

**CONFIDENTIAL
ISSUES NOTE**

**Ministry: Technology, Innovation and
Citizens' Services**

Date: Sept. 19, 2014; Updated: Oct. 6, 2014

Minister Responsible: Andrew Wilkinson

**Created by Government Communications and
Public Engagement**

**OIPC Report – Report card on
FOI responses**

ADVICE AND RECOMMENDED RESPONSE:

- We are currently reviewing the report and recommendations.
- Openness and transparency is a top priority of this Ministry and Government.
- This is why we are making more information available on the DataBC and Open Information websites, so that the public do not have to rely on the Freedom of Information and Protection of Privacy Act to access information.
- In spite of tight fiscal situation, we have maintained the budget and staffing levels in the Information Access Operations Branch of the Ministry.
- Our approach is to look at ways to improve the processes, and reduce the number of requests by proactively releasing information, rather than increase the budget at the expense of other vital public services.
- In the coming months, we will begin to proactively release government purchasing card and business transaction account information on a quarterly basis rather than at the end of the fiscal year with Public Accounts.

If asked about Premier's Office staff bulk deleting received and sent items:

- Her report notes that instances where emails were deleted that were transitory in nature, which is a routine practice in good records management.
- On page 31 the Commissioner states: "...the Office of the Premier does not instruct staff to delete all sent or received emails on scheduled intervals. However, the Office of the Premier confirmed that at least some staff members regularly delete emails that they consider transitory, including their sent emails. Transitory records are those records that are not required to meet statutory obligations or to sustain administrative or operational functions."

If asked about no-response rate for the Office of the Premier.

- Ministries are responsible for delivering on their mandates and keeping records, not the Premier's Office. Applicants commonly include the Premier's Office on requests if they are uncertain which ministry holds responsive records. This results in a higher rate of no records responses from that office.
- In fact, the Commissioner concluded on page 29: "IAO notes that many applicants misunderstand the Office of the Premier's mandate and this leads to a larger than average number of requests that result in no responsive records. My office's experience is that this is indeed the case and I do accept that the Office of the Premier's statistics in this area will be usually higher than the government average."

If asked about timeliness:

- Government responded to more requests this year than last year, and responded to the highest number of general requests ever.
- Government closed almost the same number of requests on time in 2013/14 as we did in 2010/11 when the timeliness percentage was at its highest level, 93%.
- The nature of requests are becoming more complex. Cross government requests take much more time to process. The number of requests to multiple ministries has increased by approximately 250% since 2009.
- As pointed out by the Commissioner, the increase in volume is largely due to requests for calendars of public servants and Ministers. These requests alone account for 35% of all general requests, and 75% of the total increase in volume in the last two fiscal years.
- We will continue to improve processes. We have completed a major LEAN initiative, introduced a new system, and will continue to improve our processes.
- These improvements have allowed government to close more requests every year as volume continues to increase.

If asked about no records responses:

- 19% of requests have resulted in no records responses in 2013/14, down from 26% last fiscal.
- The Commissioner's report acknowledges that government is compliant with its duty to assist.
- The number of non-responsive requests over recent years can in part be explained by the centralization of the system in 2009 and the greater ease with which applicants can make requests to multiple ministries.
- Applicants can file cross-government searches, regardless of the fact there may be only a slim chance a particular ministry may hold records.
- Ministries are responsible for delivering on their mandates and keeping records, not the Premier's Office. Applicants commonly include the Premier's Office on requests if they are uncertain which ministry holds responsive records. This results in a higher rate of no records responses from that office.

If asked about fees:

- Fee estimates are prepared and issued by professional public servants, whose actions are guided by legislation.
- Staff frequently work with applicants to narrow the scope of their requests in order to help reduce fee estimates.

KEY FACTS ABOUT THE ISSUE:

On Sept. 23, 2014, the Office of the Information and Privacy Commissioner (OIPC) will release a special report "A Step Backwards: Report Card on Government's Access to Information Responses."

The report examines three aspects of government's access to information process from April 1, 2013 to March 31, 2014:

- Timeliness of responses to information requests.

- Percentage of general information requests that result in no records response.
- Fee estimates and discrepancy between the estimated fees provided to applicants and the amount of fees collected for those same requests.

The report makes seven recommendations to government.

BACKGROUND:

Timeliness

The report acknowledges that the ministry's Information Access Operations (IAO) worked with the OIPC during the review and that eight IAO directors and managers were interviewed.

The results of the review show that government's performance on timeliness has declined in the past fiscal year from 87% in 2012/13 to 74% in 2013/14.

The Ministry of Children and Family Development is noted as having the lowest on-time response rate to access requests for information at 52%. This is a systemic issue, rather than MCFD only, because access to information is a shared responsibility between IAO and ministries.

The report acknowledges that the number of government's closed access to information requests has risen steadily in recent years ... an increase of 63% from 2008 and of 24% since 2011 – and that the result “is a significant increase in the workload for IAO and ministries in responding to access to information requests.”

The report notes that calendar requests accounts for 75% of the total increase in volume in the last two fiscal years.

No Responsive Records

The report notes that the percentage of no responsive records rose from 13% in 2008/09 to 26% in 2012/13 and down to 19% in 2013/14. While acknowledging that it's a positive sign that government is down from the previous year, and is compliant with its duty to assist, the report identifies instances where government could respond to applicants in a more “open, accurate and complete manner.”

The percentage of no responsive records from the Office of the Premier is 29% in 2013/14. The report expresses concerns about the Office of the Premier's records management.

Fee Estimates

The report states that the overall average over the past five fiscal years shows that government collects 9% of the money of initial fee estimates. There was no indication from the review that government is making unreasonably large fee estimates in an effort to deter applicants.

Recommendations:

Recommendation #1

Government should define and implement steps to reduce the backlog of access to information requests and, in the forthcoming budget cycle, should give priority to providing more resources to dealing with the greatly increased volume of access requests.

Status:

Recommendation #2

As recommended in the report *A Failure to Archive: Recommendations to Modernize Government Information Management*, government should adopt a modern statutory framework to address the needs and realities of the digital age, recognizing the importance for government to effectively track records from their creation through to their archiving.

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Recommendation #3

After discussion and agreement between government and the political parties currently making calendar requests, the minister responsible for FOIPPA should develop a system to proactively disclose calendar information of ministers, deputy ministers, assistant deputy ministers as well as certain other staff whose calendar are routinely the subject of access to information requests. This release should, at a minimum, contain the names of participants, the subject and date of meetings and be published on a monthly basis.

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Recommendation #4

The Ministry of Children and Family Development should give attention on a priority basis to its statutory obligation under FOIPPA to respond to access to information requests within legal timeliness. Planned actions should include addressing elements such as printing and retrieving difficulties regarding the ICM system, staff levels related to access to information and providing effective ongoing training to ICM users.

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Recommendation #5

Government should ensure it builds access and privacy into any new information management system at the design stage in order to ensure the system operates from a records management perspective as well as from a program perspective.

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Recommendation #6

Where government does not have records responsive to an access to information request, IAO should provide a brief explanation to the applicant as to why this is the case.

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Recommendation #7

Government should implement the Capstone or a similar email management system with respect to senior government officials to document its key decisions. This system should also be adopted by the Office of the Premier and ministerial offices.

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Hayes, Dana GCPE:EX

From: Phelps, Blair GCPE:EX
Sent: Tuesday, September 23, 2014 4:10 PM
To: Chalmers, Jennifer MTIC:EX
Subject: CBC material

ADVICE AND RECOMMENDED RESPONSE:

- We are currently reviewing the report and recommendations.
- Openness and transparency is a top priority of this Ministry and Government.
- We have taken significant initiatives to make more information available than ever before, through DataBC and Open Information.
 - Open Information is fully searchable and is updated daily with over 4,200 responses to FOI requests currently available for citizens to view.
 - B.C. is the first province in Canada to create a site like *DataBC* which is a catalogue of over 3,000 datasets that are free, searchable and available for anyone to use and repurpose.
- In spite of tight fiscal situation, we have maintained the budget and staffing levels in the Information Access Operations Branch of the Ministry.
- Our approach is to look at ways to improve the processes, and reduce the number of requests by proactively releasing information, rather than increase the budget at the expense of other vital public services.
- For example, in the coming months, we will begin to proactively release government purchasing card and business transaction account information on a quarterly basis rather than at the end of the fiscal year with Public Accounts.

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Hayes, Dana GCPE:EX

From: Michael Mui <Michael.Mui@sunmedia.ca>
Sent: Tuesday, September 23, 2014 3:44 PM
To: Wey, Melody GCPE:EX
Subject: Re: OIPC report

Thanks Melody,

Michael

Michael Mui
Reporter, Vancouver 24 Hours
P: 604 322 2352
M: 604 782 3531
michael.mui@sunmedia.ca

From: Wey, Melody GCPE:EX <Melody.Wey@gov.bc.ca>
Sent: Tuesday, September 23, 2014 3:36 PM
To: Michael Mui
Subject: OIPC report

Hi Michael – here's background information to answer your questions. Please let me know if you need anything more. In case you didn't see this, here is a statement from Minister Wilkinson in response to the commissioner's report: <http://www.newsroom.gov.bc.ca/2014/09/ministers-statement-on-access-to-information.html>

Government is currently reviewing the commissioner's report and recommendations. No decision has been made about the recommendation to implement the Capstone or a similar email management system at this time.

Overall, government has responded to more requests this past fiscal year than the previous year and received the highest number of general requests ever. Applicants can file cross-government searches, regardless of the fact there may be only a slim chance a particular office or ministry may hold records. In fact, government has also seen the number of requests to multiple ministries increase by 250% since 2009.

Ministries are responsible for delivering on their mandates and keeping records, not the Premier's Office. Applicants commonly include the Premier's Office on requests if they are uncertain which ministry holds responsive records. This results in a higher rate of no records responses from that office. Public servants are all required to follow government's records retention schedule.

Thanks again, Melody

Melody Wey | Communications Manager
Ministry of Technology, Innovation and Citizens' Services
Government Communications and Public Engagement
250 508-5030

Hayes, Dana GCPE:EX

From: GCPE News GCPE:EX
Sent: Monday, September 22, 2014 12:30 PM
To: GCPE Minis
Subject: MEDIA ADVISORY - Office of the Information and Privacy Commissioner for British Columbia

s.3

Hayes, Dana GCPE:EX

From: Phelps, Blair GCPE:EX
Sent: Tuesday, September 23, 2014 10:16 AM
To: GCPE Comm Directors
Cc: Wey, Melody GCPE:EX
Subject: Re: OIPC report

Hi folks,

This morning the Office of the Information and Privacy Commission released a report on FOI timeliness.

I have provided our key messages below.

Should you have any questions, feel free to give me a shout.

Blair

ADVICE AND RECOMMENDED RESPONSE:

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Hayes, Dana GCPE:EX

From: Wey, Melody GCPE:EX
Sent: Tuesday, September 23, 2014 9:57 AM
To: GCPE Newsroom
Cc: Phelps, Blair GCPE:EX
Subject: For web-posting 11am
Attachments: Statement - OIPC report on FOI responses Sept 2014 dr7.docx

Please prepare this for web posting at 11am today ... depending on the level of media interest, we may decide to distribute through the news release system but for now, we're planning to softly web-post only. Thanks, M

Pages 12 through 13 redacted for the following reasons:

s.13

Not Responsive

From: Herman, Stephan GCPE:EX
Sent: December-02-13 10:08 AM
To: Wey, Melody GCPE:EX
Subject: RE: Commissioner to release report on disclosure of risks to health and safety

Hi Melody,

Attached is a draft IN with all the s.25 stuff compiled.

Stephan Herman
Public Affairs Officer
Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Wey, Melody GCPE:EX
Sent: December-02-13 9:33 AM
To: Herman, Stephan GCPE:EX
Subject: FW: Commissioner to release report on disclosure of risks to health and safety

You can pull key points from this email as well. Thanks.

From: Macnaughton, Jason GCPE:EX

Sent: November-29-13 3:10 PM

To: Thomas, Vivian P GCPE:EX; Jabs, Ryan GCPE:EX; Porter, Rodney GCPE:EX; Thistle-Walker, Carlene GCPE:EX; Gilmore, Dan GCPE:EX; Crebo, David GCPE:EX; Murphy, Bernadette GCPE:EX; Dean, Sharon GCPE:EX; Groot, Jeff GCPE:EX; Sitter, Donna GCPE:EX; Schollen, Tasha GCPE:EX; McCaffrey, Julianne GCPE:EX

Cc: Wey, Melody GCPE:EX; Gleeson, Kelly T GCPE:EX

Subject: FW: Commissioner to release report on disclosure of risks to health and safety

Hi all,

Wanted to ensure you were aware that on Monday morning at 9:30, the Office of the Information and Privacy Commissioner (OIPC) will issue their investigation report on the topic of disclosures of risks to health and safety and matters in the public interest mandated by section 25 of the Freedom of Information and Protection of Privacy Act ("FIPPA").

You may recall this issue was first raised in June 2012 when the BC's Freedom of Information Privacy Assoc. along with the Law Clinic at UViC alleged that public bodies were not meeting their obligations under s.25 of FIPPA and asked the OIPC to investigate.

<http://fipa.bc.ca/home/news/317>

The below information was provided to our Ministry staff on an embargoed basis and should not be distributed.

The 5 cases investigated in the report are:

1. Testalinden Dam near the town of Oliver
2. 2008 Air quality report for the City of Prince George
3. 2009 BC Centre for Disease Control ("BCCDC") study which indicated that the incidence of Lyme disease in BC
4. Well water tests in the Cowichan Valley Regional District ("CVRD") which showed elevated nitrate levels
5. Occurrence of mould in Hamilton Hall, a student residence at Simon Fraser University ("SFU")

Based on embargoed copy of the report, Testalinden was the only case in which gov't failed in our duty under s 25

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Other findings (from the exec summary):

The first case study related to the 2010 collapse of the Testalinden Dam near the town of Oliver. The Ministry of Forests, Lands and Natural Resource Operations is responsible for the inspection and safety of dams. It had information from inspection reports that the dam was nearing the end of its life and was a hazard to people and property located downstream. I found that when FIPPA came into force in 1993, the Ministry failed to meet its obligation under s. 25 to disclose information about the compromised state of the dam to residents downstream.

The second case study related to an air quality report for the City of Prince George. In 2008, the Ministry of Environment conducted an air quality study in which one test indicated levels of formaldehyde that were significantly higher than normal, and well above safe levels. The Ministry did not fully evaluate this test until seven months later and concluded that the results were incorrect based on other related indicators. I found that the Ministry's interpretation of the results

was reasonable, and therefore there was no urgent and compelling need for disclosure of this information. Accordingly, the Ministry had no obligation to disclose these results under s. 25.

The third case study related to a 2009 BC Centre for Disease Control (“BCCDC”) study which indicated that the incidence of Lyme disease in BC was higher than officially reported. The Environmental Law Clinic argued that this underreporting posed a significant public health risk which should have been disclosed by the BCCDC and the Provincial Health Services Authority (“PHSA”). I found that BCCDC was not a public body governed by FIPPA until 2011. I also found that the information was not of an urgent and compelling nature and therefore neither the PHSA nor the Provincial Health Officer would have had an obligation to disclose it. Further, as the BCCDC became a public body in 2011, it was not subject to FIPPA at the time of the report in 2009, and would not have been obligated to comply with s. 25.

The fourth case study relates to well water tests in the Cowichan Valley Regional District (“CVRD”) which showed elevated nitrate levels. The owners of the wells were informed of the results, but as neither well supplied drinking water and the water in the aquifer was unaffected, the CVRD did not inform the public. I found that the CVRD did not have an obligation under s. 25 to disclose the test results because there was no urgent and compelling need for public disclosure of the information.

The fifth case study relates to the occurrence of mould in Hamilton Hall, a student residence at Simon Fraser University (“SFU”). One of the rooms at Hamilton Hall was occupied by a graduate student who informed SFU prior to moving in that he had health issues related to mould. I found that SFU was only aware of the presence of mould as a result of engineering reports commissioned after the graduate student had moved out of Hamilton Hall. SFU did not have information that was of an urgent and compelling nature that would have necessitated disclosure to the graduate student or other student residents with relevant health sensitivities. As a result, SFU did not have an obligation to disclose information under s. 25.

Please let me know if you have any questions.

Jason

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Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Monday, December 2, 2013 12:14 PM
To: Francis, Celia MTIC:EX
Subject: RE: Messaging for section 25

They did - thanks for checking though!

Stephan Herman
Public Affairs Officer
Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile) P Please consider the environment before printing this email.

-----Original Message-----

From: Francis, Celia MTIC:EX
Sent: December-02-13 12:14 PM
To: Herman, Stephan GCPE:EX
Subject: RE: Messaging for section 25

I am not sure if the deletions (strikeouts) showed up in the email you got - they don't show below

-----Original Message-----

From: Herman, Stephan GCPE:EX
Sent: November-29-13 5:45 PM
To: Francis, Celia MTIC:EX
Subject: RE: Messaging for section 25

thanks!

From: Francis, Celia MTIC:EX
Sent: Friday, November 29, 2013 4:42 PM
To: Herman, Stephan GCPE:EX
Cc: Plater, Sharon MTIC:EX
Subject: RE: Messaging for section 25

Hi Stephan

I have just chatted with Sharon and we are fine with the bullets with the changes below.

Celia

From: Herman, Stephan GCPE:EX
Sent: November-29-13 4:26 PM
To: Francis, Celia MTIC:EX
Cc: Plater, Sharon MTIC:EX
Subject: Messaging for section 25
Importance: High

Hi Celia,

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With s.22 are you acting as approver in her stead, or do I have to send these elsewhere in LPP before moving them along?

Stephan Herman
Public Affairs Officer
Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile) P Please consider the environment before printing this email.

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Monday, December 2, 2013 9:32 AM
To: Wey, Melody GCPE:EX
Subject: RE: OIPC Investigation Report re Section 25 (EMBARGOED)

On it.

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Wey, Melody GCPE:EX
Sent: December-02-13 9:31 AM
To: Herman, Stephan GCPE:EX
Subject: RE: OIPC Investigation Report re Section 25 (EMBARGOED)

Great – can you please drop this analysis and the response points into a quick IN for us? Jason did a good summary that could also be added as well, will send in separate email.

From: Herman, Stephan GCPE:EX
Sent: December-02-13 9:29 AM
To: Wey, Melody GCPE:EX
Subject: FW: OIPC Investigation Report re Section 25 (EMBARGOED)

Jason sent it over as an FYI

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Macnaughton, Jason GCPE:EX
Sent: November-30-13 8:26 AM
To: Wey, Melody GCPE:EX; Herman, Stephan GCPE:EX
Subject: Fwd: OIPC Investigation Report re Section 25 (EMBARGOED)

FYI

Sent from my iPhone

Begin forwarded message:

From: "Hughes, Bette-Jo MTIC:EX" <BetteJo.Hughes@gov.bc.ca>
Date: November 29, 2013 at 11:26:17 PM PST

To: "Macnaughton, Jason GCPE:EX" <Jason.Macnaughton@gov.bc.ca>
Cc: "Jacobson, John MTIC:EX" <John.Jacobson@gov.bc.ca>, "Plater, Sharon MTIC:EX" <Sharon.Plater@gov.bc.ca>, "Ahmed, Sarf MTIC:EX" <Sarf.Ahmed@gov.bc.ca>
Subject: FW: OIPC Investigation Report re Section 25 (EMBARGOED)

Jason, attached is the embargoed copy of the OIPC's s.25 report, and the LPP staff analysis of the recommendation to amend s.25 (b).

This report may be released on Monday, so please let us know what you need to develop the IN.

In Summary:

As this is a complex change with mixed consequences, it would seem that the most prudent approach would be to incorporate this recommendation into the policy review, analysis, legal review, and consultations that will proceed the anticipated 2015 amendments to FOIPPA.

Section 25 of FOIPPA overrides exceptions to disclosure in the Act. It requires that, whether or not there has been an FOI request, public bodies disclose information to an applicant, the public or an affected group of people, without delay, in certain circumstances:

- (a) if the information is about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

Commissioner's orders have interpreted the term "without delay" as requiring that there be an element of "temporal urgency" impelling disclosure of the types of information listed. However, "without delay" could also be interpreted as simply requiring disclosure in a timely manner. Government's policy and procedures manual chapter on section 25 supports this later interpretation as it acknowledges that there should be some urgency to the disclosure.

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The Commissioner is recommending that s. 25(1)(b), the public interest portion, be amended to remove the wording "without delay", so that there is a mandatory obligation on public bodies to disclose information that is clearly in the public interest, without any need for "temporal urgency".

Section 25(1)(b) refers to information other than information about a significant risk of harm to the environment or to public health or safety of the public or a group of people. (Examples of information captured by section 25(1)(b) could include financial, tax, contract or budget information, information on the use or sale of land, plans for changes in services or benefits, plans for restructuring of public bodies, plans for major infrastructure projects, how certain decisions were made.) The underlying rationale is that affected individuals or others who have a stake in the issues can take steps to protect their interests or take some other action.

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**CONFIDENTIAL
ISSUES NOTE**

**Ministry of Forests, Lands and Natural
Resource Operations**

Date: Nov. 29, 2013

Minister Responsible: Hon. Steve Thomson

**Testalinden Dam
public safety
disclosure**

ADVICE AND RECOMMENDED RESPONSE:

- **The Ministry takes its responsibilities for public safety very seriously. Whenever ministry staff become aware of a potential risk to public safety, that information is publically communicated as soon as possible.**
- **While the Ministry disagrees with the Commissioner's interpretation of the facts and her conclusion in this case, the Testalinden incident in 2010 underscored how important it is for government to inform the public when it receives information about dams that are deemed to be unsafe – and other potential public safety hazards.**
- **Since 2010, and acting on recommendations stemming from the review of the Testalinden dam failure, the Ministry has stepped up audits and inspections of dams, increased compliance orders and renewed its commitment to providing timely information to members of the public who may be impacted.**
- **In addition the ministry has decommissioned or is in the process of decommissioning several dams with structural deficiencies that were identified as part of the government's post-Testalinden dam safety review.**

KEY FACTS REGARDING THE ISSUE:

On Dec. 2, 2013 at 9:30 a.m., the Office of the Information and Privacy Commissioner (OIPC) is releasing an investigation report criticizing the Province for failing to disclose to downstream residents information about the allegedly compromised state of Testalinden Dam near Oliver.

The OIPC relies on various historical documents to conclude that there was an urgent and compelling need for public disclosure. The OIPC launched an investigation in May 2012 following a request from the University of Victoria Environmental Law Clinic, which asked the OIPC to review several unrelated incidents, including the failure of Testalinden Dam. The UVic clinic claimed that historical reports identifying the risks associated with Testalinden should have been proactively released under Section 25 of the Freedom of Information and Protection of Privacy Act, which was passed into legislation in 1993.

In its response to the OIPC, the ministry maintained there was no obligation to release documents that predate the enactment of FIPPA; and that ministry staff who inspected the dam in 1992 did not believe the dam posed any imminent risk or needed to be replaced. Ministry personnel were of the same view following a site visit in 1999. Since 1992 was the most recent report available, and similarly no hazard was revealed in 1999, the ministry maintains it was reasonable to conclude that the dam was not at imminent risk of failure - an assertion that is supported by the fact the dam did not breach until 2010. And when it did fail, the ministry maintains it was because of a maintenance issue for which the dam owner was responsible – rather than because of any inherent weakness in the structure.

Nevertheless, the OIPC investigative report criticizes the province for relying on the 1992 report, as well as the results of a 1999 site visit for which no report was produced, to the exclusion of previous reports

that outlined the dam's deficiencies dating back to 1977. The OIPC report concludes there was an "urgent and compelling need for public disclosure of this information" and that the ministry failed to meet its obligations under Section 25 of the Freedom of Information and Protection of Privacy Act.

After the Testalinden dam failure in June 2010, the deputy solicitor general was asked to conduct a review of the circumstances that led to the dam failure. In July 2010 the deputy solicitor general produced a report with 12 recommendations.

In October 2010, the Ministry of Environment outlined how they and other ministries identified in the recommendations had acted or were acting on all 12 recommendations, including completion of the rapid dam assessment program and improvements to the dam safety program. Responsibility for the dam safety program now rests with the Ministry of Forests, Lands and Natural Resource Operations.

Communications Contact: Brennan Clarke

356-5261

Issues note\Water\2013\Testalinden

Program Area	ADM	Comm. Director
Brian Symonds (250) 490-8255	Tom Ethier 250 356 0972	Vivian Thomas 250 356 2475

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Saturday, November 30, 2013 10:30 AM
To: Hughes, Bette-Jo MTIC:EX
Subject: RE: For review: Messaging on s.25

Thank you!

From: Hughes, Bette-Jo MTIC:EX
Sent: Saturday, November 30, 2013 10:29 AM
To: Herman, Stephan GCPE:EX
Cc: Harvey, Caylla MTIC:EX; Wey, Melody GCPE:EX; Macnaughton, Jason GCPE:EX
Subject: Re: For review: Messaging on s.25

Approved

> On Nov 30, 2013, at 10:24 AM, "Herman, Stephan GCPE:EX" <Stephan.Herman@gov.bc.ca> wrote:
>
> Good morning Bette-Jo,
>
> Pasted below is our draft messaging around section 25. This has been reviewed and approved by program staff through Sharon Plater.
>
> Please let us know if you have any changes or feedback.
>
> Thank you,
>
> · I thank the Information and Privacy Commissioner for her report. The recommendations will assist in the continuous improvement of government's policies, guidelines and training.
> · It's important that public servants understand their obligations under the Freedom of Information and Protection of Privacy Act, especially where the information is clearly in the public interest or involves a risk of harm to the environment, health or safety of the public.
> · The Ministry makes training available to public bodies on FOIPPA that includes a section outlining and explaining public service responsibilities under section 25.
> · Individual ministries and public bodies currently have the final responsibility to oversee staff training. FOIPPA training is available through regular sessions offered during the year, or by request to any public body.
> · Ministry staff will review the OIPC's recommendations and will review the FOI training to determine if any changes need to be made.
> · The recommendation to amend FOIPPA to remove the temporal urgency component - the need for disclosure without delay - is complex and will require study.

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Saturday, November 30, 2013 10:05 AM
To: Francis, Celia MTIC:EX
Cc: Plater, Sharon MTIC:EX; Wey, Melody GCPE:EX
Subject: RE: Messaging for section 25

Hi Celia,

Is there any issue with revising the last bullet as below?

s.13

From: Francis, Celia MTIC:EX
Sent: Friday, November 29, 2013 4:42 PM
To: Herman, Stephan GCPE:EX
Cc: Plater, Sharon MTIC:EX
Subject: RE: Messaging for section 25

Hi Stephan

I have just chatted with Sharon and we are fine with the bullets with the changes below.

Celia

From: Herman, Stephan GCPE:EX
Sent: November-29-13 4:26 PM
To: Francis, Celia MTIC:EX
Cc: Plater, Sharon MTIC:EX
Subject: Messaging for section 25
Importance: High

Hi Celia,

Pasted below are the bullets we drafted on this issue. Can you review and let us know if these are OK?

s.13

s.13

With s.22 are you acting as approver in her stead, or do I have to send these elsewhere in LPP before moving them along?

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929 (office) 778 679-7691 (mobile) P Please consider the environment before printing this email.

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Friday, November 29, 2013 6:33 PM
To: Wey, Melody GCPE:EX
Subject: RE: For quick review: S.25 revisions

Let me run it by program staff, and if they like it, I'll keep moving it through.

From: Wey, Melody GCPE:EX
Sent: Friday, November 29, 2013 6:18 PM
To: Herman, Stephan GCPE:EX
Subject: RE: For quick review: S.25 revisions

I'm thinking we can add to the previous bullet, not necessarily rewrite. Is this any better?

s.13

From: Herman, Stephan GCPE:EX
Sent: Friday, November 29, 2013 6:06 PM
To: Wey, Melody GCPE:EX
Subject: RE: For quick review: S.25 revisions

How about:

s.13

I'm not sure, but I think I'd like to get Celia/Sharon to sign off on the language if you approve the change.

From: Wey, Melody GCPE:EX
Sent: Friday, November 29, 2013 6:05 PM
To: Herman, Stephan GCPE:EX
Subject: Re: For quick review: S.25 revisions

Any way to plain language the last bullet so it's more clear what it means?

----- Original Message -----

From: Herman, Stephan GCPE:EX
Sent: Friday, November 29, 2013 05:48 PM
To: Wey, Melody GCPE:EX
Subject: For quick review: S.25 revisions

Hi Melody,

Pasted below are the revised bullets incorporating program area and your edits. This has been approved by Sharon and Celia, and I wanted to check to see if you wanted a quick look-over before I sent it to Bette-Jo.

s.13

Let me know,

Otherwise, have a great weekend!

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Friday, November 29, 2013 2:52 PM
To: Macnaughton, Jason GCPE:EX; Wey, Melody GCPE:EX
Subject: RE: Commissioner to release report on disclosure of risks to health and safety

Hi Jason, Melody.

Here's what I have so far.

s.13

These are the questions I've asked and are waiting for answers on:

What is the procedure for delivering access training? Does a public body need to request it?

Who usually takes this training?

Is there s.25 training in any other course or material?

Do we have any statistics on how many public servants have taken access training?

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Macnaughton, Jason GCPE:EX
Sent: November-29-13 2:33 PM
To: Herman, Stephan GCPE:EX; Wey, Melody GCPE:EX
Subject: RE: Commissioner to release report on disclosure of risks to health and safety

Yes please.

From: Herman, Stephan GCPE:EX
Sent: November-29-13 2:33 PM
To: Macnaughton, Jason GCPE:EX; Wey, Melody GCPE:EX
Subject: RE: Commissioner to release report on disclosure of risks to health and safety

As of 2:22, Celia and co. are 'working on it'

I can put together some messaging based on what I know, and I've attached the training deck used in OCIO's information access training course. Slides 52 & 53 relate to s.25.

Will follow up shortly with some brief bullets.

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services

250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Macnaughton, Jason GCPE:EX

Sent: November-29-13 2:30 PM

To: Wey, Melody GCPE:EX; Herman, Stephan GCPE:EX

Subject: FW: Commissioner to release report on disclosure of risks to health and safety

How are we doing here?

From: Gleeson, Kelly T GCPE:EX

Sent: November-29-13 2:27 PM

To: Thomas, Vivian P GCPE:EX; Macnaughton, Jason GCPE:EX

Subject: Commissioner to release report on disclosure of risks to health and safety

Hi would you mind sending me your notes/messaging on this?

thx

s.3

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Friday, November 29, 2013 4:19 PM
To: Macnaughton, Jason GCPE:EX
Cc: Wey, Melody GCPE:EX
Subject: RE: training on s 25 FOI

New bullets in red

s.13

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Macnaughton, Jason GCPE:EX
Sent: November-29-13 4:10 PM
To: Herman, Stephan GCPE:EX
Cc: Wey, Melody GCPE:EX
Subject: RE: training on s 25 FOI

So are we developing a policy as per reco 1?
What about reco 2?

From: Herman, Stephan GCPE:EX
Sent: November-29-13 4:07 PM
To: Macnaughton, Jason GCPE:EX
Subject: RE: training on s 25 FOI

Hi Jason,

Here's what Melody and I cooked up – I'll send to Celia for approvals once you've reviewed/edited.

s.13

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services

250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Macnaughton, Jason GCPE:EX

Sent: November-29-13 3:26 PM

To: Herman, Stephan GCPE:EX

Cc: Wey, Melody GCPE:EX

Subject: RE: training on s 25 FOI

OK will leave to you to work into bullets.

Can you make sure we have lines drafted on each of these:

s.13

From: Herman, Stephan GCPE:EX

Sent: November-29-13 3:21 PM

To: Macnaughton, Jason GCPE:EX

Cc: Wey, Melody GCPE:EX
Subject: FW: training on s 25 FOI

Answers from program staff

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Francis, Celia MTIC:EX
Sent: November-29-13 3:18 PM
To: Herman, Stephan GCPE:EX
Cc: Plater, Sharon MTIC:EX
Subject: RE: training on s 25 FOI

Hi Stephan – answers below:

What is the procedure for delivering access training?

Both LPP and IAO deliver training on access.

IAO delivers access training to their client ministries on request/as needed -- if they are asked to deliver training on s.25 (or if they see a need to deliver training on s.25) then they will do so. IAO also has scheduled training on access that covers s. 25. Brad Williams at IAO could give you details on this.

LPP also delivers training on access to ministries, for example, during the recent session at St. Anne's, which was open to both gov't and non gov't. Section 25 forms part of that training.

Does a public body need to request it?

For the most part, LPP mostly delivers training on request, but does deliver 2-3 "scheduled" sessions throughout the year (Privacy & Security Conference, Spring FOIPPA session and/or Autumn FOIPPA session).

Who usually takes this training?

Ministries are LPP's biggest training audience. We do not take registration or track attendance.

Is there s.25 training in any other course or material?

s.25 does not appear in any other training for which our branch is responsible (i.e., the mandatory Information Awareness and Privacy Training). s.25 also doesn't appear in the IM110: Managing our Information Assets

Do we have any statistics on how many public servants have taken access training?

In 2013, approximately 500 public body employees have taken access training that would have contained mention of s.25.

From: Herman, Stephan GCPE:EX
Sent: November-29-13 12:13 PM
To: Francis, Celia MTIC:EX
Subject: RE: training on s 25 FOI

Hi Celia,

Here's a preliminary list of questions:

What is the procedure for delivering access training? Does a public body need to request it?
Who usually takes this training?
Is there s.25 training in any other course or material?
Do we have any statistics on how many public servants have taken access training?

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Francis, Celia MTIC:EX
Sent: November-29-13 12:03 PM
To: Herman, Stephan GCPE:EX
Cc: Plater, Sharon MTIC:EX
Subject: training on s 25 FOI

Hi Stephan

Here is a link to our slide presentations on FOI – if you scroll down to the “new” training sessions delivered, you will see what we said recently on s. 25 – see pp. 52-53 – this is consistent with what we say to public bodies when we deliver training on access to information, i.e., we always include s. 25 in the access presentations (as opposed to privacy training).

Celia

http://www.cio.gov.bc.ca/cio/priv_leg/foipppa/training/index.page?

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Friday, November 29, 2013 2:18 PM
To: Francis, Celia MTIC:EX
Subject: RE: training on s 25 FOI

Hi Celia,

Just following up on those questions – the OIPC just sent out a news release about the report being released on Monday @ 9:30, and I'm really hoping to get the answers to Jason ASAP so we can plan for our response.

Stephan Herman

Public Affairs Officer

Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile)



Please consider the environment before printing this email.

From: Francis, Celia MTIC:EX
Sent: November-29-13 12:03 PM
To: Herman, Stephan GCPE:EX
Cc: Plater, Sharon MTIC:EX
Subject: training on s 25 FOI

Hi Stephan

Here is a link to our slide presentations on FOI – if you scroll down to the “new” training sessions delivered, you will see what we said recently on s. 25 – see pp. 52-53 – this is consistent with what we say to public bodies when we deliver training on access to information, i.e., we always include s. 25 in the access presentations (as opposed to privacy training).

Celia

http://www.cio.gov.bc.ca/cio/priv_leg/foippa/training/index.page?

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Saturday, November 30, 2013 10:30 AM
To: Wey, Melody GCPE:EX
Cc: Macnaughton, Jason GCPE:EX
Subject: Section 25 messaging

Hi Melody,

The bullets pasted below are approved and ready to go to the MO. (Assuming BJH is still acting as DM approvals)

s.13

Hayes, Dana GCPE:EX

From: Herman, Stephan GCPE:EX
Sent: Saturday, November 30, 2013 10:04 AM
To: Macnaughton, Jason GCPE:EX
Cc: Wey, Melody GCPE:EX
Subject: RE: training on s 25 FOI

it's going through approvals.

From: Macnaughton, Jason GCPE:EX
Sent: Saturday, November 30, 2013 8:22 AM
To: Herman, Stephan GCPE:EX
Cc: Wey, Melody GCPE:EX
Subject: Re: training on s 25 FOI

Has this gone anywhere?

Sent from my iPhone

On Nov 29, 2013, at 4:19 PM, "Herman, Stephan GCPE:EX"
<Stephan.Herman@gov.bc.ca<mailto:Stephan.Herman@gov.bc.ca>> wrote:

New bullets in red

s.13

Stephan Herman
Public Affairs Officer
Government Communications and Public Engagement - Ministry of Technology, Innovation and Citizens' Services
250-953-3929(office) 778 679-7691 (mobile) P Please consider the environment before printing this email.

From: Macnaughton, Jason GCPE:EX

**CONFIDENTIAL
ISSUES NOTE**

**Ministry: Technology, Innovation and
Citizens' Services**

Date: March 4, 2013 (updated June 4, 2013)

**Minister Responsible: Hon. Andrew
Wilkinson**

**Created by Government Communications and
Public Engagement**

**OIPC Investigation into “No
Responsive Records”**

ADVICE AND RECOMMENDED RESPONSE:

- **I would like to thank the Commissioner for her report and recommendations aimed at improving the FOI process and assisting applicants even further.**
- **Since the report was tabled in early March, we have implemented changes to government processes to respond to five of the Commissioner's six recommendations.**
- **As the report notes, in the past three years there has been a 111% increase in the number of general requests which have provided responsive records to applicants.**
 - **2673 requests with responsive records in 2012/13; 1269 requests with responsive records in 2009/10 = 111% increase**
 - **2009/10 = 1269;**
 - **2010/11 = 1467;**
 - **2011/12 = 1747;**
 - **2012/13 = 2673**
- **To date in 2013/14, only 15% of general requests have resulted in a no records response (down from 26% in 2012/13).**
- **I am pleased the Commissioner suggests government is complying with its duty to assist applicants in its handling of general requests, and that “For the most part...search efforts are thorough and comprehensive”.**
- **I'm also pleased the commissioner noted governments' centralization of processing of requests in 2009 was positive and “led to greater ease for applicants to make the same request to multiple ministries.”**
- **I'd also like to note that when multiple “no records” replies are accounted for in cross ministry requests (as recommended by the commissioner), we have only seen a 3% increase to “no records” replies since 2009.**
- **However, there is always room for improvement – and that is what we are working towards.**

Recommendations:

- We took action on five of the six recommendations.
- These amount to incremental operational changes, and will help us to track our performance more accurately, as well as provide improved service to applicants.
- The sixth recommendation introduces a duty to document by amending FOIPPA. This is a complex matter and will require some studying and discussion to determine how best to address it.
- It's important to note, no other jurisdiction in Canada contains this requirement under its FOI legislation.

Context / No Responsive Records:

- The 2009 centralization was positive and led to greater ease for applicants to make the same requests to multiple ministries.
- However, as a result of that change, we know anecdotally that some applicants file cross-government searches, regardless of the fact they may be aware there is only a slim chance a particular ministry may hold records.
- In some instances, media applicants have been advised that documents they are seeking exist in another ministry or another public body- and have demanded a “no records” response for the record.

OOP requests / Context:

- The number of OOP records that have been supplied to applicants has increased by 224% since 2009/10.

OOP Releases: 224% increase since 2009/10

Fiscal Year	Number of general requests with responsive records
2009/10	87
2010/11	109
2011/12	161
2012/13	282

- Because of the ease with which applicants can request files from OOP, coupled with what anecdotally appears to be a misconception OOP creates or holds records on everything across government, there has been an increase to the percentage of ‘no records’ replies.
- In fact the OIPC believes “the increased ease of making requests to multiple ministries – and the increasing influence of requests made to the OOP help explain both the overall trend for all applicant types as well as the increase in no records responses to media requests.”
- It's also important to note that unlike most ministries or bodies, the Office of the Premier involves a relatively small number of staff who work in a confined space – and it should come as no surprise that many interactions would be verbal.

FOI – GENERAL:

- **Our Freedom of Information (FOI) legislation is one of the cornerstones of our democratic process and one of the best tools available to provide accountable and transparent government.**
- **FOI requests are processed by trusted professional public servants, whose decisions and actions are guided by the Freedom of Information and Privacy Protection Act (FOIPPA).**
- **Last year, we received more than ten-thousand FOI requests. That’s more than five FOI requests every hour, every working day of the year.**
- **British Columbia’s Freedom of Information and Protection of Privacy Act is widely recognized as having the broadest coverage in the country.**

BACKGROUND

In September 2012, the Freedom of Information and Privacy Association (FIPA) filed a complaint with the OIPC about an overall increase in the number of “no responsive records” replies to Freedom of Information requests by the province. A month later, five more complaints over “no responsive records” regarding the resignation of the former Chief of Staff prompted the OIPC to launch an investigation to determine if government was complying with its duty to assist applicants in obtaining requested information as required by the FOI Act.

The OIPC released her Investigation Report into this matter on March 4, 2013.

The report contains six recommendations made by the OIPC:

1. IAO should communicate to an applicant when it is aware that the records the applicant is seeking exist within a different ministry than from where the applicant has originally requested the records.
s.13
2. IAO should be reasonably confident that before narrowing a request, the result will not deprive applicants of records they would otherwise receive, unless IAO informs the applicant that this may be the case.
s.13
3. IAO ensures that it interprets requests (including those for government calendars) broadly enough to assist the applicant in obtaining the records he or she is seeking.
s.13
4. If government does not have records responsive to an access request, IAO provide an explanation to the applicant as to why this is the case.
s.13
5. Government should create a legislative duty within FIPPA to document key decisions as a clear indication that it does not endorse “oral government” and that it is committed to be accountable to citizens by creating an accurate record of its actions.

- The 2010 Special Committee did not make this recommendation to government.
- 6. IAO should develop a classification system that more accurately reflects where an individual who has made the same request to multiple ministries ultimately receives the records they were seeking, irrespective of how many ministries respond that they do not have records. (The IAO has already indicated that they are working on such a system to the commissioner.)

s.13

Key points in report:

- The review determined “No Responsive Records” results increased from 18% in 2009/10 to 25% in 2011/12.
- The commissioner did not find one single reason for the increasing trend in this type of response.
- She attributes the trend to a number of factors, specifically the 2009 centralization of processing of access to information requests and the high percentage of no records responses generated by the Office of the Premier.

Centralization:

The Commissioner states that centralization of government’s processing of access to information requests in 2009 led to greater ease for applicants to make the same request for information to multiple ministries. This change is positive because it has made it easier for applicants to request records from multiple ministries. However, if the information requested only resides in one ministry, the rest of the requests would come back as “no responsive records”, contributing to the increasing number of “no responsive records” responses.

The Commissioner notes the IAO has already indicated to her office they are working towards improving their classification system to more accurately reflect where an individual who has made the same request to multiple ministries ultimately receives the records they were seeking, irrespective of how many ministries respond that they do not have records. This addresses the OIPC’s sixth recommendation.

Office of the Premier (OOP)-Chief of Staff resignation:

The Commissioner’s investigation was unable to find any evidence of records at the time of these FOI requests. Interviews with the OOP revealed the general practice of staff in that office is to communicate verbally and in person. They were told staff members don’t normally use email for substantive communication relating to business matters, and most emails are transitory in nature and are deleted once a permanent record, such as a calendar entry, is created. The Commissioner notes the disposal of transitory records is within the scope of the Document Disposal Act and not within her jurisdiction under the FOI Act. Recommendation #5 addresses this point. As an action item, government has referred this proposed change to legislation to the all-party special committee on FOIPPA.

Also worth noting is although the Commissioner noted a higher than average rate of “No Responsive Records” for requests submitted by Media, she says there doesn’t appear to anything specific to media access requests that contribute to the overall increasing trend in no responsive records.”

Further, she found there does not appear to be a significant increase in the number of “no records released” responses issued from any particular ministry (excluding the Office of the Premier) or in response to a particular applicant.

Communications Contact: Stephan Herman//Lara Perzoff/Jason Macnaughton
 Program Area Contact: Brad Williams/Kathleen Ward/Charmaine Lowe
 File Created: February 28, 2013
 File Updated: June 4, 2013
 File Location: N:\zz_Citizens' Services Communications Office\Operations\Issue Notes\2013\DRAFT\OIPC

Minister's Office	Program Area	ADM/Deputy	Communications
	KW/CL	BP/BJH	