



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

Order No. FI-15-008

Re: Department of Finance

October 20, 2015

Prince Edward Island Information and Privacy Commissioner

Karen A. Rose

Summary: An applicant sought a review of a request for access to a record held by the Department of Finance (“the Public Body”), being an email directing the Property Tax Records office to change a mailing address of property tax bills for properties of which the Applicant is joint owner. The Public Body provided the applicant with a copy of the email, severing out certain third party personal information. During the course of the review, the Public Body decided to disclose some further information in the email, as the Public Body determined that disclosure would not constitute an unreasonable invasion of the third party’s personal privacy. The name and email address of a third party remained severed from the email. The Commissioner found that the name and email address of the third party are personal information of the third party, and disclosure would constitute an unreasonable invasion of the third party’s personal privacy, in accordance with section 15 of the *Freedom of Information and Protection of Privacy Act*. The decision of the head of the Public Body was confirmed.

- Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, ss. 1(i), 7, 15, 28, 37, 65, 68(1.1)
- Decisions Considered:** Order No. 03-003, *Department of Tourism, Re*, 2003 CanLII 52560 (PE IPC)
Order No. FI-15-005, *Department of Health and Wellness, Re* (31 August 2015), Charlottetown FI-15-005 (PE IPC)
Order MO-3140, *Niagara (Regional Municipality)(Re)*, 2014 CanLII 79320 (ON IPC)
Order F2004-004, *Alberta Learning, Re* (10 May 2004), Edmonton Review Numbers 2576, 2577 and 2633 (AB IPC)
Order F2008-016, *Edmonton Police Service, Re* (23 December 2008), Edmonton Case File Number F4070 (AB IPC)
Order F2008-028, *Alberta Employment and Immigration, Re* (16 July 2009) Edmonton Case File Number F2872 (AB IPC)
Order F2012-06, *Alberta Innovates-Technology Futures, Re* (30 March 2012) Edmonton Case File Numbers F4743 F4762 (AB IPC)
Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC)
- Other Resources Cited:** Phoenix Strategic Perspectives Inc., *2014 Survey of Canadians on Privacy, December 2014*, online: Office of the Privacy Commissioner of Canada
<https://www.priv.gc.ca/information/por-rop/2015/por_2014_12_e.pdf>

I. BACKGROUND

- [1] An Applicant made a request pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01 (the “FOIPP Act”), to a department formerly referred to as the Department of Finance, Energy and Municipal Affairs, and now referred to as the Department of Finance (the “Public Body”), for access to the documentation that was required to change the mailing address for tax bills associated with properties of which the Applicant is a joint owner.

[2] The Public Body found one responsive record to the access request, being an email from a third party (“the Third Party”) confirming telephone instructions for the Public Body to change the billing address for three property tax numbers. The Public Body gave written notice of the access request to third parties affected by the request, as required by section 28 of the *FOIPP Act*. The Public Body advised the third parties of their right to consent to disclosure, or to make representations explaining why the information should not be disclosed. The third parties did not provide the Public Body with consent to disclose the information.

[3] The Public Body gave the Applicant partial access to the email sent by the Third Party, and relied on section 15 of the *FOIPP Act* for severing information it considered to be personal information, the disclosure of which would be an unreasonable invasion of the Third Party’s personal privacy. The severed information includes the following:

- 1) Name of the Third Party
- 2) Email address of the Third Party
- 3) Parcel number of property owned jointly by the Applicant and a third party; and
- 4) Name and address of the other joint property owner.

[4] The Applicant requested a review of the Public Body’s decision, expressing a desire for the complete email. During the course of the review, the Public Body reconsidered its original decision and released to the Applicant the following information in the email, on the basis that disclosure of this information would not constitute an unreasonable invasion of the personal privacy of a third party:

- 1) Parcel number of property owned jointly by the Applicant and a third party; and
- 2) Name and address of the other joint property owner.

[5] The Public Body maintains that the Third Party's name and email address is personal information of the Third Party, the disclosure of which would be an unreasonable invasion of the Third Party's personal privacy.

II. RECORD

[6] The record subject to this review is an email from the Third Party requesting that the Public Body change the mailing address of property tax bills for properties to which the Applicant is a joint owner ("the Record"). The information at issue in the Record is the name and email address of the Third Party ("the information at issue").

III. ISSUE

[7] The issue being addressed in this order is as follows:

Was the head of the Public Body correct in finding that the name and email address of the Third Party, being the information at issue in the Record, is personal information that, if disclosed, would constitute an unreasonable invasion of the Third Party's personal privacy, pursuant to section 15 of the *FOIPP Act*?

IV. BURDEN OF PROOF

[8] The burden of proof is outlined in section 65 of the *FOIPP Act*. Pursuant to subsection 65(3), in an inquiry about a public body's decision to give an applicant access to all or part of a record containing information about a third party, the burden of proof ordinarily lies with the third party. However, if the information at issue is personal information, the burden of proof lies with the applicant. Thus, given the findings below regarding personal information, the Applicant bears the burden of proof in this review, that disclosing the personal information would not be an unreasonable invasion of the Third Party's personal privacy.

V. ANALYSIS OF THE ISSUE

Section 15, Disclosure harmful to personal privacy

- [9] The submissions of both parties are succinct in this review. The head of the Public Body relies on section 15 of the *FOIPP Act* in refusing the Applicant access to the information at issue, stating that without the consent of the Third Party, it is obligated to withhold the information at issue. The Applicant states that, as a joint property owner, it is the Applicant's right to have the name and email address of the individual who instructed the Public Body to send documents with the Applicant's name to an address unknown to the Applicant, without the Applicant's authorization.
- [10] Subsection 15(1) of the *FOIPP Act*, *supra*, relied upon by the Public Body, states:
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.
- [11] Section 15 of the *FOIPP Act* is a mandatory exception. A public body is not permitted to disclose personal information of a third party if the disclosure would be an unreasonable invasion of the third party's personal privacy. As such, it is my duty to analyze the information at issue in light of section 15.
- [12] Order No. 03-003, *Department of Tourism, Re*, 2003 CanLII 52560 (PE IPC), which has been relied on in many subsequent orders of this office, establishes a two-step process to be followed when applying the exception of section 15 of the *FOIPP Act* [page 5]. More recently, Order No. FI-15-005, *Department of Health and Wellness, Re* (31 August 2015), Charlottetown FI-15-005 (PE IPC), also describes the test, commencing at

paragraph [83], as follows:

- [83] In the first step, it should be determined whether the information at issue is personal information, pursuant to clause 1(i) of the *FOIPP Act*. If the information at issue is not personal information, section 15 will not apply, because there would be no unreasonable invasion of personal privacy.
- [84] In step two, if the information at issue is found to be personal information, it must be decided whether disclosure of the personal information would constitute an unreasonable invasion of personal privacy. This analysis may involve the other subsections of section 15 of the *FOIPP Act*, as follows:
- (a) If a party wishes to raise subsection 15(2), it should be dealt with first. This is a deeming provision, so that certain circumstances are deemed not to be an unreasonable invasion of a third party's personal privacy. If one of the exceptions in subsection 15(2) is found to apply, the analysis is at an end, and the information should be disclosed. In the review before me, no party has raised any clause of subsection 15(2), nor have I identified any, based on the evidence and the Record at issue itself, that apply.
 - (b) The next analysis involves subsection 15(4), and is only reached if subsection 15(2) does not apply. Subsection 15(4) contains examples of circumstances that are presumed to be an unreasonable invasion of privacy. If one or more of the presumptions listed in subsection 15(4) applies to the information at issue, then disclosure of that information is presumed to constitute an unreasonable invasion of privacy of the third party to whom the information relates. Despite any presumptions, however, a factor under subsection 15(5), or a combination of factors, including the other circumstances listed below, may rebut the presumption(s), and lead to disclosure of the information.
 - (c) In all cases, even if no presumptions of subsection 15(4) apply, all relevant factors favoring disclosure must be

balanced against those favouring nondisclosure, pursuant to subsection 15(5), so that a decision can be made regarding whether disclosure would constitute an unreasonable invasion of a third party's personal privacy.

Step One: *Is the information at issue personal information, as defined at clause 1(i) of the FOIPP Act?*

[13] The definition of personal information is found at clause (1)(i) of the *FOIPP Act*. Of the nine described types listed, subclause 1(i)(i) is relevant to this review in relation to the information at issue, as follows:

1. In this Act

...
(i) "personal information" means recorded information about an identifiable individual, including

...
(i) the individual's name, home or business address or home or business telephone number,

[14] The information at issue is the Third Party's name and email address. Based on the definition above, it is clear that the Third Party's name is personal information under subclause 1(i)(i) of the *FOIPP Act*. Although an email address is not specifically listed under clause 1(i), I find that it is recorded information about an identifiable individual. This finding corresponds with previous findings of this office, and decisions of other Information and Privacy Commissioners across the country [see Ontario Order MO-3140, *Niagara (Regional Municipality)(Re)*, 2014 CanLII 79320 (ON IPC) at para 13 and 23; also Alberta Orders F2004-004, *Alberta Learning, Re* (10 May 2004), Edmonton Review Numbers 2576, 2577 and 2633 (AB IPC) at para 23; F2008-016, *Edmonton Police Service, Re* (23 December 2008), Edmonton Case File Number F4070 (AB IPC) at para

75-76; F2008-028, *Alberta Employment and Immigration, Re* (16 July 2009) Edmonton Case File Number F2872 (AB IPC) at para 59-61; and F2012-06, *Alberta Innovates-Technology Futures, Re* (30 March 2012) Edmonton Case File Numbers F4743 F4762 (AB IPC) at para 77].

[15] Further, I find that a personal email address falls under the same category of personal information as a home address and home phone number; it is basic contact information of an identifiable individual. This finding, that an email address constitutes contact information, is supported by subclause 37(1)(z.1)(i) of the *FOIPP Act*, which states as follows:

37. (1) A public body may disclose personal information only

...

(z.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure

(i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and email address, and

(ii) does not reveal other personal information about the individual or personal information about another individual; [emphasis added]

Therefore, I find that both the Third Party's name and email address are personal information in accordance with clause 1(i) of the *FOIPP Act*.

Step Two: *Would disclosure of the personal information constitute an unreasonable invasion of personal privacy?*

Step 2(a):

[16] As noted above, subsection 15(2) of the *FOIPP Act* describes circumstances in which disclosure is not an unreasonable invasion of a third party's personal privacy. No

provision under subsection 15(2) has been raised by the Applicant, nor has the Applicant raised any facts or issues that would lead me to conclude that this subsection applies. I have determined that subsection 15(2) does not apply to the information at issue in the Record. Thus, I must now consider subsection 15(4) of the *FOIPP Act*.

Step 2(b):

[17] Subsection 15(4) of the *FOIPP Act* describes circumstances when disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. I have determined that the relevant provision of subsection 15(4) to the information at issue in the Record is as follows:

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

...

(g) the personal information consists of the third party's name where

(i) it appears with other personal information about the third party, or

[18] *Clause 15(4)(g), Presumption:* The personal information at issue is the Third Party's name, together with the Third Party's email address, which satisfies subclause 15(4)(g)(i) of the *FOIPP Act*, and, therefore, is sufficient to raise the presumption of clause 15(4)(a).

[19] Having determined that the information at issue is presumed to be an invasion of personal privacy if disclosed, I must consider the relevant factors that support disclosure of the information at issue, and balance them against the relevant factors that support nondisclosure, to determine whether the presumption is rebutted. Such factors are set out in subsection 15(5) of the *FOIPP Act*.

Step 2(c):

[20] Subsection 15(5) of the *FOIPP Act* lists factors to be considered in determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy. I have determined that the following factors may have relevance to this review:

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

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

...

(c) the personal information is relevant to a fair determination of the applicant's rights;

...

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

[21] To continue my analysis, I first consider the factors under subsection 15(5) of the *FOIPP Act* that may rebut the presumption which, as determined above, include clauses 15(5)(a), (c), (e), and (f):

- The Public Body discussed with the Applicant the error it had made by updating the mailing address to property tax bills without consulting the Applicant, who is joint owner of the parcels. The Public Body also corrected the error by ensuring that the Applicant's property tax bills resumed their delivery to the Applicant's original mailing address. Disclosing the name and email address of the Third Party would not contribute any further to public scrutiny of the Public Body's error. The Applicant has been given access to the body of the email message, making it clear how the direction was made to change the mailing address [s. 15(5)(a)];

- The Applicant submits that the Applicant has a right to receive the name and email address of the person who effected the change in the mailing address of the Applicant's documents to an address unknown to the Applicant without the Applicant's authorization. The Public Body has admitted and corrected its error; therefore, disclosing the name and email address of the Third Party would not contribute to any further determination of the Applicant's rights [s. 15(5)(c)];
- There is no evidence that the Third Party will be exposed unfairly to financial or other harm if the personal information is disclosed to the Applicant. However, there is also no control over the resulting effects of disclosure. Once the Third Party's personal information is disclosed, the damage cannot be reversed. There is little to prevent the Applicant from using or disclosing this personal information at will [s. 15(5)(e)]; and
- Although there is no direct evidence that the personal information was supplied to the Public Body in explicit confidence, it is reasonable to find that the Third Party sent the email with an expectation that the contact information was to be held in confidence. Any other conclusion would not be reasonable: private citizens would, by virtue of sending a communication to a public body by email, risk their personal contact information being disclosed without their consent. [s. 15(5)(f)].

[22] Case law has established additional factors that I must consider that are not specifically set out in the *FOIPP Act*, but that have been raised in previous orders of this office, including Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC) at para 89, set out below. The factors that I have determined to be relevant to this review are indicated by an asterisk.

[89] **Subsection 15(5):** Under subsection 15(5), before making its decision, a public body must still consider the relevant factors in favour of disclosure and balance them against those favoring nondisclosure. The factors set out in subsection 15(5) should be considered, but this list is not exhaustive. Other relevant factors may be considered, such as the following:

(i) disclosure of the information would promote the objective of

providing citizens of the province with an open, transparent and accountable government;

* (ii) a third party's refusal to consent to the release of their personal information;

* (iii) the fact that an applicant is not required to maintain the confidentiality of personal information once it has been released to them;

(iv) if it is not possible for a public body to notify a third party under section 38;

(v) the fact that personal information is available to the public;

* (vi) the fact that the applicant was previously given some other information;

(vii) whether, under the circumstances, it is practicable to give notice to the third parties is a relevant circumstance that weighs in favour of not disclosing the personal information of those third parties;

(viii) the fact that the names of individuals requested by the applicant were provided solely in their professional capacity;

(ix) the fact that the names of individuals requested by the applicant were contained in letters sent to the applicant's solicitor;

(x) if disclosure of the information would affect the applicant's career opportunities, it is a relevant circumstance that weighs in favour of disclosing a third party's personal information;

(xi) where a person who has obtained information in confidence uses that information as a springboard for activities detrimental to the person who made the confidential communication;

(xii) the existence of a power imbalance between the parties;

(xiii) the nature and content of the records; and/or

* (xiv) the fact that the applicant has no pressing need of the third party personal information. [*French v. Dalhousie University* [2003] N.S.J. No. 44, (N.S.C.A.), and *Dickie v. Nova Scotia* [1999] N.S.J. No. 116 (N.S.C.A.)]

[23] I have determined that factors (ii) and (iii) above are relevant to this analysis, as the Third Party has refused to consent to the release of the information at issue [factor (ii)], and the Applicant is not required to maintain the confidentiality of the information at issue, once it has been released [factor (iii)]. Given the concerns that Canadians currently have for the protection of their personal privacy, these factors weigh heavily in favour of withholding the information at issue. It is also notable that, in a recent survey commissioned by the Privacy Commissioner of Canada, nine in ten respondents expressed some level of concern about their privacy, and 56% of Canadians reported that they are concerned specifically about posting information relating to their contact information¹.

[24] I have also considered factors (vi) and (xiv) above. The Applicant has been provided with a copy of the email requesting the change of mailing address, with only the sender's name and email address severed. The Public Body has thus been as open and transparent as it can be without violating the privacy of the Third Party. The Applicant does not have a pressing need for the Third Party's name and email contact. The email makes it clear how the address change came about.

[25] I have carefully considered the information at issue in relation to the provisions of the *FOIPP Act* and the other relevant factors described above. Based on my analysis, I conclude that the *FOIPP Act's* subsection 15(4) presumption has not been rebutted, and that disclosing the information at issue in the Record, being the name and email

¹ Phoenix Strategic Perspectives Inc., *2014 Survey of Canadians on Privacy, December 2014*, online: Office of the Privacy Commissioner of Canada <https://www.priv.gc.ca/information/por-rop/2015/por_2014_12_e.pdf>

address of the Third Party, would be an unreasonable invasion of the Third Party's personal privacy, pursuant to section 15.

[26] I wish to note that, despite my findings, I empathize with the Applicant's circumstances. The Record originates from an issue relating to the Applicant's jointly held property. It may seem unjust to the Applicant that the Applicant is unable to discover the name and email address of the person who sent the email to the Public Body, effectively changing the address to where the Applicant's property tax bills would be sent. The Applicant submits,

I feel that I have been disrespected. . . . I feel very strongly that I should be provided with the information that I requested - name and email address. . . . I might also add that there has been no apology made for the error made by the property tax office.

[27] The subject of apology is something to be worked out between the Public Body and the Applicant. While an error was made by the Public Body, the head of the Public Body has not made an error under the *FOIPP Act*. Private citizens who correspond with public bodies have a reasonable expectation of confidentiality of their contact information. Because no such error has been made, it is not within my jurisdiction to order an apology. The head of the Public Body has properly withheld the personal information of the Third Party. Disclosing the Third Party's personal information to the Applicant would violate the *FOIPP Act*, thus compounding the initial administrative error of the Public Body.

VI. SUMMARY OF FINDINGS

[28] My findings in this review are as follows:

1.1 I find that the information at issue in the Record, being the name and email

address of the Third Party, is personal information of the Third Party, in accordance with clause 1(i) of the *FOIPP Act*.

1.2 I find that disclosure of the information at issue in the Record would constitute an unreasonable invasion of the Third Party's personal privacy, pursuant to section 15 of the *FOIPP Act*.

VII. ORDER

[29] Based on the above findings, I confirm the decision of the head of the Public Body to withhold the information at issue in the Record, pursuant to section 15 of the *FOIPP Act*, as the name and email address of the Third Party are personal information, the disclosure of which would be an unreasonable invasion of personal privacy of the Third Party.

[30] I thank all parties for their participation in this review. According to subsection 68(1.1) of the *FOIPP Act*, the Public Body shall not take any steps to comply with this order until the end of the time for bringing an application for judicial review of the order under section 3 of the *Judicial Review Act*, R.S.P.E.I. 1988, c. J-3.

Karen A. Rose
Information and Privacy Commissioner