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Ahmed, Sarf MTIC:EX

From: Boyd, Wes MTIC:EX
Sent: Monday, May 5, 2014 12:49 PM
To: Ahmed, Sarf MTIC:EX; Hughes, Bette-Jo MTIC:EX
Cc: Cameron, Tara D MTIC:EX
Subject: FW: G. Heyman private member's statement this AM re FOI/Records

Fyi.

From: Wright, Alexander M MTIC:EX
Sent: May-05-14 12:35 PM
To: Boyd, Wes MTIC:EX; Williams, Brad M MTIC:EX
Cc: Hoskins, Chad MTIC:EX; Isaac, Glen MTIC:EX
Subject: G. Heyman private member's statement this AM re FOI/Records

Excerpt from Hansard follows:

PUBLIC INTEREST

G. Heyman: In this time when British Columbians and people across Canada are becoming more cynical about politics, more alienated from government, I think one of the tools we have at our disposal to reverse that unfortunate trend, to give people back some sense that we in this chamber and people in government are acting on their behalf, is to respect their right to information.

The freedom-of-information and protection-of-privacy commissioner, Elizabeth Denham, has expressed the strong view that the creation of records is a fundamental part of our access-to-information rights. The public has a right, and it's been enshrined in legislation since the early 1990s, to the free release of information about the processes and discussions through which government makes decisions on all of our behalf. It's subject to only very explicit and narrow limitations.

However, the commissioner has repeatedly, including recently, noted that government is simply not keeping and releasing appropriate documentation. She said: "We're seeing the creation of an era of oral government that leaves little trace as it erases its tracks."

Ms. Denham reported out recently the increase in "no record" responses in March 2013. This is following many years of slow response to freedom-of-information requests. In fact, this government received an F, or a failing grade, from the Association of Journalists in Canada. "No record" is the frequent claim made by government that it just has absolutely no documents that are relevant to the requests that has been made.

The commissioner's key conclusion is that in the past four years the number of "no record" responses has increased from 13 percent in '08 and '09 to 25 percent in '11 and '12. The dramatic increase was helped along by a Premier's office record where the percentage went from 30 percent to 45 percent, ending in 2012. This includes speaking notes, agendas, travel expenses, briefing materials and far more information that's quite critical for people who are reviewing how government reaches its decision.

That's why the commissioner has called for a legislated duty to document — that the public's right to know deserves to be supported by proactive information.

Recently the Freedom of Information and Privacy Association reported that the U.S. Trade Representative had complained about B.C.'s privacy laws that require information be housed in Canada. We could find, and no one could find, any records in B.C. of these discussions, yet an FOI request to the American government turned up this information. When asked about it, the minister responsible brushed off this news by saying that it was a non-issue.

How can this be, hon. Speaker? Well, let's look at a directive from the current assistant deputy minister of International Trade and then—special projects executive director Christine Little telling staff to make e-mail info transitory only and telling them to be sure to delete it. Transitory e-mails are not FOI-able. They're only meant to cover very time-limited discussions around the logistics of meeting schedules. They are not meant to throw a blanket over information to which the public has a right to access.

Similarly, recently the commissioner pointed out that there was very little knowledge of the requirement in section 25 by public bodies. Section 25 requires the release of information proactively when there's a threat to public health, safety or the environment.

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Not only did she point out that public bodies were essentially ignorant of their requirement to release this information, as demonstrated in the failure to release information about the Testalinden dam failure, but she thought that there was a history in B.C. of people simply not responding to the other part of section 25, which contemplates releasing information proactively if it's clearly

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failure, but she thought that there was a history in B.C. of people simply not responding to the other part of section 25 — which contemplates releasing information proactively if it's clearly in the public interest — because people are interpreting this to mean that it must be of a temporary, urgent nature.

She called that the act be strengthened so that the public-interest disclosure provision should not require urgent circumstances, and she recommended that legislation be amended so that there's a mandatory obligation for the release of information proactively that is in the public interest. As the head of the University of Victoria's Environmental Law Centre pointed out, the most shocking thing about the commissioner's report was that ministries don't even understand their current legal requirements.

Finally, the Privacy Commissioner just last month pointed out that there is a habit in British Columbia of releasing police information checks on request by employers or volunteer groups. She says that her investigation shows that mental health and other non-conviction information — including completely unsubstantiated allegations and charges that have not resulted in criminal charges — is routinely released and that we're on the extreme end of the disclosure spectrum compared to other jurisdictions.

She called for immediate action to cease the release of information on mental health records, on suicide attempts and unsubstantiated allegations. With the exception, she said — and I agree — of those understandable checks dealing with people who work with children or vulnerable adults, there is no evidence that the release of non-conviction information helps the hiring practice or that it increases public safety.

People don't know what's in their job file. This is an inhibitor to job and volunteer applications. The commissioner said that there is a history with the people she interviewed of significant negative impact on their

self-esteem, on their dignity and even on their willingness to volunteer for volunteer organizations. Record checks that prevent citizens, she says, from obtaining work may actually result in a burden on society as a whole.

Far from being the most transparent government in B.C.'s history, as this government claimed to want to be, its actions are shrouded in secrecy. It's disrespectful of British Columbians' right to privacy. This government needs to heed the recommendations made by the independent Privacy Commissioner and strengthen the act.

J. Martin: It gives me, indeed, great pleasure to rise on behalf of my constituents in Chilliwack to address this morning's private member's statement, "Public Interest." In that respect we are committed to ensuring that this government is open and transparent for British Columbians.

Our Freedom of Information and Protection of Privacy Act is widely recognized as having the broadest coverage in the country. B.C.'s freedom-of-information legislation is a cornerstone of our democratic process, and it's crucial to providing accountable, accessible government. Responses to general freedom-of-information requests are posted to B.C.'s Open Information website 72 hours after being released.

While exercising sound fiscal management, the Ministry of Technology, Innovation and Citizens' Services and other ministries have maintained resources dedicated to freedom-of-information requests. To follow through on our commitments, this government is keeping funding for freedom of information stable.

This year a budget of \$7.9 million will remain the same as the budget for '12-13. In fiscal 2013-14, government responded to 9,832 freedom-of-information requests. This represents a 3 percent increase over the previous year. It may interest members to know that government receives approximately six requests every single hour. In fact, in the past year government responded to 5,234 general requests, the most ever.

It is interesting to note this was also the first year in which general requests have outpaced personal requests. It should be of interest to several members in this House to know that the number of political party requests government responded to has increased by 52 percent this year. At the same time, the number of media requests responded to was precisely the same number as the previous year. This is evidence that the freedom-of-information process is serving British Columbians well.

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It's important to recognize that complex freedom-of-information requests can result in many, many hours of search time. The current fee structure in place under the legislation ensures that taxpayers do not have to bear the full cost of extensive FOI requests.

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complex freedom-of-information requests can result in many, many hours of search time. The current fee structure in place under the legislation ensures that taxpayers do not have to bear the full cost of extensive FOI requests.

A member of the public can ask for records relating to their personal information at no charge at all. Free estimates are provided and issued by professional public servants whose actions are guided by the legislation. Staff work with applicants to narrow the scope of their requests in order to help reduce fee estimates.

In total, for freedom-of-information requests that result in fees being charged to the applicant, the average fee was \$440. The total value of fees collected in the fiscal year 2013-14 was \$78,000. So despite criticisms from the opposition that our government uses fees to discourage FOI requests, we have not raised the cost of fees

since 1993. That's because the government is committed and continues to be committed to being open and transparent.

In conclusion, the Freedom of Information and Protection of Privacy Act is designed to make public bodies more accountable to the public and to protect personal privacy through a number of measures, including providing for an independent review of decisions made under this act.

I would like to take a moment to thank the member opposite for this opportunity to demonstrate the commitment of this government to being open and transparent. Thank you so much for this opportunity.

G. Heyman: Thank you to the member for Chilliwack for his comments. I appreciate the member sincerely believes that this government is doing well, or at least better, but if that was the case, there simply wouldn't be constant commentary from the independent commissioner responsible for privacy and freedom of information, from the freedom-of-information and protection-of-privacy advocacy organization.

It's one thing to say that British Columbia has the broadest possible coverage for freedom of information. Yet the commissioner has just recently pointed out that we're on the extreme end of releasing far too much information that impinges seriously on the privacy rights of British Columbians with no good reason whatsoever, either from a hiring practice perspective or from a public safety perspective.

The member has said that British Columbia has a higher response. Yet the commissioner has pointed out on more than one occasion that the rate of speed of response, frankly, has been terrible, and that there was a dramatic increase in the rate of no responses, which has gotten marginally better this year but nowhere near the baseline of 2008 and nowhere near the benchmark that is expected.

The reason for this is simple. We know about private e-mails being used for communication within government. We now know that there were directives explicitly from senior members of the bureaucracy to simply arbitrarily label information as transitory and to delete it. That is why there is such a high record of "no records" responses — no response on record. If there's no response, there's nothing to post. If nothing's kept, there's no information for the public, the media and the opposition to peruse.

The kinds of records that have not been available were: critical briefing notes on B.C. Hydro rate increases and information passed on to the Premier prior to her meeting with the Premier of Alberta. These are not transitory issues. They go to the very heart of the policy decisions being made.

The member talked about fees being kept at a low level. The commissioner has called for the elimination of fees because they are an inhibitor to seeking information. She's also pointed out that the centralization of recordkeeping has resulted in records not being properly archived and kept, so that when people ask for them, there's nothing that can be handed over because it has not been properly catalogued.

I could go on, and the litany goes on, but the answer to this issue is to strengthen the act on the recommendations of the Information and Privacy Commissioner, which she has made on numerous occasions, both to allow greater access to information and to ensure documents are kept. We on this side of the House would, in fact, do that.

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