



May 11, 2012

Honourable Blair Lekstrom
Minister of Transportation and Infrastructure
Room 342 , Parliament Buildings
Victoria BC V8V 1X4

Dear Minister Lekstrom:

Re: Bill 47 – Coastal Ferry Amendment Act, 2012; OIPC File F12-49326

I am writing to provide my comments regarding Bill 47 – Coastal Ferry Amendment Act, 2012 which you tabled in the Legislative Assembly on May 9, 2012. I understand the purpose of these amendments is to address concerns regarding the cost of ferry services in British Columbia.

The *Freedom of Information and Protection of Privacy Act* (“FIPPA”) provides my office with the responsibility to comment on the implications of proposed legislative schemes on access to information and the protection of privacy. The Legislative Assembly granted my office the responsibility for monitoring how FIPPA is administered to ensure its purposes are achieved. I note that specific requirements pertaining to proactive disclosure by public bodies were added to FIPPA during the last Session of the Legislature.

Section 3 of Bill 47 would repeal and replace an existing provision in the Coastal Ferry Act that requires the British Columbia Ferries Commissioner (the “Commissioner”) to publish financial and service information provided by a ferry operator (BC Ferries) for the purposes of establishing price caps for ferry routes.

The proposed amendment would give the Commissioner the discretion not to publish information that could be withheld in response to an access request under sections 17 or 21 of FIPPA. Sections 17 and 21 of FIPPA allow information to be withheld where disclosure could harm the financial or economic interests of a public body or government, or where disclosure could be harmful to the business interests of a third party.

In my view, a proposed amendment to the Coastal Ferry Act that would remove an existing requirement for proactive disclosure is a step backward. It is contrary to government’s Open Government initiative and to the policy intent of new provisions in FIPPA in relation to proactive disclosure (sections 70 and 70.1). These provisions promote greater proactive and routine disclosure by public bodies.

In relation to the Open Government initiative, I am currently engaged in monitoring government's efforts to make more information publicly available and advocating that government adopt a presumption favouring proactive and routine disclosure. In my investigation into the simultaneous disclosure practices of BC Ferries (Investigation Report F11-02), I identified three types of information suitable for proactive disclosure: disclosure of information useful to the public, disclosure of information likely to be the subject of an access to information request, and publishing responses to access to information requests.

In my opinion, service and financial information pertaining to essential government services, such as the information BC Ferries discloses to the Commissioner for the purpose of establishing price caps for ferry routes, is information that is both useful to the public and likely to be the subject of access requests. It is clearly in the public interest that the Commissioner routinely and proactively disclose such information. I ask that you amend Bill 47 by removing section 3.

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. Given the negative implications of this Bill with respect to government's Open Government initiative, I am also copying the Honourable Margaret MacDiarmid as Minister responsible for Open Government.

Sincerely,



Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Honourable Dr. Margaret MacDiarmid
Minister of Labour, Citizens' Services
and Open Government

Harry Bains, MLA-Surrey-Newton
Opposition Critic for Transportation
and Infrastructure

Grant Main
Deputy Minister
Ministry of Transportation and Infrastructure