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November 24, 2020

**RE: File PO 2020 -189**

Dear Ms. Doiron,

Please accept this letter as my request for an official Review of my FOI File, #PO-2020-189.

Just yesterday (November 23<sup>rd</sup>), I received a decision signed by Mr. Paul Ledwell (Clerk of Executive Council and Secretary to Cabinet) dated November 17, 2020, stating the following:

***“Your request was revised (July 9, 2020) to: All records in any formats (including TEXT messages, BBMs and/or other end-to-end mobile messaging app) of former Premier Robert Ghiz that were either sent to, received from, or make mention of former Clerk of the Executive Council, Rory Beck. Time Period: December 1, 2011 to April 31, 2012.”***

The letter went on to say:

***“I am writing to inform you that a search by the Premier’s Office has failed to retrieve any records relating to the subject of your request. The search included a search of Mr. Ghiz’s email records by the corresponding secretary, and documented as lasting 10 minutes using the words, Rory, Rory Beck and Beck. Records in the Archives were searched by the Records Information Coordinator and documented lasting 10 hours.”***

As you are aware, this is not the first time I've received such “failed to retrieve any records” response letters from the PEI Government in my efforts to obtain documentation from former Premier Robert Ghiz.

My 18-month-long investigation into Brad Mix's destroyed email records led to a June 9<sup>th</sup>, 2020 Order by your predecessor, Ms. Karen Rose. In that Order, a document that precipitated the formation of the Special Committee on Records Retention, Commissioner Rose stated:

[47] I find that the **EGTC did not fulfill their duty to be open, accurate and complete when responding to the Applicants**, by failing to explain why very few responsive records were found. I further find that the EGTC deliberately withheld this important information from the Applicants, which is a violation of their section 8 duty. **I would have expected the gap in the named employee's emails to be one of the first facts to be communicated to the Applicants**, following the EGTC's realization that their search could not be properly completed. Instead, the EGTC provided the few records they had to the Applicants, **and remained silent about the possibility that there could have been more, but they had not been retained.**

*[48] **I am at a loss to explain the motivation of the EGTC in withholding such key information from the Applicants.** I have overseen many access reviews since November, 2002, and have observed that public bodies are forthright in their dealings with applicants, even when the information the public body must provide is embarrassing, or does not place the public body or a given employee in the best light. In such circumstances, public bodies prioritize their duty to respond openly, accurately and completely. **Why the EGTC chose to keep the fact of missing emails from the Applicants remains a mystery, even after multiple submissions to the Commissioner by the EGTC in these reviews.***

It doesn't appear these strong words have had any impact whatsoever on changing the culture of withholding information from applicants, as I have been told different, and totally contradictory things about Robert Ghiz's government records by the Public Body that both can't be true.

In Court documents filed with the PEI Supreme Court associated with the CMT lawsuit, I read about Paul Maine's attempts to also access records from the former Premier, in particular, in a FOIPP request (PO 2019- 285) seeking:

*“All records in any form of Robert Ghiz sent to or received by Shane MacEachern or make mention of Paul Jenkins or Chris LeClair. Time Period: May 1, 2011 to November 1, 2011”*

The decision letter Mr. Maines received was strikingly similar to the one I just received from Mr. Ledwell, although it only took 210 minutes in contrast to the 10 hrs they spent with my request to determine that no records existed that met the search criteria:

*“I am writing you to inform you that a search by the Premier’s Office **has failed to retrieve any records** relating to the subject of your request. The Recorded Information Management (RIM) coordinator assigned to the Premier’s Office conducted a search of the archive files including correspondence and report dated from May 1, 2011 to November 1, 2011. The search included the former premier's hard-copy files and was documented lasting 210 minutes.”*

It seemed incredulous to me that there would not be a single record mentioning the Chief of Staff (Chris LeClair) for the entire last months of his employment. But it wasn't really proof of anything. I thought I'd try my hand at getting Ghiz documents in a request.

I submitted a previous request for Ghiz records received by the Premier's Office on January 28, 2019 (PO 2019-16). I was told at that time that there were no electronic files for Ghiz, only 18 boxes of paper records that had been retained when his electronic files and emails had been deleted. I was also told that I would therefore need to amend my search request, since electronic “keyword” searches were not possible. I was asked to provide “subjects” that might then correspond to file folder labels I suppose.

On Fri, Mar 1, 2019 at 10:49 AM Mary-Lynn Smith <[marylynsmith@gov.pe.ca](mailto:marylynsmith@gov.pe.ca)> wrote:

Good morning Mr. Arsenault,

This is to confirm our telephone conversation this morning. In response to a letter from Kathryn Dickson dated February 15, 2019, you have instructed me to narrow your access request to read as follows:

**“A copy of all electronic documents and e-mails that were backed up from the network drives and GroupWise e-mail account of the former Premier Robert Ghiz from November 5, 2014 to November 12, 2014.”**

I would ask that you please confirm the accuracy of this re-wording. Please provide any revisions.

Regards,

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

I had already obtained a copy of the ITSS “*Employee Removal Form*” for Robert Ghiz which had been filed in Court by CMT. That form was completed and sent to ITSS within 30 days of MacLachlan's election as Premier in May, 2015, and the boxes saying “delete” both network files and accounts and emails and email accounts were both checked.

Given that fact, I had no reason at the time to question APSO's claim that no electronic records existed for Ghiz that could be searched for my FOI Request. It shocked me that Premier MacLachlan would have had Ghiz's electronic files and emails deleted so promptly after the election. His actions immediately made it far more work, costing both government and FOI applicants like me additional financial costs, given how much harder it is to search and access paper records.

I complied with Ms. Dickson's request, and amended the search parameters of my request. I received confirmation of my amended request on March 1, 2019.

Despite confirmation that my request would be amended further to the above to search for the following more “specific” subject headings. I filed my Access to Information request on January 28, 2019 and received a decision letter on April 11, 2019 with the following information:

I am writing to inform you that a search by the Premier's Office has failed to retrieve any records relating to the subject of your request. A review of a list documenting the former Premier's records found no matches with the subjects of your request. In addition, an electronic search of the former Premier's email account performed by the Senior Advisor, Operations located no responsive records. The electronic search lasted 20 minutes and used the key words: Capital Market. Technologies (CMT). E-gaming and Bruce MacDonald.

After being informed by Ms. Dickson that there were no electronic records to search, and told I would need to amend my request accordingly, I then get a response letter from the Premier's Office, signed by Paul Ledwell, saying that an “electronic search of the former Premier's email account” had been undertaken. How is that possible when both the APSO worker and the ITSS Employee Removal Form I was holding in my hand said that Premier MacLachlan's office had instructed ITSS to delete Robert Ghiz's email account in May, 2015.

Things became more confusing to me when I read Judge Campbell's CMT decision. Paragraph 626 addressed Paul Maines' allegation that Ghiz's electronic records and emails had been deleted: t

***Paragraph 626:** Also in Maines' 2019 affidavit he alleged that the emails and records of Ghiz were deleted on May 29, 2015, which he maintains is evidence of “bad faith” litigation and further confirming evidence of “misfeasance in public office”. **In fact, Ghiz's emails were never deleted.** The email account of Ghiz was copied and preserved the day after the initial statement of claim in this matter was filed. That was done notwithstanding i) Ghiz was not a party to the action in 2015 (he was added some 3 years later), and ii) counsel for the plaintiffs did not identify Ghiz as having any relevant documents for the purpose of the litigation.” (My Emphasis).*

I learned this just shortly after Campbell's ruling was made public on October 25, 2019.

The 6-month window on my previous FOI request for Ghiz records had closed, so I was unable to file a review with your office challenging the information I had been given from Ms. Dickson that there were no electronic records to search, relying on paragraph 626 in Judge Campbell's ruling.

I decided I'd try to answer the question once and for all by submitting a broad FOI request casting a very wide net – knowing it would likely cost me in search time, which it did, the deposit to proceed was over \$100 – so I could finally answer the question I have been trying to get an answer to for nearly 3 years: are there any remaining records for Robert Ghiz, or were they too all destroyed, and I and everyone else are being (once again) lied to by the government about deleted government records.

As you are aware, it was confirmed by the former Auditor General, Jane MacAdam, in her *2016 Special Assignment on Egaming*, that the 2 most-senior people to former Premier Robert Ghiz [former Chief of Staff, Chris LeClair, and former Clerk of the Executive Council, Rory Beck] had ALL of their records destroyed shortly after they left government. Notwithstanding Judge Campbell's ruling, they were deleted contrary to the *Archive and Records Act* which makes it illegal to destroy or order the destruction of government records. Only the PEI Provincial Archivist is legally-authorized to destroy government records, following schedules and record retention policy.

Judge Campbell regarded the deletion of both Beck's and LeClair's records as having happened in accordance with the normal course of business “standard procedure and practice” saying it happened exactly as it happens with all staff leaving the employ of government; however, that isn't true.

ITSS senior staff (Scott Cudmore and Tracey Wood) indicated to the Standing Committee on Public Accounts (Cudmore) and in sworn cross-examination in the CMT lawsuit (Wood) that ITSS would NEVER have processed those requests coming from Robert Ghiz and Neil Stewart if ITSS had known at the time that neither had followed the law and had first backed-up those records – ITSS technicians processed “work orders” assuming (and why wouldn't they?) that the law had been followed. But of course we now know it wasn't.

Both of these gentlemen (Beck and LeClair) worked very closely with the Premier, as their positions would indicate. The especially-intimate work-relationship between Mr. Beck and Premier Ghiz was noted in a Guardian article following Mr. Beck's sudden and untimely passing while still Clerk of the Executive Council.

On April 14, 2012, the PEI Guardian wrote:

*“One of Premier Robert Ghiz's senior advisers, a man described as the P.E.I. premier's right-hand man, died suddenly on Friday. Rory Beck was clerk of the executive council and secretary to cabinet.*

***Not a single decision passed through Ghiz's cabinet without getting Beck's stamp of approval.”*** [[“Rory Beck, premier's 'right-hand man', dies of natural causes | Local | News | The Guardian”](#)].

It is simply not reasonable to believe that former Premier of PEI, Robert Ghiz, would not have a single record mentioning or containing the name of his former right-hand man [Rory Beck]. Beck had his hand in every file of the Premier **for the entire 18 months preceding his death.**

I am tiring of this ongoing and seemingly unending and relentless campaign to get simple answers and documents from the Premier's Office. What I've been getting is obfuscation and delays, efforts designed to deceive and mislead me quite frankly.

The Premier's Office that has been preventing me from accessing the information I have a right to access under the law to do the work I need to do. It has cost me dearly, both in financial terms, as well as in terms of the impact on my career as an investigative journalist. My work over the past two years in this egaming investigation should have long-since been finished based on the very reasonable timeline I had mapped out for myself. It's no where's near complete, and I'm now seriously considering launching a lawsuit for what the government has - and is continuing - to do to thwart my investigation and prevent its culmination.

It seems there's never any consequences for these actions, breaches of law and tactics; never any “remedy” that comes anywhere CLOSE to matching the crime (thwarting democracy). Two years of effort and hundreds of hours of work and personal cost to get to the bottom of a major public scandal regarding the Brad Mix file, and what did I get for my effort? My initial \$5 application fee returned (without interest)!

Ms. Doiron, I'm really sick of this kind of treatment from our Government, and so are thousands of other Islanders. We want the channels that have been established to guard against this kind of document destruction and document access abuse to stop. I and all Islanders need respectable, appropriate remedies and redress through channels such as your office. We need more done to deter the continuation of what the Brad Mix Order highlighted as entirely unacceptable. I'm asking you to thoroughly investigate this serious matter of the status and state of former Premier Robert Ghiz's records.

I am requesting a review of my PO 2020-189 FOI request not on grounds that the Public Body failed to deal with me in an honest, open and helpful manner, as is their legal duty as per section 8.1 of the Act. I believe they did indeed violate section 8.1 of the Act., but I'm asking that all focus and energy be narrowed to the issue of what I think it's fair to call "missing records" giving the context and facts as outlined in this letter.

I don't expect any openness and cooperation from the public body to be honest, and haven't for some time. And given that there's really no "remedy" for me for you to determine that they breached 8.1 (probably why they keep breaching that provision) what's the point of me officially complaining yet again, and taking up your time, which I know is constrained with many pending Orders and far more important work.

What I want your help with as the *Commissioner of Information and Privacy* is to investigate a former PEI Premier's files were deleted, and if they weren't deleted, why are no FOI requests returning ANY records? Not a single page? Including the two very broad ones that I have submitted?

How it is possible there is not a single page of official government record even containing Rory Beck's name - not a single occurrence apparently - in 18 months? How is that possible if, in fact, Robert Ghiz's paper records, emails and electronic files were properly retained, which is what the Premier's Office apparently wants me to believe?

Sincerely,

Kevin J. Arsenault, Ph.D.