



**OFFICE OF THE INFORMATION &
PRIVACY COMMISSIONER
Of Prince Edward Island**

Order No. FI-24-008
(file C/24/00005, previously known as FI-19-312)
(Public Body's reference FIN 2019-202)

Re: Department of Finance

**Maria C. MacDonald
Deputy Commissioner**

October 18, 2024

Summary:

In 2019, an applicant requested access to some emails of an employee from 2015. The Public Body took an extension to search, but ultimately did not find any responsive records.

The Applicant requested a review because the Public Body did not find any responsive records. The Deputy Commissioner found that the Public Body conducted an adequate search.

Statutes Cited:

Freedom of Information and Protection of Privacy Act, RSPEI 1988, c F-15.01, subsection 8(1)

Decisions Cited:

Order FI-22-006, *Re: Department of Transportation and Infrastructure*, 2022 CanLII 83334 (PE IPC)

I. BACKGROUND

- [1] An individual (the “Applicant”) asked the Department of Finance (the “Public Body”) for access to the following:

All emails of [Employee A] received from or sent to [Employee B] that makes mention of [Employee C]. Time period: April 14, 2015 to June 14, 2015

- [2] Employee A and C were employees of the Public Body, and Employee B was an employee of a different public body. There were a large number of records to search, and with notice to the Applicant, the Public Body took a 10-day extension under section 12(1)(b) of the *Freedom of Information and Protection of Privacy Act* (the “*FOIPP Act*”). This provision allows a public body to take an extension of up to 30 days if there are a large number of records requested or must be searched, and if responding within the period set out in the *FOIPP Act* would unreasonably interfere with the operations of the public body.
- [3] The Public Body responded to the Applicant 39 days after they received the access request, but did not find any responsive records. In their decision letter, the Public Body advised the Applicant where they searched, and the keywords that they used for the electronic searches. The Applicant requested a review because no records were found. The Applicant also believed that the Public Body had destroyed responsive records.
- [4] Former Commissioner Karen A. Rose sought and exchanged submissions between the Applicant and the Public Body. Commissioner Denise N. Doiron delegated this matter to me to complete the review.

II. ISSUES

- [5] The issue in this review is whether the Public Body conducted an adequate search, as part of the duty to assist under subsection 8(1) of the *FOIPP Act*.

III. BURDEN OF PROOF

- [6] Previous decisions of our office have held that a public body has the burden to show that they conducted a reasonable search for responsive records. Public bodies are in a better position to explain what they did to search for responsive records, and to explain their role and their records. Although applicants do not have the burden of proof, it is helpful for an applicant to give reasons to show why they believe that a public body did not conduct an adequate search or to support a reasonable belief that the public body has other responsive records in their custody or control [see for example, Order FI-22-006, *Re: Department of Transportation and Infrastructure*, 2022 CanLII 83334 (PE IPC)].

- [7] There is no single method for a public body to search for responsive records. The standard to review a public body's search is based on reasonableness in the circumstances. A public body is not held to a standard of perfection [Order FI-19-013, *Re: Transportation, Infrastructure and Energy*, 2019 CanLII 93497 (PE IPC), at paragraph 55]. A public body does not have to prove with absolute certainty that records do not exist, but it must demonstrate that it has made every reasonable effort to locate responsive records.

IV. ANALYSIS

- [8] Subsection 8(1) of the *FOIPP Act* states:

8. (1) The head of a public body shall make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[9] Subsection 8(1) of the *FOIPP Act* is often referred to as the duty to assist. In this matter, the Applicant's concern is that the Public Body did not adequately search for responsive records. Several decisions of our office have confirmed that the duty to assist under subsection 8(1) of the *FOIPP Act* includes a duty to conduct a reasonable search.

[10] I will first address the Applicant's belief that the Public Body has other responsive records in their custody or control. Then I will review the Public Body's explanation of their search.

(a) The Applicant's belief that the Public Body has other responsive records

[11] The Applicant cited two reasons for why they believe that there should have been responsive records. The first is that the Applicant had copies of emails that they believed were responsive to this access request, but that the Public Body did not find or provide to the Applicant in this access request. The second reason is that Employee A had a large number of emails to search, therefore the Applicant believes that there should have been some responsive records.

[12] The Applicant provided four pages of email exchanges that they received in response to an access request to a different public body. Not including the duplicates, these pages include five emails. The Applicant believed that these emails are responsive to their access request, and should have been found in a search for records of Employee A. Because these emails were not found, the Applicant believed that there may be some issue with Employee A's record management.

[13] The Applicant acknowledged that two of the five emails are outside the time range of the access request. These two emails are also not between Employee A and Employee B. For these two reasons, these two emails are not responsive to the Applicant's access request.

[14] As the Public Body pointed out, the other three of the five emails are between Employee A and Employee B, but they do not mention Employee C. An email between Employee A and

B that does not mention Employee C is not responsive to the Applicant's access request. I reviewed the five emails the Applicant provided and the text of the Applicant's access request and find that they are not responsive to the access request.

[15] The Applicant also believed that there ought to be responsive records because Employee A had a large number of email records. Respectfully, the number of records a public body searched does not have any relationship with whether any of those records are responsive to an access request. I am not persuaded that there ought to have been any responsive records, because the Public Body had to search through a large number of emails.

[16] I also reviewed the content of the five emails that the Applicant provided, and nothing in these emails suggests that there should have been responsive records.

(b) The Public Body's search

[17] Former Commissioner Rose asked the Public Body for their submissions and evidence about their search. The Public Body's position is that their search was adequate even though they did not find any responsive records. The Public Body provided evidence related to their searches, including the following summary in their submissions:

1. Who conducted the search: [Employee A] conducted a search of his current email account and the Legislative and Planning Coordinator for the Department of Finance coordinated the search of the current account and the search of the archived account with ITSS.

2. Steps taken by the Public Body to identify and locate records responsive to the Applicant's access request: email account of [Employee A] was searched.

The Public Body submits that all responsive records would have been retrieved by searching this one email account.

3. Scope of the Search (areas searched): The inbox, sent box, and archive of [Employee A]'s email account were searched to retrieve any records between

himself and [Employee B] that made mention of [Employee C].

4. Steps taken to identify and locate all possible locations of records responsive to the access request: Please see the Public Body's submission for part two and three which also responds to part four.

5. Reasons the Public Body believes that no more responsive records exist: The Public Body has no reason to believe that more responsive records exist that can be located as a result of a reasonable search. No responsive records were retrieved for the time period noted in the request.

[18] These submissions are supported by the Public Body's processing file. The employees who searched were knowledgeable and experienced. I am satisfied that the active and archived emails of Employee A and the email archives were appropriate locations for the Public Body to search for emails of Employee A. The request was not related to any subject matter, and I am satisfied that the Public Body did not have any information to identify any other search areas. I am satisfied that an electronic keyword search was reasonable. The Public Body has satisfied their burden of proof, and I find that the Public Body conducted an adequate search.

Applicant's concerns about Employee A's record management

[19] The Applicant said they believe that responsive records exist which warrants a more extensive and comprehensive search, or if they do not exist, they may have been destroyed contrary to the *Archives and Records Act* and the Treasury Board policies. However, I have no evidence that responsive records ever existed or that any records were deleted or destroyed. I have no reason to believe that anyone may have contravened a statute, regulation or policy.

V. SUMMARY OF FINDINGS

[20] I find that the Public Body conducted an adequate search for records in response to the Applicant's access request.

VI. ORDER

[21] As I confirm that the Public Body conducted an adequate search for responsive records, I make no Order as a result of this review.

SGD MARIA MACDONALD

Maria C. MacDonald
Deputy Commissioner