



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

**Order No. FI-15-010**

**Re: Department of Justice and Public Safety**

**Prince Edward Island Information and Privacy Commissioner**

**Karen A. Rose**

**November 30, 2015**

**Summary:** An applicant requested access to information relating to suicides that have occurred in any publicly funded health facility over the past ten years, broken down by year of death, type of health facility, name of health facility, and city or town in province. The public body disclosed the number of suicides, and the name of the health facility at which they occurred, withholding the year of the deaths, and claiming that disclosure of that detail could reasonably identify the individuals involved, and thus constitute an unreasonable invasion of their personal privacy. The applicant requested a review of the public body's decision.

The Commissioner found that disclosure of the year of suicide, combined with the name of the publicly funded health facility, is not personal information. In the alternative, if it were personal information, the Commissioner found that disclosure would not constitute an unreasonable invasion of a third party's personal privacy, in accordance with section 15 of the *Freedom of Information and Protection of Privacy Act*. The Commissioner further found that the public body had fulfilled its duty to assist the applicant under section 8 of the *FOIPP*

Act in every respect except one: the public body had interpreted the applicant's request too narrowly. The Commissioner ordered the public body to provide the applicant with access to the year of death for the two suicides identified.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, ss. 1(i), 7, 8, 9, 15, 65, 66, 68(1.1)

**Decisions Considered:** Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC)  
Order No. 03-003, *Department of Tourism, Re*, 2003 CanLII 52560 (PE IPC)  
Order No. FI-15-005, *Prince Edward Island (Health and Wellness) (Re)*, 2015 CanLII 66636 (PE IPC)  
Order No. 261-1998, *School District No. 35 (Langley); School District No. 75 (Mission); School District No. 43 (Coquitlam); School District No. 38 (Richmond); School District No. 41 (Burnaby); School District No. 36 (Surrey); and School District No. 39 (Vancouver), Re*, 1998 CanLII 2828 (BC IPC)  
Order F10-29, *British Columbia (Education) (Re)*, 2010 BCIPC 41 (CanLII)  
Order PO-3233, *Carleton University (Re)*, 2013 CanLII 46618 (ON IPC)  
Order F2011-001, 2011 CanLII 96578 (AB OIPC)  
Order No. FI-10-005, *Prince Edward Island (Department of Education and Early Childhood Development) (Re)*, 2010 CanLII 97256 (PE IPC)

**Other Resources Cited:** Department of Health and Wellness, *Suicide and Mental Health in Prince Edward Island 2002-2011* (Charlottetown: Document Public Centre, October 2013), online: Department of Health and Wellness  
<<http://www.gov.pe.ca/photos/original/suicidetrends.pdf>>

## I. BACKGROUND

[1] An applicant ("the 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 the department presently referred to as the Department of Justice and Public Safety ("the Public Body"), for access to information on suicides that have occurred in any

publicly funded health facility over the past ten years, broken down by year of death, type of health facility, name of health facility, and city or town in province.

[2] During the review process, and after the Public Body provided the Applicant with the number of suicides within the requested time period, the Applicant narrowed her request to year of death, and name of health facility. The Public Body withheld the year of death from disclosure, pursuant to section 15 of the *FOIPP Act*, on the basis that the information is personal information, the disclosure of which would be an unreasonable invasion of third party personal privacy. The Public Body claims that disclosing the details could reasonably identify the deceased individuals.

[3] The Applicant requested a review of the Public Body's decision, submitting that the information is in the public interest, as it pertains directly to the safety record of P.E.I.'s health facilities, and is a matter vital to the citizens of the province. The Applicant contends that the number of deaths, year of death, and name of the health facility where the death occurred, would not identify an individual, given that there may be many deaths in a hospital in any given year. The Applicant points out that some other provinces with similar obligations to protection of privacy have provided the information requested, in full.

## **II. INFORMATION AT ISSUE**

[4] The Public Body has created a record containing the information requested by the Applicant. The information in the record subject to this review ("the information at issue") is the year of death relating to two suicides that have occurred at publicly funded health institutions over a ten year period, between 2004 and 2014. As will be discussed later in this decision, it is notable that three suicides have occurred at publicly funded health facilities during the ten year period requested. The Public Body has

provided to the Applicant both items of information requested relating to the third suicide (year of death and name of health facility), as the information had already been published.

### **III. ISSUES**

[5] The issues addressed in this order are as follows:

1. Was the head of the Public Body correct in finding that the year of death, when combined with name of health facility, is personal information, the disclosure of which would be an unreasonable invasion of a third party's personal privacy, pursuant to section 15 of the *FOIPP Act*?
2. Does subsection 30(1) of the *FOIPP Act* apply to the information at issue, such that the head of the Public Body should, without delay, disclose it to the Applicant? and
3. Did the head of the Public Body fulfill her duty to assist the Applicant, by responding to the access request openly, accurately, and completely, pursuant to subsection 8(1) of the *FOIPP Act*?

### **IV. BURDEN OF PROOF**

#### ***Section 15 of the FOIPP Act:***

[6] Subsection 65(2) of the *FOIPP Act, supra*, states that an applicant holds the burden of proof if information determined to be personal information about a third party is withheld by a public body. If the information at issue is found to be personal information of a third party, the applicant must show that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy:

65. (1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the

record.

(2) Notwithstanding subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

***Section 8 of the FOIPP Act:***

- [7] Although an applicant must have a basis for requesting a review of a public body's duty to assist, the burden of proof under section 8 of the *FOIPP Act* lies with the public body. [Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC), at para 17-18].

**V. ANALYSIS OF THE ISSUES**

**Issue One: Was the head of the Public Body correct in finding that the year of death, when combined with name of health facility, is personal information, the disclosure of which would be an unreasonable invasion of a third party's personal privacy, pursuant to section 15 of the *FOIPP Act*?**

- [8] As will be set out below, the issue for determination in this review is unique from other orders of this office relating to section 15 of the *FOIPP Act*, as it is the Public Body's contention that, while disclosure of the year of death may not, on its own, constitute an unreasonable invasion of a third party's personal privacy, the combination of the disclosure of the year of death with the name of the health facility already disclosed by the Public Body, would lead to an unreasonable invasion of the personal privacy of the individual to whom the information relates.

- [9] Subsection 15(1) of the *FOIPP Act*, *supra*, 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.

[10] Section 15 of the *FOIPP Act* is a mandatory exception, so that 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. It is incumbent upon me to analyze the information at issue in light of section 15.

[11] Order No. 03-003, *Department of Tourism, Re*, 2003 CanLII 52560 (PE IPC), which has been relied on in many orders of this office, established that a two-step process should be followed before reaching a conclusion, in order to apply the exception of section 15 of the *FOIPP Act* accurately. A more recent decision, Order No. FI-15-005, *Prince Edward Island (Health and Wellness) (Re)*, CanLII 66636 (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?

[12] The first of the two-step process, noted above, is to determine whether the information at issue is personal information, which is defined at clause 1(i) of the *FOIPP Act* as being recorded information about an identifiable individual. Clause 1(i) expands on the definition, and provides a description of nine types of information that are included in the definition of personal information:

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,
- (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;

[13] As noted above, the information at issue is the year of death relating to two suicides that have occurred in publicly funded health facilities over a ten year period. The names of the deceased individuals are not at issue, nor was this information requested by the Applicant. It is also notable that the exact dates of death are not at issue. The Applicant requests only the year. Based on the definition of personal information, it is clear that the year of death (the year in which a suicide occurred) does not constitute personal information under clause 1(i) of the *FOIPP Act*. The year of death, on its own, is not information about an identifiable individual; however, this finding does not end the matter. I must consider the Public Body's submissions relating to how this information may constitute personal information when combined with other information disclosed to the Applicant; I must also consider the Applicant's submissions regarding how it does not.

[14] In its initial submissions, the Public Body states that it opted not to provide other

information to the Applicant, aside from the number of suicides over the ten year period, because providing it “could reasonably result in the identification of the people involved.” The Public Body notes, based on information from the Coroner's office, the records reveal that 141 suicides occurred in this province over ten years. At the time of the Public Body's submission, the Coroner had identified that two of these 141 suicides had occurred at a publicly funded health facility. As noted below, during the course of this review, it was later determined that three suicides had occurred at a publicly funded health facility during the ten year period at issue.

[15] It is the submission of the Public Body that the information at issue is personal information:

The records at issue contain medical information. The public body is concerned that details about these suicides, given the small number of suicides occurring in a small number of health facilities in a small population, could reasonably be expected to identify the actual individuals involved.

[16] The Applicant does not agree with the Public Body's submission. The Applicant states that since she has only asked for the year of death and the name of the publicly funded health facility, the risk of identifying the deceased individuals is very low, if not impossible. In her two submissions, the Applicant addresses the Public Body's argument under section 15, as follows:

. . . I work as a researcher for a living and have searched for information on suicides at this hospital through resources available to me. I cannot find any information beyond that of the 1999 suicide death. There are other reports of deaths at this hospital but the way the person died is unstated.

. . . if someone thought they could identify the individual who died from suicide after the release of the year of these two deaths they would certainly only be making a random guess and would have very little ways

of verifying this guess.

The only way I see to identify an individual would be to contact the family of every publicized death at the hospital in the year the suicide occurred and ask the family whether or not their deceased loved one committed suicide in the hospital. This would mean that the family would be the one to reveal this information if they chose to, the information I am requesting would not be enough. I find it unlikely that someone would do this and even if they did there is a good chance that the death would have not been mentioned anywhere publicly in a way that would allow the person trying to find this information out to find the name of the deceased and their family. For example, there may have been an obituary of the individual in the year of their death but it would likely not include that the person died in a hospital, which would mean that the researcher in this scenario would never know to contact that family.

. . . I would argue that for the release of this information to be an invasion of a third party's privacy, the individual would have to be identified. The release of the medical history, a death by suicide, on its own does not invade the privacy of an individual. As previously discussed I believe finding the individual associated with these deaths would be a challenge given that there are multiple deaths in this hospital each year and would require further information to be known.

[17] In initial submissions, the Applicant points out that some other provinces have provided the information, as follows:

Many provinces with similar freedom of information laws to PEI have released the information we are requesting in full. Provinces which have already provided this information in full include British Columbia, Quebec, Manitoba and New Brunswick. This information has been released even when there has only been one reported inpatient suicide in a small community for example, information was given on a death in Portage la Prairie, Manitoba with a population of approximately 20,000 and on a death in Nelson, BC with a population of about 10,000 people.

[18] In later submissions, the Applicant further states:

I would like to again point to the other provinces with similar

requirements to protect personal information who have provided me the full information I am looking for; British Columbia, Quebec, New Brunswick, and Manitoba and Nunavut. In the cases of the remaining provinces several have not been able to identify the information I am looking for because of the system in which they keep these records which is why I have not yet received their statistics yet.

[19] In general, statistical information is not considered to be personal information, as it is not about an identifiable individual. However, exceptions have been made from this general rule. The Information and Privacy Commissioner of British Columbia discussed a possibility of re-identification of individuals from statistical information where the pool of information of the subject area is small, in Order No. 261-1998, *School District No. 35 (Langley)*; *School District No. 75 (Mission)*; *School District No. 43 (Coquitlam)*; *School District No. 38 (Richmond)*; *School District No. 41 (Burnaby)*; *School District No. 36 (Surrey)*; and *School District No. 39 (Vancouver)*, Re, 1998 CanLII 2828 (BC IPC), at page 12, as follows:

It is customary in statistical work, such as that done by Statistics Canada, to refuse to disclose personal information in cells in a table that contain fewer than five persons, for example. Some Districts raised the issue of not releasing information about one or two students in small schools, or in a specific grade, who might be easily identified by other families in a given school district. I think that this is a practical issue that needs to be addressed.

[20] In the British Columbia decision, noted above, the applicant had requested data regarding the administration of Ritalin medication to elementary school students. The information at issue, which was withheld by the school boards, was the number and gender of students in each school who receive Ritalin during school hours. The Commissioner found that the information at issue should be disclosed, subject to the guideline noted above, where the cell contains fewer than five persons, to avoid re-identification. In my view, re-identification is not a reasonable concern in the review before me, as is discussed more fully below.

[21] The Public Body's concern for the potential of the statistical information in this request to result in invasion of privacy led it to canvas opinions from other bodies:

Prior to making a decision to provide the applicant with the number of suicides only, we canvassed Health PEI, the Canadian Institute for Health Information (CIHI), and the Public Service Commission (PSC) as to their threshold or cut off at which they would not release information which may lead to identifying people the statistics are about. Health PEI indicated their cutoff would be five; CIHI advised when the cell size count is less than five and PSC would cut off at 20. We considered the first two to be more similar to the personal medical information at issue.

[22] A more recent British Columbia decision, Order No. F10-29, *British Columbia (Education) (Re)*, 2010 BCIPC 41 (CanLII), discusses this "fewer than five" policy, at paragraph [31], as follows:

[31] . . . In other words, the Ministry is required to withhold from disclosure to the applicant all of the individual student data about those students who were part of a population of fewer than 5 students in a given grade in a given school. If there were only 4 students in a particular grade at a certain school, the data associated with those students will not be provided to the applicant. If there were five or more students in the grade at that school, the data with respect to those students will be provided to the applicant. While not a direct application of the Ministry's masking policy, the Order was, like the masking policy itself, aimed at minimizing the risk that individual student results could be identified by withholding information associated with smaller populations.

[23] It is unclear which number the Public Body is using as its representative population in this review. It is the Public Body's evidence that 141 suicides have occurred in this province over the ten year period requested. Three of these suicides occurred in two publicly funded health facilities. In my view, identifying which of the 141 individuals committed suicide at the health facility disclosed by the Public Body would be a very difficult task. Similarly, if the representative population is the number of patients at a given health facility, the risk of identification would be extremely low. In any event,

neither of these population sizes would be less than five, so that, even if I were to accept the “fewer than five” rule, the Public Body’s suggested approach is not applicable to the circumstances of this review.

[24] A blanket rule of withholding statistics when the cell number is fewer than five is not supported by clause 1(i) of the *FOIPP Act*. Whether an individual can be identified is a question to be determined on the unique facts of every access request. In Order PO-3233, *Carleton University (Re)*, 2013 CanLII 46618 (ON IPC), the Ontario Information and Privacy Commissioner considered the use of small cell counts:

[44] However, I have taken into account the flexibility in the concept of “small cell count” in reaching my decision not to impose a threshold in this appeal. As described by former Senior Adjudicator John Higgins in Order PO-2811:

the term ‘small cell’ count refers to a situation where the pool of possible choices to identify a particular individual is so small that it becomes possible to guess who the individual might be, and the number that would qualify as a ‘small cell’ count varies depending on the situation.

As noted above, the pool of possible choices to identify the deceased third parties in this review is not small.

[25] As the Ontario adjudicator noted in Order PO-3233, *supra*, “[t]he question is whether it is reasonable to expect that an individual could be identified when the information at issue is combined with information from sources otherwise available” [para 36]. Upon careful review of the submissions of the parties, and of all of the information that may combine with the information at issue, I find that it is not reasonable to expect that an individual could be identified by disclosure of the information at issue.

[26] It is notable that, in Order No. F10-29, *supra*, at paragraph [34], the British Columbia

Information and Privacy Commissioner also distinguishes between a risk of re-identification and a reasonable expectation of re-identification. He states, “However, I do not think that the fact that there is some risk that this may occur means that there is reasonable expectation that it will occur.” I accept the Applicant’s submission that the potential for re-identification of individuals from the information at issue is extremely low. The Public Body has provided no particulars of how re-identification might reasonably be expected to occur.

[27] It is clear that the Public Body put considerable time into its conclusion that the information at issue is personal information within the meaning of clause 1(i) of the *FOIPP Act*; however, I disagree with the Public Body’s conclusion. I accept the submission of the Applicant that the information at issue, even when combined with the other information provided to the Applicant, does not constitute personal information. There may, indeed, be a method of determining the identity of the individual(s) who committed suicide at the publicly funded health facilities of the province of Prince Edward Island. The Applicant raised the possibility of interviews with family members, if family members could be found, or would be willing to respond to questions. However, such a determination would not be a result of the Public Body releasing the year of death; rather, it would be the result of research and investigation that is outside the parameters of the Applicant’s request for access.

[28] Despite my finding that the information at issue does not constitute personal information, and in the event that my finding is found by a higher authority to be in error, I will carry on with the second step of the section 15 analysis, whether disclosure of the information (if it were personal information) would constitute an unreasonable invasion of personal privacy of a third party.

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

[29] In Order No. FI-15-005, *supra*, I discussed all of the steps required in a section 15 analysis. For further detail, Order No. FI-15-005 may be referred to. In order to properly apply the clauses of section 15 of the *FOIPP Act*, I must first conclude that the information at issue constitutes personal information. Despite my finding that it does not, I will presume that it does, for the purposes of the section 15 analysis only.

[30] Firstly, subsection 15(2) of the *FOIPP Act* describes circumstances when disclosure is not an unreasonable invasion of a third party's personal privacy. I have determined that no provision under subsection 15(2) applies to the information at issue, and thus move on to consider subsection 15(4).

[31] 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, as has the Public Body, that the relevant clause of subsection 15(4) to the information at issue 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  
(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

[32] The information at issue relates to the year and location of two suicides. I find that suicide information relates to general cause of death, and corresponds to medical, psychiatric or psychological history, thus satisfying clause 15(4)(a) of the *FOIPP Act*, as set out above.

[33] Having determined, for the purposes of this analysis, that the information at issue is presumed to be an invasion of personal privacy if disclosed, I must consider the relevant factors that support the disclosure of the information at issue, and balance them against the relevant factors that support nondisclosure. These factors are set out in subsection 15(5) of the *FOIPP Act*.

[34] Subsection 15(5) of the *FOIPP Act* lists factors to be considered when 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 are relevant 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;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

...

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

[35] To continue my analysis, I will 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), (b), and (e).

*Clause 15(5)(a): Is disclosure desirable for the purpose of subjecting the activities of the Government of Prince Edward Island or a public body to public scrutiny?*

[36] The Applicant notes that, in 1999, a public inquiry was held in this province relating to a

suicide in a publicly funded health facility. The Applicant elaborates as follows:

This information is particularly relevant given a 1999 suicide death at the same hospital which led to a coroner's inquest which resulted in recommendations to prevent similar deaths. I believe it is in the public interest to know whether the coroner's recommendations prevented further deaths in the years after the 1999 death or not. It would also be interesting to know if perhaps recommendations were effective for many years and only recently have people been able to take their own lives in the care of this institution.

[37] The Applicant points out that this is not only an issue of public concern in Prince Edward Island, but also in other provinces:

Of course the year of death alone does not provide all the answers to these questions but providing this information to the public allows for scrutiny of this hospital which could lead to more conclusive research about the care of suicidal patients and suicide prevention.

A recent suicide death like this in an Ontario hospital has prompted the government here to look at medical secrecy, while the review is into a slightly different area I believe the spirit in which this review is being conducted also applies to PEI.

...

This recent prominent case of in hospital suicide in Ontario points to the public interest in learning more about how and why these in hospital suicide deaths occur.

[38] The submissions from the Applicant regarding public scrutiny are compelling. Indeed, it may be inferred that the provincial government in this province agrees with the goal of public scrutiny based on the following evidence provided by both parties:

1. An inquiry was conducted into a suicide in a publicly funded health facility in 1999, and recommendations were made for prevention; and

2. The Department of Health and Wellness issued a report in 2013 entitled "*Suicide and Mental Health in Prince Edward Island 2002-2011*"<sup>1</sup>, a copy of which was provided by the Public Body to the Applicant at the outset of her request.

[39] In my view, disclosure of statistical information that focuses on suicides in publicly funded health facilities is desirable for scrutinizing the operation of those facilities. The government, and the Public Body, are responsible for putting in place measures of prevention in such facilities. The information at issue may lead to re-examination of such strategies. This factor, combined with the above-noted evidence, heavily favors disclosure of the information at issue in this review.

*Clause 15(5)(b): Is disclosure likely to promote public health and safety or the protection of the environment?*

[40] The second factor that, in my view, favors disclosure of the information at issue, is that it would contribute to the promotion of public health and safety, in accordance with clause 15(5)(b) of the *FOIPP Act*, as it relates to publicly funded health facilities. The Applicant, in her submissions that the information at issue relates to public interest, states the following:

. . . The reason we believe this request is a matter of public interest is because it informs Canadians about the safety of hospitals and other publicly funded health facilities in relation to our growing awareness around mental health and suicide prevention. There are approximately 3,500 suicides in Canada a year.

If someone is suicidal and in crisis, they are often advised [to] seek help at a hospital. Family members caring for people with serious mental health issues are given the same advice. These families often feel a sense of relief when they finally pass the care of someone with a mental illness to a trained professional in a hospital setting. Unfortunately, the threat of suicide may be minimized in a hospital setting but it doesn't seem to

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<sup>1</sup> Department of Health and Wellness, *Suicide and Mental Health in Prince Edward Island 2002-2011* (Charlottetown: Document Public Centre, October 2013), online: Department of Health and Wellness <<http://www.gov.pe.ca/photos/original/suicidetrends.pdf>>

be eliminated. Through media articles and a study of formal death investigations and coroners' reports across the country, it's been documented that people have committed suicide in health facilities. Family members have told CTV's W5 in that these types of deaths are hugely shocking because they hoped their suicidal loved ones were in the safest place possible. The reasons behind what is often described in the academic literature as "inpatient suicides" are complex yet reveal a growing need for awareness and prevention of these tragic institutional deaths.

In the United States, research about inpatient suicides by groups like The Joint Commission has been able to identify concrete measures to prevent these deaths from happening, including simple precautions hospitals can take to improve safety for suicidal patients. Some researchers and advocates working in the field believe all of these deaths could be prevented with increased education in suicide prevention and assessment and by incorporating proven safety measures.

However in Canada there has been very little research on the topic and there are no centralized statistics on how often these deaths happen and where. Little is known about this issue nationally or provincially as evidenced by the challenge in collecting this information.

- [41] Disclosure of the information at issue to citizens of this province will promote public health and safety, because it will encourage discussion of the serious issue of suicides, generally, and, more specifically, what can be done to prevent the occurrence of suicides within publicly funded health facilities. In British Columbia Order No. 261-1998, *supra*, the applicant argued that disclosure of the statistics relating to students' Ritalin use was likely to promote public health and safety "for one of the most vulnerable groups in our society", and the Commissioner agreed [page 10]. In my view, a similar reasoning applies to the circumstances of this review. In the report "*Suicide and Mental Health in Prince Edward Island 2002-2011*", noted above, suicide was described as the tenth leading cause of death in 2009, and it was also suggested that there may be a tendency for under-reporting [page 9].

[42] I accept the Applicant's submission that hospitals are recommended as the best place for individuals in mental health crisis. In the report cited above, which covers the ten year period between 2002 and 2011, it is stated that six individuals died by suicide the same day that they were discharged from hospital. The role of publicly funded health care facilities in the prevention of suicides in this province is a public health issue worthy of discussion, and disclosing the information at issue would contribute to that discussion. As a result, this factor weighs in favor of providing the information at issue to the Applicant.

*Clause 15(5)(e): Will the third party be exposed unfairly to financial or other harm?*

[43] In its early submission, the Public Body showed concern for potential harm to the third parties from disclosing the two items of personal information combined: the name of the health facility and the year of death. The Public Body had formally asked the named health facility for its thoughts about harm if the Public Body was to consider disclosing more information to the Applicant. Although the Public Body did not provide information regarding the health facility's response, it did, subsequently, disclose one of the two items of requested information: the name of the health facility. In my view, this demonstrates a willingness by the Public Body to subject itself to scrutiny, but a concern for potential harm to victims of suicide from disclosing the information at issue.

[44] It has been established that deceased persons have an expectation of privacy, but that circumstances will determine whether such expectation is diminished. Clause 15(2)(i) of the *FOIPP Act* says it is not an unreasonable invasion of a third party's personal privacy if the personal information is about an individual who has been dead for 25 years or more. This is not the case in this review. However, by virtue of this clause, it may be inferred that deceased persons have an expectation of privacy before 25 years have passed. Despite the inference, Alberta Order F2011-001, 2011 CanLII 96578 (AB OIPC)

examines whether the disclosure of personal information of a deceased person is considered an unreasonable invasion of privacy. Starting at [para 29], the Adjudicator states:

[para 29] In my view, section 17(2)(i) acknowledges that some privacy interests may continue after the death of an individual, but that any such interests end, absolutely, after 25 years. Under section 17(5) then, relevant circumstances as to whether the presumption created by section 17(4) is rebutted when the personal information is about a deceased person, would include consideration of the kinds of privacy interests the deceased person had in the information at issue in his or her lifetime, the extent to which those interests continue to exist, whether the deceased's personal information is also the personal information of someone else, and whether there is another interest, such as a public interest, that may outweigh privacy interests or strengthen them.

[para 30] In Order M-50, in referring to factors relevant to determining whether it would be an unjustifiable invasion of personal privacy to disclose the personal information of an individual, the former Information and Privacy Commissioner of Ontario said:

In the circumstances of this appeal, I feel that one such unlisted factor is that one of the individuals whose personal information is at issue is deceased. Although the personal information of a deceased individual remains that person's personal information until thirty years after his/her death, in my view, upon the death of an individual, the privacy interest associated with the personal information of the deceased individual diminishes. The disclosure of personal information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of personal privacy if the person is deceased.

The former Information and Privacy Commissioner of Ontario considered that the fact that an individual is deceased is a factor to be weighed when deciding whether it would be an unreasonable or unjustifiable invasion of personal privacy to disclose personal information. In his view,

that an individual is deceased, while only one of several factors he considered in that case, was nevertheless a factor weighing in favor of disclosure. I agree with this analysis and share the view that individual privacy interests diminish after death. If privacy interests do not diminish following death and over time, it would be entirely arbitrary for the legislature to determine that privacy rights end after twenty-five years when they do not after twenty-four years and eleven months, for example. [underline emphasis added]

[45] In the review before me, if the deceased individual could be identified by the disclosure of the information at issue (which is only presumed for the purpose of this section 15 analysis), it is reasonable to conclude that their individual privacy would be affected. However, that is not to say that the invasion of privacy would be unreasonable in the circumstances. It is worthy of note that the information at issue does not involve such detailed medical history as diagnosis, or even manner of death. What would be revealed is that the individual died as a result of a suicide in a particular health facility. While this factor would favor withholding the information at issue from the Applicant, the desire for public scrutiny and the promotion of public health and safety would, in my view, outweigh this factor. Indeed, the very existence of public inquiries relating to such suicides demonstrates the publicly-accepted need for scrutiny.

[46] Previous decisions have established that there are other 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, *supra*, at paragraph [89]. I have set out these factors below, indicating those that I have determined to be relevant with an asterisk:

- \*(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. (xiv) the fact that the applicant has no pressing need of the third party personal information.

[47] In my view, disclosure of the information at issue will help to promote the objective of providing the citizens of Prince Edward Island with an open, transparent, and accountable government. There is a public interest in holding publicly funded health facilities accountable for the events that occur at their facilities. Suicides, especially, are a tragic event that, having taken place at a publicly funded health facility, should be disclosed by government in the interests of transparency. It is only when such information is provided to the public that we can best measure whether a systemic problem may need to be addressed.

[48] As noted above, the Applicant has already been provided with some information by the Public Body. The Applicant is aware that, based on information already provided by the Public Body, three suicides have occurred at publicly funded health facilities during the

ten year period requested. The Applicant is also aware of the names of the health facilities where the suicides occurred. Further, in the case of one suicide, the Applicant is also aware of the year of death. In my view, providing the Applicant with her final requested item of information, the year of death for the two other suicides, is the most basic of information that provides a balance between the over-arching goal of government transparency, and the privacy interests of third parties who are deceased. The nature of the information at issue is not so private that it overrides the factors that favor disclosure of same.

[49] I have concluded that the disclosure of the information at issue, if it were determined to be personal information, may affect third parties' privacy; however, I have also concluded that it would not amount to an *unreasonable* invasion of the third parties' privacy. When balanced against the benefits for public mental health, and government accountability (a purpose upon which the *FOIPP Act* is based), I find that the exemption of section 15 of the *FOIPP Act* has not been sufficiently satisfied.

[50] Based on the above analysis, I conclude that disclosing the information at issue would not amount to an unreasonable invasion of third parties' personal privacy, pursuant to section 15 of the *FOIPP Act*. There are compelling factors that rebut the subsection 15(4) presumption, and favor release of the information at issue.

**Issue Two: Does subsection 30(1) of the *FOIPP Act* apply to the information at issue, such that the head of the Public Body should, without delay, disclose it to the Applicant?**

[51] The Applicant has raised subsection 30(1) of the *FOIPP Act*, submitting that the information at issue should be disclosed, because it is in the public interest to do so. Subsection 30(1) of the *FOIPP Act* states, as follows:

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.

[52] While I have considered the Applicant's public interest arguments in my analysis of section 15 above, I find that subsection 30(1) does not apply to the information at issue in this review. Acting Commissioner Haldemann dealt with this subsection, at length, in Order No. FI-10-005, *Prince Edward Island (Department of Education and Early Childhood Development) (Re)*, 2010 CanLII 97256 (PE IPC), and, starting at page 16, states as follows:

Section 30 deals with releasing information related to issues which have an element of urgency to them, or have an element of overriding public interest. The urgent issues are public health and safety issues, where delay might have significant and serious consequences. An example of the kind of issues contemplated by clause 30(1)(a) is the release of information about the number of persons in the province identified as being infected with the H1N1 influenza virus. The kind of information released regularly by the Chief Health Officer during the 2009 H1N1 pandemic was generic and therefore not subject to privacy issues, nor to section 30. However, for example, if there had been a necessity to warn the public that everyone who worked in a particular industry was likely exposed to H1N1, and that they and their families were at high risk, that kind of situation might have come under clause 30(1)(a), and personal information might be released even though it would have the effect of identifying a number of people in that category. That is the kind of information for which clause 30(1)(a) was written.

An example of an issue similar to health and safety issues that might be covered under clause 30(1)(a) would be the concerns that a significant environmental impact was expected to result from an upcoming storm surge, which could result in the release to the wild of a particular type of animal that is raised securely but would pose a threat to people if released, accidentally or not. In such a situation, a public body might consider it necessary to release information about the owner and

business information on the grounds of public safety. In such a case, it could be argued to be in the public interest for a public body to release information about the upcoming issue in the hopes that the environmental or public safety impact might be modified or alleviated. Another example of the kind of situation that might fall under subsection 30(1) would be a situation where evacuation of a particular area was necessary, and in order to accomplish the evacuation, the public body would have to release details that would otherwise not be known to the public.

The salient features of subsection 30(1) of the FOIPP Act are urgency and, under clause (a) significant harm, or clause (b) the public interest. Subsection 30(1) must be read as a whole to determine the tenor and intent of the subsection. Subsection 30(1) is an exception to the usual process of disclosure of information. It allows a public body to disclose information that would not normally be disclosed, in situations where such disclosure might be an urgent matter of health or safety, or a matter of great importance to the people of the province, which should be released sooner rather than later. When invoking an exception section like section 30 of the Act, it is important to note that the situation that falls within that section must be urgent in nature (“without delay”). . . . It should also be noted that subsection 30(3) requires that a public body notify the Commissioner if it intends to release information under subsection (1). This requirement in itself is an indication that section 30 will apply only rarely, and, time permitting, the Commissioner might have very different views from the public body as to what might be “clearly in the public interest” to disclose.

[53] The Applicant has not satisfied the requirement of urgency in this review. While I have found the information at issue to be of interest to the public, I do not find that there is an urgent need for the Public Body to disclose the information at issue, based on the evidence provided to me. The circumstances of this review are not the type to which section 30 of the *FOIPP Act* is meant to apply.

**Issue Three: Did the head of the Public Body fulfill her duty to assist the Applicant, by responding to the access request openly, accurately, and completely, pursuant to subsection 8(1) of the *FOIPP Act*?**

[54] Subsection 8(1) of the *FOIPP Act*, *supra*, states, as follows:

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.

[55] The test to determine whether a public body's duty to assist an applicant has been satisfied under subsection 8(1) of the *FOIPP Act* is based on reasonableness. In order to meet its duty to assist under subsection 8(1) of the *FOIPP Act*, a public body's obligation is two-fold:

- (i) it must conduct an adequate search; and
- (ii) it must provide information to an applicant to show that its duty to assist has been fulfilled (Order No. FI-11-001, *supra*, at para [18]).

[56] It is notable that the information at issue is not tracked by the Public Body as a matter of course. While the Public Body appears to keep statistics relating to the total number of suicides in the province, it does not separately identify those that occur at publicly funded health facilities. The Public Body explains its search for records within two separate submissions, as follows:

We initiated a search for records with the Coroner's Office. In an email dated February 7, 2014, the Chief Coroner wrote that data about suicides at publicly funded health facilities is not captured by the Coroner's Office using a data base. He wrote that to obtain records, a manual search of all records in the office would be necessary. . . .

. . .

The Chief Coroner was identified as the appropriate person to search for records pertinent to the request. On February 7, 2014, he wrote that he had reviewed 141 autopsy files and determined "only two people who would fit this category" (i.e. that had committed suicide in a publically

funded facility). He wrote that he had reviewed the finding with his two colleagues, and the three Coroners together were only able to recall two suicides that had occurred in a publically funded facility within the requested time frame. While the Chief Coroner wrote that reviewing the records would be time consuming, he did provide two autopsy reports totaling 21 records. . . .

[57] The Public Body submits that it fulfilled its duty to assist by providing the Applicant with as much information as was possible, without delay, and at no cost. The following are excerpts from the two submissions of the Public Body relating to fulfilling its duty to assist:

The applicant submitted their request via email on January 29, 2014, and we acknowledged receipt of the request on the same day also via email. The applicant's fee was received on February 6, 2014, and our FOIPP Coordinator wrote to the applicant that same day to acknowledge receipt. Also on that day, our FOIPP Coordinator emailed the applicant a link to a report published by the Department of Health and Wellness titled "Suicide and Mental Health in Prince Edward Island, 2002 -2011," which had been recently posted to the government website.

. . .

. . . knowing the search would result in locating records that would fall under personal information and would be protected, the public body decided to provide the applicant with a partial response to their request at no additional cost to the applicant. The applicant was provided with the number of suicides (two) during a ten-year period.

. . .

These records contained extensive amounts of personal information, including far more information than had been requested by the applicant. With the responsive records and information in hand, we set about determining what information in the records was unreasonable to disclose, including what information should be inserted into the applicant's submitted table.

. . .

We disclosed information to the applicant 12 days after the original

request for information had been received, well under the 30 day limit. We included an explanation as to why we were not providing all of the information requested. Our FOIPP Coordinator also spoke with the applicant about the protection of personal information during a telephone conversation on March 5 and again on March 6.

We submit that the steps taken were timely, responsive, and fulfilled our duty to assist the applicant. The search was reasonable, performed by an appropriate person, and produced records which were used to provide the applicant with some of the information they had requested. Our FOIPP Coordinator was in regular contact with the applicant throughout the process.

[58] Based on my review of all records in the Public Body's file, which it provided me for the purposes of this review, and based on the submissions of the parties, I find that the Public Body has fulfilled its duty to assist the Applicant under subsection 8(1) of the *FOIPP Act*, in all but one respect. It processed the request in a very timely way, especially considering the manual search that was required. The Public Body communicated with the Applicant openly, and the Public Body made reasonable efforts to assist the Applicant, by offering to provide a public document relating to suicides at the outset of the Applicant's request, and by creating a record where none existed. All of these factors bode well for a determination that the Public Body did everything it could to assist the Applicant in accordance with subsection 8(1); however, as noted below, the Public Body fell short in one vital area.

[59] The Public Body was asked to address an error it had made in its initial search for records, as this error related to its duty to assist. The Public Body explained that former Commissioner MacDonald provided it with a newspaper article about a death that occurred at a publicly funded health facility that had not been identified by the Public Body. The Public Body provided the following explanation for its oversight in not providing this information in its response to the access request:

This death had not been considered responsive to the original request by

any of three Coroners who had interpreted the request literally as a suicide having occurred "in" a facility. This death had occurred "outside" of a facility and was therefore considered not responsive. Recognizing previous orders had instructed public bodies to interpret requests broadly, the public body complied with the Commissioner's request that we address the situation described by the Commissioner as an oversight and provide the applicant with this new information. The applicant was provided with the new information by letter dated December 11, 2014.

[60] Based on the Public Body's submissions quoted above, it is clear that it recognizes its error in interpreting the Applicant's request narrowly. While the third suicide identified did not occur "in" a publicly funded health facility, it did occur at a publicly funded health facility, and, therefore, should have been captured by the original search. In interpreting the request so narrowly, the Public Body failed to fulfill its duty to assist the Applicant.

[61] Pursuant to clause 66(3)(c) of the *FOIPP Act*, I may confirm or reduce a fee charged by a public body to an applicant, or order a refund, in the appropriate circumstances. It is within my power to refund a fee where a public body has not fulfilled its duty to assist an applicant. However, I make no order as a result of my finding that the Public Body failed to interpret the Applicant's request broadly enough. The head of the Public Body acknowledged the error, and adopted the broader approach. In fact, a new search was conducted, taking into consideration the more broadly-interpreted request. I would ask nothing more of the head of the Public Body, and I am satisfied that future requests will be interpreted with the same broad approach.

## **VI. SUMMARY OF FINDINGS**

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

- 1.1 I find that the year of death information in the record at issue, even when combined with the name of the health facility, is not personal information of a third party in accordance with clause 1(i) of the *FOIPP Act*.
- 1.2 I find that, in the event that the year of death information is found to constitute personal information in accordance with clause 1(i) of the *FOIPP Act*, the disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy, pursuant to section 15 of the *FOIPP Act*.
- 1.3 I find that subsection 30(1) of the *FOIPP Act* does not apply to the information at issue in this review.
- 1.4 I find that the head of the Public Body fulfilled its duty to assist the Applicant, pursuant to subsection 8(1) of the *FOIPP Act*, in all respects except one: the head of the Public Body failed to interpret the Applicant's request broadly enough to encompass all of the information responsive to the request.

## **VII. ORDER**

[63] Based on the above findings, I order the head of the Public Body to disclose the year of death for the two suicides responsive to the Applicant's request, pursuant to section 15 of the *FOIPP Act*, as this information is not personal information the disclosure of which would be an unreasonable invasion of the personal privacy of a third party.

[64] I thank both parties for their thoughtful submissions. 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.

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Karen A. Rose  
Information and Privacy Commissioner