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2nd SESSION, 61st GENERAL ASSEMBLY
Province of Prince Edward Island
50 ELIZABETH II, 2001

CHAPTER 37

(Bill No. 47)

Freedom of Information and Protection of Privacy Act (No. 2)

Hon. Jeffrey E. Lantz
Attorney General

GOVERNMENT BILL

BERYL BUJOSEVICH
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CHAPTER 37

Freedom of Information and Protection of Privacy Act (No. 2)

(Assented to May 15, 2001)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

- 1. In this Act**
- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| | Definitions |
| (a) “applicant” means a person who makes a request for access to a record under subsection 7(1); | applicant |
| (b) “Commissioner” means the Information and Privacy Commissioner appointed under Part III; | Commissioner |
| (c) “employee”, in relation to a public body, includes a person retained under a contract to perform services for the public body; | employee |
| (d) “head”, in relation to a public body, means | head |
| (i) if the public body is a department, branch or office of the Government of Prince Edward Island, the member of the Executive Council who presides over it, | |
| (ii) in any other case, the chief executive officer of the public body; | |
| (e) “law enforcement” means | law enforcement |
| (i) policing, including criminal intelligence operations, | |
| (ii) investigations that lead or could lead to a penalty or sanction being imposed, or | |
| (iii) proceedings that lead or could lead to a penalty or sanction being imposed; | |
| (f) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; | Minister |
| (g) “offence” means an offence under an enactment of Prince Edward Island or Canada; | offence |
| (h) “officer of the Legislative Assembly” means the Auditor General, the Clerk, Clerk Assistant and Sergeant-at-Arms, Chief Electoral Officer, the Information and Privacy Commissioner or the Conflict of Interest Commissioner; | officer of the
Legislative
Assembly |

personal information	<p>(i) “personal information” means recorded information about an identifiable individual, including</p> <ul style="list-style-type: none"> (i) the individual's name, home or business address or home or business telephone number, (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations, (iii) the individual's age, sex, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health and health care history, including information about a physical or mental disability, (vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given, (viii) anyone else's opinions about the individual, and (ix) the individual's personal views or opinions, except if they are about someone else;
prescribed	(j) “prescribed” means prescribed by the regulations;
public body	<p>(k) “public body” means</p> <ul style="list-style-type: none"> (i) a department, branch or office of the Government of Prince Edward Island, (ii) an agency, board, commission, corporation, office or other body designated as a public body in the regulations, (iii) the Executive Council Office, and (iv) the office of an officer of the Legislative Assembly, <p>but does not include</p> <ul style="list-style-type: none"> (v) the office of the Speaker of the Legislative Assembly and the office of a Member of the Legislative Assembly, or (vi) the Supreme Court of Prince Edward Island or the Provincial Court of Prince Edward Island;
record	(l) “record” means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records;
third party	(m) “third party” means a person, a group of persons or an organization other than an applicant or a public body;
trade secret	(n) “trade secret” means information, including a formula, pattern, compilation, program, device, product, method, technique or process

- (i) that is used, or may be used, in business or for any commercial purpose,
- (ii) that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use,
- (iii) that is the subject of reasonable efforts to prevent it from becoming generally known, and
- (iv) the disclosure of which would result in significant harm or undue financial loss or gain.

2. The purposes of this Act are

Purposes of this Act

- (a) 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;
- (b) 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;
- (c) 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;
- (d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body; and
- (e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

3. This Act

Scope of this Act

- (a) is in addition to and does not replace existing procedures for access to information or records;
- (b) does not affect access to records deposited in the Public Archives and Records Office before the coming into force of this Act;
- (c) does not limit the information otherwise available by law to a party to legal proceedings;
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents; and
- (e) does not prohibit the transfer, storage or destruction of any record in accordance with any other enactment of Prince Edward Island or Canada.

4. (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

Records to which this Act applies

- (a) information in a court file, a record of a judge of the Supreme Court or the Provincial Court of Prince Edward Island, a record of a prothonotary, a record of a sitting justice of the peace, a judicial

- administration record or a record relating to support services provided to a judge;
- (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
- (c) a record that is created by or for or is in the custody or under the control of an officer of the Legislative Assembly and relates to the exercise of that officer's functions under an enactment;
- (d) a record that is created by or for or is in the custody or under the control of the Conflict of Interest Commissioner and relates to any advice relating to conflicts of interest whether or not the advice was given under the *Conflict of Interest Act*;
- (e) a question that is to be used on an examination or test;
- (f) material that has been deposited in the Public Archives and Records Office by or for a person or entity other than a public body;
- (g) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;
- (h) a record made from information
- (i) in a registry of documents relating to personal property,
 - (ii) in the office of the Registrar of Companies,
 - (iii) in a land titles registry office,
 - (iv) in an office of a district registrar as defined in the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1, or
 - (v) in a registry operated by a public body where public access to the registry is normally permitted;
- (i) a personal record or constituency record of a member of the Executive Council;
- (j) a record created by or for the office of the Speaker of the Legislative Assembly or the office of a member of the Legislative Assembly;
- (k) a record created by or for
- (i) a member of the Executive Council, or
 - (ii) a member of the Legislative Assembly
- that has been sent or is to be sent to a member of the Executive Council or a member of the Legislative Assembly;
- (l) a record relating to the business or affairs of Credit Union Central of Prince Edward Island, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union that is obtained or produced in the course of administering or enforcing the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1 or the regulations under it, other than a record that relates to a non-arm's length transaction between the Government and another party;
- (m) a record relating to the business or affairs of the Credit Union Deposit Insurance Corporation, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union that is obtained or produced in the course of administering or

enforcing the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1 or the regulations under it, other than a record that relates to a non-arm's length transaction between the Government and another party.

(2) In this section, "judicial administration record" means a record containing information relating to

- (a) the scheduling of judges and trials;
- (b) the content of judicial training programs;
- (c) statistics of judicial activity prepared by or for a judge; and
- (d) any record of a judicial council.

Judicial
administration
record

(3) For the purposes of clauses (1)(l) and (m), a non-arm's length transaction is any transaction that has been approved

- (a) by the Executive Council or any of its committees; or
- (b) by a member of the Executive Council.

Non-arm's length
transaction

5. (1) The head of a public body shall refuse to disclose information to an applicant if the disclosure is prohibited or restricted by another enactment of Prince Edward Island.

Refusal, existing
law

(2) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

- (a) another Act; or
- (b) a regulation under this Act

Relationship to
other Acts

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

(3) Two years after section 6 comes into force, subsection (1) is repealed and subsection (2) comes into force.

Commencement

PART I FREEDOM OF INFORMATION

Division 1 Obtaining Access to Records

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.

Information rights

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

Excepted
information,
severance

(3) The right of access to a record is subject to the payment of any fee required by the regulations.

Fee

How to make a request	7. (1) To obtain access to a record, a person shall make a request to the public body that the person believes has custody or control of the record.
Form, etc.	(2) A request shall be in writing and shall provide enough detail to enable the public body to identify the record.
Copy or examination	(3) In a request, the applicant may ask <ul style="list-style-type: none"> (a) for a copy of the record; or (b) to examine the record.
Abandoned requests	(4) Where the head of a public body contacts an applicant in writing respecting the applicant's request including <ul style="list-style-type: none"> (a) seeking further information from the applicant that is necessary to process the request, or (b) requesting the applicant to pay a fee or to agree to pay a fee, and the applicant fails to respond to the head of the public body, as requested by the head, within 30 days of being contacted, the head of the public body may, by notice in writing to the applicant, declare the request abandoned.
Duty to assist applicants	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.
Creation of record	(2) The head of a public body shall create a record for an applicant if <ul style="list-style-type: none"> (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise; and (b) creating the record would not unreasonably interfere with the operations of the public body.
Time limit for responding	9. (1) The head of a public body shall respond to a request without undue delay and in any event shall make every reasonable effort to respond to a request not later than 30 days after receiving it unless <ul style="list-style-type: none"> (a) that time limit is extended under section 12; or (b) the request has been transferred under section 13 to another public body.
Failure to respond	(2) The failure of the head to respond to a request within the 30 day period or any extended period is to be treated as a decision to refuse access to the record.
Contents of response	10. (1) In a response under section 9, the applicant shall be informed <ul style="list-style-type: none"> (a) whether access to the record or part of it is granted or refused; (b) if access to the record or part of it is granted, where, when and how access will be given; and (c) if access to the record or to part of it is refused,

- (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
- (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- (iii) that the applicant may ask for a review of that decision by the Commissioner.

(2) Despite subclause (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of

- (a) a record containing information described in section 16 or 18; or
- (b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.

Refusal to confirm etc. existence of record

11. (1) If an applicant is told under subsection 10(1) that access will be granted, the head of the public body shall comply with this section.

How access will be given

(2) If the applicant has asked for a copy of a record and the record can reasonably be reproduced,

Copy of record

- (a) a copy of the record or part of it shall be provided with the response; or
- (b) the applicant shall be given reasons for any delay in providing the copy.

(3) If there will be a delay in providing the copy under subsection (2), the applicant shall be told where, when and how the copy will be provided.

Delay

(4) If the applicant has asked to examine a record or for a copy of a record that cannot reasonably be reproduced, the applicant

Examination of record

- (a) shall be permitted to examine the record or part of it; or
- (b) shall be given access in accordance with the regulations.

12. (1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

Extending the time limit for responding

- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (b) a large number of records is requested or must be searched, and responding within the period set out in section 9 would unreasonably interfere with the operations of the public body;
- (c) more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record; or
- (d) a third party asks for a review under subsection 60(2).

Multiple concurrent requests	(2) The head of a public body may, with the Commissioner's permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by two or more applicants who work for the same organization or who work in association with each other.
Third party intervention	(3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 28 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 29.
Information to be supplied to applicant	(4) If the time is extended under subsection (1), (2) or (3), the head of the public body shall inform the applicant of <ul style="list-style-type: none"> (a) the reason for the extension; (b) when a response can be expected; and (c) that the applicant may make a complaint to the Commissioner about the extension.
Transferring a request	13. (1) Within 15 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if <ul style="list-style-type: none"> (a) the record was produced by or for the other public body; (b) the other public body was the first to obtain the record; or (c) the record is in the custody or under the control of the other public body.
<i>Idem</i>	(2) If a request is transferred under subsection (1), <ul style="list-style-type: none"> (a) the head of the public body who transferred the request shall notify the applicant of the transfer as soon as practicable; and (b) the head of the public body to which the request is transferred shall make every reasonable effort to respond to the request not later than 30 days after receiving the request unless that time limit is extended under section 12.

Division 2 Exceptions to Disclosure

Disclosure harmful to business interests of a third party	14. (1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant information <ul style="list-style-type: none"> (a) that would reveal <ul style="list-style-type: none"> (i) trade secrets of a third party, or (ii) commercial, financial, labour relations, scientific or technical information of a third party; (b) that is supplied, explicitly or implicitly, in confidence; and (c) the disclosure of which could reasonably be expected to
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- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
- (iii) result in undue financial loss or gain to any person or organization, or
- (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax. Taxation

- (3) Subsections (1) and (2) do not apply if Exception
- (a) the third party consents to the disclosure;
 - (b) an enactment of Prince Edward Island or Canada authorizes or requires the information to be disclosed;
 - (c) the information relates to a non-arm's length transaction between the Government of Prince Edward Island and another party; or
 - (d) the information is in a record that is in the custody or under the control of the Public Archives and Records Office and has been in existence for 50 years or more.

15. (1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. Disclosure harmful to personal privacy

(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if Presumption

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;
- (d) the personal information relates to employment or educational history;
- (e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;
- (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;
- (g) the personal information consists of the third party's name when

- (i) it appears with other personal information about the third party, or
- (ii) the disclosure of the name itself would reveal personal information about the third party; or
- (h) the personal information indicates the third party's racial or ethnic origin, or religious or political beliefs or associations.

Circumstances considered

(3) In determining under subsection (1) or (2) 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;
- (b) the disclosure is likely to promote public health and safety or the protection of the environment;
- (c) the personal information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the personal information has been supplied in confidence;
- (g) the personal information is likely to be inaccurate or unreliable; and
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Where disclosure not unreasonable invasion of third party's privacy

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

- (a) the third party has, in writing, consented to or requested the disclosure;
- (b) there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the last known address of the third party;
- (c) an Act of Prince Edward Island or Canada authorizes or requires the disclosure;
- (d) the disclosure is for research purposes and is in accordance with sections 39 and 40;
- (e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council;
- (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

- (g) the disclosure reveals details of a license, permit or other similar discretionary benefit granted to the third party by a public body;
- (h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body; or
- (i) the personal information is about an individual who has been dead for 20 years or more.

16. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

Disclosure harmful to individual or public safety

- (a) threaten anyone else's safety or mental or physical health; or
- (b) interfere with public safety.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a physician, psychologist, psychiatrist or any other appropriate expert depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety.

Disclosure harmful to applicant's health or safety

(3) The head of a public body may refuse to disclose to an applicant information in a record that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual's safety or mental or physical health.

Confidential informant

17. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information is provided, explicitly or implicitly, in confidence.

Confidential evaluations

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

Disclosure harmful to law enforcement

- (a) harm a law enforcement matter including an ongoing or unsolved law enforcement matter;
- (b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;
- (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement;
- (d) reveal the identity of a confidential source of law enforcement information;
- (e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities;

- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) reveal a record that has been confiscated from a person by a peace officer in accordance with a law;
- (h) facilitate the escape from custody of an individual who is being lawfully detained;
- (i) facilitate the commission of an unlawful act or hamper the control of crime;
- (j) reveal technical information relating to weapons or potential weapons;
- (k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system;
- or
- (l) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.

Refusal, exposure to civil liability and prisoner custody interests

(2) The head of a public body may refuse to disclose information to an applicant if the information

- (a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record; or
- (b) is about the history, supervision or release of an individual who is under the control or supervision of a correctional authority and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

Offence

(3) The head of a public body shall refuse to disclose information to an applicant if the information is in a law enforcement record and the disclosure would be an offence under an Act of Canada.

Non-application of subsections (1) and (2)

(4) Subsections (1) and (2) do not apply to

- (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act of Prince Edward Island; or
- (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2).

Decision not to prosecute

(5) After a police investigation is completed, the head of a public body may disclose under this section the reasons for a decision not to prosecute

- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim; or
- (b) to any other member of the public, if the fact of the investigation was made public.

- 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.
- Disclosure harmful to intergovernmental relations
- (2) The head of a public body may disclose information referred to in clause (1)(a) only with the consent of the Minister in consultation with the Executive Council.
- Consent of Minister
- (3) The head of a public body may disclose information referred to in clause (1)(b) only with the consent of the government or organization that supplies the information, or its agency.
- Consent of organization, etc.
- (4) This section does not apply to information that has been in existence in a record for 15 years or more.
- Historical records
- 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.
- Cabinet confidences
- (2) Subsection (1) does not apply to
- (a) information in a record that has been in existence for 15 years or more;
 - (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act; or
 - (c) information in a record the purpose of which is to present background facts to the Executive Council or any of its committees for consideration in making a decision if
 - (i) the decision has been made public,
 - (ii) the decision has been implemented, or
 - (iii) 5 years or more have passed since the decision was made or considered.
- Non-application of subsection (1)
- 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 the substance of deliberations of a meeting of its officials or of its governing body or a committee of its governing body, if an Act or a regulation
- Public body confidences

under this Act authorizes the holding of that meeting in the absence of the public.

Non-application of subsection (1)

- (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 15 years or more.

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;
 - (b) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Prince Edward Island or a public body, or considerations that relate to those negotiations;
 - (c) plans relating to the management of personnel or the administration of a public body that have not yet been implemented.;
 - (d) the contents of draft legislation, regulations and orders of members of the Executive Council or the Lieutenant Governor in Council;
 - (e) the contents of agendas or minutes of meetings of an agency, board, commission, corporation, office or other body that is a public body; or
 - (f) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

Non-application of subsection (1)

- (2) Subsection (1) does not apply to information that
- (a) has been in existence for 15 years or more;
 - (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
 - (c) is the result of a product or environmental testing carried out by or for a public body, unless the testing was done
 - (i) for a fee as a service to a person other than a public body, or
 - (ii) for the purpose of developing methods of testing or testing products for possible purchase;
 - (d) is a statistical survey;
 - (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;

(f) is an instruction or guideline issued to the officers or employees of a public body; or

(g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an Act or regulation or administering a program or activity of the public body.

23. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Prince Edward Island or the ability of the Government to manage the economy, including the following information:

Disclosure harmful to economic and other interests of a public body

(a) trade secrets of a public body or the Government of Prince Edward Island;

(b) financial, commercial, scientific, technical or other information in which a public body or the Government of Prince Edward Island has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;

(c) information the disclosure of which could reasonably be expected to

(i) result in financial loss to,

(ii) prejudice the competitive position of, or

(iii) interfere with contractual or other negotiations of,

the Government of Prince Edward Island or a public body;

(d) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or public body of priority of publication.

(2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for a public body, unless the testing was done

Results of product or environmental testing

(a) for a fee as a service to a person other than the public body; or

(b) for the purpose of developing methods of testing or testing products for possible purchase.

24. The head of a public body may refuse to disclose to an applicant information relating to

Testing procedures, tests and audits

(a) testing or auditing procedures or techniques; or

(b) details of specific tests to be given or audits to be conducted,

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

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

Privileged information

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

- (b) information prepared by or for an agent or lawyer of the Office of the Attorney General or a public body in relation to a matter involving the provision of legal services; or
- (c) information in correspondence between an agent or lawyer of the Office of the Attorney General or a public body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer.

Idem

(2) The head of a public body shall refuse to disclose information described in clause (1)(a) that relates to a person other than a public body.

Parliamentary privilege

(3) Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege.

Disclosure harmful to the conservation of heritage sites, etc.

26. The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to or interfere with the conservation of

- (a) any archaeological site as defined in the *Archaeological Sites Protection Act* R.S.P.E.I. 1988, Cap. A-17;
- (b) any heritage place as defined in the *Heritage Places Protection Act* R.S.P.E.I. 1988, Cap. H-3.1; or
- (c) any rare, endangered, threatened or vulnerable form of life.

Information that is or will be available to the public

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

- (a) that is available for purchase by the public; or
- (b) that is to be published or released to the public within 60 days after the applicant's request is received.

Publication

(2) The head of a public body shall notify an applicant of the publication or release of information that the head has refused to disclose under clause (1)(b).

Renewal of request

(3) If the information is not published or released within 60 days after the applicant's request is received, the head of a public body shall reconsider the request as if it were a new request received on the last day of that period, and access to the information requested shall not be refused under clause (1)(b).

Division 3 Third Party Intervention

Notifying the third party

28. (1) When the head of a public body is considering giving access to a record that may contain information

- (a) that affects the interests of a third party under section 14; or
- (b) the disclosure of which would be an unreasonable invasion of a third party's personal privacy under section 15,

the head shall, subject to section 27, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (3).

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 14 or 15, the head may give written notice to the third party in accordance with subsection (3). *Idem*

(3) A notice under this section shall

Content of notice

- (a) state that a request has been made for access to a record that may contain information the disclosure of which would affect the interests or invade the personal privacy of the third party;
- (b) include a copy of the record or part of it containing the information in question or describe the contents of the record; and
- (c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.

(4) When notice is given under subsection (1), the head of a public body shall also give the applicant a notice stating that

Notice to applicant

- (a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party;
- (b) the third party is being given an opportunity to make representations concerning disclosure; and
- (c) a decision will be made within 30 days after the day notice is given under subsection (1).

29. (1) Within 30 days after notice is given pursuant to subsection 28(1) or (2), the head of the public body shall decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of

Time limit and notice decision

- (a) 21 days after the day notice is given; and
- (b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of a public body shall give written notice of the decision, including reasons for the decision, to the applicant and the third party.

Notice of decision

(3) If the head of a public body decides to give access to the record or part of the record, the notice under subsection (2) shall state that the applicant will be given access unless the third party asks for a review under Part IV within 20 days after that notice is given.

Review, third party request

Idem, applicant's request

(4) If the head of a public body decides not to give access to the record or part of the record, the notice under subsection (2) shall state that the applicant may ask for a review under Part IV.

Division 4
Public Health and Safety

Information shall be disclosed if risk of harm to environment or public health

30. (1) Whether or not a request for access is made, the head of a public body shall without delay, disclose to the public, to an affected group of people, to any person or to an applicant
(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant; or
(b) information the disclosure of which is, for any other reason, clearly in the public interest.

Application

(2) Subsection (1) applies despite any other provision of this Act.

Notice

(3) Before disclosing information under subsection (1), the head of a public body shall where practicable
(a) notify any third party to whom the information relates;
(b) give the third party an opportunity to make representations relating to the disclosure; and
(c) notify the Commissioner.

Idem

(4) If it is not practicable to comply with subsection (3), the head of a public body shall mail a notice of disclosure in the prescribed form
(a) to the last known address of the third party; and
(b) to the Commissioner.

PART II
PROTECTION OF PRIVACY

Division 1
Collection of Personal Information

Purpose of collection of information

31. No personal information may be collected by or for a public body unless
(a) the collection of that information is expressly authorized by or under an Act of Prince Edward Island or Canada;
(b) that information is collected for the purposes of law enforcement; or
(c) that information relates directly to and is necessary for an operating program or activity of the public body.

Manner of collection of information

32. (1) A public body shall collect personal information directly from the individual the information is about unless

- (a) another method of collection is authorized by
 - (i) that individual, or
 - (ii) another Act or a regulation under another Act;
- (b) the information may be disclosed by the public body under Division 2 of this Part;
- (c) the information is collected for the purpose of law enforcement;
- (d) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Prince Edward Island or a public body;
- (e) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority;
- (f) the information is collected for use in the provision of legal services to the Government of Prince Edward Island or a public body;
- (g) the information is necessary
 - (i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Prince Edward Island or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or
 - (ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Prince Edward Island or a public body and is collected for that purpose;
- (h) the information is collected for the purpose of informing the Public Trustee or a person exercising public guardianship functions about potential clients;
- (i) the information is collected for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1;
- (j) the information is collected for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body; or
- (k) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people.

(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about shall inform the individual of

Right to be informed

- (a) the purpose for which the information is collected;
- (b) the specific legal authority for the collection; and
- (c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

Application of subsections (1) and (2)	(3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, compliance with them might result in the collection of inaccurate information.
Accuracy of personal information	<p>33. If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body shall</p> <p>(a) make every reasonable effort to ensure that the information is accurate and complete; and</p> <p>(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.</p>
Right to request correction of personal information	34. (1) An applicant who believes there is an error or omission in the applicant's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.
Annotation	(2) If no correction is made in response to a request under subsection (1), the head of a public body shall annotate or link the information with the correction that was requested but not made.
Notice to others of correction, etc.	(3) On correcting, annotating or linking personal information under this section, the head of a public body shall notify any other public body or any third party to whom that information has been disclosed during the one year before the correction was requested that a correction, annotation or linkage has been made.
Correction, etc. by body notified	(4) On being notified under subsection (3) of a correction, annotation or linkage of personal information, a public body shall make the correction, annotation or linkage on any record of that information in its custody or under its control.
Notice to individual	(5) Within 30 days after the request under subsection (1) is received, the head of the public body shall give written notice to the individual that
	(a) the correction has been made; or
	(b) an annotation or linkage has been made pursuant to subsection (2).
Extension of time	(6) Section 12 applies to the period set out in subsection (5).
Transferring request to correct personal information	(7) Within 15 days after a request to correct personal information under section 34(1) is received by a public body, the head of the public body may transfer the request to another public body if
	(a) the personal information was collected by the other public body;
	or
	(b) the other public body created the record containing the personal information.

- (8) If a request is transferred under subsection (7),
- (a) the head of the public body who transferred the request must notify the applicant of the transfer as soon as possible, and
 - (b) the head of the public body to which the request is transferred must make every reasonable effort to respond to the request not later than 30 days after receiving the request unless the time limit is extended pursuant to subsection (6).

Time limit for responding to transferred request

35. The head of a public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

Protection of personal information

Division 2

Use and Disclosure of Personal information by Public Bodies

- 36.** (1) A public body may use personal information only
- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
 - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
 - (c) for a purpose for which that information may be disclosed to that public body under section 37, 39 or 40.

Use of personal information

(2) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

Only to extent necessary

- 37.** (1) A public body may disclose personal information only
- (a) in accordance with Part I;
 - (b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
 - (c) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure;
 - (d) for the purpose of complying with an enactment of Prince Edward Island or Canada or with a treaty, arrangement or agreement made under an enactment of Prince Edward Island or Canada;
 - (e) for any purpose in accordance with an enactment of Prince Edward Island or Canada that authorizes or requires the disclosure;
 - (f) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;

Disclosure of personal information

- (g) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member;
- (h) for the purpose of enforcing a legal right that the Government of Prince Edward Island or a public body has against any person;
- (i) for the purpose of
 - (i) collecting a fine or debt owing by an individual to the Government of Prince Edward Island or to a public body or to an assignee of either of them, or
 - (ii) making a payment owing by the Government of Prince Edward Island or by a public body to an individual;
- (j) for the purpose of determining an individual's suitability or eligibility for a program or benefit;
- (k) to the Auditor General or any other prescribed person or body for audit purposes;
- (l) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem;
- (m) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry;
- (n) to the Public Archives and Records Office or to the archives of a public body for permanent preservation;
- (o) to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
- (p) if the public body is a law enforcement agency and the information is disclosed
 - (i) to another law enforcement agency in Canada, or
 - (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;
- (q) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;
- (r) in accordance with section 39 or 40;
- (s) to an expert for the purposes of section 16(2);
- (t) for use in a proceeding before a court or quasi-judicial body to which the Government of Prince Edward Island or a public body is a party;
- (u) when disclosure is by the Attorney General or an agent or lawyer of the Attorney General to a place of lawful detention;
- (v) for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body;

- (w) to the Director of Maintenance Enforcement for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act* R.S.P.E.I 1988, Cap. M-1;
- (x) to an officer of the Legislative Assembly, if the information is necessary for the performance of the duties of that officer;
- (y) for the purpose of supervising an individual under the control or supervision of a correctional authority;
- (z) when the information is available to the public; or
- (aa) to a relative of a deceased individual if, in the opinion of the head of a public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy.

(2) Only information that is reasonably required may be disclosed under subsection (1). Information reasonably required

38. For the purposes of clauses 36(1)(a) and 37(1)(b), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure Consistent purposes

- (a) has a reasonable and direct connection to that purpose; and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

39. A public body may disclose personal information for a research purpose, including statistical research, only if Disclosure for research or statistical purposes

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Commissioner;
- (b) any record linkage is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- (c) the head of a public body has approved conditions relating to the following:
 - (i) security and confidentiality,
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time, and
 - (iii) the prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of that public body; and
- (d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

40. The Public Archives and Records Office and the archives of a public body may disclose personal information for research purposes if Disclosure for research purposes

- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 15;
- (b) the disclosure is in accordance with section 39;
- (c) the information is about someone who has been dead for 25 years or more; or
- (d) the information is in a record that has been in existence for 75 years or more.

PART III
OFFICE AND POWERS OF INFORMATION
AND PRIVACY COMMISSIONER

Definition	41. In this Part, “Standing Committee” means the Standing Committee on Legislative Management.
Appointment of Commissioner	42. (1) The Legislative Assembly shall appoint an Information and Privacy Commissioner to carry out the functions set out in this Act.
Status	(2) The Commissioner is an officer of the Legislative Assembly.
Membership of Legislative Assembly	(3) The Commissioner shall not be a member of the Legislative Assembly.
Commissioner may be part time	(4) The Commissioner may be designated to hold office on a part-time basis.
Term of office	43. (1) Except as provided for in section 44, the Commissioner holds office for a term of 5 years.
Continuation	(2) A person holding office as Commissioner continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.
Reappointment	(3) A person is eligible for reappointment as Commissioner.
Resignation, removal or suspension of Commissioner	44. (1) The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from the province, by notifying the Clerk of the Legislative Assembly.
Removal, etc.	(2) The Legislative Assembly shall remove the Commissioner from office or suspend the Commissioner for cause or incapacity.
<i>Idem</i>	(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee.

- 45.** (1) The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if
- (a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting;
 - (b) the Commissioner is suspended when the Legislative Assembly is not sitting; or
 - (c) the Commissioner is removed or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no appointment is made by the Assembly under subsection 42(1) before the end of the session.
- (2) The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.
- (3) An acting Commissioner holds office until
- (a) a person is appointed under subsection 42(1);
 - (b) the suspension of the Commissioner ends; or
 - (c) the Commissioner returns to office after a temporary absence.
- 46.** The Commissioner shall be remunerated as determined by the Standing Committee, and it shall review that remuneration at least once a year.
- 47.** (1) Before beginning the duties of office, the Commissioner shall take an oath to faithfully and impartially perform the duties of the office and not to disclose any information received by the Office of the Information and Privacy Commissioner under this Act except as provided in this Act.
- (2) The oath shall be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.
- 48.** (1) There may be a part of the public service of the province called the Office of the Information and Privacy Commissioner consisting of the Commissioner and those persons that are necessary to assist the Commissioner in carrying out the Commissioner's functions under this or any other enactment.
- (2) The Commissioner may engage the services of any persons necessary to assist the Commissioner in carrying out the Commissioner's functions.
- (3) Every person employed or engaged by the Office of the Information and Privacy Commissioner shall, before beginning to perform duties under this Act, take an oath, to be administered by the Commissioner, not to disclose any information received by that person under this Act except as provided in this Act.

Submission of estimate	49. (1) The Commissioner shall submit to the Standing Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Information and Privacy Commissioner in that fiscal year.
Financing of operations	(2) The Standing Committee shall review each estimate submitted pursuant to subsection (1) and on the completion of the review, the chair of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Legislative Assembly.
Review	50. (1) In addition to the Commissioner's functions under Part IV, with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved.
Resolution of complaints	(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that <ul style="list-style-type: none"> (a) a duty imposed by section 8 has not been performed; (b) an extension of time for responding to a request is not in accordance with section 12; (c) a fee required under this Act is inappropriate; (d) a correction of personal information requested under subsection 34(1) has been refused without justification; and (e) personal information has been collected, used or disclosed by a public body in violation of Part II.
Advice and recommendations	51. (1) The head of a public body may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.
Request for advice	(2) The Commissioner may in writing provide the head with advice and recommendations that <ul style="list-style-type: none"> (a) state the material facts either expressly or by incorporating facts stated by the head; (b) are based on the facts referred to in clause (a); and (c) may be based on any other considerations the Commissioner considers appropriate.
Power to authorize a public body to disregard requests	52. If the head of a public body asks, the Commissioner may authorize the public body to disregard requests under subsection 7(1) that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body or amount to an abuse of the right to access.
Powers of Commissioner in conducting inquiries	53. (1) In conducting an inquiry under section 64 or in giving advice and recommendations under section 51, the Commissioner has all the

powers, privileges and immunities of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31 and the powers given by subsection (2).

(2) The Commissioner may require any record to be produced to the Commissioner and may examine any information in a record, including personal information whether or not the record is subject to the provisions of this Act.

Examination of records

(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).

Production of record

(4) If a public body is required to produce a record under subsection (1) or (2) and it is not practicable to make a copy of the record, the head of that public body may require the Commissioner to examine the original at its site.

Examination of original

(5) After completing a review or investigating a complaint, the Commissioner shall return any record or any copy of any record produced.

Return

54. (1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except

- (a) in a prosecution for perjury in respect of sworn testimony;
- (b) in a prosecution for an offence under this Act; or
- (c) in an application for judicial review or an appeal from a decision with respect to that application.

Statements made to the Commissioner not admissible in evidence

(2) Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the Commissioner.

Application of subsection (1)

55. Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court.

Privileged information

56. (1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not disclose any information obtained in performing their functions under this Act, except as provided in subsections (2) to (5).

Restrictions on disclosure of information by the Commissioner and staff

(2) The Commissioner may disclose or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary to

Exception

(a) conduct an investigation or inquiry under this Act; or

(b) establish the grounds for findings and recommendations contained in a report under this Act.

Information not to be disclosed

(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) whether information exists, if the head of a public body in refusing to provide access does not indicate whether the information exists.

Information concerning offences

(4) The Commissioner may disclose to the Attorney General information relating to the commission of an offence against an enactment of Prince Edward Island or Canada if the Commissioner considers there is evidence of an offence.

Other exceptions

(5) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 54.

Protection of Commissioner and staff

57. No proceedings lie against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a function under this Part or Part IV.

Delegation by Commissioner

58. (1) The Commissioner may delegate to any person any function of the Commissioner under this Act, except

(a) the power to delegate under this section;

(b) the power to examine information described in sections 18 and 20; and

(c) the duties, powers and functions specified in section 66.

Idem

(2) A delegation under subsection (1) shall be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

Report of Commissioner

59. (1) The Commissioner shall report annually to the Speaker of the Legislative Assembly on

(a) the work of the Commissioner's office;

(b) any complaints or reviews resulting from a decision, act or failure to act of the Commissioner as head of a public body; and

(c) such other matters relating to freedom of information and protection of personal privacy as the Commissioner considers appropriate.

(2) The Speaker shall lay each annual report before the Legislative Assembly as soon as possible. *Idem*

PART IV REVIEWS AND COMPLAINTS

Division 1 Reviews by the Commissioner

60. (1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request. *Right to ask for a review*

(2) A third party notified under section 29 of a decision by the head of a public body to give access may ask the Commissioner to review that decision. *Third party request*

(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part II may ask the Commissioner to review that matter. *Personal information*

(4) A relative of a deceased individual may ask the Commissioner to review a decision of a head of a public body under clause 37(1)(aa) not to disclose personal information. *Idem, deceased*

(5) This section does not apply *Application*

(a) to a decision by the Speaker of the Legislative Assembly that a record is subject to parliamentary privilege; or

(b) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislative Assembly, to a decision, act or failure to act of that person when acting as the head of that office.

61. (1) To ask for a review under this Division, a written request shall be delivered to the Commissioner. *How to ask for a review*

(2) A request for a review of a decision of the head of a public body must be delivered to the Commissioner *Time for request*

- (a) if the request is pursuant to section 60(1) or (3) within
- (i) 60 days after the person asking for the review is notified of the decision, or
 - (ii) any longer period allowed by the Commissioner;

or

- (b) if the request is pursuant to section 60(2), within 20 days after the person asking for the review is notified of the decision.

Failure to respond constitutes refusal	(3) The failure of the head of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access, but the time limit in clause (2)(a) for delivering a request for review does not apply.
Notifying others of review	<p>62. On receiving a request for a review, the Commissioner shall as soon as practicable</p> <p>(a) give a copy of the request</p> <p style="padding-left: 20px;">(i) to the head of the public body concerned, and</p> <p style="padding-left: 20px;">(ii) to any other person who in the opinion of the Commissioner is affected by the request; and</p> <p>(b) provide a summary of the review procedures and an anticipated date for a decision on the review</p> <p style="padding-left: 20px;">(i) to the person who asked for the review,</p> <p style="padding-left: 20px;">(ii) to the head of the public body concerned, and</p> <p style="padding-left: 20px;">(iii) to any other person who in the opinion of the Commissioner is affected by the request.</p>
Use of mediation	63. The Commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review.
Inquiry by Commissioner	64. (1) Unless a matter is settled under section 63, the Commissioner shall conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.
Inquiry in private	(2) An inquiry under subsection (1) may be conducted in private.
Representations	(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review shall be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.
<i>Idem</i>	(4) The Commissioner may decide whether the representations are to be made orally or in writing.
Counsel	(5) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.
Time for completion of inquiry	<p>(6) An inquiry under this section shall be completed within 90 days after receiving the request for the review unless the Commissioner</p> <p>(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period; and</p> <p>(b) provides an anticipated date for the completion of the review.</p>

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. Burden of proof

(2) Despite 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. *Idem*, third party personal information

(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party, *Idem*

(a) in the case of personal information, it is up to the applicant to prove the disclosure of the information would not be an unreasonable invasion of the third party's personal privacy; and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record.

66. (1) On completing an inquiry under section 64, the Commissioner shall dispose of the issues by making an order under this section. Commissioner's orders

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following: Decision to give or refuse access

(a) require the head to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;

(b) either confirm the decision of the head or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access;

(c) require the head to refuse access to all or part of the record, if the Commissioner determines that the head is required to refuse access.

(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following: Other matters

(a) require that a duty imposed by this Act or the regulations be performed;

(b) confirm or reduce the extension of a time limit under section 12;

(c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met;

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body to stop collecting, using or disclosing personal information in violation of Part II;

(f) require the head of a public body to destroy personal information collected in violation of this Act.

Conditions	(4) The Commissioner may specify any terms or conditions in an order made under this section.
Copies of order	(5) The Commissioner shall give a copy of an order made under this section <ul style="list-style-type: none"> (a) to the person who asked for the review; (b) to the head of the public body concerned; (c) to any other person given a copy of the request for the review; and (d) to the Minister.
Enforcement	(6) A copy of an order made by the Commissioner under this section may be filed with the registrar of the General Division of the Supreme Court and, after filing, the order is enforceable as a judgment or order of that court.
No appeal	67. An order made by the Commissioner under this Act is final.
Duty to comply with orders	68. (1) Not later than 30 days after being given a copy of an order of the Commissioner, the head of the public body concerned shall comply with the order unless an application for judicial review of the order is made before that period ends.
Judicial review	(2) If an application for judicial review is made before the end of the period referred to in subsection (1), the order of the Commissioner is stayed until the application is dealt with by the court.

Division 2
Disclosure to Commissioner

Disclosure to Commissioner	69. (1) An employee of a public body may disclose to the Commissioner any information that the employee is required to keep confidential and that the employee, acting in good faith, believes <ul style="list-style-type: none"> (a) ought to be disclosed by a head under section 30; or (b) is being collected, used or disclosed in violation of Part II.
Review	(2) The Commissioner shall investigate and review any disclosure made under subsection (1).
Identity	(3) If an employee makes a disclosure under subsection (1), the Commissioner shall not disclose the identity of the employee to any person without the employee's consent.
Liability to prosecution, employee	(4) An employee is not liable to a prosecution for an offence under any Act <ul style="list-style-type: none"> (a) for copying a record or disclosing it to the Commissioner; or (b) for disclosing information to the Commissioner, unless the employee acted in bad faith.

(5) A public body or person acting on behalf of a public body shall not take any adverse employment action against an employee because the employee, acting in good faith,

Discrimination
against employee
disclosing
information

(a) has disclosed information to the Commissioner under this section; or

(b) has exercised or may exercise a right under this section.

(6) Every person who violates subsection (5) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

Penalty

(7) In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 53, 56, 63, 64 and subsections 66(1), (2), (3)(a) to (d), (4) and (5), and sections 54, 55 and 57 apply.

Powers of
Commissioner

PART V GENERAL PROVISIONS

70. Where this Act requires any notice or other document to be given to a person, it is to be given

Manner of giving
notice

(a) by sending it to that person by prepaid mail to the last known address of that person;

(b) by personal service;

(c) by substituted service if so authorized by the Commissioner; or

(d) by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system.

71. (1) Any right or power conferred on an individual by this Act may be exercised

Exercise of rights
by other persons

(a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

(b) if a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;

(c) if a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;

(d) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor;

(e) if the individual has appointed a proxy to make decisions on his or her behalf, by the proxy if the exercise of the right or power relates to the powers and duties of a proxy conferred by the *Consent*

to Treatment and Health Care Directives Act R.S.P.E.I. 1988, Cap. C-17.2; or

(f) by any person with written authorization from the individual to act on the individual's behalf.

Notice	(2) Any notice required to be given to an individual under this Act may be given to the person entitled to exercise the individual's rights or powers referred to in subsection (1).
Delegation by the head of a public body	72. (1) The head of a public body may delegate to any person any duty, power or function of the head under this Act, except the power to delegate under this section.
Delegation to be in writing	(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate
Records available without request	73. The head of a public body may specify categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.
Fee	(2) The head of a public body may require a person who asks for a copy of an available record to pay a fee to the public body, unless such a record can otherwise be accessed without a fee.
General discretion	(3) Subsection (1) does not limit the discretion of the Government of Prince Edward Island or a public body to release records that do not contain personal information.
Protection of public body from legal suit	74. No action lies and no proceeding may be brought against the Crown, a public body, the head of a public body, or any person acting for or under the direction of the head of a public body for damages resulting from <ul style="list-style-type: none"> (a) the disclosure of or failure to disclose, in good faith, all or part of a record or information under this Act or any consequences of that disclosure or failure to disclose; or (b) the failure to give a notice required under this Act if reasonable care is taken to give the required notice.
Offences	75. (1) A person shall not wilfully <ul style="list-style-type: none"> (a) collect, use or disclose personal information in violation of Part II; (b) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act; (c) obstruct the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;

(d) fail to comply with an order made by the Commissioner under section 66; or

(e) destroy any records subject to this Act with the intent to evade a request for access to the records.

(2) A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000. Penalty

76. (1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations. Fees

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy. Personal information

(3) If an applicant is required to pay fees for services under subsection (1), the public body shall give the applicant an estimate of the total fee before providing the services. Estimate

(4) The head of a public body, or the Commissioner at the request of an applicant, may excuse the applicant from paying all or part of a fee if, in the opinion of the head or the Commissioner, as the case may be, Waver of fees

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment; or

(b) the record relates to the matter of public interest, including the environment or public health or safety.

(5) The fees referred to in subsection (1) shall not exceed the actual costs of the services. Fee not to exceed actual cost

77. The Lieutenant Governor in Council may make regulations, including the designation of public bodies under this Act. Regulations

78. This Act applies to any record in the custody or under the control of a public body regardless of whether it comes into existence before or after this Act comes into force. Application of this Act

79. Schedule A to the *Financial Administration Act R.S.P.E.I. 1988, Cap. F-9* is amended by the addition of the words "Office of the Information and Privacy Commissioner". Consequential amendment

80. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council. Proclamation

CHAPTER 37

(Bill No. 47)

**Freedom of Information and Protection of
Privacy Act (No. 2)**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	April 24, 2001
<i>2nd Reading:</i>	April 25, 2001
<i>To Committee:</i>	April 25 & 26, 2001
<i>Reported:</i>	April 26, 2001
<i>3rd Reading and Pass:</i>	May 4, 2001
<i>Assent:</i>	May 15, 2001

Hon. Jeffrey E. Lantz
Attorney General

GOVERNMENT BILL