OFFICE OF THE
INFORMATION & PRIVACY COMMISSIONER
for
Prince Edward Island

Order No. OR-24-007

Re: Department of Education and Early Years
OIPC file C/24/00004 (formerly FI-19-307)
PB file ELL 2019-120

Maria C. MacDonald
Deputy Commissioner

October 16, 2024

Summary:

In 2019, an Applicant asked for access to letters someone wrote to a former Minister in 2007. The Public Body withheld the records in full because they determined that disclosure would unreasonably invade third parties' personal privacy under section 15 of the *FOIPP Act*. The Applicant asked for a review of whether the Public Body properly applied section 15. The Applicant also questioned whether it would have been reasonable to sever the personal information under subsection 6(2) of the *FOIPP Act*, instead of withholding the entire records.

The Deputy Commissioner found that the Public Body properly applied section 15 and subsection 6(2) of the *FOIPP Act* and confirmed the Public Body's decision to withhold the record.

Statutes cited:

Freedom of Information and Protection of Privacy Act, RSPEI 1988, Cap. F-15.01, subsection 1(i) [definition of "personal information"], subsection 6(2) [sever, if

reasonable], section 15 [unreasonable invasion of personal privacy], clause 56(3)(a) [prohibition against disclosing information a public body is required to withhold], section 65 [burden of proof] and section 67 [Orders are final].

Cases Considered:

Order FI-23-001, *Re: City of Charlottetown*, 2023 CanLII 28286 (PE IPC)
Order F23-109, *Re: Ministry of Attorney General*, 2023 BCIPC 125 (CanLII)
Order No. FI-11-001, *Re: Department of Agriculture*, 2011 CanLII 91839 (PE IPC)
Order No. 03-003, *Re: Department of Tourism*, 2007 CanLII 55714 (PE IPC)
Order F2024-14, *Re: Edmonton Police Service*, 2024 CanLII 37859 (AB OIPC)
Order FI-19-012, *Re: Department of Justice and Public Safety*, 2019 CanLII 93498 (PE IPC)

I. BACKGROUND

[1] An individual (the "Applicant") was employed by the Eastern School District until 2005. The Applicant believes that their supervisor did not treat them fairly and mistreated other employees. The Applicant learned that in 2007 someone wrote about this employee of the Eastern School District to the former Minister of the Department of Education.

[2] The Department of Education went through a few changes over the years and is now known as the Department of Education and Early Years, and I will refer to it as the "Public Body". I will refer to the person who wrote to the former Minister as the "author". The author is a private citizen and a former employee of the Eastern School District, although it does not appear that the author ever worked with the Applicant.

[3] In 2019, the Applicant asked the Public Body for a copy of the 2007 letter, identifying it by the author, the former Minister, and date.

> Letter dated June 26, 2007 from [the author] to the Honourable Gerard Greenan, Minister of Education. Time Period: June 26, 2007.

[4] After consulting with the author, the Public Body decided to refuse access to the letter and cover letter under subsection 15(1) of the *FOIPP Act* which requires public bodies to

refuse access to an applicant if disclosing personal information would unreasonably invade a third party's personal privacy.

[5] The Applicant requested a review of the Public Body's decision to refuse access under section 15 of the *FOIPP Act*, and the Public Body's decision to withhold the entire records, as opposed to severing personal information.

[6] Former Commissioner Karen A. Rose and Commissioner Denise N. Doiron sought and exchanged submissions from the Applicant and the Public Body. Former Commissioner Rose had invited the author for their submissions, but they did not respond. Commissioner Doiron delegated this matter to me to complete the review.

II. RECORDS AT ISSUE

[7] The records at issue are two letters from the same author to the same former Minister on the same date. The first letter is a cover letter for the second letter.

III. ISSUES

[8] There are two issues in this review:

> **Issue A:** Did the Public Body properly apply section 15 of the *FOIPP Act?* That is, would disclosing personal information be an unreasonable invasion of the third parties' personal privacy?
>
> **Issue B:** Did the Public Body properly apply subsection 6(2) of the *FOIPP Act?* That is, would it have been reasonable for the Public Body to have severed the personal information to disclose the rest of the records to the Applicant?

IV. BURDEN OF PROOF

[9] Section 65 of the *FOIPP Act* sets out which parties have the burden of proof depending on

the circumstances. Section 65 states, in part:

> 65. (1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.
>
> (2) Notwithstanding subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.
> . . .

[10] When a public body refuses access under section 15 of the *FOIPP Act*, an applicant and a public body have a shared burden of proof. The Public Body must show that the withheld information is personal information of a third party, and the Applicant must show that disclosing the personal information would not be an unreasonable invasion of the third party's personal privacy under section 15 of the *FOIPP Act*.

[11] The *FOIPP Act* does not address the burden of proof about whether it would be reasonable for a public body to sever any information excepted from disclosure, and to disclose the rest of the record. Our office has held that a public body is in a better position to provide evidence about whether they complied with subsection 6(2) of the *FOIPP Act*, because an applicant does not know what information was withheld, [Order FI-23-001, *Re: City of Charlottetown*, 2023 CanLII 28286 (PE IPC)]. Therefore, if the Public Body must refuse access to personal information under section 15 of the *FOIPP Act*, the Public Body has the burden to show that it would not be reasonable for them to sever that personal information and disclose the rest of the record under subsection 6(2) of the *FOIPP Act*.

V. ANALYSIS

[12] First, I will address Issue A, whether the Public Body properly applied section 15 of the *FOIPP Act* [unreasonable invasion of a third party's personal privacy]. If so, I will address Issue B, about whether it would have been reasonable for the Public Body to have severed the personal information and disclosed the rest of the record under subsection 6(2) of the *FOIPP Act*.

Issue A: Section 15 – Whether disclosure would unreasonably invade the third parties' personal privacy

[13] Section 15 of the *FOIPP Act* does not authorize or require public bodies to withhold all personal information, but it prohibits public bodies from providing access to personal information if it would unreasonably invade a third party's personal privacy. There is a two-step process to reviewing whether a public body properly applied section 15 of the *FOIPP Act*:

1. In the first step, we consider whether the information at issue is personal information as defined at clause 1(i) of the *FOIPP Act*. If not, section 15 does not apply, and the analysis stops here.

2. If it is personal information, the second step is to assess whether disclosing personal information would constitute an unreasonable invasion of a third party's personal privacy. The analysis may involve the other subsections of section 15 of the *FOIPP Act*, as follows:

    (a) Subsection 15(2) lists several types of information that, if disclosed, would not unreasonably invade a third party's personal privacy. If one of the exceptions in subsection 15(2) applies, the analysis ends, and the public body cannot withhold personal information under section 15.

    (b) Subsection 15(4) lists several types of information that, if disclosed, are presumed to unreasonably invade a third party's personal privacy. Presumptions are rebuttable. A presumption that disclosure would unreasonably invade the third party's personal privacy might be superseded. If any of the presumptions listed in subsection 15(4) applies to the information at issue, then we must still consider

and weigh all relevant circumstances under section 15(5) of the *FOIPP Act*.

(c) When assessing whether disclosure would unreasonably invade a third party's personal privacy, under subsections 15(1) or 15(4), we must consider all the relevant circumstances, including those listed at subsection 15(5) of the *FOIPP Act*.

Step one: Whether the records include third parties' personal information

[14] The Applicant believes the records at issue contain their personal information. I will consider first whether the records at issue contain the Applicant's personal information. Then I will consider whether the records at issue contain personal information of any third parties.

[15] Section 15 of the *FOIPP Act* does not apply to an applicant's own personal information. The Public Body advised the Applicant that the records do not include any of the Applicant's personal information. The Applicant verbally advised our office that they believe that the records relate to their former job as a school bus driver, therefore the Applicant contends that the records at issue contain their personal information.

[16] The *FOIPP Act* defines "personal information" in part, at subsection 1(i), as information about an identifiable individual. The records at issue do not include the Applicant's name, nor can I identify any information about the Applicant. I find that the records at issue do not contain any identifiable information about the Applicant, therefore, the records at issue do not include any personal information of the Applicant.

[17] Former Commissioner Rose confirmed to the Applicant and to the Public Body that the records include third parties' personal information. She described it as "including names, home or business address, home or business telephone number, employment history, opinions about an individual, and an individual's personal views or opinions."

[18] I reviewed the records at issue and am also satisfied that the records at issue contain personal information of identifiable third parties as described above. There are nine third parties, including the author and the former Minister.

[19] In addition to their own experiences with their supervisor, the Applicant described other people's experiences with the same employee. But, I cannot confirm nor deny whether other people's personal information in the records at issue relates to the concerns or experiences described by the Applicant. When describing personal information, I have to be careful not to disclose the content of a record. Clause 56(3)(a) of the *FOIPP Act* states:

> 56 (3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner shall take every reasonable precaution to avoid disclosing and shall not disclose
>
> (a) any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under subsection 7(1); or
>
> (b) . . .

Step two: whether disclosure would unreasonably invade personal privacy

[20] Having found that the records at issue contain third parties' personal information, I now consider whether disclosure would unreasonably invade their personal privacy.

Subsection 15(2) – Whether disclosure is deemed not to unreasonably invade personal privacy

[21] Subsection 15(2) of the *FOIPP Act* lists several circumstances that, when applicable, means disclosure is not an unreasonable invasion of personal privacy. Neither the Public Body nor the Applicant alleges that any clauses of subsection 15(2) of the *FOIPP Act* apply. I reviewed these provisions and the information at issue and do not see any applicable provisions. As such, I continue with the analysis and consider whether any clauses of subsection 15(4) of the *FOIPP Act* apply.

Subsection 15(4) – Whether disclosure is presumed to unreasonably invade personal privacy

[22] Next, I consider whether any of the circumstances listed at subsection 15(4) of the *FOIPP Act* apply, which if applicable, would mean disclosing the personal information is presumed to unreasonably invade the third parties' personal privacy. The Public Body referred to three provisions, stating in part that:

> The Public Body submits that both clause 15(4)(d) for personal information that relates to employment history and clause 15(4)(f) for recommendations or evaluations apply to much of the Record. In addition, the Public Body submits that clause 15(4)(g) for personal information that appears with the name of a third party applies to some of the information in the Record.

[23] We provided a copy of the Public Body's submissions to the Applicant and invited them to respond. The Applicant provided submissions, but did not respond to these clauses, which is not unexpected given that the Applicant does not know the content of the withheld personal information. I will review these clauses.

Clause 15(4)(d) – Employment history

[24] Clause 15(4)(d) of the *FOIPP Act* says that disclosing someone's employment history is presumed to unreasonably invade their personal privacy. The provision states:

> 15(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> . . .
>
> (d) the personal information relates to employment or educational history;
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> . . .

[25] As noted above, the records at issue include employment history of several third parties (but not of the Applicant). I find that clause 15(4)(d) of the *FOIPP Act* applies to the employment history, and disclosing the employment history is presumed to unreasonably invade the third parties' personal privacy.

Clause 15(4)(f) – Personal recommendations or evaluations

[26] Clause 15(4)(f) of the *FOIPP Act* says that disclosing personal recommendations or evaluations is presumed to unreasonably invade a third party's personal privacy. The provision states:

> 15(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
> . . .
> (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;
> . . .

[27] Most Canadian provinces with a similar provision interpret it to apply to formal performance evaluations. See for example, Order F23-109, *Re: Ministry of Attorney General*, 2023 BCIPC 125 (CanLII), at paragraph 83. They are considering clause 22(3)(g) of BC's *Freedom of Information and Protection of Privacy Act* (the "*FOIPP Act*") which is similar to clause 15(4)(f) of PEI's *FOIPP Act*:

> [83] Previous orders have interpreted s. 22(3)(g) as referring to "formal performance reviews, to job or academic references or to comments and views of investigators about a complainant's or a respondent's workplace performance and behaviour in the context of a complaint investigation". . . .

[28] I adopt British Columbia's approach to considering clause 15(4)(f) of the *FOIPP Act*. I reviewed the withheld information and confirm that it does not include any of these types of information. The records include the author's opinions, but it is not part of a formal performance review. The opinions are not job or academic references. The author is not an investigator, and the record does not contain comments or views in the context of a complaint investigation. I find that clause 15(4)(f) of the *FOIPP Act* does not apply.

Clause 15(4)(g) – Names of people

[29] Clause 15(4)(g) of the *FOIPP Act* says that disclosing someone's name is presumed to unreasonably invade the third party's personal privacy if it appears with other personal information about them, or if it would reveal personal information about the third party. The provision states:

> 15(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> . . .
>
> (g) the personal information consists of the third party's name where
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> (i) it appears with other personal information about the third party, or
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> (ii) the disclosure of the name itself would reveal personal information about the third party;
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> . . .

[30] I reviewed the withheld information and confirm that, with the exception of the former Minister, third parties' names appear with other personal information about them. I find that clause 15(4)(g) of the *FOIPP Act* applies to the third parties' names in the records. With the exception of the former Minister, I find that disclosing the names of the third parties is presumed to unreasonably invade their personal privacy.

[31] Next, pursuant to section 15(5) of the *FOIPP Act*, I will consider whether any relevant circumstances weigh in favour of or against a finding that disclosure would unreasonably invade the third parties' personal privacy.

Subsection 15(5) – Other relevant circumstances

[32] Disclosing employment history and names of most individuals is presumed to unreasonably invade third parties' personal privacy under clauses 15(4)(d), and 15(4)(g) respectfully. The rest of the personal information, which consists mostly of the author's opinions, does not fall within any of the circumstances in which disclosure is presumed to

unreasonably invade a third party's personal privacy. However, this does not mean that disclosure would not unreasonably invade the third parties' personal privacy. I must consider the relevant circumstances.

[33] Subsection 15(5) of the *FOIPP Act* requires that we consider whether there are any relevant circumstances that may impact the assessment of whether disclosure would unreasonably invade the third parties' personal privacy. Subsection 15(5) of the *FOIPP Act* lists several potential considerations, but this list is not exhaustive.

[34] The Public Body submits the following about what they considered under subsection 15(5) of the *FOIPP Act,* referring to some potential considerations listed at paragraph 89 of Order No. FI-11-001, *Re: Department of Agriculture*, 2011 CanLII 91839 (PE IPC):

> We also considered all relevant circumstances set out in subsection 15(5) of the *Act.* As you have noted in previous orders such as Order No. FI-11-001, the list set out in subsection 15(5) of the *Act* is not exhaustive. As such, we have also considered other factors or circumstances. This is carried out so that the factors and circumstances in favour of disclosure may be balanced against the factors and circumstances supporting non-disclosure.
>
> The Public Body acknowledges that disclosure of the protected information may be considered a measure that satisfies the purpose of allowing access to information in custody and control of a public body. It may also promote openness and transparency.
>
> However, we believe that in the instant case other factors and circumstances outweigh the factors that favour disclosure. Specifically, the Public Body states that:
>
> - Disclosure of the Record will not promote public health or safety;
> - Likewise, public health or safety does not require the Record to be disclosed;
> - While the Record may be of interest to the Applicant, the information in it does not relate to the Applicant. The Applicant's interest in the Record should not outweigh the rights of third parties to their personal privacy;
> - The Record does not relate to Aboriginal people or their rights;
> - If disclosed, the information may unfairly damage the reputation of third parties;

- The Applicant is not required to maintain the confidentiality of the Records if disclosed;
- The information at issue contains very personal opinions related to third parties and a workplace that were supplied to those in authority (Ministers). Being able to control access to information received in this context may promote individuals coming forward when concerns arise;
- The entire Record is interspersed with personal information intermingled with facts as perceived by or known to the writer. The Public Body is unable to verify the accuracy of the all [sic] of the information in the Record;
- The Applicant has no pressing need for the protected information;
- Further, disclosure of the protected information would reveal detailed and sensitive employment history information about identifiable individuals; and,
- As previously noted in this Submission, the writer of the Record has withheld consent to disclose the writer's personal information.

[35] I considered the factors listed by the Public Body and a few other potentially relevant circumstances. I will briefly discuss the following:

a) Clause 15(5)(a) – public scrutiny
b) Clause 15(5)(b) – public health or safety
c) Clause 15(5)(c) – the Applicant's rights
d) Clause 15(5)(h) – the reputation of third parties
e) The Applicant's prior knowledge of the names of the author and recipient
f) The Applicant's claim that they have a copy of the records at issue
g) The third parties' knowledge of their own personal information
h) Whether refusing to disclose the records at issue would promote people coming forward with their concerns

a) ***Clause 15(5)(a) – public scrutiny***

[36] Clause 15(5)(a) of the *FOIPP Act* states:

> 15(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Prince Edward Island or a public body to public scrutiny;
. . .

[37] The author does not describe themselves like this, but the Applicant describes themselves and the author as whistleblowers. I cannot confirm or deny whether the content of the records at issue relates to whistleblowing, as the Applicant believes. The Applicant does not specifically refer to this clause, but their use of the expression "whistleblower" suggests I should consider whether disclosure is desirable to subject a public body to public scrutiny.

[38] Previous orders have confirmed that, for clause 15(5)(a) of the *FOIPP Act* to apply, an activity of a public body must have been called into question, raising the necessity for public scrutiny [see Order No. 03-003, *Re: Department of Tourism*, 2007 CanLII 55714 (PE IPC), at page 11]. These decisions were based on Alberta's earlier interpretation of a nearly identical provision to PEI's clause 15(5)(a) of the *FOIPP Act*.

[39] Alberta's Information and Privacy Commissioner's Office has expanded on how to assess this provision related to public scrutiny, and adopted the following considerations, see for example Order F2024-14, *Re: Edmonton Police Service*, 2024 CanLII 37859 (AB OIPC), at paragraph 29:

> [para 29] In Order F2014-16, the Director of Adjudication discussed appropriate factors to consider in determining whether public scrutiny is desirable. She said (at paras. 35-36):
>
> > In determining whether public scrutiny is desirable, I may consider factors such as:
> > 1. whether more than one person has suggested public scrutiny is necessary;
> > 2. whether the applicant's concerns are about the actions of more than one person within the public body; and

3. whether the public body has not previously disclosed sufficient information or investigated the matter in question.

(Order 97-002, paras 94 and 95; Order F2004-015, para 88).

It is not necessary to meet all three of the foregoing criteria in order to establish there is a need for public scrutiny. (See *University of Alberta v. Pylypiuk* (cited above) at para 49.) For example, in Order F2006-030, former Commissioner Work said (at para 23) that the first of these factor "is less significant where the activity that has been called into question, though arising from a specific event and known only to those immediately involved, is such that it would be of concern to a broader community had its attention been brought to the matter", commenting that "[i]f an allegation of impropriety that has a credible basis were to be made in this case, this reasoning would apply".

[40] I adopt these considerations also.

[41] We first consider whether more than one person has suggested public scrutiny is necessary. The Applicant gave their submissions, and it is clear that they have raised their concerns many times in various forums. The Applicant provided copies or excerpts of various school board policies, newspaper clippings, information about the Applicant's grievance and their human rights complaint. The Applicant also provided copies or excerpts of several letters, emails or notices to or from lawyers, the law society, other professionals, Members of the Legislative Assembly, and government representatives (PEI and another province). The Applicant also provided a list of incidents that the Applicant describes as "the tip of the iceberg of the abuses, corruption, dereliction of duty and abusive power of [the Applicant's former supervisor]". The Applicant recounted their conversations with various individuals, including some who were former employees of the Eastern School District. The Applicant also provided copies of letters or statements of three people about their respective employment challenges, and other documents related to their employment.

[42] When the Public Body notified the author about this access request, the author responded. The author did not consent to the Public Body disclosing the information and

saw no reason for anyone to have the information. The author does not appear to think the Public Body should disclose personal information for any purpose.

[43] The Applicant recounted statements from other people, and copies of letters of three former employees, but they do not relate to the records at issue or suggest that the records at issue should be disclosed to subject the Public Body to public scrutiny.

[44] The Applicant has been vocal about their concerns about their former supervisor. However, I have no evidence that anyone other than the Applicant believes that the records at issue should be disclosed for the purposes of subjecting the Public Body to scrutiny, including most significantly, the author of the records at issue. This factor does not indicate that disclosing the records at issue is desirable for the purpose of public scrutiny.

[45] Second, we consider whether the concerns are about the actions of more than one person. The Applicant's concerns are about a single person. If the records at issue relate to the Applicant's concerns, this factor does not indicate that disclosing the records at issue is desirable for the purpose of public scrutiny.

[46] Third, we consider whether the Public Body has previously disclosed sufficient information or investigated the matter in question. If the records at issue relate to the Applicant's concerns about a single employee of a different public body, I would not expect the Public Body that responded to the access request to have any corporate history or knowledge about an employee of a different public body. I did not ask the Public Body about this. This factor does not indicate that disclosing the records at issue is desirable for the purpose of public scrutiny.

[47] I also considered that the Applicant does not suggest a systemic issue and the Applicant's concerns relate to events that occurred more than a decade before their access request.

If the records at issue relate to the Applicant's concerns, I find that disclosing personal information is not desirable to subject a public body's activities to public scrutiny. I find that clause 15(5)(a) of the *FOIPP Act* is not applicable, and therefore neither weighs for nor against a finding that disclosing the personal information would unreasonably invade the third parties' personal privacy.

b) ***Clause 15(5)(b) – Public health or safety***

[48] Clause 15(5)(b) of the *FOIPP Act* states:

> 15(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether
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> . . .
>
> (b) the disclosure is likely to promote public health and safety or the protection of the environment;
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> . . .

[49] The Applicant mentions student safety and employee wellbeing, which could be public health and safety issues. The Applicant's concerns focus on a single person, and events that occurred over a decade before their access request. If the records at issue relate to the Applicant's concerns, I am not persuaded that disclosing these records is likely to promote public health or safety.

[50] I find that clause 15(5)(b) of the *FOIPP Act* is not applicable, and therefore neither weighs for nor against a finding that disclosing the personal information would unreasonably invade the third parties' personal privacy.

c) ***Clause 15(5)(c) – the Applicant's rights***

[51] Clause 15(5)(c) of the *FOIPP Act* states:

> 15(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether
>
> . . .
>
> (c) the personal information is relevant to a fair determination of the applicant's rights;
>
> . . .

[52] The Applicant states that "this letter will clear my name of all wrong doing". However, the records at issue do not refer to the Applicant, or any right of the Applicant.

[53] I find that clause 15(5)(c) of the *FOIPP Act* is not applicable, and therefore neither weighs for nor against a finding that disclosing the personal information would unreasonably invade the third parties' personal privacy.

d) ***Clause 15(5)(h) – the reputation of third parties***

[54] Clause 15(5)(h) of the *FOIPP Act* states:

> 15(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether
>
> . . .
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant;
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> . . .

[55] The Public Body remarks that they are not able to assess the accuracy of the information in the records at issue. The Applicant described their concerns about their former supervisor as abuses, corruption, dereliction of duty and abuse of power. If the records at

issue include unproven information along these veins, disclosure without a response or a determination of their merits may unfairly damage someone's reputation.

[56] I find that clause 15(5)(h) of the *FOIPP Act* applies, and weighs in favour of a finding that disclosure would unreasonably invade the third parties' personal privacy.

e) ***The Applicant's prior knowledge of the names of the author and recipient***

[57] The Public Body withheld the entire record, including the names of the author and recipient. The Applicant knows their names and included them in their access request. This knowledge is a significant factor weighing in favour of a finding that disclosing their names would not unreasonably invade the author's or the recipient's personal privacy.

[58] The author's name appears with other personal information about them. I found that the presumption of clause 15(4)(g) of the *FOIPP Act* applied to the author's name. I find the fact that the Applicant knows the author's name outweighs the presumption that disclosing the author's name would unreasonably invade their personal privacy. For clarity, I am referring only to the author's name, not the rest of the author's personal information in the records at issue.

[59] I would also add that the only personal information about the former Minister is their name, title, and work address. This information was widely available to the public. Previous decisions of our office have also held that if personal information is among these types of information routinely disclosed in a business and professional context, it weighs heavily in favour of a finding that disclosing it would not unreasonably invade a third parties' personal privacy.

f) ***The Applicant's claim that they have a copy of the records at issue***

[60] The Applicant advised our office that they had a copy of the records at issue. It might be a relevant consideration if an applicant knows what personal information a public body withheld. For example, if an applicant provided the information in the records to a public body, or the information was available to the public, disclosing such personal information might not unreasonably invade a person's personal privacy.

[61] The Applicant did not give our office a copy, but verbally advised our office that they would be posting a copy of the records at issue on a website for human resources professionals. We were not able to find the records at issue at this website.

[62] The Applicant provided a copy of a letter from the former Minister of Communities and Cultural Affairs and Labour to the author. In this letter, the Minister confirmed that the author wrote to them with allegations about an unnamed Manager of the Eastern School District on June 26, 2007, the same date the Applicant indicated in their access request.

[63] The Applicant gave our office copies of heavily redacted letters to two different public bodies, dated June 26, 2007 (the same date cited in the Applicant's access request). Some opinions and employment history information are visible, but the name of the writer is severed. I cannot confirm or deny the Applicant's belief that the letters in the Applicant's possession have the same content as the records at issue.

[64] I am not persuaded that the Applicant already has a copy of the records at issue. Therefore, this is not a relevant circumstance in assessing whether disclosing personal information would unreasonably invade the third parties' personal privacy.

g) ***The third parties' knowledge of their own personal information***

[65] The author gave the former Minister other people's personal information. Based on the content, these individuals probably do not know what the author wrote about them. I find that this factor weighs heavily in favour of a finding that disclosure would unreasonably invade their personal privacy.

h) ***Whether refusing to disclose the personal information would promote other people coming forward with their concerns***

[66] The Public Body says that "Being able to control access to information received in this context may promote individuals coming forward when concerns arise". The Public Body did not provide any other explanation or evidence to support this assertion.

[67] I find that this neither weighs for nor against a finding that disclosure would unreasonably invade the third parties' personal privacy.

Section 15 -- Summary

[68] I find that

a. The records contain personal information of third parties, but do not include any personal information of the Applicant,
b. Clause 15(4)(d) of the *FOIPP Act* applies and disclosing employment history is presumed to unreasonably invade personal privacy,
c. Clause 15(4)(f) of the *FOIPP Act* does not apply as the personal information is not a formal evaluation, reference, or investigation, and
d. Clause 15(4)(g) of the *FOIPP Act* applies, and disclosing people's names is presumed to unreasonably invade their personal privacy.

[69] The following is a relevant circumstance that weighs against a finding that disclosing the author's and the former Minister's names would unreasonably invade their personal privacy:

a. The Applicant knows the names of the author and the recipient (former Minister).

[70] I find that disclosing the names of the author and recipient would not be an unreasonable invasion of their personal privacy.

[71] The following are relevant circumstances that weigh in favour of finding that disclosing the other personal information would unreasonably invade third parties' personal privacy:

a. Disclosure is not desirable to subject a public body to public scrutiny,
b. Disclosure may unfairly damage the reputation of the third parties, and
c. The third parties' likely do not know what the author wrote about them.

[72] I find that the Applicant has not met their burden of proof. With the exception of the author and the former Minister's names, I find that disclosing the third parties' personal information would unreasonably invade the third parties' personal privacy.

Issue B: Subsection 6(2) -- Whether the Public Body could have severed the personal information and disclosed the rest of the records

[73] Having found that disclosing the personal information would unreasonably invade the third parties' personal privacy, I now turn to consider whether it would have been reasonable for the Public Body to have severed this personal information to disclose the rest of the record under subsection 6(2) of the *FOIPP Act*.

[74] Section 6 of the *FOIPP Act* states in part:

> 6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
>
> (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, <u>but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.</u>
> . . .
> [underlined emphasis added]

[75] It is apparent that the Public Body considered severing the record. In their decision letter, they advised the Applicant that:

> In this particular circumstance, due to the extent of personal information contained throughout this record, as well as the manner in which the personal information is interspersed throughout this record, the excepted information cannot reasonably be severed from the record.

[76] In their submissions, the Public Body summarized the law with respect to subsection 6(2) of the *FOIPP Act* as follows:

> The right to access does not extend to information excepted from disclosure under the *Act* pursuant to subsection 6(2) of the *Act*. And, the right to access to the remainder of such records depends upon whether that information can be reasonably severed.

[77] The Public Body also referred to an explanation of what is reasonable at paragraph 85 of Order FI-19-012, *Re: Department of Justice and Public Safety*, 2019 CanLII 93498 (PE IPC), which states:

> [85]. . . I adopt the standard set out by the Information and Privacy Commissioner of Ontario. Order MO-1928, *Re: Toronto Police Services Board,* 2005 CanLII 56390 (ON IPC):
>
> > The key question raised by section 4(2) is one of reasonableness. Where a record contains exempt information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner*) (1997), 102 O.A.C. 71 (Div. Ct.)].

[78] I agree that these are accurate statements of the law.

[79] The Public Body's position is that if they severed the excepted personal information, the remaining information would be minimal and would result in meaningless disclosure.

[80] I carefully reviewed the records at issue and considered whether it would be reasonable to sever the excepted personal information to disclose the rest of the information in the record. I agree with the Public Body that it would not be reasonable to attempt to sever the personal information to disclose the rest of the record.

[81] As noted above, I did not find that disclosing the names of the author or the former Minister would unreasonably invade their personal privacy because the Applicant knows their names already. I considered whether it would be reasonable for the Public Body to sever the body of the letter and disclose the names of the author and the recipient. However, I do not think it is reasonable for the Public Body to sever information in the records at issue to disclose only these names in the salutation and closing signature in otherwise blacked-out or whited-out pages. This information is meaningless and does not meet the reasonable threshold. I will not order the Public Body to sever the personal information to disclose the salutation and closing signature.

[82] I find that the Public Body properly withheld the entire records, and properly assessed that it would not be reasonable to sever the personal information that they are prohibited from disclosing under section 15 of the *FOIPP Act*.

VI. SUMMARY OF FINDINGS

[83] I find that the Public Body properly applied section 15 of the *FOIPP Act* to the responsive records, specifically that:

a. The records at issue do not include any personal information of the Applicant,
b. The records at issue include personal information of the third parties who are the author of the records at issue, and other individuals the author mentions, and

c. With the exception of the name of the author and of the recipient, if the Public Body were to disclose the third parties' personal information it would unreasonably invade the third parties' personal privacy under section 15 of the *FOIPP Act*.

[84] I find that the Public Body properly applied subsection 6(2) of the *FOIPP Act* to the responsive records, specifically that it is not reasonable for the Public Body to sever this information to disclose the rest of the records.

VII. CONCLUSION

[85] As I have found that the Public Body properly applied section 15 and subsection 6(2) of the *FOIPP Act*, I confirm the decision of the Public Body to refuse access to the entire records at issue.

[86] In accordance with section 67 of the *FOIPP Act*, this order is final. However, an application for judicial review of the Order may be made pursuant to section 3 of the *Judicial Review Act*, RSPEI 1988, Cap. J-3.

SGD MARIA MACDONALD

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Maria C. MacDonald
Deputy Commissioner