



May 18, 2016

Elizabeth Denham
Information and Privacy Commissioner
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Re: BC Government posting individual FOI requests

Dear Commissioner,

We are writing to you further to the investigation you are conducting into “the disclosure of details of active freedom of information requests on the Open Information website.”

There are a number of issues that you may wish to examine in terms of “possible implications, including any unintended consequences, of publicly disclosing a description of an applicant’s request for records before they have received those records.”

The BC government’s announcement, which was apparently not discussed with you or your office prior to release, states that the government intends to begin posting summaries of active FOI requests on its Open Information website beginning this Friday, May 20. Incoming requests will be added to the site on a weekly basis.¹

No one outside of government seems to have requested or recommended this initiative. In fact the government itself did not call for it in its submissions to the Special Legislative Committee reviewing the *Freedom of Information and Protection of Privacy Act (FIPPA)*, nor did it bring these plans to the attention of your office before foisting it on an unsuspecting public.

In addition to its surprising nature, there are a number of other issues raised by this initiative. As you yourself noted in your investigative report on a similar scheme brought in by BC Ferries, “...the simultaneous disclosure practice...frustrates the purposes of *FIPPA*. This is because it may deter individuals, particularly journalists, from making access requests. Public bodies become less, not more, accountable when journalists and others are deterred from making access requests.”²

The government’s press release claims that public identification of requests will somehow make the government more accountable. Clearly that is not the case. The design of this measure does more to expose requesters to scrutiny—and discourage them from making request in the first place—than it does to hold public bodies accountable.

As you stated in your BC Ferries investigation:

“The purpose of identifying the individual applicant is not clear and may not be permitted under s. 33 of FIPPA. While the type of applicant may be of interest for statistical

¹ <https://news.gov.bc.ca/releases/2016FIN0017-000746>

² Investigation Report F11-02, para 153.

purposes, it is not essential that either the name or type of applicant be included in a disclosure log.”

The government is also claiming that posting requests online (before providing any records whatsoever to the requester) will somehow improve service to requesters, as they will be able to see the stage their request has reached. However this information is already typically available to requesters who call or email the FOI official handling their request.

Furthermore, if the government insisted on putting this information online for the convenience of requesters, they could identify requests simply by the file number known to both the government and the requester.

The only possible problem that would conceivably be mitigated by the government’s proposed exposure of FOI requests would be a reduction in duplicate requests, in cases where people might hold off after seeing that a similar request is already underway. The government has provided no statistics or estimate of how many requests, if any, would fall into this category.

There may also be issues of legal privilege raised by this ill-considered scheme, in the context of requests made by lawyers or their clients. This could involve litigation privilege or legal privilege depending on the request and the context.

There would also likely be situations where a requester might be identifiable based on the nature of their request. The information provided by the requester for the purpose of allowing their request to be processed would now be used and disclosed for the unrelated purpose of publishing their request and its status. As you noted in your earlier report, this may be a violation of s.33 of the *Act*.

It is more than a little disturbing to see the government undertaking such an initiative in the same week that the Special Legislative Committee reviewing the *Act* recommended amendments to ensure the anonymity of FOI requesters.

As the Special Committee put it in their unanimous report, rejecting the government’s view that no changes were necessary, “The right to anonymity during the FOI process should be entrenched in legislation, as it is in the Newfoundland and Labrador statute, in order to properly protect the name and type of applicant.”

For all of these reasons we urge you to denounce this regressive action in the strongest possible terms, and urge the Minister not to proceed.

If you have any questions, or require any additional information, we would be pleased to assist.

Sincerely yours,



Vincent Gogolek
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BC Freedom of Information
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