



ARCS: 292-30
File: PSA-2017-72484

November 21, 2017

Sent via email:

Re: Request for Access to Records
Freedom of Information and Protection of Privacy Act (FOIPPA)

I am writing further to your request received by the BC Public Service Agency. Your request is for:

All briefing books prepared by the public service for the transition in government from the BC Liberal Party to the New Democratic Party. (Date Range for Record Search: From 01/01/2017 To 07/23/2017)

Please find enclosed phase two of your request. Some information has been withheld in the enclosed records pursuant to section(s) 12 (Cabinet and local public body confidences), 13 (Policy advice or recommendations), 14 (Legal advice), 17 (Disclosure harmful to the financial or economic interests of a public body), and 22 (Disclosure harmful to personal privacy) of FOIPPA. Copies of these sections of FOIPPA are provided for your reference. A complete copy of FOIPPA is available online at:

http://www.bclaws.ca/civix/document/id/complete/statreg/96165_00

Some information has been withheld under 3(1)(c) subject to subsection (3), a record that is created by or for, or is in the custody or control of, an officer of the Legislature and that relates to

.../2

the exercise of that officer's functions under an Act. These records are within the custody and or control of the Office of the Merit Commissioner.

Your file is now closed.

These records will be published on the BC Government's Open Information website a minimum of five business days after release. To find out more about Open Information, please access the Open Information website at: www.gov.bc.ca/openinformation

If you have any questions regarding your request, please contact Mikaela Bertucci, the analyst assigned to your request, at 778 698-2675. This number can be reached toll-free by calling from Vancouver, 604 660-2421, or from elsewhere in BC, 1 800 663-7867 and asking to be transferred to 778 698-2675.

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

A handwritten signature in black ink that reads "Mikaela Bertucci". The signature is written in a cursive, flowing style.

Mikaela Bertucci, FOI Analyst
On behalf of Jamie Onciul-Omelus, Manager
Social / Tech Team, Information Access Operations

Enclosures

<p>How to Request a Review with the Office of the Information and Privacy Commissioner</p>
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If you have any questions regarding your request please contact the analyst assigned to your file. The analyst's name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:

Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria BC V8W 9A4
Telephone 250 387-5629 Fax 250 387-1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.

Sections of FOIPPA

Scope of this Act

- 3** (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:
- (a) a court record, a record of a judge of the Court of Appeal, Supreme Court or Provincial Court, a record of a master of the Supreme Court, a record of a justice of the peace, a judicial administration record or a record relating to support services provided to the judges of those courts;
 - (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity;
 - (c) subject to subsection (3), a record that is created by or for, or is in the custody or control of, an officer of the Legislature and that relates to the exercise of that officer's functions under an Act;
 - (c.1) [Repealed 2002-50-19.]
 - (c.2) subject to subsection (4), a record that is created by or for, or is in the custody or control of the auditor general appointed under the *Auditor General for Local Government Act* and that relates to the exercise of his or her functions under that Act;
 - (d) a record of a question that is to be used on an examination or test;
 - (e) a record containing teaching materials or research information of
 - (i) a faculty member, as defined in the College and Institute Act and the University Act, of a post-secondary educational body,
 - (ii) a teaching assistant or research assistant employed at a post-secondary educational body, or
 - (iii) other persons teaching or carrying out research at a post-secondary educational body;
 - (f) material placed in the archives of the government of British Columbia by or for a person than a public body;
 - (g) material placed in the archives of a public body by or for a person or agency other than a public body;
 - (h) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;
 - (i) [Repealed 2011-17-1.]
 - (j) a record that is available for purchase by the public;
 - (k) a record of a service provider that is not related to the provision of services for a public body.
- (2) This Act does not limit the information available by law to a party to a proceeding.
- (3) The following sections apply to officers of the Legislature, their employees and, in relation to their service providers, the employees and associates of those service providers, as if the officers and their offices were public bodies:

- (a) section 30 (protection of personal information);
- (b) section 30.1 (storage and access must be in Canada);
- (c) section 30.2 (obligation to report foreign demand for disclosure);
- (d) section 30.3 (whistle-blower protection);
- (e) section 30.4 (unauthorized disclosure prohibited);
- (e.1) section 30.5 (notification of unauthorized disclosure);
- (f) section 33 (disclosure of personal information);
- (g) section 33.1 (disclosure inside or outside Canada);
- (h) section 33.2 (disclosure inside Canada only);
- (i) section 74.1 (privacy protection offences).

(4) The sections referred to in subsection (3) apply to the auditor general appointed under the *Auditor General for Local Government Act*, employees appointed under that Act and, in relation to service providers to the auditor general, the employees and associates of those service providers, as if the auditor general and his or her office were public bodies.

Cabinet and local public body confidences

12 (1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

(2) Subsection (1) does not apply to

- (a) information in a record that has been in existence for 15 or more years,
- (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or
- (c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if
 - (i) the decision has been made public,
 - (ii) the decision has been implemented, or
 - (iii) 5 or more years have passed since the decision was made or considered.

(3) The head of a local public body may refuse to disclose to an applicant information that would reveal

- (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private Bill, or
- (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

(4) Subsection (3) does not apply if

- (a) the draft of the resolution, bylaw, other legal instrument or private Bill or the subject matter of the deliberations has been considered in a meeting open to the public, or
- (b) the information referred to in that subsection is in a record that has been in existence for 15 or more years.

(5) The Lieutenant Governor in Council by regulation may designate a committee for the purposes of this section.

(6) A committee may be designated under subsection (5) only if

- (a) the Lieutenant Governor in Council considers that
 - (i) the deliberations of the committee relate to the deliberations of the Executive Council, and
 - (ii) the committee exercises functions of the Executive Council, and
- (b) at least 1/3 of the members of the committee are members of the Executive Council.

(7) In subsections (1) and (2), "**committee**" includes a committee designated under subsection (5).

Policy advice or recommendations

13 (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

- (a) any factual material,
- (b) a public opinion poll,
- (c) a statistical survey,
- (d) an appraisal,
- (e) an economic forecast,
- (f) an environmental impact statement or similar information,
- (g) a final report or final audit on the performance or efficiency of a public body or on any of its policies or its programs or activities,
- (h) a consumer test report or a report of a test carried out on a product to test equipment of the public body,
- (i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,
- (j) a report on the results of field research undertaken before a policy proposal is formulated,
- (k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,
- (l) a plan or proposal to establish a new program or activity or to change a program or activity, if the plan or proposal has been approved or rejected by the head of the public body,

- (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or
- (n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

(3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

Disclosure harmful to the financial or economic interests of a public body

17 (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia;
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

(2) The head of a public body may refuse to disclose under subsection (1) research information if the disclosure could reasonably be expected to deprive the researcher of priority of publication.

(3) The head of a public body must not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

- (a) for a fee as a service to a person, a group of persons or an organization other than the public body, or
- (b) for the purpose of developing methods of testing.

Disclosure harmful to personal privacy

22 (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- (g) the personal information is likely to be inaccurate or unreliable,
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and
- (i) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
- (c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,
- (d) the personal information relates to employment, occupational or educational history,
- (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,
- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
- (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,
- (h) the disclosure could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party,
- (i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or

(j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,

(c) an enactment of British Columbia or Canada authorizes the disclosure,

(d) the disclosure is for a research or statistical purpose and is in accordance with section 35,

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,

(g) public access to the information is provided under the *Financial Information Act*,

(h) the information is about expenses incurred by the third party while travelling at the expense of a public body,

(i) the disclosure, in respect of

(i) a licence, a permit or any other similar discretionary benefit, or

(ii) a degree, a diploma or a certificate,

reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):

(iii) the name of the third party to whom the item applies;

(iv) what the item grants or confers on the third party or authorizes the third party to do;

(v) the status of the item;

(vi) the date the item was conferred or granted;

(vii) the period of time the item is valid;

(viii) the date the item expires, or

(j) the disclosure, in respect of a discretionary benefit of a financial nature granted to a third party by a public body, not including personal information referred to in subsection (3) (c), reveals any of the following with respect to the benefit:

(i) the name of the third party to whom the benefit applies;

(ii) what the benefit grants to the third party;

(iii) the date the benefit was granted;

(iv) the period of time the benefit is valid;

(v) the date the benefit ceases.

(5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless

(a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or

(b) with respect to subsection (3) (h), either paragraph (a) of this subsection applies or the applicant could reasonably be expected to know the identity of the third party who supplied the personal recommendation or evaluation, character reference or personnel evaluation.

(6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5).