

**ANNUAL REPORT
2022**

**OFFICE OF THE
INFORMATION AND PRIVACY
COMMISSIONER**

**PROVINCE OF PRINCE EDWARD
ISLAND**





Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

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

Assemblée législative

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

November 10, 2023

The Honourable Darlene Compton, 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 2022 Annual Report of the Office of the Information and Privacy Commissioner, for the period January 1, 2022 to December 31, 2022. This is the twentieth report from this office and is submitted to you pursuant to subsection 59(1) of the *Freedom of Information and Protection of Privacy Act*.

Sincerely,

Signed: Denise N. Doiron

Denise N. Doiron
Information and Privacy Commissioner

Enclosure

DND/nlk

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**OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER**

Commissioner's Message:

The year 2022 was a year of challenge and change. Early in the year, I experienced an unexpected medical issue, and an extended absence from work. Shortly after my return, our office, which had been minimally affected by the pandemic to that point, experienced multiple bouts of COVID-19 infections, resulting in unexpected extended staff absences from March through September. Even one staff person out of the office reduced our workforce by a full 1/3. This had significant impacts on our workload. We had an additional work disruption in August, as we moved our office from its long-time location on 180 Richmond Street to 149 Kent Street, where we co-located with the new OmbudsPEI office.

Despite the frequent disruptions to our office during 2022, we were still able to make a lot of progress, thanks to the dedicated staff of our office. We opened over a hundred new files for access reviews, privacy complaints, privacy breaches, and privacy impact assessment reviews. We also initiated new practices within the office to triage new files and attempt more informal resolutions of matters, such as alternative dispute resolutions and decision letters, where appropriate, rather than formal orders. This allowed us to close 75 files during 2022, in spite of the multiple disruptions. Unfortunately, the pace of new files is continuing to exceed the ability of this office to close files, even with these new practices.

Our move to co-locate with the new OmbudsPEI office has been a big positive for our office. Our original location was not accessible and did not have meeting space. The new location is more modern, is centrally located, has an elevator for accessibility, and gives us access to a boardroom with integrated telecommunications so that we can have on-site meetings in person or by web-conference. The co-location also allows us to share some operating costs with OmbudsPEI.

Another positive is that the Legislative Management Committee approved a reclassification of the positions within the office, to be effective January 1, 2023, allowing our staff positions to be more aligned with the work they are doing, and aligned with similar positions in other independent offices. I am hopeful this will not only reflect well on current staff but allow our office to be more competitive when hiring for the additional positions approved in our 2022-23 budget. As of the issuance of this annual report, one position has been filled and we are hopeful the other will be filled in the not- too-distant future.

Although 2022 was a challenging year, there were many positives as well, which we expect will be continuing into 2023 and 2024. We will be making some substantial changes over the next year or so, and I am excited for what is ahead. I look forward to showcasing these new developments in my next annual report.

I wish to express my gratitude to the dedicated staff of the Office of the Information and Privacy Commissioner. Without their hard work and perseverance, we would not be able to continue the important work we do.

Respectfully submitted,

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:

At the end of the year 2022, we were a three-person office, consisting of the Information and Privacy Commissioner, the Adjudicator and an 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;*
- *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; and*
- *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

Commissioner's Decisions, 2022:

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. In either situation, the request for review must be made 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. Nine such orders were issued by the Commissioner and Adjudicator in 2022. Table A, on page 22, sets out the above statistics in detail.

FI-22-001, January 14, 2022

Re: Department of Economic Growth, Tourism and Culture

An applicant requested access to all records of a former employee of the Public Body that were exchanged with a named employee of another public body, or that mentioned a named former employee of a third public body, for a two month period in 2015.

The Public Body provided the applicant with responsive records but withheld one record over which the Public Body claimed legal privilege, pursuant to section 25 of the *FOIPP Act*. The applicant objected to the Public Body's claim of legal privilege on the grounds that none of the parties named in the access to information requests were lawyers, and requested a review of the Public Body's decision to withhold the record under section 25 of the *FOIPP Act*.

The Commissioner found that the Public Body was authorized to refuse to disclose the record under clause 25(1)(a) of the *FOIPP Act* and confirmed the decision of the Public Body to withhold the record from the responsive records.

Quote from Order

- Commissioner, Order No. FI-22-001 at para 24

As mentioned earlier, the Applicant's only submission was that none of the parties named in the access request were lawyers, so solicitor-client privilege cannot apply. With respect, solicitor-client privilege is not that narrow. It is not necessary that the communication be a direct communication between a lawyer and their client. A document can be solicitor-client privileged in some circumstances even if it is not a direct communication between a lawyer and a client.

Quote from Order

- Commissioner, Order No. FI-22-001 at para 30

... While the Applicant is correct in that none of the parties named in the request for access to information were lawyers, based on the in-camera information provided for the purposes of assessing the Public Body's claim of solicitor-client privilege, I am satisfied that the record is of a nature that would qualify as a communication within a continuum of legal advice which may reveal the advice sought or received from a lawyer.

FI-22-002, January 24, 2022

Re: Executive Council Office

The Public Body requested authorization to extend the time for responding to the Applicant's access to information request pursuant to clauses 12(1)(b) and 12(1)(c) of the *FOIPP Act*. This was not the first request for extension in this matter. The Commissioner found that the Public Body had not substantiated that the length of the extension was reasonable. The Commissioner authorized an extension of the Public Body's time to respond to the Applicant's access request, pursuant to clauses 12(1)(b) and 12(1)(c) of the *FOIPP Act*, but for a shorter period than had been requested by the Public Body, and specified certain terms and conditions, pursuant to subsection 66(4) of the *FOIPP Act*.

Quote from Order

- Commissioner, Order No. FI-22-002 at paras. 2 and 9

[2] This matter has been on-going for over three years. The history of this access request is long and complicated. It is not necessary to review the history for the purposes of this Order.

...

[9] However, I find that the Public Body has not substantiated that an extension until November 30, 2022 is reasonable. Pursuant to clause 66(3)(b) of the *FOIPP Act*, I am reducing the time the Public Body requested, and authorize an extension to the Public Body's time to respond to the Applicant's access request until August 31, 2022, with specified terms and conditions.

FI-22-003, January 28, 2022

Re: Department of Transportation and Infrastructure

The Applicant made an access request for records relating to them, their property, and the road along their property. The Public Body responded, disclosed some records, and withheld 13 pages under clause 25(1)(a) of the *FOIPP Act* [solicitor-client privilege]. The Applicant requested a review of this decision, and a review of the adequacy of the Public Body's search.

The Adjudicator found that the Public Body had properly applied clause 25(1)(a) of the *FOIPP*

Act [solicitor-client privilege], and that the Public Body's search was reasonable. The Public Body located and retrieved emails between the Public Body's external lawyer and the Applicant's lawyer but assumed that the Applicant would not be interested in these records. They did not confirm this with the Applicant and, in this respect, the Public Body failed to respond to the Applicant openly, accurately, and completely pursuant to subsection 8(1) of the *FOIPP Act*.

Quote from Order

- Adjudicator, Order No. FI-22-003 at para 47

When an access request is clear, it is not for the Public Body to unilaterally determine what records would be of interest to the Applicant.

Quote from Order

- Adjudicator, Order No. FI-22-003 at para 60

Subsection 8(1) of the *FOIPP Act* requires public bodies to make every reasonable effort to assist an applicant and to respond to each applicant openly, accurately and completely. The Public Body did not initially advise the Applicant that they presumed the Applicant did not want these records. Nor did they advise our office when the Applicant provided copies of records that illustrated that responsive records were not included in the Public Body's response.

Quote from Order

- Adjudicator, Order No. FI-22-003 at para 61

As noted in Order FI-20-002, *supra*, if a public body approaches a request too narrowly, they may abrogate their duties under section 8 of the *FOIPP Act*. The Public Body made a unilateral decision of what records would be of interest to the Applicant. I find that the Public Body did not fulfill their duty to respond to the Applicant openly, accurately and completely, because they failed to confirm with the Applicant, the Public Body's assumption that the Applicant would not want records between the Public Body's lawyer and the Applicant's lawyer.

Quote from Order

- Adjudicator, Order No. FI-22-003 at para 67

When processing an access request, if the Public Body believes that an applicant is not interested in receiving responsive records that is correspondence to or from the Applicant, I recommend that the Public Body ask the Applicant to confirm this belief.

FI-22-004, April 27, 2022

Re: Department of Justice and Public Safety

Pursuant to section 52 of the *FOIPP Act*, the Public Body asked for the Commissioner's authorization to disregard two access requests for video records, comprising in excess of 1,000 hours of video. The Commissioner authorized the Public Body to disregard these two access requests, pursuant to clause 52(1)(b) of the *FOIPP Act*, finding that the requests were frivolous and vexatious.

Quote from Order

- Commissioner, Order No. FI-22-004 at para 13

The misuse or abuse of the right of access by an applicant is a serious matter. It can effectively obstruct the exercise of this same right by other applicants, can overburden a public body, and harm the public interest by both diminishing the ability of other citizens to exercise their own statutory rights of access and unnecessarily adding to the cost and time burdens of the public bodies in complying with their statutory duties under the *FOIPP Act*.

Quote from Order

- Commissioner, Order No. FI-22-004 at paras 43, 44 and 45

[43] The two access requests are unreasonably broad, and appear to be part of a pattern of unreasonable behavior. I am satisfied that the access requests at issue are an abuse of the Applicant's right to access their own personal information. I am not persuaded that the Applicant is seeking this information for the purpose of gaining access to the information. I am persuaded that the requests for in excess of 1,000 hours of video were made in bad faith and are vexatious in nature.

[44] The Public Body requests that I authorize them to disregard the access requests at issue. This is not a decision I take lightly. Authorizing a public body to disregard an access request is a serious matter, as it is removing an individual's right.

[45] If a public body has established to my satisfaction that one or more of the requirements of subsection 52(1) of the *FOIPP Act* apply, I must still determine whether the circumstances warrant an exercise of my discretionary power to authorize the Public Body to disregard the access requests at issue.

Quote from Order

- Commissioner, Order No. FI-22-004 at para 49

Based on the above, I find that the Public Body has not established that the Applicant's access requests JPS 2021-214 and JPS 2021-263 are repetitious or systematic. I find that the Public Body has established that the Applicant's access requests JPS 2021-214 and JPS 2021-263 are both frivolous and vexatious, and that the circumstances warrant exercising my discretion in favour of authorizing the Public Body to disregard these access requests.

FI-22-005, June 28, 2022

Re: Health PEI

An Applicant made an access request to Health PEI, asking a series of questions. The Applicant was not satisfied with Health PEI's answers and asked the Commissioner to conduct a review. The Commissioner refused to conduct an inquiry pursuant to section 64.1 of the *FOIPP Act*.

Quote from Order

- Commissioner, Order No. FI-22-005 at para 7

The issue in this matter is whether I should conduct a review of Health PEI's response to the Applicant's request, or if I should exercise my discretion under section 64.1 of the *FOIPP Act* to refuse to conduct a review.

Quote from Order

- Commissioner, Order No. FI-22-005 at para 19

Health PEI could have refused to answer the Applicant's questions, but they did not. Since Health PEI did choose to answer the Applicant's questions, I must determine whether an inquiry into their response is warranted.

Quote from Order

- Commissioner, Order No. FI-22-005 at para 26

Although the Applicant states again "Clarity on this issue is required", what the Applicant is asking for is clarification on provisions of the *Mental Health Act*, which is not within our jurisdiction. We cannot interpret the *Mental Health Act* or provide any guidance to a public body if it does not relate to access to information or protection of privacy.

Quote from Order

- Commissioner, Order No. FI-22-005 at para 27

Health PEI answered the Applicant's questions. The Applicant's follow-up questions in their request for review are not within our jurisdiction. For these reasons, I am of the view the circumstances warrant refusing to conduct an inquiry. Pursuant to subsection 64.1(b) of the *FOIPP Act* I refuse to conduct an inquiry into the Applicant's concerns about any implied meanings in Health PEI's response to the first question.

FI-22-006, July 8, 2022

Re: Department of Transportation and Infrastructure

The Applicant requested a review of the Public Body's decisions to withhold information, and of the adequacy of the Public Body's search. The Adjudicator found that the Public Body properly

applied section 15 of the *FOIPP Act* [disclosure of personal information would be an unreasonable invasion of personal privacy], clause 22(1)(g) [advice from officials], and clause 25(1)(a) [solicitor-client privilege]. Although there were some shortcomings of the Public Body's search, the Adjudicator found that the Public Body conducted an adequate search.

Quote from Order

-Adjudicator, Order No. FI-22-006 at para 12

The Applicant believes that we should give the personal information to them so the Applicant can assess the Public Body's claims that section 15 of the *FOIPP Act* applies. This is not reasonable. If we gave applicants the personal information to participate in a review, all the measures intended to protect personal privacy would be undermined by simply requesting a review, which would be an absurd result.

Quote from Order

-Adjudicator, Order No. FI-22-006 at para 43

The Applicant says they need the personal information to determine if the information is accurate and reliable. The Applicant may misunderstand this provision. It applies if the information is likely to be inaccurate or unreliable, not for an applicant to assess the accuracy or reliability of the information. If the personal information is inaccurate or unreliable, that would weigh in favour of a finding that disclosure would be an unreasonable invasion of personal privacy and cannot be disclosed. This is the opposite of the Applicant's intention to gain access to the identifying information.

Quote from Order

-Adjudicator, Order No. FI-22-006 at para 118

The Public Body provided the particulars of who searched, where, and the search terms they used for electronic searches. They responded to each of the Applicant's concerns and re-searched an employee's records. There were records located in a subsequent search, and the Public Body did not provide an attachment to an email (page 185). This shows that their original searches were not perfect. A public body does not have to have perfect searches, but they need to be reasonable. I am satisfied that although there were shortcomings of the Public Body's original searches, it does not show that the Public Body's search efforts were not reasonable.

Quote from Order

-Adjudicator, Order No. FI-22-006 at para 123

The Public Body remarked that they are not required to disclose to an applicant a deed that is available for purchase by the public. This is accurate, but the Public Body did not advise the Applicant of these provisions as required under subclause 10(1)(c)(i). In the future, I recommend that the Public Body advise an applicant when they are withholding a record under either section 27 or 4 of the *FOIPP Act*.

FI-22-007, July 12, 2022

Re: University of Prince Edward Island

An applicant requested access to records relating to the relationship between the Public Body and the University of Canada, Egypt (UCE)/UPEI Cairo Campus. Some of the information in the responsive records related to a third party. The Public Body consulted with the Third Party and requested their views on the application of subsection 14(1) of the *FOIPP Act* to their information, which requires public bodies to refuse to disclose third party business information if certain conditions are met. After considering the views of the Third Party, the Public Body decided that subsection 14(1) applied to some, but not all, of the Third Party's information. The Third Party requested a review of the Public Body's decision that subsection 14(1) did not apply to two paragraphs in the responsive records.

The Commissioner found that the Third Party did not demonstrate that all the requirements of subsection 14(1) were met and confirmed the decision of the Public Body to disclose the two paragraphs.

Quote from Order

- Commissioner, Order No. FI-22-007 at para 13

As this review is in relation to a decision of the Public Body to give access to part of a record containing information about a third party for a reason other than personal privacy, clause 65(3)(b) of the *FOIPP Act* places the burden of proof in this review on the Third Party to prove that subsection 14(1) of the *FOIPP Act* applies to the information in issue.

Quote from Order

- Commissioner, Order No. FI-22-007 at paras 15 and 16

[15] For subsection 14(1) of the *FOIPP Act* to apply, the information at issue must fulfill each of the three elements set out in subsection 14(1).

[16] If all three parts are met, it is mandatory that a public body withhold the information and access must be refused. If all three conditions are not met, a public body does not have authority to withhold the information, and they must release it to the applicant.

FI-22-008, July 12, 2022

Re: Department of Fisheries and Communities

A Third Party asked the Commissioner to review the Public Body's decision to disclose records, claiming that the records were their personal information and would be an unreasonable invasion of their personal privacy if disclosed. When asked to identify the information in the records they claimed was personal information, the Third Party would not advise the Commissioner what information was at issue and indicated that they would not be participating further. In these circumstances, the Commissioner refused to conduct an inquiry.

Quote from Order

- Commissioner, Order No. FI-22-008 at para 8

I reviewed the records, but it is not obvious what information the Third Party wanted me to review. I wrote to the Third Party and explained that I needed to determine if the information at issue is the Third Party's personal information before I could decide whether the circumstances warranted conducting a review. To ensure that we did not misunderstand what personal information was at issue, I asked the Third Party to review the responsive records and highlight what information is about them, and that they believe would be an unreasonable invasion of their personal privacy if it was disclosed...

Quote from Order

- Commissioner, Order No. FI-22-008 at para 14

The Third Party continued to assert that the records in their entirety should be withheld, despite several explanations that only personal information about them qualifies for potential exemption under section 15 of the *FOIPP Act*, not the full records themselves, and several requests for them to identify what information in the records they considered their personal information.

Quote from Order

- Commissioner, Order No. FI-22-008 at para 15

There is an expectation that a party seeking a review of a Public Body's decision by our office will meaningfully participate in the process. Despite several attempts at receiving clarification, I have been unable to determine what information the Third Party considers to be their personal information that they believe, if disclosed, would be an unreasonable invasion of their personal privacy, and the Third Party has not cooperated in that process.

Quote from Order

- Commissioner, Order No. FI-22-008 at para 18

The Third Party came to us to review the Public Body's decisions. For us to do this, we need to know what decisions the Third Party disagrees with and wants us to review. We need the person requesting a review to provide adequate information and cooperate with our office. Although the Third Party asked for this review, they have not responded to reasonable requests to identify the information at issue. They further suggest that they are not willing to participate in the review any further. I reviewed the records and am not able to ascertain what information the Third Party could consider to be their personal information that, if disclosed, would be an unreasonable invasion of their personal privacy.

FI-22-009, November 29, 2022

Re: Health PEI

The Public Body investigated a complaint of sexual harassment, and the accused person requested access to the investigation records. The Public Body withheld all the responsive records, claiming

that disclosure of most of the records could interfere with a law enforcement matter under clause 18(1)(a) of the *FOIPP Act*. The Public Body withheld the remaining 7 pages, claiming that they were solicitor-client privileged under clause 25(1)(a) of the *FOIPP Act*. The Adjudicator found that the Public Body did not properly apply clause 18(1)(a) of the *FOIPP Act*, and properly applied clause 25(1)(a) of the *FOIPP Act*.

The Adjudicator considered whether the Public Body properly applied subsection 6(2) of the *FOIPP Act*, which requires public bodies, if it is reasonable, to sever information and disclose the rest of the information. As the Adjudicator found that the Public Body did not properly apply section 18, severing is not applicable. The Adjudicator did not review the records over which the Public Body claimed solicitor-client privilege but has no reason to believe that it would be reasonable for the Public Body to sever these records.

Part of the Applicant's request was for the audio recording of their interview, but the Public Body advised that the investigator did not keep these recordings. The Public Body indicated these recordings were never in their custody or control. The Adjudicator found that the records were in the Public Body's control.

The Adjudicator confirmed the decision of the Public Body with respect to clause 25(1)(a) of the *FOIPP Act* and ordered the Public Body to process the records withheld under clause 18(1)(a) of the *FOIPP Act*, and consider whether disclosure of other people's personal information would be an unreasonable invasion of their personal privacy under section 15 of the *FOIPP Act*.

Quote from Order

-Adjudicator, Order No. FI-22-009 at para 34

The Public Body claims that the disclosure to the accused person will cause a chilling effect on future complaints. I understand the Public Body's cautious approach, but if under section 15 of the *FOIPP Act*, the Public Body severs other people's personal information that would be an unreasonable invasion of personal privacy to disclose, I am not persuaded that disclosure of the rest of the information could reasonably be expected to result in the chilling effect claimed by the Public Body. I find that the Public Body has not properly applied clause 18(1)(a) of the *FOIPP Act*.

Quote from Order

-Adjudicator, Order No. FI-22-009 at para 58

Section 4 of the *FOIPP Act* states that the Act applies to all records in the custody or under the control of a public body (except those records enumerated at subsection 4(1) of the *FOIPP Act*). The Public Body advises that they did not have physical possession of the audio recordings. They requested the records from the investigator, but the investigator had already destroyed them. The records are no longer available, but the Public Body claims that in any event, they were never in their custody or under their control. Although the records have been destroyed, I will nevertheless consider the Public Body's position that the records were never under their control, as it may impact other public bodies if they happen to find themselves in similar circumstances.

Quote from Order

-Adjudicator, Order No. FI-22-009 at para 63

I...find that a senior official of the Public Body could reasonably expect to obtain a copy of the document upon request. I accept that both questions of the Minister of Defence test of whether a record is under the control of a public body are answered in the affirmative, and that the audio recordings of the independent investigator were under the control of the Public Body.

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. Six of the 12 privacy complaints made in 2022 were closed the same year, by way of resolution or refusal to conduct an investigation. No orders resulted from privacy complaints in 2022. Two privacy complaints from 2020 were brought forward to 2023, along with eight from 2021 and three from 2022. Table B, on page 23, sets out the above statistics in detail.

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 privacy breaches they have experienced. 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 the two privacy breach reports voluntarily made to the OIPC by public bodies in 2022, which were closed in the same year.

BRF-22-039 – Confederation Centre of the Arts, (Fathers of Confederation Buildings Trust)

In March 2022, this office received a voluntary breach notification from the above-referenced Public Body, involving a breach of cyber security.

Within a few days of discovering the breach, the Public Body advised the media of the incident and, six months later, advised the affected individuals. Although they gave indirect notification through the media shortly after the breach was discovered, it was a general notification to anyone who had interacted with their service over a lengthy period of time, and the press release stated that staff would be in direct contact with any affected individuals "in the coming days". In their covering email to our office in September 2022, the Public Body indicated they were in direct

contact with affected individuals “in late July” via email with a notification letter. This indicates the affected individuals were not directly notified until six months later, after the investigation was complete. The length of time taken before notifying the affected individuals directly was concerning to this office. We advised the Public Body that the standard is to notify the affected individuals as soon as is reasonably possible.

While we appreciated the Public Body wanted to be sure of who specifically was affected before contacting the affected parties, waiting until the investigation is completed before directly contacting affected individuals would not be considered reasonable. We advised the Public Body that direct contact with a potentially affected individual in a timely manner, with a later follow-up after the investigation is completed and more information is available, would be considered reasonable.

We encouraged the Public Body to consider timeliness of notification and add specific timelines into their notification considerations to ensure potentially affected individuals are notified directly in a timely manner. We also gave recommendations around the contents of their notification letters, to ensure affected individuals had adequate information about the breach and made aware of their right to complain to the Office of the Information and Privacy Commissioner.

This office was not provided with particulars of the investigation or an investigation report but, because this was a voluntary breach report the Public Body was not required to provide us with that information. The Public Body provided information about the remediation efforts they made, which appeared to provide a more secure system to protect the personal information of the Public Body’s patrons in future.

BRF-22-040 – Information Technology Shared Services (ITSS) Department of Finance

In August of 2022, the Public Body became aware of suspicious activity on a government server, and immediately blocked access to the server and commenced an investigation. The investigation revealed that no personal information was compromised, but the Public Body decided to voluntarily report the incident to our office in the interests of transparency, and kept our office updated on what they did to minimize potential future risk.

The Commissioner was satisfied that the Public Body addressed the incident effectively and efficiently, and took adequate steps to mitigate the situation and to address the circumstances that gave rise to the breach risk. The Commissioner had no comments or recommendations for the Public Body.

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. There were no decisions in relation to an *HIA* access review in 2022. Four access reviews were opened in 2022 and all four were closed in 2022. Of the four reviews, one was resolved, two were refused, and one was withdrawn. None of the four 2022 reviews were carried forward to 2023, however one review from 2021 was carried forward to 2023.

Decisions resulting from privacy complaints

If an individual believes that their personal health information has been collected, used, accessed or disclosed by a custodian without authorization, they may complain to the Commissioner. Three privacy complaints were made under the *HIA* in 2022. No decisions resulted from the privacy complaints that were opened in 2022. Of the three files opened in 2022, one was refused and the other two were brought forward to 2023, along with two files from 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. Eleven breach notifications were provided to the Commissioner by custodians in 2022. Of the 11 breach notifications, four were resolved and the other seven were brought forward to 2023. One additional breach notification from 2021 was carried forward to 2023. A breach notification brought forward from 2021 resulted in an order in 2022.

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

Order No. HI-22-001, August 16, 2022

Re: Health PEI

Health PEI was advised that a blogger had posted online personal health information about one of Health PEI’s patients. Health PEI investigated and found an employee had accessed personal health information about the patient without authorization, but could not confirm if this individual disclosed personal health information. Health PEI was not able to ascertain how the blogger got the personal health information about the patient. The Adjudicator found that Health PEI had responded appropriately to the incident and did not make any recommendations or orders.

Quote from Order

- Adjudicator, Order No. HI-22-001 at paras 6

The issue in this review is whether Health PEI took appropriate steps to respond to the suspected

breach of privacy. The *Health Information Act* does not give the Office of the Information and Privacy Commissioner the power to review the actions of individuals like this blogger.

Quote from Order

- Adjudicator, Order No. HI-22-001 at paras 15

A privacy breach cannot be undone, but Custodians must still review an incident to identify any shortfalls in policies or procedures that may have contributed to the breach. Health PEI investigated, but was unable to determine the blogger's source.

Quote from Order

- Adjudicator, Order No. HI-22-001 at para 28

Remediation are any measures taken to reduce the risk of a similar breach occurring in future. Health PEI addressed a known unauthorized access by one of their employees, and although they were not able to confirm that a disclosure occurred from within Health PEI, they also addressed a potential unauthorized disclosure by an employee.

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 2022, our office opened 16 PIA files. Of those 16 files opened in 2022, 14 were resolved in 2022, and two were carried forward to 2023. There were no additional PIA files from previous years carried forward to 2023. We believe there were likely more PIAs that should have been conducted and submitted to our office in 2022, particularly given the move by many health services providers to offer alternatives to in-person service delivery as a result of the pandemic and shortages of medical personnel, 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. We have observed an increase in PIAs coming in from custodians, but are aware there is still some work to do in this area around awareness of when a PIA should be conducted and submitted to our office.

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 2022, our office did not receive any 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 2022 in all respects except the budget. The reporting period of the budget is from April 1, 2022 to March 31, 2023. ¹

	2022-2023 Budget Forecast	2022-2023 Budget Estimate	2022-2023 Expenditures
Administration	8,700.00	8,700.00	5,021.00
Equipment	-	-	4,918.00
Materials, Supplies, and Services	1,600.00	1,600.00	632.00
Professional Services	18,800.00	18,800.00	22,438.00
Salaries	424,000.00	424,000.00	334,495.00
Travel and Training	5,000.00	5,000.00	2,943.00
Total	458,100.00	458,100.00	370,448.00

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

For information regarding Commissioner and staff expenses, which are included in the above list of expenditures, please refer to our website under “Transparency and Accountability”.

¹ Some of this information is reproduced from page 182 of the *Prince Edward Island Estimates 2023-2024*, at https://www.princeedwardisland.ca/sites/default/files/publications/2023-24_estimates_book_-_final_0.pdf

STATISTICS

**TABLE A – Summary of Requests for Review (Access to Information), FOIPP Act
January 1, 2022 – December 31, 2022**

Public Body	Carried over from previous years	2022 requests	Resolved in 2022 without order/ decision	Withdrawn in 2022 without order/ decision	Refusals in 2022	Order/Decision issued in 2022	Carried forward to 2023
Agriculture and Land	2	2	0	0	1	0	3
City of Charlottetown	7	3	2	0	0	0	8
City of Charlottetown (Police Services)	1	2	0	1	0	0	2
Economic Growth, Tourism and Culture	11	0	0	1	0	1	9
Education, Early Learning and Culture	1	0	0	0	0	0	1
Education and Lifelong Learning	4	2	0	0	0	0	6
Environment, Energy and Climate Action	3	8	3	0	1	0	7
Executive Council Office	2	1	0	0	0	1 (preliminary order)	3
Finance	4	1	0	0	1	0	4
Fisheries and Communities	1	2	1	0	0	1	1
Health and Wellness	3	8	0	0	0	0	11
Health PEI	8	7	0	0	0	2	13
Island Regulatory and Appeals Commission	2	0	0	0	0	0	2
Justice and Public Safety	5	4	1	5	0	1	2
Premier's Office	7	1	0	0	1	0	7
Public Schools Branch	3	5	1	2	0	0	5
Social Development and Housing	1	4	1	1	1	0	2
Transportation and Infrastructure	13	5	1	0	0	2	15
University of PEI	4	3	0	0	0	1	6
Workers Compensation Board	0	1	0	0	0	0	1
No PB referenced	0	1	0	0	1	0	0
TOTAL	82	60	10	10	6	9	108

**TABLE B – Summary of Privacy Complaints, FOIPP Act
January 1, 2022 – December 31, 2022**

Public Body	Carried over from previous years	2022 Complaints	Resolved in 2022 without Investigation Report/ Order/ Decision	Withdrawn in 2022 without Investigation Report/ Order/ Decision	Refusals in 2022	Investigation Report/ Order/ Decision issued in 2022	Carried forward to 2023
City of Charlottetown	1	0	0	0	0	0	1
City of Summerside	1	0	0	0	0	0	1
Commission scolaire de langue française	1	0	0	0	0	0	1
Economic Growth, Tourism and Culture	0	1	1	0	0	0	0
Finance	1	0	0	0	0	0	1
Health and Wellness	3 (1 w/ HPEI) (2 w/JPS)	3 (1 w/ HPEI)	0	0	2	0	4 (2 w/ HPEI) (2 w/JPS)
Health PEI	3 (+1 w/HW)	2 (+1 w/HW)	0	0	0	0	5 (+2 files w/HW)
Justice and Public Safety	0 (+ 2 w/ HW)	0	0	0	0	0	0 (+ 2 files w/ HW)
Transportation, Infrastructure and Energy	1	0	1	0	0	0	0
University of PEI	0	1	0	0	1	0	0
Workers Compensation Board	1	1	1	0	1	0	0
Social Workers Registration Board and Health PEI	0	1	0	0	1	0	0
TOTAL	12	9	3	0	5	0	13

**TABLE C – Summary of Reviews, Health Information Act
January 1, 2022 – December 31, 2022**

Custodian	Breach Reporting 2022 (BRH)	Access to Information Reviews 2022 (HIA)	Privacy Complaints 2022 (HIP)	Privacy Impact Assessment 2022 (PIA)	Carried Forward from 2021	Resolved/ Refused/ Withdrawn Closed in 2022	Report or Order issued in 2022	Carried forward to 2023
Doctor		1 HIA				1 HIA		
Health PEI	6 BRHs		3 HIPs	3 PIAs	1 PIA 1 BRH 1 HIA 2 HIPs	3 PIAs 2 BRHs 1 HIP	1 BRH	1 PIA 4 BRHs 1 HIA 4 HIPs
Nursing Homes	1 BRH				1 BRH	1 BRH		1 BRH
Health and Wellness		2 HIAs		3 PIAs	1 PIA	3 PIAs 2 HIAs		1 PIA
Education and Lifelong Learning					1 PIA	1 PIA		
Maple					1 PIA	1 PIA		
Medical Centre	1 BRH					1 BRH		
Pharmacies	2 BRHs			8 PIAs	3 PIAs	11 PIAs		2 BRHs
Vision Centre				1 PIA		1 PIA		
Emergency services		1 HIA		1 PIA		1 PIA 1 HIA		
UPEI	1 BRH				1 PIA	1 PIA		1 BRH
TOTAL	11 BRHs	4 HIAs	3 HIPs	16 PIAs	13 8 PIAs 2 BRHs 1 HIA 2 HIPs	31 22 PIAs 4 BRHs 4 HIAs 1 HIP	1 1 BRH	15 2 PIAs 8 BRHs 1 HIA 4 HIPs

Statistics of Public Bodies:

A list of public bodies and entities subject to the *FOIPP Act* can be found in Schedule 1 of the general regulations to the *FOIPP Act*, at pages 9 to 11. 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 2 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 3 of Schedule 1 lists approximately 88 other designated public bodies which are included under the *FOIPP Act*.

Appendix A of this report sets out the number of access requests made to Part 1 public bodies in 2022. These statistics were provided by the provincial government's 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 of this report sets out the number of access requests made to Part 2 local public bodies in 2022. 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 3 designated public bodies in 2022. These statistics were provided by the 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 2022 are not necessarily related to the same access requests recorded by a public body in 2022, as some may be reviews of 2021 decisions of public bodies. Further, the Appendices do not include informal responses to requests for access to information.

Appendix A: Schedule 1, Part 1 Public Bodies – Access Requests and Reviews (FOIPP Act)

Public Body	Requests for access to records from public body, (general) 2022*	Requests for access to records from public body, (personal) 2022*	Requests for Review to OIPC, 2022
Agriculture and Land (AL)	25	0	2
Economic Growth Tourism and Culture (EGTC)	12	1	0
Education and Lifelong Learning (ELL)	11	2	2
Environment, Energy and Climate Action (EECA)	42	0	8
Executive Council Office (EX)	12	0	2
Finance (FIN)	27	0	1
Fisheries and Communities (FC)	8	0	1
Health and Wellness (HW)	50	3	8
Intergovernmental Affairs (IA)	2	0	0
Justice and Public Safety (JPS)	32	11	4
Premier's Office (PO)	16	0	1
PEI Public Service Commission (PSC)	1	0	0
Social Development and Housing (SDH)	29	18	4
Transportation and Infrastructure	20	2	5
TOTAL	287 access requests (general) to public bodies	37 access requests (personal) to public bodies and 2 correction requests	38 requests for review

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

Appendix B: Schedule 1, Part 2 Local Public Bodies - Access Requests and Reviews (FOIPP Act)

Public Body	Requests for access to records from public body (general) 2022*	Requests for access to records from public body (personal) 2022*	Requests for Review to OIPC, 2022
City of Charlottetown	66	7	3
City of Charlottetown (Police Services)	21	4	2
City of Summerside/ Police Services	3	0	0
Collège de l'Île	0	0 + 1 correction	0
Holland College	1	0	0
Town of Cornwall	1	0	0
Town of Stratford	0	0	0
University of PEI	9	2 *With 2 requests to erase personal information	3
TOTAL	101 access requests to public bodies (general info)	13 access requests to public bodies (personal info)	8 access reviews

*Stats provided by each local public body.

Appendix C: Schedule 1, Part 3 Public Bodies - Access Requests and Reviews (FOIPP Act)

Public Body	Requests for access to records from public body (general) 2022 *	Requests for access to records from public body (personal) 2022 *	Requests for Review to OIPC, 2022
Elections PEI	0	0	0
Fathers of Confederation Buildings Trust	0	0	0
French Language School Board	0	0	0
Health PEI	38	15 + 2 corrections	7
Human Rights Commission	0	0	0
Island Waste Management Corporation	1	0	0
Island Regulatory and Appeals Commission	2	0	0
PEI Cannabis Management Corporation	0	0	0
Office of the Police Commissioner	1	0	0
PEI Liquor Control Commission	3	0	0
Public Schools Branch	25	3	5
Workers Compensation Appeal Tribunal	0	0	0
Workers Compensation Board	1	0	1
TOTAL	71 access requests to public bodies (general info)	18 access requests to public bodies (personal info) + 2 correction requests	13 access reviews

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