



Office of the Information
& Privacy Commissioner
Nova Scotia

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October 15, 2019

Law Amendments Committee
c/o Office of the Legislative Counsel
Legc.office@novascotia.ca

//via email//

Dear Law Amendments Committee:

Re: Bill 180 – Fatality Investigations Act (amended)

I write today to contribute to the public debate of Bill 180, as introduced by the Minister of Justice on October 8, 2019 and passed at second reading on October 10, 2019. This letter is not a full analysis of Bill 180, as there has been very little time to provide input and my office was not consulted on the drafting. While I am supportive of the important aims of Bill 180, I have three concerns:

1. Removal of the Privacy Protections Contained in *FOIPOP*

Bill 180's section 39H(5) states, "The *Freedom of Information and Protection of Privacy Act* [*FOIPOP*] and the *Personal Health Information Act* [*PHIA*] do not apply to Committees or to death review information." Although the Bill's sections 39G(4) and 39H(4) prohibit a Committee from disclosing certain information, the privacy framework and safeguards contained in *FOIPOP* are entirely removed. Section 24 of *FOIPOP* is the source of a public body's legal obligation to safeguard and protect the personal information it holds against such risks as unauthorized access and other security threats.

2. Removal of the Transparency Framework Contained in *FOIPOP*

The sharing of sensitive personal information necessary for the function of Death Review Committees is already permitted under both *FOIPOP* and *PHIA*. Bill 180's section 39H provides authority for the Committees to collect death information and for the information sources to disclose to the Committees. This makes the information sharing authorized under s. 27(a) of *FOIPOP* and s. 38(1)(l) of *PHIA*. Furthermore, *FOIPOP* provides a framework for withholding sensitive personal information from the public. It is not necessary to remove the applicability of *FOIPOP* in order to provide for effective information sharing. By entirely removing the applicability of *FOIPOP*, the remainder of the transparency framework set out in *FOIPOP* is also lost.

3. Omission of Reference to the *Municipal Government Act, Part XX*

It is my understanding that municipal police departments and records created by municipal police departments are intended to be included in the death review process. Municipal police departments are not subject to *FOIPOP*, rather they are subject to a similar access and privacy framework under the *Municipal Government Act, Part XX*. For consistency and clarity, it appears there should be a reference to the *Municipal Government Act, Part XX* where necessary to include municipal police.

Continuing to propose bills that remove the applicability of *FOIPOP* undermines the intent and effectiveness of the quasi-constitutional status of the privacy and transparency frameworks set out in *FOIPOP*. The result is an unnavigable swiss cheese foundation unable to protect these fundamentals of democracy. Such provisions should only be used when demonstrably necessary.¹ I have demonstrated in this brief submission that it is not necessary to sacrifice privacy and transparency to achieve the objectives of this Bill. **I urge the Committee to remove section 39H(5) from the Bill before it is returned to the House of Assembly.**

Sincerely,



Carmen Stuart
Information and Privacy Commissioner for Nova Scotia (Acting)

c: The Honourable Mark Furey, Minister of Justice

¹ Accountability for the Digital Age: Modernizing Nova Scotia's Access & Privacy Laws, recommendation #3(a); <https://oipc.novascotia.ca/sites/default/files/publications/annual-reports/Accountability%20for%20the%20Digital%20Age%20%28June%202017%29%20.pdf>