



Access and  
Privacy Services  
Office

Bureau de l'accès à  
l'information et de la  
protection de la vie privée



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June 20, 2018

2018-116 JPS

Mr. Peter Rukavina

peter@rukavina.net

Dear Mr. Rukavina:

Re: *Freedom of Information and Protection of Privacy Act* (the "Act")

The Department of Justice and Public Safety has received this request under the Act:

- **"All input submitted during the public consultations on the Freedom of Information and Protection of Privacy Act from November 1, 2017 to March 31, 2018."**

We are considering disclosing records that pertain to your business. A copy of the information is attached to this letter. We would appreciate receiving your views regarding disclosure of this information.

If you are not the appropriate party to receive this Notice or if another third party may also have an interest in the information or be affected by the disclosure of the information, please call me at 902-569-0568.

As section 14 of the Act indicates, the Department of Justice and Public Safety must disclose information to the applicant if all elements of a 3-part harms test are not met.

An explanatory note regarding section 14 of the Act is attached to assist you. After reviewing the material, please provide your views on the disclosure of the records in writing to me by **July 10, 2018**. You have 20 days from the date of this letter in which to respond. You may either:

- Consent to the disclosure of the information; or
- Make written representations explaining why the information should not be disclosed.

If you wish to have any of the information pertaining to your business withheld, it is important that you provide clear and specific reasons based on section 14 of the Act.

Your input and other relevant factors will be considered when deciding whether to disclose the information. Please note that if we do not receive written representations from you, we are required under the Act to make a decision based on the information that we have available. I will write to you by **July 20, 2018** to inform you of the decision made by the Department of Justice and Public Safety.

If you have any questions, please contact our office at 902-569-7590 or [apso@gov.pe.ca](mailto:apso@gov.pe.ca).

Sincerely,

A handwritten signature in blue ink, appearing to read 'K Dickson', is written above the typed name.

Kathryn E Dickson  
FOIPP Coordinator

Attachment

# *Notice to Third Party under section 28*

## Explanatory Note

### Notice under section 14 Third Party Business Interests

The *Freedom of Information and Protection of Privacy Act* provides a right of access to records held by public bodies.

We have received a request for access to records in which you have an interest. We are required to provide access to as much of the requested records as possible. We may withhold only the information covered specifically in the Act's exceptions.

We are notifying you in order to give you an opportunity to express any concerns that you may have about disclosure of the records. To be excepted from disclosure, the third party business information must meet *all three* of the criteria in section 14 of the Act, harm to the business interests of a third party.

These criteria are:

1. The information is a trade secret or commercial, financial, labour relations, scientific or technical information about a third party.
2. The information was supplied, implicitly or explicitly, in confidence. There must be evidence that the information has been consistently treated in a confidential manner.
3. One or more of the following harms will occur if the information is disclosed. The disclosure of the information will:
  - Harm significantly the competitive position or interfere significantly with the contractual or other negotiations of the third party.
  - Result in similar information no longer being supplied to the public body where it is in the public interest that similar information continues to be supplied. This does not apply where a statute or regulation requires that the information be supplied.
  - Result in undue financial loss or gain to any person or organization.
  - Reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer, or other person or body appointed to resolve or inquire into a labour dispute.

**Blair Barbour - Submission for "Modernizing the Freedom of Information and Protection of Privacy Act"**

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**From:** Peter Rukavina <peter@rukavina.net>  
**To:** <bwbarbour@gov.pe.ca>  
**Date:** 2/21/2018 1:27 PM  
**Subject:** Submission for "Modernizing the Freedom of Information and Protection of Privacy Act"  
**CC:** Peter Bevan-Baker <psbevanbaker@assembly.pe.ca>, <pc@bradtrivers.com>

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Mr. Barbour,

Please accept the following comments from me in response to your call for feedback in the "Modernizing the Freedom of Information and Protection of Privacy Act" paper.

I am a longtime user of the FOIPP mechanisms afforded by the provincial and federal governments, as well as, more recently by the University of Prince Edward Island. I'm also a longtime practitioner of, and advocate for, open data use.

I have two general comments to make, focused on the intersection of open data and FOIPP legislation.

1. While the Government of PEI, in recent years, has begun to establish the technical and policy groundwork for a more open approach to data, there remains an attitude in the public service that the role of a public servant is, writ large, to act as a *gatekeeper* for data. This role is only reinforced by the dynamic of the access provisions of FOIPP legislation which, by carefully defining the mechanisms for access, serve to enhance the notion of the public service as guardians of a bank vault of data that is only to be parcelled out carefully, on a cost-recovery basis, in response to specific requests. A truly open and transparent approach to data would see public servants mandated to release as much data about what they do, how they do it, and how it went, as often as possible; their job performance should be judged, in part, by their success in doing so, in much the same way as academics are rewarded for the volume of their publications.

2. In a similar vein, it is at our peril that we continue to regard open data and FOIPP as in opposition. The public service, because of resource constraints, is often faced with the question of where to turn its open data efforts first: tremendous benefit would come from using access requests themselves as semaphores for public interest, and to use access requests as the trailheads of proactive disclosure. Not only would this be an effective use of resources, but it would also result in a change, on a technical level, from treating access requests as one-of technical jobs to treating them as prompts to build systems that are open-data-enabled. For example, if I submit a FOIPP request for a list of survey markers, the likely response currently would be that a technician would prepare a one-time data export of survey markers from an internal system, and I would receive this by email or on physical digital media; a more effective response, in contrast, would be to use the same resources to extend a bridge between the internal survey marker system and open data infrastructure so that the data becomes open to all as a regular course of action, without the need for additional FOIPP requests.

In addition, I have some specific responses to points you raise in your paper:

**Information and Privacy Commissioner:** In 2006 I submitted an access request to Health PEI for information related to financial transactions related to my personal health care. Health PEI denied my request, and I appealed to the Information and Privacy Commissioner. The adjudication of this appeal

was delayed multiple times, over the course of several years, and it was not until 1007 days later, in 2014, that I received the information I'd requested. In letters from the Information and Privacy Commissioner regarding the delays it was made clear to me that the reason for the delay was simply that her office did not have the capacity to deal with its workload. As such, I believe that effective administration of the FOIPP Act requires that the Information and Privacy Commissioner's office be sufficiently resourced to carry out its duties under the timelines laid out in the Act.

**University of Prince Edward Island:** The University of PEI updated its own FOIPP policy last year, and I find it problematic in two ways. First, there is a \$25 non-refundable processing fee for each request, which I find onerous (especially when contrasted to the more reasonable \$5 established under provincial FOIPP legislation). Second, the policy does not apply retroactively, so that information and data gathered before May 2015 is not subject to the policy. While I can appreciate that there are limited situations where this might be appropriate, I believe the starting point should include retroactivity, with only specific limitations to this. Ultimately, I believe that it would be more sensible and efficient to have the University of PEI covered by provincial FOIPP legislation.

**Municipalities:** As a longtime resident of the City of Charlottetown, I have found access to information and data maintained by the City to be effectively unavailable in many situations. This is particularly problematic as the City holds data that in many ways is the most relevant to the day-to-day life of citizens, data that could most effectively be used by citizens to advocate and analyze. While the Province of PEI has made progress on the "open data culture shift," in my experience the City is still working in a "tell us why you want this data, and what you're going to use it for" era. For example, several years ago I asked the City for a digital copy of the GIS layer for its Zoning and Development Bylaw, and this request was arbitrarily denied at a bureaucratic level (ultimately I was given a copy by a City Councillor, something no less problematic). As such, I believe strongly that the FOIPP Act should be extended to municipalities.

**Fees:** Pursuant to my comments above related to using access requests as a smaphore for public interest and an opportunity to build open systems, I believe that processing fees should be eliminated entirely. They are a barrier to access and, ironically, are highest for information that is, from a technical perspective, the most technically challenging to make accessible. Citizens should not be punished financially for requesting information that is, by dint of history, buried the deepest, so to speak. FOIPP requests should be looked upon as a gift from citizens to the public service, and the technical expenditure an investment in openness.

Regards,  
Peter Rukavina  
(as a private citizen)