, as some supplies and services the office receives are shared with other departments of the provincial government, including ITSS, Public Works and the Legislative Assembly (e.g. office space and utilities, photocopy paper, accounting services, printing services and IT support) and these costs are not reflected.

For information regarding Commissioner and staff expenses, which are included in the above list of expenditures, please refer to our website under “Proactive Disclosure”. Due to website changes, this information is now posted under the heading “Transparency and Accountability”.

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<sup>1</sup> Some of this information is reproduced from page 148 of the *Prince Edward Island Estimates of Revenue and Expenditures 2020-2021*, at [https://www.princeedwardisland.ca/sites/default/files/publications/budget\\_estimate\\_book\\_2020-2021\\_web.pdf](https://www.princeedwardisland.ca/sites/default/files/publications/budget_estimate_book_2020-2021_web.pdf)

## STATISTICS

**TABLE A – Summary of Requests for Review (Access to Information), FOIPP Act  
January 1, 2020 – December 31, 2020**

Public Body	Carried over from 2019	2020 Requests /PIAs received	Resolved in 2020 without order/ decision	Withdrawn in 2020 without order/ decision	Refused in 2020 without order/ decision	Order/ Decision issued in 2020	Carried forward to 2021
Agriculture and Land	0	2	0	0	0	0	2
City of Charlottetown	0	6	3	0	0	0	3
City of Summerside	0	1	0	0	0	0	1
Communities, Land and Environment	3	0	0	0	0	3	0
Economic Development and Tourism	6	0	0	0	0	6	0
Economic Growth, Tourism and Culture	10	14	7	2	0	1	13
Education, Early Learning and Culture	1	0	0	0	0	0	1
Education and Lifelong Learning	1	8	1	1	0	0	7
Environment, Water and Climate Change	1	0	1	0	0	0	0
Executive Council Office (ECO)	0	2	0	0	0	0	2
ECO and Premier's Office	0	1	0	0	0	0	1
Finance	4	1	2	0	0	0	3
Health and Wellness	0	2	0	0	0	0	2
Health PEI	3	1	1	0	0	1	2
Justice and Public Safety	2	3	0	0	0	1	4
Premier's Office	1	5	1	0	1	0	4
Public Schools Branch	3	3	2	0	0	1	3
Social Development and Housing	1	1	2	0	0	0	0
Transportation, Infrastructure and Energy	3	4	2	0	0	0	5
UPEI	0	1	1	0	0	0	0
Various	0	1	0	1	1	0	0
<b>TOTAL</b>	<b>39</b>	<b>56</b>	<b>23</b>	<b>4</b>	<b>2</b>	<b>13</b>	<b>53</b>

Please note that Charlottetown Police Services access requests are counted under the City of Charlottetown public body but are processed separately by Charlottetown Police Services.

Please note that the total number 56 includes 52 access reviews and four voluntary PIAs. One PIA was received from Charlottetown Police Services, and resolved in 2020. Three PIAs were received from the Department of Education and Lifelong Learning, which were carried forward to 2021.



**TABLE B – Summary of Privacy Complaints, FOIPP Act  
January 1, 2020 – December 31, 2020**

<b>Public Body</b>	<b>Carried over from 2019</b>	<b>2020 Complaints</b>	<b>Resolved in 2020 without Investigation Report/ Order/ Decision</b>	<b>Withdrawn in 2020 without Investigation Report/ Order/ Decision</b>	<b>Investigation Report/ Order/ Decision issued in 2020</b>	<b>Carried forward to 2021</b>
Cannabis Management Corporation	1	0	0	0	1	0
City of Charlottetown (Police Services)	1	0	0	0	1	0
City of Summerside	0	1	0	0	0	1
Finance (ITSS)	0	1	0	0	0	1
Health and Wellness	0	1	1	0	0	0
Health PEI	1	0	0	0	0	1
Justice and Public Safety	0	1	1	0	0	0
Office of the Police Commissioner	0	1	1	0	0	0
Social Development and Housing	1	0	1	0	0	0
Transportation Infrastructure and Energy	1	2	1	0	0	2
<b>TOTAL</b>	<b>5</b>	<b>7</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>5</b>

**TABLE C – Summary of Reviews, Health Information Act  
January 1, 2020 – December 31, 2020**

Custodian	Breach Reporting 2020 (BRH)	Access to Information Reviews 2020 (HIA)	Privacy Complaints 2020 (HIP)	Privacy Impact Assessment 2020 (PIA)	Carried Forward from 2019	Resolved/ Refused Closed in 2020	Report or Order issued in 2020	Carried forward to 2021
Canadian Blood Services				2 PIAs		2 PIAs		
Health PEI	1 BRH	2 HIAs	2 HIPs	4 PIAs	1 PIA 3 BRHs	4 PIAs 3 BRHs 2 HIAs 1 HIP		1 PIA 1 BRH 1 HIP
Department Education and Lifelong Learning					1 PIA	1 PIA		
Lab (National)					1 BRH			1 BRH
Health PEI / Maple				1 PIA				1 PIA
Pharmacy	1 BRH					1 BRH		
Emergency services				1 PIA	1 PIA	1 PIA		1 PIA
Physician			1 HIP				1 HIP	
Justice and Public Safety			1 HIP			1 HIP		
Non-profit/ Advocate Group			1 HIP			1 HIP		
<b>TOTAL</b>	<b>2 BRHs</b>	<b>2 HIAs</b>	<b>5 HIPs</b>	<b>8 PIAs</b>	<b>7</b>	<b>17</b>	<b>1</b>	<b>6</b>
					<b>3 PIAs 4 BRHs</b>	<b>8 PIAs 4 BRHs 2 HIAs 3 HIPs</b>	<b>1 HIP</b>	<b>3 PIAs 2 BRHs 1 HIP</b>

## Statistics of Public Bodies:

A list of public bodies and entities subject to the *FOIPP Act* can be found in Schedule 1, at pages 9 to 11 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 lists seven local public bodies which are included under the *FOIPP Act*. There are three educational public bodies listed and four municipal public bodies.

Part III of Schedule 1 lists over 88 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 2020. 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 local public bodies in 2020. The statistics for Appendix B were provided by the local public bodies, which include three educational public bodies and four municipal public bodies. This office received separate statistics from the City of Charlottetown and their police force. The statistics shown will reflect that. 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.

Appendix C sets out the number of access requests made to Part III public bodies in 2020. 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.

It should be noted the requests for review to the OIPC in 2020 are not necessarily related to the same access requests recorded by a public body in 2020, as some may be reviews of 2019 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, (general) 2020*	Requests for access to records from public body, (personal) 2020*	Requests for Review to OIPC, 2020**
Agriculture and Land (AL)	22	0	2
Economic Growth Tourism and Culture (EGTC)	38	0 + 3 corrections	14
Education and Lifelong Learning (ELL)	22	1	5
Environment, Water and Climate Change (EWCC)	12	0	0
Executive Council Office (EX)	4	0	3
Fisheries and Communities (FC)	9	0	0
Finance (FIN)	14	0 + 1 correction	1
Health and Wellness (HW)	47	1	2
Intergovernmental Affairs (IGA)	0	0	0
Justice and Public Safety (JPS)	24	12	3
Premier's Office (PO)	16	0	6
PEI Public Service Commission (PSC)	3	0	0
Social Development and Housing (SDH)	2	4	1
Transportation, Infrastructure and Energy (TIE)	57	1	4
<b>TOTAL</b>	<b>270 access requests (general) to public bodies</b>	<b>19 access requests (personal) to public bodies and 4 correction requests</b>	<b>41 requests for review</b>

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

Please note there was one request for review which involved two public bodies (PO and EX).

There was also a request to OIPC for an investigation of various public bodies. That request for investigation is not included in this table because there had not been an access request to a public body.

\*\*The number of total access review requests involving Part 1 public bodies is 41.

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

Public Body	Requests for access to records from public body (general) 2020*	Requests for access to records from public body (personal) 2020*	Requests for Review to OIPC, 2020
City of Charlottetown	15	2	4
City of Charlottetown (Police)	2	4	1
City of Summerside	4	0	1
Collège de l'Île	Not submitted	Not submitted	0
Holland College	0	1 + 1 correction	0
Town of Cornwall	0	0	0
Town of Stratford	0	0	0
University of PEI	3	1	1
<b>TOTAL</b>	<b>24 access requests to public bodies (general info)</b>	<b>8 access requests to public bodies (personal info) + 1 correction request</b>	<b>7 access reviews</b>

\*Stats provided by each Public Body.

## Appendix C: Schedule 1, Part III public bodies - Access Requests and Reviews

Public Body	Requests for access to records from public body (general) 2020 *	Requests for access to records from public body (personal) 2020 *	Requests for Review to OIPC, 2020
Elections PEI	0	0	0
Fathers of Confederation Buildings Trust	0	0	0
French Language School Board	3	0	0
Health PEI	44	19 + 2 corrections	1
Human Rights Commission	1	0	0
Island Waste Management Corporation	0	0	0
Island Regulatory and Appeals Commission	4	0	0
PEI Cannabis Management Corporation	2	0	0
Office of the Police Commissioner	0	0	0
PEI Liquor Control Commission	2	0	0
Public Schools Branch	7	0	3
Workers Compensation Appeal Tribunal	0	0	0
Workers Compensation Board	3	0	0
<b>TOTAL</b>	<b>66 access requests to public bodies (general info)</b>	<b>19 access requests to public bodies (personal info) + 2 correction requests</b>	<b>4 access reviews</b>

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