

**SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)**

BETWEEN:

PAUL MAINES

Plaintiff

and

DEPARTMENT OF ECONOMIC GROWTH, TOURISM, AND CULTURE
RESPESENTED BY ERIN MCGRATH GAUDET

Defendant

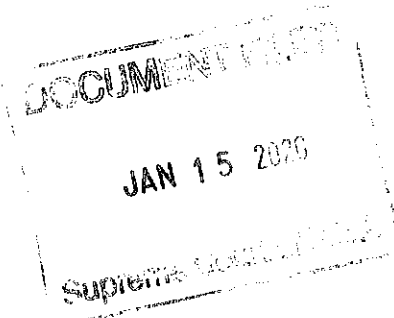
MOTION RECORD

Paul Maines
140 Keir Shore Road
Malpeque, PE C0B 1M0
Tel 416-995-1429
Plaintiff

Index

- A Notice of Motion
- B Affidavit of Paul Maines sworn January 15, 2020

Documents attached as tabs 01 through 05



To: PEI GOVERNMENT

DEPARTMENT OF ECONOMIC GROWTH, TOURISM AND CULTURE

Erin McGrath-Gaudet

Shaw Building

95-105 Rochford Street, 5th floor

Charlottetown, PE C1A 7N8

Tel 902-368-4250

Fax 902-620-3726

Defendent

**SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)**

BETWEEN:

PAUL MAINES

Plaintiff

and

**DEPARTMENT OF ECONOMIC GROWTH, TOURISM, AND CULTURE
RESPESENTED BY ERIN MCGRATH GAUDET**

Defendant

NOTICE OF MOTION

THE PLAINTIFF will make a motion to the Supreme Court of Prince Edward Island on Thursday, February 6, 2020 at 1:00 pm, or as soon after that time as the Motion can be heard at the Sir Louis Henry Davies Law Courts, 42 Water Street, Charlottetown, PE CIA 7N8.

1. THE MOTION IS FOR:

- (a) Contempt Order pursuant to Rule 60.12; and
- (b) An Order granting the plaintiff all responsive records.

2. THE GROUNDS FOR THE MOTION ARE:

- (a) Rules of Civil Procedure Rules 36, 37 and 60; and

- (b) Pursuant to subsection 61(3) of the Freedom of Information and Protection of Privacy Act (“Act”), where the defendant did not respond in time to a request for access to a record, it is to be treated as a decision to refuse access. Notwithstanding the foregoing, the Defendant desired to enter into a Consent Order to confirm its intention to provide responsive records in accordance with the Act to the Plaintiff pursuant to the timelines set out in the consent order;
- (c) The Defendant proposed to respond to the Plaintiff in accordance with Act on or before **January 7, 2020**. The Plaintiff agreed to this proposal; and
- (d) The Defendant failed to produce any responsive records violating the Consent and Court Order.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) Consent Order signed October 9, 2019 by Paul Maines, Erin McGrath Gaudet/Department of Economic Growth, Tourism, and Culture and Karen Rose, Prince Edward Island Privacy Commissioner. This order was filed with Supreme Court of Prince Edward Island for enforcement, Court File No: S1-GS 28824; and
- (b) Affidavit evidence of Paul Maines.

Dated at Charlottetown, Prince Edward Island, this 15th day of January, 2020



Paul Maines

140 Keir Shore Road
Malpeque, PE C0B1M0

Tel 416-995-1429

TO: PEI GOVERNMENT/
DEPARTMENT OF ECONOMIC GROWTH, TOURISM AND CULTURE
Erin McGrath-Gaudet
Shaw Building-95-105 Rochford Street, 5th floor
Charlottetown, PE C1A 7N8
Tel 902-368-4250
Fax 902-620-3726

**SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)**

BETWEEN:

PAUL MAINES

Plaintiff

and

DEPARTMENT OF ECONOMIC GROWTH, TOURISM, AND CULTURE
RESPESENTED BY ERIN MCGRATH-GAUDET

Defendant

AFFIDAVIT OF PAUL MAINES

I, Paul Maines, of the Town of Malpeque, Prince County, Prince Edward Island having knowledge of the matters hereinafter:

MAKE OATH AND SAY AS FOLLOWS:

I have personal knowledge of the matters deposed to in this affidavit, except where I state below that the information contained in the affidavit was obtained from a third party, in which case I believe it to be true.

I make this affidavit as a Plaintiff to the Supreme Court of Prince Edward Island (General Section).

FACTUAL SUMMARY:

1. On May 14, 2019 I filed a request for information pursuant to the Freedom of Information and Protection Act (the "Act") for the following:

"All records, in any format, electronic or otherwise, of Brad Mix [Senior Director Innovation PEI] which were either sent to – or received from – Cheryl Paynter from February 1, 2012 – July 1, 2012"

This request was identified as 2019-091 EGTC

2. On May 23, 2019 I agreed to a plan presented by the Defendant, with a commitment by the Defendant to respond to this request on or before June 22, 2019 with a project response date of July 22, 2019.
3. On July 30, 2019, I received a letter from the Defendant, through FOIPP Coordinator Mary-Lynn Smith, indicating the Defendant would be taking an extension. Ms Smith stated:

"Dear Mr. Maines ... The Department of Economic Growth, Tourism and Culture aims to respond to requests for information within 30 days after receiving the request; however, under certain circumstances, the Act provides that a public body may extend this limit."

"...A time extension will allow the Department of Economic Growth, Tourism, Culture to **provide you with a complete response to your request, which will be ready no later than August 21, 2019.** We will try to respond soon, if possible."

Attached hereto as **Exhibit '1'** is a true copy of the letter I received.

4. **On August 21, 2019, the Defendant failed to produce any records, nor did they make made any contact.**
5. On August 21, 2019, I wrote a letter to the Privacy Commissioner, Ms Karen Rose, stating:

"Dear Ms Rose ... Subsection 8(1) of the FOIPP Act states: "The head of a public body shall make every reasonable effort to assist applicants and to respond to each applicant

openly, accurately and completely.” In addition, subsection 8(2) also states: “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.”

I believe that the Public Body has failed to comply with all of the above. Please accept this letter as my request to seek a review of file **2019-091 EGTC** under subsection 9(2) of the FOIPP Act, where the public body is **deemed to have refused access to responsive records.**”

Attached hereto as **Exhibit “2”** is a true copy of the letter I sent Ms Rose.

6. On September 20, 2019, the Defendant advised me that they were proposing to make a proposal for a further extension on time to process four requests that were under subsection 9(2) of the FOIPP Act, where the public body is deemed to have refused access to responsive records. This was one of those requests.
7. On or about September 23, 2019, the Defendant made me a proposal for a Consent Order to confirm its intention to provide responsive records in accordance with the Act on or before January 7, 2020. I agreed to this proposal.
8. On October 9, 2019, the Consent Order was executed and agreed to by both parties. This was signed by PEI Privacy Commissioner Karen Rose. In the Order, Commissioner Rose wrote:

“As agreed to by both parties, by Order pursuant to s. 66 of the Act, **I require the Department of Economic Growth, Tourism, and Culture to respond to the Applicant in accordance with subsection 8(1) of the Act on or before January 7, 2020.**”
9. On October 9, 2019, I filed for enforcement of the Consent Order with the Supreme Court of Prince Edward Island and received court file #S1-GS-28824.

Attached hereto as **Exhibit '3'** is a true copy of the Consent Order with Supreme Court of Prince Edward Island Stamp.

10. On December 18, 2019, I received an email from FOIPP Coordinator Ms Smith stating:
"Good afternoon Mr. Maines ... On another matter, I was hoping you would be able to contact me tomorrow any time after 10 am to discuss the access request related to the final consent order (2019-091 EGTC), relating to records between B. Mix and C. Paynter."

11. On December 19, 2019, pursuant to her request, I contacted FOIPP Coordinator Ms Smith by phone, and Ms Smith told me that the Defendant would not be meeting their January 7, 2020 deadline as agreed upon in the Consent Order. Given that the holiday season was coming fast, I informed Ms Smith I could accept a small extension, but I needed her to email me and tell me how much time she requested in writing.

12. On December 20, 2019, FOIPP Coordinator Ms. Smith emailed me stating:

"Good afternoon Mr. Maines ... Thank you for taking the time to speak with me about your access request ... This request is subject to a consent order dated October 9, 2019, proposing a response to the request on or before January 7, 2020.

As we discussed, I received the responsive records on December 6, 2019. After removing duplicate records, 1400+ pages remain to be processed. I confirm that third party consultations will be required. I also confirm that the public body intends to disclose any records not requiring third party consultation as soon as the records are processed, so as not to have you wait for us to complete the third party consultation requirements.

At this stage of processing, I know that I will not be able to achieve the deadline of a January 7, 2020 response. Based on my discussion with Commissioner Rose, it is my understanding that the Commissioner does not have jurisdiction to grant extensions in time.

I will be out of office from December 24, 2019 to January 6, 2020. While I have continued to review the records, I am not yet in a position to advise of an estimated date for response, nor an estimate of the number of records requiring third party consultations.

I appreciate your understanding of the circumstance and for allowing me additional time to provide you with details. I will contact you on or before January 10, 2020, with this information."

Attached hereto as **Exhibit '4'** is a true copy of the correspondence from FOIPP Coordinator Ms Smith.

13. On January 10, 2020, I received an email from FOIPP Coordinator Ms Smith stating:

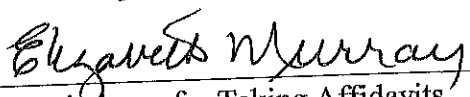
“Good evening Mr. Maines ... I have continued my review of the responsive records to this access request, approximately 400 pages. Based on my progress this week, I estimate a response to this request will not be possible before the end of February, 2020.”

Attached hereto as **Exhibit '5'** is a true copy of the correspondence from FOIPP Coordinator Ms Smith.

14. On January 10, 2020, I did not accept the terms of any extension for the Defendant.

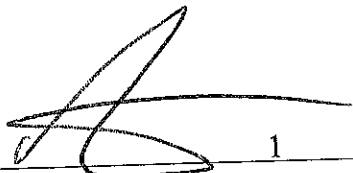
15. The Department of Economic Growth, Tourism and Culture is in violation of the Consent Order and I am requesting that the Supreme Court of Prince Edward Island enforce the terms of the Consent Order and compel by whatever means the release of requested documents related to FOIPP 2019-091 EGTC.

SWORN BEFORE ME at the City of
Charlottetown, in the Province of Prince
Edward Island on January 15, 2020



Commissioner for Taking Affidavits
in the Supreme Court

ELIZABETH MURRAY
A Commissioner for Affidavits
Supreme Court of P.E.I.



Paul Maines 1

Exhibit

1



PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8

July 30, 2019

Access and
Privacy Services
Office

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



C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8

2019-091 EGTC

BY E-MAIL paulmaines@icloud.com

Paul Maines
140 Plug Street
Malpeque, PE C0B 1M0

Dear Mr. Maines:

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

You have request access to records under the Act from the Department of Economic Growth, Tourism and Culture, as follows:

"All records, in any formats, electronic or otherwise, of Brad Mix [Senior Director Innovation PEI] which were either sent to - or received from - Cheryl Paynter from February 1, 2012 to July 1, 2012."

The Department of Economic Growth, Tourism and Culture aims to respond to requests for information within 30 days after receiving the request; however, under certain circumstances, the Act provides that a public body may extend this time limit.

As you know, a cursory search for responsive records to this particular request revealed that your request will involve a large number of records, such that the volume of information involved cannot be processed within the usual 30 day limit. A time extension will allow the Department of Economic Growth, Tourism and Culture to provide you with a complete response to your request, which will be ready no later than **August 21, 2019**. We will try to respond sooner, if possible.

Pursuant to section 60 of the Act, you may make a written request to the Information and Privacy Commissioner to review this matter. You have 60 days from the date of this notice to request a review by writing to the Information and Privacy Commissioner at the J. Angus MacLean Building, P. O. Box 2000, Charlottetown, PE C1A 7N8.

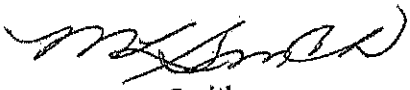
When requesting a review, please provide the Commissioner with the following information:

- the file number noted at the top of this letter;
- a copy of this letter; and
- a copy of your original request form.

This is Exhibit "1" referred to in
the affidavit of Paul Maines
sworn before me in Charlottetown PEI
on the 15 day of January 2020
E. Murray
Commissioner of the

If you have any questions, please contact our office at 902-569-7590 or apso@gov.pe.ca.

Sincerely,



Mary-Lynn Smith
FOIPP Coordinator

Exhibit

2

Aug 21, 2019

Karen A. Rose
Information and Privacy Commissioner
Office of the Information and Privacy Commissioner
Charlottetown PE C1A 7N8

Dear Ms Rose,

Subsection 8(1) of the *FOIPP* Act states: "The head of a public body shall make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely."

In addition, subsection 8(2) also states:

"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."

I believe that the Public Body has failed to comply with all of the above. Please accept this letter as my request to seek a review of file 2019-091 EGTC under subsection 9(2) of the *FOIPP Act*, where the public body is deemed to have refused access to responsive records.

Thank you in advance for your attention on this matter,

Regards,

Paul Maines

This is Exhibit "2" referred to in
the affidavit of Paul Maens
sworn before me in Charlottetown PEI
on the 25 day of January 2020
E. Murray

Exhibit

3



SI-GS-28824

OIPC File No.: F1-19-302
Public Body file EGTC 2019-091

DOCUMENT FILED
OCT 09 2019
Supreme Court of P.E.I.

In the Matter of a Request for Review between
Paul Maines (the "Applicant")
and
Department of Economic Growth, Tourism, and
Culture (the "Public Body")

This is Exhibit "3" referred to in
the affidavit of Paul Maines
sworn before me in Charlottetown, PEI
on the 15 day of January 2020
E. Murray
Commissioner of Oaths

Consent Order

On May 14, 2019 the Public Body received a request from the Applicant for information pursuant to the *Freedom of Information and Protection of Privacy Act* (the "Act").

On May 23, 2019 the Applicant and the Public Body agreed on a plan to respond to 11 concurrent requests. The Applicant and the Public Body also agreed that the Public Body would commence processing this request on or before June 22, 2019, with a projected response date of July 22, 2019.

On July 30, 2019 the Public Body extended its time to respond pursuant to section 12 of the Act to August 21, 2019.

On September 20, 2019 the Public Body advised the Applicant that they were proposing a further extension of time to process four requests, including the request identified as EGTC 2019-091.

Pursuant to subsection 76(1) of the Act, the head of a Public Body may require an applicant to pay to the Public Body fees for services as provided in the regulations. However, the Public Body has not issued a fee estimate, and does not intend to charge a fee to the Applicant.

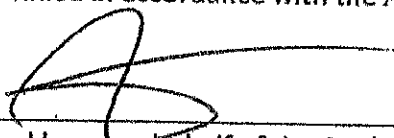
The Applicant filed this request for review regarding the Public Body's failure to respond to an access request in accordance with the timelines set out in ss. 9 and 12 of the Act.

Pursuant to subsection 61(3) of the Act, where a Public Body does not respond in time to a request for access to a record, it is to be treated as a decision to refuse access. Notwithstanding the foregoing, the Public Body desires to enter into this Consent Order to confirm its intention to provide responsive records in accordance with the Act to the Applicant pursuant to the timelines set out below.

Accordingly, the Public Body now proposes to respond to the Applicant in accordance with the Act on or before **January 7, 2020**. The Applicant agrees to this proposal.


As noted, the records contain information of third parties. The Public Body will withhold those records involving information of third parties for twenty (20) days after the day of notice is given pursuant to section 29 of the Act to give the third parties who have not consented to disclosure time to request a review by the Commissioner. If a third party requests a review by the Commissioner, the Public Body

will continue to withhold those records involving said third party's information until a review has been concluded in accordance with the Act.

X 
Signed by or on behalf of the Applicant

RUC MINS
Print Name

Dated: Oct. 9/2019



Signed by or on behalf of the Public Body

E. McGRATH-GAUDET
Print Name

Dated: _____

As agreed by the parties, by order pursuant to s. 66 of the Act, I require the Department of Economic Growth, Tourism, and Culture to respond to the Applicant in accordance with subsection 8(1) of the Act on or before January 7, 2020.

Dated: October 9, 2019


Karen A Rose
Information and Privacy Commissioner

Exhibit

4

From: Mary-Lynn Smith <marylynnsmith@gov.pe.ca>
Date: December 20, 2019 at 3:11:49 PM AST
To: paulmaines@icloud.com
Cc: Karen Rose <karose@assembly.pe.ca>, Kimberley Johnston <kjohnston@assembly.pe.ca>
Subject: Access Request 2019-091 EGTC re C. Paynter

Good afternoon Mr. Maines,

Thank you for taking the time to speak with me yesterday about your access request for **"All records, in any formats, electronic or otherwise, of Brad Mix [Senior Director Innovation PEI] which were either sent to - or received from – Cheryl Paynter from February 1, 2012 to July 1, 2012."**

This request is subject to a consent order dated October 9, 2019, proposing a response to the request on or before January 7, 2020.

As we discussed, I received the responsive records on December 6, 2019. After removing duplicate records, 1400+ pages remain to be processed. I confirm that third party consultations will be required. I also confirm that the public body intends to disclose any records not requiring third party consultation as soon as the records are processed, so as not to have you wait for us to complete the third party consultation requirements.

At this stage of processing, I know that I will not be able to achieve the deadline of a January 7, 2020 response. Based on my discussion with Commissioner Rose, it is my understanding that the Commissioner does not have jurisdiction to grant extensions in time.

I will be out of office from December 24, 2019 to January 6, 2020. While I have continued to review the records, I am not yet in a position to advise of an estimated date for response, nor an estimate of the number of records requiring third party consultations.

I appreciate your understanding of the circumstance and for allowing me additional time to provide you with details. I will contact you on or before January 10, 2020, with this information.

Regards,

Mary-Lynn Smith
FOIPP Coordinator
Access and Privacy Services
Justice and Public Safety
Sullivan Building

Telephone: (902) 569-7591

This is Exhibit "4" referred to in
the affidavit of Paul Maines
sworn before me in Charlottetown PEI
on the 15 day of January 2020
E. Murray
Notary Public

Exhibit

5

From: Mary-Lynn Smith <marylynsmith@gov.pe.ca>
Date: January 10, 2020 at 7:51:05 PM AST
To: paulmaines@icloud.com
Cc: Karen Rose <karose@assembly.pe.ca>, Kimberley Johnston <kjohnston@assembly.pe.ca>
Subject: Re: Access Request 2019-091 EGTC re C. Paynter

Good evening Mr. Maines,

I have continued my review of the responsive records to this access request, approximately 400 pages. Based on my progress this week, I estimate a response to this request will not be possible before the end of February, 2020. I will continue to dedicate the majority of my time to this request with a goal of completing this preliminary stage and having an accurate number of third parties who will need to be consulted by the end of next week. I do commit to providing you weekly updates on the status of my progress.

Regards,

Mary-Lynn Smith
FOIPP Coordinator
Access and Privacy Services
Justice and Public Safety
Sullivan Building

This is Exhibit "5" referred to in
the affidavit of Paul Maines
sworn before me in Charlottetown PEI
on the 15 day of January, 2020
E. Murray

PRINCE EDWARD ISLAND

Supreme Court (General Section)

Proceedings commenced at

Charlottetown

MAINES AFFIDAVIT

Paul Maines
140 Keir Shore Road
Malpeque, PE COB IMO