



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

Order No. FI-15-013

Re: Office of the Premier

Prince Edward Island Information and Privacy Commissioner

Karen A. Rose

December 31, 2015

Summary: The Applicant sought a review of a request for access to information held by the Office of the Premier for e-mails sent or received by staff of the Office of the Premier that contain the Applicant's name, including those e-mails that originated with the Applicant and were forwarded by staff to others. The Office of the Premier determined that no records were responsive to the Applicant's request. The Applicant argued that the Office of the Premier had not conducted an adequate search for records. The Commissioner found that the Office of the Premier had conducted an adequate search, in the circumstances. Further, the Commissioner found that the Office of the Premier had sufficiently informed the Applicant of how it had satisfied its duty to search for records, as the standard is not one of perfection. No order resulted from the Commissioner's findings, although the Commissioner recommended that the Office of the Premier follow its established search documentation procedures fully in the future.

Sections Considered: *Freedom of Information and Protection of Privacy Act, RSPEI 1988, c F-15.01, s. 7, 8, 50, 65, 66(4), 68(1.1)); General Regulations to the FOIPP Act, PEI Reg EC564/02, Schedule 1*

Orders Considered: *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 593 (CanLII)
Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC)
Order No. FI-15-006, *Prince Edward Island (Agriculture and Fisheries) (Re)*, 2015 CanLII 66638 (PE IPC)
Order No. FI-12-001, *Department of Tourism and Culture (Re)*, 2012 CanLII 99857 (PE IPC)
British Columbia (Re) 2013 BCIPC 7 (CanLII)
Order No. 03-001, *Department of Development and Technology, Re*, 2003 CanLII 52558 (PE IPC)
Order No. FI-11-002, *Prince Edward Island (Department of Agriculture)(Re)*, 2011 CanLII 91841 (PE IPC)

Other Resources Cited: Prince Edward Island, Queen's Printer, *Royal Gazette*, vol CXXXVII-No. 48 (Charlottetown: Communications PEI, 26 November 2011)
Prince Edward Island Freedom of Information and Protection of Privacy Guidelines and Practices Manual (May 2006)
Public Archives and Records Office of Prince Edward Island, *RIM Recorded Information Management, Managing Electronic Mailing* (Charlottetown: PARO, March 2007)
Legault, Suzanne, Information Commissioner of Canada, Special Report to Parliament, *Interference with Access to Information: Part 2* (Ottawa: ICC, April 2014)

I. BACKGROUND

[1] The Applicant made an access to information request to both the Office of the Premier and to the Executive Council Office, pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01 (the “FOIPP Act”). The Applicant requested access to all e-mails sent to or received by staff employed by either office that contain the Applicant’s name, including e-mails that originated with the Applicant and were forwarded by staff of either office to others, regardless of who those recipients may be, or where the recipients may be employed. The Applicant cited three variations of the spelling of his name and e-mail address.

- [2] The Applicant's access request resulted in two separate files: one with the Executive Council Office; and the second with the Office of the Premier. The Applicant did not request a review of the decision of the Executive Council Office, and its decision does not form part of this review.
- [3] The Office of the Premier (the "Public Body") advised the Applicant that it had failed to retrieve any responsive records to the Applicant's access request. The Public Body described its process for searching the Groupwise e-mail platform using the search tools available and the following five separate fields to locate responsive records: To; From; Subject; Message; and Attachments.
- [4] The Applicant requested a review of the Public Body's decision, claiming records he had received from the Executive Council Office include e-mails of a staff member of the Public Body that contain the Applicant's name and e-mail address. The Applicant claims the Public Body did not properly handle the access request.

II. RECORDS AT ISSUE

- [5] The Public Body found no responsive records to the Applicant's access request, and no copies of the records identified by the Applicant as records at issue were produced. Therefore, there are no records at issue to this review.

III. ISSUE

- [6] There is one issue to be decided in this review, as follows:

Did the head of the Public Body fulfill his duty to assist the Applicant, pursuant to subsection 8(1) of the FOIPP Act, by responding to the Applicant's access request openly, accurately, and completely?

IV. JURISDICTION

[7] The Information and Privacy Commissioner is generally responsible for monitoring how the *FOIPP Act* is administered, and ensuring that its purposes are achieved. Section 50 of the *FOIPP Act* describes functions of the Commissioner in carrying out her responsibilities, including the Commissioner's responsibility to bring to the attention of the head of a public body any failure by a public body to assist applicants under section 8 [s. 50(1)(g)]. The provisions of section 50 of the *FOIPP Act*, *supra*, as they relate to this review, include:

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, and may

...

(g) bring to the attention of the head of a public body any failure by the public body to assist applicants under section 8;

...

(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(a) a duty imposed by section 8 has not been performed;

V. BURDEN OF PROOF

[8] Section 65 of the *FOIPP Act* provides instruction regarding which party bears the burden of proof, as it lies with different parties, depending on which exception to disclosure under the *FOIPP Act* is at issue. Although not specifically stated in section 65, it has been established that the burden of proof of a public body's duty to assist is upon the public body. I agree with the Alberta Information and Privacy Commissioner in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 593 (CanLII), at paragraph [53], wherein he states:

[53] As recognized by the Commissioner, it would be impractical to require the head of a public body to either conduct or supervise the searches mandated by *FOIPP*. This obligation can be delegated. However, the public body must be in a position to establish that reasonable efforts were taken to search records in order to be able to respond openly, accurately and completely to the request. It follows that the person to whom the obligation is delegated must be in a position to provide evidence sufficient to establish what was done.

VI. ANALYSIS OF THE ISSUE

Basis for the Applicant's belief that the Public Body's search was not adequate

- [9] The Applicant expressed concern about the organization of the Public Body as it relates to two additional public bodies, namely, the Executive Council Office (“ECO”) and Intergovernmental and Public Affairs. He questioned the responsibilities of each of the three offices, which are identified as three separate public bodies under the *FOIPP Act*, including the appointment of one FOIPP coordinator to act on behalf of all three public bodies. As the *FOIPP Act* allows for the delegation of duties, and written delegations were properly made for each of these three public bodies, the Applicant's concern about the organization of the three public bodies is not considered an issue to this review. However, as is described more fully below, the interrelationship between these three public bodies may result in some confusion for individuals who make access requests, a fact of which the Public Body should be mindful.
- [10] The Applicant takes issue with the results of the search carried out by the Public Body for responsive records to his access request, as there were no responsive records. Despite the burden upon the Public Body, it is helpful that the Applicant made initial representations to show why he believes that an adequate search was not conducted. The Applicant states he received confirmation from the Public Body that it does not have any e-mails containing his name or e-mail address, yet, he has obtained records from the ECO demonstrating that the Deputy Minister of Intergovernmental and Public

Affairs had received and responded to e-mails containing the Applicant's name and/or e-mail address. As evidence that the Deputy Minister of Intergovernmental and Public Affairs is part of the Public Body's staff, the Applicant refers to the Government of PEI website, and, in particular, the Premier's Office staff directory, which lists the Deputy Minister of Intergovernmental and Public Affairs by name and position.

- [11] The Public Body states, accurately, that Intergovernmental and Public Affairs is a separate public body, and that the Applicant did not include it in his access request.

The head of the Public Body states:

The website is a tool to assist the public in finding information about programs and services offered by government and should not be considered an official employee organizational chart. As per Schedule 1 of the *Freedom of Information and Protection of Privacy Act* regulations, the Office of the Premier, Executive Council Office and Intergovernmental and Public Affairs are all separate public bodies . . .

- [12] In my view, provincial government websites may be used as tools to assist the public in locating provincial offices and their employees, and a public body should expect that this may occur. The Public Body's website clearly titles its page "Premier's Office Directory", and it lists the names and contact information for the staff of that office, including the Deputy Minister of Intergovernmental and Public Affairs. The Applicant raises a valid point; however, this administrative confusion does not lead me to a finding that the Public Body has not conducted an adequate search. The FOIPP coordinator for the Public Body produced the e-mails from Intergovernmental and Public Affairs, albeit in response to an access request to ECO, a separate public body.

- [13] I wish to elaborate further on the basis for the administrative confusion regarding designated public bodies to the *FOIPP Act*. As noted by the Public Body, Schedule 1 of the regulations to the *FOIPP Act* [PEI Reg EC564/021] sets out each entity designated as

a public body under the *FOIPP Act*. From the *FOIPP Act*'s enactment on November 1, 2002, until November 23, 2013, the date the schedule was revoked, Schedule 1 contained twelve parts, each part representing a government department, branch, or office designated as a public body. Listed under each part, or public body, were all of the agencies, boards, commissions, corporations, and other offices to which the public body holds ministerial responsibility, including responsibilities under the *FOIPP Act*. It is important to note that, during those first eleven years, Intergovernmental and Public Affairs did not exist as a separate public body, having only first appeared in the *Royal Gazette*, dated November 26, 2011¹, as forming part of the title of the Executive Council Office, namely, "the Executive Council Office (Intergovernmental and Public Affairs)".

[14] By order of the Lieutenant Governor in Council, Schedule 1 of the regulations to the *FOIPP Act* was revoked, and a new schedule substituted, effective November 23, 2013. The revised schedule contains two parts: the first part listing the twelve departments, branches, and offices of government as individual designated public bodies; and the second part listing 114 agencies, boards, commissions, corporations, and other offices of the government as individual designated public bodies. Despite these significant changes, the designated heads of the public bodies remain the same. The Applicant requested access to information six months subsequent to the revision of Schedule 1 of the regulations to the *FOIPP Act*.

[15] As noted above, the Applicant was provided with responsive records from the ECO for the same request as that in the review before me. One FOIPP coordinator handles all requests for access for three public bodies that are very closely related. Physically, all of these offices are located in the same building, on the same floor, and in the same

¹ Prince Edward Island, Queen's Printer, *Royal Gazette*, vol CXXXVII-No. 48 (Charlottetown: Communications PEI, 26 November 2011)

area. When these facts are combined with the fact that the Applicant's original request was made to two of the public bodies, and then later divided by the FOIPP coordinator, it is logical to conclude that when the FOIPP coordinator provided responsive records from the ECO, she avoided redundancy by not providing the same responsive records from the Office of the Premier. However, as noted below, it was incumbent upon the FOIPP coordinator to explain this to the Applicant.

[16] Subsection 8(1) of the *FOIPP Act* requires that the head of a public body make every reasonable effort to assist applicants, and to respond to applicants openly, accurately and completely. Thus, 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.

[17] It is challenging when there are perceived overlaps between public bodies in requests like the one in the review before me. It is challenging for an applicant to know that the request is being made to the correct public body. It is also challenging for a public body to know whether a closely related public body (in this case, Intergovernmental and Public Affairs) may have responsive records, and whether the request should be transferred. In my view, because all three of the public bodies share one FOIPP coordinator, it is reasonable for that FOIPP coordinator to inform applicants that the public bodies are separate public bodies, and explain how the records are divided between them.

Section 8

[18] It has been established that in order to meet its duty to assist under subsection 8(1) of the *FOIPP Act*, a public body's obligation is two-fold: it must conduct an adequate search; and it must provide information to an applicant to show that its duty to assist has been fulfilled [Order No. FI-11-001, *Prince Edward Island (Department of*

Agriculture) (Re), 2011 CanLII 91839 (PE IPC) at para 17-18; and Order No FI-15-006, *Prince Edward Island (Agriculture and Fisheries) (Re)*, 2015 CanLII 66638 (PE IPC) at para 30]. Both of these obligations, as they apply to the circumstances of this review, are analyzed below.

Adequacy of Search

[19] As stated in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, *supra*, a public body must be in a position to establish that reasonable efforts were taken to search records in order to be able to claim it responded to an access request openly, accurately, and completely. Order No. FI-11-001, *supra*, outlines the evidence required to prove an adequate search, at paragraph [19], as follows:

[19] **C. Adequacy of Search:** In order to determine whether an adequate search was conducted, the Commissioner requires evidence as follows:

1. who conducted the search;
2. steps taken by the public body to identify and locate records responsive to the applicant's access request;
3. the scope of the search (areas searched);
4. the steps taken to identify and locate all possible locations of records responsive to the access request; and
5. reasons the public body believes that no more responsive records exist than the ones that have been identified. (Alberta Order F2007-029, paragraph 66).

The Public Body's Processing File:

[20] Former Commissioner Maria MacDonald asked the Public Body to provide this office with its processing file for the purposes of the review, in order that she may have a complete picture of who performed the search, the locations that were searched, the

responsive records resulting from the search, and the reasoning behind the Public Body's conclusion that there are no responsive records.

[21] The Public Body's processing file includes a memorandum from the Public Body's FOIPP coordinator to four employees requesting that they search for records and complete and return an access retrieval form that was attached, which form, if properly completed, would have satisfied the five elements of evidence required, and listed above.

[22] The Public Body states that the memorandum sent to the four employees includes helpful tips to search the Groupwise e-mail system. The memorandum directs the searchers, as follows:

A simple search can be conducted in Groupwise by clicking Tools and then Find. A window will open - enter [Applicant's name] in the Full Text box to complete the search. Note the request goes back as far as January 2010, therefore you may have to search in your archives, too, if emails divert to this after a certain time period.

[23] The memorandum summarizes the Applicant's access request, and notifies the recipients that it is an offence to alter, falsify, or conceal any record. It does not ask the employees to have all staff search for responsive records. The Public Body states that the FOIPP coordinator attached a portion of the access request with the various spellings to the memorandum. Unfortunately, the response forms in the processing file were not completed by the four employees. It is not possible to determine from the forms who searched for the responsive records, what areas were searched, or how the locations were identified. I note a single notation on each of the four forms, as follows: (1) "[searcher 1]-no records.June 6.via BBM"; (2) "no records"; (3) [searcher 3] for Premier-no records"; and (4)"[searcher 4]-via phone no records.May 30/14". Because

of these deficiencies, the Public Body's processing file does not contain sufficient supporting evidence to prove it conducted an adequate search.

- [24] Despite the shortcomings of the Public Body's processing file, the head of the Public Body addresses the issues the former Commissioner identified about the contents of its processing file. In his submissions, he states:

Normally, employees complete a form and return when responsive records are located, however, as no records were located, no fee estimate was to be calculated, and because it was a busy time for all employees, each called or messaged their response. It was seen as a reasonable accommodation for busy staff for the forms to be completed by our FOIPP Coordinator, who was confident that each person had completed a thorough search of their email accounts. The report related to Mr. MacDonald's search was communicated to our FOIPP Coordinator by his administrative assistant.

Please note that while administrative workers were not identified among those likely to have responsive records, our FOIPP Coordinator reports she took the additional step to verbally ask them to conduct searches. As expected, none reported having any emails to, or from the applicant.
[emphasis added]

- [25] Public bodies have legal obligations under the *FOIPP Act*, including the vital obligation of assisting applicants under section 8. This obligation cannot be accommodated, or amended, even for busy offices, or other priorities. As noted below, perfection is not expected, but a reasonable effort is. Those employees who are tasked with conducting a search for records are chosen because they have full knowledge of the location of records responsive to an applicant's request. In future, I would expect the individual searchers to complete the access retrieval forms in their entirety. Completion of these forms is a straightforward reporting task that should take little time to carry out.

[26] The Prince Edward Island *Freedom of Information and Protection of Privacy Guidelines and Practices Manual* (May 2006) is an internal reference resource to assist public bodies and FOIPP coordinators in fulfilling their obligations under the *FOIPP Act* by offering guidelines regarding how to properly process FOIPP requests. In Order No. FI-12-001, *Department of Tourism and Culture (Re)*, 2012 CanLII 99857 (PE IPC), former Commissioner Maria MacDonald emphasizes the importance of the contents of the processing file of an access request. She cites from the practice manual regarding what is expected of a FOIPP coordinator when conducting a search. She states:

[76] The manual speaks to maintaining a separate file for each access request to document the activities of processing the access request. At page 29, under “Documenting and Tracking Requests”, the manual states:

All public bodies should maintain documentation systems to record all deliberations and decisions regarding the processing of requests and to help ensure that the request process meets the requirements set out in the *Act*.

This documentation may become a critical part of the evidence required during a review by the Information and Privacy Commissioner. It can also be of assistance in the processing of subsequent similar requests. [emphasis added]

[77] Subsection 53(3) of the *FOIPP Act* requires a public body to produce within 10 days any record or a copy of any record required by the Commissioner. The initial correspondence to a public body from this office upon the receipt of a request for review asks the public body to produce all documents or correspondence relating to the access to information request, including records surrounding the public body’s decision-making process. This is essential for me to determine whether a formal investigation or inquiry is warranted.

[27] As noted above, the four access request review forms on file contain sparse information. The head of the Public Body advises that the FOIPP coordinator had verbally asked administrative workers to conduct searches. While I accept the Public Body's evidence as credible, there is nothing in the file to indicate that the FOIPP coordinator took the additional step to verbally ask administrative workers to conduct searches, or who the FOIPP coordinator contacted. In future, I would expect the processing file to contain such information.

Transitory Records:

[28] Former Commissioner MacDonald identified the existence of an e-mail from a staff member of the Public Body to the Applicant, a copy of which was provided to her by the Applicant. The Public Body had not identified this e-mail as a responsive record. The head of the Public Body submits, as follows:

After receiving Commissioner MacDonald's letter, the public body asked the Correspondence Secretary to repeat a search for records. Another search was performed on May 27, 2015, but failed to find the record you mention. As mentioned earlier in this submission, it is policy to manage electronic mail and this includes distinguishing official records from transitory records, and retaining as per policy. The Correspondence Secretary likely classified this record as transitory, and therefore, as per the email guidelines referenced above, was not saved or printed to file.

[29] I accept the Public Body's evidence that the e-mail was not located after two searches by the correspondence secretary. The head of the Public Body speculates that the correspondence secretary likely classified the e-mail as transitory, and did not save or print it. I have reviewed the e-mail, and note that it is a request for the name of the FOIPP coordinator for the Public Body, which was responded to with the FOIPP coordinator's e-mail address. As such, it would qualify as a transitory record of the correspondence secretary. However, it was copied to the FOIPP coordinator of the

Public Body, and was provided as a responsive record to the Applicant's request to the ECO. A Groupwise search of the FOIPP coordinator's e-mails produced this e-mail.

Paper Records:

[30] *Managing Electronic Mail* guidelines² direct government employees to print e-mails, both sent and received, and to "file it in the departmental filing system the same way you would file a paper document on the same subject." The head of the Public Body submits,

The request was specific and asked for "emails" so the government email system (Group Wise) was the focus of the search, although it would also have included appropriate file cabinets where emails would have been printed, and filed. This detail was not documented in the access request review form.

[31] Again, aside from the above evidence, which I accept as credible, there is no supporting evidence in the processing file to indicate the Public Body carried out any searches of its paper-based filing systems for responsive records to the Applicant's access request. In future, I would expect the processing file to contain such information.

[32] Overall, despite the Public Body's deficiencies in documenting its search for records, I have been provided with sufficient evidence during the review to prove the adequacy of the Public Body's search for records. In summary, I have been provided with the following evidence regarding the Public Body's search for responsive records:

1. *Who conducted the search.* The Public Body identified four employees of the Office of the Premier who conducted a search. The Public Body states that it verbally asked administrative workers of the Office of the Premier to conduct a search.

² Public Archives and Records Office of Prince Edward Island, *RIM Recorded Information Management, Managing Electronic Mailing* (Charlottetown: PARO, March 2007).

2. *Steps taken by the public body to identify and locate records responsive to the applicant's access request.* The Public Body contacted the Applicant to clarify the timeframe of the request. The Public Body identified four employees who might reasonably have responsive records, provided each with a memorandum directing them to search their Groupwise e-mail and archives for one spelling of the Applicant's name, and advised them on how to carry out the search. The Public Body states that it attached a portion of the Applicant's application with the various spellings of the Applicant's name to be searched, as requested by the Applicant, to the memorandum.

3. *The scope of the search (areas searched).* The Public Body searched the Groupwise e-mail and archives of four identified staff. The Public Body states that it also searched the Groupwise e-mail and archives of unidentified administrative workers. The Public Body further states that its search would have also included appropriate file cabinets wherein e-mails would have been printed and filed.

4. *The steps taken to identify and locate all possible locations of records responsive to the access request.* The Public Body identified key staff who would be most likely to have responsive records, and directed them in carrying out the search.

5. *Reasons the public body believes that no more responsive records exist than the ones that have been identified.* The Public Body submits that it had staff familiar with the records conduct a reasonable search and report to the FOIPP coordinator, who documented their findings.

[33] Although I have found that the Public Body provided sufficient evidence during the review to prove the adequacy of its search for records, the Public Body has an additional obligation to the Applicant to show that its duty to assist has been fulfilled. The Public Body's obligation to inform the Applicant of its search details is discussed below.

Informing Applicant of Search Details

[34] Subsection 8(1) of the *FOIPP Act* requires that the head of a public body make every reasonable effort to respond to an applicant openly, accurately, and completely.

[35] In a recent order, Order No. FI-15-006, *supra*, I examine a public body's obligation to inform an applicant, including when a search results in no responsive records. At

paragraph [29], I agree with a decision of the British Columbia Information and Privacy Commissioner in *British Columbia (Re)*, 2013 BCIPC 7 (CanLII), that, where government does not have records responsive to an access request, the public body should provide an explanation to the applicant as to why this is the case.

[36] The Public Body's decision letter informs the Applicant of the outcome of its search for records, and the parameters of the search, as follows:

I regret to inform you that a search by the Office of the Premier has failed to retrieve any records relating to the subject of your request. Staff within the office have conducted searches using Groupwise search tools. Various forms of your name were entered into the following fields to complete the search: To, From, Subject, Message, and Attachments.

[37] I am satisfied that the Public Body has provided the Applicant with a reasonable explanation as to why its search resulted in no responsive records. However, as is noted above, it would have been exceedingly more helpful had the head of the Public Body described which employees' e-mails had been searched (positions only), why those employees were chosen as appropriate for the searches, and that paper records were also searched. An additional explanation as to how records and searches are divided between the three public bodies in question would have avoided the confusion that the Applicant was left with when he received the decision letter. Such additional communication may have satisfied the Applicant that a thorough search was conducted in response to his request.

[38] With reference to the Applicant's evidence that other e-mails exist that may have been responsive to his request, the Public Body states that it did not know the Applicant was looking for records from Intergovernmental and Public Affairs, and that the Applicant should have contacted and advised the Public Body of the exact records he was looking

for. The head of the Public Body states that if the Applicant had contacted the Public Body with his concern, then it could have worked with him to conduct a further search.

[39] The issue of a public body's duty to communicate with an applicant was raised in the first order of this office, Order No. 03-001, *Department of Development and Technology, Re*, 2003 CanLII 52558 (PE IPC). I also speak to this issue in Order No. FI-11-002, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91841 (PE IPC), at paragraph [105], wherein I state:

[105] The underpinnings of public bodies' duty to engage in discussions with applicants and to assist in narrowing requests flow naturally from the circumstances of each access request. A public body is the party that has the background knowledge and familiarity, not only with the records in its possession, but also with the *FOIPP Act* and its Regulations. An applicant is at a disadvantage as a newcomer to this process, and it is up to the public body to guide the applicant. I find that this is an integral part of a public body's duty to assist applicants.

[40] During the processing of the Applicant's access request, the Public Body contacted the Applicant once by e-mail to clarify the timeframe of the Applicant's request. The wording of the Applicant's access request is clear, and no other clarification was necessary. Although the duty to assist is borne only by the public body, communication requires both parties. As stated in Order No. FI-11-001, *supra*, the duty of a public body to give an applicant detailed information about its search is heightened when an applicant specifically raises questions or concerns [paragraphs 22 and 37]. Understandably, an applicant does not have the benefit of knowing all of the records in the custody and control of a public body. However, in the circumstances of this review, the Applicant had evidence that raised questions about the quality of the search for records. He did not approach the Public Body following his receipt of its decision letter for an explanation. Instead, he asked for a review by this office. I accept the Public

Body's suggestion that it would have conducted an additional search if the Applicant had brought the other e-mails to its attention.

[41] The head of the Public Body submits:

In conclusion, the Nova Scotia Freedom of Information and Protection of Privacy Review Officer in FI -12-77 wrote that, "*the test of whether a public body has met its burden is one of reasonableness not perfection.*" This public body, based on this test has met its burden in a reasonable manner. I trust I have replied to all of your concerns.

[42] Under section 8 of the *FOIPP Act*, the Public Body is not held to a standard of perfection. I note that all public bodies are held to the same standard, that being one of reasonableness. In the circumstances of this review, I find that the Public Body has met this standard. However, I also note that this public body, the Office of the Premier, may be regarded as the leader of our public administration, and an example for the rest to follow. The federal Information Commissioner, Suzanne Legault, in a 2014 special report to parliament³, recognized the need for strong leadership from the top, and says:

The integrity and neutrality of the access system depends on strong leadership from the top. Ministers and senior managers must ensure their employees know their responsibilities with regard to access to information, and the limitations on their roles. Political and institutional leaders must ensure that their organizations follow the policies and procedures governing the access process.

[43] Although I have found that the Public Body has met its duty to assist the Applicant, as required under subsection 8(1) of the *FOIPP Act*, I do have recommendations based on my analysis above. These recommendations are:

³ Legault, Suzanne, Information Commissioner of Canada, Special Report to Parliament, *Interference with Access to Information: Part 2* (Ottawa: ICC, April 2014) at 3.

- Where a public body has established procedures for searching for records responsive to requests for access, those procedures should be fully adhered to in every request for access. In the circumstances of this review, this includes having the appropriate persons complete available forms in their entirety, and ensuring that searches for records responsive to access requests are fully documented.

VII. FINDINGS

[44] Based on the standard of reasonableness, I find that the head of the Public Body has fulfilled his duty to assist the Applicant, pursuant to subsection 8(1) of the *FOIPP Act*, by responding to the Applicant's access request openly, accurately, and completely.

VIII. ORDER

[45] As I am satisfied that the head of the Public Body conducted an adequate search for records responsive to the Applicant's access request, no order will result from this review.

IX. RECOMMENDATIONS

[46] Under subsection 66(4) of the *FOIPP Act*, I recommend that the head of the Public Body ensures the following:

- that established procedures for searching for records responsive to requests for access be fully adhered to in every request for access. In the circumstances of this review, this includes having appropriate persons complete available forms in their entirety, and ensuring that searches for records responsive to access requests are fully documented.

[47] I thank both parties for their 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*, RSPEI 1988, c J-3.

Karen A. Rose
Information and Privacy Commissioner