

**Chalifour, Adrian MTIC:EX**

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**From:** Boyd, Wes MTIC:EX  
**Sent:** Monday, December 14, 2015 3:32 PM  
**To:** Schollen, Tasha GCPE:EX  
**Subject:** RE: Louk\_response\_QA\_Dec14\_DRAFT MTICS FIN Edits V2  
**Attachments:** Louk\_response\_QA\_Dec14\_DRAFT MTICS FIN Edits V2 WB.docx

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**From:** Schollen, Tasha GCPE:EX  
**Sent:** Monday, December 14, 2015 3:26 PM  
**To:** Boyd, Wes MTIC:EX  
**Subject:** Louk\_response\_QA\_Dec14\_DRAFT MTICS FIN Edits V2

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## **Chalifour, Adrian MTIC:EX**

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**From:** Schollen, Tasha GCPE:EX  
**Sent:** Monday, December 14, 2015 3:26 PM  
**To:** Boyd, Wes MTIC:EX  
**Subject:** Louk\_response\_QA\_Dec14\_DRAFT MTICS FIN Edits V2  
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## **David Loukidelis Terms of Reference**

### **Questions and Answers**

**Nov. 2, 2015**

**1. What is your general reaction to the Loukidelis report?**

- I have always been motivated by a commitment to ensure our government is open and transparent. We have taken many steps to enhance our laws, policies and procedures to meet this commitment.
- The Privacy Commissioner's report has identified specific areas in which we can improve, and Mr. Loukidelis has provided additional thoughts and recommendations on how best to implement these improvements.
- We are accepting all of Mr. Loukidelis' recommendations, and will take further actions to ensure our records management and freedom of information practices meet public expectations.

**2. Why are you moving the Chief Records Officer into the Ministry of Finance?**

- The position of Chief Records Officer and the Information Access Operations office will reside in the Ministry of Finance and provide corporate over-site and guidance to all government ministries. This office will also begin work to develop service enhancements aimed at improving our duty to assist freedom of information applicants.

**3. How many people will staff the new Chief Records Officer position in the Ministry of Finance? Can you provide some logistical details about this?**

- The position of Chief Records Officer, along with responsibility for Information Access policy and operations, will reside in the Ministry of Finance and provide corporate over-site and guidance to all government ministries.
- This office will also begin work to develop service enhancements aimed at improving our duty to assist freedom of information applicants.
- Further details will be worked through in the coming weeks. There will be costs associated with improvements to service but we have determined this is required and are committed to funding this office appropriately.

**4. Mr. Loukidelis recommends a number of process changes in minister's offices where records management is concerned. How much is it going to cost government to make those changes?**

- These details will be worked through in the coming weeks. There will be costs associated with improvements to service but we have determined this is required and are committed to implementing his recommendations.

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- The Privacy Commissioner's report has identified specific areas in which we can improve, and Mr. Loukidelis has provided additional thoughts and recommendations on how best to implement these improvements.
- Today, I am announcing that we are accepting all of Mr. Loukidelis' recommendations, and will take further actions to ensure our records management and freedom of information practices meet public expectations.
- I am confident the actions announced today provide the assurance the public deserves to be confident government is operating in the most open and accountable manner possible.

**6. Loukidelis recommends that access requests should be handled by career public servants in Minister's offices. Many of those staff are young, so how are you going to fulfill this recommendation?**

- These details will be worked through in the coming weeks.
- It's Government's intent to implement a senior team of people who are well versed in access requests.

**7. Will you have duty to document legislation ready for the spring legislative session?**

- This will require careful review and consideration. Mr. Loukidelis recommends studying the concept and working out the details in policy at a ministry and program level.
- We intend to have more to say on Duty to Document in the new year.

**8. Triple deletion will be prohibited through policy – but how will you know if people are following the rules? Is it merely based on an honour system that is likely to be abused?**

- The practice of 'triple-deleting' will be prohibited through a policy directive, subject to the identification and implementation of a technical solution.
- Until the new policy has been developed and new specific training has been established, political staff will continue to retain sent emails.
- Government also agrees with Mr. Loukidelis's recommendations to study and consider the establishment of duty to document, and the work to study this policy will begin immediately.

**9. What will the penalty be for public servants and political staff who destroy records?**

- Mr. Loukidelis recommends considering legislation consistent with Alberta's FOI act.
- Government accepts this recommendation and do the work necessary to put it into practice.
- More information will be available as the legislation is developed.
- Presently, the new Information Management Act excludes coverage by section 5 of the Offence Act, which is common legislative practice.
- That hasn't precluded government from imposing disciplinary sanctions, contractual penalties and, in extreme cases, criminal proceedings.

**10. Loukidelis acknowledges that not every email should be kept as it would be poor records management – is this a vindication of sorts for government?**

- We agree what is fundamental is ensuring the official records are kept. This is why we have agreed to formalize duty to document in legislation and taking the necessary time to carefully consider how best to develop this proposed legislation.

**11. Will government stall implementation of the Information Management Act, given Mr. Loukidelis' expressed concerns about overlapping legislation and confusion for public servants?**

- This new legislation was drafted with the input of the Office of the Information and Privacy Commissioner and addresses several issues raised by the Commissioner in her review of the Act.
- That said, Government will make take another look at the Information Management Act in light of Mr. Loukidelis' recommendations and determine what if any amendments or policy changes are necessary as a result.

**12. A court ruled that it would be unconstitutional to include the Offence Act in the new IMA so how will you get around this and introduce penalties for wilful destruction of documents or a refusal to produce them?**

- A 1985 Supreme Court of Canada ruling stated that it is unconstitutional to have a “no-fault offence” with a penalty of imprisonment, which in this context means that it wouldn't be appropriate to have every technical breach of the act be an offence that could result in such severe penalties.

**13. Will the changes recommended by Mr. Loukidelis solve a common occurrence whereby there is a discrepancy in responsive records from two sources?**

- Mr. Loukidelis recommends that clear policy be developed and specific training for public servants be implemented to help address the issues raised by the Information and Privacy Commissioner and Mr. Loukidelis' own recommendations.
- We accept Mr. Loukidelis' recommendation to update and enhance our transitory records policy, notably in relation to emails.
- We will also be improving training for public service and political staff to ensure that records that should be kept, are kept and if requested through FOI are included as a responsive record.
- That said, Mr. Loukidelis acknowledges that not every email is a record.
- It is possible that transitory records that have no further business value to the employee who has them may result in different records submitted by different sources.
- As Mr. Loukidelis suggests as possible guidelines, that you are responsible for the capture of records if the following apply:
  - You are the sender
  - You have received an email from an external sender and you are the only recipient in your agency

- if you have received an email from an external sender and you are one of many recipients in your agency – the person who is most directly involved in the issue or task.
- We will need more time to consider and update our transitory records policy.

**14.The OIPC recently ruled in favour of government in prohibiting the release of all message logs in government. It looks like government is arguing the email addresses of employees are private information and therefore will not be included in future FOIs, is that the case?**

- The Ministry agrees with the ruling of the OIPC, which states that the request would be ineffective in facilitating the access to, and public scrutiny of, the requested records.
- The Ministry also agrees with the OIPC's ruling that the logs could disclose patterns and information about an employee's leave and other personal information that it is typically an unreasonable invasion of personal privacy to disclose.
- The request for message logs was extremely broad; and the Ministry estimates it would have taken many years to process.
- Government routinely releases government email addresses in other requests, other than those that may cause harm to an individual.

**15.How much was Mr. Loukidelis being paid to undertake this review?**

- Mr. Loukidelis was paid up to a maximum of \$50,000, including expenses.
- His hourly rate is \$300. (That does not include expenses)
- Final cost will be available publicly.

**16.How did you appoint Mr. Loukidelis without going through procurement?**

- Mr. Loukidelis performed this review as part of a legal services retainer.
- Legal Services Branch can enter into a retainer with individuals on a prequalified list who are licensed to practice law.
- As a lawyer, QC, former deputy attorney general and former privacy commissioner, not only is Mr. Loukidelis particularly qualified for this role, he is also on the pre-qualified list.

**17.What was covered in the review?**

- Mr. Loukidelis focused on four specific areas:
  - Provide advice to government in relation to the recommendations in the Information and Privacy Commissioner's report.
  - This includes any advice he may have about changes we should make to ensure compliance with records management and retention requirements.
  - Provide training for all ministers and staff, including those in the Premier's Office.
  - Make recommendations concerning the establishment of an ongoing review process to ensure we continually improve our records management practices.
  - Provide any other findings or advice that he may deem appropriate.

## **Chalifour, Adrian MTIC:EX**

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**From:** Schollen, Tasha GCPE:EX  
**Sent:** Monday, December 14, 2015 3:11 PM  
**To:** Boyd, Wes MTIC:EX  
**Cc:** Schollen, Tasha GCPE:EX  
**Subject:** Louk\_response\_QA\_Dec14\_DRAFT MTICS Edits  
**Attachments:** Louk\_response\_QA\_Dec14\_DRAFT MTICS Edits.docx  
  
**Importance:** High

With Finance tweaks



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## Chalifour, Adrian MTIC:EX

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**From:** Boyd, Wes MTIC:EX  
**Sent:** Monday, December 14, 2015 1:54 PM  
**To:** Schollen, Tasha GCPE:EX  
**Subject:** Re: Louk\_response\_QA\_Dec14\_DRAFT MTICS Edits

Thanks Tasha, I will give you a call.

Sent from my iPad

On Dec 14, 2015, at 1:41 PM, Schollen, Tasha GCPE:EX <[Tasha.Schollen@gov.bc.ca](mailto:Tasha.Schollen@gov.bc.ca)> wrote:

Hello,

Can you please have a look at this questions and answers document and insert your comments/edits please?

I am available this afternoon to chat if that is easier. I have been asked to put this together by end of day to provide significant review time tomorrow for other folks.

Also – if you know of other areas of vulnerability not captured here – please let me know and I will add those Q's and draft responses.

Thanks,

Tasha

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## Ahmed, Sarf MTIC:EX

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**From:** Schollen, Tasha GCPE:EX  
**Sent:** Tuesday, December 15, 2015 2:33 PM  
**To:** Jacobson, John MTIC:EX; Hughes, Bette-Jo MTIC:EX; Ahmed, Sarf MTIC:EX  
**Subject:** Loukidelis Report Tomorrow  
**Attachments:** MA\_Loukidelis Report\_15 Dec 2015 FINAL.pdf; MA\_Loukidelis Report\_15 Dec 2015 FINAL.docx

Hello John, Bette-Jo and Sarf,

This media advisory will go out today at 3pm advising media that Mr. Loukidelis' report will be available on our website (OCIO webpage) at 9am tomorrow morning.  
Loukidelis will then hold a teleconference call at 9:30am.

The premier (not indicated in the media advisory so this is confidential) will comment at 10:30am at an event in Vancouver. A statement will also be issued from her office.

Subsequent media questions will be handled by my GCPE shop or the Finance GCPE shop depending on the nature of the questions.

If you have any questions, please ask.

Thanks,  
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Tasha Schollen | Communications Director Ministry of Technology, Innovation and Citizens' Services Government  
Communications and Public Engagement  
Phone: 250-387-3134 | Cell: 250-889-1121

Dec. 15, 2015

**MEDIA ADVISORY – Freedom of Information Policies and Procedures and Records Management Practices Review**

VICTORIA – Media are invited to participate in a teleconference call with former Information and Privacy Commissioner, David Loukidelis, Q.C. about his recommendations to the B.C. government on how best to implement the recommendations of B.C.'s Information and Privacy Commissioner, Elizabeth Denham, in her Oct. 22, 2015, report.

Event Date: Wednesday, Dec. 16, 2015

Time: 9:30 a.m.

Loukidelis' report will be available online at 9 a.m. on Wednesday, Dec. 16, 2015 at:  
[www.cio.gov.bc.ca](http://www.cio.gov.bc.ca)

**Dial-In Information:**

Toll Free: 1 877 353-9184  
Participant pass code: 75136#

Media are asked to call in prior to the 9:30 a.m. start time. Callers will have an opportunity to ask questions.

Mr. Loukidelis will not be doing interviews in advance of the news conference.

Contact:  
Hannah Glover  
Government Communications and Public Engagement  
250 480-9311