



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

Order No. FI-21-002

Re: Department of Finance

**Prince Edward Island Information and Privacy Commissioner
Denise N. Doiron**

May 7, 2021

Summary: An applicant requested access to information, and the responsive records included information of third parties. The Public Body conducted the required third party consultations and decided to release the information to the applicant. A third party, who did not respond to the Public Body's request for consultation within the requested time, objected to the Public Body's decision to release their information, and complained that the Public Body should have given them more time to respond to the consultation request. The third party requested a review by the Commissioner, claiming that some of the pages were not "records" and therefore not subject to the *Freedom of Information and Protection of Privacy Act* ("FOIPP Act"), and that disclosure of the records would be harmful to their business interests pursuant to section 14 of the *FOIPP Act*.

The Commissioner confirmed that the Public Body did not have authority to give the third party more time to respond to the consultation request than what was specified in the legislation. The Commissioner also determined that the records in issue were "records" and subject to the *FOIPP Act*, and found the third party did not meet the burden of proof establishing that all three parts of the test set out in section 14 of the *FOIPP Act* [harm to business interests] were met. The Commissioner confirmed the decision of the Public Body to disclose the information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, Cap. F-15.01, sections 1, 4, 12, 14, 28, 29, 65, 66, 68.*

Cases Cited: Order No. FI-17-007, *Prince Edward Island (Justice and Public Safety)(Re)*, 2017 CanLII 49929 (PE IPC)

Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 (CanLII)

I. BACKGROUND:

- [1] An applicant (the “Applicant”) made an access to information request to the Department of Finance (the “Public Body”), pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01 (the “FOIPP Act”). The Applicant requested:

“All records in all formats (paper, email, text message, PINS, BBM, Fax) sent by [named employee] to [third party 1], or received by [named employee] from [third party 1], as well as records cc’d to [third party 1] or mention [third party 1], [third party 2], or [third party 3] from September 1, 2011 to March 31, 2013.”

- [2] The Public Body located and retrieved the responsive records and observed that the records contained information related to multiple private individuals and businesses. As such, the Public Body must consider whether any mandatory exceptions to disclosure apply.
- [3] One of the mandatory exceptions to disclosure is section 14 of the *FOIPP Act*, which prohibits a public body from disclosing some types of business information under certain circumstances.
- [4] As they are required to do pursuant to section 28 of the *FOIPP Act*, the Public Body notified the third parties that they were considering disclosing the records to the Applicant. As required by clause 28(3)(c) of the *FOIPP Act* the Public Body stated in

their notice to the third parties 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.

- [5] One of the third parties to whom information in the responsive records related is a business that is owned and operated by a former civil servant. I will refer to this third party as “the Third Party” for the remainder of this decision, as their records are the only ones under review.
- [6] The Third Party told the Public Body they were objecting to the Public Body disclosing the pages of the records containing their information. However, because of personal circumstances, the Third Party requested an extension to submit their response beyond 20 days.
- [7] The Public Body stated that, although they sympathized with the Third Party’s circumstances, section 29 of the *FOIPP Act* requires the Public Body to make a decision regarding access to the records within 30 days of giving notice to the Third Party, and the *FOIPP Act* does not permit an extension of time as had been requested.
- [8] The Third Party did not provide submissions to the Public Body within the 20 days. The Public Body reviewed the information and determined that although some information was business information of the Third Party, it did not meet the criteria set out in section 14 for mandatory non-disclosure. The Public Body proceeded to make its decision, deciding that section 14 of the *FOIPP Act* did not apply, and that the Public Body was not authorized to withhold the records from the Applicant.
- [9] Pursuant to the procedure set out in the *FOIPP Act*, the Public Body advised the Third Party of their decision to disclose the records to the Applicant. They advised the Third Party that they could ask the Information and Privacy Commissioner (the “Commissioner”) to review the Public Body’s decision and had 20 days to do that. The

Public Body also advised that, if no request for review was made, the Public Body would release the records after the period to request a review had passed.

- [10] The Third Party asked the Commissioner to review the Public Body's decision that section 14 of the *FOIPP Act* did not apply to the Third Party's information. The Third Party also raised a concern about the Public Body not giving them extra time to provide submissions prior to making the decision on disclosure, and requested additional time to provide submissions to the Commissioner.
- [11] Commissioner Rose, who was the Commissioner at the time, gave the Third Party extra time to make their submissions. The Third Party asked for two further extensions beyond the original due date for submissions, and both were granted. In all, the Third Party had in excess of 15 weeks after the initiation of their request for review to provide their initial submissions to our office. We later requested the Third Party to confirm the records in issue and provide supplementary submissions. The Third Party did not respond.
- [12] We then invited submissions from the Public Body and the Applicant, both of which provided submissions. Each party's submissions were provided to the other parties, with appropriate redactions and, as no new issues were raised, submissions were closed.

II. RECORDS IN ISSUE

- [13] In their submissions, the Third Party only referred to 12 pages out of the larger package of records the Public Body had decided to disclose: pages 12, 13, 15, 16, 17, 18, 48, 50, 147, 152, 153 and 154. The Third Party claimed that pages 48 and 50 should be withheld pursuant to section 14 of the *FOIPP Act*, as they contained information about a client relationship of the Third Party. The Third Party submitted that the remaining 10 pages should be withheld as they were personal correspondences and were therefore

not “records” and not subject to release under the *FOIPP Act*. For ease of reference, I will refer to pages 48 and 50 specifically, and the other 10 pages collectively as “the 10 pages” throughout the rest of this decision.

- [14] I subsequently sent a letter to the Third Party asking them to confirm they were only objecting to the specified 12 pages of records being disclosed to the Applicant, and indicating if we did not hear back from them, we would treat these 12 pages as the only pages in issue in the review. A follow-up letter was also sent.
- [15] The Third Party did not respond so, in the absence of any concerns about the other pages, we notified the Public Body that we only considered the above-noted 12 pages to be the records in issue in this review, and authorized the Public Body to release the remainder of the records they had initially withheld for the purpose of this review.
- [16] As a result, the records in issue in this review are pages 12, 13, 15, 16, 17, 18, 48, 50, 147, 152, 153 and 154.

III. JURISDICTION

- [17] The Third Party submitted that 10 pages of the records in issue are personal correspondence. They stated “as such, we believe they do not constitute a “record” under FOIP legislation.” The implied suggestion here is that our office does not have jurisdiction to review those 10 pages.
- [18] Do I have jurisdiction in this matter and, if so, does it cover all or only some of the pages of the records in issue? To answer this question, I must determine if the pages are:

- a) “records” as defined within the *FOIPP Act*;
- b) in the custody or under the control of the Public Body; and
- c) subject to one of the exceptions set out in section 4 of the *FOIPP Act*.

[19] The first issue to decide is whether the records in issue are “records” as defined within the *FOIPP Act*. Subsection 1(l) of the *FOIPP Act* defines a record as follows:

“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

[20] This is a broad definition, which only requires that it is a record of information in any form. The contents are not relevant for the purposes of determining whether something is a record. The 10 pages of the records in issue are emails on the government email server. Therefore, all 12 pages of the records in issue meet the definition of “record” set out in the *FOIPP Act*.

[21] However, being a record is not determinative of whether the *FOIPP Act* applies. Not all records are subject to the *FOIPP Act*. The next step is to determine if these records are subject to the *FOIPP Act*.

[22] Section 4 states that the *FOIPP 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...” and lists several exceptions of records and information that are in the custody or under the control of a public body but are not subject to the *FOIPP Act*.

[23] If any records are exempt from the application of the *FOIPP Act* under section 4, then I would not have jurisdiction to review the Public Body’s decision in relation to these records.

- [24] In essence, the Third Party claims the specified pages were personal emails and therefore not subject to release by the Public Body. The Third Party claims:

"Pages 12, 13, 15, 16, 17, 18, 152, 153, 154

These pages constitute personal correspondence between me and [a named employee] on the topic of wishing each other a "Merry Christmas/Happy New Year." As such, we believe they do not constitute a "record" under FOIP legislation.

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This page constitutes a personal correspondence between myself and [a named employee] on the topic of a retirement party for a friend. As such, we believe it does not constitute a "record" under FOIP legislation."

- [25] The Public Body submitted that the 10 pages in question are "emails from a Ministerial email account; and they do not appear to be of the types excluded under section 4 of the Act". The Applicant did not address this issue in their submissions. However, the Applicant has not seen the records and does not have knowledge of the contents, so is at a disadvantage for being able to provide such submissions.
- [26] I have reviewed the 10 pages and confirm they are emails between a government Minister and the Third Party using the Minister's Government of Prince Edward Island email address. The emails are within the custody or under the control of the Public Body. This means the *FOIPP Act* would apply to them, unless they fall under one of the categories of exemption set out under section 4.
- [27] The Third Party has not specified the provision they are claiming these 10 pages are exempt under, only that they are not records and therefore the *FOIPP Act* does not apply. However, as the Third Party describes the content as being of a personal nature, the only clause that could possibly apply to exempt these pages from application of the *FOIPP Act* is clause 4(1)(i), which indicates the *FOIPP Act* does not apply to "a personal record or constituency record of a member of the Executive Council".

- [28] I do not accept that the specified pages are personal records and therefore exempt from the application of the *FOIPP Act*.
- [29] The presence of personal comments within a record is not, in and of itself, sufficient to qualify it as a “personal record” and thereby make it exempt from the application of the *FOIPP Act*. It is not uncommon for business emails to have pleasantries or other personal comments contained within them, particularly if there is a long-standing business relationship, or some other personal connection between the correspondents. The full content of the record must be taken into consideration to determine if it is subject to one of the exceptions set out in section 4 of the *FOIPP Act*.
- [30] While the emails contain personal pleasantries, the records also contain information related to the Public Body’s business. The emails discuss setting up meetings with government officials and other business involving government participation. Personal comments made in emails that otherwise pertain to business discussions involving government business does not disqualify the records from application of the *FOIPP Act*.
- [31] The records are in the custody or under the control of the Public body, were emails sent to/from a Government email address, and contain information about government-related business. All of these factors support that the records in question do not fall under clause 4(1)(i) of the *FOIPP Act*. None of the other categories of exemption from application of the *FOIPP Act* outlined in section 4 of the *FOIPP Act* apply, either. I find, therefore, that the remaining 10 pages of records, specifically pages 12, 13, 15, 16, 17, 18, 147, 152, 153 and 154, are records as defined within the *FOIPP Act*, and that the *FOIPP Act* applies to them.
- [32] None of the parties claimed that pages 48 and 50 of the records in issue were exempt from the application of the *FOIPP Act*. The Third Party claimed that they were subject to the mandatory exception under section 14 of the *FOIPP Act*, but not that they were exempt from the application of the *FOIPP Act* under section 4. I am satisfied that these

records are subject to the *FOIPP Act*. They are records as defined within the *FOIPP Act*, they were in the custody or under the control of the Public Body, and they do not fall into any of the categories of exemption from application of the *FOIPP Act* as set out in section 4. I find that I have jurisdiction in respect of pages 48 and 50 of the records in issue.

- [33] I am satisfied that all of the records in issue are “records” under the *FOIPP Act*, and that the *FOIPP Act* applies to them. For this reason, I find that I have jurisdiction to consider all of the records in issue in this review.

IV. ISSUES

- [34] There are two issues in this review:

Issue A: Did the Public Body have the authority to extend the time for the Third Party to provide representations before the Public Body made its decision regarding disclosure?

Issue B: Does section 14 of the *FOIPP Act* apply to any of the records in issue?

V. ANALYSIS

Issue A: Did the Public Body have the authority to extend the time for the Third Party to provide representations before the Public Body made its decision regarding disclosure?

- [35] The Third Party raised a concern in their request for review that the Public Body did not extend the time to respond to the Public Body’s consultation request. Although the primary ground for the request for review was the Public Body’s decision with respect to section 14 of the *FOIPP Act*, this was an issue raised by the Third Party and I will address it to provide clarity.

- [36] When the head of a public body is considering disclosing information and has determined that section 14 of the *FOIPP Act* possibly applies, the head of the public body is required to give written notice to the third party (subsection 28(1) of the *FOIPP Act*). As former Commissioner Rose explained in PEI Order No. FI-17-007, *Prince Edward Island(Justice and Public Safety)(Re)*, 2017 CanLII 49929 (PE IPC) at paragraph 17:

To further describe the notice requirement of section 28(1) of the *FOIPP Act*, if a public body decides notice is required, it has determined, not that section 14 or 15 actually apply, but that there is a possibility they apply. If one were to illustrate on a line drawing, showing a gradual transition from one extreme to another of whether the section 14 or section 15 exceptions to disclosure apply, there is no obligation to notify in the circumstances at the two extreme ends of this line drawing. One extreme would be when a public body is absolutely certain that the section 14 or section 15 exceptions to disclosure apply; the other extreme is when a public body is absolutely certain that the section 14 or section 15 exceptions to disclosure do not apply. With the exception of these two extremes, there is an obligation to notify.

- [37] When notice under section 28(3) of the *FOIPP Act* must be given, subsection 28(3) requires the written notice to state, among other things, 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. When written notice is given to the third party, the public body is also required to give written notice to the applicant that, among other things, the third party is being given an opportunity to make representations and a decision will be made within 30 days after the day notice is given to the third party.
- [38] The Public Body gave the required notice to the Third Party with the information required by subsection 28(3) of the *FOIPP Act*. The Public Body also gave the requisite notice to the Applicant. A few days before the expiry of the 20-day deadline to make representations, the Third Party requested the Public Body to provide them with an extension of time to respond.
- [39] The Public Body declined to extend the time for the Third Party to respond on the basis of not having authority to do so, citing a mandatory 30-day time limitation for a

decision to be made on disclosure, required by section 29 of the *FOIPP Act*. The Third Party believes that section 12 of the *FOIPP Act* would have given the Public Body authority to extend the deadline, either on their own or with permission from the Commissioner.

- [40] Respectfully, the Third Party's interpretation of section 12 of the *FOIPP Act* is mistaken. There is no provision in the *FOIPP Act* that allows a public body to extend the time for a third party to give its representations before the public body makes its decision on access, nor to extend the time for making its decision on access, after the public body has given a section 28 notice to a third party.
- [41] Third parties have three options when given notice that a Public Body is considering disclosing information to an applicant: to not respond, consent, or make representations regarding disclosure of their business information within the 20 days permitted within that provision. However, subsection 28(3) of the *FOIPP Act* does not give the Public Body any discretion to extend the 20-day response period, and section 12 does not apply.
- [42] Additionally, section 29 of the *FOIPP Act* specifies that the head of a public body "shall" decide whether or not to give access "within 30 days after notice is given" to a third party. This is a mandatory time requirement for a decision on access. There is no provision in section 29, or elsewhere within the *FOIPP Act*, that permits a public body to make the decision on access more than 30 days from the time the notice is given to the affected third party. This is supported by the requirement, in subsection 28(4), that an applicant be notified that a decision will be made on access within 30 days after the day notice is given to the third party under subsection 28(1) of the *FOIPP Act*.
- [43] The time difference between the 20 days for representations from a third party and the 30 days for the public body to make a decision on access is so that the public bodies have time to consider the representations made by the third party or parties before the

final decision on access is made. There are other areas where the Legislature, which passed the *FOIPP Act*, gave public bodies or the Commissioner some authority to extend time limits. The authority to extend time was not afforded to sections 28 and 29. Therefore, it must be assumed that the Legislature intended the times set out in sections 28 and 29 to be firm. Without being given specific authority in the legislation to extend these times, neither the Public Body nor the Commissioner has the authority to extend the times set out in these sections.

- [44] For the reasons stated above, I confirm the Public Body's position that they did not have authority to extend the Third Party's time to make representations about the Public Body's stated intention to give the Applicant access to the records containing information about the Third Party.
- [45] It should be noted that once a decision is made regarding access, notice of that decision is given to both the affected third party and the applicant, and either party is able to apply for a review of that decision by the Commissioner. In the event the public body decides to give access, and the third party asks for a review within the legislated timeline, the public body is prohibited from releasing the records in issue to the applicant until the review process is completed. In the present case, the Public Body decided to give access and the Third Party sought a review of that decision within the legislated time limitation, so the Public Body did not give the Applicant access to the records in issue.

Issue B: Does section 14 of the *FOIPP Act* apply to any of the records in issue?

- [46] The Third Party made submissions in respect of pages 48 and 50 of the records in issue specifically and separately from the other 10 pages of the records in issue. I will address pages 48 and 50 first, then address the remainder of the 10 pages of the records in issue separately.

- [47] The Third Party submits that section 14 of the *FOIPP Act* applies to pages 48 and 50 of the records in issue in this matter, and these pages should therefore be exempt from disclosure.
- [48] Subsection 14(1) of the *FOIPP Act* has three conditions that must be met to require a public body to withhold records or information from an applicant. These conditions are specific to the party claiming the exemption, not other parties with whom that party is or may be associated.
- [49] Subsection 14(1) of the *FOIPP Act* is as follows:

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) results 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.

- [50] In order for subsection 14(1) to apply, a third party must satisfy each part of the following three-part test:

- (a) The record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
 - (b) The information must have been supplied to the public body in confidence, either implicitly or explicitly; and
 - (c) The prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in clauses (a), (b),(c) and/or (d) of subsection 14(1) will occur.
- [51] If all three parts are met, it is mandatory that a public body withhold the information and access must be refused. If all three conditions are not met, a public body does not have authority to withhold the records and they must be released to the applicant.
- [52] I requested the Third Party provide submissions and evidence explaining how the information would meet the three-part test set out above. The Third Party submitted that pages 48 and 50 reference client work the Third Party did for a non-government party and therefore disclosure:
- “...reveals the investment/business intentions (financial affairs) of a client and as such should be exempt from disclosure.
- Confidential Information
As a course of business practice, we treat client information as confidential. Our clients do not authorize us to publicly disclose that we are working for them. At the time of this communication, lobbyist registration legislation did not exist requiring public disclosure.
- Occurrence of Harm
Both my client (the third party) and my company will experience harm as a result of the public disclosure of this information. This information is being sought and used for the purposes of a negative media campaign and blog postings that will damage reputations and impact business opportunities.”
- [53] The Third Party’s submissions mostly relate to the first two parts of subsection 14(1) of the *FOIPP Act*, about the type of information and whether the information was submitted in confidence. For the reasons set out below, it is not necessary for me to

determine if clauses 14(1)(a) and 14(1)(b) are satisfied, as this is only a portion of the requirements under the test for section 14.

- [54] The Third Party must also establish the disclosure of the information could reasonably be expected to cause one or more of the harms described. Although the Third Party submitted that they believe the Applicant's intention is to try to harm their business, there was no evidence provided that disclosure of the records could reasonably be expected to result in any of the harms set out in clause 14(1)(c) of the *FOIPP Act*.
- [55] I requested additional submissions from the Third Party, asking for further information and submissions on how the Third Party considered clause 14(1)(c) of the *FOIPP Act* [harm] would apply. However, the Third Party did not provide any further information.
- [56] We provided the Third Party's submissions to both the Public Body and the Applicant, and offered the opportunity to respond. The Public Body and Applicant both provided response submissions.
- [57] The Public Body's position is that the three-part test had not been met to establish that the exception to disclosure applied to the Third Party's information.
- [58] The Applicant disagreed with the Third Party's comments about disclosure revealing the investment/business intentions of a client of the Third Party and confidential information of a client or clients of the Third Party. The Applicant claimed that other *FOIPP Act* requests and discussions in the Legislature had already revealed this information previously, so disclosure of such information within these records would not harm the Third Party's business interests. The Applicant's comments are based on a misapprehension of the content of the records, but the Applicant made these comments without the benefit of having read the content of the records, as the Public Body is required to withhold the records until the matter is determined.

- [59] The Applicant also indicated they took exception to the comments made in the Third Party's submissions regarding the Third Party's belief that the Applicant was specifically seeking the information in order to engage in a negative media campaign and blog postings to damage the reputation of and impact business opportunities for the Third Party, but provided no other submissions on this point.
- [60] I agree with the Public Body that the Third Party has not met its burden of proof to establish that all three parts of the test set out in section 14 of the *FOIPP Act* have been met, for the reasons set out below.
- [61] Pursuant to clause 65(3)(b) of the *FOIPP Act*, the burden of proof is on the third party claiming the exception to disclosure. That means it is up to them to provide sufficient information to demonstrate that all three parts of the test are met.
- [62] While it is possible that some of the information in pages 48 and 50 of the records in issue might be the type of information described in clause 14(1)(a) of the *FOIPP Act*, that is only one portion of what must be established by a third party seeking to have the exception apply. I did not pursue the analysis of whether this provision applies because I am not persuaded that the information was supplied to the Public Body in confidence, either explicitly or implicitly, nor that disclosure of the information would cause any of the outcomes set out at clause 14(1)(c) of the *FOIPP Act*, which are also required elements.
- [63] In relation to clause 14(1)(b) of the *FOIPP Act*, the Third Party did not adequately show that the information in pages 48 and 50 of the records in issue was supplied to the Public Body in confidence. Rather, the information appears to be provided as part of general discussions the Third Party had with an employee of the Public Body with no indication of any expectation of confidentiality being expressed or implied. While the Third Party submissions indicate the Third Party treats their client information as confidential, there was no indication that the Third Party was expecting the

communications between the Third Party and the Public Body to have been made in confidence. I do not find that the Third Party supplied information in confidence as set out in clause 14(1)(b) of the *FOIPP Act* as it relates to pages 48 and 50.

- [64] Clause 14(1)(c) of the *FOIPP Act* requires that disclosure “could reasonably be expected to” result in one or more of the four types of harm set out in that clause. The Supreme Court of Canada in Ontario (*Community Safety and Correctional Services*) v. *Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) held that the reasonable expectation of probable harm formulation must be used where a provision requires a reasonable expectation of harm. A party does not need to prove that disclosure will, in fact, result in such harm, but evidence considerably above the mere possibility of harm is required. As described at paragraph 52 of *Ontario*, the reasonable expectation of probable harm formulation “simply captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative”.
- [65] In relation to clause 14(1)(c) of the *FOIPP Act*, the Third Party did not provide any evidence or submissions relating to if, or how, any of the described outcomes would be caused by disclosure of the information in question. While the Third Party asserts that harm might occur, assertions alone are not sufficient to establish that the harm could reasonably be expected to occur. As such, the Third Party has fallen below the threshold of establishing that disclosure of pages 48 and 50 could reasonably be expected to cause the harm asserted in their submissions.
- [66] In the absence of sufficient submissions or evidence demonstrating how disclosure of the Third Party’s information would meet the requirements of clause 14(1)(c), I find that the Third Party has not met that portion of the required test in relation to pages 48 and 50 of the records at issue.
- [67] As noted earlier, the mandatory exception to disclosure applies only if all three parts of subsection 14(1) of the *FOIPP Act* are established. Because the Third Party has not

provided satisfactory evidence in relation to all of the portions of the test that are required to be established, I find that the Third Party has not met its burden of proof. As the Third Party has not met its burden of proof, the Third Party has therefore not substantiated its claim that section 14 of the *FOIPP Act* applies to the information at pages 48 and 50 of the records.

- [68] The Third Party did not claim section 14 of the *FOIPP Act* applied to the other 10 pages of the records (pages 12, 13, 15, 16, 17, 18, 147, 152, 153 and 154), only that they were not “records”. However, the review was sought in relation to the Public Body’s decision that the records in issue were not subject to the mandatory exception in section 14 of the *FOIPP Act*. Having found that these 10 pages are “records” and the *FOIPP Act* applies to them, I must look at whether section 14 of the *FOIPP Act* applies to them.
- [69] In the absence of any argument or evidence, I find that the Third Party has not met the three part test set out above, and has not substantiated that section 14 of the *FOIPP Act* applies to the information at pages 12, 13, 15, 16, 17, 18, 147, 152, 153 and 154. I have reviewed the content of these other 10 pages of records and am satisfied that section 14 of the *FOIPP Act* would not apply, and that there are no other mandatory exceptions in the *FOIPP Act* that would apply to these pages.
- [70] Pursuant to clause 66(2)(a) of the *FOIPP Act*, I find that the Third Party has not substantiated its claim that subsection 14(1) of the *FOIPP Act* applies to the information in the records at issue. Therefore, I have determined that the head of the Public Body is not required nor authorized to refuse access to the Applicant, and I require that the head of the Public Body give the Applicant access to the responsive records, as they had initially decided.
- [71] I have not reviewed whether section 15 of the *FOIPP Act* [disclosure harmful to personal privacy] would apply to any information on pages 48 and 50 which the Third Party refers to as client information. I recommend the Public Body consider whether

section 15 applies and, if disclosure would be an unreasonable invasion of personal privacy, make any severances that would be required.

VI. CONCLUSION

- [72] I find that pages 12, 13, 15, 16, 17, 18, 147, 152, 153 and 154 are “records” and are not exempt under section 4 of the *FOIPP Act*. I further find that the *FOIPP Act* applies to these records, and that I have jurisdiction to review the Public Body’s decision regarding access to these pages.
- [73] I find that the Third Party has not met the burden of proof to establish that section 14 of the *FOIPP Act* applies to any of the records in issue. I further find that the Public Body is not permitted to refuse to disclose them to the Applicant. I confirm the Public Body’s decision that they are not authorized to withhold pages 12, 13, 15, 16, 17, 18, 48, 50, 147, 152, 153 and 154 of the responsive records, and require the Public Body to give the Applicant access to these records, with any required severances of personal information.
- [74] In accordance with subsection 68(1.1) of the *FOIPP Act*, the head of the Public Body shall not release the records until the end of the period for bringing an application for judicial review of the order under section 3 of the *Judicial Review Act*.

Signed: Denise N. Doiron

Denise N. Doiron
Information and Privacy Commissioner