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Commissioner calls for legal reform in wake of “no responsive records” investigation

VICTORIA—B.C.’s Information and Privacy Commissioner Elizabeth Denham is recommending changes to the province’s freedom of information laws to ensure that government documents its key actions and decisions.

The recommendation is at the heart of a comprehensive investigation report issued today by Commissioner Denham, who examined the increasing number of “no responsive records” replies by the B.C. government in response to general access to information requests.

“A citizen’s right to access government records is a fundamental element of our democracy. The right to know promotes transparency in the public policy process, and is an essential mechanism for holding government to account,” said Denham.

“In the course of my investigation, we have seen evidence of the practice of oral government, where business is undertaken verbally and in a records-free way. There is currently no requirement to document these activities. However, without a duty to document, government can effectively avoid disclosure and public scrutiny as to the basis and reasons for its actions.

“Government should continually demonstrate its commitment to transparency, accountability and open government by creating accurate records as it carries out its duties. I believe the duty to document should be a legal requirement in the legislative framework of government.”

The Commissioner initiated an investigation in Sept. 2012, after the Freedom of Information and Privacy Association filed a complaint alleging significant growth in “no responsive records” replies by government over a 10-year period. In October and November 2012, the office also received several complaints about “no responsive records” replies regarding the resignation of the Premier’s former Chief of Staff.

These complaints were combined into a comprehensive investigation that sought to identify the reason for the increase in “no responsive records” replies, and also to determine whether government was assisting applicants as required by section 6(1) of the Freedom of Information and Protection of Privacy Act (FIPPA).

While there is no single reason behind the increasing number of “no responsive records” replies, the Commissioner identified several factors contributing to the trend, including the centralization of Freedom of Information (FOI) processing within government, an above-average number of media requests resulting in “no responsive records”, and a high rate of “no responsive records” replies by the Office of the Premier, where 45 per cent of all requests made in 2011-12 returned no records.

The investigation found that in a majority of cases, government’s handling of requests for information did not raise significant issues of compliance with s. 6(1) of FIPPA. However, improvements to the process are necessary; the Commissioner has made six recommendations to improve government’s practices and promote transparency in the access to information process.

With regard to the resignation of the Premier’s former Chief of Staff, the investigation did not reveal any responsive records. However, the Commissioner asked the Office of the Premier to ensure its practices regarding the deletion of transitory records are consistent with those recommended by the government’s central information management office.

The office’s oversight of this issue will continue, with a review of “no responsive records” statistics at the end of the current fiscal year and an additional follow up at the end of the 2013-14 fiscal year. The results of these follow-ups will be made public.

On a related matter, Commissioner Denham confirmed that her office has been collecting information about an email sent by Kim Haakstad, the Premier’s former Deputy Chief of Staff, with an eye to whether the email and its contents raise compliance issues with B.C.’s access and privacy law. The Commissioner will decide in the coming days whether further action by her office is warranted.

Investigation report F13-01, Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia, is available at:
www.oipc.bc.ca/report/investigation-reports.aspx

Commissioner Denham will be available for one-on-one interviews about the investigation report between 11 a.m. and 2 p.m. on Monday, March 4. To arrange an interview, please contact:

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