



May 3, 2012

Honourable Margaret MacDiarmid
Minister of Labour, Citizens' Services
and Open Government
Rm 346, Parliament Buildings
Victoria BC V8W 9E2

Dear Minister MacDiarmid:

Re: Bill 39 – Emergency Intervention Disclosure Act; OIPC File F12-49125

I am writing to provide my comments regarding Bill 39 – Emergency Intervention Disclosure Act, which your ministry tabled before the Legislative Assembly on April 30, 2012.

The *Freedom of Information and Protection of Privacy Act* provides my office with the responsibility to comment on the implications for access to information or for protection of privacy of proposed legislative schemes. Bill 39 provides for court-ordered testing of individuals for communicable diseases such as HIV/AIDS, Hepatitis B and Hepatitis C when an individual's bodily fluids contact an emergency responder. The laudable objective of this Bill is to protect the health of firefighters, paramedics, and other emergency responders who put themselves at risk for society's benefit. However, Bill 39 subjects individuals to a process of testing for disease that is highly privacy invasive while providing little to no demonstrable benefit to the emergency responder.

Due to the sensitive nature of health information associated with communicable diseases and the stigma attached to these illnesses, this Bill has a serious impact on the privacy rights of individuals required to undergo testing. Government should only contemplate a privacy intrusion of this nature where there is a significant demonstrated need. However, based on the statistics your ministry has provided my office, the usefulness of Bill 39 is limited due to the very few instances where emergency responders contract communicable diseases.

While there are other provinces in Canada that have adopted similar legislation, the necessity for Bill 39 no longer exists. Since the time these provinces passed legislation, universal pre-exposure protocols call for emergency responders to take such precautions as vaccinations as well as wearing personal protective equipment (i.e. appropriate gloves) and clothing.

Further, where individuals may have contracted a communicable disease, medical best practices call for immediate post-exposure treatment. This would necessarily occur well before the results of a compelled test would be available to the emergency responder. It is our understanding that the Alberta government has used their legislation on as few as two occasions in the previous four or five years. This shows a very limited usefulness to the emergency responders whom Bill 39 is designed to protect.

Under the Bill, it would likely be several weeks before an applicant would receive test results indicating whether an individual they had been in contact with has a communicable disease. By the time an applicant obtains those results, he or she will be several weeks into their post-exposure treatment. To guard against false test results, some physicians recommend that individuals complete the post-exposure treatment even if the test result is negative. While there can be uncomfortable side effects from these treatments, in very few instances will an individual need to continue treatment considerably longer than is required to obtain test results through the court process provided for in the Bill. This would essentially negate any benefit to the emergency responder from a compelled test result.

Removing an individual's right to control their bodily integrity is the most intrusive form of privacy infringement. Any initiative that limits this right must strike a balance between the reasonableness of restricting an individual's liberties with the commensurate need to infringe them. I do not see such a balance within Bill 39.

I respectfully ask you to withdraw Bill 39. I believe this Bill has significant privacy concerns for individuals from whom the court compels testing, with little or no benefit to the emergency responders that government is trying to protect.

Consistent with our longstanding practice when commenting on a Bill tabled in the Legislative Assembly, I am providing a copy of this letter to the Opposition critic for your ministry. In addition, my office will post a copy of this letter on our website.

Sincerely,



Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Raj Chouhan, MLA-Burnaby Edmonds
Opposition Critic for Labour

Kim Henderson
Deputy Minister
Ministry of Labour, Citizens' Services
and Open Government