



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

July 30, 2015

Vincent Gogolek
Executive Director
BC Freedom of Information and Privacy Association
#103 - 1093 West Broadway
VANCOUVER BC V6H 1E2

Dear Vincent Gogolek:

**Re: Publishing investigation reports online;
OIPC File F15-60274**

On January 19, 2015, you wrote to this office requesting that we conduct an investigation into the government's position that it could not post the Mingay Report and the McNeil Report online due to purported restrictions in the *Freedom of Information and Protection of Privacy Act* (FIPPA).

The government has stated that the applicable disclosure provision for these reports is s. 33.2 of FIPPA, which authorizes disclosure only within Canada. You have argued that this is a new and unsubstantiated interpretation of FIPPA. You also contend that this interpretation contrasts with other government disclosures, such as the proactive disclosure of FOI responses on the Open Information website and the BC Lottery Corporation's policy of posting the personal information of lottery winners online.

I certainly understand your concern that failing to post these reports online may well undermine their transparency.

Having considered the positions of FIPA and the government, I have concluded that while findings of statutory investigations may be disclosed pursuant to s. 33.1(1)(c) or s. 33.1(1)(c.1), these authorities do not extend to non-statutory investigation reports. Moreover, I am unable to identify any other authority under s. 33.1(1) that would allow the government to post non-statutory investigation reports online.

It appears, however, that the government could post these reports online pursuant to a minister's order under s. 33.1(3) or s. 33.3. The Minister has issued several orders under s. 33.1(3). These include Ministerial Order M351, which authorized the online publication of a report entitled "A College Divided: Report of the Fact Finder on the BC College of Teachers". The Minister also issued an order under s. 33.1(3) in relation to the McNeil Report, but that order only authorized a summary to be published.

The absence of a more readily available authority for the online publication of non-statutory reports within s. 33.1(1) appears to be a shortcoming in the Act—one that has come to light given the recent trend to appoint non-statutory investigators from outside government to look into matters of public concern.

This matter can, and the Commissioner believes should, be put to the Special Committee reviewing FIPPA, which was struck in May 2015, so that the Legislature can assess whether and how to authorize the online publication of personal information contained in such reports. This would be consistent with the broad purposes of FIPPA and in particular the need to hold government accountable in s. 2. Our Office encourages stakeholders to bring any matters of concern of this nature to the attention of the Special Committee.

Sincerely,



Nathan Elliot
Policy Analyst