

## Beach, Kara MTIC:EX

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**From:** Whittier, Joanne GCPE:EX  
**Sent:** Tuesday, June 2, 2015 12:17 PM  
**To:** Rorison, Trish GCPE:EX; Jabs, Ryan GCPE:EX  
**Cc:** Fougner, Trish GCPE:EX  
**Subject:** heads up - MTCS media call Les Leyne TC - information management act  
**Attachments:** s.13

Hi there – flagging for you that we (MTICS) has a call from Les Leyne regarding a release issued by the official opposition yesterday and new legislation to modernize B.C.'s approach to information management – relates to disciplinary actions available for improper disposal of records.

Issues note attached. Will loop you in when our response points for TC are finalized.

Jo

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**From:** Whittier, Joanne GCPE:EX  
**Sent:** Tuesday, June 2, 2015 11:15 AM  
**To:** Gleeson, Kelly T GCPE:EX; Gordon, Matt GCPE:EX  
**Cc:** Fougner, Trish GCPE:EX  
**Subject:** heads up - MTCS media call Les Leyne TC - information management act

Reporter/outlet: Les Leyne/TC

Contact: [lleyne@timescolonist.com](mailto:lleyne@timescolonist.com)

Request: Reporter looking to confirm the status of the Information Management Act; specifically if the Act is in force at this point. Reporter is doing a story on the release issued by the official opposition yesterday suggesting that recent changes to the new Information Management Act have meant there are no penalties for staff who improperly destroy documents.

Deadline: around 1 p.m.

Will pull together background information, including the fact that most, if not all, legislation drafted in the last 20 years has excluded the application of the Offence Act and that there have been no changes to the disciplinary actions available to government regarding improper disposal of records.

Jo

<http://bcndpcaucus.ca/news/bc-liberals-rule-change-protects-staffers-who-destroy-records/>

Page 02 to/à Page 03

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s.13

## ADVICE TO MINISTER

### CONFIDENTIAL ISSUES NOTE

Ministry of Transportation and Infrastructure  
Date: July 7, 2015

Minister Responsible: Todd Stone

## Allegations regarding records destruction Highway 16

### ADVICE AND RECOMMENDED RESPONSE:

- Although I am not going to speculate on what may or may not have occurred, I want to be very clear that all government staff must obey the Freedom of Information Act.
- As Minister, my expectation is that all staff – including my own – manages their records in accordance with legislation.
- I expect all documents that need to be kept are kept, and I expect that to be the case each and every day.
- I've reinforced this with my staff, all of whom have taken the appropriate FOI training, which is mandatory for all political staff.
- We will cooperate fully with the Office of the Information and Privacy Commissioner and await her findings.

### IF ASKED ABOUT THE STAFF MEMBER WHO ALLEGEDLY INSTRUCTED THE DESTRUCTION OF EMAILS:

- The information and privacy commissioner has stated they are pursuing this complaint.

s.13

### Key Facts Regarding the Issue:

On May 28, the leader of the official opposition raised concerns in Question Period that a former executive assistant to the Minister of Transportation and Infrastructure had issued a written complaint regarding the handling of an FOI request and alleged the destruction of emails by another staff member.

Shortly following, the B.C. Information and Privacy Commissioner issued a statement indicating that her office received a letter on May 27 outlining allegations regarding the deletion of emails in relation to an FOI request on topic of Highway 16.

The Privacy Commissioner indicated in her statement that she is determining next steps in an investigation under section 42 of the Freedom of Information and Protection of Privacy Act.

s.13

Communications contact: Ryan Jabs – Communications Director

Program contact:

Minister's Office	Program Area	ADM	Comm. Dir

## ADVICE TO MINISTER

<p><b>CONFIDENTIAL ISSUES NOTE</b></p> <p><b>Ministry:</b> Technology, Innovation and Citizens' Services</p> <p><b>Date:</b> (updated June 29<sup>th</sup>, 2015)</p> <p><b>Minister Responsible:</b> Hon. Amrik Virk</p> <p>Created by Government Communications and Public Engagement</p>	<p><b>Information Management Act and allegations regarding records destruction</b></p>
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### ADVICE AND RECOMMENDED RESPONSE:

- Government will cooperate fully with the OIPC and await her findings.
- I have made it clear that my expectation as the Minister responsible is that staff – including my own – manage their records in accordance with legislation.
- I expect all records that need to be kept are kept.

#### **If asked about the new Information Management Act:**

- Government has several remedies at its disposal, such as disciplinary sanctions, to respond to the rare circumstance where an employee willfully disregards the requirements of document retention and disposal. There has been no change to government's ability to take these actions where warranted.
- The legislative changes that were introduced recently are intended to modernize B.C.'s approach to information management.
- The new Information Management Act does not in any way remove the ability to discipline an individual who has knowingly removed or destroyed documents subject to an FOI request.
- The previous Act was passed in 1936 and the new Act modernizes document retention in a digital era.

#### **If asked why the Information Management Act excludes coverage by the Offence Act:**

- Although the new Act specifically excludes coverage by section 5 of the Offence Act, it is important to recognize that this is common legislative practice.
- Most, if not all, legislation drafted in the last 20 years has excluded the application of the Offence Act.
- The reason is due to the sweeping nature of the penalties associated with section 5 of the Offence Act.

### KEY FACTS ABOUT THE ISSUE:

On May 28, the leader of the official opposition raised concerns in Question Period that a former executive assistant to the Minister of Transportation and Infrastructure had issued a written complaint regarding the handling of an FOI request and alleged the destruction of emails by another staff member.

Shortly following, the B.C. Information and Privacy Commissioner issued a statement indicating that her office received a letter on May 27 outlining allegations regarding the deletion of emails in relation to an FOI request on topic of Highway 16.

The Privacy Commissioner indicated in her statement that she is determining next steps in an investigation under section 42 of the Freedom of Information and Protection of Privacy Act.

s.13

On June 1, the official opposition issued a release suggesting that recent changes to the new Information Management Act have meant there are no penalties for staff who improperly destroy documents.

The new Information Management Act will replace legislation that was introduced in 1936. Although the new Act specifically excludes coverage by section 5 of the Offence Act, it is important to recognize that this is common legislative practice. Due to the sweeping nature of section 5 of the Offence Act, most, if not all, legislation drafted in the last 20 years has excluded the application of the Offence Act. There are also concerns that the application of section 5 of the Offence Act could be unconstitutional.

It is also important to reinforce that there have been absolutely no changes to the actions available to government in responding to the rare circumstance where an employee willfully disregards the requirements of the Act. These actions include disciplinary sanctions, contractual penalties and, in extreme cases, criminal proceedings.

## **BACKGROUND:**

On February 12, 2015, B.C. introduced the new information management legislation to replace the 1936 Document Disposal Act. The legislation passed second reading on March 3, 2015.

This Document Disposal Act does not have any mechanisms for modernization, including digital archives, and the current paper-based processes cannot manage effectively the growing volume of information and pace of change.

The need for better document retention and archiving policies and procedures has also been highlighted in the recent OIPC report on 'failure to archive' in July 2014.

The Information Management Act received Royal Assent on May 28, 2015 and will be implemented over three years (beginning in 2016).

This legislation was drafted with the input of the Office of the Information and Privacy Commissioner. The Commissioner also reviewed the amendments to the bill and expressed no concerns.

## Whittier, Joanne GCPE:EX

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**From:** Whittier, Joanne GCPE:EX  
**Sent:** Monday, July 6, 2015 2:44 PM  
**To:** Fougner, Trish GCPE:EX  
**Subject:** FW: Sihota/Hansen - deleted FOI emails

**From:** Whittier, Joanne GCPE:EX  
**Sent:** Tuesday, June 16, 2015 8:24 AM  
**To:** Fougner, Trish GCPE:EX  
**Subject:** Sihota/Hansen - deleted FOI emails

This must be the one we were talking about yesterday?

**From:** [tno@gov.bc.ca](mailto:tno@gov.bc.ca) [<mailto:tno@gov.bc.ca>]  
**Sent:** Monday, June 1, 2015 11:18 AM  
**Subject:** CBU: Sihota/Hansen - deleted FOI emails

s.3

Page 09 to/à Page 11

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s.3



## Whittier, Joanne GCPE:EX

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**From:** Whittier, Joanne GCPE:EX  
**Sent:** Tuesday, June 2, 2015 1:18 PM  
**To:** Rorison, Trish GCPE:EX; Jabs, Ryan GCPE:EX  
**Cc:** Fougner, Trish GCPE:EX  
**Subject:** RE: heads up - MTCS media call Les Leyne TC - information management act

Here is the background info we have provided to Les. Jo

### Background information:

- The new Information Management Act does not in any way remove the ability to discipline an individual who has knowingly removed or destroyed documents subject to an FOI request.
- Government has several remedies at its disposal, such as disciplinary sanctions, to respond to the rare circumstance where an employee willfully disregards the requirements of document retention and disposal. There has been no change to government's ability to take these actions where warranted.
- Although the new Act specifically excludes coverage by section 5 of the Offence Act, it is important to recognize that this is common legislative practice.
- Most, if not all, legislation drafted in the last 20 years has excluded the application of the Offence Act. The reason is due to the sweeping nature of the penalties associated with section 5 of the Offence Act.
- The Information Management Act (which replaces the 1936 Document Disposal Act) received Royal Assent on May 28, 2015 and will be implemented over three years (beginning in 2016).
- The legislative changes that were introduced are intended to modernize B.C.'s approach to information management.
- A regulation (Order in Council) will need to be passed before the new Act is in effect. The timing has not been confirmed but will likely be early next year.

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<http://bcndpcaucus.ca/news/bc-liberals-rule-change-protects-staffers-who-destroy-records/>

**Whittier, Joanne GCPE:EX**

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**From:** Whittier, Joanne GCPE:EX  
**Sent:** Tuesday, June 2, 2015 1:15 PM  
**To:** 'lleyne@timescolonist.com'  
**Subject:** Background information - Information Management Act

Hi there Les:

As discussed, please find below background information on the Information Management Act. Best – Joanne

**Background information:**

- The new Information Management Act does not in any way remove the ability to discipline an individual who has knowingly removed or destroyed documents subject to an FOI request.
- Government has several remedies at its disposal, such as disciplinary sanctions, to respond to the rare circumstance where an employee willfully disregards the requirements of document retention and disposal. There has been no change to government's ability to take these actions where warranted.
- Although the new Act specifically excludes coverage by section 5 of the Offence Act, it is important to recognize that this is common legislative practice.
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Joanne Whittier  
Communications Manager  
Ministry of Technology, Innovation and Citizens' Services  
office: 250-387-0172 / cell: 250-893-5650

**Alaimo, Marie GCPE:EX**

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**From:** Herman, Stephan GCPE:EX  
**Sent:** Thursday, May 28, 2015 9:54 PM  
**To:** Phelps, Blair GCPE:EX; Fougner, Trish GCPE:EX; Alaimo, Marie GCPE:EX  
**Subject:** Tim duncan on cbc

This may be worth listening to.i did Will likely be a transcript tmorrow on TNO

[www.cbc.ca/m/news/tim-duncan-speaks-out-1.3092236](http://www.cbc.ca/m/news/tim-duncan-speaks-out-1.3092236)

## **Alaimo, Marie GCPE:EX**

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**From:** Phelps, Blair GCPE:EX  
**Sent:** Thursday, May 28, 2015 9:55 PM  
**To:** Herman, Stephan GCPE:EX; Fougner, Trish GCPE:EX; Alaimo, Marie GCPE:EX  
**Subject:** Re: Tim duncan on cbc

Thanks.

Sent from my BlackBerry 10 smartphone on the TELUS network.

Original Message

**From:** Herman, Stephan GCPE:EX  
**Sent:** Thursday, May 28, 2015 9:53 PM  
**To:** Phelps, Blair GCPE:EX; Fougner, Trish GCPE:EX; Alaimo, Marie GCPE:EX  
**Subject:** Tim duncan on cbc

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