OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

INVESTIGATION REPORT F08-03

MINISTRY OF CHILDREN & FAMILY DEVELOPMENT

David Loukidelis, Information and Privacy Commissioner

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Summary: A reporter with the *Victoria Times-Colonist* newspaper requested records from the Ministry of Children and Family Development regarding the Ministry's Sexual Abuse Intervention Program (SAIP). The Ministry provided records, including a copy of a report about the SAIP program which the Ministry had partially severed under discretionary sections of FIPPA. The applicant later obtained an unsevered version of the report through other means and complained to this office about the Ministry's decisions in severing under FIPPA. During this investigation, the Ministry conceded that s. 13(1) could not apply because s. 13(2) applied. Section 13(1) is a discretionary exception and the head of the public body must be able to demonstrate that he or she has actually considered whether or not to exercise it. Discretion can only be said to be properly exercised if the public body has addressed relevant considerations in the circumstances of the particular request. Public bodies must have the procedures and resources in place to ensure they meet their statutory obligations, including the obligation to appropriately exercise their discretion under provisions such as s. 13(1).

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1.0 INTRODUCTION

[1] On June 27, 2007, a reporter with the Victoria *Times-Colonist* newspaper ("Applicant") made a request, under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), for the following records from the Ministry of Children and Family Development ("the Ministry"):

> …copies of all documents, memos, correspondence, briefing notes, and reports dated from Jan. 1 2007 to June 1, 2007 that refer to the ministry's Sexual Abuse Intervention Program and/or the Mary Manning Centre in Victoria.
> In particular but not excluding the rest of my request I'd like all documents related to the review ordered by Minister Christensen of the Sexual Abuse Intervention Program and its budget.

[2] On October 12, 2007, the Ministry responded to the Applicant and provided him with partial access to several records, including a report from April 2006 called "Review of the Sexual Abuse Intervention Program" ("SAIP Report"). The Ministry severed portions of the SAIP Report under ss.13 and 17 of FIPPA. The Applicant continued to do research and, through other avenues, obtained a full version of the SAIP Report that showed the portions the Ministry had removed. On October 29, 2007, after comparing the two versions, the Applicant wrote to this office and complained about the Ministry's response:

> It appears to me that the ministry used the sweeping Section 13 and 17 exemptions to withhold the most critical and embarrassing aspects of the report, namely that all agencies involved in the program felt they were under-funded, that they had been neglected by government for years, and that the program was deserving of greater focus. I am particularly disturbed that the ministry chose to exclude a list of common complaints voiced by agencies during the review, as I fail to see how this qualifies as advice to the minister.

[3] On October 31, 2007, the Applicant published a story on the front page of the *Times Colonist* about the severing the Ministry applied to the SAIP report. That day, I issued a press release advising that, in light of the Applicant's complaint, this office would investigate the Ministry's response and that it was my intention to make the results of the investigation public.[1] Shortly after, the Ministry posted the full version of the SAIP Report on its website.[2]

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[1] *See* www.oipc.bc.ca/news/rlsgen/NR-IPC-TC-MCFD.pdf.
[2] *See* www.mcf.gov.bc.ca/mental_health/pdf/SAIP_Report_Final%20_July06.pdf.

2.0 BACKGROUND

[4] **2.1 Scope of This Report**—This report relates to the SAIP Report itself, not its appendices, and examines only issues related to s. 13 of FIPPA. As both ss.13 and 17 are discretionary, issues relating to the exercise of discretion under either provision can be adequately addressed by discussing s. 13 only. The Applicant is aware of this and does not object.

[5] It is convenient here to dispose of a process point raised by the Ministry. Without alleging any unfairness to it in proceeding in this way, the Ministry questioned why, in view of the OIPC's published policies and procedures, I decided to, as the Ministry puts it, "vary from established" OIPC policy by not referring the complainant back to the Ministry in order to first attempt to resolve the complaint. It also questioned why a complaint process was followed, not a request for review process under Part 5 of FIPPA.

[6] Regarding the second point, since the complainant already possessed, and the Ministry soon released, a complete copy of the SAIP report, the complainant's concerns about apparent discrepancies in severing, and the issue of exercise of discretion, could only adequately be addressed through the complaint process.

[7] On the first point, the supposed variance from "established" OIPC policy by not first referring the complainant back to the Ministry, the OIPC's policies and procedures under FIPPA in fact state that the OIPC will "normally" refer would-be complainants back to the relevant public body before opening a complaint file.[3] On this basis alone, a referral back to the public body is the general but by no means universal policy. Further, the OIPC's policies and procedures state that, "[w]here the OIPC determines it would not be appropriate to refer the complainant to the public body, the file will be referred to an Officer for investigation."[4] I determined in this case that, for reasons just given, it would not be "appropriate to refer the complainant" to the Ministry. There is no discrepancy between what was done here and OIPC policy. Nor has the Ministry asserted any unfairness to it in proceeding in this way.

[8] **2.2 Evidence**—As a first step in this investigation, on November 2, 2007, I asked the Ministry to provide me with complete information about its processing of and response to the request, including the request's receipt and handling; identification of responsive records; severing of records (including differing versions of proposed severing); the records released; outstanding records releases (if any); decisions and consultations of any kind; advice (excluding legal advice), and any other instructions or directions. I also asked the Ministry to provide me with a list of the names and positions of all individuals who participated in, were consulted, or gave advice, directions or instructions respecting the processing of the request.

[9] I also required the Ministry to provide me with certification of the assembly and the completeness of the records produced in the form of a statutory declaration that

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[3] OIPC Policies and Procedures (November 2006), at p. 4. http://www.oipc.bc.ca/advice/PoliciesProceduresRevised(Nov2006).pdf

[4] OIPC Policies and Procedures, at p. 4.

incorporated a detailed index of the records produced and the steps taken (and by whom) to assemble them. I also required that the statutory declaration certify the completeness of the records package, with the nature and status of any reservations being fully explained. I required that the certification come from a Ministry official personally knowledgeable about all aspects of the processing of and response to access to information requests and who had direct supervisory knowledge of and responsibility for assembly of the records package. I asked the Ministry to provide me with the records package and accompanying certification within 10 business days and the Ministry did so. After reviewing the materials, my staff asked the Ministry for additional material and clarification based on the results of their review and the Ministry complied.

3.0 ISSUES

[10] These are the two issues to be addressed:

1. Was the Ministry authorized to sever portions of the SAIP Report under s. 13 of FIPPA?

2. Did the Ministry properly exercise its discretion in making the decision to apply s. 13 of FIPPA to portions of the SAIP Report?

4.0 DISCUSSION

[11] **4.1 Background: Processing of the Applicant's Request**—As soon as the Ministry received the applicant's request, it opened a file and assigned it to an Information and Privacy Officer ("Analyst"). The Analyst received a copy of the SAIP Report and reviewed it for any exceptions to disclosure. She selected portions of the text she believed could be subject to s. 13(1) of FIPPA. After she had done this, she contacted the Director of the program area that produced the SAIP Report, the Child Youth Mental Health Branch ("CYMH"), and provided her with a copy. The Director and a staff member reviewed the record and selected additional portions that they felt could be subject to s. 13(1).

[12] The Analyst integrated her own suggested severing and the suggested severing of the program area staff to prepare her final recommendations. The proposed release package included a sign-off sheet that provided information about the request and the Ministry's proposed response. The sign-off sheet included signature blocks for the Manager of Privacy and Access, the Ministry's Chief Information Officer, the Assistant Deputy Minister of Integrated Policy & Legislation ("ADM") and the Deputy Minister. All four signed the sheet. In addition to the sign-off sheet, CYMH staff prepared a briefing note about the records the Applicant had requested. After review and sign-off was complete, the Analyst mailed the severed records to the Applicant.

[13] The Ministry was responsive, open and fully co-operative throughout our investigation.

[14] **4.2 Advice or Recommendations**—Section 13(1) of FIPPA is a discretionary exception that authorizes public bodies to refuse to disclose information that would reveal advice or recommendations:

Policy advice or recommendations

13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[15] Section 13(2), however, provides that a public body must not refuse disclosure under s. 13(1):

13(2) The head of a public body must not refuse to disclose under subsection (1)

(a) any factual material,

(b) a public opinion poll,

(c) a statistical survey,

(d) an appraisal,

(e) an economic forecast,

(f) an environmental impact statement or similar information,

(g) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies,

(h) a consumer test report or a report of a test carried out on a product to test equipment of the public body,

(i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,

(j) a report on the results of field research undertaken before a policy proposal is formulated,

(k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,

(l) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body,

(m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[16] Although it does not apply here, I note that under s. 13(3), information in a record that has been in existence for ten years or longer also cannot be withheld under s. 13(1).

[17] **4.3 Was the Ministry Authorized to Refuse Disclosure?**—During the course of our investigation, the Ministry changed its initial position that s. 13(1) was properly applied and conceded that, because the SAIP Report was a final report, s. 13(2)(g) precluded it from withholding any portion of the report under s. 13(1). Based on the information provided to us, this was the correct and responsible thing to do. The SAIP Report was clearly a final report on the performance or efficiency of one of the Ministry's programs. Accordingly, s. 13(2)(g) clearly applies to it and precludes the Ministry from relying on s. 13(1) at all.

[18] The Ministry says it acted reasonably when it initially determined that the SAIP Report was still a draft, such that s. 13(2)(g) did not apply:

> This Ministry is of the view that, in the circumstances in which the severing decisions were made, the interpretation that section 13(1) could properly be applied to the SAIP Report was reasonable and was applied in good faith. …In withholding some of the Report's recommendations while disclosing others, the Ministry properly exercised its discretion under section 13(1).

[19] In essence, the Ministry argues that its error was an understandable mistake. It notes that the SAIP Report was part of a larger review of the SAIP Program, and that changes flowing from the review were not complete when the Applicant made his access request. The Ministry says, for example, that standards for its SAIP program were not finalized until April 2008 and that contract templates were still under development in 2008. The Ministry also states that funding approval for the SAIP program was not made until March 2008.

[20] The Director of CYMH stated:

> The perspective that this was still a draft report was based on our understanding at the time regarding the status of the report, [the IPO's] interpretation of FOIPPA, and her advice based on our discussion. We understood this to be appropriate since the report included policy advice with financial implications for the ministry that had not yet been considered. However, this does not change the fact that the report is only part of a broader review of the program that includes regional consideration of their particular service needs, development of the new SAIP standards, related budgetary decisions, and development of new contract templates.

[21] In summary, the Ministry's position is that the Ministry's head decided that s. 13(1) applied because all of the changes resulting from the broader SAIP review were not yet complete and because the program area took the position that the SAIP Report was a draft report. This led to the understandable if ultimately incorrect conclusion that the SAIP Report itself was not "final".

[22] In addition to the fact that there was an ongoing review, the Ministry also cited staffing issues as a reason the Ministry initially concluded that s. 13(1) applied. During the course of this investigation, the Ministry submitted the following:

> … [t]here appears to have been some lack of clarity on both the status and the context of the SAIP Report and the broader review of the SAIP program. This lack of clarity stemmed, in part, from transitions with the staff of both the program area and the Information Access Unit. Interviews of staff in both areas have confirmed that, had there been greater clarity on some of the relevant issues, different decisions would have been made regarding how the SAIP Report was severed.

[23] In summary, the Ministry's position on this point is that because there was not sufficient information at hand to clearly understand that the SAIP Report was a final report, the Ministry reached the wrong conclusion that the SAIP Report was covered by s. 13(1).

[24] **4.4 Application of Section 13(1)**—For the benefit of the Ministry and other public bodies, I will add some observations about the Ministry's application of s. 13(1) itself.

[25] The Ministry released a good deal of the SAIP Report to the Applicant, but there were notable exceptions, where whole sections of information were removed. For example, the Ministry disclosed all of section 2.2.3 (headed "Counsellor Credentials and Access to Clinical Supervision"), but completely withheld section 2.2.4 ("Specific Issues/Concerns Raised by Survey Respondents"). Section 2.2.3 highlights the qualifications of the counsellors employed by SAIP, including information about how many of them have graduate degrees or have completed other specialized training. By contrast, the section that was removed contains comments on, for example, "poor wages for SAIP counsellors, relative to MCFD clinicians."

[26] Other portions of the SAIP Report that were disclosed had portions removed. For example, the Ministry released much of the Executive Summary, but it withheld selective portions, such as this sentence: "Providers were unanimous in their view that program funding is insufficient to meet the needs for SAIP services." As another example, at the end of the SAIP Report, in the "Conclusions and Recommendations" section, the Ministry left in this sentence:

> SAIP providers exhibit a high level of commitment to the program area and to the children and families they serve.

[27] But took out this one:

> There is a pervasive view among providers that the program has been neglected by government decision-makers over the past several years.

[28] The Ministry's severing of the SAIP Report is perplexing. There is no qualitative difference between negative and neutral or positive comments by third parties. Yet neutral or positive information about the SAIP program and the Ministry was consistently included, while critical or negative information was very often (though not always) removed. The result would leave a reader with the impression that the report was more positive than it actually was when read in full.

[29] The Ministry's rationale for its severing decisions was stated as follows:

> The rationale for the exercise of discretion was summed up by the [Analyst]: "Some of the recommendations [of the SAIP Report] had been approved and implemented and the Ministry was not prepared to release those that [had not been approved and implemented]." … [d]ecisions on significant aspects of the delivery of the program had not been made or implemented at the time the severing decisions were made.

[30] My review of the SAIP Report leads me to the view that not all of the information the Ministry withheld is advice or recommendations. For example, the bullets contained in the severed section called "Specific Issues/Concerns Raised by Survey Respondents" contain personal views, or concerns, of various individuals who were interviewed, as to various existing states of affairs, not what could be characterized as advice or recommendations. Similarly, it is not at all apparent how the title of the section, which was also withheld, contains advice or recommendations.

[31] Other parts of the SAIP Report that the Ministry severed do meet the first requirement. For example, in section 3.1.2 ("Recommendations") the Ministry severed the following sentence:

> Initiate a process involving key stakeholders (CYMH provincial and regional managers, selected CYMH team leaders, selected SAIP program representatives, Child Protection representatives) to address which issues central to program mandate (i.e., service eligibility, core services, etc.) require provincially [*sic.*] policy direction.

[32] This is clearly a "recommendation" and is thus covered by s. 13(1).

[33] **4.5 Ministry's Exercise of Discretion**—Because the Ministry has conceded that it was not authorized to apply s. 13(1) at all, it is not necessary to consider whether the Ministry exercised its discretion appropriately. However, this is an opportunity to examine the issue of a public body's exercise of discretion in accordance with my responsibility under s. 42(1)(c) of FIPPA to inform the public, including other public bodies, about FIPPA and how it works.

[34] Section 13(1) is a discretionary exception and the head of the public body must be able to demonstrate that he or she has actually considered whether or not to exercise it. As I said in Order No. 325-1999:

> Section 13(1) is discretionary, *i.e.*, the head of a public body may decide to disclose information to which the section technically applies. Of course, many other exceptions in the Act are also discretionary in this sense. Since the Act's early days public bodies have been required to demonstrate a proper exercise of that discretion. In Order No. 5-1994, for example, the first commissioner remitted a matter to a public body so it could exercise its discretion under s. 14 (solicitor client privilege). This approach is consistent with the purpose of the Act found in s. 2(1): "to make public bodies more accountable to the public", including by "giving the public a right of access to records". It is also an approach followed in other jurisdictions. In Ontario, for example, their commissioner has required public bodies to exercise their discretion under comparable exceptions. See, for example, Ontario Order 147 (February 15, 1990).[5]

[35] In Order 02-50, I had this to say:

> [144] The head must exercise that discretion in deciding whether to refuse access to information, and upon proper considerations. If the head of the public

[5] See *www*.oipc.bc.ca/orders/1999/Order325.html.

> body has not done so, he or she can be ordered to re-consider the exercise of discretion. See, for example, Order No. 325-1999, [1999] B.C.I.P.C.D. No. 38, at p. 4. The commissioner can require the head to reconsider her or his exercise of discretion if it has been exercised in bad faith, has been exercised perversely or unfairly, where irrelevant or extraneous grounds have been considered or relevant ones have not been considered. See Order 02-38, at para. 147.[6]

[36] The Ministry had the following comments regarding the exercise of discretion:

> A public body must be able to demonstrate that, in deciding to withhold information under section 13, the public body considered all relevant factors and exercised its discretion appropriately. In this Ministry, the Deputy Minister makes these decisions on the advice of the specialists in our Information Access Unit, which in turn relies on advice from the program area.
>
> …
>
> There was also no indication in the sign off package to alert the Ministry executive that section 13(2)(g) was a potential issue for them to consider in approving the release of the report as severed. …The IPO's advice to the program area, and to the Ministry executive, was given in good faith based on her understanding of the status and context of the SAIP Program Review Report.
>
> Similarly, it was not unreasonable in the circumstances for the program area and the Ministry executive to believe that the section 13(1) exemption was properly applied to the severed portions of the report and that it was appropriate to refuse to disclose the severed portions of the report.

[37] In summary, the Ministry's view is that the head exercised her discretion appropriately in the circumstances based on the information before her.

[38] Discretion can only be said to be properly exercised if the public body has addressed relevant considerations in the circumstances of the particular request. Some factors will play a greater role in some cases and less in others. In Order 02-50, I supplied the following non-exhaustive list of the factors that a public body should consider when deciding on the exercise of discretion under s. 13(1)—and other discretionary provisions in FIPPA:

> In exercising discretion, the head considers all relevant factors affecting the particular case, including:
>
> - the general purposes of the legislation: public bodies should make information available to the public; individuals should have access to personal information about themselves;
>
> - the wording of the discretionary exception and the interests which the section attempts to balance;

[6] See www.oipc.bc.ca/orders/2002/Order02-50.pdf.

- whether the individual's request could be satisfied by severing the record and by providing the applicant with as much information as is reasonably practicable;
- the historical practice of the public body with respect to the release of similar types of documents;
- the nature of the record and the extent to which the document is significant and/or sensitive to the public body;
- whether the disclosure of the information will increase public confidence in the operation of the public body;
- the age of the record;
- whether there is a sympathetic or compelling need to release materials;
- whether previous orders of the Commissioner have ruled that similar types of records or information should or should not be subject to disclosure; and
- when the policy advice exception is claimed, whether the decision to which the advice or recommendations relates has already been made.[7]

[39] As I have noted previously,[8] the fourth factor is unhelpful when past practice has not reflected a proper evaluation of relevant factors or the public body has been secretive and not in favour of disclosing records.

[40] To sum up, in considering whether to withhold records under a discretionary exception, a public body must first determine whether the information fits within one of the discretionary exceptions. If it does, the head of the public body must then determine whether to exercise the public body's discretion in favour of releasing or withholding the information. In order to make this decision, the head must consider all the relevant factors. After the head makes a decision, he or she must have the ability to demonstrate how they reached that decision. The reasons for making the decision must be appropriate in the circumstances, in the sense described above.

[41] The Ministry has provided records, including the sign-off sheet and the briefing note prepared by Ministry staff for the purpose of informing the head of the public body. None of the evidence clearly establishes that the Ministry's head considered the exercise of discretion in deciding to rely on s. 13(1) to withhold information, as opposed to waiving that section and releasing the information, and if the head did exercise discretion, on what basis. Previous orders have established that the public body must provide evidence to show that its head did exercise discretion. If a head is not shown to have done so, the matter will be remitted to the head to do so. This is not appropriate in this case in view of disclosure of the complete SAIP report. It does bear emphasis, however, that public

[7] See www.oipc.bc.ca/orders/1999/Order325.html
[8] See www.oipc.bc.ca/orders/2002/Order02-38.pdf at para. 149.

bodies must be able to show that their head in fact did exercise her or his discretion under FIPPA and the basis on which that was done.

[42] Reviewing the non-exhaustive list of factors set out above, I believe that, had the Ministry's head turned her mind to the exercise of her discretion to disclose, these factors would be relevant:

- the general purposes of the legislation: public bodies should make information available to the public; individuals should have access to personal information about themselves;
- the wording of the discretionary exception and the interests which the section attempts to balance;
- the historical practice of the public body with respect to the release of similar types of documents;
- whether the disclosure of the information will increase public confidence in the operation of the public body.

[43] The introductory section of the SAIP Report states the purpose for writing it:

> This review was requested by the Ministry of Children and Family Development (MCFD), Child and Youth Mental Health Division. The purpose of the review was to inform and update the Provincial Director of Child and Youth Mental Health and the Child and Youth Mental Health Regional Transition Managers with respect [to] Sexual Abuse Intervention Programs (SAIP) funded by the ministry throughout the province and to identify any issues related to successful delivery of services.[9]

[44] With respect to historical practice, I note that the Ministry has in the past published similar reviews and other reports on its website. For example, the Ministry posted a full copy of an April 2000 report titled "Review of Deaf Mental Health Services in British Columbia"[10] on its website. I strongly support the practice of pro-active, timely disclosure of information by public bodies and encourage the Ministry in particular to do this wherever it can.

[45] As an overall observation, the Ministry, like all public bodies, should wherever possible exercise its discretion in favour of disclosure of as much information as possible. The strong default under FIPPA is that the public has a right of access to information and the onus generally is on public bodies to establish that this right is overridden by an exception. As s. 2(1) explicitly states, the purpose of FIPPA is to make public bodies more open and accountable to the public. It is a central tenet of democracy that public institutions are accountable to the citizens they serve, and accountability cannot survive in the absence of transparency. This is consistent with the observation of the Supreme Court of Canada that

> … [t]he overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to

[9] See www.mcf.gov.bc.ca/mental_health/pdf/SAIP_Report_Final%20_July06.pdf at p. 5.
[10] See www.mcf.gov.bc.ca/mental_health/mh_publications/deaf_mh_review.htm

> participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.[11]

[46] Accordingly, even where information can be withheld under s. 13(1), information should be disclosed wherever possible.

5.0 CONCLUSION

[47] The following observations are intended to assist public bodies in meeting their statutory obligations under FIPPA, including the obligation to appropriately exercise their discretion under provisions such as s. 13(1). Public bodies must have procedures—and resources—in place to ensure they meet these obligations and to ensure they fulfill the openness and accountability objectives of the legislation. The Ministry has advised that it accepts the guidance provided in these conclusions, has implemented some of the following observations and is reviewing how the others can be implemented.

Evidence of exercise of discretion

[48] Public body staff must assist the head of the public body in making his or her decision. The head needs information about the exercise of discretion whenever staff recommend withholding information under a discretionary exception. The head needs to know what factors staff considered in deciding to recommend that the head exercise his or her discretion in favour of withholding the information. The head needs also to know what other factors may be relevant, so as to reach an independent decision on the matter. As indicated earlier, the public body must be able to establish all of this, on clear evidence, in any inquiry.

Staff training

[49] The Ministry has cited staffing issues as one of the reasons for what happened here. It says that since this incident occurred, it has made changes to address staffing issues:

> **Changes to MCFD Information Access**
>
> Since the OIPC investigation into this complaint was initiated, this Ministry has hired a Director of Information Access and Records Management. We are restructuring our Information Access Unit into three teams, each headed by a team lead reporting to the Director. The team leads will provide guidance, training and direction to team members.
>
> One of the three teams will focus on general FOI requests and on privacy. This will enable more specific training to the team members as well as providing a broader base of knowledge and experience in responding to general requests. Information Access has received approval for additional resources to implement this restructuring.

[11] See *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403; available online at: http://csc.lexum.umontreal.ca/en/1997/1997rcs2-403/1997rcs2-403.html.

> We are satisfied that our actions to strengthen our Information Access unit will help this Ministry to provide a high level of service in responding to FOI requests.

[50] I agree with the Ministry that these measures are helpful. Staff who make recommendations to the head should be specifically trained on the importance of the proper exercise of discretion.

Effective consultations

[51] Staff who process access to information requests must frequently consult with program area staff in order to learn more about the history and content of a record. Because the proper application of FIPPA requires expertise, access to information staff should provide program area staff with the information about FIPPA that they require. In return, program area staff should provide access to information staff with information about the records that they can use to decide whether an exception to disclosure may apply. With respect to any type of report, staff should ask program areas whether the report is a final report. If program staff are uncertain, access to information staff should inform program area staff what a final report includes so that the program area can properly advise them.

Appropriate delegation and sign-off procedures

[52] Under FIPPA, the minister is the "head" of the public body where provincial government ministries are concerned. The *Interpretation Act* permits a deputy minister to act on the minister's behalf and s. 66 of FIPPA allows the head of a public body to delegate any duty, power or function of the head under FIPPA except the power to delegate.[12] I note for the Ministry's consideration that, while it is appropriate from a legal perspective for the deputy minister to act as the head of the public body, fully delegating the decision-making authority to expert staff at a lower level can speed up processing of requests and thus compliance with FIPPA's time requirements. In this case, for example, it took the Ministry three-and-a-half months to respond to the applicant's request.[13] This included the three weeks it took for the Manager of Privacy and Access, the Ministry's Chief Information Officer and the ADM to review the package and for the Deputy Minister to sign off. In an investigation report released by this office earlier this year, I recommended that no more than two staff should be involved in approving decisions and suggest the Ministry consider doing so here.[14] Delegation should be meaningful, and public bodies should delegate down to the appropriate level where it is reasonable to do so.

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[12] *See* www.oipc.bc.ca/legislation/FIPPA/Freedom_of_Information_and_Protection_of_Privacy_Act(May_2008).htm#section66

[13] There was a delay of a few weeks because the Analyst needed to contact the Applicant to clarify his request, a practice which is permitted under FIPPA. However, the materials provided to this Office show that the Analyst wrote to the Applicant on July 18, 2007 asking him to call her about his request, but the Analyst went on to state that she would be away from the office between July 20 and August 7. In this case, it would have been much faster for the Analyst to call the Applicant herself to clarify.

[14] See OIPC Investigation Report F08-01 available online at http://www.oipc.bc.ca/orders/investigation_reports/InvestigationReportF08-01.pdf.

[53] This report was prepared by Caitlin Lemiski, Portfolio Officer.

November 4, 2008

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

OIPC File: F07-33097