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AUDIT & COMPLIANCE REPORT F18-01

WorkSafeBC Management of access and privacy requests and complaints

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January 17, 2018

CanLII Cite: 2018 BCIPC 05
Quicklaw Cite: [2018] B.C.I.P.C.D. No. 05

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COMMISSIONER'S MESSAGE

WorkSafeBC collects highly sensitive personal information in many ways, including through employee insurance claims, reports of unsafe working conditions, or during an incident investigation. In the case of workplace injuries that require medical attention, the incident must be reported to WorkSafeBC. Employees cannot opt out and so must trust the agency to appropriately handle their personal information.

I chose to audit WorkSafeBC because I wanted to look closely at how WorkSafeBC manages the personal information in its care. My office also receives a comparatively high number and variety of access and privacy related complaints about this agency.

For this report, my Audit and Compliance team examined WorkSafeBC's access to information and privacy management policies and responses to requests and complaints. I am pleased to report that this is an example of a good news story. Overall, the audit revealed that WorkSafeBC has developed a number of practices that indicate a successful information and privacy program.

In particular, WorkSafeBC has a secure online portal where individuals can view their own claims information. The portal has likely reduced the number of access requests under FIPPA, while providing information expediently. This approach works well and may be a useful resource for other public bodies.

Additionally, we found that WorkSafeBC typically responds to straightforward requests the same day, rather than adding them to a queue to be processed. This early resolution tactic resulted in a response to 22% of requests within two business days, and 31% of requests within one week.

There is still room for improvement. We found that documentation was missing in a number of files. Implementation of an electronic case management system would assist WorkSafeBC in properly managing requests for records and complaints.

This report makes four recommendations to help WorkSafeBC fine tune and improve current practices. I hope that other public bodies will learn from this report, as WorkSafeBC has established tools and practices to achieve compliance with statutory timelines 94% of the time. This is encouraging, and though FIPPA requires 100% compliance, it is much higher than other timeliness reports across government.

My office will be following up in three months' time to assess WorkSafeBC's progress with the implementation of these recommendations.

ORIGINAL SIGNED BY

Drew McArthur
Acting Information and Privacy Commissioner for BC

EXECUTIVE SUMMARY

WorkSafeBC is a provincial agency mandated to oversee a no-fault insurance system for the workplace and regulate workplace health and safety in BC.

Under the authority of s. 42 of the *Freedom of Information and Protection of Privacy Act* (FIPPA), the Office of the Information and Privacy Commissioner (OIPC) conducted an audit of WorkSafeBC's

1. access to information policies and privacy management program policies; and
2. responses to requests and complaints.

The Commissioner ordered this audit because the OIPC received a higher number and variety of both access and privacy related complaints related to WorkSafeBC compared to many other public bodies.

The key objective of this audit was to determine the extent to which WorkSafeBC's processes comply with legislation and OIPC guidelines, and to provide recommendations, where needed, to improve WorkSafeBC's policies and practices.

The scope of this audit included:

1. Review of WorkSafeBC's policies and practices on access to information and the protection of privacy;
2. Interviews with the Manager of Access to Information and Privacy;
3. Examination of a random sample of the requests for records received by WorkSafeBC between 2014 and 2016 (300);
4. Examination of a random sample of the privacy complaints received by WorkSafeBC between 2014 and 2016 (46); and
5. Examination of OIPC complaints and requests for review initiated during the same time frame (50 files).

OIPC auditors built assessment criteria and tools based on FIPPA obligations, OIPC guidance documents and orders, and WorkSafeBC policies relating to the handling of access-related requests and complaints.

A large portion of the personal information managed by WorkSafeBC relates to workplace accident claims. WorkSafeBC has streamlined the process for individuals to access records containing their own personal information through an online platform that is set up when an individual initiates an injury claim. This platform allows individuals the ability to access their information without making a request for records and, thereby, likely reduces the number of requests for records. The individual can still request a copy of the records from WorkSafeBC.

WorkSafeBC typically processes requests for records from different applicants, which include requests for incident investigation reports, inspection reports or other claim-related information from injured workers, family members, insurance companies, or government.

Auditors reviewed a sample of request for records files and found that WorkSafeBC is generally in compliance with FIPPA with regard to how it manages requests for records. Specifically, within the sample of files, auditors found that WorkSafeBC:

- Conducted an adequate search 99% of the time;
- Rarely charged fees (11% of sampled files);
- Met legislated timelines for responding to requests for records 94% of the time;
- Responded to one-third of requests within one week after receiving the request;
- Found records responsive to 83% of requests, and provided 99.6% of those records to applicants;
- Provided appropriate explanations to applicants when they did not find responsive records;
- Applied very minimal severing and released over half (58%) of records with no severing.

Auditors also found areas where WorkSafeBC can improve their request for records and complaint management processes:

- Documentation was missing in 19% of request for records files;
- WorkSafeBC did not track dates showing when fee invoices were paid; and
- WorkSafeBC took longer than 30 business days to respond to 31% of complaint files and did not provide a response to 11% of complainants.

To address these issues and help WorkSafeBC to achieve full compliance with FIPPA, this report offers four recommendations:

1. WorkSafeBC should fully document all requests for records.
2. WorkSafeBC should consider implementing an electronic case management system to manage requests for records and complaints, and associated documentation.
3. WorkSafeBC should document fee payment dates to enable proper compliance with timelines allowed by FIPPA. (Note: WorkSafeBC implemented this recommendation in full prior to publication of this report.)
4. WorkSafeBC should respond to all access requests within the timelines allowed by FIPPA.

1 INTRODUCTION

The Office of the Information and Privacy Commissioner for BC (OIPC) established the Audit & Compliance Program to assess how effectively public bodies and private sector organizations protect personal information and comply with access provisions under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Personal Information Protection Act*.

Audits provide learning opportunities for entities involved and set out general expectations the OIPC has about access to information and the protection of privacy. Audits also identify areas where an entity may excel in addition to areas where they require improvements in order to comply with legislation and guidelines.

Analysis of requests for review and complaints that the OIPC received over the past few years reveal WorkSafeBC is the subject of a higher number and variety of both access and privacy related complaints compared to many other public bodies. As such, the Commissioner approved an audit of WorkSafeBC's

3. access to information policies and privacy management program policies; and
4. responses to requests and complaints.

This office conducted this project in accordance with s. 42 of FIPPA. The key objective of this audit is to determine the extent to which WorkSafeBC's processes comply with legislation and OIPC guidelines, and to provide recommendations, where needed, to improve WorkSafeBC's policies and practices.

1.1 Objectives, scope, and methodology

This audit and compliance review, completed under the authority of s. 42 of FIPPA, focussed on WorkSafeBC's compliance with duty to assist provisions found in FIPPA and WorkSafeBC's processes for managing requests for access to records, and correction of personal information. It also examines how WorkSafeBC handles complaints that individuals make to it regarding protection of privacy and access requests.

OIPC auditors built assessment criteria and tools based on FIPPA obligations, OIPC guidance documents, and WorkSafeBC policies relating to the handling of access-related requests and complaints.

The main objectives of this review were to:

1. Review the extent to which WorkSafeBC's access request and complaint processes reflect legislative requirements;

2. Identify gaps or challenges in managing access to information requests and in running the privacy management program; and
3. Make recommendations to improve WorkSafeBC's access request and complaint policies and practices.

The scope of this audit is limited to:

6. Review of WorkSafeBC's policies and practices on access to information and the protection of privacy;
7. Interviews with the Manager of Access to Information and Privacy;
8. Examination of a random sample of the requests for records received by WorkSafeBC between 2014 and 2016 (300);
9. Examination of a random sample of the privacy complaints received by WorkSafeBC between 2014 and 2016 (46); and
10. Examination of OIPC complaints and requests for review initiated during the same time frame (50 files).

See Appendix A for more detail on the methodology.

2 LEGISLATION

To honour access rights under s. 6 of FIPPA, public bodies must respond openly, accurately and completely, and without delay. Public bodies must make every reasonable effort to assist applicants by clarifying the request where needed, searching diligently and thoroughly for responsive records, and responding in a timely manner.¹

The access to information and privacy management requirements of FIPPA are centrally important for compliance with FIPPA's openness, accountability, and protection goals.

In this review, OIPC auditors considered how WorkSafeBC managed the following:

1. Receiving the request;
2. Searching for responsive records;
3. Responding to the applicant;
4. Complaints, requests for correction and breaches; and
5. Requests for review and complaints to OIPC.

2.1 Receiving the request

Section 5(1) of FIPPA requires an applicant to make a written request for records and provide sufficient detail to enable an employee of the public body to identify the records sought.

Once a public body receives a request for records, the public body should record the date it received the request, as the statutory timeline for the 30-day response begins the next day.² The public body should also obtain clarification of the parameters of a request from the applicant, if necessary.³

A public body, in accordance with s. 75 of FIPPA, may charge a fee to perform particular services when processing a request for records.⁴ If the public body requires a fee or deposit, the public body must provide a fee estimate to the applicant, at which point the statutory time limitation for the response is paused. The timeline recommences after the applicant pays the deposit or the public body waives the fee.⁵ The public body must use its discretion in determining whether to charge applicants a fee and must consider waiving fees if the applicant makes a written request. Reasons for requesting a fee waiver include an applicant's ability to pay, their assertion that the record relates to a matter of public interest, or "for any other reason it is fair to excuse the payment."⁶

2.2 Searching for responsive records

After receiving and, if necessary, clarifying requests for records, public bodies must conduct a search for responsive records. Efforts in searching for records must conform to what a fair and reasonable person would expect the public body to do or consider acceptable.

To this effect, public bodies should:

- Train and provide guidance to employees on the typical steps for searching for responsive records.
- Train employees on records management, records retention, and the appropriate storage of records.
- Adequately document decisions and understand the requirements for retention of particular records.⁷
- Maintain a record that includes a reasonably detailed description of what the public body did to search for responsive records.⁸
- Be able to describe potential sources of records, sources searched, sources not searched (and reasons for not doing so), and how much time staff spent searching for records.⁹

If no records are responsive to the request, the public body should always explain why this is the case to applicants or, if needed, to the OIPC.

2.3 Responding to the applicant

The final stage of an access to information request is the duty to respond without delay to each applicant openly, accurately and completely. Public bodies should make every reasonable effort to respond sooner than the required 30 days under s. 7.¹⁰ Numerous OIPC orders have held that a public body that fails to respond to an access request within the time required under FIPPA has not met its s. 6(1) duty to respond without delay.¹¹

If the public body cannot meet the deadline, it may take a 30-day extension if:

- They do not receive enough detail to identify a requested record.
- If the request involves a large number of records and meeting the time limit would unreasonably interfere with the public body's operations.
- More time is needed to consult with a third party or other public body.
- The applicant has consented to the extension.

Under s. 10(2), the public body may also seek an extension longer than 30 days with the permission of the Commissioner.

When responding to requests for records, s. 8(1) requires public bodies to tell applicants:

- Whether or not they are entitled to access the record or part of the record.
- Where, when and how access will be given.
- If access to the record or part of the record is refused, the reasons for refusal (including the section of FIPPA), contact information for an employee of the public body who can answer questions and that the applicant may request a review by the OIPC.

Part 2 of FIPPA (ss. 12 through 22.1) details the authority for public bodies to withhold certain information from applicants. Some of the exceptions are mandatory, in that the public body must withhold the information (for example, in s. 22 where disclosing the information would be an unreasonable invasion of a third party's personal privacy), and some are discretionary (for example, in s. 13, where a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister). FIPPA expects public bodies to conduct a line-by-line review of records and sever only information that meets these discretionary or mandatory exceptions.

2.4 Complaints, corrections, and breaches

2.4.1 Complaints

A public body should have written processes, policies, and procedures for handling complaints related to privacy and access to information requests. Individuals have a right to complain about a public body's compliance with FIPPA, and to retain their trust, a public body must ensure that they address their complaints properly.¹²

2.4.2 Requests for Correction

In accordance with FIPPA s. 29(1), a public body should maintain accuracy of the information in its custody. The onus is on applicants to request correction if they believe there is an error or omission in their personal information. FIPPA requires the public body to make substantiated corrections or annotations as appropriate.

To ensure public bodies adhere to an individual's right to request correction of their own personal information, public bodies should have a policy direction on how they will handle correction requests.¹³

2.4.3 Privacy breaches

A privacy breach involves the unauthorized access to personal information, or the unauthorized collection, use, disclosure or disposal of personal information.¹⁴ Privacy breaches can be unintentional or deliberate.

Managing privacy breaches is part of the duty to protect personal information.¹⁵ Section 30 of FIPPA governs the responsibility for managing privacy breaches and establishes the public body's obligation to protect personal information. FIPPA s. 30.4 also prohibits unauthorized disclosure of personal information and s. 30.5 contains a requirement that employees immediately report such disclosures to the head of the public body.

In addition, OIPC investigation reports and guidance documents highlight a need for public bodies to appropriately and effectively manage privacy breaches;¹⁶ provide timely notification to affected individuals;¹⁷ and consider reporting breaches to the OIPC.¹⁸

2.5 Requests for review and complaints to OIPC

If an individual is not satisfied with how a public body has handled their personal information or their response to a request for information, the individual can complain to or request a review by the OIPC. The OIPC may open a file to investigate the matter.

The OIPC has the authority to direct a public body to respond to an individual's complaint to attempt to resolve a complaint against a public body, if the complaint pertains to:

- 42(2) (a) a duty imposed under this Act has not been performed,
- (b) an extension of time for responding to a request is not in accordance with section 10 (1),
- (c) a fee required under this Act is inappropriate,
- (d) a correction of personal information requested under section 29 (1) has been refused without justification, and
- (e) personal information has been collected, used or disclosed in contravention of Part 3 by
 - (i) a public body or an employee, officer or director of a public body, or
 - (ii) an employee or associate of a service provider.

3 OVERVIEW OF WORKSAFEBC PROCESSES

WorkSafeBC is a provincial agency mandated to oversee a no-fault insurance system for the workplace and regulate workplace health and safety in BC. WorkSafeBC partners with employers and workers to promote the prevention of workplace injury, illness and disease. Services include rehabilitation, education, prevention, compensation, and support for injured workers and employers.¹⁹

WorkSafeBC provides certain public information on its website without a request for information. Examples include:

- statistics on demographics of work-related injuries, disease and deaths, claim costs, prevention services and service evaluations,
- interactive tools such as health and safety information, and,
- data for download such as claims data and occupational injury and disease data.²⁰

WorkSafeBC also has a Freedom of Information and Protection of Privacy (FIPP) office that has managed nearly 3,656 requests for records, complaints, correction, and review over the past three years. FIPP staffing has fluctuated significantly, currently employing the full-time equivalent of approximately eight employees who process access to information requests and manage privacy related complaints.

The eight positions include:

- FIPP Director – The director ensures that WorkSafeBC establishes programs and controls for access to information and protection of privacy and provides legal advice on compliance with FIPPA within the public body.²¹

- Access to Information and Privacy (ATIP) Manager – The manager receives and responds to privacy complaints, facilitates access to information requests, provides advice on FIPPA, ensures data security complies with FIPPA,²² and establishes and maintains the privacy management program, including:
 - interpretation and application of privacy legislation and policy;
 - Privacy Impact Assessments (PIAs);
 - privacy compliance issues;
 - privacy breaches and suspected privacy breaches;
 - privacy awareness and education programs;
 - review of amendments to privacy legislation;
 - point of contact for the OIPC on all matters relating to FIPPA; and
 - notification of potential non-compliance with FIPPA.²³
- ATIP Services Lead – The lead manages FIPP administrative staff, develops procedures, manages file-tracking systems, provides advice to ATIP Officers, and deals with complex privacy and access issues. The lead also acts in place of the manager as needed.
- ATIP Officers (three) – The officers manage access requests, privacy complaints, information correction requests, and requests for reviews. ATIP officers also provide FIPP advice to other WorkSafeBC staff, respond to internal and external queries, review research agreements, manage PIAs and breaches, conduct literature reviews of case law and FIPPA, train WorkSafeBC employees on FIPPA compliance, and act as contact persons for OIPC.²⁴
- FIPP Secretaries (two) – The FIPP secretaries monitor FIPP shared mailbox, faxes, phones, case management system, and work trays that contain instructions from ATIP officers and the manager. FIPP secretaries also open files for access requests, provide the manager with updates on OIPC files, and report on privacy breach management.²⁵

3.1 Receiving access requests

Given that a large portion of the requests for records WorkSafeBC receives relate to workplace accident claims, WorkSafeBC streamlined the process for requestors with an online platform where individuals can view their claim information without making a request to the FIPP office. When an individual initiates a claim, WorkSafeBC sets up a profile for the individual to access their own claim file and personal information through a secure online portal. To request a paper or electronic copy of their claim file, the individual or representative is required to fill out a *request for disclosure* form and provide a signed consent letter.²⁶ Staff from the WorkSafeBC Disclosures Department review requests, verify the identity of requestors, and provide a copy of the claim file free of charge.²⁷

For other types of requests, WorkSafeBC requires individuals to contact the appropriate WorkSafeBC department. If the department cannot fulfil the request, or the individual is not satisfied with the manner in which the request was treated, the individual can contact the FIPP office via mail or fax. The FIPP office also receives requests via email for general requests, noting that any request for personal information must contain a written signature from the individual.²⁸

Upon receipt of a request for information, the FIPP secretary reviews, prints, and date-stamps the request. The FIPP secretary classifies the type of request, fills out a check sheet, and forwards the document to the ATIP manager who delegates the request, usually to an ATIP officer.²⁹ The manager reported that the FIPP secretary has the authority to manage some standard requests.

The FIPP office typically processes access requests from different applicants which include claim-related requests from:³⁰

- Injured workers or their lawyers (for specific reports or “Any & All” requests for all information WorkSafeBC has in a claim);
- Family members or others for fatal or serious incident investigation reports or inspection reports;
- Insurance companies (requests mutual claimant claim files – FIPP requires authorization from the claimant);
- Federal government agencies, pursuant to their respective legislative authority (Human Resource Development Canada, Canada Revenue Agency, Employment Insurance, Veterans Affairs Canada, Indigenous and Northern Affairs, Canada Pension Plan);
- BC government agencies (Ministry of Health, victim assistance, Coroner’s Office, Ministry of Social Development & Poverty Reduction requests for personal information on claimants); and
- Pre-employment checks (requests from third parties running pre-employment checks for companies and police departments).

Depending on the type of request and the available records, the FIPP office may transfer certain requests to other public bodies. The ATIP officer gives advance notice to the public body before doing so.³¹

If the FIPP office can process the request, the ATIP officer may charge a fee for requests that are not for the applicant’s own personal information.³² WorkSafeBC does not charge fees for requests from family members for investigations and inspection reports³³ or requests from employers entitled to disclosure.³⁴ The ATIP officer usually calculates the fee based on the following:

- Whether the applicant is a commercial applicant;
- Whether the information exists in a record or if a record needs to be created;

- The format for records delivery (i.e., paper, CD);
- The amount of time to review records for severing; and
- Any shipping and handling fees.³⁵

After the ATIP officer calculates the fee, the FIPP secretary sends a fee estimate to the applicant and places the file on hold. If the applicant has not paid the fee by the statutory due date plus a grace period of one week, WorkSafeBC closes the file.³⁶ In situations where the applicant believes the request relates to a matter of public interest, they may request WorkSafeBC to waive the fee.³⁷

3.2 Searching for responsive records

While FIPP sends many access requests to specific departments, FIPP sends Any & All requests (requests for any and all information that may exist outside of an applicant's claims file) to a contact list consisting of 15 departments. These 15 departments are required to review their records for any information they may have on the applicant, in the case of a new request, or, for an existing request, any information that was not included in the original file sent to the applicant.³⁸ For other requests such as incident investigation reports, FIPP requests records from specific departments (such as Prevention Records) or, for an insurance company request, through the Claims Management System.³⁹

In the event that departments have not confirmed or provided requested records, FIPP will follow up with departments to ensure they receive records prior to the response due date.

The Access to Information and Protection of Privacy policy requires that WorkSafeBC must respond to access requests within 30 business days, unless an extension is required. FIPP requests a time extension when necessary. If FIPP needs more time to manage a request, the ATIP officer would request a further time extension from the OIPC.

3.3 Responding to the applicant

The ATIP officer reviews the requested records for accuracy prior to sending records to the applicant.⁴⁰ Upon receipt from specific departments, the ATIP officer reviews the records and may sever portions of the record if necessary.⁴¹

After review, the ATIP officer signs off on the response. All responses require the ATIP manager's approval before FIPP can send out response letters to applicants.⁴²

3.4 Complaints, corrections, and breaches

3.4.1 Complaints

WorkSafeBC receives complaints either directly from the complainant or through the OIPC.

Most of the complaints WorkSafeBC receives are privacy-related, but they also handle complaints relating to access to information (involving time extensions, fee estimate, or correction of personal information). ATIP officers aim to respond to complaints within 30 business days.⁴³

The ATIP manager considers the complaint and assigns the complaint to an officer.⁴⁴ The ATIP officer or manager will make a decision about the complaint. If they confirm the complaint, the ATIP officer will educate department staff on how to avoid such errors and will include an apology in the response letter to the complainant.⁴⁵

3.2.1 Requests for correction

WorkSafeBC asks individuals to send correction requests directly to the department that holds the personal information records. If an applicant has concerns about how a particular department manages their request, as noted in WorkSafeBC's online privacy policy, the applicant can forward the request to FIPP.

The procedure for addressing corrections to personal information ensures that WorkSafeBC either corrects information when they can verify an error, or annotates a record based on the applicant's request. The procedure also ensures that WorkSafeBC does not remove personal information from a claimant's record to ensure both accuracy and completeness.⁴⁶

3.4.2 Privacy breaches

WorkSafeBC's has a privacy breach response protocol that defines breaches, actions that management and staff should take, processes for responding to privacy breaches, methods of containing and correcting breaches, internal and external notifications that must occur, follow-up protocols, further investigations, and guidelines for reporting to the FIPP office and to the OIPC in the case of significant breaches.⁴⁷

WorkSafeBC's Code of Business Ethics and Behaviour provides guidelines for reporting privacy breaches that states:

"If you accidentally or without authorization disclose personal information, you're legally required to report it as soon as possible to our Freedom of Information and Protection of Privacy (FIPP) office. You can report it by phone, in writing, by email to FIPP, or by using our Privacy Breach Notification Form."

WorkSafeBC also provides further guidelines to staff on communicating with claimants via email and on accessing claims files only when they have a valid business reason. To prevent breaches, WorkSafeBC has an internal worker portal for employees to view their own claim files.⁴⁸

3.5 Requests for review and complaints to OIPC

For files where a complainant has requested a review or complained to the OIPC, FIPP staff will open a file, enter details relating to the review or complaint into a tracking document, pull the originating file, draft an acknowledgement letter, and monitor or assist in the OIPC investigation as necessary.

4 FINDINGS

This section assesses the extent to which WorkSafeBC is complying with relevant sections of FIPPA, (as expressed through OIPC guidance documents, reports and orders) and WorkSafeBC's policies and practices related to access to information and privacy complaints.

Findings presented in the report represent analysis of random samples of WorkSafeBC requests for records (n=300), access to information and privacy complaints (n=46) and OIPC review files (n=50). Analyses provide an accurate illustration of WorkSafeBC's requests for records and complaints processed during 2014 to 2016 (within a 1.5% margin of error).⁴⁹ As such, auditors are able to generalize findings from the random sample to WorkSafeBC's requests for records and complaints received during that same time period, plus or minus 1.5% 19 times out of 20.

These sample datasets also allowed analysis of WorkSafeBC's request and complaint management from the start of the process to the ultimate completion of the file after the OIPC's involvement. Audit findings described below follow the principal aspects of s. 6 duty to assist as it pertains to the following:

1. Receiving the request;
2. Searching for responsive records;
3. Responding to the applicant;
4. Complaints, corrections, and breaches; and
5. Requests for review and complaints to OIPC.

4.1 Receiving the request

4.1.1 Records requests

WorkSafeBC received 3,544 access to information requests from January 2014 to December 2016. Applicants requested a review by the OIPC on 38 of these files.

According to the ATIP manager, WorkSafeBC requires applicants to provide requests for records in writing via email, fax or regular mail. FIPP requires a signed authorization from individuals requesting disclosure of their personal information. FIPP staff review the request to determine whether it is a request for WorkSafeBC records and whether there is another process for responding to the request (for example, the Disclosures process for individuals to receive a copy of their own claims files).

Among the sampled request files, the types of records applicants requested most from WorkSafeBC included claims histories (25%), incident investigation reports (20%), site inspection reports (17%), general confirmation of file numbers or the existence of claims (13%), medical histories (5%), histories of payments to individuals, Any & All requests and statistical summaries (each 4%), consultation reports (3%) and copies of WorkSafeBC policies (1%).⁵⁰

4.1.2 Documentation

FIPP staff store documents related to requests for information in electronic and paper files. They scanned some material from the paper files to the electronic files for purposes of this audit. Typical documents contained in each electronic file folder FIPP provided for review included:

- original requests;
- acknowledgement letters containing the date WorkSafeBC received the request;
- communications with department staff to search for records and their replies;
- fee estimates and invoices;
- copies of records; and
- response letters to applicants.

OIPC auditors found one or more documents missing in 19% of sampled files. Missing documentation included:

- notation containing fee payment information;
- the original unsevered records or copies of disclosed records;
- responses from department staff when FIPP requested they search for records;
- notes from telephone conversations with department staff or applicants;

- decisions related to the severing of records; and
- notation on when or why files were closed if abandoned.

Where documentation was missing from a file or where documentation was unclear,⁵¹ it was not possible for auditors to draw a conclusion about the data.

FIPP currently does not have a case management system for storing documents pertinent to requests for records. An appropriate case management system would be useful for tracking and managing requests and complaints. While this is not a requirement of FIPPA, a case management system is a best practice and valuable for managing files and generating compliance reports.

The ATIP manager noted that WorkSafeBC is moving toward electronic retention for all requests for records files and is exploring options for electronic case management systems.

RECOMMENDATION 1

WorkSafeBC should fully document all requests for records.

RECOMMENDATION 2

WorkSafeBC should consider implementing an electronic case management system to manage requests for records and complaints, and associated documentation.

Note: Prior to publication of this report WorkSafeBC implemented a standardized record keeping to improve file documentation and has stated they will consider implementing an electronic case management system.

4.1.3 Interpretation of requests

FIPP requested clarification from applicants on only four occasions across the sample of 300 request for records files. For this small subset, FIPP sought either clarification on types of documents requested or the timeframe within which the applicant wished to search.

In 73% of the sampled files, after FIPP received the request (and clarified if needed), they sent an acknowledgement letter to applicants that summarized the request. Twenty percent of sampled files did not need an acknowledgement letter, as FIPP sent the final

response to the applicant within six business days. In 7% of the sampled files, FIPP did not send the applicant an acknowledgement letter or respond within one week. Acknowledgement letters are not required under FIPPA, but are useful to advise applicants that the public body has received and is processing the request. They also provide a written record confirming the public body's interpretation of the request.

Auditors were satisfied that FIPP interpreted the request for records appropriately in 99% of the sampled files. There were possible issues with two requests. In one case, the applicant requested "information from [a] WorkSafeBC investigator of a fatal workplace incident" and FIPP interpreted the request to mean the final Incident Investigation Report but did not clarify with the applicant. In the other case, FIPP staff did not include all of the records requested in their acknowledgement letter to the applicant but did eventually respond to all queries.

4.1.4 Start date of requests

FIPPA requires that a public body respond to an applicant's request within 30 business days and that processing time for a request for records starts the day after the public body receives the request and ends the day they respond.

In general, WorkSafeBC initiated a file on the same day that they received the request from the applicant. However, 9% of the sampled files had an incorrect date noted as the day WorkSafeBC received the request.

In some cases, applicants sent their request to a department of WorkSafeBC that forwarded the request to FIPP. In these cases, WorkSafeBC counted the received date as the day FIPP received the request, as opposed to the day that the other department received the request. FIPPA considers the public body as a whole and does not differentiate specific departments such as FIPP. Under s. 7 of FIPPA, WorkSafeBC must respond no later than 30 days after receiving a request for records, regardless of the department or individual to which an applicant has sent their request for records.

4.2 Searching for responsive records

4.2.1 Requesting records from departments

The ATIP manager noted that upon receiving and logging an access request, FIPP staff review each new file to determine the complexity of the request and whether FIPP needs department staff to search for records. Of the 300 sampled requests for records, 71% did not require departmental involvement in the search, as FIPP staff either compiled responsive records, referred files to other public bodies or departments, or closed files cancelled or abandoned by applicants.

In the remaining 29% of the sampled files (85 files), FIPP emailed relevant departments to request that department staff conduct a search for records. FIPP generally sent these emails within seven business days of opening the request file. FIPP provided search

terms (i.e., phrases or topics to search for within records) in 66% of the emails to departments and provided specific instructions for where to search (e.g., telephone logs, email strings, or in specific databases) in 33% of the files.

According to the ATIP manager, FIPP sends the requests for departmental searches to supervisors designated as FOI contacts for most of the 12 to 15 departments that typically may hold records. Department supervisors review the requests prior to assigning staff to retrieve records. Department supervisors are also responsible for providing training or direction to their staff regarding records storage and search protocols.⁵²

4.2.2 Receiving records from departments

FIPP did not typically include timelines for response in departmental search requests. According to the ATIP manager, departments generally understand they have five business days to respond and provide responsive records to FIPP. FIPP followed up with department staff in 76% of the cases where they did not respond to the request within the anticipated five business days. Average response time from departments in the sampled files was seven business days.

From the documentation on file, auditors determined that department staff provided a response to FIPP in 89% of the sampled files where FIPP requested departments to conduct the search for records. In 11% of sampled files, Auditors found no documentation detailing departmental responses to the FIPP request.

4.2.3 Adequacy of searches

OIPC auditors found that WorkSafeBC staff (FIPP and departmental staff) performed an adequate search for records in 99% of sampled files. Auditors found three occasions where WorkSafeBC did not conduct an adequate search. In one file, WorkSafeBC staff missed sending some records due to “technical or human error.” In another, WorkSafeBC missed one set of records from a request that included multiple records. In the third instance, WorkSafeBC staff provided no explanation for the lack of records and it appeared to auditors that records should have been available.

In the 85 sampled files where FIPP requested department staff to search for records, staff did not find responsive records 21% of the time. In these 18 cases, the department staff provided appropriate explanations for the lack of responsive records 89% of the time. There was only one instance where department staff did not provide any explanation regarding the absence of records. In this instance, FIPP staff also did not follow-up with department staff for an explanation of the reason for no responsive records.

4.2.4 Fees

FIPP staff invoiced applicants for fees in 11% of the audited files, with an average fee of \$223.34 per file, including applicable taxes. FIPP charged fees only in cases where commercial applicants (i.e., insurance companies and law firms) requested third party or client information. There were no occasions where applicants requested a fee waiver.

Acknowledgement letters included with invoices indicated a date by which FIPP would close the file, should the applicant not respond with payment. Auditors found little or no documentation indicating the date when fees were actually paid. In the absence of accounts receivable information or other memos to file, the final response letters indicating the inclusion of records was the only documentation available to indicate that applicants had paid the fee.

The legislated timeline for responding to requests for records is paused on the date a public body issues a fee and recommences on the day the applicant pays the fee (or the public body waives the fee). As such, documentation showing the date the applicant paid the fee is required to calculate the new due date. Public bodies should track the date upon which fees are paid to ensure they are responding with the timelines required by s. 7 of FIPPA.

RECOMMENDATION 3

WorkSafeBC should document fee payment dates to enable proper compliance with timelines allowed by FIPPA.

Note: Prior to publication of this report, WorkSafeBC started recording fee payment dates and has fully implemented recommendation 3.

4.3 Responding to the applicant

4.3.1 Without Delay

Responding without delay

WorkSafeBC met legislated timelines for responding to requests for records in 94% of the sampled files where FIPP provided a final response to applicants. FIPP staff failed to respond within legislated timelines in the remaining 6% of the sampled files (14 files). In the majority of these (10 files), FIPP responded one day late. In the remaining files, FIPP exceeded the time by two-to-seven days.

WorkSafeBC’s timeliness record is comparatively better than other public bodies the OIPC has recently reviewed. A similar audit found the City of Vancouver met legislative timelines in 84% of sampled request files from 2013 to 2015, and failed to meet the mandatory deadline in 16% of files. In addition, the OIPC Special Report on the BC Government’s timeliness found government’s on-time response rate was 80% across sampled request files from 2016 and 2017, meaning that government failed to meet legislated timelines in 20% of sampled files.

While WorkSafeBC is performing comparatively well, FIPPA requires compliance with mandatory timelines in all cases. As such, WorkSafeBC (and all public bodies) should make it a priority to meet legislated response times in all cases. As many of WorkSafeBC’s late files were only one day over the legislated due date, this should be achievable.

RECOMMENDATION 4

WorkSafeBC should respond to all access requests within the timelines allowed by FIPPA.

Average timeline for responding to access requests

The timeframe for responses in the 2014 to 2016 sample ranged from same-day to 37 days, with an average of 16 days from the day WorkSafeBC received a request to the day FIPP responded. FIPP provided a response to 22% of applicants within two business days and 31% within a week. Auditors found only one file in the sample where FIPP utilized a time extension (in order to consult on the records to be released, under FIPPA s. 10(1)(c)).

Auditors noted a small fluctuation in average response time over the three-year sample period (see Table 1).

Table 1: Types of OIPC Reviews and Complaints involving WorkSafeBC 2014-2016			
Year	Number of requests	Average days to respond	Staffing
2014	1,264	13	7
2015	1,173	19	7.1
2016	1,107	17	6.5

The ATIP manager noted that the longer average response time in 2015 was likely due to increased workload stemming from the nature of the requests for records during that year. In 2015, WorkSafeBC conducted inquests into several high-profile incidents that received public attention from the community, media and others.

Auditors analyzed average response times by whether records existed or not, whether severing was applied, and file size.

- For files in which responsive records existed, the average response time was 17 days. In cases of no responsive records, average response time was 12 days.
- Where responsive records required severing, the average response time was 23 days versus 13 days for files where severing was not applied.
- Average response times increased according to file size: 17 days for small files (1-199 pages), 22 days for medium-sized files (200-499 pages), and 24 days for large files (500 pages or more).

Average response times also varied by WorkSafeBC file types. For example, FIPP provided responses to applicants within an average of:

- Two-to-three days for **fraud investigations** (i.e., requests by law enforcement or government checking for fraudulent claims), **payment history** (i.e., requests by insurers and government), and **general claims inquiries** (e.g., by government). These types of files are usually easily accessed by clerical staff, typically involve requests for names and confirmation of a claim or payment amount, and generally require little to no severing.
- 10 days for **claims history** (existence of a claim, claim details and history) and 13 days for **medical history** requests. These files had a longer response time if records required severing.
- 23 days for **reports** (i.e., requests for Incident Investigation Reports, Inspection Reports, and/or Consultation Records). These files had a longer response time if records required severing or the request was for a report on an investigation in progress.
- 24 days for statistical summaries. Generally, WorkSafeBC would have to collect and compile the statistics (creating the record) prior to sending to applicants.
- 28 days for **Any & All** requests. These requests often generated a large volume of records requiring extensive severing.

4.3.2 Openly, Accurately and Completely

Response letter details

WorkSafeBC provided response letters to applicants in 99% of all sampled files (in two cases, the files lacked sufficient documentation). Response letters generally met the requirements of s. 8. Responses typically included:

- the date FIPP received the request;
- a summary of the request;
- whether or not FIPP staff located responsive records;
- a description of reasons for severing or withholding information, including the relevant sections of FIPPA;
- a note that records are attached;
- contact information for OIPC including a link to the OIPC website; and
- a statement that the applicant can seek review of the response with the OIPC.

Records provided for review and released

WorkSafeBC staff found responsive records in 83% of sampled files that did not close early due to withdrawal or cancellation. Where WorkSafeBC found records responsive to a request, they released records or information to applicants 99.6% of the time.

Auditors categorized the relative size of a file based on the number of pages WorkSafeBC collected for review. Within the sampled files where WorkSafeBC found responsive records, auditors deemed 76% of the files to contain a small amount of records (from one page of records to 199 pages), 12% medium (200 to 499 pages), and 8% large (500 pages or more). In the remaining 6% of files, auditors were unable to determine the file size because documentation on responsive records was missing.

The number of pages that FIPP staff collected from departments can differ from the number provided to an applicant even if no severing takes place. Reasons for this may be, for example, that records FIPP staff received were not responsive to the request or portions of records (such as reports) may already be publicly available. The ratio of the number of pages of records collected to the number of pages released to applicants is 3:2. FIPP disclosed the same number of pages of records as they collected in 76% of the sampled files, 7% had less than a 10 page difference, 8% had between 10-100 pages difference and the remaining 9% had 100 pages or greater difference.

No responsive records

Almost one-in-five sampled files (18% or 50 files) contained no responsive records. FIPP provided an appropriate explanation for the lack of records 98% of the time. One response lacked sufficient explanation as to why FIPP could not provide records.

Denying access to records

FIPP denied or partially denied access to records requests in only 3% of the sample (10 files). Reasons given for withholding records in part or in full are:

- s. 8(2)(b): disclosure of the existence of information would be an unreasonable invasion of a third party's personal privacy;

- s. 13: disclosure would reveal advice or recommendations developed by or for a public body;
- s. 14: disclosure would violate solicitor-client privilege;
- s. 15(1)(a): disclosure could harm a law enforcement matter;
- s. 16(1)(b): disclosure could reasonably be expected to reveal information received in confidence from a government, council, or organization or their agencies;
- s. 21: disclosure could harm business interest of third party; and
- s. 22: disclosure would be an invasion of personal privacy.

Based on review of the file sample, auditors did not have any concern about WorkSafeBC's decisions to deny or partially deny access to records.

Severing

After retrieving and preparing records for disclosure, FIPP staff review them to assess whether or not they contain personal information to sever information prior to responding to the applicant. According to the ATIP manager, it is the ATIP manager's responsibility to review the accuracy of severing for files before preparing a response letter.

Department staff provided input on severing in only two of the 85 files where FIPP asked them to search for records. The first instance was a request not to disclose staff names due to concerns for the safety of WorkSafeBC staff. The second was to highlight that a portion of the language in the responsive record might be the personal opinion of the author.

WorkSafeBC released 58% of records with no severing at all. FIPP applied exceptions under FIPPA in 42% of the records they released to applicants. Auditors found no issue with 95% of severed files. In five files, FIPP did not specify the FIPPA section numbers used as an exception for severing.

The most common exceptions FIPP applied included:

- s. 22 disclosure harmful to personal privacy (in 90% of severed records);
- s. 15 disclosure harmful to law enforcement (5%);
- s. 14 legal advice (4%);
- s. 13 policy advice or recommendations (3%); and
- s. 19 disclosure harmful to individual or public safety (3%).

Auditors found very minimal severing overall and no evidence of block severing⁵³ in the sampled files.

Bring forward requests for incident investigation reports

WorkSafeBC maintains a slightly different process when requests for records pertain to incident investigation reports. These reports summarize investigations of incidents that often resulted in injury or death, and are not available until the investigation is complete. In most of the files containing requests for incident investigation reports, auditors found that FIPP staff responded to the request with available information at the time, and then continued to check periodically for the completed report. Once a report became available, FIPP provided it to the applicant, even though they had already managed the initial request file.

4.4 Complaints, corrections, and breaches

4.4.1 Complaints

Numbers and Types of Complaints

From 2014 to 2016, WorkSafeBC received 52 complaints about their information handling practices or access to information process. Complaints increased slightly year over year, with 14 complaints in 2014, 17 in 2015, and 21 in 2016.

Based on a sample of 46 complaint files, WorkSafeBC complaints involved:

- Disclosure of personal information to third parties (65% of the file sample);
- Collection of personal information by WorkSafeBC (22%);
- Accuracy of personal information held by WorkSafeBC and requests for correction (11%);
- Use of personal information they collected (7%);
- Duties to assist applicants required under s.6 of FIPPA (4%); and
- Retention of personal information (4%).

Complainants escalated 22 complaints to the OIPC for further investigation during the sample timeframe. Complaints investigated by the OIPC related to:

- Adequacy of WorkSafeBC's search for records (32% of the complaints to OIPC);
- Disclosure of personal information by WorkSafeBC (27%);
- WorkSafeBC's duty to assist applicants required under s. 6 of FIPPA (23%);
- Collection of personal information by WorkSafeBC (9%);
- Accuracy of personal information held by WorkSafeBC and requests for correction (5%); and
- Concern about a time extension taken (5%).

Acknowledgement of complaints

Acknowledgement letters provide complainants with confirmation that WorkSafeBC has received a complaint. These differ from final response letters, as they do not include a summary of how WorkSafeBC concluded the complaint.

After receiving a complaint, WorkSafeBC provided an acknowledgement letter to the complainant 80% of the time. In 97% of those cases, FIPP staff sent the acknowledgement to the complainant within six business days of receiving the complaint. In one file, FIPP sent the acknowledgement letter three weeks after receiving the complaint.

FIPP did not send an acknowledgement letter to complainants in 20% of sampled files (9 files). Four of the files did not need acknowledgement as FIPP provided their final response to the complainant within two weeks of receiving the complaint. In another four files, FIPP responded between one month and four months after receiving the complaint. In one file, FIPP did not respond at all. This means, in some cases, a complainant may have waited several weeks before receiving any type of acknowledgement that WorkSafeBC received their complaint.

Complaint resolution

FIPP sent response letters to complainants in 89% of the sampled files. Of these, WorkSafeBC deemed 57% of the complaints unfounded and 43% to have merit.

WorkSafeBC did not provide a final response to complainants in the remaining 11% of files (5 files). In two of these cases, FIPP sent a request to the complainant to determine whether they wanted FIPP to continue with the investigation. As the applicants did not respond by the stated date, FIPP closed the files. In the other three cases, WorkSafeBC did not respond to the complainants for a variety of reasons.

In all, auditors considered the complaint investigation to be adequate in the majority (85%) of the sampled files. A further 9% of files (4 files) lacked sufficient documentation to reach a conclusion on the adequacy of investigation, and auditors considered 7% (3 files) as occasions where FIPP could have taken further action to investigate the complaint.

Timelines for responding to complaints

There is no deadline under FIPPA for resolving complaints. However, the ATIP manager noted that the internal guideline for WorkSafeBC to respond to complaints is 30 days, although acknowledged that FIPP did not always meet this guideline. FIPP staff record and track complaints on a similar spreadsheet to that used for requests for records.

FIPP responded to 59% of the sampled complaints within 30 business days. They responded to another 22% within six months from receiving the complaint, and 9% within seven to 10 months. As noted above, in 11% of files, FIPP did not provide a final response to complainants.

WorkSafeBC has reportedly addressed this issue. In early 2017, the ATIP manager verbally reminded staff of the 30-day target for responding to complainants and, in June 2017, WorkSafeBC updated the FIPP office manual to reflect these guidelines.

4.4.2 Requests for Correction

According to the ATIP manager, WorkSafeBC attempts to ensure that personal information is correct at the time of collection by collecting it directly from the individual, where possible, and reviewing information prior to adding it to the file. As WorkSafeBC collects new information (from the individual or other parties under the *Workers Compensation Act*) while managing a file, original information may no longer be correct. If factual information (such as date of birth) is incorrect, the onus is on the individual to inform WorkSafeBC, so claims staff can make the change. In cases where some personal information becomes outdated, WorkSafeBC retains that information to have it available through the life cycle of a claim for injury compensation (for example, medical or employment information).

The ATIP manager noted that when FIPP receives a request for correction, it is typically with a disagreement about an opinion or conclusion. In these cases, FIPP evaluates the request and the information and provides a response letter to the complainant. If WorkSafeBC does not correct the information, they may annotate it by adding the request for correction onto the claim file.

The sample of WorkSafeBC's complaint files included three requests for correction. Of these, WorkSafeBC made one correction, provided an explanation as to where they derived the information, and closed one file without response pending further direction from the complainant or the OIPC. In each of these cases, auditors found WorkSafeBC's investigation and response to be reasonable.

4.4.3 Privacy breaches

In addition to complaints and requests for correction, WorkSafeBC reported three breaches to the OIPC during 2014 and 2016. The breaches involved an unencrypted USB that went missing in the mail, a notebook containing business information misplaced an employee, and a bin containing inter-office mail that may have been lost in transit by a courier. In each of these cases, the OIPC was satisfied that WorkSafeBC took reasonable steps by:

- Containing the breach;
- Investigating the matter and assessing the potential risk of harm;

- Notifying affected individuals, where relevant; and
- Implementing appropriate preventative measures to prevent future breaches.

WorkSafeBC has a breach reporting policy that provides direction to staff on reporting potential breaches, who to involve in breach investigations, and how to assess the potential risk of harm to individuals whose personal information is involved in a breach.

4.5 Requests for review and complaints to OIPC

Auditors reviewed 50 OIPC complaint and request for review files opened between 2014 and 2016 involving WorkSafeBC. See Table 2 for detail on the types of reviews of complaints.

Table 2: Types of OIPC Reviews and Complaints involving WorkSafeBC 2014-2016	# of files	% of files
Request for Review	28	56%
Deny	13	46%
Partial/Severed Release	12	43%
Deemed Refusal	2	7%
Refusal to Confirm or Deny	1	4%
Complaint	22	44%
Adequate Search	7	32%
Disclosure	6	27%
Duty required by Act	5	23%
Collection	2	9%
Time Extension re: Request (s.53)	1	5%
Correction	1	5%
Total	50	100%

OIPC investigators resolved the majority (89%) of the requests for review received during mediation and referred 7% to inquiry for resolution (2 files). An applicant withdrew one request for review during mediation. Of the two request for review files that proceeded to inquiry, OIPC adjudicators confirmed the decision made by WorkSafeBC in one file and partially upheld WorkSafeBC's decision in the other.⁵⁴

OIPC investigators have the delegated authority to resolve complaint files and few proceed to inquiry. Between 2014 and 2016, OIPC investigators resolved all complaints involving WorkSafeBC and none proceeded to inquiry.

5 RECOMMENDATIONS

The following recommendations result from the findings in this report. They comprise best practices that will help WorkSafeBC comply with legislative obligations to protect personal information:

1. WorkSafeBC should fully document all requests for records.
2. WorkSafeBC should consider implementing an electronic case management system to manage requests for records and complaints, and associated documentation.
3. WorkSafeBC should document fee payment dates to enable proper compliance with timelines allowed by FIPPA. (Note: WorkSafeBC implemented this recommendation in full prior to publication of this report.)
4. WorkSafeBC should respond to all access requests within the timelines allowed by FIPPA.

6 CONCLUSION

Overall, WorkSafeBC is generally in compliance with FIPPA with regard to how it manages requests for records and complaints. This audit revealed that WorkSafeBC conducted appropriate searches for records, rarely applied fees, and usually met legislated timelines to respond to applicants. In addition, WorkSafeBC provided responsive records to applicants most of the time and with minimal-to-no severing.

This report highlights a couple of areas where WorkSafeBC can improve their request for records and complaint response processes. In particular, auditors found documentation missing in 19% of files and no tracking of fee payment dates. WorkSafeBC should ensure adequate documentation and tracking of requests for records and fee payments. In addition, WorkSafeBC did not respond within legislated timelines in 6% of sampled request for record files and did not always acknowledge or respond to complaints. Use of an electronic case management system within FIPP, along with implementation of the other recommendations in this report, will help WorkSafeBC ensure that it meets its legislated duties with regard to managing requests for records and complaints.

As the bulk of WorkSafeBC's late responses to requests for records were only late by one day, full compliance with statutory timelines appears to be achievable. WorkSafeBC's use of a separate disclosures process where individuals can view their own claims information online has likely aided in WorkSafeBC achieving an average response time that is well below legislated requirements. This provision of access through a secure online portal is commendable and may provide a model for other public bodies.

7 ACKNOWLEDGEMENTS

I would like to thank Tanya Allen, Audit Manager, and Gbola Atitebi and Alison Hogan, Audit Researchers, who conducted the audit and drafted this report.

January 17, 2018

ORIGINAL SIGNED BY

Drew McArthur
Acting Information and Privacy Commissioner
for British Columbia

8 APPENDIX A: METHODOLOGY

The scope of this compliance review was to focus on WorkSafeBC's compliance with the access and privacy provisions found in section 6, 29 and 44 of FIPPA. Utilizing components of compliance assessment; operational audit; program evaluation; and process improvement methodologies, the review included:

1. Review of WorkSafeBC's policies and practices on access to information and the protection of privacy;
2. Interviews with the Manager of Access to Information and Privacy;
3. Examination of a random sample of the requests for records received by WorkSafeBC between 2014 and 2016 (300);
4. Examination of a random sample of the privacy complaints received by WorkSafeBC between 2014 and 2016 (46); and
5. Examination of OIPC complaints and requests for review initiated during the same time frame (50 files).

OIPC auditors built assessment criteria and tools based on FIPPA obligations, OIPC guidance documents and orders, and WorkSafeBC policies relating to the handling of access-related requests or complaints.

8.1 Background research

Auditors reviewed the following documents as background material for the report and to aid in planning the scope of this review:

- OIPC BC Government Timelines Report 2017;
- OIPC City of Vancouver Duty to Assist Audit;
- *A Step Backwards: Report Card on Government's Access to Information Responses April 1, 2013-March 31, 2014* (OIPC Special Report Sept 23, 2014);
- *Requested materials from WorkSafeBC*;
- Duty-related requests and complaints received by OIPC;
- OIPC orders involving WorkSafeBC; and
- Leading cases related to ss. 6 and 29 of FIPPA.

8.2 Review of policies and procedures

This portion of the review included an overview of WorkSafeBC's policies, procedures and other documentation in order to understand and report on the FIPP process. Auditors reviewed the following materials:

- Access to Information Policy;
- Access to Information and Protection of Privacy at WorkSafeBC;
- FIPP Officers Procedure and Practice;
- FIPP Secretary Procedure Manual 2017;
- Delegation and Chair's instruction;
- Policies on privacy, breach management, encryption and complaints;
- communications related to email and server backups and use of personal email for business purposes;
- WorkSafeBC Records Retention and Destruction Policy and Schedule;
- organizational Charts of WorkSafeBC;
- basic statistics and other information related to:
 - staff within the FIPP office,
 - numbers of requests for access by type and by year (2014-2016), and
 - a description of the types of fields collected in a software tracking program or database relating to access or complaint files managed within the FIPP program.

Auditors also used the materials collected during this portion of the review to create interview guides and checklists for reviewing access files.

8.3 Interviews

Auditors conducted preliminary and follow-up interviews with WorkSafeBC's ATIP manager. Interviews and follow-up took place in August and November of 2017, the preliminary interview lasted two and a half hours, and the auditors sent questions to follow up or clarify any outstanding items via email.

The interview guide included questions on:

- process for records requests and releases;
- timelines;
- responses to applicants;
- policy;
- challenges and improvements that may be needed.

OIPC examiners used information gleaned from the preliminary interview to develop a basic understanding of:

- the FIPP program;
- how records are collected from departments;
- processes and decisions involved in the release of records; and
- the types of documents that are available for reviewing access requests.

This interview was also useful for identifying documents and files for review, informing the audit of program files, and explaining the OIPC's review process.

OIPC examiners used information collected during the follow-up interview to clarify findings from the review of policies and procedures and the audit of program files.

8.4 Audit of files

The audit of files included:

- A random sample of WorkSafeBC's request for records files (n=300);
- A random sample of privacy complaints received by WorkSafeBC between 2014 and 2016 (46 files); and
- A review of OIPC complaints and requests for review initiated during the same time frame (50 files).

In total, OIPC examiners reviewed 396 files for inclusion in the analysis for this report.

8.4.1 Request for records

Using standard statistical methods, the OIPC examiners selected a sample of 300 WorkSafeBC access request files that the FIPP office received between 2014 through to 2016. This size of sample, combined with the strongly positive results, provides for a point margin of error of 1.5% at a 95% confidence level, meaning that the sample selected for review will provide an accurate representation of the overall population of access files within WorkSafeBC for the same timeframe, give or take 1.5%, 19 times out of 20.

Auditors conducted a comparison of key demographics between the sample and the population of files to ensure that the sample mirrored the overall population on variables such as year and applicant type.

OIPC auditors reviewed WorkSafeBC access requests in relation to 84 different points of data. Examples of these data points included:

- Applicant type (e.g., association, business, individual, lawyer, media);
- disposition of the file (e.g., disclosed in part, disclosed in full, abandoned, no records, in progress);
- Subject of records request (e.g., animal control, financial, development/ business license, property-related, human resources);
- Appropriateness of request interpretation;
- Dates (e.g., date request received, date due, extension dates, etc.);
- Whether personal email was requested and, if so, searched and provided;
- Reasons for occasions of no responsive records;
- Whether, on the surface, a search was adequate;
- Fees, hours billed, fee waiver requests;
- Holds and extensions on files, including reasons for and relevant sections of FIPPA;
- Internal review and sign-off for files, if applicable;
- Responses to applicants, including reasons for denying records, appropriateness of severing, legislative sections applied; and
- Other issues that may be present in a file, such as lack of documentation.

OIPC examiners then evaluated and cross tabulated these data points to establish findings for inclusion in the report and used them to create interview guides for follow-up interviews with WorkSafeBC FIPP staff.

Auditors removed missing cases from each cross-tabulation. Missing cases included occasions where no data was available or based on exclusion criteria particular to a data point. As such, Auditors based report findings only on the valid cases for each data point. The margin of error may differ for analysis of each data point that included missing cases.

8.4.2 Complaints

Examiners also selected a sample of 46 WorkSafeBC privacy complaint files for a period of 2014 to 2016. This size of sample provides for a three percentage point of margin at a 95% confidence level. This indicates that the sample selected for review will provide an accurate representation of the overall population of access files within WorkSafeBC for the same time frame give or take 3%, 19 times out of 20.

Auditors analyzed complaints in relation to 23 points of data. Examples of these data points included:

- Appropriateness of complaint interpretation;
- Type or topic of complaint;
- Dates (e.g., date complaint received, date of final response);
- Whether, on the surface, the investigation into the complaint was adequate;
- Responses to complainants; and
- Conclusion of complaints.

8.4.3 OIPC files

OIPC examiners reviewed requests for review and complaints received by the OIPC in order to determine the ultimate completion of the public body's files up to and including an OIPC inquiry.

The OIPC opened 65 request for review and complaint files from 2014 to 2016 related to WorkSafeBC. This included requests for review, complaints, and deemed refusals. OIPC examiners only included completed and closed request for review files and access-related complaint files in the analysis. In the end, 50 files were included in this review.

The types of files included in the analysis were:

- Complaints about the adequacy of the search for records;
- Deemed refusals whereby the public body allegedly did not respond to an applicant within the statutory timelines;
- Requests to review the public body's decision to deny records altogether;
- Complaints about the public body not meeting a duty under s. 6 of FIPPA;
- Requests for review of exceptions used to sever records; and
- Complaints about time extensions taken by WorkSafeBC.

OIPC examiners reviewed the OIPC files in relation to four different points of data:

- Type or topic of complaint;
- Whether a complaint was substantiated;
- Inquiry results, if applicable; and
- Issues with WorkSafeBC's handling of the original file.

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Analysis included the original OIPC investigator's opinion or decision, and the OIPC audit examiner's opinion where relevant. This review did not include analysis of any open files. OIPC examiners then evaluated and cross tabulated the data points to establish additional findings for inclusion in the report and to compare findings with the review of WorkSafeBC files.

9 ENDNOTES

¹ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 8, paras. 1 and 2 (<https://www.oipc.bc.ca/investigation-reports/1874>).

² An inadvertent error or miscalculation of the date for response does not excuse a public body from its statutory obligation to respond within 30 days (or longer, if an extension is warranted).

³ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 15, para. 4 (<https://www.oipc.bc.ca/investigation-reports/1874>). See also OIPC Order 00-33 at pp. 5 and 6 (<https://www.oipc.bc.ca/orders/605>).

⁴ Schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*, B.C. Reg. 155/2012 provides a schedule of the maximum amount of fees that public bodies may charge for services.

⁵ FIPPA s. 7(4).

⁶ FIPPA s. 75(5). Please note that where the applicant makes a fee waiver request, the public body has 20 days to respond to the applicant. As well, the applicant may appeal the fee estimate to the OIPC for review, which will also extend the 30-day response time.

⁷ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 60 (<https://www.oipc.bc.ca/investigation-reports/1874>); see also the joint Press Release issued on January 25, 2016 by Canada's Information Commissioners, *Information Commissioners Call on Governments to Create a Duty to Document* (<https://www.oipc.bc.ca/announcements/1904>).

⁸ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 47, para. 7 (<https://www.oipc.bc.ca/investigation-reports/1874>).

⁹ OIPC Order 00-32 at p. 5 (<https://www.oipc.bc.ca/orders/603>).

¹⁰ OIPC Order 03-32 at para. 16 (<https://www.oipc.bc.ca/orders/782>). Note that a "day" constitutes a business day and does not include Saturdays, Sundays or public holidays: *Interpretation Act*, [RSBC 1996] c. 238 at ss. 25 and 29.

¹¹ See, for example, OIPC Order 03-32 at para. 16 (<https://www.oipc.bc.ca/orders/782>); OIPC Order 01-47 at para. 28); and OIPC Order 02-40 at para. 9 (<https://www.oipc.bc.ca/orders/730>).

¹² OIPC. 2013. [Accountable Privacy Management in BC's Public Sector](#). P. 12.

¹³ OIPC. 2013. [Accountable Privacy Management in BC's Public Sector](#). P. 10.

¹⁴ Office of the Information and Privacy Commissioner. 2012. *Privacy Breaches: Tools and Resources*. <https://www.oipc.bc.ca/guidance-documents/1428>.

¹⁵ Office of the Information and Privacy Commissioner. *Accountable Privacy Management in BC's Public Sector*, pp. 14, 15. (<https://www.oipc.bc.ca/guidance-documents/1545>).

¹⁶ Office of the Information and Privacy Commissioner. Investigation Report F06-02, paragraph 81. (www.oipc.bc.ca/investigation-reports/1233).

Office of the Information and Privacy Commissioner. Investigation Report F13-02, section 2.2, p 20. (<https://www.oipc.bc.ca/investigation-reports/1546>).

¹⁷ Office of the Information and Privacy Commissioner. Investigation Report F06-02, paragraph 55. (www.oipc.bc.ca/investigation-reports/1233).

Office of the Information and Privacy Commissioner. Investigation Report F08-02; p 12. (<https://www.oipc.bc.ca/investigation-reports/1236>).

¹⁸ Office of the Information and Privacy Commissioner. *Accountable Privacy Management in BC's Public Sector*, pp. 14-15. (<https://www.oipc.bc.ca/guidance-documents/1545>).

Office of the Information and Privacy Commissioner. 2012. *Privacy Breaches: Tools and Resources*, pp. 7-9. (<http://www.oipc.bc.ca/guidance-documents/1428>).

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Office of the Privacy Commissioner of Canada, Office of the Information and Privacy Commissioners of Alberta and Office of the Information and Privacy Commissioners of British Columbia. 2012. *Getting Accountability Right with a Privacy Management Program*. <https://www.oipc.bc.ca/guidance-documents/1435>.

¹⁹ WorkSafeBC. 2017. *Who we are*. <https://www.worksafebc.com/en/about-us/who-we-are>.

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- ²⁰ WorkSafeBC. 2017. *Access to Information*. <https://www.worksafebc.com/en/about-us/shared-data>.
- ²¹ WorkSafeBC. 2016. Delegation and Chairs instruction. Pp. 2-3.
- ²² WorkSafeBC. 2016. Delegation and Chairs instruction. P. 3.
- ²³ WorkSafeBC. 2014. *Privacy Policy*. Pp. 2-3.
- ²⁴ WorkSafeBC. 2006. Freedom of Information and Protection of Privacy Office Manual Officers. Pp. 6-9.
- ²⁵ WorkSafeBC. 2017. FIPP Secretary Procedure Manual. Pp. 3-6.
- ²⁶ WorkSafeBC. 2017. *Access to Information*. <https://www.worksafebc.com/en/about-us/fairness-privacy/access-to-information>. P.1.
- ²⁷ <https://www.worksafebc.com/en/claims/manage-claim/view-claim-information>
- ²⁸ WorkSafeBC. 2017. *Access to Information*. <https://www.worksafebc.com/en/about-us/fairness-privacy/access-to-information>. P.1.
- ²⁹ WorkSafeBC. 2017. FIPP Secretary Procedure Manual. P. 22.
- ³⁰ WorkSafeBC. 2017. FIPP Secretary Procedure Manual. P. 24.
- ³¹ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 2. Access Requests*. P. 2.
- ³² WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 6. Fees*. P. 1.
- ³³ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 7. Responding to Requests for IIRs*. P. 2.
- ³⁴ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 2. Disclosure*. Pp. 1-2.
- ³⁵ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 6. Fees*. P. 1.
- ³⁶ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 6. Fees*. P. 1.
- ³⁷ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 6. Fees*. P. 1.
- ³⁸ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 2. Access Requests*. Pp. 1-3.
- ³⁹ WorkSafeBC. 2017. FIPP Secretary Procedure Manual. Pp. 27-30.
- ⁴⁰ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 2. Any and All Requests*. P. 3.
- ⁴¹ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 2. Any and All Requests*. Pp. 6-7.
- ⁴² WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 1. FIPP Office Overview*. P. 6.
- ⁴³ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 9. Privacy Complaints*.
- ⁴⁴ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 11. Reviews*.
- ⁴⁵ WorkSafeBC. 2017. FIPP Secretary Procedure Manual. P. 40.
- ⁴⁶ WorkSafeBC. 2006. FIPP Office Manual; Officers' Procedures and Practices Section. *Chapter 5. Corrections and Annotations*. P. 1-2.
- ⁴⁷ WorkSafeBC. 2014. Privacy Breach Response Protocol.
- ⁴⁸ WorkSafeBC. 2016. Code of Business Ethics and Behaviour. Pp. 10-12.
- ⁴⁹ The margin of error may differ for analysis of each data point that included missing cases. See the Methodology section for further detail.
- ⁵⁰ This list provides a summary of common requests for records and does not include all requests.
- ⁵¹ An example where documentation was unclear included occasions where WorkSafeBC did not follow standard naming conventions (e.g., original unmarked records, working copy of marked records for severing, severed records for disclosure). This type of standardized convention would allow FIPP staff (and OIPC auditors) to more easily discern the status of a particular record.

⁵² In addition, ATIP staff will also provide FOI training to departments “either at the request of a department, or on an annual or bi-annual basis, or when high profile issues arise that need to be addressed urgently.”

⁵³ Block severing is when, for example, entire paragraphs or pages are severed without conducting a line-by-line review to determine what portion of the records should be withheld under FIPPA’s exceptions.

⁵⁴ OIPC Orders: 15-38 (<https://www.oipc.bc.ca/orders/1837>) and 17-22 (<https://www.oipc.bc.ca/orders/2039>).