



# Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

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

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

## Private and Confidential

March 4, 2024



(sent via email)

Dear [REDACTED]

**Re: Complaint under the *Freedom of Information and Protection of Privacy Act***  
**Public Body: Department of Economic Development, Innovation and Trade**  
**Public Body's reference: EGTC 2019-286**  
**Our reference: FI-24-576**

Maria MacDonald of our office advised me that as part of your review file FI-20-350, you recently raised concerns about the Public Body responding to you openly accurately and completely in access request EGTC 2019-286. She gave me copies of your email correspondence, which I have reviewed carefully. I have decided to address this separately from FI-20-350 which also relates to access request EGTC 2019-286.

In 2023, you received information in an access request that you believe shows that in 2019-2020, the Public Body was unable to conduct an adequate search for records of a former employee, [REDACTED]. The information you refer to as supporting your belief includes the following statements from records you received in your 2023 access request:

- Dec 12, 2019: "[REDACTED] does exist in or online system. I don't see an archive for this user.";
- Dec 13, 2019: "... [REDACTED] doesn't have records going back beyond 2015";
- Undated record (no author): memo entitled "Summary of ITSS notes Related to *FOIPP Act* email searches within 2011 for [REDACTED] and [REDACTED]" which indicates that there was an archive from [REDACTED]'s records from 2015, but they had no responsive records from 2011.

I acknowledge that without the rest of the history, these messages would suggest that there was an issue with the Public Body's ability to search [REDACTED]'s email records. We do not have the particulars, but among the processing records for file EGTC 2019-286 we see that the issues were resolved about five to six weeks later and a search of [REDACTED]'s email records was conducted. Although the Public Body was not initially able to search the records of this employee, with ITSS assistance, they were able to search for email records of this employee, and the Public Body found a significant number of responsive records, which were processed as part of their

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response to EGTC 2019-286. Therefore, the Public Body did conduct a search which included the records of [REDACTED]

On February 20, 2024, you requested we review the Public Body's duty to respond to you openly, accurately and completely. Your position is that the Public Body was required to inform you they were not able to search [REDACTED]'s records as part of their duties under section 8 of the *FOIPP Act*. On February 21, 2024, you stated that as [REDACTED]'s records were destroyed, you were requesting we initiate an inquiry under the *Archives and Records Act*.

As the search issues were resolved and the Public Body did search the records of [REDACTED], I do not believe that the Public Body was required to inform you of their initial inability to find these records as a part of their duty to respond openly, accurately and completely under section 8 of the *FOIPP Act*. The records were searched, and a volume of records were located and processed prior to the Public Body providing you their decision. In addition, we do not have any evidence that this employee's records were destroyed, as you asserted, to warrant an inquiry under the *Archives and Records Act*.

Under section 64.1 of the *FOIPP Act*, I have the discretion to refuse to conduct an inquiry if, in my opinion, the circumstances warrant refusing to conduct an inquiry. Before I initiate a review, I need to have a reasonable basis to believe that a review is warranted. For the reasons given above, in my opinion there is no reasonable basis to believe that a review is warranted. Therefore, I am exercising my discretion under 64.1 of the *FOIPP Act* and am refusing to conduct a review in this matter.

I have opened a new file for your newly raised issues but, as I have decided to refuse to conduct an inquiry under section 64.1 of the *FOIPP Act*, I am closing the file.

Sincerely,



Denise N. Doiron  
Information and Privacy Commissioner

c: APSO