



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

April 1, 2014

Honourable Pat Pimm
Minister of Agriculture
Room 325, Parliament Buildings
Victoria BC V8W 9E2

Dear Minister Pimm:

Bill 19 – Animal Health Act—OIPC File No. F14-57017

I am writing to convey my concerns regarding Bill 19, the Animal Health Act, which you tabled in the Legislature on March 27, 2014.

Bill 19 would replace the *Animal Disease Control Act* and several other enactments that address farm animal production and disease, and replace them with the Animal Health Act. The new Animal Health Act would provide government with legislative tools to enable the monitoring and management of animal disease, and require farmers to report incidents of disease and suspected disease.

The Bill would also prevent public access to information about animal disease reporting and testing by exempting information collected in the administration of the Animal Health Act from the access to information provisions of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). As a result, journalists, citizens, and researchers would never be able to examine the manner in which government is managing its responsibilities under this new act.

Government proposes this broad exemption despite the carefully balanced set of access to information provisions and exemptions already present in FIPPA which protect both the public's right to know and a person's legitimate business interests and right to privacy. This balance is the result of policy and legislative decisions originally adopted by unanimous vote of the Legislature and fine-tuned over FIPPA's twenty year history.

Bill 19 also exempts Animal Health Act inspectors from compliance with FIPPA and the *Personal Information Protection Act* ("PIPA") during an emergency. This would remove all instances of collection, use and disclosure from the oversight of my office, which would prevent any review of how those emergency powers are exercised.

I am concerned that in Bill 19, government has set aside the comprehensive access to information and protection of privacy scheme provided by FIPPA without providing evidence that the current regime is incapable of protecting the interests of farmers and the public that are at stake in the administration of the Animal Health Act.

ACCESS TO INFORMATION

In Bill 19, section 16(2) provides that a person engaged in the administration of the Animal Health Act must not disclose the types of information listed in s. 16(1), even where disclosure of that information would otherwise be required by FIPPA. Government has neither demonstrated the need for this exemption nor has it demonstrated how existing exemptions in FIPPA would not adequately protect the interests of farmers who report suspected incidents of animal disease or who submit samples for laboratory testing.

This broad exemption is proposed despite the protections in Part 2 of FIPPA which expressly prevent the disclosure of information where that disclosure would be harmful to the business interests of a third party, or to an individual's personal privacy. For example, ss. 21 and 22 of FIPPA would provide for the protection of information supplied by farmers under the Animal Health Act. Section 21 prevents the disclosure of commercial information where that disclosure could be harmful to the business interests of a third party. Similarly, s. 22 prevents the disclosure of personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.

Those two sections, as components of FIPPA's complete access to information scheme, are capable of governing the treatment of confidential information collected pursuant to the Animal Health Act. I note that the existing *Animal Disease Control Act* does not exempt disease reports from access to information under FIPPA, and government has yet to provide an example of where public access to information has frustrated the objective of that Act. However, if it is the opinion of government that provisions in FIPPA exempting access are not sufficient, legislative options are available that would be less sweeping than those proposed in this Bill.

For example, other Canadian jurisdictions that have enacted animal health legislation have not generally granted such a broad exemption over the public's right to information. Rather, they have crafted narrow exemptions that preserve the jurisdiction of access to information legislation by either deeming the information supplied by farmers to be commercial information and to have been supplied in confidence,¹ or by narrowly exempting specific provisions of access to information legislation.²

¹ See s. 16(2) of the Ontario *Animal Health Act*, S.O. 2009, Chapter 31.

² See s. 55(3) of the Alberta *Animal Health Act*, S.A. 2007, Chapter A-40.2.

MANDATORY DISCLOSURE OF INFORMATION IN THE PUBLIC INTEREST

I appreciate that government has chosen not to exempt information collected under the *Animal Health Act* from the obligation under s. 25 of FIPPA to disclose information where disclosure is in the public interest. While this is an improvement over the version of the Bill originally tabled in April 2012, it does not provide for adequate public access to information. As I described in my Investigation Report into the application of s. 25 by public bodies,³ that section has been interpreted as setting a high legal threshold for disclosure, where there must be both an urgent and compelling need for public disclosure and a significant risk of harm to an individual or to the environment. In practice this has proven very difficult to apply because the determination of what triggers an urgent and compelling need for disclosure can be open to broad and inconsistent interpretation by the heads of public bodies. As a result, it is not sufficient to expect the public to rely on your Ministry to proactively disclose information related to animal health simply through the application of s. 25.

I recommend that government remove the FIPPA exemption in s. 16(2) of Bill 19, and allow access to information about animal disease to be governed by the access to information regime enacted in FIPPA. Alternatively, government could amend the Bill to deem samples supplied by farmers for laboratory testing to be, for the purposes of s. 21 of FIPPA, commercial information that has been supplied in confidence. This would ensure that information would not be disclosed where the disclosure could reasonably be expected to harm the business interests of the farmer, while retaining the public interest in access to information, and my office's oversight of the balance between those interests.

EMERGENCY POWERS

Bill 19 also provides for an override of FIPPA and PIPA in relation to emergency powers. Section 60(a) provides that when an emergency is declared by the chief veterinarian, an inspector under the *Animal Health Act* has unlimited powers for collection, use, and disclosure of personal information. These emergency provisions are being proposed without evidence of actual need or evidence that FIPPA and PIPA do not already enable this collection, use, and disclosure. Further, in exempting these emergency powers from provincial privacy legislation, government has removed the authority of my office to review how those powers are used during or even after an emergency.

I am concerned that these proposed emergency powers to collect, use and disclose personal information during an emergency are unlimited, and would be susceptible to misuse during an emergency. It is important that my office be given the jurisdiction to review how British Columbian's personal information is collected, used, or disclosed by

³ Investigation Report F13-05, [2013] B.C.I.P.C.D. No. 33, Public Body Disclosure of Information under Section 25 of the *Freedom of Information and Protection of Privacy Act*.

inspectors, even if that review were to take place after an emergency. Further, I am not convinced that there is a need for these powers that is not already met by FIPPA and PIPA.

I recommend that government amend Bill 19 to provide my office with the authority to review the extraordinary collection, use, and disclosure of information by government when an emergency is declared.

SUMMARY

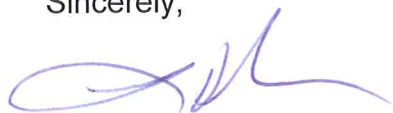
In conclusion, the broad exemptions proposed in Bill 19 disregard the established balance in provincial privacy legislation between access to information and confidentiality. The Bill also provides for extraordinary emergency powers without providing for oversight of how those powers may impact the privacy rights of British Columbians.

I recommend that government amend the Bill to remove s. 16(2). Alternatively, I recommend that government provide for a narrower exemption from FIPPA, such that information is deemed to meet the requirements of s. 21(a) and (b) of FIPPA, protecting the interests of farmers where there is a real risk of harm to their business interests, while retaining the public's interest in access to information, and the role of my office in providing oversight over the balance between those interests.

I further recommend that government amend s. 60 to provide my office with authority to have oversight over the collection, use, and disclosure of information that takes place during an emergency.

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, a copy of this letter will be posted on my office's website.

Sincerely,



Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Nicholas Simons, MLA for Powell River-Sunshine Coast
Opposition Critic for the Ministry of Agriculture