



BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

May 26, 2010

Office of the Information and Privacy
Commissioner for British Columbia
3rd Floor — 756 Fort Street
Victoria, BC V8W 1H2

Dear Commissioner:

Request for Investigation

I am writing to ask you to conduct an investigation under s.42 of the *Freedom of Information and Protection of Privacy Act* regarding the government's decision to add instructions on the handling of FOI requests in its "Shareholder's Letter of Expectations" to BC Crown corporations.

A template of this letter can be found at the following URL on the Ministry of Finance website: http://www.gov.bc.ca/caro/attachments/sle_template_04_2010.pdf

The specific letters to each Crown Corporation can be found at the following URL, also on the Ministry's website: <http://www.gov.bc.ca/caro/agencies/index.html>

The specific phrase, which has been added this year, gives us a great deal of concern about the increased likelihood of delay and possibly direct political interference with FOI requests. It is set out below:

"The Shareholder also sets broad policy direction to ensure [the Corporation's] operation and performance are consistent with government's strategic priorities and Fiscal Plan; as such [the Corporation] will:

...ensure the Shareholder is advised in advance of the release of any information requests by [the Corporation] under *the Freedom of Information and Protection of Privacy Act*,"

This phrase did not appear in past editions of the SEL, and the decision to include this direction in a document setting out "key actions required and high-level performance expectations of Crown Agency and Government" is worrisome to say the least.

What is the purpose of this clause?

If the information were being provided to the "Shareholder" purely for the purpose of information, this clause would be useless as well as innocuous. The decision to release would be made by the Crown Corporation as public body, and the "Shareholder" would just receive notice of that fact, and would do nothing with it.

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The wording of this clause makes it clear that something much more intrusive is intended.

First, there is no indication of where exactly this information is supposed to go. Does it go to the office of the responsible Minister who signed the SEL on behalf of the Shareholder? Does it go to the central FOI shop in the Ministry of Citizens' Services? Does it go to the Public Affairs Bureau? The SEL does not make this clear, but it is obvious that none of the three possible destinations should play any role whatsoever in the FOI process.

Second, the clause requires the Crown corporation to advise the "Shareholder" in advance of the release of any information under the Act. This would require every FOI response involving release of information to be sent to the "Shareholder" before release. Presumably this would involve the recipient "Shareholder" (whoever that turns out to be) doing something with the information. It appears that it would inevitably result in delay for the requester, if not actual interference with the response to the request. Your office has in the past repeatedly cited lengthy sign-off processes and the involvement of communications staff in FOI administration for improper and chronic delays in responding to requesters.

Third, the forwarding of FOI responses, in advance, to the "Shareholder" is practically an invitation to interfere in the process. For a cautionary example we just have to look to Ottawa where your counterpart is undertaking investigations of ministerial staff for possible violation of the *Access to Information Act*. This came after ATI staff were ordered to "unrelease" records which they had determined were releasable in their entirety.

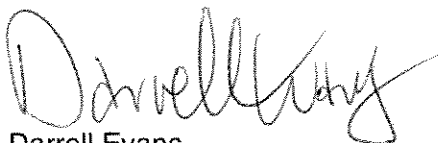
Why an investigation is necessary

At a time where delay and interference in FOI are endemic problems, it is discouraging to say the least that the government of British Columbia has taken the unprecedented step of sending instructions to Crown Corporations which appear to institutionalize practices which have already been criticized by your office. This is not the message public bodies should be receiving from the government of this province.

It is vital that your office conduct an investigation into the rationale behind this disturbing new initiative to increase central control of information – particularly into its effects on the achievement of the purposes of the *Act* set out in s.2, and on the duty to assist requesters set out in s.6.

As always, we would be pleased to assist if you have any questions or concerns.

Sincerely yours,



Darrell Evans
Executive Director
B.C. Freedom of Information
and Privacy Association (FIPA)