



BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

September 2, 2010

Elizabeth Denham
Information and Privacy Commissioner
PO Box 9038, Stn. Prov. Govt.
Victoria, BC
V8W 9A4

BY FAX: 250-387-1696

Re: Failure/refusal of the Office of the Premier to release records re. HST

Dear Commissioner,

I am writing to you after discovering that the response of 'no responsive records' from the Office of Premier to a request for records we submitted was false.

On September 8, 2009 we submitted a request for:

Copies of all correspondence, briefing notes, background papers, lists of phone calls and meetings, agendas and minutes for any phone calls or meetings with either the federal or Ontario governments where the creation of a Harmonized Sales Tax in BC was discussed. This request relates to records between January 1, 2009 and May 12, 2009.

We received a response of "No responsive records" on October 20, 2009, but we discovered earlier today that various media outlets have received HST related documents including briefing notes for a First Ministers' Meeting on January 16-17, 2009. The briefing note can be found at:

<http://www.cbc.ca/bc/news/bc-100901-hst-briefing-notes.pdf>

FIPA has already filed a complaint about this particular request with your office (OIPC File F09-40332). What we are concerned about is that this appears to be part of a disturbing trend identified in your last report (pp.16-17) where an increasing number of responses are returning with 'no responsive records'. We have directly experienced similar problems with other requests, and we have heard a number of other requesters encountering similar difficulties.

Because the system requires confidence in public bodies carrying out adequate searches for requested records, cases like this one cast a pall over the overall functioning of FOI in this province.

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In your report last month, you stated that you would "...carefully monitor the outcome of access requests in fiscal year 2011 to ensure that the recent increase in "no responses" and "no records released" does not continue."

It appears the problem is much more serious than you initially supposed. Therefore, I am asking you to exercise your powers under s.42(1) of the *Freedom of Information and Protection of Privacy Act* to carry out an investigation into the increased use by the provincial government of 'no responsive records' in reply to FOI requests.

I look forward to your response and to your investigation of this very disturbing trend. We would be pleased to provide you and your office with whatever additional information and assistance we can about this disturbing problem.

Sincerely,

Vincent Gogolek
Director, Policy and Communications