

From: [Curtis, David CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Cc: [Cook, Jeannette CITZ:EX](#); [Biggs, Jackie CITZ:EX](#)
Subject: BN
Date: June 20, 2018 8:15:36 AM
Attachments: [DM DN Personal Email Account Requests v.4.docx](#)

Hi Jill,

Please find the revised draft note on the personal emails attached. It has been amended to include the additional context and process descriptions.

Regards,

David

2018 Decision Note

Jill Kot, Deputy Minister

Date: June 20, 2018

Ref:

Issue: Responding to Information Requests for Records Sent to, or Received from, Specified Non-Government Email Accounts

Summary:

- Approximately 720 requests have been received from a single applicant for all emails sent to or received from 30 named email accounts that are not government-issued accounts.
- The Appropriate Use Policy states that employees must use their government email accounts when conducting government business; however, an exception is permitted in extenuating circumstances.
 - An employee must copy the email to their government account and must delete it as soon as possible from their non-government account in this circumstance.
- There is no established precedent as to how to respond to these requests. There are several considerations in identifying potential options for responding to these requests, including considerations related to employee privacy.
 - There is a risk of directly or indirectly disclosing personal information about the owners of the personal email accounts.

s.13

Background / Facts:

Details of the Requests

- Freedom of Information (FOI) requests have recently been received for all emails sent to, or received from, approximately 30 specified email accounts that are not government-issued accounts.
- The requests do not specify the name of the employee. Nor do they specify a subject or topic of interest.
- The FOI requests are worded as follows: "All emails sent to, or received from, [specified non-government email address] including cc's and bcc's (Date range for records search: From 07/18/2017 to 05/15/2018)".
- The applicant has sent each of the FOI requests to every ministry (in other words, there are approximately 720 requests for records related to 30 named accounts).

- Interpreted broadly, this request could require any person in any ministry who may have received an email from the specified address to search for responsive records. This would include cases where the email account owner was interacting with a ministry in an individual capacity unrelated to their work.

No Precedent

- Under normal circumstances, the principles of “duty to assist an applicant” and “conducting an adequate search” require employees to search any location where they believe responsive records may reside (including their non-government email accounts, if there is reason to believe responsive records exist there).
- However, there is no precedent for FOI requests that ask specifically for records associated with the non-work email accounts of government employees. Therefore there is no established precedent as to how to respond to these requests.

Policy and Practice Context

- The Appropriate Use Policy requires employees to use their government email accounts when conducting government business. This includes while working outside of the workplace.
- However, the policy also permits the use of non-government email accounts for government business in extenuating circumstances, provided that the employee follows three rules:
 - Send a copy of the email to their government email account;
 - Delete the email from their personal or non-government email account as soon as possible after dealing with the extenuating circumstance; and,
 - Send or receive the least amount of confidential information necessary to deal with the extenuating circumstance.
- Any email created or received by an employee in the course of doing their work may be under the control of the public body — and therefore subject to the *Freedom of Information and Protection of Privacy Act* (the Act) — regardless of where the email is located.
- A record may be under the control of the public body even when it resides in an email account that is not government-issued.
- The Appropriate Use Policy’s provision for the use of non-government email accounts in extenuating circumstances has recently been the subject of media attention and has been raised by the opposition in the House.
- At least one of the personal email aliases referenced in these requests has been captured in previous FOI requests made by this applicant ^{s.13}

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Page 05

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Approved / Not Approved

Final approver to specify if the recommendation has been approved or one of the other options or simply not approved.

Jill Kot, Deputy Minister

Date

Contact: *David Curtis, ADM, 778-698-5845*

From: [Curtis, David CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Cc: [Cook, Jeannette CITZ:EX](#); [Biggs, Jackie CITZ:EX](#)
Subject: Re: BN
Date: June 20, 2018 1:41:40 PM

Will do and send an amended version this afternoon.

Sent from my iPhone

On Jun 20, 2018, at 12:28 PM, Kot, Jill CITZ:EX <Jill.Kot@gov.bc.ca<<mailto:Jill.Kot@gov.bc.ca>>> wrote:

s.13

I'd like to discuss this with Don
Thanks

Sent from my iPhone

On Jun 20, 2018, at 8:15 AM, Curtis, David CITZ:EX
<David.Curtis@gov.bc.ca<<mailto:David.Curtis@gov.bc.ca>>> wrote:

Hi Jill,

Please find the revised draft note on the personal emails attached. It has been amended to include the additional context and process descriptions.

Regards,

David
<[DM_DN_Personal Email Account Requests v.4.docx](#)>

From: [Curtis, David CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Cc: [Cook, Jeannette CITZ:EX](#); [Biggs, Jackie CITZ:EX](#)
Subject: BN
Date: June 20, 2018 7:07:13 PM
Attachments: [DM DN Personal Email Account Requests v.5.docx](#)

Hi Jill,

I would appreciate your review of the attached BN on the personal email account requests. If you are supportive of the approach we will finalize and put forward for formal approval. Please note that the material does not include a recommendation at this time.

Regards,

David

2018 Decision Note

Jill Kot, Deputy Minister

Date: June 20, 2018

Ref:

Issue: Responding to Information Requests for Records Sent to, or Received from, Specified Non-Government Email Accounts

Summary:

- Approximately 720 requests have been received from a single applicant for all emails sent to or received from 30 named email accounts that are not government-issued accounts.
- The Appropriate Use Policy states that employees must use their government email accounts when conducting government business; however, an exception is permitted in extenuating circumstances.
 - An employee must copy the email to their government account and must delete it as soon as possible from their non-government account in this circumstance.
- There is no established precedent as to how to respond to these requests. There are several considerations in identifying potential options for responding to these requests, including considerations related to employee privacy.
 - There is a risk of directly or indirectly disclosing personal information about the owners of the personal email accounts.

s.13

Background / Facts:

Details of the Requests

- Freedom of Information (FOI) requests have recently been received for all emails sent to, or received from, approximately 30 specified email accounts that are not government-issued accounts.

- The requests do not specify the name of the employee. Nor do they specify a subject or topic of interest.
- The FOI requests are worded as follows: *"All emails sent to, or received from, [specified non-government email address] including cc's and bcc's (Date range for records search: From 07/18/2017 to 05/15/2018)"*.
- The applicant has sent each of the FOI requests to every ministry (in other words, there are approximately 720 requests for records related to 30 named accounts).
- Interpreted broadly, this request could require any person in any ministry who may have received an email from the specified address to search for responsive records. This would include cases where the email account owner was interacting with a ministry in an individual capacity unrelated to their work.

No Precedent

- Under normal circumstances, the principles of "duty to assist an applicant" and "conducting an adequate search" require employees to search any location where they believe responsive records may reside (including their non-government email accounts, if there is reason to believe responsive records exist there).
- However, there is no precedent for FOI requests that ask specifically for records associated with the non-work email accounts of government employees. Therefore there is no established precedent as to how to respond to these requests.

Policy and Practice Context

- The Appropriate Use Policy requires employees to use their government email accounts when conducting government business. This includes while working outside of the workplace.
- However, the policy also permits the use of non-government email accounts for government business in extenuating circumstances, provided that the employee follows three rules:
 - Send a copy of the email to their government email account;
 - Delete the email from their personal or non-government email account as soon as possible after dealing with the extenuating circumstance; and,
 - Send or receive the least amount of confidential information necessary to deal with the extenuating circumstance.
- Any email created or received by an employee in the course of doing their work may be under the control of the public body — and therefore subject to the *Freedom of Information and Protection of Privacy Act* (the Act) — regardless of where the email is located.
- A record may be under the control of the public body even when it resides in an email account that is not government-issued.
- The Appropriate Use Policy's provision for the use of non-government email accounts in extenuating circumstances has recently been the subject of media attention and has been raised by the opposition in the House.
- At least one of the personal email aliases referenced in these requests has been captured in previous FOI requests made by this applicant s.13

Analysis:

- There is limited precedent for dealing with requests for records related to non-government email accounts.
- Occasionally, requests have been made for records related to non-government email accounts belonging to contractors providing services to government.

- However, these requests are different in that they typically identify the person or organization and the topic of the request.
- There are several considerations in identifying potential options for responding to these requests, including:

Policy and Practice:

- Because the Appropriate Use Policy permits limited use of non-government email accounts to carry out government business in extenuating circumstances, if any employee believes that government records responsive to any FOI request may reside only in a non-government email account under their control, the employee has an obligation to search that location when responding to the request.
- Emails originating from non-government accounts have recently been included in FOI responses. This is consistent with the legislated "Duty to Assist" FOI applicants.
- A public body must, by law, make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely.
- Several past orders of the Information and Privacy Commissioner have held that non-government email accounts should be searched if there is a reasonable belief that responsive records reside there.
- However, because the Appropriate Use Policy requires employees to (a) copy their government email address when sending email from a non-government account and (b) delete the email from their non-government account as soon as possible, even those employees who have a reasonable belief that they used a non-government account in an extenuating circumstance should likely be able to locate relevant records within the government system, assuming the policy was followed.

Privacy Protections:

- The legislation provides for access to government records, but also restricts what information can be collected, used, or disclosed to protect privacy.
- There may be privacy implications related to identifying the email account owner, and related to searching and processing emails in these accounts.
- Section 8 of the Act allows a public body to refuse to confirm or deny the existence of a record, if it could reveal personal information about a third party.
- Personal email accounts are not government-issued, and the validity of the account, and the identity of the account owner, as well as use would all be considered personal information.

Ability to apply to the Information and Privacy Commissioner for authority to disregard the requests

- FOIPPA provides a mechanism for dealing with requests that are clearly repetitious, systematic, made without reasonable or probable cause, or requests that show an intention to harass a public body, to "break" the system or to engage in "information warfare".
- The applicant in this circumstance has made thousands of requests to ministries over a period of months.
- The Commissioner can be asked to authorize disregarding the requests, and can also be asked to authorize relief for the public body.¹³

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Search:

- Emails are electronic records, which can be searched for relatively easily by an employee within the public body. Emails may also exist in other locations and formats, including print copies.

Resources:

- There is a significant workload impact associated with this request. As the wording currently stands, approximately 27,000 public servants would be required to search for records.

Privacy Concerns:

- By providing access to records related to this request, there is a real risk of directly or indirectly disclosing personal information about the owners of the personal email accounts.
- Of the 30 specified email aliases, some contain names (e.g.: john.doe@gmail.com) that can be matched to names of current public service employees or OIC appointees. Other specified email aliases do not contain names.
- In cases where the email account aliases do not contain names, there is also no way to validate the authenticity of an account without collecting personal information from government employees. ^{s.13}

Options:

Option 1: Ask the Information and Privacy Commissioner to authorize the ministries to disregard these requests

- Section 43 of FOIPPA allows the head of a public body to ask the commissioner to authorize the public body to disregard requests that:
 - would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or
 - are frivolous or vexatious.

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Withheld pursuant to/removed as

s.14;s.13

s.13

Approved / Not Approved

Final approver to specify if the recommendation has been approved or one of the other options or simply not approved.

Jill Kot, Deputy Minister

Date

Contact: *David Curtis, ADM, 778-698-5845*

From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: CBC request
Date: July 24, 2018 9:30:41 PM

From: Kot, Jill CITZ:EX
Sent: Wednesday, July 11, 2018 8:37 PM
To: Curtis, David CITZ:EX
Subject: Re: CBC request

You're welcome -- you should have been included all along.

From: Curtis, David CITZ:EX
Sent: Wednesday, July 11, 2018 8:34 PM
To: Kot, Jill CITZ:EX
Subject: Re: CBC request
Thanks for including me on the exchange.

Sent from my iPhone

On Jul 11, 2018, at 8:28 PM, Kot, Jill CITZ:EX <Jill.Kot@gov.bc.ca> wrote:

Yes, I am fine to send to the CBC the exact same statement that was sent yesterday to Rob Shaw.

Thanks,
Jill

From: Russell, Shannon CITZ:EX
Sent: Wednesday, July 11, 2018 7:36 PM
To: Whittier, Joanne GCPE:EX
Cc: Harbord, Chris GCPE:EX; Kot, Jill CITZ:EX; Marriott, Sarah GCPE:EX
Subject: Re: CBC request

I've spoken to MJS and she is ok with not doing this. Chris, please work directly with Jill to ensure she is good with all the details being sent out.

Thanks for your work on this.

Shannon

On Jul 11, 2018, at 6:48 PM, Whittier, Joanne GCPE:EX
<Joanne.Whittier@gov.bc.ca> wrote:

Hi Shannon - we've been asked to send the statement from yesterday to CBC, along with stats and a graph on FOI requests involving political party or researcher. Wanted to make sure you were aware of what we plan to send. Will do so first thing in the a.m. Jo

Sent from my iPhone

Begin forwarded message:

From: "Whittier, Joanne GCPE:EX"
<Joanne.Whittier@gov.bc.ca>
Date: July 11, 2018 at 6:14:37 PM PDT
To: "Kot, Jill CITZ:EX" <Jill.Kot@gov.bc.ca>
Cc: "Harbord, Chris GCPE:EX"
<Chris.Harbord@gov.bc.ca>, "Cook, Jeannette CITZ:EX"
<Jeannette.Cook@gov.bc.ca>
Subject: CBC request

Hi Jill – we have a request from CBC (On the Coast, the afternoon show) to have Minister go on tomorrow afternoon to discuss the FOI issue. We are going to decline but would like to send the statement from yesterday, along with stats and a graph on FOI requests involving political party or researcher. Plz let me know if any concerns? Hoping to close the loop with the producer tomorrow a.m. first thing. Thx much - Jo

Sent on behalf of Jill Kot, Deputy Minister, Ministry of
Citizens' Services

"My ministry is committed to supporting a freedom of information system that is transparent, accountable and provides timely service to British Columbians.

The Freedom of Information and Protection of Privacy Act (FOIPPA) contains a clause that protects the integrity of the FOI system from requests that are systematic or repetitious and could inappropriately overload the system or requests that are frivolous or vexatious. In order to ensure the information access system operates effectively for the businesses, lawyers, researchers, reporters and British Columbians who depend on it, I directed legal counsel to ask the Information and Privacy Commissioner for the authority to disregard those requests specific to my ministry. Legal services has similarly made the same request on behalf of other ministries.

These requests would require government to process more than 850 individual FOI requests, at costs that could potentially exceed \$2 million. Through the first three months of 2018, this applicant has submitted more than 1,750 FOI requests, or 73% of all general requests received by government. The estimated cost of processing these requests is \$4.7 million.

Between January 1 and March 31, 2018, there were 1,560 requests from political parties, a 429% increase over the same quarter in 2016/17 (295 requests). This significant

increase in requests has understandably had operational impacts on the system's ability to provide timely FOI service to British Columbians.

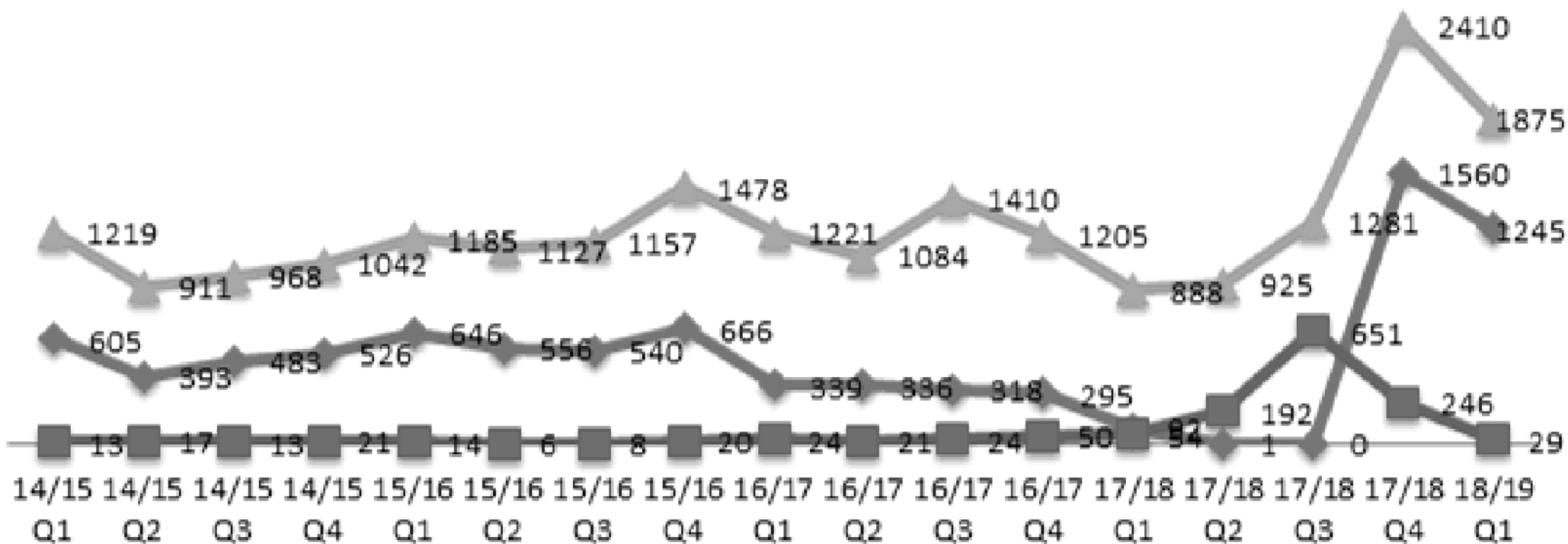
It's important to note that the public service followed appropriate processes in this instance. The requests were not acknowledged because government was submitting an application to the Commissioner to disregard these requests, which was done within legislated timelines.

If the Commissioner directs government to process these requests, our regular FOI processes, including acknowledgment and working with the applicant, will take place."

| Fiscal Quarter | Number of Political Party Requests | Researcher Requests | Number of General Requests |
|-----------------------|-------------------------------------------|----------------------------|-----------------------------------|
| 14/15 Q1 | 605 | 13 | 1219 |
| 14/15 Q2 | 393 | 17 | 911 |
| 14/15 Q3 | 483 | 13 | 968 |
| 14/15 Q4 | 526 | 21 | 1042 |
| 15/16 Q1 | 646 | 14 | 1185 |
| 15/16 Q2 | 556 | 6 | 1127 |
| 15/16 Q3 | 540 | 8 | 1157 |
| 15/16 Q4 | 666 | 20 | 1478 |
| 16/17 Q1 | 339 | 24 | 1221 |
| 16/17 Q2 | 336 | 21 | 1084 |
| 16/17 Q3 | 318 | 24 | 1410 |
| 16/17 Q4 | 295 | 50 | 1205 |
| 17/18 Q1 | 92 | 54 | 888 |
| 17/18 Q2 | 1 | 192 | 925 |
| 17/18 Q3 | 0 | 651 | 1281 |
| 17/18 Q4 | 1560 | 246 | 2410 |
| 18/19 Q1 | 1245 | 29 | 1875 |

Political Party and Researcher Requests by Quarter

Number of Political Party Requests Number of Researcher Requests Number of General Requests



From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: TNO: Front Pages
Date: July 24, 2018 9:31:45 PM

From: Kot, Jill CITZ:EX
Sent: Wednesday, July 11, 2018 7:22 AM
To: Russell, Shannon CITZ:EX
Cc: Harbord, Chris GCPE:EX; Curtis, David CITZ:EX
Subject: Re: TNO: Front Pages

Above the fold.

Sent from my iPhone

On Jul 11, 2018, at 7:20 AM, Russell, Shannon CITZ:EX
<Shannon.Russell@gov.bc.ca<<mailto:Shannon.Russell@gov.bc.ca>>> wrote:

Thx

Sent from my iPhone

On Jul 11, 2018, at 6:41 AM, Harbord, Chris GCPE:EX
<Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>> wrote:

FYI that the FOI story is on the front page of the Sun today.

Sent from my iPhone

Begin forwarded message:

From: <tno@gov.bc.ca<<mailto:tno@gov.bc.ca>>>
Date: July 11, 2018 at 5:31:51 AM PDT
To: Undisclosed recipients;;
Subject: TNO: Front Pages

[http://tno.gov.bc.ca/av/2018/07/11/vasn20180711033001_page_a1_20180711_320.jpg]
[http://tno.gov.bc.ca/av/2018/07/11/vapr20180711024501_page_a1_20180711_320.jpg]
[http://tno.gov.bc.ca/av/2018/07/11/vitc20180711030001_page_a1_20180711_320.jpg]
[<http://tno.gov.bc.ca/av/2018/07/11/sv-GLB-WED-11072018-A001-C-ISL-001.jpg>]
[http://tno.gov.bc.ca/av/2018/07/11/ntnp20180711023001_page_a1_20180711_320.jpg]

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From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals
Date: July 24, 2018 9:32:03 PM

From: Kot, Jill CITZ:EX
Sent: Tuesday, July 10, 2018 8:41 PM
To: Wright, Don J. PREM:EX
Subject: Fwd: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

Sent from my iPhone

Begin forwarded message:

From: "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>>
Date: July 10, 2018 at 8:08:08 PM PDT
To: "Russell, Shannon CITZ:EX" <Shannon.Russell@gov.bc.ca<<mailto:Shannon.Russell@gov.bc.ca>>>, "Kot, Jill CITZ:EX" <Jill.Kot@gov.bc.ca<<mailto:Jill.Kot@gov.bc.ca>>>
Cc: "Curtis, David CITZ:EX" <David.Curtis@gov.bc.ca<<mailto:David.Curtis@gov.bc.ca>>>, "Whittier, Joanne GCPE:EX" <Joanne.Whittier@gov.bc.ca<<mailto:Joanne.Whittier@gov.bc.ca>>>
Subject: Fwd: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

FYI

Shaw isn't sympathetic generally to the burden these requests put on the public service and taxpayers.

Sent from my iPhone

Begin forwarded message:

From: "Ghag, Kris CITZ:EX" <Kris.Ghag@gov.bc.ca<<mailto:Kris.Ghag@gov.bc.ca>>>
Date: July 10, 2018 at 8:03:13 PM PDT
To: "Curtis, David CITZ:EX" <David.Curtis@gov.bc.ca<<mailto:David.Curtis@gov.bc.ca>>>, "Hoskins, Chad CITZ:EX" <Chad.Hoskins@gov.bc.ca<<mailto:Chad.Hoskins@gov.bc.ca>>>, "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>>
Subject: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

FYI:

<https://vancouversun.com/news/politics/ndp-tries-to-block-information-requests-from-b-c-liberals>

KG

Sent from my Samsung Galaxy smartphone.

From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals
Date: July 24, 2018 9:32:24 PM

From: Kot, Jill CITZ:EX
Sent: Tuesday, July 10, 2018 8:41 PM
To: Russell, Shannon CITZ:EX
Subject: Fwd: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

Sent from my iPhone

Begin forwarded message:

From: "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>>
Date: July 10, 2018 at 8:08:08 PM PDT
To: "Russell, Shannon CITZ:EX" <Shannon.Russell@gov.bc.ca<<mailto:Shannon.Russell@gov.bc.ca>>>, "Kot, Jill CITZ:EX" <Jill.Kot@gov.bc.ca<<mailto:Jill.Kot@gov.bc.ca>>>
Cc: "Curtis, David CITZ:EX" <David.Curtis@gov.bc.ca<<mailto:David.Curtis@gov.bc.ca>>>, "Whittier, Joanne GCPE:EX" <Joanne.Whittier@gov.bc.ca<<mailto:Joanne.Whittier@gov.bc.ca>>>
Subject: Fwd: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

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Begin forwarded message:

From: "Ghag, Kris CITZ:EX" <Kris.Ghag@gov.bc.ca<<mailto:Kris.Ghag@gov.bc.ca>>>
Date: July 10, 2018 at 8:03:13 PM PDT
To: "Curtis, David CITZ:EX" <David.Curtis@gov.bc.ca<<mailto:David.Curtis@gov.bc.ca>>>, "Hoskins, Chad CITZ:EX" <Chad.Hoskins@gov.bc.ca<<mailto:Chad.Hoskins@gov.bc.ca>>>, "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>>
Subject: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

FYI:

<https://vancouversun.com/news/politics/ndp-tries-to-block-information-requests-from-b-c-liberals>

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Sent from my Samsung Galaxy smartphone.

From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals
Date: July 24, 2018 9:32:44 PM

From: Kot, Jill CITZ:EX
Sent: Tuesday, July 10, 2018 8:40 PM
To: Harbord, Chris GCPE:EX
Cc: Russell, Shannon CITZ:EX; Curtis, David CITZ:EX; Whittier, Joanne GCPE:EX
Subject: Re: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

I see that

Sent from my iPhone

On Jul 10, 2018, at 8:08 PM, Harbord, Chris GCPE:EX
<Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>> wrote:

FYI

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Sent from my iPhone

Begin forwarded message:

From: "Ghag, Kris CITZ:EX" <Kris.Ghag@gov.bc.ca<<mailto:Kris.Ghag@gov.bc.ca>>>
Date: July 10, 2018 at 8:03:13 PM PDT
To: "Curtis, David CITZ:EX" <David.Curtis@gov.bc.ca<<mailto:David.Curtis@gov.bc.ca>>>, "Hoskins, Chad CITZ:EX" <Chad.Hoskins@gov.bc.ca<<mailto:Chad.Hoskins@gov.bc.ca>>>, "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>>
Subject: Vancouver Sun Article: NDP tries to block information requests from B.C. Liberals

FYI:
<https://vancouversun.com/news/politics/ndp-tries-to-block-information-requests-from-b-c-liberals>

KG

Sent from my Samsung Galaxy smartphone.

From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: FOI story
Date: July 24, 2018 9:33:05 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)

From: Kot, Jill CITZ:EX
Sent: Tuesday, July 10, 2018 6:03 PM
To: Harbord, Chris GCPE:EX; Russell, Shannon CITZ:EX; Curtis, David CITZ:EX
Cc: Whittier, Joanne GCPE:EX
Subject: Re: FOI story
Why was this sent without my approval?

From: Harbord, Chris GCPE:EX
Sent: Tuesday, July 10, 2018 5:31 PM
To: Russell, Shannon CITZ:EX; Kot, Jill CITZ:EX; Curtis, David CITZ:EX
Cc: Whittier, Joanne GCPE:EX
Subject: FW: FOI story

Thanks all – this was sent to Rob, approved by MO, Legal, and not significantly changed from what David read to you Jill. I've looped in Tim and Sarah from issues as well.
A big thank you to David for negotiating this with the legal team under tight timelines!
Cheers, Chris

From: Harbord, Chris GCPE:EX
Sent: Tuesday, July 10, 2018 5:29 PM
To: 'Shaw, Rob'
Subject: RE: FOI story

Hi Rob – thanks for your patience. Statement below. Cheers, Chris
Sent on behalf of Jill Kot, Deputy Minister, Ministry of Citizens' Services

"My ministry is committed to supporting a freedom of information system that is transparent, accountable and provides timely service to British Columbians.

The Freedom of Information and Protection of Privacy Act (FOIPPA) contains a clause that protects the integrity of the FOI system from requests that are systematic or repetitious and could inappropriately overload the system or requests that are frivolous or vexatious. In order to ensure the information access system operates effectively for the businesses, lawyers, researchers, reporters and British Columbians who depend on it, I directed legal counsel to ask the Information and Privacy Commissioner for the authority to disregard those requests specific to my ministry. Legal services has similarly made the same request on behalf of other ministries.

These requests would require government to process more than 850 individual FOI requests, at costs that could potentially exceed \$2 million. Through the first three months of 2018, this applicant has submitted more than 1,750 FOI requests, or 73% of all general requests received by government. The estimated cost of processing these requests is \$4.7 million.

Between January 1 and March 31, 2018, there were 1,560 requests from political parties, a 429% increase over the same quarter in 2016/17 (295 requests). This significant increase in requests has understandably had operational impacts on the system's ability to provide timely FOI service to British Columbians.

It's important to note that the public service followed appropriate processes in this instance. The requests were not acknowledged because government was submitting an application to the Commissioner to disregard these requests, which was done within legislated timelines.

If the Commissioner directs government to process these requests, our regular FOI processes, including acknowledgment and working with the applicant, will take place."

From: Shaw, Rob [mailto:rshaw@postmedia.com]
Sent: Tuesday, July 10, 2018 4:05 PM
To: Harbord, Chris GCPE:EX
Subject: Re: FOI story

Ok. Do you have a statement from the deputy coming and if so can I get an ETA? I'm up against my deadline.

ROB SHAW
LEGISLATIVE CORRESPONDENT
The Vancouver Sun | The Province
Room 360, Parliament Buildings
Victoria, B.C. V8V1X4
T: [250-953-5932](tel:250-953-5932)
C: [250-893-0841](tel:250-893-0841)
rshaw@postmedia.com
twitter.com/robshaw_vansun



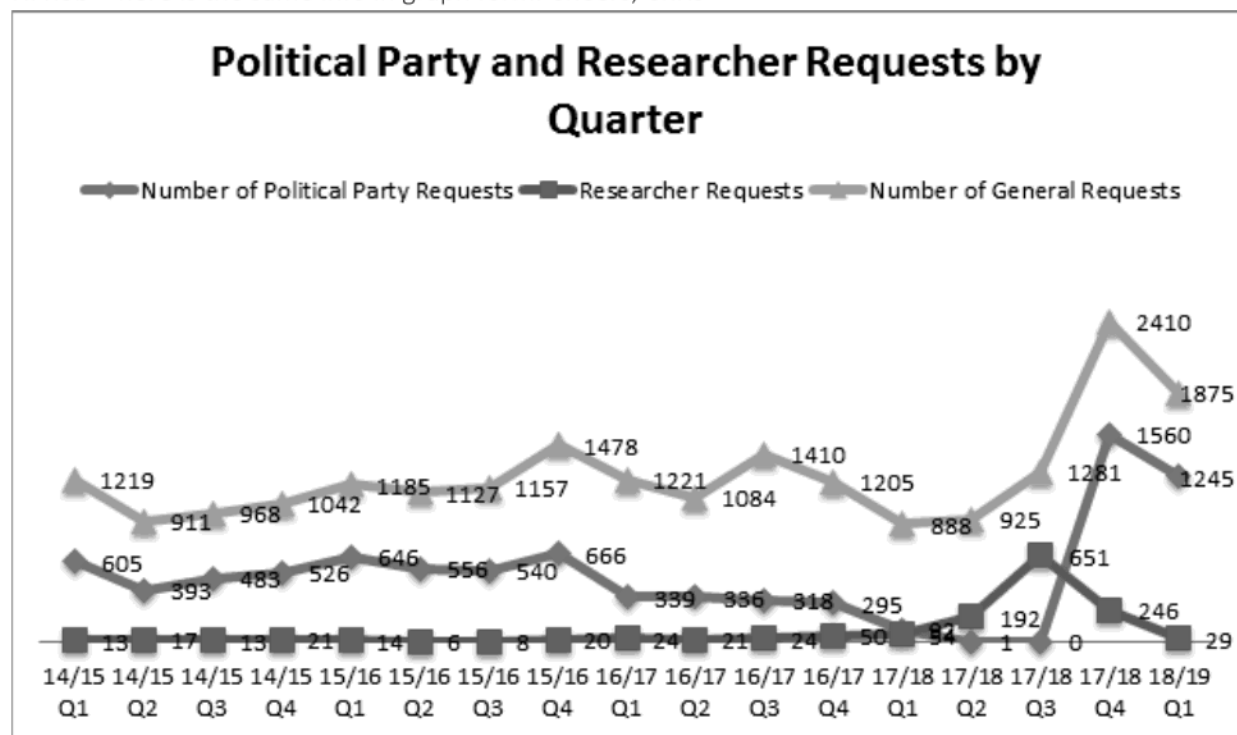
The Province

POSTMEDIA

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From: "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca>
Date: Tuesday, July 10, 2018 at 2:59 PM
To: Postmedia Inc <rshaw@postmedia.com>
Cc: "Whittier, Joanne GCPE:EX" <Joanne.Whittier@gov.bc.ca>, Sage Aaron <sage.aaron@gov.bc.ca>
Subject: RE: FOI story

Hi Rob – here is the same info in graph form. Cheers, Chris



From: Shaw, Rob [mailto:rshaw@postmedia.com]
Sent: Tuesday, July 10, 2018 2:32 PM
To: Harbord, Chris GCPE:EX
Cc: Whittier, Joanne GCPE:EX; Aaron, Sage PREM:EX
Subject: Re: FOI story

Ok thanks.

From: "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca>

Date: Tuesday, July 10, 2018 at 2:29 PM

To: Postmedia Inc <rshaw@postmedia.com>

Cc: "Whittier, Joanne GCPE:EX" <Joanne.Whittier@gov.bc.ca>, Sage Aaron <sage.aaron@gov.bc.ca>

Subject: RE: FOI story

Hi Rob – here is the background info you requested. As you know, some applicants self identify as ‘researchers’ but also work for a political party so we’ve included those figures as well. Cheers, Chris

| Fiscal Quarter | Number of Political Party Requests | Researcher Requests | Number of General Requests |
|----------------|------------------------------------|---------------------|----------------------------|
| 14/15 Q1 | 605 | 13 | 1219 |
| 14/15 Q2 | 393 | 17 | 911 |
| 14/15 Q3 | 483 | 13 | 968 |
| 14/15 Q4 | 526 | 21 | 1042 |
| 15/16 Q1 | 646 | 14 | 1185 |
| 15/16 Q2 | 556 | 6 | 1127 |
| 15/16 Q3 | 540 | 8 | 1157 |
| 15/16 Q4 | 666 | 20 | 1478 |
| 16/17 Q1 | 339 | 24 | 1221 |
| 16/17 Q2 | 336 | 21 | 1084 |
| 16/17 Q3 | 318 | 24 | 1410 |
| 16/17 Q4 | 295 | 50 | 1205 |
| 17/18 Q1 | 92 | 54 | 888 |
| 17/18 Q2 | 1 | 192 | 925 |
| 17/18 Q3 | 0 | 651 | 1281 |
| 17/18 Q4 | 1560 | 246 | 2410 |
| 18/19 Q1 | 1245 | 29 | 1875 |

From: Shaw, Rob [<mailto:rshaw@postmedia.com>]

Sent: Tuesday, July 10, 2018 10:58 AM

To: Harbord, Chris GCPE:EX

Cc: Whittier, Joanne GCPE:EX

Subject: Re: FOI story

Okay one other thing I’d like on background:

Could I get a list of the total number of FOIs submitted by political parties in pervious years?

For example, 3,156 by political parties in 2015/2016 (fiscal year or calendar year or however it is measured – and note I just made that figure up as an example).

I think those figures are readily available because gov compiles them annually. So hopefully someone could give me annual figures going back several years if possible please.

From: "Harbord, Chris GCPE:EX" <Chris.Harbord@gov.bc.ca>

Date: Tuesday, July 10, 2018 at 9:24 AM

To: Postmedia Inc <rshaw@postmedia.com>

Cc: "Whittier, Joanne GCPE:EX" <Joanne.Whittier@gov.bc.ca>

Subject: RE: FOI story

Thanks Rob – we'll check on her availability and get back to you asap. Cheers, Chris

From: Shaw, Rob [<mailto:rshaw@postmedia.com>]

Sent: Tuesday, July 10, 2018 9:23 AM

To: Harbord, Chris GCPE:EX

Cc: Whittier, Joanne GCPE:EX

Subject: FOI story

Hi Chris/Joanne,

I'm going to do a story today about this letter from a government lawyer to the Liberal opposition regarding FOI requests.

I'd be interested in talking to the minister about why government thinks that cracking down on the Official Opposition's use of FOI is the kind of openness and transparency promised by her party in the past, given that the opposition has an important role in holding government to account.

So we're clear up front, I'm not particularly interested in a statement, since I could just get that from the letter. But I am interested in talking to the minister.

Deadline 4pm

Thanks,

Rob

ROB SHAW

LEGISLATIVE CORRESPONDENT

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The Province

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From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: For Review: Statement re OIPC/large email volume
Date: July 24, 2018 9:33:48 PM

From: Kot, Jill CITZ:EX
Sent: Tuesday, July 10, 2018 4:35 PM
To: Harbord, Chris GCPE:EX
Cc: Curtis, David CITZ:EX; Russell, Shannon CITZ:EX; Marriott, Sarah GCPE:EX
Subject: Re: For Review: Statement re OIPC/large email volume

Has david approved?

Sent from my iPhone

On Jul 10, 2018, at 4:22 PM, Harbord, Chris GCPE:EX
<Chris.Harbord@gov.bc.ca<<mailto:Chris.Harbord@gov.bc.ca>>> wrote:

Hi Jill – please find attached the draft statement for your review.

s.13

Happy to chat further.

Cheers, Chris

s.13

Chris Harbord
Communications Director
Ministry of Citizens' Services
Government Communications and Public Engagement
P: 250 952-7302 | M: 250 920-5079 | chris.harbord@gov.bc.ca <<mailto:chris.harbord@gov.bc.ca>>

<MR_Rob Shaw - letter re large volume of email-FOI 2.docx>

From: [Kot, Jill CITZ:EX](#)
To: [Kot, Jill CITZ:EX](#)
Subject: FW: BN
Date: July 24, 2018 9:35:46 PM

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

From: Kot, Jill CITZ:EX
Sent: Wednesday, June 20, 2018 8:12 PM
To: Curtis, David CITZ:EX
Subject: Re: BN

If you put in eapprovals I will be happy to make that decision.

Sent from my iPhone

> On Jun 20, 2018, at 8:11 PM, Curtis, David CITZ:EX <David.Curtis@gov.bc.ca> wrote:

>

> Done!

>

> -----Original Message-----

> From: Kot, Jill CITZ:EX

> Sent: Wednesday, June 20, 2018 8:10 PM

> To: Curtis, David CITZ:EX

> Subject: Re: BN

>

> Definitely

>

> Sent from my iPhone

>

>> On Jun 20, 2018, at 7:18 PM, Curtis, David CITZ:EX <David.Curtis@gov.bc.ca> wrote:

>>

>> Great!!! Just to confirm - are you ok if we reintroduce the recommendation as Option 1 (and move away from the neutral position)?

>>

>> -----Original Message-----

>> From: Kot, Jill CITZ:EX

>> Sent: Wednesday, June 20, 2018 7:17 PM

>> To: Curtis, David CITZ:EX

>> Cc: Cook, Jeannette CITZ:EX; Biggs, Jackie CITZ:EX

>> Subject: Re: BN

>>

>> Excellent-- my preference is option 1. Really good work, thanks!

>>

>> Sent from my iPhone

>>

>>> On Jun 20, 2018, at 7:07 PM, Curtis, David CITZ:EX <David.Curtis@gov.bc.ca> wrote:

>>>

>>> Hi Jill,

>>>

>>> I would appreciate your review of the attached BN on the personal email account requests. If you are supportive of the approach we will finalize and put forward for formal approval. Please note that the material does not include a recommendation at this time.

>>>

>>> Regards,
>>>
>>> David
>>> <DM_DN_Personal Email Account Requests v.5.docx>

2018 Decision Note

Jill Kot, Deputy Minister

Date: June 21, 2018

Ref: 108730

Issue: Responding to Information Requests for Records Sent to, or Received from, Specified Non-Government Email Accounts

Summary:

- Approximately 720 requests have been received from a single applicant for all emails sent to or received from 30 named email accounts that are not government-issued accounts.
- There is no established precedent as to how to respond to these requests. There are several considerations in identifying potential options for responding to these requests, including considerations related to employee privacy.
 - There is a risk of directly or indirectly disclosing personal information about the owners of the personal email accounts.
- The Appropriate Use Policy states that employees must use their government email accounts when conducting government business; however, an exception is permitted in extenuating circumstances.
 - An employee must copy the email to their government account and must delete it as soon as possible from their non-government account in this circumstance.

s.13

Background / Facts:

Details of the Requests

- Freedom of Information (FOI) requests have recently been received for all emails sent to, or received from, approximately 30 specified email accounts that are not government-issued accounts.
- The requests do not specify the name of the employee, nor do they specify a subject or topic of interest.
- The FOI requests are worded as follows: “All emails sent to, or received from, [specified non-government email address] including cc’s and bcc’s (Date range for records search: From 07/18/2017 to 05/15/2018)”.
- The applicant has sent each of the FOI requests to every ministry (in other words, there are approximately 720 requests for records related to 30 named accounts).
- Interpreted broadly, this request could require any person in any ministry who may have received an email from the specified address to search for responsive records. This would include cases where the email account owner was interacting with a ministry in an individual capacity unrelated to their work.

No Precedent

- Under normal circumstances, the principles of “duty to assist an applicant” and “conducting an adequate search” require employees to search any location where they believe responsive records may reside (including their non-government email accounts, if there is reason to believe responsive records exist there).
- However, there is no precedent for FOI requests that ask specifically for records associated with the non-work email accounts of government employees. Therefore there is no established precedent as to how to respond to these requests.

Policy and Practice Context

- The Appropriate Use Policy requires employees to use their government email accounts when conducting government business. This includes while working outside of the workplace.
- However, the policy also permits the use of non-government email accounts for government business in extenuating circumstances, provided that the employee follows three rules:
 - Send a copy of the email to their government email account;
 - Delete the email from their personal or non-government email account as soon as possible after dealing with the extenuating circumstance; and,
 - Send or receive the least amount of confidential information necessary to deal with the extenuating circumstance.
- Any email created or received by an employee in the course of doing their work may be under the control of the public body — and therefore subject to the *Freedom of Information and Protection of Privacy Act* (the Act) — regardless of where the email is located.
- A record may be under the control of the public body even when it resides in an email account that is not government-issued.
- The Appropriate Use Policy’s provision for the use of non-government email accounts in extenuating circumstances has recently been the subject of media attention and has been raised by the opposition in the House.
- At least one of the personal email aliases referenced in these requests has been captured in previous FOI requests made by this applicant^{s.13}

Analysis:

- There is limited precedent for dealing with requests for records related to non-government email accounts.
- Occasionally, requests have been made for records related to non-government email accounts belonging to contractors providing services to government.
- However, these requests are different in that they typically identify the person or organization and the topic of the request.
- There are several considerations in identifying potential options for responding to these requests, including:

Policy and Practice

- A public body must, by law, make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely.
- Because the Appropriate Use Policy permits limited use of non-government email accounts to carry out government business in extenuating circumstances, if any employee believes that government records responsive to any FOI request may reside only in a non-government email account under their control, the employee has an obligation to search that location when responding to the request.
- Emails originating from non-government accounts have recently been included in FOI responses. This is consistent with the legislated "Duty to Assist" FOI applicants.
- Several past orders of the Information and Privacy Commissioner have held that non-government email accounts should be searched if there is a reasonable belief that responsive records reside there.
- However, because the Appropriate Use Policy requires employees to (a) copy their government email address when sending email from a non-government account, and (b) delete the email from their non-government account as soon as possible, even those employees who have a reasonable belief that they used a non-government account in an extenuating circumstance should likely be able to locate relevant records within the government system, assuming the policy was followed.

Privacy Protections

- The legislation provides for access to government records, but also restricts what information can be collected, used, or disclosed by ministries, to protect privacy.
- There may be privacy implications related to identifying the email account owner, and related to searching and processing emails in these accounts.
- Section 8 of the Act allows a public body to refuse to confirm or deny the existence of a record, if it could reveal personal information about a third party.
- Personal email accounts are not government-issued, and the validity of the account and the identity of the account owner, as well as use would all be considered personal information.

Ability to apply to the Information and Privacy Commissioner for authority to disregard the requests.

- The Act provides a mechanism for dealing with requests that are clearly repetitious, systematic, made without reasonable or probable cause, or requests that show an intention to harass a public body, to "break" the system or to engage in "information warfare".
- The applicant in this circumstance has made thousands of requests to ministries over a period of months.
- The Commissioner can be asked to authorize disregarding the requests, and can also be asked to authorize relief for the public body^{s.13}

s.13

Search

- Emails are electronic records, which can be searched for relatively easily by an employee within the public body. Emails may also exist in other locations and formats, including print copies.

Resources

- There is a significant workload impact associated with this request. As the wording currently stands, approximately 27,000 public servants would be required to search for records.

Privacy Concerns

- By providing access to records related to this request, there is a real risk of directly or indirectly disclosing personal information about the owners of the personal email accounts.
- Of the 30 specified email aliases, some contain names (e.g.: john.doe@gmail.com) that can be matched to names of current public service employees or Order in Council (OIC) appointees. Other specified email aliases do not contain names.
- In cases where the email account aliases do not contain names, there is no way to validate the authenticity of an account without collecting personal information from government employees.

s.13

Recommendation:

Option 1 (Recommended): Ask the Information and Privacy Commissioner to authorize the ministries to disregard these requests.

- Section 43 of the Act allows the head of a public body to ask the Commissioner to authorize the public body to disregard requests that:
 - would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or
 - are frivolous or vexatious.

s.13,s.14

Page 36

Withheld pursuant to/removed as

s.14;s.13

Approved

Final approver to specify if the recommendation has been approved or one of the other options or simply not approved.



22 June 2018

Jill Kot, Deputy Minister

Date

Contact: David Curtis, ADM, 778-698-5845



DC



David

I spoke to section 43 item at dmc --
all good

Excellent!

Fri, Jun 29, 3:46 PM

s.13,s.14



iMessage





DC



David

s.13,s.14

Have a great long weekend.

Thanks you too 🕶️

Seemed to go well with our IAO staff today -- what did you think?

Went really well. I was glad there were some questions. A few folks were disappointed that they were going to be off today and missed it.

IAO is actually really good about Lean. We did a process review last year with Berlin Eaton

s.13

s.13



iMessage





DC



David

Wed, Jul 4, 3:00 PM

Just sent you an email from John Tuck regarding s.43. Looking forward to discussing.

Ok

Wed, Jul 4, 7:05 PM

In Vancouver now. Do you want to meet at VPO at 9:15am or earlier at the DM drop in spot?

Yes earlier if possible

Thanks for coming tonight

All good. Just name the time and the place!

Thu, Jul 5, 7:57 AM

Issue has arisen. Meeting mjs early. Likely head to pvo around 9

s.22

See you at 9:00 at the PVO.

s.22



iMessage





DC



David

Tue, Jul 10, 12:17 PM

Expect that you are aware of Rob Shaw's interest in the Political Party section 43. He has the letter sent to them.

Also - just sent you the official opposition's response to the commissioner.

Tue, Jul 10, 1:38 PM

Have provided Chris with responses to all of the questions to date.

Will support development of a statement.

Tue, Jul 10, 2:39 PM

Ok

Tue, Jul 10, 6:08 PM

Free for a call?

Wed, Jul 11, 7:30 AM

I'm in Vancouver today David -- just in case there is any follow up to media.



iMessage





DC



David

I'm in Vancouver today David -- just in case there is any follow up to media.

You bet. Will be available and standing by.

I got a text from don wright saying he totally has our backs on this

Great! Nice of him to touch base.

And good work shepherding this through.

Article is a bit rough

Agree - I don't think it is well balanced.

s.13



iMessage





Don

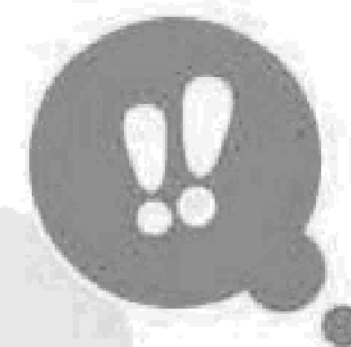
... Nice surprise and appreciated!

Tue, Jul 10, 12:49 PM

Can you give me a call ASAP. Thanks.

Tue, Jul 10, 10:09 PM

Hope you are not too upset about the publicity. I totally back you on this.



Wed, Jul 11, 5:17 AM

Thanks Don. Not upset at all.

Thu, Jul 12, 9:16 PM

Don -- 3 things: 1. My apologies for C...



iMessage

