

FOI/PP Legislation in PEI

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Post-Secondary Institutions

A submission by the UPEI Student Union in Response to
“Open and Accessible Government: Modernizing the Prince Edward Island
Freedom of Information and Protection of Privacy Act”



Prepared By:

Taya Nabuurs - VP Academic & External

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Colin Trewin - Policy & Research Coordinator

Introduction

The University of Prince Edward Island Student Union is the only student-driven organization in Prince Edward Island that dedicates resources to the advancement of post-secondary education at both the provincial and federal levels of government. Additionally, it is the sole collective voice recognized for students by the UPEI Board of Governors, the governing body of the University.

The UPEI Student Union has three core values in its policy framework: affordability, accessibility, and accountability. Since 2014, the UPEI Student Union has been advocating that post-secondary institutions in PEI be included in provincial Freedom of Information legislation. The opportunity to write this submission is one that, we as an organization, are incredibly grateful to participate in.

Executive Summary

This submission of the UPEI Student Union seeks to answer one key question in particular, as outlined in the “Open and Accessible Government - Modernizing the Freedom of Information and Protection of Privacy Act” discussion paper: “Should additional organizations be added to the *FOIPP Act*, such as municipalities, police, and post-secondary institutions?”

Given the considerable amount of public dollars invested in the University of Prince Edward Island, the UPEI Student Union firmly believes that the University and other post-secondary institutions in PEI should be subject to the same level of transparency and oversight as other public bodies included under *FOIPP*. UPEI’s internal Access to Information policy and practices do not satisfy the basic principles of Freedom of Information and cannot serve as an adequate substitute for *FOIPP* legislation. It is time to bring Prince Edward Island up to speed with every other province and territory in Canada in bringing its post-secondary institutions under *FOIPP* legislation.

FOIPP & Public Bodies: Why Post-Secondary Institutions

Fundamentally, freedom of information legislation is designed to allow the public access to information within public institutions, while respecting the privacy of individuals. Roughly half of UPEI’s revenues are

derived from government funding - money which comes from the taxpayers of Prince Edward Island and, indeed, Canada.¹ It is not unreasonable to believe, as the UPEISU does, that post-secondary institutions should therefore be considered public bodies and treated as such under the *FOIPP Act*, therefore allowing for rightful access to records and providing independent review of decisions made by the University.

Other Jurisdictions Across Canada

As of 2018, Prince Edward Island remains the only province in Canada in which the provincial *Freedom of Information and Protection of Privacy Act* does not apply to post-secondary institutions. The UPEI Student Union remains unclear as to why Prince Edward Island is the only exception across Canada.

The launch of this review of PEI's *FOIPP Act* provides us with a perfect opportunity to modernize the *Act* and bring it in line with best practice across Canada. The UPEI Student Union firmly believes that Islanders should be afforded the same rights as all other Canadians with regard to Access to Information.

UPEI Access to Information Policy

In 2017, UPEI implemented a new "*Access to Information and Protection of Personal Information and Privacy Policy*." A new "*Access to Information and Privacy Office*" was also established to help facilitate the new system. While these efforts prove a move in the right direction on the university's behalf, this new policy and Office do not satisfy a number of basic accountability and accessibility measures at the heart of basic Access to Information principles.

There are three primary reasons that UPEI's *Access to Information and Protection of Personal Information Privacy Policy* does not suffice:

¹ UPEI Operating Budget 2016-2017. Pgs. 5 & 9. Avail:
http://files.upei.ca/finance/operating_budget_2016-2017.pdf

No external oversight:

Regardless of any new policy that UPEI might establish, those overseeing UPEI's budgets themselves are still doing their own access to information rulings. External oversight is absolutely necessary in order to provide necessary accountability when public dollars are involved.

Expensive:

The exorbitant costs associated with UPEI's Access to Information requests do not lend themselves well to an accessible system. UPEI Access to Information request fees are as follows²³:

- Initial application fee: \$25.00
- \$40.00 per hour for:
 - Locating and retrieving a record
 - Preparing and handling a record for disclosure
 - Examining a record

To put these numbers into context, a member of the public looking for some data in regards to makes and models of cars driven by UPEI students paid \$166 to obtain 2017 parking permit records.⁴

To compare these fees to those for general requests through the Government of Prince Edward Island, *FOIPP* fees are as follows⁵:

- Initial application fee: \$5.00
- Initial two hours free
- \$10 per every half hour thereafter for:
 - Locating and preparing a record for disclosure
 - Supervising the examination of a record

² UPEI Policy: "Access to Information and Protection of Personal Information and Privacy." Avail: <http://www.upei.ca/policy/files/policy/Access%20to%20Information%20and%20Protection%20of%20Personal%20Information%20and%20PrivacyApproved.pdf>

³ "Office of the Vice-President Administration and Finance - Access to Information and Privacy Office." UPEI Website. Avail: <http://www.upei.ca/vpaf/access-information-and-privacy-office>

⁴ Peter Rukivina. "I Paid \$166 for Data about Parked Cars." *Ruk.ca*. Avail: <https://ruk.ca/content/i-paid-166-data-about-parked-cars>

⁵ "FOIPP Fees." Government of Prince Edward Island Website. Avail: <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/foipp-fees-0>

Not retroactive:

UPEI's new *AIPPIPP* policy is not retroactive. That is to say, the only information within the purview of this policy is that which came to being on or after May 1st, 2017. Any requests for information for beyond that date are inaccessible through UPEI's Access to Information process.⁶

Therefore, we see that, in effect, UPEI's policy offers less information at greater costs than government *FOIPP* requests, with no external oversight or accountability.

Privacy Commissioner's Report and Recommendations

Prince Edward Island's Privacy Commissioner's Report examined concerns over *FOIPP*'s lack of inclusion of post-secondary institutions.

The report notes that:

*"While the two Island post-secondary educational institutions have recently adopted policies about access to information and protection of personal information, these policies are at the discretion of the institutions and, further, there is no independent oversight of their processes or decisions."*⁷

Therefore, the report advises the Government of Prince Edward Island to begin the process of adding post-secondary institutions as public bodies under *FOIPP* legislation. The Privacy Commissioner's Report uses Alberta's existing *FOIPP* legislation as an example that can be emulated in Prince Edward Island.

⁶ UPEI Policy: "Access to Information and Protection of Personal Information and Privacy." Avail: <http://www.upei.ca/policy/files/policy/Access%20to%20Information%20and%20Protection%20of%20Personal%20Information%20and%20PrivacyApproved.pdf>

⁷ "FOIPP Act Review - Recommendations of the Office of the Information and Privacy Commissioner." Report to the Standing Committee on Communities, Land and Environment - 2 October 2017. Avail: <http://www.assembly.pe.ca/docs/oipc-FOIPP-Act-recommendations.pdf>

UPEI Student Union Recommendations

It is time for Prince Edward Island to bring a new level of transparency to post-secondary institutions in PEI, and those institutions should welcome this transparency with open arms. Institutions receiving public funding must always be willing to be as open and accountable as possible in regards to their activities, and the provincial government must understand its role in helping facilitate this.

As detailed above, the costs, lack of oversight, and scope of available information through UPEI's internal policy is not sufficient and does not serve as an adequate substitute for *FOIPP* legislation.

The UPEI Student Union recommends that the Government of Prince Edward Island amend the *Freedom of Information and Protection of Privacy Act* to bring post-secondary institutions under its jurisdiction.