



August 8, 2014

Office of the Information and  
Privacy Commissioner  
PO Box 9038  
4th Floor — 947 Fort Street  
Victoria, BC V8W 9A4

BY E Mail: [info@oipc.bc.ca](mailto:info@oipc.bc.ca)

Dear Commissioner:

**RE: FIPPA request for investigation into failure to release information about tailings pond contrary to s.25**

I am writing to ask you to conduct an investigation under s.42 of the *Freedom of Information and Protection of Privacy Act* (“the Act”) into the conduct of the government of British Columbia regarding the Government’s failure to release information under its custody or control related to the Mount Polley tailings pond collapse last week. It appears that the government had information about the dangerous conditions at that location. If that is so, the government was in breach of its duty under s.25 of the Act.

That section requires a public body to release information “without delay” and without a FOI request where there is “...a risk of significant harm to the environment or to the health or safety of the public or a group of people”. That risk is now reality for the people of the area.

It is troubling to have to write to you about a public body failing in its duty to release information without a FOI request so soon after you dealt with our last complaint about this issue.

Less than a year ago you handed down a report on the failure of public bodies to meet their legal obligation to release information under s.25, in response to a very detailed complaint we filed with the Environmental Law Clinic at UVic.

<https://www.oipc.bc.ca/investigation-reports/1588>

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Regrettably, there is considerable similarity between the collapse of the Mount Polley tailings pond and the collapse of the Testalinden Dam, where you found the BC government had failed to carry out its duty to release information to the public about the danger:

*“I find that when FIPPA came into force in 1993, the Ministry had an obligation under ss. 25(1)(a) and (b) to disclose information about the compromised state of the Testalinden Dam to residents downstream of the dam along the Osoyoos-Oliver Highway because there was an urgent and compelling need for public disclosure of this information. I also find that the Ministry did not meet this obligation.” (p.16)*

Given the circumstances in this case, we believe it is important to determine not just whether the BC government breached its duty to release information related to this situation, but also to determine whether the BC government has done anything to implement the recommendations in your Investigation Report of last December.

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

Sincerely yours,

Vincent Gogolek  
Executive Director  
B.C. Freedom of Information  
and Privacy Association (FIPA)