



**A Submission in Response to
“Open and Accessible Government: Modernizing the Prince Edward Island
Freedom of Information and Protection of Privacy Act”**

February 22, 2018

Introduction

Certified in 2001, the University of Prince Edward Island Faculty Association (UPEIFA) is the sole and exclusive bargaining agent for approximately 450 academic staff members at UPEI. The Faculty Association is comprised of two bargaining units, BU #1 (faculty members, librarians, sessional instructors and clinical nursing instructors) and BU #2 (clinical veterinary professionals). The UPEIFA is a member of the Canadian Association of University Teachers (CAUT), the CAUT Defence Fund, and the National Union of the Canadian Association of University Teachers (NUCAUT).¹

The UPEI Faculty Association is an active one, representing members through collective bargaining and by monitoring compliance with the collective agreement. Additionally, the Association engages in a number of educational and advocacy campaigns on campus and at the national level through CAUT, provides opportunities to build community across the disciplines on campus, and supports students and academic staff through a number of awards, scholarships, and medals.

Given the diversity of our membership and their points of view, the Faculty Association has rarely commented upon provincial government policy, particularly in a public way. This submission to the FOIPP Act Review is, then, an exception warranted by the significance of the issue at hand.

The UPEI Faculty Association firmly supports the inclusion of institutions of higher education in the FOIPP Act. This maintains the position historically taken and expressed by the UPEIFA Executive.

Modernizing the FOIPP Act

“Open and Accessible Government: Modernizing the Prince Edward Island *Freedom of Information and Protection of Privacy Act*” invites responses to the question of whether or not institutions of higher learning on PEI will be included in the FOIPP Act. In reference to UPEI, the following factors are to be considered:

- UPEI is a public body. Therefore, it is reasonable to expect information about UPEI to be accessible under the same terms and conditions as other public bodies under the FOIPP Act in order to be accountable to Islanders;
- PEI is the only province in Canada that does not include publically funded colleges and universities under provincial FOIPP legislation. PEI’s anomalous status within the nation warrants correction;
- UPEI’s recently created internal FOIPP policy (2017) raises a number of accessibility issues, detailed below, and is also inconsistent with the provincial FOIPP legislation; and
- PEI’s Information and Privacy Commissioner has called for the inclusion of post-secondary institutions under the provincial

¹ <http://www.upeifa.org/home/index.php>

Act as have other concerned parties.

UPEI as a Public Body

The Preamble to the University Act defines The University of Prince Edward Island as a public body.² The province's current FOIPP Act defines a public body as one that is noted as such, a public body, in its regulations. Taken together, it is then clear that UPEI is a public body that warrants inclusion in the FOIPP Act.

Beyond the Preamble, the University Act articulates a relationship between UPEI and Government that is both managerial and financial. For example, section 7 of the University Act prescribes the composition of the UPEI Board of Governors, in which the management of the University is vested. By the Act, over one-third of the Board is appointed by Government.

In terms of financial relations, sections 17 through 20 limit the University's financial autonomy in certain instances, placing such power in the hands of the Province through the Lieutenant Governor in Council. Similarly, there is a financial reporting line from UPEI to Government's Executive Council.

In terms of its funding, UPEI is highly dependent on public funds, both narrowly and more broadly defined. Government was projected to provide almost half of the University's operating revenues through restricted and

²<https://www.princeedwardisland.ca/sites/default/files/legislation/U-04-University%20Act.pdf>; and <https://www.princeedwardisland.ca/sites/default/files/legislation/F-15-01-Freedom%20of%20Information%20and%20Protection%20of%20Privacy%20Act.pdf>, sec. 1 (k) ii.

unrestricted grants for 2017-18. Students were projected to provide nearly 33 percent through tuition and fees of various kinds.³ Whether drawn directly from the public purse or from the family purse, these represent significant investments in a public body. Islanders should have a right to access to information.

UPEI is a public body. It receives substantial public funds. Therefore, it is reasonable for Islanders to expect to have the right to information about UPEI to be accessible under the same terms and conditions as other public bodies under the FOIPP Act.

UPEI as Anomaly

All provinces in Canada include publicly funded universities under their FOIPP legislation, with the sole exception of PEI. The Faculty Association is not aware of any functional or legal reason for this. While UPEI operates at arms length from government (in some matters), so too do other universities in other provinces. UPEI's governance structure is not unique, nor is its relationship to Government.

The current Government's discussion paper⁴ frames two key themes for the FOIPP review: openness and accessibility of information, and modernization of the legislation. This is an excellent opportunity to correct the anomaly in our legislation. And now is the time to bring PEI in line with modern national norms and practice standards in FOIPP legislation across the country by

³http://files.upei.ca/finance/operating_budget_2017-2018.pdf, p. 6 and 9.

⁴<https://www.princeedwardisland.ca/en/publication/open-and-accessible-government-modernizing-freedom-information-and-protection-privacy>

including post-secondary institutions. Islanders deserve a right that all other Canadians take for granted.

UPEI's Internal Policy

The Faculty Association and some of its members filed a series of access to information requests in 2013. This was during a period of significant staff cuts at the University and members and the Association sought to understand the priorities of the University better. Information requests largely focused on financial issues, relationships between the University and various corporations or firms, and conflict of interest disclosures. Association records from that time show only one of the requests was answered in full; the others were denied or only partially addressed. The Association acknowledges that this is snapshot data and that the larger pattern under the 2004-2016 policy may have been different. Yet one of the key areas of concern for the Association in 2013 persists today.

In 2017, UPEI adopted an internally created Access to Information and Protection of Personal Information and Privacy Policy (ATIPPIPP), established an Office of the Information and Privacy Commissioner, and appointed a Chief Officer to the unit.⁵ While this degree of bureaucratization is new, a number of concerns with this policy exist. The Research and Advocacy Committee of the Faculty Association compared UPEI's ATIPPIPP to the provincial FOIPP Act and determined the following:

⁵<http://www.upei.ca/policy/files/policy/Access%20to%20Information%20and%20Protection%20of%20Personal%20Information%20and%20PrivacyApproved.pdf>

- The provincial FOIPP Act is mostly about providing access to and freedom of information (although there are many exceptions and restrictions). The UPEI Policy is more focused on protection of privacy and personal information and is less robust around access to information;
- The list of exemptions and exceptions is extensive for the provincial Act. In the case of the UPEI Policy, the list is shorter, which is to be expected given the focus is on a single institution. Nevertheless, the UPEI Policy accords the Chief Officer the right to decline access to information in order to “protect the interests of the University.” This latter is stated explicitly in 11 (b) and (c); in particular 11(c), that notes requests that “may negatively affect a relationship important to the university,” will be exempt from freedom of information. This gives a large amount of discretion to the Office of Information and Privacy at UPEI, and could lead to cases of a lack of transparency in the process.
- The provincial process is overseen by an Information and Privacy Commissioner, who is an officer of the Legislative Assembly. There is provision for appeals, and in some cases arbitration. Under the UPEI Policy, the process is overseen by the internal Office of Information and Privacy. In the case that a request for information is denied,

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and the applicant disagrees with the decision, the applicant may submit a written request for reconsideration by UPEI's Vice President Administration and Finance, whose decision is final. The combination of a large amount of discretionary power and the lack of a route to external appeal or oversight of the process concerns the Association.

Other Voices

PEI's Information and Privacy Commissioner has called for the inclusion of post-secondary institutions in the FOIPP Act. This call recognizes that PEI is out of step with other provinces and advocates for a more normative provincial Act.

The Faculty Association joins the UPEI Student Union and CUPE 1870 in supporting the inclusion of post-secondary institutions in the provincial legislation.

There are many additional reasons to encourage a culture of transparency and access to reliable information. We live in a time where "truth" is regularly assailed and "alternative facts" promoted. There is value in forthright, transparent, and accessible information. Access to complete and reliable information promotes informed knowledge; in the absence of information, or in the presence of partial and selective information, speculation and guesswork rule the day.

One crucial step to modernize the PEI FOIPP Act and to promote access to information within the province is to include post-secondary institutions. The opportunity exists for Government to

make this inclusion. In the spirit of its stated commitment to transparency, openness and accessibility, the UPEI Faculty Association calls upon Government to incorporate this national practice.

Respectfully submitted on behalf of the University of Prince Edward Island Faculty Association,



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