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**From:** Watson, Andy PSSG:EX  
**Sent:** Friday, October 5, 2018 3:24 PM  
**To:** BCCS FOI Inbox PSSG:EX  
**Cc:** Sidhu, Tej PSSG:EX  
**Subject:** FW: Coroners Service Policy update  
**Attachments:** Release of Information September 2017 Final.docx

Email 3/3

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**From:** Lapointe, Lisa PSSG:EX  
**Sent:** Thursday, September 21, 2017 4:06 PM  
**To:** Hugh, Nadia JAG:EX  
**Cc:** Watson, Andy PSSG:EX  
**Subject:** Coroners Service Policy update

Hi Nadia, I wonder if I could impose on you to kindly update our policy manual with the attached next week? This section will go into Chapter 7 – File Management and will replace the existing Release of Information section.

Please let me know if you have any questions.  
Many thanks,  
Lisa

## **Release of Information**

### **Authority:**

*Coroners Act*, Sections 63, 64, 65, 69, *Freedom of Information and Protection of Privacy Act and Regulation*

### **Background:**

Section 63 of the *Coroners Act*, prohibits the disclosure of any information in respect of a deceased person or a person related to or otherwise connected with a deceased person and any information provided or record compiled, made, used or submitted in the course of an investigation, inquest or review except where **necessary and incidental to a Coroner's investigation**. The ability to disclose information where necessary or incidental **does not** apply after the investigation, inquest or review is concluded.

Section 64 provides discretion to refuse to disclose information in an open investigation despite the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Section 69 permits the chief coroner to disclose a Coroner's Report, Inquest Verdict, or Review report when certain criteria are met.

The *Freedom of Information and Protection of Privacy Act* (FOIPPA) permits the disclosure of personal information under certain circumstances by the Chief Coroner, or delegate.

Neither FOIPPA nor the *Coroners Act* provides specific guidance regarding the discretionary disclosure of personal information by the Coroners Service, such as the name of a decedent and/or specific details of a death until the investigation, inquest or review is concluded.

### **Policy**

#### **General:**

Unless authorized by this policy, staff members are prohibited from disclosing any information regarding a death.

Information includes digital and hard copy records gathered, compiled, made, used or submitted during an investigation, inquest or review. Digital records include information reviewed on or down-loaded from electronic devices including phones, cameras, laptops, tablets, hard drives, and cloud and internet services. Information may also include passwords.

## Disclosure During Investigation

1. During an Investigation, Inquest or Review: Coroners and members of the child death review unit or a person acting on their behalf *may* disclose information as *necessary or incidental to carrying out an investigation, inquest or review*<sup>1</sup>. When disclosing information, detailed notes must be recorded in the coroner database that include the name of the person to whom the information was disclosed, when it was disclosed, and why disclosure was necessary or incidental to the investigation, inquest or review. The Regional Coroner must be consulted before releasing any sensitive information.
  - a) Autopsy Results – the preliminary results of an autopsy may be shared verbally with the personal representative or nearest relative of the deceased as incidental to an investigation, inquest or review, with the advice that the information cannot be considered final until the Coroner’s Report is issued. (If requested in writing, the request will be logged in the database and a copy of the final autopsy report will be provided by the regional office or Office of the Chief Coroner to the personal representative or nearest relative once the investigation, inquest or review is concluded.)
  - b) Toxicology Results – the preliminary results of toxicology testing may be shared verbally with the personal representative or nearest relative of the deceased as incidental to an investigation, inquest or review, with the advice that the information cannot be considered final until the Coroner’s Report is issued. (If requested in writing, the request will be logged in the database and a copy of the final toxicology report will be provided by the regional office or Office of the Chief Coroner to the personal representative or nearest relative at the conclusion of the investigation, inquest or review.)
  - c) Other Information – requests for information when disclosure is not necessary or incidental for purposes of an investigation, inquest or review should be referred to [CoronerRequest@gov.bc.ca](mailto:CoronerRequest@gov.bc.ca). The request will then be reviewed and a response provided as per the criteria of the *Coroners Act* and/or *Freedom of Information and Protection of Privacy Act*. To protect the integrity of the investigation, information will only be shared in exceptional circumstances during an open Coroner’s investigation. If a police investigation is ongoing, no information designated as “holdback information” will be released until the conclusion of that investigation.
  - d) Police Agencies/ Independent Investigations Office (IIO)/ WorkSafeBC/ Transportation Safety Board – the preliminary results of an autopsy and/or toxicology testing may be shared verbally with police or other authorized investigators when necessary or incidental to an investigation, inquest or review. This will occur when the police, IIO, WorkSafeBC or Transportation

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<sup>1</sup> Section 63, *Coroners Act*

Safety Board are conducting a parallel investigation into the death and the results of their investigation will assist the coroner, inquest jury or review with their determinations. If requested in writing, a copy of the final autopsy and/or toxicology report will be provided to the police, IIO, WorkSafeBC or Transportation Safety Board when necessary to assist an **open** coroner's investigation, inquest or review.

- e) First Nations – in many First Nations communities, the nearest relative(s) will appoint a spokesperson to represent them following a death. In this circumstance, the coroner will engage with the family's spokesperson to provide information.

### **Disclosure on Closed Files**

2. Following an Investigation: Requests for a copy of a Coroner's Report may be made by request to the coroner of record, phoning or e-mailing the Coroners Service regional office in the region with jurisdiction in the death or by e-mailing the Office of the Chief Coroner at [CoronerRequest@gov.bc.ca](mailto:CoronerRequest@gov.bc.ca) and providing the name of the deceased. The request will be noted on the Information Request screen in the database. When the requestor does not know the name of the deceased but provides sufficient information for Coroners Service staff to readily identify the deceased, a copy of the Coroner's Report will be provided to the requestor with identifying information redacted. Staff must note in the database that the name of the deceased was not provided.
3. Following an Inquest: Verdicts at inquest will be provided upon request to those present in the courtroom at the conclusion of an inquest, or by telephone or email request to: [CoronerRequest@gov.bc.ca](mailto:CoronerRequest@gov.bc.ca). Inquest Verdicts will also be posted on-line as soon as possible after an inquest concludes.
4. Following a Review: Reports of Death Review Panels will be posted on-line as soon as they are approved for release by the chief coroner.
5. Disclosure of information retrieved from Electronic Devices: The Coroners Service may be able to retrieve information from an electronic device that would not easily be retrievable or found when the device is returned. This could also include a password to access information on the device. Where the information is relevant to the Coroner's Report findings or otherwise appropriate when balancing the circumstances and the deceased's right to privacy, the Chief Coroner may exercise discretion under FOIPPA and the regulation to provide that information to the personal representative, executor or nearest relative.
6. Autopsy and Toxicology results to Personal Representative or Nearest Relative: If requested in writing, the request will be logged in the database and a copy of the final autopsy report and toxicology report, as applicable, will be provided by

headquarters to the personal representative or nearest relative at the conclusion of the investigation.

7. Other Information: If an individual, lawyer, police or other agency requests other information about a death once the investigation, inquest or review has concluded, they should be directed to [CoronerRequest@gov.bc.ca](mailto:CoronerRequest@gov.bc.ca). The request will then be reviewed and a response provided as per the criteria of the *Coroners Act* and/or the *Freedom of Information and Protection of Privacy Act*. Under this process, information may be provided in exceptional circumstances.

### **Media Requests**

1. If approached by media while at a death scene, the attending coroner may confirm that a death has been reported and refer the media to [CoronerMedia@gov.bc.ca](mailto:CoronerMedia@gov.bc.ca). This mailbox is monitored during working hours.
2. The Manager, Strategic Communications will respond to all media requests. When a death is being investigated for possible criminal charges by police or the Independent Investigations Office, the Manager will refer media to the respective authority.
3. When a death is not being investigated for possible criminal charges, the Manager will confirm when a death is under investigation by the Coroners Service. Where the general circumstances of the death are public (i.e. motor vehicle crash), the Manager will confirm general, non-identifying information only about the incident. At his/her discretion, the Manager may delegate confirmation of this information to the Regional Coroner.
4. Personal information about the deceased (including release or confirmation of identity) and details about the circumstances of death cannot be disclosed during an investigation. Exceptions to this are when the personal representative or nearest relative (as defined by the *Freedom of Information and Protection of Privacy Act*) explicitly requests in writing that the Coroners Service release or confirm the identity of the deceased.
5. For other information, media should be advised that they may make a request for information by e-mail to: [CoronerMedia@gov.bc.ca](mailto:CoronerMedia@gov.bc.ca). Their request will then be reviewed as per the provisions of the *Coroners Act* and/or the *Freedom of Information and Protection of Privacy Act*.

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**From:** Watson, Andy PSSG:EX  
**Sent:** Friday, October 5, 2018 3:23 PM  
**To:** BCCS FOI Inbox PSSG:EX  
**Cc:** Sidhu, Tej PSSG:EX  
**Subject:** FW: Legal opinion re: proactive release of personal information  
**Attachments:** Scan\_.pdf; Section 25 - Final.pdf

Email 2/3

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**From:** Lapointe, Lisa PSSG:EX  
**Sent:** Friday, February 23, 2018 11:23 AM  
**To:** SG BCCS Regional Coroners; Stancato, Vincent PSSG:EX; Egilson, Michael PSSG:EX; Baidwan, Jatinder PSSG:EX; Burns, Aaron PSSG:EX; Petit, Eric PSSG:EX; Watson, Andy PSSG:EX  
**Cc:** Sidhu, Tej PSSG:EX; McNamee, John PSSG:EX  
**Subject:** Legal opinion re: proactive release of personal information

Hi everyone,

We've had quite a few conversations over the past few months about our authorities/obligations with respect to release of personal information and the concept of public interest. I know I've mentioned previously that we'd received legal advice on this topic and thought it would be helpful to share with you. I've also attached government policy with respect to FOIPPA section 25 and consideration of public interest. Our policy regarding Release of Information is based on/consistent with this advice. As we work on revising the Guidelines for Coroner Reports, we'll include information to support the coroners in assessing what information they should/can include in their reports.

The material attached here is focused on proactive release of personal information and necessary criteria. s.14

s.14 This is useful when there is a high profile death and proactive disclosure of personal information (ie identity) seems appropriate. s.14 Andy will work with the RD on these types of disclosures and will be developing a process for consistency. Please don't hesitate to let me know if you have any questions.

s.14

Lisa Lapointe  
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Ministry of Public Safety and Solicitor General  
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<http://www.gov.bc.ca/coroners>



**Coroners Service**  
Ministry of Public Safety and Solicitor General

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Withheld pursuant to/removed as

s.14



# Section 25 - Information must be disclosed if in the public interest

## Summary

Section 25 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) is a general override provision that requires the head of a public body to disclose information relating to a significant risk of harm to people or the environment, or where disclosure is clearly in the public interest. Even if information attracts an exception to disclosure within Part 2 of the Act or would be restricted from disclosure within Part 3 of the Act, section 25 requires the immediate disclosure of the information. The broad override that section 25 provides necessitates a high threshold for disclosure. The use of this section should require sufficient gravity in that it overrides all other provisions of the Act, and therefore its use should be considered exceptional.

## Policy Objective

The objective of the following policy is to support public bodies in complying with the requirements of section 25. This policy provides guidance to public bodies in determining when mandatory section 25 disclosures are necessary and what steps a public body is required to take. In addition, specific direction is provided to ministries to ensure consistent and thoughtful application of section 25 across government.

## Section 25 Policy

### Identify and Assess Information for Disclosure

Ministries should see specific guidance below.

1. The head of the public body must disclose information in the public interest, as required by section 25 of the FOIPPA.
2. The head of the public body must consider whether another statute applies, notwithstanding FOIPPA, and determine whether or not this may impact the application of section 25.
3. If a disclosure under section 25 is required where more than one public body has joint responsibility for the record or information, each public body's section 25 obligation will be met so long as a section 25 disclosure is made by one of the responsible public bodies. However, where there is a shared obligation, a public body must not assume that another public body has made a disclosure under section 25 and must confirm disclosure has occurred.
4. Under section 25(1)(a), the head of the public body must disclose information based on a contextual assessment and determination as to whether there is a "risk of significant harm," which may include a risk of future significant harm, to the environment or to the health or to the safety of the public or a group of people.

The head of the public body may seek guidance based on accepted international or national environmental, health or safety standards to determine risk of harm and significance of harm. .

The head of the public body must assess the case-specific facts to determine risk of harm and significance of harm.

The head of the public body may consult subject matter experts to determine risk of harm and significance of harm.

The public body may be required to release information regardless of temporal urgency (i.e. disclosure may still be required despite an absence of urgency).

5. In accordance with section 25(1)(b), the head of the public body must disclose information based on a contextual assessment and determination as to whether information is clearly in the public interest.

The public body must determine what is clearly in the public interest through an analysis of the facts and circumstances of a particular case. The threshold for determining what is clearly in the public interest is not static.

In any given set of circumstances, there may be competing public interests, weighing for and against disclosure, and the threshold will vary according to those interests.

The public body is required to release information when it is clearly in the public interest, regardless of temporal urgency (i.e. disclosure may still be required despite an absence of urgency).

The following are questions that should guide the head of the public body in determining whether or not a specific disclosure is clearly in the public interest:

- Would a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, conclude that disclosure is plainly and obviously in the public interest?
- Are the public in general, or in a particular region, debating the issue, holding public forums and/or circulating petitions?
- Is the matter the subject of widespread debate in the media, the Legislature or by other Officers of the Legislature or oversight bodies?

Media coverage may indicate a public interest, but is not proof of this fact.

There may be public interest in the disclosure of information of a subject that is unknown to the media/public.

Is there evidence of any FOIPPA Part 2 exceptions that may apply to the information in question?

The head of the public body is not entitled to apply Part 2 exceptions when making a disclosure under section 25. However, the head of the public body should consider the interests that underlie the Part 2 exceptions as these will assist the head of the public body in determining whether the information meets the public interest threshold for disclosure.. The head of the public body must consider the nature of the information, the interests engaged, and the impact of disclosure on those interests as factors in assessing whether disclosure is clearly in the public interest, because those exceptions are themselves recognition of a public interest against disclosure.

The head of the public body should also consider whether the release of information (e.g. a summary or media release), as opposed to records, would mitigate any concerns about Part 2 exceptions, and result in more information being disclosed.

➤ Would disclosure of **records** or the disclosure of **information**:

- contribute to educating the public about the matter;
- contribute in a substantive way to the information that is already available about the matter;
- enable or facilitate the expression of public opinion or enable the public to make informed decisions about public matters;
- contribute in a meaningful way to holding a public body accountable for its actions or decisions;
- Restore public confidence regarding the public body's approach to a given issue;
- satisfy the needs of the public interest (i.e. although records or information may relate to a subject that is in the public interest, the disclosure of specific records or information may not satisfy the needs of the public interest)?

➤ Is there a public interest served by disclosing a risk of harm that did not meet the threshold of section 25(1)(a)?

25(1)(a) speaks to risks of significant harm to the environment or the health or safety of the public or a group of people.

Where a risk does not meet this "significant" threshold, it may meet the "public interest" threshold of 25(1)(b) because the information is about how the public body is managing that risk. This relates to the public interest in government accountability.

6. The head of the public body may consider for proactive disclosure other types of information the public body receives, holds, or creates.
7. A public body may, for ongoing operational reasons, have already disclosed information under the authority of another statute, policy or operational practice. Where this disclosure has already been made by the public body, a further disclosure of the information or record is likely not required under section 25.

Information that does not meet the section 25 threshold may be disclosed proactively so long as the information does not attract the mandatory exceptions contained in Part 2 of FOIPPA (e.g. cabinet confidence; harm to third party business) or contain personal information. Ministry public bodies should proactively disclose information pursuant to the Open Information and Open Data Policy.

8. The head of the public body may consider proactive disclosure of other types of information the public body receives, holds, or creates.

The head of the public body may identify section 25 disclosure thresholds where the public body is more likely to receive information that could be about a risk of significant harm, or disclosure of which would clearly be in the public interest. For example, if a ministry's business relates to food regulation, then contaminated food sources would be a potential area where a section 25 disclosure may be required. If applicable, the head of the public body may create thresholds which illustrate when a risk has become a risk of significant harm.

## Notification

Ministries should see specific guidance below.

9. Ministries must, if practicable, notify the Corporate Information and Records Management Office (CIRMO) prior to disclosure.
10. Before disclosing information under section 25, the head of a public body must, if practicable, notify any third party to whom the information relates and the Information and Privacy Commissioner ("the Commissioner").
11. A notification is "practicable" if, amongst other considerations, it does not result in a delay that adversely affects the environment, the health or safety of the public or group of people, or the public interest. The assessment of what constitutes "practicable" must be made on a case by case basis.
12. Notice to an affected third party under section 25 is intentionally less formal due to the potential urgency of the circumstances. In many cases, a public body may initially give notice to the individual by telephone rather than writing.
13. When it is possible to give written notice before disclosing the information, the head of the public should use Letter 25-1: Section 25 Written Notification to the Third Party and the Commissioner (Appendix 1).

14. Should the head of the public body determine that it is not practicable to provide notification prior to a disclosure, or if verbal notification was provided, the head of the public body must provide written notification using Letter 25-1: Section 25 Written Notification to the Third Party and the Commissioner (Appendix 1) as soon as is practicable.
15. Written notification must contain the following:
  - a. That a disclosure is being made under section 25 of FOIPPA;
  - b. The name of the public body making the disclosure;
  - c. The information that will be disclosed;
  - d. How and when the information will be disclosed;
  - e. Who the information will be disclosed to;
  - f. The reason for the disclosure;
  - g. Who made the decision to disclose the information;
  - h. The contact information of someone within the public body who can answer any questions, including their name, job title and contact information, and;
  - i. Ministries must provide a copy to CIRMO.
16. The head of the public body is not required to wait for any prescribed period of time or for input after notifying the third party and/or the Commissioner, before disclosing information under section 25.

## Release of Information

Ministries should see specific guidance below.

17. The head of the public body must assess whether the disclosure of a specific record(s) is required in order to enhance the public's ability to understand the decisions and/or actions of the public body, or whether general disclosure of a summary of the relevant information contained in those records will satisfy the obligation to disclose.
18. The head of the public body must ensure that only the minimum amount of personal information necessary to mitigate the risk is disclosed.
19. The head of the public body must ensure the continual disclosure of new or updated information throughout the lifecycle of an evolving issue or situation, where required.

In most instances, the one-time release of information will satisfy the public body's section 25 obligations. In some instances however, there may be a need to maintain an ongoing release of information. This should be assessed based on the unique circumstances of a given disclosure. For example, if a disclosure is made under section 25 that notifies the public of a regional outbreak of the measles, it is possible that subsequent disclosures may be required in order to ensure the public is aware should the measles outbreak spread to additional jurisdictions.

20. The head of the public body must ensure that the information is released in a manner designed to reach the intended audience; i.e. the public, the affected group or the applicant.

21. The head of the public body must consider the appropriate channels that will ensure the information reaches the intended audience (e.g. existing external communication mediums, Government Communications and Public Engagement and/or mainstream media).
22. The head of the public body must approve any release of information under section 25.
23. The head of a public body must disclose information subject to subsection 25(1) even if there has been no formal access request under FOIPPA.
24. The head of a public body must ensure that there is no delay in releasing the information subject to section 25.

## Ministry-Specific Procedure

1. The head of the ministry or appropriate delegate must release information under section 25 pursuant to ministry-specific policy or, in the absence of ministry-specific policy, following proactive consultation with CIRMO.

Consultation with CIRMO is not required if it would result in a delay that could heighten the risk of harm to the environment, health or safety, or undermine the public interest.

2. The Ministry Privacy Officer (MPO), when Ministry circumstances necessitate, must develop, issue and maintain ministry-specific section 25 policies in collaboration with CIRMO.
3. Where Ministry-specific policy, created in accordance with the Privacy Management and Accountability Policy (PMAP), exists:
  - a) an employee who identifies record(s) and/or information believed to be subject to section 25, must follow the ministry-specific policy, as directed by their MPO;
  - b) the head of the public body, upon receiving notification from an employee, must, pursuant to their ministry-specific policy, determine whether there is a risk of significant harm or that, for any other reason, disclosure is clearly in the public interest.
4. Where Ministry-specific policy does not exist:
  - a) an employee who identifies record(s) and/or information believed to be subject to section 25, must immediately forward the record(s) and/or information to the MPO and the head of the public body for decision on release, without delay.
  - b) where consultation would not delay the disclosure of information that may affect the environment, health or safety of an individual or group of people, the head of the public body and/or the MPO must consult with CIRMO in order to determine whether there is a risk of significant harm or that, for any other reason, disclosure is clearly in the public interest.

## Ministry-Specific Examples:

The Ministry of Environment does not have a ministry-specific section 25 policy. Employees in the Fish and Wildlife department determine that there is a substantiated contamination of BC's freshwater fish supply. Following an evaluation of significance informed by international fishery standards and the advice of experts in the field, employees escalate the issue to the MPO and the Deputy Minister. The Deputy Minister contacts CIRMO for assistance in confirming that the disclosure to the public regarding the freshwater fish supply is appropriate under section 25. The Deputy Minister provides notice to the residents found to be living on the affected lakes and to the Commissioner using the Section 25 Written Notification to the Third Party and the Commissioner (Appendix 1). Public notice is disseminated through the appropriate channels (e.g. existing external communication mediums, Government Communications and Public Engagement and/or mainstream media).

The BC Corrections Branch within the Ministry of Public Safety and Solicitor General relies on ministry-specific policy and subject-specific risk assessment tools to evaluate whether or not an offender presents a significant risk that warrants a public interest disclosure under section 25. Before determining whether to disclose a high risk offender notice to the public under section 25, the head of the public body evaluates the release of a high risk offender against a set of criteria used to determine the likelihood or significance of harm.

## Linked Interpretation

### **Without delay**

Because of the urgency and/or significance of the circumstances that may warrant disclosure under section 25, the head of a public body must ensure that there is no delay that adversely affects the public interest. The head of the public body may require time to provide notice to a third party to whom the information relates and/or to the Commissioner, prior to making a disclosure under section 25. Ministries may require time to proactively consult with CIRMO. However, neither notice to the third party, the Commissioner, nor proactive consultation with CIRMO, should result in a delay that could heighten the risk of harm to the environment, health or safety, or undermine the public interest.

The head is not required to wait for any prescribed period after notifying the third party and the Commissioner before disclosing the information.

### **Information**

In section 25, the release of "information", as opposed to the release of "records", means that if information will provide the public, affected parties or applicant, enough detail to avoid harm, or to satisfy the public interest, then it may not be necessary to release the entire record. In many instances the obligation to disclose information will be satisfied by disclosing pertinent, relevant information from a record, without

necessitating the disclosure of the entire record in which the information is found. However, in some instances, disclosure of an entire record may be required.

Example:

- Releasing information about the location of a pesticide spill contained in a record, but not the detailed record containing scientific data, may be acceptable. However, if the scientific data could enhance the public's understanding of the pesticide spill or restore public confidence in the public body's actions regarding the pesticide spill, the public body may decide to disclose this record.

## **Harm**

The head of the public body must make a determination as to whether there is a "risk of significant harm." Each case will need to be assessed on the basis of its own facts, including the nature of the risk involved. Harm must be assessed in accordance with section 25(1)(a) and may be a factor to assess in accordance with section 25(1)(b).

Factors to be considered include, but are not limited to:

- the level of harm anticipated;
- the degree of risk that the harm will occur;
- the immediacy of the harm; and
- the right of the public to make informed choices about the risks to which they are exposed.

## **Risk**

"Risk" means the chance or possibility of danger, loss, injury or other adverse consequences. The assessment of whether a risk exists must be made on a case by case basis and include a process for assessing risk. Guidance by generally accepted international or national standards and/or expert advice may be needed to establish whether there is a real risk.

## **Significant**

The modifier "significant" ensures that the head makes a determination of the degree of harm that would result. The determination of what constitutes "significant harm" will be made on a case by case basis and should be determined based on a risk assessment informed by ministry-specific expertise. For example, what would significantly harm a small and vulnerable ecosystem might result in only minor damage to a larger and more robust ecosystem.

As with the assessment of risk, the determination of significant harm may require guidance by generally accepted international or national standards and/or expert advice to establish whether there is a real risk.



## **Harm to the environment**

"Harm to the environment" means damage or detriment to "external conditions affecting the growth of plants and animals" or other adverse consequences.

## **"Health"**

## **"Safety"**

Examples:

A risk of significant harm to the environment:

- The accidental release of a pesticide into a stream, which will affect fish and other aquatic life.

A risk of significant harm to the health of the public or a group of people:

- The presence of polio virus in the public drinking water.

A risk of significant harm to the safety of the public or a group of people:

- A natural gas leak which could cause an explosion in a populated area.

**"Clearly"** means "unmistakably"; more than a "possibility" or "likelihood" that disclosure is in the public interest.

When determining whether something is clearly in the public interest, the public body should consider that disclosure is required where a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest.

## **"Public interest"**

The public interest must speak to an interest of the greater good of a larger group of people. The public interest affects, or is in the interest of, a significant number of people and is something that transcends the individual or private interest. The public interest can only be determined after analyzing the facts and circumstances of a particular case. In determining what is clearly in the public interest, disclosure is required where a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest. That an individual, group or the public at large, expresses a mere curiosity in a topic does not necessarily constitute something being in the public interest.

A balancing of the public interest disclosure versus non-disclosure will be part of the case-by-case assessment of public interest.

## **Before Disclosing**

The template notice Letter 25-1: Section 25 Written Notification to the Third Party and the Commissioner as soon as is practicable (Appendix 1), must, if practicable, be given to affected third parties and the Commissioner before information is released under section 25. It is not necessary to wait for a response to be received from such third party notices before the information is released.

The time limits regarding notice or consultation response and decision on access, which are set out in sections 23 and 24, do not apply to section 25.

It is possible that notification under section 25(3) may occur via different mediums (e.g. the telephone) in order to expedite the third party and the Commissioner's receipt of the information.

## **If practicable**

The obligation of when to provide prior notification to third parties and the Commissioner needs to be balanced against the obligation to disclose information without delay. The head must ensure that there is no delay adversely affecting the public interest.

There may be additional considerations required when determining whether or not prior notification is practicable, these should include:

- The immediacy of the anticipated harm;
- Would notification reasonably be expected to threaten, or result in immediate and grave harm to the safety or mental or physical health of a person under section 19 of the Act;
- Would notification unreasonably invade the personal privacy of a third party under section 22 of the Act.

## **Any third party to whom the information relates**

"Third party"[correct link to FOIPPA]

## **Notice of disclosure in the prescribed form**

The language to provide the notice required by this subsection is found in Letter 25-1: Section 25 Written Notification to the Third Party and the Commissioner as soon as is practicable (Appendix 1).

## **The last known address of the third party**

When providing required notice, the last known address for the third party found in the records of the public body. There is no requirement that the public body undertake an extensive search in external sources to verify a more current address.

# Appendices

## LETTERS:

Letter 25-1: Section 25 Written Notification to the Third Party and the Commissioner as soon as is practicable (Appendix 1), prepared in accordance with Schedule 2 of the FOIPPA Regulation

**The section 25 entry in the FOIPPA Policy & Procedure Manual was last updated: July 2017**

Appendix 1: 25-1

Section 25 Written Notification to the Third Party and the Commissioner, prepared in accordance with Schedule 2 of the FOIPPA Regulation.

Date

Third party's name and address

**Re: *Freedom of Information and Protection of Privacy Act* Public Interest Disclosure**

Dear [third party's name]:

[***name of public body***] has disclosed information that relates to you in compliance with the requirements of section 25 of the *Freedom of Information and Protection of Privacy Act* ("Act"), which requires a public body to disclose, without delay, information:

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

The information disclosed is [***describe the information***].

The information was disclosed [***describe when and how the information was disclosed***].

The information was disclosed to [***tick the appropriate box and provide the information in the brackets unless doing so could reasonably be expected to threaten, or result in immediate and grave harm to the safety or mental or physical health of a person under section 19 of the Act, or unreasonably invade the personal privacy of a third party under section 22 of the Act***]

☐ the public.

☐ an affected group [***describe the affected group***].

☐ an applicant [***identify the applicant***].

The reason for disclosure of the information is [***explain the reason for which the information was disclosed***].

The decision to disclose this information was made by [***name, job title***].

Should you have any questions about the disclosure of this information, please contact [***name, job title, contact information***].

Signed,

***[name, job title]***

*cc: Office of the Information and Privacy Commissioner*

*Chief Records Officer [ministry public bodies only]*