

# *FOI/PP Act Review*



Office of the Information and Privacy  
Commissioner

*Recommendations to Standing  
Committee on Communities, Land  
and Environment*

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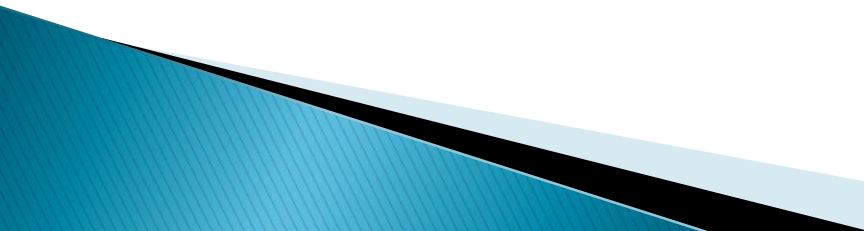
# 5 Key Recommendations

1. Adding Municipalities
2. Adding Post-Secondary Educational Institutions
3. Producing information relating to claim of solicitor-client privilege
4. Shorter time limits for ss. 19,20,21,22
5. Periodic review of *FOIPP Act*

# Previous Reviews of *FOIPP Act*

- ▶ May–December, 2004
  - Bill 10 (December 15, 2005)
- ▶ December, 2008 – April, 2009
  - No amendments made

# *FOI/PP Act Today*

- ▶ Well-written
  - ▶ Effective tool of government accountability
  - ▶ Much-used
  - ▶ Reflects growing concern for personal privacy
  - ▶ Generally consistent with other jurisdictions
- 

# Recommendation #1:

## *Add Municipalities as public bodies*

- ▶ Currently no legislated requirement to provide access to information, or to protect the personal information they hold
- ▶ *Municipal Government Act* requires bylaws
  - Less detailed standard, no independent oversight
- ▶ PEI is only province
  - Commissioners of Territories have recommended inclusion of municipalities
- ▶ Collaboration among service providers may pose a problem
  - PEI Bridge

# *Implementing Recommendation #1*

- ▶ Consider delayed statutory effective date
- ▶ Consider amendment to section 19 exception – harm to intergovernmental relations
  - Intergovernmental relations may include municipal governments

# Recommendation #2:

## *Add Post-Secondary Educational Institutions as public bodies*

- ▶ Currently no legislated requirement to provide access to information, or to protect the personal information they hold
- ▶ UPEI and Holland College policies, May 1, 2017
  - Not legislated (discretionary)
  - No independent oversight (may ask for reconsideration)
- ▶ All provinces and territories, except PEI, include post-secondary educational institutions

# *Implementing Recommendation #2*

- ▶ Consider delayed statutory effective date
- ▶ Consider amendments to:
  - section 4
  - section 15
  - section 36
  - section 37



## Recommendation #3:

### *Producing information relating to claim of solicitor–client privilege*

- ▶ Section 25 permits a public body to refuse to disclose information subject to solicitor–client privilege
  - SCC states solicitor–client privilege is not merely an evidentiary rule
  - S. 53(3) interpreted as not applying to records with a claim of solicitor–client privilege
- ▶ If public body refuses to produce a record, difficult for Commissioner to perform oversight function

# *Implementing Recommendation #3*

- ▶ That the *FOIPP Act* explicitly state:
  - The Commissioner may require a public body to produce records containing information over which solicitor–client privilege is claimed; and
  - Solicitor–client privilege is not waived when the solicitor–client privileged records are provided to the Commissioner.

# Recommendation #4

## *Shorter time limits in ss. 19,20,21,22*

- ▶ These 4 exceptions state that the exceptions do not apply to information in a record that has been in existence for 20 years or more
- ▶ Rationale is that harm decreases with time
  - Time limits in other jurisdictions vary
  - Alberta FOIP currently states 15 years, but its reviewing Committee recommended 10 years (Nov 2010)
- ▶ OIPC recommends an amendment to 15 years

# Recommendation #5

## *Periodic Review of FOIPP Act*

- ▶ Section 79 provided for an initial review, but not periodic
- ▶ Access and privacy issues are dynamic
- ▶ *FOIPP Act* is frequently used by Islanders
- ▶ Reviews are necessary to respond to evolving needs
- ▶ 3 other Canadian jurisdictions provide for periodic reviews
  - In Alberta, it has been recommended

# *Implementing Recommendation #5*

## *Review of Act*

79 (1) At least once every 6 years, a standing committee of the Legislative Assembly shall begin a comprehensive review of this Act and shall submit a report respecting this Act to the Legislative Assembly within one year after the date of the commencement of the review.

(2) A report submitted under subsection (1) may include any recommended amendments to this Act.

(3) For the purposes of subsection (1), the first 6 year period begins on \_\_\_\_\_, 2017.

Questions?



# Section 19 (harm to intergovernmental relations)

19. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- (a) harm relations between the Government of Prince Edward Island or its agencies and any of the following or their agencies:
    - (i) the Government of Canada or a province or territory of Canada,
    - (ii) the government of a foreign state, or
    - (iii) an international organization of states; or
  - (b) reveal information supplied, explicitly or implicitly, in confidence by a government or an organization listed in clause (a) or its agencies.

...

(4) This section does not apply to information that has been in existence in a record for 20 years or more.

# Section 20 (Cabinet Confidences)

20. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

(2) Subsection (1) does not apply to

(a) information in a record that has been in existence for 20 years or more; or

(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act.

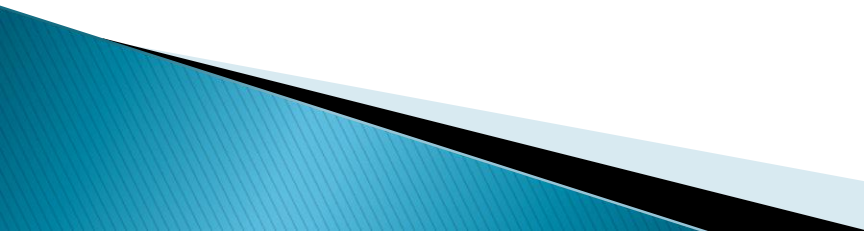


# Section 21 (public body confidences)

21. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

- (a) a draft of a resolution, bylaw or other legal instrument by which the public body acts; or
- (b) the substance of deliberations of a meeting of its officials or of its governing body or a committee of its governing body, if any enactment, including a regulation made under this Act, authorizes the holding of that meeting in the absence of the public.

(2) Subsection (1) does not apply if

- (a) the draft of the resolution, bylaw or other legal instrument or the subject-matter of the deliberation has been considered in a meeting open to the public; or
  - (b) the information referred to in that subsection is in a record that has been in existence for 20 years or more.
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# Section 22 (advice from officials)

22. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

- (a) consultations or deliberations involving
  - (i) officers or employees of a public body,
  - (ii) a member of the Executive Council, or
  - (iii) the staff of a member of the Executive Council;

...

(2) Subsection (1) does not apply to information that

- (a) has been in existence for 20 years or more;

# Section 25 (Privileged information)

25. (1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor–client privilege or parliamentary privilege;

...



# Subsection 53(3)

53.

(3) Despite any other enactment or any privilege of the law of evidence, a public body shall produce to the Commissioner within 10 days any record or a copy of any record required under subsection (1) or (2).

