PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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This document, prepared by the ***Legislative Counsel Office***, is an office consolidation of this Act, current to March 30, 2026. It is intended for information and reference purposes only.

This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*** on the Prince Edward Island Government web site.

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FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CHAPTER F-15.01

1. Definitions

In this Act

(a) "**adjudicator**" means a person designated under section 68.1;

(a.1) "**applicant**" means a person who makes a request for access to a record under subsection 7(1);

(a.2) "**biometric information**" means information derived from an individual's unique measurable characteristics;

(b) "**Commissioner**" means the Information and Privacy Commissioner appointed under Part III;

(b.1) "**designated educational body**" means

(i) the University of Prince Edward Island established under the *University Act* R.S.P.E.I. 1988, Cap. U-4,

(ii) Holland College established under the *Holland College Act* R.S.P.E.I. 1988, Cap. H-6,

(iii) La Société Éducative de L'Île-de-Prince Édouard Inc., a non-profit corporation established under the laws of the Province, operating under the trade name "Collège de l'Île", or

(iv) any other body that may be designated as a designated educational body in the regulations;

(b.2) "**designated municipality**" means

(i) the City of Charlottetown,

(ii) the City of Summerside,

(iii) the Town of Cornwall,

(iv) the Town of Stratford, or

(v) any other municipality that may be designated as a designated municipality in the regulations;

(c) "**employee**", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract with the public body;

(d) "**head**", in relation to a public body, means

(i) if the public body is a department, branch or office of the Government of Prince Edward Island, the member of the Executive Council who presides over it,

(ii) if the public body is an agency, board, commission, corporation, office or other body designated as a public body in the regulations,

(A) the person designated under subsection 77(2) as the head of that body, or

(B) where a head is not so designated, the person who acts as the chief officer for, and is charged with the administration and operation of, that body,

(ii.1) if the public body is a local public body, the person or group of persons designated under section 77.1 as the head, or

(iii) in any other case, the chief officer of the public body;

(e) "**law enforcement**" means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings, or by another body to which the results of the proceedings are referred;

(e.1) "**local public body**" means

(i) a designated educational body, or

(ii) a designated municipality;

(f) "**Minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(f.1) "**municipality**" means a municipality as defined in the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1;

(g) "**offence**" means an offence under an enactment of Prince Edward Island or Canada;

(h) "**officer of the Legislative Assembly**" means any person appointed as an officer of the Legislative Assembly by the Legislative Assembly;

(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, other biometric information, blood type, genetic information 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 granted or a record suspension has been ordered in respect of the offence under the *Criminal Records Act* (Canada),

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

(j) "**prescribed**" means prescribed by the regulations;

(k) "**public body**" means

(i) a department, branch or office of the Government of Prince Edward Island,

(ii) an agency, board, commission, corporation, office or other body designated as a public body in the regulations,

(iii) the Executive Council Office,

(iv) the office of an officer of the Legislative Assembly, or

(iv.1) a local public body,

but does not include

(v) the office of the Speaker of the Legislative Assembly and the office of a Member of the Legislative Assembly, or

(vi) the Court of Appeal of Prince Edward Island, the Supreme Court of Prince Edward Island or the Provincial Court of Prince Edward Island;

(l) "**record**" means a record of information in any form, including electronic form, but does not include a mechanism or system for generating, sending, receiving, storing or otherwise processing information;

(m) "**third party**" means a person, a group of persons or an organization other than an applicant or a public body;

(n) "**trade secret**" means information, including a formula, pattern, compilation, program, device, product, method, technique or process

(i) that is used, or may be used, in business or for any commercial purpose,

(ii) that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use,

(iii) that is the subject of reasonable efforts to prevent it from becoming generally known, and

(iv) the disclosure of which would result in significant harm or undue financial loss or gain. *2001,c.37,s.1; 2002,c.27,s.1,2; 2005,c.6,s.1; 2008,c.20,s.72(34); 2018,c.27,s.1; 2022,c.69,s.1; 2025,c.11,s.12(2).*

2. Purposes of this Act

The purposes of this Act are

(a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act;

(b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information;

(c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body;

(d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body; and

(e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act. *2001,c.37,s.2.*

3. Scope of this Act

This Act

(a) is in addition to and does not replace existing procedures for access to information or records;

(b) does not affect access to records deposited in the Public Archives and Records Office before the coming into force of this Act;

(c) does not limit the information otherwise available by law to a party to legal proceedings;

(d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents; and

(e) does not prohibit the transfer, storage or destruction of any record

(i) in accordance with any other enactment of Prince Edward Island or Canada, or

(ii) in accordance with a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument in respect of the transfer, storage or destruction of a record, as authorized by the governing body of the local public body. *2001,c.37,s.3; 2018,c.27,s.2.*

4. Records to which this Act applies

(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(a) information in a court file, a record of a judge of the Court of Appeal of Prince Edward Island, the Supreme Court of Prince Edward Island or the Provincial Court of Prince Edward Island, a record of the Prothonotary, a record of a justice of the peace, a judicial administration record or a record relating to support services provided to a judge;

(b) a personal note, communication or draft decision created by or for a person who is acting in a judicial or quasi-judicial capacity;

(c) a record that is created by or for or is in the custody or under the control of an officer of the Legislative Assembly and relates to the exercise of that officer's functions under an enactment;

(d) a record that is created by or for or is in the custody or under the control of the Conflict of Interest Commissioner and relates to any advice relating to conflicts of interest whether or not the advice was given under the *Conflict of Interest Act*;

(d.1) a record that is created by or for or is in the custody or under the control of the Public Interest Disclosure Commissioner or the Office of the Public Interest Disclosure Commissioner or a record related to a disclosure or complaint, and any investigation, findings or recommendations made in relation to a disclosure or complaint, made under the *Public Interest Disclosure and Whistleblower Protection Ac*t R.S.P.E.I. 1988, Cap. P-31.01;

(e) a question that is to be used on an examination or test;

(e.1) teaching materials

(i) of an employee of a designated educational body,

(ii) of a designated educational body, or

(iii) of both an employee of a designated educational body and the designated educational body;

(e.2) research information of an employee of a designated educational body;

(f) material that has been deposited in the Public Archives and Records Office or the archives of a public body by or for a person or entity other than a public body;

(f.1) published works collected by a library of a public body in accordance with the library's acquisition of materials policy;

(g) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;

(h) a record made from information

(i) in a registry of documents relating to personal property,

(ii) in the office of the Director of Corporations,

(iii) in the office of the Registrar of Deeds,

(iv) in an office of a division registrar, district registrar, or the Office of the Director, as defined in the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1, or

(v) in a registry operated by a public body if that registry is authorized or recognized by an enactment and public access to the registry is normally permitted;

(h.1) a personal record or constituency record of an elected or appointed member of a public body;

(h.2) a personal record of an elected official of or of an appointed or elected member of the governing body of a local public body;

(i) a personal record or constituency record of a member of the Executive Council;

(j) a record created by or for the office of the Speaker of the Legislative Assembly or the office of a member of the Legislative Assembly;

(k) a record created by or for

(i) a member of the Executive Council, or

(ii) a member of the Legislative Assembly

that has been sent or is to be sent to a member of the Executive Council or a member of the Legislative Assembly;

(l) a record relating to the business or affairs of Credit Union Deposit Insurance Corporation of Prince Edward Island, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union that is obtained or produced in the course of administering or enforcing the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1 or the regulations under it, other than a record that relates to a non-arm's length transaction between the Government and another party;

(m) a record relating to the business or affairs of the Credit Union Deposit Insurance Corporation, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union that is obtained or produced in the course of administering or enforcing the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1 or the regulations under it, other than a record that relates to a non-arm's length transaction between the Government and another party;

(n) personal health information as defined in the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41, that is in the custody or control of a public body that is a custodian as defined in the *Health Information Act*.

Part I does not apply to certain records

(1.1) Notwithstanding subsection (1), Part I does not apply to a record that is created by or for, or is in the custody or under the control of, a local public body before the date that this Act applies with respect to that local public body.

Judicial administration record

(2) In this section, "**judicial administration record**" means a record containing information relating to

(a) the scheduling of judges and trials;

(b) the content of judicial training programs;

(c) statistics of judicial activity prepared by or for a judge; and

(d) any record of a judicial council.

Non-arm's length transaction

(3) For the purposes of clauses (1)(l) and (m), a non-arm's length transaction is any transaction that has been approved

(a) by the Executive Council or any of its committees; or

(b) by a member of the Executive Council. *2001,c.37,s.4; 2002,c.27,s.3; 2005,c.6,s.2; 2008,c.20,s.72(34); 2010,c.7,s.54; 2018,c.27,s.3; 2017,c.11,s.29; 2018,c.52,s.59.*

5. Refusal, existing law

(1) Repealed by *2001,c.37,s.5.*

Relationship to other Acts

(2) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

(a) another Act; or

(b) a regulation under this Act

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

Commencement

(3) Subsection (1) is repealed, and subsection (2) comes into force, two years after the day on which section 6 comes into force. *2001,c.37,s.5; 2002,c.27,s.4.*

PART I — FREEDOM OF INFORMATION

Division 1 — Obtaining Access to Records

6. Information rights

(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

Excepted information, severance

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

Fee

(3) The right of access to a record is subject to the payment of any fee required by the regulations. *2001,c.37,s.6.*

7. How to make a request

(1) To obtain access to a record, a person shall make a request to the public body that the person believes has custody or control of the record.

Form, etc.

(2) A request shall be in writing and shall provide enough detail to enable the public body to identify the record.

Copy or examination

(3) In a request, the applicant may ask

(a) for a copy of the record; or

(b) to examine the record.

Abandoned requests

(4) Where the head of a public body contacts an applicant in writing respecting the applicant's request including

(a) seeking further information from the applicant that is necessary to process the request, or

(b) requesting the applicant to pay a fee or to agree to pay a fee,

and the applicant fails to respond to the head of the public body, as requested by the head, within 30 days of being contacted, the head of the public body may, by notice in writing to the applicant, declare the request abandoned.

Notice

(5) A notice given by the head of a public body under subsection (4) shall state that the applicant may ask for a review, under Part IV, of a declaration of abandonment of the applicant's request. *2001,c.37,s.7; 2002,c.27,s.5.*

8. Duty to assist applicants

(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.

Creation of record

(2) The head of a public body shall create a record for an applicant if

(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise; and

(b) creating the record would not unreasonably interfere with the operations of the public body. *2001,c.37,s.8.*

9. Time limit for responding

(1) The head of a public body shall respond to a request without undue delay and in any event shall make every reasonable effort to respond to a request not later than 30 days after receiving it unless

(a) that time limit is extended under section 12; or

(b) the request has been transferred under section 13 to another public body.

Failure to respond

(2) The failure of the head to respond to a request within the 30 day period or any extended period is to be treated as a decision to refuse access to the record. *2001,c.37,s.9.*

10. Contents of response

(1) In a response under section 9, the applicant shall be informed

(a) whether access to the record or part of it is granted or refused;

(b) if access to the record or part of it is granted, where, when and how access will be given; and

(c) if access to the record or to part of it is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.

Refusal to confirm etc. existence of record

(2) Despite subclause (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of

(a) a record containing information described in section 16 or 18; or

(b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy. *2001,c.37,s.10; 2005,c.6,s.3.*

11. How access will be given

(1) If an applicant is told under subsection 10(1) that access will be granted, the head of the public body shall comply with this section.

Copy of record

(2) If the applicant has asked for a copy of a record and the record can reasonably be reproduced,

(a) a copy of the record or part of it shall be provided with the response; or

(b) the applicant shall be given reasons for any delay in providing the copy.

Delay

(3) If there will be a delay in providing the copy under subsection (2), the applicant shall be informed as to where, when and how the copy will be provided.

Examination of record

(4) If the applicant has asked to examine a record or for a copy of a record that cannot reasonably be reproduced, the applicant

(a) shall be permitted to examine the record or part of it; or

(b) shall be given access in accordance with the regulations. *2001,c.37,s.11; 2002,c.27,s.6.*

12. Extending the time limit for responding

(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

(a) the applicant does not give enough detail to enable the public body to identify a requested record;

(b) a large number of records is requested or must be searched, and responding within the period set out in section 9 would unreasonably interfere with the operations of the public body;

(c) more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record; or

(d) a third party asks for a review under subsection 60(2).

Multiple concurrent requests

(2) The head of a public body may, with the Commissioner's permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by two or more applicants who work for the same organization or who work in association with each other.

Third party intervention

(3) Notwithstanding subsection (1), where the head of a public body is considering giving access to a record to which section 28 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 29.

Information to be supplied to applicant

(4) If the time is extended under subsection (1), (2) or (3), the head of the public body shall inform the applicant

(a) of the reason for the extension;

(b) of when a response can be expected; and

(c) of the applicant's entitlement to make a complaint to

(i) the Commissioner under subsection 50(2) if the decision was not made by the Commissioner, or

(ii) an adjudicator under section 68.1 if the decision was made by the Commissioner. *2001,c.37,s.12; 2002,c.27,s.7; 2005,c.6,s.4.*

13. Transferring a request

(1) Within 15 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if

(a) the record was produced by or for the other public body;

(b) the other public body was the first to obtain the record; or

(c) the record is in the custody or under the control of the other public body.

Idem

(2) If a request is transferred under subsection (1),

(a) the head of the public body who transferred the request shall notify the applicant of the transfer as soon as practicable; and

(b) the head of the public body to which the request is transferred shall make every reasonable effort to respond to the request not later than 30 days after receiving the request unless that time limit is extended under section 12. *2001,c.37,s.13.*

Division 2 — Exceptions to Disclosure

14. Disclosure harmful to business interests of a third party

(1) Subject to subsection (2) the head of a public body shall refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, explicitly or implicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of a third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) 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 relations dispute.

Taxation

(2) The head of a public body shall refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.

Exception

(3) Subsections (1) and (2) do not apply if

(a) the third party consents to the disclosure;

(b) an enactment of Prince Edward Island or Canada authorizes or requires the information to be disclosed;

(c) the information relates to a non-arm's length transaction between a public body and another party; or

(d) the information is in a record that is in the custody or under the control of the Public Archives and Records Office or the archives of a public body and has been in existence for 50 years or more. *2001,c.37,s.14; 2002,c.27,s.8; 2005,c.6,s.5.*

15. Disclosure harmful to personal privacy

(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.

Where disclosure not unreasonable invasion of third party's privacy

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure;

(b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party;

(c) an Act of Prince Edward Island or Canada authorizes or requires the disclosure;

(d) the disclosure is for research purposes and is in accordance with sections 39 and 40;

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council;

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(g) the information is about a license, permit or other similar discretionary benefit relating to

(i) a commercial or professional activity, that has been granted to the third party by a public body, or

(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body,

and the disclosure is limited to the name of the third party and the nature of the license, permit or other similar discretionary benefit;

(h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body;

(i) the personal information is about an individual who has been dead for 25 years or more; or

(j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:

(i) enrolment in a school of the English school system or the French school system as defined in the *Education Act* R.S.P.E.I. 1988, Cap. E-.02,

(i.1) enrolment in a designated educational body or in a program offered by a designated educational body,

(ii) admission to a health care facility or institution as a current patient or resident, except where the disclosure would reveal the nature of the third party's treatment,

(iii) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip,

(iv) receipt of an honour or award granted by or through a public body.

Unreasonable invasion

(3) The disclosure of personal information under clause (2)(j) is an unreasonable invasion of personal privacy if the third party whom the information is about has requested that the information not be disclosed.

Presumption

(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;

(b) the personal information was compiled and is identifiable as part of a law enforcement matter, except to the extent that disclosure is necessary to prosecute in respect of , or to continue or conclude, the matter;

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;

(d) the personal information relates to employment or educational history;

(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

(e.1) the personal information consists of an individual's bank account information or credit card information;

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;

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

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

(ii) the disclosure of the name itself would reveal personal information about the third party; or

(h) the personal information indicates the third party's racial or ethnic origin, or religious or political beliefs or associations.

Circumstances considered

(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;

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

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

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

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

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant; and

(i) the personal information was originally provided by the applicant. *2001,c.37,s.15; 2002,c.27,s.9; 2005,c.6,s.6; 2016,c.6,s.119; 2018,c.27,s.4.*

16. Disclosure harmful to individual or public safety

(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health; or

(b) interfere with public safety.

Disclosure harmful to applicant's health or safety

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a physician, psychologist, psychiatrist or any other appropriate expert depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety.

Confidential informant

(3) The head of a public body may refuse to disclose to an applicant information in a record that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual's safety or mental or physical health. *2001,c.37,s.16.*

17. Confidential evaluations

(1) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.

Idem

(2) The head of a public body may refuse to disclose to an applicant personal information that identifies or could reasonably identify a participant in a formal employee evaluation process concerning the applicant when the information is provided, explicitly or implicitly, in confidence.

participant

(3) For the purposes of subsection (2), "participant" includes a peer, subordinate or client of an applicant, but does not include the applicant's supervisor or superior. *2001,c.37,s.17; 2002,c.27,s.10; 2005,c.6,s.7.*

18. Disclosure harmful to law enforcement

(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) interfere with or harm a law enforcement matter, including an ongoing or unsolved law enforcement matter;

(b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement;

(d) reveal the identity of a confidential source of law enforcement information;

(e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities;

(e.1) reveal any information relating to or used in the exercise of prosecutorial discretion;

(f) deprive a person of the right to a fair trial or impartial adjudication;

(g) reveal a record that has been confiscated from a person by a peace officer in accordance with a law;

(h) facilitate the escape from custody of an individual who is being lawfully detained;

(i) facilitate the commission of an unlawful act or hamper the control of crime;

(j) reveal technical information relating to weapons or potential weapons;

(k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system; or

(l) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.

Application of clause (1)(e.1)

(1.1) Clause (1)(e.1) does not apply to information that has been in existence for 10 years or more.

Refusal, exposure to civil liability and prisoner custody interests

(2) The head of a public body may refuse to disclose information to an applicant if the information

(a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record; or

(b) is about the history, supervision or release of an individual who is under the control or supervision of a correctional authority and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

Offence

(3) The head of a public body shall refuse to disclose information to an applicant if the information is in a law enforcement record and the disclosure would be an offence under an Act of Canada.

Non-application of subsections (1) and (2)

(4) Subsections (1) and (2) do not apply to

(a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act of Prince Edward Island; or

(b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2).

Decision not to prosecute

(5) After a police investigation is completed, the head of a public body may disclose under this section the reasons for a decision not to prosecute

(a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim; or

(b) to any other member of the public, if the fact of the investigation was made public. *2001,c.37,s.18; 2002,c.27,s.11.*

19. Disclosure harmful to intergovernmental relations

(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm relations between the Government of Prince Edward Island or its agencies and any of the following or their agencies:

(i) the Government of Canada or a province or territory of Canada,

(i.1) a municipality,

(ii) the government of a foreign state, or

(iii) an international organization of states; or

(b) reveal information supplied, explicitly or implicitly, in confidence by a municipality or by a government or an organization listed in clause (a) or its agencies.

Consent of Minister

(2) The head of a public body may disclose information referred to in clause (1)(a) only with the consent of the Minister in consultation with the Executive Council.

Consent of organization, etc.

(3) The head of a public body may disclose information referred to in clause (1)(b) only with the consent of the municipality, government or organization that supplies the information, or its agency.

Historical records

(4) This section does not apply to information that has been in existence in a record for 15 years or more. *2001,c.37,s.19; 2002,c.27,s.12; 2018,c.27,s.5.*

20. Cabinet confidences

(1) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

Non-application of subsection (1)

(2) Subsection (1) does not apply to

(a) information in a record that has been in existence for 15 years or more; or

(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act. *2001,c.37,s.20; 2002,c.27,s.13; 2018,c.27,s.6.*

21. Public body confidences

(1) The head of a public body may refuse to disclose information to an applicant

(a) if the disclosure could reasonably be expected to reveal a draft of a resolution, bylaw or other legal instrument by which the public body acts; or

(b) where an enactment authorizes a meeting of the officials or governing body of a public body or a committee of the governing body of the public body to be held in the absence of the public, if the disclosure could reasonably be expected to reveal the substance of deliberations of the meeting.

Non-application of subsection (1)

(2) Subsection (1) does not apply if

(a) the draft of the resolution, bylaw or other legal instrument or the subject-matter of the deliberation has been considered in a meeting open to the public; or

(b) the information referred to in that subsection is in a record that has been in existence for 15 years or more. *2001,c.37,s.21; 2002,c.27,s.14; 2018,c.27,s.7.*

22. Advice from officials

(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(a) consultations or deliberations involving

(i) officers or employees of a public body,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council;

(b) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Prince Edward Island or a public body, or considerations that relate to those negotiations;

(c) plans relating to the management of personnel or the administration of a public body that have not yet been implemented;

(d) the contents of draft legislation, regulations and orders of members of the Executive Council or the Lieutenant Governor in Council;

(e) the contents of agendas or minutes of meetings of

(i) the governing body of an agency, board, commission, corporation, office or other body that is designated as a public body in the regulations made under this Act; or

(ii) a committee of a governing body referred to in subclause (i);

(f) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision;

(g) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council; or

(h) the contents of a formal research or audit report that, in the opinion of the head of the public body, is incomplete, unless no progress has been made on the report for at least three years.

Non-application of subsection (1)

(2) Subsection (1) does not apply to information that

(a) has been in existence for 15 years or more;

(b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;

(c) is the result of a product or environmental testing carried out by or for a public body, which is complete, or on which no progress has been made for at least three years, unless the testing was done

(i) for a fee as a service to a person other than a public body, or

(ii) for the purpose of developing methods of testing or testing products for possible purchase;

(d) is a statistical survey;

(e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal, which is complete, or on which no progress has been made for at least three years;

(f) is an instruction or guideline issued to the officers or employees of a public body; or

(g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an Act or regulation or administering a program or activity of the public body.

Audit

(3) In this section, "**audit**" means a financial or other formal and systematic examination or review of a program or activity, or a portion of a program or activity. *2001,c.37,s.22; 2002,c.27,s.15; 2015,c.36,s.28; 2018,c.27,s.8.*

23. Disclosure harmful to economic and other interests of a public body

(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Prince Edward Island or the ability of the Government to manage the economy, including the following information:

(a) trade secrets of a public body or the Government of Prince Edward Island;

(b) financial, commercial, scientific, technical or other information in which a public body or the Government of Prince Edward Island has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;

(c) information the disclosure of which could reasonably be expected to

(i) result in financial loss to,

(ii) prejudice the competitive position of, or

(iii) interfere with contractual or other negotiations of,

the Government of Prince Edward Island or a public body;

(d) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or public body of priority of publication.

Results of product or environmental testing

(2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for a public body, unless the testing was done

(a) for a fee as a service to a person other than the public body; or

(b) for the purpose of developing methods of testing or testing products for possible purchase. *2001,c.37,s.23.*

24. Testing procedures, tests and audits

The head of a public body may refuse to disclose to an applicant information relating to

(a) testing or auditing procedures or techniques;

(b) details of specific tests to be given or audits to be conducted; or

(c) standardized tests used by a public body, including intelligence tests,

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits. *2001,c.37,s.24; 2002,c.27,s.16.*

25. Privileged information

(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege;

(b) information prepared by or for

(i) the Minister of Justice and Public Safety and Attorney General,

(ii) an agent or lawyer of the Department of Justice and Public Safety, or

(iii) an agent or lawyer of a public body,

in relation to a matter involving the provision of legal services; or

(c) information in correspondence between

(i) the Minister of Justice and Public Safety and Attorney General,

(ii) an agent or lawyer of the Department of Justice and Public Safety, or

(iii) an agent or lawyer of a public body,

and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Public Safety and Attorney General, the agent or lawyer.

Idem

(2) The head of a public body shall refuse to disclose information described in clause (1)(a) that relates to a person other than a public body.

Parliamentary privilege

(3) Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege. *2001,c.37,s.25; 2002,c.27,s.17; 2010,c.31,s.3; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

26. Disclosure harmful to the conservation of heritage sites, etc.

The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to or interfere with the conservation of

(a) any archaeological site as defined in the *Archaeology Act* R.S.P.E.I. 1988, Cap. A-17.1;

(b) any heritage place as defined in the *Heritage Places Protection Act* R.S.P.E.I. 1988, Cap. H-3.1; or

(c) any rare, endangered, threatened or vulnerable form of life. *2001,c.37,s.26; 2022,c.62,s.30.*

27. Information that is or will be available to the public

(1) The head of a public body may refuse to disclose to an applicant information

(a) that is available for purchase by the public;

(b) that is to be published or released to the public within 60 days after the applicant's request is received; or

(c) that is otherwise readily available to the public.

Publication

(2) The head of the public body shall notify an applicant of the publication or release of information that the head has refused to disclose under clause (1)(b).

Renewal of request

(3) If the information is not published or released within 60 days after the applicant's request is received, the head of the public body shall reconsider the request as if it were a new request

received on the last day of that period, and access to the information requested shall not be refused under clause (1)(b). *2001,c.37,s.27; 2005,c.6,s.8.*

Division 3 — Third Party Intervention

28. Notifying the third party

(1) When the head of a public body is considering giving access to a record that may contain information

(a) that affects the interests of a third party under section 14; or

(b) the disclosure of which would be an unreasonable invasion of a third party's personal privacy under section 15,

the head shall, subject to section 27, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (3).

Exception

(1.1) Subsection (1) does not apply to a record containing information described in clause 15(2)(j).

Exception

(1.2) Subsection (1) does not apply to information that the head of the public body may refuse to disclose in accordance with section 27.

Idem

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 14 or 15, the head may give written notice to the third party in accordance with subsection (3).

Content of notice

(3) A notice under this section shall

(a) state that a request has been made for access to a record that may contain information the disclosure of which would affect the interests or invade the personal privacy of the third party;

(b) include a copy of the record or part of it containing the information in question or describe the contents of the record; and

(c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.

Notice to applicant

(4) When notice is given under subsection (1), the head of the public body shall also give the applicant a notice stating that

(a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party;

(b) the third party is being given an opportunity to make representations concerning disclosure; and

(c) a decision will be made within 30 days after the day notice is given under subsection (1). *2001,c.37,s.28; 2002,c.27,s.18; 2005,c.6,s.9; 2018,c.27,s.9.*

29. Time limit and notice decision

(1) Within 30 days after notice is given pursuant to subsection 28(1) or (2), the head of the public body shall decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of

(a) 21 days after the day notice is given; and

(b) the day a response is received from the third party.

Notice of decision

(2) On reaching a decision under subsection (1), the head of the public body shall give written notice of the decision, including reasons for the decision, to the applicant and the third party.

Review, third party request

(3) If the head of a public body decides to give access to the record or part of the record, the notice under subsection (2) shall state that the applicant will be given access unless the third party asks for a review under Part IV within 20 days after that notice is given.

***Idem*, applicant's request**

(4) If the head of a public body decides not to give access to the record or part of the record, the notice under subsection (2) shall state that the applicant may ask for a review under Part IV. *2001,c.37,s.29; 2002,c.27,s.19.*

Division 4 — Public Health and Safety

30. Information shall be disclosed if risk of harm to environment or public health

(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.

Application

(2) Subsection (1) applies despite any other provision of this Act.

Notice

(3) Before disclosing information under subsection (1), the head of a public body shall where practicable

(a) notify any third party to whom the information relates;

(b) give the third party an opportunity to make representations relating to the disclosure; and

(c) notify the Commissioner.

Idem

(4) If it is not practicable to comply with subsection (3), the head of a public body shall give written notice of the disclosure

(a) to the third party; and

(b) to the Commissioner. *2001,c.37,s.30; 2018,c.27,s.10.*

PART II — PROTECTION OF PRIVACY

Division 1 — Collection of Personal Information

31. Purpose of collection of information

No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by or under an enactment of Prince Edward Island or Canada;

(b) that information is collected for the purposes of law enforcement; or

(c) that information relates directly to and is necessary for an operating program or activity of the public body. *2001,c.37,s.31; 2002,c.27,s.20.*

32. Manner of collection of information

(1) A public body shall collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(i) that individual,

(ii) another Act or a regulation under another Act, or

(iii) the Commissioner under clause 50(1)(f);

(b) the information may be disclosed to the public body under Division 2 of this Part;

(c) the information is collected for the purpose of law enforcement;

(d) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Prince Edward Island or a public body;

(e) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority;

(f) the information is collected for use in the provision of legal services to the Government of Prince Edward Island or a public body;

(g) the information is necessary

(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Prince Edward Island or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Prince Edward Island or a public body and is collected for that purpose;

(h) the information is collected for the purpose of informing the Public Guardian and Trustee about clients or potential clients;

(i) the information is collected for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1;

(j) the information is collected for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body;

(k) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people;

(l) the information is collected in a health or safety emergency where

(i) the individual is not able to provide the information directly, or

(ii) direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person;

(m) the information concerns an individual who is designated as a person to be contacted in an emergency, or other specified circumstances;

(n) the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary; or

(o) the information is collected from published or other public sources for the purpose of fundraising.

Right to be informed

(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about shall inform the individual of

(a) the purpose for which the information is collected;

(b) the specific legal authority for the collection; and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

Application of subsections (1) and (2)

(3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, compliance with them could reasonably be expected to result in the collection of inaccurate information. *2001,c.37,s.32; 2002,c.27,s.21; 2005,c.6,s.10; 2023,c.35,s.34(2).*

33. Accuracy of personal information

If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body shall

(a) make every reasonable effort to ensure that the information is accurate and complete; and

(b) retain the personal information for

(i) the period required by the records retention and disposition schedule for the public body, as required by the *Archives and Records Act* or another enactment that applies with respect to that public body, or

(ii) if subclause (i) does not apply with respect to the public body, at least one year after using it. *2001,c.37,s.33; 2005,c.6,s.11; 2018,s.27,s.11.*

34. Right to request correction of personal information

(1) An individual who believes there is an error or omission in the individual's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

Opinions not to be altered

(1.1) The head of a public body shall not, under this section, correct or otherwise alter an opinion included in personal information, including a professional or expert opinion.

Annotation

(2) If no correction is made in response to a request under subsection (1), or if no correction is permitted under subsection (1.1), the head of a public body shall annotate or link the personal

information with that part of the requested correction that is relevant and material to the record in question.

Notice to others of correction, etc.

(3) On correcting, annotating or linking personal information under this section, the head of a public body shall notify any other public body or any third party to whom that information has been disclosed during the one year before the correction was requested that a correction, annotation or linkage has been made.

Dispensing with notice

(3.1) Notwithstanding subsection (3), the head of a public body may dispense with notifying any other public body or third party that a correction, annotation or linkage has been made if

(a) in the opinion of the head of the public body, the correction, annotation or linkage is not material; and

(b) the individual who requested the correction is advised and agrees in writing that notification is not necessary.

Correction, etc. by body notified

(4) On being notified under subsection (3) of a correction, annotation or linkage of personal information, a public body shall make the correction, annotation or linkage on any record of that information in its custody or under its control.

Notice to individual

(5) Within 30 days after the request under subsection (1) is received, the head of the public body shall give written notice to the individual that

(a) the correction has been made; or

(b) an annotation or linkage has been made pursuant to subsection (2).

Extension of time

(6) Section 12 applies to the period set out in subsection (5).

Transferring request to correct personal information

(7) Within 15 days after a request to correct personal information under section 34(1) is received by a public body, the head of the public body may transfer the request to another public body if

(a) the personal information was collected by the other public body; or

(b) the other public body created the record containing the personal information.

Time limit for responding to transferred request

(8) If a request is transferred under subsection (7),

(a) the head of the public body who transferred the request shall notify the individual of the transfer as soon as possible, and

(b) the head of the public body to which the request is transferred shall make every reasonable effort to respond to the request not later than 30 days after receiving the request unless the time limit is extended pursuant to subsection (6). *2001,c.37,s.34; 2002,c.27,s.22; 2005,c.6,s.12; 2018,c.27,s.12.*

35. Protection of personal information

The head of a public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, disposal or destruction. *2001,c.37,s.35; 2002,c.27,s.23.*

Division 2 — Use and Disclosure of Personal information by Public Bodies

36. Use of personal information

(1) A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;

(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or

(c) for a purpose for which that information may be disclosed to that public body under section 37, 39 or 40.

Use of alumni records by designated educational body

(1.1) Notwithstanding subsection (1), but subject to subsection (1.2), a designated educational body may use personal information in its alumni records for the purpose of its own fundraising activities.

Use of alumni records to discontinue on request

(1.2) A designated educational body shall, when requested to do so by an individual, discontinue using that individual's personal information under subsection (1.1).

Only to extent necessary

(2) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner. *2001,c.37,s.36; 2018,c.27,s.13.*

37. Disclosure of personal information

(1) A public body may disclose personal information only

(a) in accordance with Part I;

(a.1) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 15;

(b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;

(c) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure;

(d) for the purpose of complying with an enactment of Prince Edward Island or Canada or with a treaty, arrangement or agreement made under an enactment of Prince Edward Island or Canada;

(e) for any purpose in accordance with an enactment of Prince Edward Island or Canada that authorizes or requires the disclosure;

(f) for the purpose of complying with a subpoena, warrant or order, issued or made by a court, person or body having jurisdiction in Prince Edward Island to compel the production of information, or with a rule of court binding in Prince Edward Island that relates to the production of information;

(g) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member;

(g.1) to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed;

(h) for the purpose of enforcing a legal right that the Government of Prince Edward Island or a public body has against any person;

(i) for the purpose of

(i) collecting a fine or debt owing by an individual to the Government of Prince Edward Island or to a public body or to an assignee of either of them, or

(ii) making a payment owing by the Government of Prince Edward Island or by a public body to an individual;

(j) for the purpose of determining an individual's suitability or eligibility for a program or benefit, including determining if an individual remains eligible or suitable for a program or benefit that individual is already participating in;

(k) to the Auditor General or any other prescribed person or body for audit purposes;

(l) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem;

(m) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry;

(n) to the Public Archives and Records Office or to the archives of a public body for permanent preservation;

(o) to a public body or a law enforcement agency in Canada to assist in an investigation

(i) undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result;

(p) if the public body is a law enforcement agency and the information is disclosed

(i) to another law enforcement agency in Canada, or

(ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;

(q) so that a spouse, relative or a friend of an injured, ill or deceased individual may be contacted;

(r) in accordance with section 39 or 40;

(s) to an expert for the purposes of section 16(2);

(t) for use in a proceeding before a court or quasi-judicial body to which the Government of Prince Edward Island or a public body is a party;

(u) when disclosure is by the Minister of Justice and Public Safety and Attorney General or an agent or lawyer of the Minister of Justice and Public Safety and Attorney General to a place of lawful detention;

(v) for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body;

(w) to the Director of Maintenance Enforcement for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1;

(w.1) to the Public Guardian and Trustee appointed under *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2, for the purposes of managing the estate of a person under the *Public Guardian and Trustee Act*;

(x) to an officer of the Legislative Assembly, if the information is necessary for the performance of the duties of that officer;

(y) for the purpose of supervising an individual under the control or supervision of a correctional authority;

(z) when the information is available to the public;

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

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

(ii) does not reveal other personal information about the individual or personal information about another individual;

(aa) to a relative of a deceased individual if, in the opinion of the head of a public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy;

(bb) to a lawyer or articled clerk acting for an inmate under the control or supervision of a correctional authority; or

(cc) if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person.

Disclosure by designated educational body for fundraising activity

(1.1) Notwithstanding subsection (1), a designated educational body may disclose personal information in its alumni records for the purpose of fundraising activities of the educational body if the educational body and the person to whom the information is disclosed have entered into a written agreement

(a) that allows individuals a right of access to personal information that is disclosed about them under this subsection; and

(b) that provides that the person to whom the information is disclosed shall discontinue using the personal information of any individual who so requests.

Disclosure of evaluations to assist students

(1.2) Notwithstanding subsection (1), a designated educational body may, for the purposes of assisting students in selecting courses, disclose teaching and course evaluations that were completed by students.

Information reasonably required

(2) Only information that is reasonably required may be disclosed under subsection (1), (1.1) or (1.2). *2001,c.37,s.37; 2002,c.27,s.24; 2005,c.6,s.13; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3; 2018,c.27,s.14; 2023,c.35,s.34(3).*

38. Consistent purposes

For the purposes of clauses 36(1)(a) and 37(1)(b), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose; and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information. *2001,c.37,s.38.*

39. Disclosure for research or statistical purposes

A public body may disclose personal information for a research purpose, including statistical research, only if

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Commissioner;

(b) any record linkage is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest;

(c) the head of a public body has approved conditions relating to the following:

(i) security and confidentiality,

(ii) the removal or destruction of individual identifiers at the earliest reasonable time, and

(iii) the prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of that public body; and

(d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information. *2001,c.37,s.39.*

40. Disclosure for research purposes

The Public Archives and Records Office and the archives of a public body may disclose

(a) personal information that is

(i) in a record that has been in existence for 25 years or more if

(A) the disclosure would not be an unreasonable invasion of personal privacy under section 15,

(B) the disclosure is made in accordance with section 39, or

(C) the information is about an individual who has been dead for 25 years or more, or

(ii) in a record that has been in existence for 75 years or more; and

(b) information, other than personal information, that is in a record that has been in existence for 25 years or more if

(i) the disclosure would not be harmful to the business interests of a third party within the meaning of section 14,

(ii) the disclosure would not be harmful to a law enforcement matter within the meaning of section 18,

(iii) the information is not subject to any type of legal privilege under section 25, and

(iv) access to the information is not restricted or prohibited by another Act of Prince Edward Island or Canada. *2001,c.37,s.40; 2002,c.27,s.25; 2018,c.27,s.15.*

PART III — OFFICE AND POWERS OF INFORMATION AND PRIVACY COMMISSIONER

41. Definition

In this Part, "**Standing Committee**" means the Standing Committee on Legislative Assembly Management. *2001,c.37,s.41; 2020,c.89,s.61(2).*

42. Commissioner

(1) There shall be an Information and Privacy Commissioner who is an officer of the Legislative Assembly.

Appointment

(2) The Commissioner shall be appointed by the Legislative Assembly

(a) on the recommendation of the Standing Committee; and

(b) following a resolution of the Legislative Assembly supported by at least two-thirds of the members present.

Membership of Legislative Assembly

(3) The Commissioner shall not be a member of the Legislative Assembly.

Commissioner may be part time

(4) The Commissioner may be designated to hold office on a part-time basis. *2001,c.37,s.42; 2002,c.27,s.26.*

43. Term of office

(1) Except as provided for in section 44, the Commissioner holds office for a term not exceeding 5 years.

Continuation

(2) A person holding office as Commissioner continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

Reappointment

(3) A person is eligible for reappointment as Commissioner. *2001,c.37,s.43; 2018,c.27,s.16.*

44. Resignation, removal or suspension of Commissioner

(1) The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from the province, by notifying the Clerk of the Legislative Assembly.

Removal

(2) The Commissioner may be removed or suspended for cause or incapacity, before the expiry of his or her term of office, by a resolution of the Legislative Assembly supported by at least two-thirds of the members present.

Idem

(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee. *2001,c.37,s.44; 2002,c.27,s.27.*

45. Acting Commissioner

(1) The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if

(a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting;

(b) the Commissioner is suspended when the Legislative Assembly is not sitting; or

(c) the Commissioner is removed or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no appointment is made by the Legislative Assembly under subsection 42(2) before the end of the session.

Commissioner absence, etc.

(2) The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.

Acting

(3) An acting Commissioner holds office until

(a) a person is appointed under subsection 42(1);

(b) the suspension of the Commissioner ends; or

(c) the Commissioner returns to office after a temporary absence. *2001,c.37,s.45; 2002,c.27,s.28.*

46. Remuneration

The Commissioner shall be remunerated as determined by the Standing Committee, and it shall review that remuneration at least once a year. *2001,c.37,s.46.*

47. Oath

(1) Before beginning the duties of office, the Commissioner shall take an oath to faithfully and impartially perform the duties of the office and not to disclose any information received by the Office of the Information and Privacy Commissioner under this Act except as provided in this Act.

Administration

(2) The oath shall be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly. *2001,c.37,s.47.*

48. Office of the Commissioner

(1) There may be a part of the public service of the province called the Office of the Information and Privacy Commissioner consisting of the Commissioner and those persons that are necessary to assist the Commissioner in carrying out the Commissioner's functions under this or any other enactment.

Services

(2) The Commissioner may engage the services of any persons necessary to assist the Commissioner in carrying out the Commissioner's functions.

Oath

(3) Every person employed or engaged by the Office of the Information and Privacy Commissioner shall, before beginning to perform duties under this Act, take an oath, to be administered by the Commissioner, not to disclose any information received by that person under this Act except as provided in this Act. *2001,c.37,s.48.*

49. Submission of estimate

(1) The Commissioner shall submit to the Standing Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Information and Privacy Commissioner in that fiscal year.

Financing of operations

(2) The Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee shall transmit the estimate to the Minister of Finance for presentation to the Legislative Assembly. *2001,c.37,s.49; 2002,c.27,s.29; 2010,c.31,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

50. Review

(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

(a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records

(i) set out in any other enactment of Prince Edward Island, or

(ii) set out in a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument setting out rules related to the destruction of records, as authorized by the governing body of the local public body;

(b) make an order described in subsection 66(3) whether or not a review is requested;

(c) inform the public about this Act;

(d) comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies;

(e) comment on the implications for protection of personal privacy of using or disclosing personal information for record linkage;

(f) authorize the collection of personal information from sources other than the individual the information is about;

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

(h) give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under this Act.

Resolution of complaints

(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;

(b) an extension of time for responding to a request is not in accordance with section 12;

(c) a fee required under this Act is inappropriate;

(d) a correction of personal information requested under subsection 34(1) has been refused without justification; and

(e) personal information has been collected, used or disclosed by a public body in violation of Part II. *2001,c.37,s.50; 2005,c.6,s.14; 2018,c.27,s.17.*

51. Advice and recommendations

(1) The head of a public body may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.

Request for advice

(2) The Commissioner may in writing provide the head with advice and recommendations that

(a) state the material facts either expressly or by incorporating facts stated by the head;

(b) are based on the facts referred to in clause (a); and

(c) may be based on any other considerations the Commissioner considers appropriate. *2001,c.37,s.51.*

52. Power to authorize a public body to disregard questions

(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard any request made under subsection 7(1), if the request

(a) would unreasonably interfere with the operations of the public body or amount to an abuse of the right to access, because of the repetitious or systematic nature of the request; or

(b) is frivolous or vexatious.

Effect on processing request

(2) The processing of a request under subsection 7(1) ceases when the head of a public body has made a request under subsection (1) and

(a) if the Commissioner authorizes the head of the public body to disregard the request, does not resume; or

(b) if the Commissioner does not authorize the head of the public body to disregard the request, does not resume until the Commissioner advises the head of the public body of the Commissioner's decision. *2001,c.37,s.52; 2002,c.27,s.30; 2018,c.27,s.18.*

53. Powers of Commissioner in conducting inquiries

(1) In conducting an investigation under clause 50(1)(a) or an inquiry under section 64 or in giving advice and recommendations under section 51, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31 and the powers given by subsection (2).

Examination of records

(2) The Commissioner may require any record to be produced to the Commissioner and may examine any information in a record, including personal information whether or not the record is subject to the provisions of this Act.

Production of record

(3) Despite any other enactment or any privilege of the law of evidence, a public body shall produce to the Commissioner within 10 days any record or a copy of any record required under subsection (1) or (2).

Examination of original

(4) If a public body is required to produce a record under subsection (1) or (2) and it is not practicable to make a copy of the record, the head of that public body may require the Commissioner to examine the original at its site.

Return

(5) After completing a review or investigating a complaint, the Commissioner shall return any record or any copy of any record produced. *2001,c.37,s.53; 2005,c.6,s.15.*

54. Statements made to the Commissioner not admissible in evidence

(1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except

(a) in a prosecution for perjury in respect of sworn testimony;

(b) in a prosecution for an offence under this Act; or

(c) in an application for judicial review or an appeal from a decision with respect to that application.

Application of subsection (1)

(2) Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the Commissioner. *2001,c.37,s.54.*

55. Privileged information

Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court. *2001,c.37,s.55.*

55.1 Competence and compellability

The Commissioner and anyone acting for or under the direction of the Commissioner is neither competent nor compellable to

(a) give evidence in a civil proceeding concerning any information that comes to his or her knowledge in the exercise of a power or the performance of a duty under this Act; or

(b) produce in a civil proceeding any records created or received in the course of activities under this Act. *2018,c.27,s.19.*

56. Restrictions on disclosure of information by the Commissioner and staff

(1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not disclose any information obtained in performing their functions under this Act, except as provided in subsections (2) to (5).

Exception

(2) The Commissioner may disclose or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary to

(a) conduct an investigation or inquiry under this Act; or

(b) establish the grounds for findings and recommendations contained in a report under this Act.

Information not to be disclosed

(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner shall take every reasonable precaution to avoid disclosing and shall not disclose

(a) any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under subsection 7(1); or

(b) whether information exists, if the head of a public body in refusing to provide access does not indicate whether the information exists.

Information concerning offences

(4) The Commissioner may disclose to the Minister of Justice and Public Safety and Attorney General information relating to the commission of an offence against an enactment of Prince Edward Island or Canada if the Commissioner considers there is evidence of an offence.

Other exceptions

(5) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 54. *2001,c.37,s.56; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

57. Protection of Commissioner and staff

No proceedings lie against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a function under this Part or Part IV. *2001,c.37,s.57.*

58. Delegation

(1) The Commissioner may delegate to any person any function of the Commissioner under this Act, except the power to delegate under this section.

Idem

(2) A delegation under subsection (1) shall be in writing and may contain any conditions or restrictions the Commissioner considers appropriate. *2001,c.37,s.58; 2005,c.6,s.16.*

59. Report of Commissioner

(1) The Commissioner shall report annually to the Speaker of the Legislative Assembly on

(a) the work of the Commissioner's office;

(b) any complaints or reviews resulting from a decision, act or failure to act of the Commissioner as head of a public body; and

(c) such other matters relating to freedom of information and protection of personal privacy as the Commissioner considers appropriate.

Idem

(2) The Speaker shall lay each annual report before the Legislative Assembly as soon as possible. *2001,c.37,s.59.*

PART IV — REVIEWS AND COMPLAINTS

Division 1 — Reviews by the Commissioner

60. Right to ask for a review

(1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request.

Third party request

(2) A third party notified under section 29 of a decision by the head of a public body to give access may ask the Commissioner to review that decision.

Personal information

(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part II may ask the Commissioner to review that matter.

***Idem*, deceased**

(4) A relative of a deceased individual may ask the Commissioner to review a decision of a head of a public body under clause 37(1)(aa) not to disclose personal information.

Application

(5) This section does not apply

(a) to a decision by the Speaker of the Legislative Assembly that a record is subject to parliamentary privilege;

(b) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislative Assembly, to a decision, act or failure to act of that person when acting as the head of that office; or

(c) to a decision, act or failure to act of the Commissioner when acting as the head of the Office of the Information and Privacy Commissioner. *2001,c.37,s.60; 2005,c.6,s.17.*

61. How to ask for a review

(1) To ask for a review under this Division, a written request shall be delivered to the Commissioner.

Time for request

(2) A request for a review of a decision of the head of a public body must be delivered to the Commissioner

(a) if the request is pursuant to subsection 60(1), (3) or (4), within

(i) 60 days after the person asking for the review is notified of the decision, or

(ii) any longer period allowed by the Commissioner; or

(b) if the request is pursuant to subsection 60(2), within 20 days after the person asking for the review is notified of the decision.

Failure to respond constitutes refusal

(3) The failure of the head of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access, but the time limit in clause (2)(a) for delivering a request for review does not apply. *2001,c.37,s.61; 2005,c.6,s.18.*

62. Notifying others of review

(1) On receiving a request for a review, the Commissioner shall as soon as practicable

(a) give a copy of the request

(i) to the head of the public body concerned, and

(ii) to any other person who in the opinion of the Commissioner is affected by the request; and

(b) provide a summary of the review procedures and an anticipated date for a decision on the review

(i) to the person who asked for the review,

(ii) to the head of the public body concerned, and

(iii) to any other person who in the opinion of the Commissioner is affected by the request.

Information from request severed

(2) Notwithstanding clause (1)(a), the Commissioner may sever any information in the request for a review that the Commissioner considers appropriate before giving a copy of the request to the head of the public body or to any other person affected by the request. *2001,c.37,s.62; 2002,c.27,s.31.*

63. Use of mediation

The Commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review. *2001,c.37,s.63.*

64. Inquiry by Commissioner

(1) Unless a matter is settled under section 63, the Commissioner shall, subject to section 64.1, conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

Inquiry in private

(2) An inquiry under subsection (1) may be conducted in private.

Representations

(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review shall be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

Idem

(4) The Commissioner may decide whether the representations are to be made orally or in writing.

Counsel

(5) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

Time for completion of inquiry

(6) An inquiry under this section shall be completed within 90 days after receiving the request for the review unless the Commissioner

(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period; and

(b) provides an anticipated date for the completion of the review. *2001,c.37,s.64; 2002,c.27,s.32.*

64.1 Refusal to conduct an inquiry

The Commissioner may refuse to conduct an inquiry pursuant to section 64 if, in the opinion of the Commissioner,

(a) the subject matter of a request for a review under section 60 has been dealt with in an order or investigation report of the Commissioner; or

(b) the circumstances warrant refusing to conduct an inquiry. *2001,c.27,s.33; 2005,c.6,s.19.*

65. Burden of proof

(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.

***Idem*, third party personal information**

(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.

Idem

(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

(a) in the case of personal information, it is up to the applicant to prove the disclosure of the information would not be an unreasonable invasion of the third party's personal privacy; and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record. *2001,c.37,s.65; 2002,c.27,s.34.*

66. Commissioner's orders

(1) On completing an inquiry under section 64, the Commissioner shall dispose of the issues by making an order under this section.

Decision to give or refuse access

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

(a) require the head to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;

(b) either confirm the decision of the head or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access;

(c) require the head to refuse access to all or part of the record, if the Commissioner determines that the head is required to refuse access.

Other matters

(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:

(a) require that a duty imposed by this Act or the regulations be performed;

(b) confirm or reduce the extension of a time limit under section 12;

(c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met;

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body to stop collecting, using or disclosing personal information in violation of Part II;

(f) require the head of a public body to destroy personal information collected in violation of this Act.

Conditions

(4) The Commissioner may specify any terms or conditions in an order made under this section.

Copies of order

(5) The Commissioner shall give a copy of an order made under this section

(a) to the person who asked for the review;

(b) to the head of the public body concerned;

(c) to any other person given a copy of the request for the review; and

(d) to the Minister.

Enforcement

(6) A copy of an order made by the Commissioner under this section may be filed with the registrar of the General Division of the Supreme Court and, after filing, the order is enforceable as a judgment or order of that court. *2001,c.37,s.66.*

67. No appeal

An order made by the Commissioner under this Act is final. *2001,c.37,s.67.*

68. Duty to comply with order

(1) Subject to subsection (1.1), not later than 40 days after being given a copy of an order of the Commissioner, the head of the public body concerned shall comply with the order.

Exception

(1.1) The head of a public body shall not take any steps to comply with an order of the Commissioner until the end of the period for bringing an application for judicial review of the order under the *Judicial Review Act* R.S.P.E.I. Cap. J-3.

Judicial review

(2) If an application for judicial review is made before the end of the period referred to in subsection (1.1), the order of the Commissioner is stayed until the application is dealt with by the court. *2001,c.37,s.68; 2002,c.27,s.35.*

Division 1.1 — Complaints About and Reviews of the Commissioner's Decisions as Head of a Public Body

68.1 Designation of an adjudicator

(1) The Lieutenant Governor in Council may designate a judge to act as an adjudicator

(a) to investigate complaints made against the Commissioner as the head of the Office of the Information and Privacy Commissioner with respect to any matter referred to in subsection 50(2);

(b) where the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to investigate complaints respecting any matter referred to in subsection 50(2) made against that person when acting as the head of that office;

(c) to investigate complaints respecting any matter referred to in subsection 50(2) made against a head of a public body and the Commissioner had been a member, employee or head of that public body or, in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body;

(d) to review, if requested under section 68.4, any decision, act or failure to act of a head of a public body and the Commissioner had been a member, employee or head of that public body or, in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body;

(e) to review, if requested under section 68.3, any decision, act or failure to act of the Commissioner as the head of the Office of the Information and Privacy Commissioner; and

(f) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to review, if requested under section 68.3, any decision, act or failure to act of that person when acting as head of that office.

Prohibition

(2) An adjudicator shall not review an order of the Commissioner made under this Act. *2005,c.s,s.20.*

68.2 Powers, duties and functions

(1) For the purposes of section 68.1, an adjudicator has the powers, duties and functions given to the Commissioner by clauses 50(2)(a) to (c), sections 52, 53, subsections 56(1) and (3) to (5) and clause 56(2)(a).

Application

(2) Sections 54, 55 and 57 apply for the purposes of an investigation, inquiry or review by an adjudicator. *2005,c.s,s.20.*

68.3 *Idem*

(1) This section applies

(a) to a decision, act or failure to act of the Commissioner when acting as the head of the Office of the Information and Privacy Commissioner; and

(b) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to a decision, act or failure to act of that person when acting as the head of that office.

Request

(2) A person who makes a request to the Commissioner for access to a record or for correction of personal information may ask an adjudicator to review any decision, act or failure to act of the Commissioner that relates to the request.

Requested by third party

(3) A third party notified under section 29 of a decision by the Commissioner to give access to a record may ask an adjudicator to review that decision.

Request for review

(4) A person who believes that the person's own personal information has been collected, used or disclosed in contravention of Part 2, may ask an adjudicator to review that matter. *2005,c.s,s.20.*

68.4 Application

(1) This section applies where the Commissioner is asked under subsections 60(1), (2), (3) or (4) to review a decision, act or failure to act of a head of a public body if

(a) the Commissioner had been a member, employee or head of that public body, or

(b) in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body.

Request for access or correction

(2) A person who makes a request to the head of a public body for access to a record or for correction of personal information, may ask an adjudicator to review any decision, act or failure to act of the head of the public body that relates to the request.

Request for review

(3) A third party notified under section 29 of a decision by the head of a public body to give access to a record may ask an adjudicator to review that decision.

Idem

(4) A person who believes that the person's own personal information has been collected, used or disclosed in contravention of Part 2, may ask an adjudicator to review that matter. *2005,c.s,s.20.*

68.5 Written request

(1) A request for a review must be made in writing to the Minister.

Idem

(2) A request for a review described in subsection (1) must be made to the Minister

(a) if the request is made pursuant to subsections 60(1), (3) or (4), within

(i) 60 days after the person asking for the review is notified of the decision, or

(ii) any longer period allowed by an adjudicator; or

(b) if the request is made pursuant to subsection 60(2), within 20 days after the person asking for the review is notified of the decision. *2005,c.s,s.20.*

68.6 *Idem*

On receiving a request for a review, the Minister shall, as soon as is practicable,

(a) give the request to an adjudicator;

(b) give a copy of the request

(i) to the Commissioner, and

(ii) to any other person who, in the opinion of the Minister, is affected by the request; and

(c) provide a summary of the review procedures

(i) to the person who asked for the review,

(ii) to the Commissioner, and

(iii) to any other person who, in the opinion of the Minister, is affected by the request. *2005,c.s,s.20.*

68.7 Powers and duties of an adjudicator

(1) An adjudicator has the powers and duties given to the Commissioner by section 63 and subsections 64(1), (2) and subsections 64(3) to (6) and section 65 apply to an inquiry conducted by an adjudicator.

Idem

(2) On completing an inquiry, an adjudicator has the same duty to dispose of the issues, the same power to make orders, and the same duty to notify others of those orders as the Commissioner has under subsections 66(1) to (5).

Copy of order

(3) An adjudicator shall give a copy of an order made by an adjudicator under this Act to the Commissioner.

Idem

(4) A copy of an order made by an adjudicator under this section may be filed with a clerk of the Supreme Court of Prince Edward Island and, after filing, the order is enforceable as a judgment or order of that Court.

Application

(5) Section 68 applies to an order of an adjudicator.

Order is final

(6) An order made by an adjudicator under this Act is final. *2005,c.s,s.20.*

DIVISION 2 — DISCLOSURE TO COMMISSIONER

69. Disclosure to Commissioner

(1) An employee of a public body may disclose to the Commissioner any information that the employee is required to keep confidential and that the employee, acting in good faith, believes

(a) ought to be disclosed by a head under section 30; or

(b) is being collected, used or disclosed in violation of Part II.

Review

(2) The Commissioner shall investigate and review any disclosure made under subsection (1).

Identity

(3) If an employee makes a disclosure under subsection (1), the Commissioner shall not disclose the identity of the employee to any person without the employee's consent.

Liability to prosecution, employee

(4) An employee is not liable to a prosecution for an offence under any Act

(a) for copying a record or disclosing it to the Commissioner; or

(b) for disclosing information to the Commissioner,

unless the employee acted in bad faith.

Discrimination against employee disclosing information

(5) A public body or person acting on behalf of a public body shall not take any adverse employment action against an employee because the employee, acting in good faith,

(a) has disclosed information to the Commissioner under this section; or

(b) has exercised or may exercise a right under this section.

Penalty

(6) Every person who violates subsection (5) is guilty of an offence and liable on summary conviction to a fine of not more than $10,000.

Powers of Commissioner

(7) In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 53, 56, 63, 64 and subsections 66(1), (2), (3)(a) to (d), (4) and (5), and sections 54, 55 and 57 apply. *2001,c.37,s.69.*

PART V — GENERAL PROVISIONS

70. Manner of giving notice

Where this Act requires any notice or other document to be given to a person, it is to be given

(a) by sending it to that person by prepaid mail to the last known address of that person;

(b) by personal service;

(c) by substituted service if so authorized by the Commissioner; or

(d) by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system. *2001,c.37,s.70.*

71. Exercise of rights by other persons

(1) Any right or power conferred on an individual by this Act may be exercised

(a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

(b) if a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;

(c) if a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;

(d) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor;

(e) if the individual has appointed a proxy to make decisions on his or her behalf, by the proxy if the exercise of the right or power relates to the powers and duties of a proxy conferred by the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2; or

(f) by any person with written authorization from the individual to act on the individual's behalf.

Notice

(2) Any notice required to be given to an individual under this Act may be given to the person entitled to exercise the individual's rights or powers referred to in subsection (1). *2001,c.37,s.71.*

72. Delegation by the head of a public body

(1) The head of a public body may delegate to any person any duty, power or function of the head under this Act, except the power to delegate under this section.

Delegation to be in writing

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate. *2001,c.37,s.72.*

73. Records available without request

(1) The head of a public body may specify categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.

Fee

(2) The head of a public body may require a person who asks for a copy of an available record to pay a fee to the public body, unless such a record can otherwise be accessed without a fee.

General discretion

(3) Subsection (1) does not limit the discretion of the Government of Prince Edward Island or a public body to release records that do not contain personal information. *2001,c.37,s.73; 2005,c.6,s.21.*

74. Protection of public body from legal suit

No action lies and no proceeding may be brought against the Crown, a public body, the head of a public body, an elected official or appointed official of a public body, or any person acting for or under the direction of the head of a public body for damages resulting from

(a) the disclosure of or failure to disclose, in good faith, all or part of a record or information under this Act or any consequences of that disclosure or failure to disclose; or

(b) the failure to give a notice required under this Act if reasonable care is taken to give the required notice. *2001,c.37,s.74; 2005,c.6,s.22.*

74.1 Adverse employment action

(1) A person acting on behalf of a public body shall not take any adverse employment action against an employee as a result of the employee properly disclosing information in accordance with this Act or the regulations.

Offence and penalty

(2) A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than $10,000. *2002,c.27,s.36.*

75. Offences

(1) A person shall not wilfully

(a) collect, use or disclose personal information in violation of Part II;

(a.1) attempt to gain or gain access to personal information in violation of this Act;

(b) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;

(c) obstruct the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;

(d) fail to comply with an order made by the Commissioner under section 66, or by an adjudicator under subsection 68.7(2);

(d.1) disclose personal information to which this Act applies pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Prince Edward Island to compel the production of information or pursuant to a rule of court that is not binding in Prince Edward Island;

(e) destroy any records subject to this Act, or direct another person to do so, with the intent to evade a request for access to the records; or

(f) alter, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to the records.

Penalty

(2) A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than $10,000. *2001,c.37,s.75; 2002,c.27,s.37; 2005,c.6,s.23; 2018,c.27,s.20.*

76. Fees

(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

Personal information

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

Estimate

(3) If an applicant is required to pay fees for services under subsection (1), the public body shall give the applicant an estimate of the total fee before providing the services.

Request to be excused

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

Waiver of fee

(4) The head of a public body may excuse an applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is appropriate to excuse payment; or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

Notice on refusal to excuse fee

(4.1) If an applicant has requested, under subsection (3.1), the head of a public body to excuse the applicant from paying all or part of a fee and the head of the public body has refused the applicant's request, the head of the public body shall notify the applicant in writing, within 30 days after receiving the request, that the applicant may ask for a review under Part IV of this Act.

Fee not to exceed actual cost

(5) The fees referred to in subsection (1) shall not exceed the actual costs of the services. *2001,c.37,s.76; 2002,c.27,s.38; 2005,c.6,s.24; 2018,c.27,s.21.*

77. Power to make regulations

(1) The Lieutenant Governor in Council may make regulations

(a) designating agencies, boards, commissions, corporations, offices or other bodies as public bodies;

(b) respecting the establishment of criteria to be used for designating agencies, boards, commissions, corporations, offices or other bodies as public bodies;

(b.1) designating educational bodies as designated educational bodies;

(b.2) respecting the establishment of criteria to be used for designating educational bodies;

(b.3) designating municipalities as designated municipalities;

(b.4) respecting the establishment of criteria to be used for designating municipalities;

(c) respecting procedures to be followed in making, transferring and responding to requests under this Act;

(d) respecting procedures to be followed in giving access where an applicant has asked to examine a record or for a copy of a record that cannot reasonably be reproduced;

(e) respecting the making of requests under this Act orally instead of in writing;

(f) respecting standards to be observed by officers or employees of a public body in fulfilling the duty to assist applicants;

(g) authorizing the disclosure of information relating to the mental or physical health of individuals to medical or other experts to determine, for the purposes of subsection 16(2), if disclosure of that information could reasonably be expected to result in immediate and grave harm to the safety of or to the mental or physical health of those individuals;

(h) respecting procedures to be followed or restrictions considered necessary with respect to the disclosure and examination of information referred to in clause (g);

(i) respecting special procedures for giving individuals access to personal information about their mental or physical health;

(j) respecting technical standards and safeguards to be observed for the security and protection of personal information;

(k) respecting standards to be observed and procedures to be followed by a public body implementing a program for data matching, data sharing or data linkage;

(l) respecting the manner of giving consent for the purposes of subclauses 36(1)(b) and 37(1)(c);

(m) prescribing persons to whom a public body may disclose personal information for audit purposes;

(n) where an enactment requires the meetings of a public body's officials, or of its governing body or a committee of its governing body, to be open to the public, authorizing, for the purposes of clause 21(1)(b), the public body to hold meetings of its officials or of its governing body or a committee of its governing body, as the case may be, to consider specified matters in the absence of the public unless another enactment

(i) expressly authorizes the public body to hold meetings of its officials, or of its governing body or a committee of its governing body, in the absence of the public, and

(ii) specifies the matters that may be discussed at those meetings;

(o) respecting fees to be paid under this Act and providing for circumstances when fees may be waived in whole or in part;

(p) respecting forms for the purposes of this Act;

(q) respecting any matter that is to be included in a notice required by this Act;

(r) defining, enlarging or restricting the meaning of any term used in this Act but not defined in this Act;

(s) requiring public bodies to provide to the Minister information that relates to the administration of this Act;

(t) exempting any public body or class of public body from the operation of a regulation made under this subsection;

(u) providing that other Acts or regulations, or any provisions of them, prevail despite this Act;

(v) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Designation of designated educational body has delayed effective date

(1.1) When an educational body is designated by a regulation made under subsection (1), the designation does not take effect until the later of

(a) one year after the regulation comes into force; or

(b) a date specified in the regulation.

Designation of municipality has delayed effective date

(1.2) When a municipality is designated by a regulation made under subsection (1), the designation does not take effect until the later of

(a) one year after the regulation comes into force; or

(b) a date specified in the regulation.

Designation of head of public body

(2) Where an agency, board, commission, corporation, office or other body is designated as a public body in the regulations, the member of the Executive Council responsible for that public body may, in writing, designate a person to act as the head of that public body. *2001,c.37,s.77; 2002,c.27,s.39; 2018,c.27,s.22.*

77.1 Power to make bylaws

A local public body, by bylaw or other legal instrument by which the local public body acts,

(a) shall designate a person or group of persons as the head of the local public body for the purposes of this Act; and

(b) may set any fees the local public body requires to be paid under section 76, which shall not exceed the fees provided for in the regulations. *2018,c.27,s.23.*

78. Application of this Act

This Act applies to any record in the custody or under the control of a public body regardless of whether it comes into existence before or after this Act comes into force. *2001,c.37,s.78.*

79. Review

Within six years after this section comes into force and every six years after that, a committee of the Legislative Assembly designated or established for the purposes of this section by the Legislative Assembly shall

(a) undertake a comprehensive review of this Act; and

(b) within one year after beginning the review, submit a report on the review, including any recommendations for amendments, to the Legislative Assembly. *2005,c.6,s.25; 2018,c.27,s.24.*