

INFORMATION NOTE

Advice to Minister Beare

Date: May 21, 2021

CLIFF#: 115171

ISSUE: Investment BC (InBC) exclusion from the scope of the *Freedom of Information and Protection of Privacy Act* (FOIPPA)

BACKGROUND:

To be covered by FOIPPA, an entity must either meet the definition for public body or meet one of the three criteria set out in s. 76.1 of FOIPPA (see Appendix for section references). If the entity meets the public body definition it is either covered automatically (e.g. a ministry) or it can be designated as a public body under FOIPPA by addition to Schedule 2 of the Act. Schedule 2 public bodies range from the BC Pension Corporation and the Land Title & Survey Authority to smaller groups like the British Columbia Turkey Marketing Board.

The Minister responsible for FOIPPA has the authority to add bodies to Schedule 2 by regulation. The decision to do so has not historically been made independently by the Minister of Citizens' Services. This has generally been done at the behest of responsible ministers or public body heads. Responsible bodies weigh the anticipated benefit of the increased transparency and accountability against the risks and costs presented by those same factors when making the decision of whether it is appropriate to be covered by FOIPPA. Ministry of Citizens' Services legislative staff petition ministries and the broader public sector at regular intervals for any entities that those bodies have determined need to be added to, removed from or revised in Schedule 2. Ministry staff then confirm that they meet the criteria of s. 76.1 prior to including them in the respective Ministerial Regulation.

InBC was previously titled the BC Immigrant Investment Fund (BCIIF). While BCIIF met at least one criterion of s 76.1, it was not added to schedule 2 by the government of the day for the same reasons currently cited by InBC and an understanding that annual reports and audits would provide an appropriate amount of transparency. The fund was renamed in September 2020 and given the specific mandate to invest in small and medium sized businesses to help them scale and grow in the province with a \$500 million budget. The Information and Privacy Commissioner (Commissioner) has publicly taken the position that not bringing InBC into Schedule 2 is an oversight by government and a failure to provide appropriate levels of transparency given the amount of public funds involved. No previous Commissioner took this stance on BCIIF.

DISCUSSION:

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SUMMARY:

- The Minister of Citizens' Services designates public bodies in Schedule 2 in cooperation with responsible ministers or heads where the subject matter expertise resides.
- BCIF and InBC have both consistently been determined to be outside the scope of FOIPPA since inception.

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Contact: Kerry Pridmore, 778 698-1591
Attachment(s): Appendix A – Statutory References
MIN Stewart – Letter to Thomas Berger (February 2010)
MIN Stewart – Letter to Thomas Berger (April 2010)

Appendix A: Statutory References

Disclosure harmful to business interests of a third party

21 (1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if

(a) the third party consents to the disclosure, or

(b) the information is in a record that is in the custody or control of the archives of the government of British Columbia or the archives of a public body and that has been in existence for 50 or more years.

Ministerial regulation making power

76.1 (1) The minister responsible for this Act may, by regulation, amend Schedule 2 to do one or more of the following:

(a) add to it any agency, board, commission, corporation, office or other body

(i) of which any member is appointed by the Lieutenant Governor in Council or a minister,

- (ii) of which a controlling interest in the share capital is owned by the government of British Columbia or any of its agencies, or
- (iii) that performs functions under an enactment;
- (b) designate or change the designation of the head of a public body;
- (c) delete from it an agency, board, commission, corporation, office or other body that
 - (i) no longer exists, or
 - (ii) no longer meets the criteria established by paragraph (a).

"public body" means

- (a) a ministry of the government of British Columbia,
- (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2, or
- (c) a local public body

but does not include

- (d) the office of a person who is a member or officer of the Legislative Assembly, or
- (e) the Court of Appeal, Supreme Court or Provincial Court;



Ref: 62964

APR 14 2010

Mr. Thomas R. Berger O.C., Q.C.
Barrister & Solicitor
440 - 355 Burrard Street
Vancouver BC V6C 2G8

Dear Mr. Berger:

In my response letter to you on February 1, 2010, I indicated that I would consult with my colleague, the Honourable Iain Black, Minister of Small Business, Technology and Economic Development, about your concerns that the BC Immigrant Investment Fund (BCIIF) and its subsidiary, the BC Renaissance Capital Fund (BCRCF), are not covered under the *Freedom of Information and Protection of Privacy Act* (FOIPP Act). This letter is a follow-up to my meeting with Minister Black.

In his capacity as Minister of Small Business, Technology and Economic Development, Minister Black is responsible for the BCIIF and BCRCF and makes ongoing operational determinations about these entities including whether they are to be brought under coverage of the FOIPP Act. In our discussion, he communicated to me that, given the nature of their operations, he does not believe that it is appropriate to make these two entities public bodies under the FOIPP Act.

Minister Black's rationale includes the need to respect legal confidentiality agreements in place with fund managers operating under the BCRCF, and the fact that public transparency is achieved through operational reporting under the BCIIF annual report. I would also like to clarify that the source of BCIIF's capital is not taxpayer funds, but rather capital sourced from immigrant investors through a federal program.

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Ministry of
Citizens' Services
and Minister Responsible
for Multiculturalism and the
Public Affairs Bureau

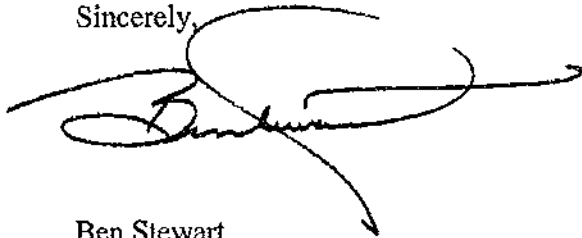
Office of the
Minister

Mailing Address:
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Victoria BC V8W 9E2

Telephone: 250 952-7623
Facsimile: 250 952-7628

Minister Black has presented a reasonable position on this matter and, until he provides different instructions, the BCIIF and BCRCE will not be added as public bodies to Schedule 2 of the FOIPP Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Stewart', with a long, sweeping horizontal stroke extending to the right.

Ben Stewart
Minister

cc: Honourable Iain Black
Minister of Small Business, Technology and Economic Development and
Minister Responsible for the BCIIF

Ms. Kim Henderson
Deputy Minister of Citizens' Services

Mr. Brian Hansen
Chair, BC Immigrant Investment Fund

Mr. Paul D.K. Fraser
Acting Information and Privacy Commissioner of British Columbia

Mr. Dave Nikolcjsin
Government Chief Information Officer

Ms. Wendy Taylor
Executive Director, Knowledge and Information Services
Office of the Chief Information Officer



BRITISH
COLUMBIA

Ref: 62169

FEB 01 2010

Thomas R. Berger O.C., Q.C.
Barrister & Solicitor
440 - 355 Burrard Street
Vancouver BC V6C 2G8

Dear Mr. Berger:

I am writing in response to your letter of December 14, 2009, regarding coverage under the *Freedom of Information and Protection of Privacy Act* (FOIPP Act) for the BC Immigrant Investment Fund (BCIIF) and its subsidiary, the BC Renaissance Capital Fund (BCRCF). I appreciate the cogent and considered arguments you have provided for including these entities as public bodies under the FOIPP Act.

As you have indicated in your letter, section 76.1 provides me, as Minister responsible for the FOIPP Act, with the authority to list entities as public bodies under Schedule 2. The process for adding new or existing entities begins with the ministry responsible for an entity submitting a formal request to my ministry asking that an addition be made to Schedule 2. Once this request has been received and confirmed, it will be included in the next Ministerial Regulation that I issue for such purposes.

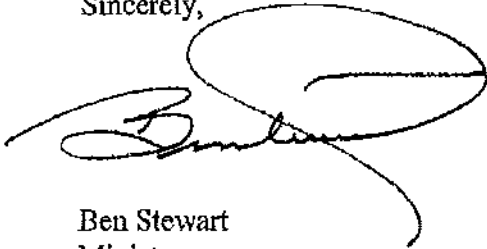
At present, I have not received a request from the Ministry for Small Business, Technology and Economic Development for inclusion of the BCIIF and the BCRCF as public bodies under Schedule 2 of the FOIPP Act. However, as you have raised concerns about their coverage with me, I will undertake to discuss this issue with the Honourable Iain Black, who is the Minister responsible for both of these funds.

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Thank you for your interest in helping British Columbia continue to be an open and transparent province. I am proud that British Columbia's FOIPP Act has the broadest range of coverage of any jurisdiction in Canada.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Stewart', with a large, stylized loop at the end.

Ben Stewart
Minister

cc: Honourable Colin Hansen
Minister of Finance and Minister Responsible for the BCIF

Ms. Kim Henderson
Deputy Minister of Citizens' Services

Mr. Brian Hansen
Chief Executive Officer, BC Immigrant Investment Fund

Mr. David Loukidelis
Information and Privacy Commissioner of British Columbia

Mr. Dave Nikolejsin
Government Chief Information Officer

Ms. Wendy Taylor
Executive Director, Knowledge and Information Services
Office of the Chief Information Officer

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