

“Managing the Public’s Information While Ensuring Transparency—The Need for Modern Information Management and Records-Creation Legislation in BC”

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I’d like to thank Darrell Evans and everyone else involved in the Right to Know Coalition for the invitation to be here today. This is the second annual BC Info Summit marking Right to Know Week and it’s clear that this event is fast becoming a fixture in the right to know movement in BC. This is an invaluable opportunity to highlight pressing issues in access to information and to learn from each other’s experiences and I offer my congratulations as well as thanks to everyone involved in organizing today’s conference.

I’d like to thank the minister responsible, the Honourable Olga Ilich, for her remarks this morning, including the welcome news that Bill 25 will be re-introduced this autumn. I’d also like to acknowledge Colin Gabelmann, who spoke so forcefully and thoughtfully this morning, and Barry Jones. The importance of their role in creating and passing our access law cannot be overstated. Without him there would be no access law in BC and we all owe him a real debt of gratitude. Murray Rankin also deserves thanks and recognition for his role in the law’s creation and his work over the years in the cause of access and transparency in Canada generally. Also, I would like to acknowledge Blair Lekstrom MLA, who chaired the last all-party committee to review the legislation and who continues to show courage and leadership in this area.

BC’s *Freedom of Information and Protection of Privacy Act* came into force 13 years ago yesterday and, looking back over the years, it’s clear that many of the threats facing the public’s right to know haven’t changed much. For one thing, government cuts in funding for FOI are nothing new—almost 10 years ago the NDP administration cut access and privacy resources within government ministries and the present administration did the same thing a few years ago.

Over the years I’ve expressed concern several times about delays in responses to access requests, notably in the case of government ministries. Before turning to the advertised topic—there’s no truth in advertising, after all—I’d like to spend a few minutes dealing with the delay issue.

At this same event last year, I announced a new policy for how my office would deal with so-called deemed refusals, namely failures by public bodies to respond to access requests when required. That policy rolled out on November 1 last year and, over the last year, we have seen a 92% increase in the number of requests for extension of the time to respond—and in over 50% of those, ministries cite lack of resources as

a reason for seeking the extension. This sharp increase in extension requested was as predicted. The goal of the new policy after all was to sharply reduce breaches of FIPPA through failures to respond on time by persuading public bodies to seek time extensions where warranted, as FIPPA contemplates and indeed requires.

Of course, as was also predicted, our own workload has increased as a result, since we are dealing with a much higher number of extension requests. And public bodies, notably ministries, continue to struggle with timelines. Data from the provincial government's own Corporate Request Tracking System show that the average response time in provincial government ministries for requests for general information during fiscal 06/07 was a troubling 53 business days, although the default statutory time limit is 30 business days. So the average response time is beyond the overall goal set by the law. It is also troubling that the 10-year average response time for individuals seeking their own personal information is 70 business days, although I note that the fiscal 06/07 average response time for personal information requests was 29 business days, a clear improvement that must continue.

And response times for requests from interest groups and political parties are even more troubling. According to the government's 10-year trend report (fiscal 96/97 to fiscal 05/06) the average response time for interest groups was 65 business days and for political parties 63 business days.

Now, I have some understanding of the difficulties an organization can face trying to serve the public in a timely fashion. I have personally struggled to issue my own orders and decisions in a timely fashion and success in doing that has been elusive overall. Similarly, my office has from time to time, largely because of budget cuts and shortfalls, struggled to investigate and resolve matters in good time. (I should pause here to say that we are now, owing to a variety of factors, in very good shape when it comes to opening and assigning files to investigators in a timely way, and our numbers in terms of turnaround times on investigations are very solid.)

The fact remains, though, that there is ongoing cause for concern about the timeliness of government responses to requests for access to information. As I acknowledged in announcing our deemed refusal policy last year, ministry directors and managers of information and privacy, and their staff, do excellent work with what they have, but they don't have enough. I expect that these days they feel like the meat in the sandwich, caught between our deemed refusal policy and their own lack of resources.

More resources are needed. That much is clear. So this fall I'm approaching the Assistant Deputy Ministers for corporate services in each ministry and calling on them to budget more for the access and privacy functions in their ministry, starting with fiscal 08-09. If these resources aren't forthcoming, I'll consider other options, ranging from formal investigation to annual public report cards, ministry by ministry, on access performance.

Let me turn—at last, you’re probably thinking—to the topic I was invited to address, the duty to create records.

A cornerstone of accountable government is good information management. This has been said time and again by many people for many years. I’ve been saying it for almost eight years. Sound information management is critical to accountable government for obvious reasons. Simply put, the effectiveness of the public’s right of access to information is determined by the quality of a government’s information management. If governments are to be held accountable and the public are to have meaningful rights of access to government information, information must be accurately and securely preserved to ensure there is a record of what has been done.

Without reliable recorded evidence, governments can’t demonstrate that they’ve used public resources responsibly or that they’ve performed their duties and used their powers lawfully. In my mind, information management means the systematic control and organization of, access to, and protection of, recorded information throughout its life cycle, from creation, through its uses, and down to its permanent retention or destruction. Without effective information management of this kind, the public’s right of access to information, and the public’s ability to hold public institutions to account, is seriously threatened.

Records management theory and practice focus on information that can loosely be described as business records. Like other access laws, FIPPA extends the challenges of traditional records management to all paper, audio, visual and electronic information in the custody and control of any public body, ranging from an obscure inter-office memo about dog catching to Cabinet submissions about proposed legislation. Different media carry different challenges to information management in principle and practice. In principle, should email be treated the same as paper records? If not, why not, and if so, how?

Records management is also bedevilled by the expanding reliance on electronic records and databases. The sheer volume, and variety, of electronic records makes it difficult to catalogue, organize and preserve them in a way that keeps them accessible. And this isn’t to mention the difficulty in deciding which of many versions of an electronic record is the authentic original. These problems are exacerbated in the electronic realm as hardware, software and storage media become obsolete over time, often leaving behind records that can no longer be read, making once-valuable information worthless. Almost eight years ago it was reported that the US National Archives had an entire warehouse full of obsolete equipment, which it was preserving in the hope that it could be used some day to read information elsewhere in the archives that is recorded in obsolete formats or media.

There are other challenges. One example is the impending sea-change in our public service. Demographics will see massive numbers of retirements in the coming decades and this looming loss of human corporate memory makes modern information management all the more critical to government.

Another example is the trend towards function-based, cross-boundary government, which has many attractions but which makes information management both complex and crucial across old and new bureaucratic boundaries and within and between functions and services.

This means that more than ever we need information management laws and standards that are designed to maximize, among other things, completeness, accuracy, integrity and preservation of information—as well as timely, accurate and complete access to information. These objectives are desirable both to improve the quality of decision-making and services, but also to promote accountability through access to information.

But new laws and resources to implement them can only go so far. One obvious characteristic of information management rules and practices is that they apply only after records have been created. Some US states have laws that prescribe certain decisions, actions or deliberations of government that must be documented. In British Columbia, some statutes require specified actions or decisions to be documented, but there is no overarching legal duty to document government actions or decisions. This is unacceptable from the perspectives of both good government *and* accountable government.

Let me give you an example of an existing, specific duty to create a record and share with you some news about it. Section 68 of the *Freedom of Information and Protection of Privacy Act* says that the minister responsible for FIPPA “must prepare an annual report on its administration and lay the report before the Legislative Assembly as soon as possible.”

I am told that the last time a minister responsible for FIPPA actually laid an annual report before the Legislative Assembly was in June of 1995, over ten years ago. Since then, ministers in different administrations, both NDP and Liberal, have not reported under s. 68. Other provinces do this—just recently, the minister responsible for Alberta’s access law tabled his latest very helpful, and informative, report.

Government officials have pointed out to me that the government publishes information and statistics on administration of the Act through websites and annual reports for various ministries. Now, information published in various ministry reports, and data on websites, are all laudable things, but they are diffuse, unfocussed and not as readily accessible as a ministerial report under s. 68. The minister’s report is a valuable mechanism for transparency and accountability in the government’s administration of FIPPA. An annual report to legislators holds the minister, and thus the government as a whole, to account for the government’s actions in implementing the law. Among other things, these reports could and should address issues such as resourcing, delays in responses and other practical matters involved in administration of the law. Such a report also offers government an opportunity, I should underscore, to communicate successes in FIPPA’s administration. There is, in other words, an upside for government as well.

I recently raised this issue with the minister responsible, the Honourable Olga Ilich, just last month. To be fair, this is the first time I've raised the point with any minister since I became commissioner eight years ago. And the present minister is still quite newly arrived in her very broad portfolio of responsibilities. I certainly don't fault her personally for the fact that successive ministers, both NDP and Liberal, have not reported to their fellow legislators under s.68. To the contrary, I am happy to say that, as a result of my discussions with the minister, government officials are now reviewing present practice and I am committed to working with them to ensure the s. 68 report obligation is met, in letter and spirit.

Narrow legal duties to create records such as that found in s. 68 of FIPPA are not, as I said a moment ago, enough. A modern information management framework must include a legal duty for officials to record specified decisions, deliberations and actions. And this duty to create records must be supplemented by government-wide, consistently applied, information management rules and standards that have a legislative underpinning and adequate resources for implementation. We also need an adaptable, scaleable government-wide information architecture and e-records directory. An accountability framework for information management must be created for each government institution, with a coordinated and preferably centralized command structure for oversight and accountability within and across departments.

Individual civil servants should, as well, be responsible for information management tasks within their own employment duties, with relevant requirements being made a condition of employment and of employee appraisal. Information management should form part of executive level compensation assessment and information management performance should be an institutional performance standard and subject to regular appraisal.

I have spoken on a number of occasions over the last six years about the need to ensure that the provincial government has modern, comprehensive information management systems in place. For many this is not a top of list issue, I know. And it is not an issue on which elections are fought—you're not going to hear politicians campaigning on the promise of better government records management. Certainly not in these days of health care concern and law and order fears. But as mundane or even arcane as it may seem, this is of critical importance. I therefore once again urge the government to ensure that its information management framework meets the challenges I've mentioned. I know work is under way within government on policies and procedures, including dealing with electronic records. But we need a modern legislative framework for this work and we need to ensure proper resourcing for the implementation of sound records management rules.

Information is the oxygen of democracy and also liberty. Our present access to information law is not perfect—none is, of course—but we've come a long way from the days when public officials meted information out to us on sufferance. Yet without good information management, without knowing that records exist because public servants have to create them, and without knowing where to find them, there's not much point

having a right to access information you can't find. Governments face many demands for resources and have many pressing challenges, but the unsexy issues of records creation and information management require immediate action.

Thank you very much.

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