

ACCESSING GOVERNMENT INFORMATION IN

Prince Edward Island

RESOURCES

Freedom of Information and Protection of Privacy Act (FOIPP)

http://www.gov.pe.ca/law/statutes/pdf/f-15_01.pdf

Prince Edward Island Freedom of Information and Protection of Privacy Office

<http://www.gov.pe.ca/foipp/index.php3>

Guide to FOIPP

<http://www.gov.pe.ca/foipp/index.php3>

FOIPP FAQ

<http://www.assembly.pe.ca/foipp/index.php?info=5#faq>

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHO CAN REQUEST GOVERNMENT INFORMATION?

Anyone can request government information.

WHAT INFORMATION CAN I ACCESS?

You have the right to access any record under the control of a public body, subject to certain exceptions described below. Public bodies include: departments, branches or offices of the Government of Prince Edward Island; agencies, boards, commissions, corporations and other bodies designated as public bodies in the regulations; the Executive Council Office; and the office of the Legislative Assembly. Public bodies do not include the office of the Speaker of the Legislative Assembly, the offices of Members of the Legislative Assembly or the PEI courts.

WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?

There are a number of circumstances in which you may be denied access to information, including the following:

Publicly available information

You may be denied access to information that is available to the public. This includes information for which you must pay a fee and information that will be made available to the public within 60 days of the date when the request is received.

If your request is refused because the information will be available within 60 days, the public body must inform you when it becomes available. If it is still not available after 60 days, the public body may not deny access on the grounds that it is publicly available.

Repetitive or frivolous request

Your access request may be refused if it is repetitive, frivolous or vexatious.

Another Act prevails

If the information you want is governed by an Act that specifies that the *Freedom of Information and Protection of Privacy Act (FOIPP)* does not apply, you cannot access it through a freedom of information request.

Law enforcement and legal proceedings

Your access request may be refused if disclosure could be harmful to law enforcement. This

includes information that would: jeopardize national security; reveal investigative techniques or details of an investigation; reveal confidential sources of information; endanger anyone; deny someone a fair trial or otherwise harm legal proceedings; expose its source to civil liability; or facilitate the escape of an inmate. In addition, if the disclosure of information is prohibited by law, your request for access will be denied. Furthermore, the public body may refuse to confirm or deny the existence of such information.

However, you are entitled to access law enforcement information in the following circumstances:

- if it is part of a report of a routine inspection conducted by an agency authorized to enforce laws;
- if it consists of statistics related to the success rate of law enforcement;
- if it consists of reasons for a decision not to prosecute; or
- if the information is more than 10 years old.

Court records

You cannot access government information found in the records of: courts, judicial administration or judicial support services, judges, magistrates, or justices of the peace. Similarly, the personal notes of judges and those acting in a judicial role are not accessible.

Privileged information

Your request for information may be denied if the information is protected by legal privilege such as solicitor-client privilege.

Advice

Unless the public body consents, or unless the information is more than 20 years old, you cannot access records that could reveal advice to or from public bodies. The term “advice” is used broadly and includes opinions, recommendations, proposals, analyses, policy options, consultations, deliberations, material relating to negotiations on behalf of the government, unimplemented administrative plans, draft law at the executive level, agendas or minutes of meetings, or any information that could likely result in disclosure of a pending policy or budgetary decision.

A public body must, however, give access to:

- statistical surveys;
- results of environmental impact statements;
- results of feasibility studies;
- guidelines for employees; and
- statements of reasons for using discretionary power.

Cabinet confidences

Unless Cabinet consents, or unless the information is more than 20 years old, you cannot access information revealing the substance of deliberations of the Cabinet or of Cabinet committees. This includes information contained in agendas, policy analyses, proposals, briefs, and draft legislation or regulations.

Relations with other governments

Unless the Executive Council consents, you cannot access to information that could harm relations between Prince Edward Island and other governments, including local, Canadian and foreign governments.

Economic and other interests of a public body

Your access to information request may be denied if disclosure could harm the financial or economic interests of a public body. Information under this heading includes: public body trade secrets; information in which a public body has a proprietary interest; and information whose disclosure could lead to financial loss or prejudice a competitive position.

However, public bodies must generally not refuse access to results of product or environmental tests unless the testing was not done for the public body or the purpose of the test was to develop testing methods or to determine whether a product should be purchased.

Conservation

Your access request may be denied if disclosure could harm conservation efforts. This includes the conservation of historic resources and rare, endangered, threatened or vulnerable life forms.

Testing procedures, tests and audits

You may be denied access to information related to testing or auditing procedures, or to details of specific future tests or audits, if disclosure could prejudice the tests or audits.

Business interests of third parties

Generally, you cannot access a third party's trade secrets or other confidential or sensitive information if disclosure could harm the business interests of a third party. This includes tax return information. You can, however, get access if:

- the third party consents to disclosure;
- the information relates to a non-arm's length transaction between the third party and the public body;
- the information is contained in a record that is more than 50 years old and is contained in the public archives; or
- another provincial or federal law authorizes access.

Third party privacy

Your access request may be denied if disclosure would invade a third party's privacy. Furthermore, a public body may refuse to confirm or deny the existence of information if to do so could invade a third party's privacy.

Disclosure of the following will be considered an invasion of a third party's privacy:

- personal health information;
- information that is part of a law enforcement record;
- financial information related to a third party's taxation, income, financial situation or receipt of social assistance;
- a third party's personal recommendations, character references or personnel evaluations if they could reveal who wrote them;
- a third party's employment or educational history; and
- information revealing the race, ethnic origin, religious or political beliefs of a third party.

In addition to the list above, other information may violate a third party's privacy, and in determining whether this is the case a public body will consider all relevant circumstances including:

- whether disclosure is desirable in order to subject the activities of a public body to public scrutiny;
- whether disclosure is likely to promote public health and safety or the protection of the environment;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to harm;
- whether the information has been provided in confidence;
- whether disclosure would help resolve the claims, disputes or grievances of aboriginal people;
- whether the information is accurate and reliable;
- whether disclosure could damage a third party's reputation; and
- whether you, the applicant, originally supplied the information.

There are, however, circumstances when, regardless of the criteria above, disclosure will be permitted. These include:

- when the relevant third party consents in writing to disclosure;
- when there are compelling circumstances affecting the applicant's health;

- when another Act expressly allows or requires disclosure;
- when disclosure is for research purposes;
- when the information relates to a public body employee's salary, classification, benefits, or expenses;
- when the information relates to a goods or services contract with a public body;
- when the information relates to a discretionary benefit to a third party; and
- when the information relates to someone who has been dead for more than 20 years.

Furthermore, unless the third party objects, the public body may disclose information regarding:

- a third party's enrolment in an educational institution;
- a third party participation in a public event associated with the public body; and
- a third party's receipt of an award from the public body.

Archived records acquired from private parties

You cannot access archived records that were acquired from private parties – that is, from people or entities other than public bodies. If the information you want was placed in an archives by a private individual or organization, contact that party directly and ask permission to access the information.

Individual or public safety

Your access request may be denied if disclosure could threaten individual or public safety.

Public interest

You must be granted access to information if disclosure is clearly in the public interest, despite any other section of the Act.

Exceptions related to personal information

For additional exceptions more relevant to personal information, see *Accessing Personal Information in Prince Edward Island*.

HOW DO I MAKE A REQUEST?

1. Check whether the information is publicly available

2. Contact public bodies

Call the public body and ask if it is willing to provide access to the information you want. Such informal methods can be effective. Note, however, that informal access to information requests do not trigger time limits for responding to you, nor do they trigger certain rights, such as the right to request a review by the Privacy Commissioner.

3. Identify the appropriate public bodies

a) Determine whether the body is subject to access to information law

FOIPP applies to public bodies in Prince Edward Island. These include: departments, branches or offices of the Government of Prince Edward Island; agencies, boards, commissions, corporations and other bodies designated as public bodies in the regulations; the Executive Council Office; and the office of the Legislative Assembly. Public bodies do not include the office of the Speaker of the Legislative Assembly, the offices of Members of the Legislative Assembly or the PEI courts.

b) Determine whether the information is in the custody or control of the public body

Access to information laws only apply to records in the custody or control of a public body. If a record is destroyed, it is no longer in the custody or control of a public body, but it is an offence to wilfully destroy records in order to evade an access request. Nevertheless, documents may sometimes legitimately be destroyed if done under an approved retention schedule.

4. Frame your request carefully

a) Request "records"

Request access to records, not to information, because "record" has a specific and broad definition which includes: "notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records."

b) Request indexes, catalogues, and other records-management aids

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two step request process: once you decide which records you would like, you must file another request to which the public body will have 30 days to respond.

c) State the purpose of your request

You are not required to state the purpose for your request, but this may help the public body to locate the information more quickly.

d) Be specific

Unless you absolutely need it, try not to request everything available on a subject so as to ensure a faster and less costly response. In addition, the more specific your request is, the less likely the public body will request a time limit extension on the grounds that answering the request within 30 days would unreasonably interfere with its operations.

5. If you need help

If you need help, ask the relevant public body. It is required to help you with your request and to respond without delay, openly, accurately and completely.

DO I HAVE TO USE A FORM?

You do not have to use a form, but a form is available and it can help you structure your request. The form can be found at:

<http://www.gov.pe.ca/forms/pdf/641.pdf?PHPSESSID=8fa4cf4b707aed3dab02d8ba56536853>

WHAT WILL IT COST?

There is a \$5 fee for requesting government information (there is no fee for requesting your own personal information). In addition, you will be charged \$10 per half hour of time spent searching for and preparing the record. The first two hours are free.

The public body will send you an estimate of the total fee and no work will begin on your request until at least half of the total estimated amount has been paid.

You may ask to have some or all of the fees waived. This request may be granted if:

- you can't afford the fee, or it would otherwise be fair to waive the fee; or
- releasing the information is in the public interest.

The public body must reply to your fee-waiver request within 30 days. If you are not satisfied with the response, you may appeal to the Privacy Commissioner.

HOW LONG WILL IT TAKE?

The public body must make every reasonable effort to respond to your request within 30 days of receiving it. If your request is transferred to another public body, the transfer must

be done within 15 days and the original body must notify you of the transfer. The new body will then have an additional 30 days to respond to your request.

A transfer to another body is only allowed when:

- the record is in the custody or under the control of the public body to which your request is being transferred; or
- the record originated with, or was first obtained by, the public body to which your request is being transferred.

A public body can extend the time limit for responses by up to 30 days or, with the Commissioner's permission, for a longer period. The time limit for responses may only be extended when:

- your request does not provide enough detail for the public body to identify the requested record;
- you have requested a large number of records and responding within 30 days would unreasonably interfere with the operations of the public body;
- a large number of records must be searched and responding within 30 days would unreasonably interfere with the operations of the public body;
- the requests are multiple and concurrent; or
- a third party requests a review of a decision to grant access.

Unless an extension has been granted, failure to respond to a request within 30 days is considered a denial of access. You can request that the Privacy Commissioner review both the denial of access and the failure to respond on time. For more information, see *Appealing Access to Information Decisions in Prince Edward Island*.

WHAT ARE MY OPTIONS REGARDING FORMAT?

Copies v. originals

You may have copies sent to you or you may view the originals. A public body may impose one format (copy or original) depending on considerations of length, condition, and form. In addition, if the record must be severed (in order not to disclose someone else's personal information, for example) you will only be given access to a copy.

Language

The record will be provided in the language in which it was created. However, public bodies that are subject to the "French Language Services Act" will respond to your request in either English or French at your request.

Alternative formats

A public body is not required to provide records in alternative formats for the hearing or seeing impaired. It will nevertheless often try to accommodate such requests.

WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?

If you are not satisfied with a public body's response, you have the right to request that the Office of the Information and Privacy Commissioner review that decision. For more information, see *Appealing Access to Information Decisions in Prince Edward Island*.