



January 19, 2015

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

Dear Commissioner,

**RE: BC Government refusal to post reports**

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. The conduct in question is the Government's claim that it is somehow prevented from posting at least two embarrassing reports because of "reputational interests" of various public servants or public figures.

The reports are the Mingay report on irregularities at Kwantlen Polytechnic University (released June 2014) and the McNeil Report on the firing of various Ministry of Health employees and contractors which was released on December 19, 2014.

I would provide you with links to the official versions of these two reports, however, the BC government has decided not to post either of these reports on its website. And that is the source of our request for an investigation.

The BC government claims its duty under the *Freedom of Information and Protection of Privacy Act* to prevent personal information from being accessed from outside Canada prevents it from posting either of these reports, as they contain personal information.

This remarkable position was set out in a BC government e mail quoting Assistant Deputy Attorney General. It is was quoted in The Tyee, and is reproduced below for your information.

"The report contains personal information subject to the FOIPP Act. If the report were posted online, it could be accessed outside of Canada. The applicable provision in this case, section 33.2, only permits the disclosure of personal information within Canada. To meet our obligations under the act, we cannot make the report available on a government server. The same was true of the Mingay report."

<http://thetyee.ca/News/2015/01/08/Adrian-Dix-Full-Health-Firings/>

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This is an interesting position to say the least. If this is the proper interpretation of the law, the posting of any personal information on a public body's website is a violation of the laws of the province.

The Government of British Columbia's own Open Information Data Policy contains no mention whatsoever for this remarkable new policy.

[http://www.cio.gov.bc.ca/local/cio/kis/pdfs/open\\_data.pdf](http://www.cio.gov.bc.ca/local/cio/kis/pdfs/open_data.pdf)

The Government's Open Data and Open Information Policy sets out its "Proactive Disclosure Exemption Criteria." in Appendix A.

These criteria mirror exceptions contained in the Act, and which presumably would have already been applied by the government's FOI staff before the records are released to the requester. The criteria are set out below, with the relevant exception section in FIPPA in brackets:

*Responses to General FOI Requests will be considered for exemption from Proactive Disclosure and posting on the Open Information Website if they contain:*

- *Personal Information or information that could lead to the identification of the Applicant or other persons; [s.22(1)]*
- *information that may harm relations with a First Nation; [s.16(1)(a)(iii)]*
- *information that may harm relations with another government; [s.16(1)(a)]*
- *information that may harm a third party's business interests; [s.21(1)] or,*
- *information that is not suitable for Proactive Disclosure based on a formal risk assessment that disclosure to the public may threaten the safety of a person or harm the security of any property or system. [s.15(1)(f)(l)]*

As you can see, there is no mention whatsoever of Part 3 of the Act or s.33.2. It is not clear that the claimed exception for personal information under s.22 fits this description.

The government's policy states that the exemption from posting is to be used "in limited circumstances".

*Information Access Operations, Ministry of Labour, Citizens' Services and Open Government may recommend an exemption from Proactive Disclosure in limited circumstances where one or more of the above criteria are met. The deputy minister, head or designate, of the responsible ministry must approve any recommended exemption.*

A review of the government's own FOIPP Act Policy and Procedures Manual for policy under s.33.2 contains nothing even vaguely related to the claims being made in the government e mail. There is no discussion whatsoever about not posting information on websites which may contain personal information, nor anything about FOI responses. The information relates to release of personal information by government directly to authorities outside Canada, which is the commonly understood purpose of the section.

[http://www.cio.gov.bc.ca/cio/priv\\_leg/manual/sec30\\_39/sec33-2.page?](http://www.cio.gov.bc.ca/cio/priv_leg/manual/sec30_39/sec33-2.page?)

Since the BC government has begun acting on this new interpretation on what it is able to post on its website, it has posted only press releases and backgrounders related to these reports. Although the actual reports are usually circulated as hard copies or pdf documents to the media and others who directly request them from the government (and are posted elsewhere as a result), the BC government only posts a press release and backgrounder giving its interpretation of the report and its contents.

If the government is correct in its interpretation of the law, then large amounts of posted information would appear to fall within the scope of s.33.2. This would include some of your own investigation reports, which sometimes identify individuals in contexts similar to those of the Mingay or McNeil reports.

<https://www.oipc.bc.ca/investigation-reports/1510>

<https://www.oipc.bc.ca/investigation-reports/1559>

Therefore we urge you to review this matter as soon as possible.

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

Sincerely yours,

Vincent Gogolek  
Executive Director  
BC FIPA