



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

April 2, 2014

Honourable Andrew Wilkinson
Minister of Technology, Innovation
and Citizens' Services
PO Box 9068 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Wilkinson:

Designation of BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police under the *Freedom of Information and Protection of Privacy Act*—OIPC File No. F13-55575

BACKGROUND

In December, pursuant to my authority to engage in research under [s. 42\(1\)\(e\)](#) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), I invited comments from the BC Association of Chiefs of Police, the BC Association of Municipal Chiefs of Police (“Associations”), and the public regarding whether it was appropriate to designate the Associations as public bodies under FIPPA.

Comments were submitted by the Associations, Rob Wipond, a journalist who has written extensively on this subject, the Delta Police Board, Dr. Adam Molnar, an academic specializing in law enforcement and surveillance, the BC Civil Liberties Association (“BCCLA”), the Freedom of Information and Privacy Association (“FIPA”), and the Pivot Legal Society.

I have made these comments publicly available on our website.

I invited comments about this issue because the Associations appear to exert significant influence over law enforcement policy decisions in British Columbia without being subject to the same access laws as are other publicly funded organizations.

Examples that I believe reflect the Associations’ significant public policy role with respect to legal and law enforcement issues include:

- The Ministry of Justice advises in its report on the Safety and Security of Vulnerable Women in BC that it has struck an advisory committee comprised of members of the BC Association of Chiefs of Police to implement police reforms;¹
- Representatives of both Associations sit on an appeal committee that enforces binding standards regarding police qualifications and training.²
- According to its website, the BC Office of the Superintendent of Motor Vehicles (“OSMV”) consults with the BC Association of Chiefs of Police on Road Safety enforcement issues, strategies, communications and training;³
- The chair of a panel struck under the *Coroners Act* to examine domestic violence deaths made recommendations to the Chief Coroner to direct the BC Association of Chiefs of Police to implement best practices and training requirements to better respond to victims;⁴ and
- In June 2008, the BC Association of Chiefs of Police requested that the Ministry of Public Safety and Solicitor General (now the Ministry of Justice) convene a working group to review the record check process in British Columbia. Government responded by convening the requested group, which drafted guidelines for police information checks in British Columbia that the BC Association of Chiefs of Police endorsed in November 2010.

These examples demonstrate that the Associations occupy an important and respected public policy and advisory role.

SUBMISSIONS

With few exceptions, the comments I received either support a recommendation to designate the Associations as being subject to BC’s access and privacy laws or did not oppose adding them.

Comments that support a recommendation to add the Associations to FIPPA

In their joint comment, the BCCLA and FIPA identified “practical and juridical reasons” for designating the Associations. Practically, when an applicant requests the Associations’ records, it “involves requests to a series of different

¹ See http://www.ag.gov.bc.ca/public_inquiries/docs/BCGovStatusReport.pdf at p. 8.

² <http://www.pssg.gov.bc.ca/policeservices/shareddocs/standards/2.3.1p-appeal-process.pdf>

³ See <http://pssg.gov.bc.ca/osmv/partners/index.htm#lawenforcement> under “Law Enforcement”.

⁴ See <http://www.pssg.gov.bc.ca/coroners/reports/docs/death-review-panel-domestic-violence.pdf>.

police forces each of which may have custody or control of various records, depending on the role played by that force's chief". Judicially, they cited an "anti-avoidance" argument that having police departments associate outside of FIPPA is analogous to government bodies forming separate associations to avoid their constitutional responsibilities under the *Charter of Rights and Freedoms*.⁵

The Pivot Legal Society also supported designation, and expressed a particular concern that by not being subject to FIPPA, the Associations could develop policies that police boards could adopt "which the public know absolutely nothing about."

Adam Molnar, Postdoctoral Fellow at the Surveillance Studies Centre at Queen's University, supported making the Associations "subject to the appropriate degree of transparency as public bodies under our freedom of information laws". Citing the significance of the Associations' work, Dr. Molnar expressed the view that "establishing such an important public-policy framework beyond the realm of public legislation that is designed to ensure transparency, accountability, and trust in our public institutions is troubling".

Comments that are neutral with respect to adding the Associations to FIPPA

The BC Association of Chiefs of Police stated that they would "fully comply" with any decision government may make and took no position as to whether government should designate them.

The BC Association of Municipal Chiefs of Police provided me with a letter indicating that it supported the BC Association of Chiefs of Police's position and comments. In its evaluation of the merits of whether to add the Associations, the BC Association of Chiefs of Police included a document prepared by the Manitoba government that includes several factors government can use to assist it in deciding whether to designate an organization under that province's access and privacy legislation.⁶ Using these factors, the BC Association of Chiefs of Police noted that the Associations are unusual candidates for designation under FIPPA because they are not mandated by statute and they do not have Directors who are appointed by government. However, it also noted that "[w]hile the members of the BCACP are not accountable to or controlled by Government, the members are accountable to their employers (which are public bodies) for their actions in pursuit of the goals of the Association".

⁵ The BCCLA and FIPA point to *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 48 in support.

⁶ See "called "Designating Organizations under FIPPA" at http://www.gov.mb.ca/chc/fippa/public_bodies/designating_organizations.html.

Comments that do not support a recommendation to add the Associations to FIPPA

While the majority of the comments I received supported adding the Associations to Schedule 2 of the Act, a journalist who has written extensively on this topic urged me to simply declare the Associations as public bodies. In his view, the Associations are already public bodies because they include public employees as members and conduct business related to public law enforcement. While I agree that the Associations include public employees and conduct business related to public law enforcement, the Associations do not meet the requirements of the definition of “public body” in FIPPA and if they are to be added, this would have to be done by adding them to Schedule 2 of the Act.

Another comment I received was that it is not necessary for the Associations to be added to FIPPA because police boards in British Columbia are already subject to FIPPA (and in the case of the RCMP, to federal access to information legislation); therefore individuals can request the Associations’ records through individual police departments.

This reality seems to be part of the problem. While it may be that many of the Associations’ records are kept by police boards, it is unknown which records are kept where, and whether the Associations keep records in other physical or electronic locations, such as home filing cabinets, private email addresses, or cloud-based online storage drives. At present, individuals seeking records from the Associations would have to know in advance which police board had a copy of the record they are seeking, or they might have to make multiple requests to multiple boards. This decentralized approach is burdensome on applicants, but more importantly, applicants may not receive or learn about the existence of records if they fail to ask the right police board or if the records are kept in a non-police board location.

From a records coverage perspective, the appropriate level of transparency of Association records can be achieved only if a member of the public can request current and historical records from the Association itself, rather than relying on what might be piecemeal and incomplete records held by individual Chief Constables at any given time.

RECOGNITION OUTSIDE OF BC

In Ontario, the Association of Chiefs of Police have been registered since 2004 under that province’s *Lobbyists Registration Act* and subject to oversight by the Office of the Integrity Commissioner.⁷ Federally, the Canadian Association of

⁷ See

<https://lobbyist.oico.on.ca/LRO/RegistrationPublic.nsf/b13320178443e46e8525682a0073cea9/d929748f6092b19985256e23005d9e3a?OpenDocument&Highlight=0,association,of,chiefs,of,police>

Chiefs of Police has been registered with the Office of the Commissioner of Lobbying of Canada since 2010.⁸

In the United Kingdom, the Association of Chief Police Officers (ACPO) became subject to the *Freedom of Information Act* in 2011 at the urging of the ACPO. Since then, the ACPO has processed several requests. Last month, it voluntarily made copies of its freedom of information disclosures publicly available on its website. In explaining the Association's decision, ACPO President Sir Hugh Orde noted:

It may seem obvious to state it, but as a public service, our principal duty is to serve the public. In so doing, we owe it to you to be transparently held to account by a variety of means, including FOI requests. ACPO's information stream is open to scrutiny, and we welcome the chance to show you how we help make a real difference to serving the public and keeping them safe.⁹

CONCLUSION

The decision-making process of the Associations should, as a matter of public policy, be transparent, and transparency flows from access. While any organization can choose to post information about itself online, freedom of information is unique because it shifts some of the power from an organization to the citizen as the driver of public disclosures.

The majority of persons and organizations who were consulted support designation of the Associations under the province's access and privacy legislation.

RECOMMENDATION

As a result of the submissions I have received and the analysis provided, I recommend that the Associations be added as public bodies under FIPPA. Under FIPPA, a "public body" means a Ministry of the Government of British Columbia, an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2. It appears to me that the only option available is for the Associations to be added to Schedule 2.

I have considered the mechanics by which the Associations could be added to Schedule 2. While you will of course take the necessary advice from the Ministry of Justice, I would simply note that based on our review, there is some question as to whether this situation falls within the scope of the Ministerial designation

⁸ See <https://ocl-cal.gc.ca/app/secure/orl/lrrs/do/vwRg?cno=271844®Id=704130>

⁹ See ACPO website <http://www.acpo.police.uk/Home.aspx> under "Freedom of Information (FOI) Disclosure Logs".

power in s. 76.1 of FIPPA. Introducing a Bill adding the Associations to Schedule 2 would provide the required certainty.

I urge government to bring the Associations under FIPPA at the earliest opportunity. If you would like to discuss this matter further, please contact me at (250) 387-5629. A copy of this letter will be posted on my office's website.

Sincerely,

ORIGINAL SIGNED BY

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Hon. Suzanne Anton
Minister of Justice

Deputy Chief Cst. Len Goerke
President – BCACP

Deputy Chief Cst. Warren Lemcke
President/Chair – BCAMCP

February 14, 2014

Re: Public comments regarding the BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police

Dear Commissioner Denham,

This letter is a request to declare the British Columbia Association of Chiefs of Police (BCACP) and the British Columbia Association of Municipal Chiefs of Police (BCAMCP) as “public bodies” in accordance to Schedule 2 of the *Freedom of Information and Protection of Privacy Act* (FIPPA), that falls within your authority under section 42(1)(e) of the Act.

As an academic researcher who has spent over a decade researching, publishing, and presenting information on criminal justice issues, including in the areas of policing governance in the Province of British Columbia, and in particular on integrated models of policing governance, I strongly support the recommendation to classify the BCACP and the BCAMCP as “public bodies”.

It is important to recognize that the BCACP and the BCAMCP are comprised of a range of public policing officials, and not only police chiefs. These associations include police chiefs, deputy chiefs, RCMP detachment commanders in BC, as well as seven senior members of the BC Ministry of Justice’s Police Services Division, the Chief Coroner, the Chief Conservation Officer, the Director of the Civil Forfeiture Office, and official security representatives for CSIS, FINTRAC, Canada Border Services, all five major Canadian banks, and the US Secret Service, amongst many others.

The BCACP and BCAMCP provide a range of functions that are integral to how British Columbia’s criminal justice system currently operates. The associations set policy agendas, shape public policy decision-making, establish provincial “best-practice” in criminal justice policy, and facilitate the harmonization of justice policy across a range of agencies that are affiliated with the associations. For these reasons, governance networks like the BCACP and BCAMCP are a vitally important means through which public criminal justice policy is currently being developed in BC.

Public bodies are expected to facilitate communication and cooperation across their respective agencies when working on criminal justice matters of mutual concern. Having elected Ministers, the provincial government, or BC police departments communicate on important criminal justice issues presents a valuable opportunity to collectively address complex public policy challenges. However, establishing such an important public-policy framework beyond the realm of public legislation that is designed to ensure transparency, accountability, and trust in our public institutions is troubling.

The BCACP and BCAMCP are comprised of public officials whom are engaged in public policy development that directly affects the everyday lives of residents and citizens of BC. Because of this, the BCACP and BCAMCP should fall under our freedom of information laws to ensure an ongoing degree of trust and accountability between the citizens of BC and the institutions that represent them. In addition, as an academic researcher who regularly relies on freedom of information legislation as a means to contribute to matters of public policy concern, it is furthermore important that police governing associations and justice-related bodies continue to cooperate with groups and organizations that contribute independent research to the public record.

Given the immense influence of the police chief associations in BC on criminal justice policies that directly affect the people of British Columbia, it is both within the public interest, as well as a public right, that the BCACP and BCAMCP are subject to the appropriate degree of transparency as public bodies under our freedom of information laws. As police governance institutions continue to evolve toward increasingly integrated partnerships, it is vitally important that such cooperative arrangements continue to be subject to our public system of laws.

Yours truly,

Original Signed By

Dr. Adam Molnar
Postdoctoral Fellow
Surveillance Studies Centre
Queen's University



BC Association of Chiefs of Police
Mailstop #306
14200 Green Timbers Way
Surrey, BC V3T 6P3

February 13, 2014

Office of the Information and
Privacy Commissioner for British Columbia
PO Box 9038 Stn. Prov. Govt.
Victoria B.C. V8W 9A4

Attention: Elizabeth Denham, Information and Privacy Commissioner for British Columbia

**Re: Response of British Columbia Association of Chiefs of Police (the “BCACP”) to
Commissioner’s letter of December 6, 2013 regarding a possible recommendation to
add the BCACP to Schedule 2 of the *Freedom of Information and Protection of
Privacy Act* (“FIPPA”)**

We write in response to your letter of December 6, 2013, in which you sought the input of the BCACP as to whether a recommendation should be made to the Legislature that the BCACP be included as a “public body” under Schedule 2 of the FIPPA.

The BCACP has considered the issues and facts set out in your letter of December 6, 2013. The BCACP takes no position on the ultimate issue of whether a recommendation should be made by the Commissioner in this matter. We defer to and will respect any decision made by you in this regard, and will fully comply with any decision the Legislature makes in response to your recommendations.

While we take no position on the ultimate decision you will make, we appreciate that you will want to make your determination with a full understanding of the relevant facts, including the composition, role, and functions of the BCACP.

Submission

We have been unable to locate any jurisprudence identifying the relevant factors to be considered in a case like the present. You have, of course, identified some of those factors in your letter, but the lack of previous decisions in this area is reflective of the fact that the designation of bodies under the FIPPA is essentially a legislative policy decision, as opposed to an adjudicative matter.

The Manitoba Government has issued a policy identifying the factors which should be considered by Government departments when considering whether to recommend that an organization be designated as a government agency under that Province's version of the FIPPA (Appendix "A"). While these guidelines, of course, are not binding on the BC Commissioner, they are, in our view, informative and are of assistance in framing any discussion of the relevant facts in this case. These factors are:

1. Governance
2. Control and Accountability
3. Types of Services
4. Funding
5. Consistency
6. Policy, Political or Historical Considerations
7. Mandate

We have provided below a summary of the relevant facts for each of these factors.

Governance

Governance: What is the governing structure of the organization? Who appoints the members of the organization and the members of the governing board of the organization? If a Minister appoints all members of an organization's board of directors, there is a strong argument for designating the organization. Many of the organizations currently designated have boards which are wholly appointed by a minister or are committees whose members are all appointed by a minister. On the other hand, if the Manitoba government (or a minister) does not appoint any members of the board, the organization is probably not a "public" body in the usually understood sense.

A review of Schedule 2 of the FIPPA reveals that, like Manitoba, organizations designated as public bodies under Schedule 2 typically are creatures of statute and/or have Directors appointed by Government.

The BCACP is not established by statute nor does it have a statutory mandate. The BCACP operated previously as an unincorporated Association, but is now a Society incorporated under the provisions of the *Society Act* R.S.B.C. 1996, c. 144 (Certificate of Incorporation attached as Appendix "B").

Government does not appoint any members to the BCACP. Membership of the BCACP is set out in Article VI of the BCACP Constitution and Bylaws (attached as Appendix "C"), and comprises primarily Chief Constables and Deputy Chief Constables hired by British Columbia municipalities as well as Senior Officers of Royal Canadian Mounted Police in charge of Detachments, Districts, Regions or having command level responsibilities for provincial and federal policing in British Columbia and the Yukon. As such, members of the BCACP are employees of Provincial and Federal public bodies. Members pay a membership fee which is reimbursed by their respective employers.

The BCACP is managed through an Executive Committee, consisting of a President, Vice-President, Secretary Treasurer, immediate Past President and two Directors, all of whom are elected by the membership. Notwithstanding this structure, decisions are made largely by consensus between members.

Control and Accountability

To what extent are the activities of the organization controlled by the Manitoba government and to what extent is the organization accountable to that government? Would application of FIPPA to the organization be inconsistent with its structure? For example, when an organization is jointly established by the federal and provincial governments and each government appoints some directors to its governing board, it is probably not appropriate to bring that organization under provincial access and privacy legislation without the agreement of the federal government. An example is the North Portage Development Corporation which was established by Canada, Manitoba and the City of Winnipeg.

While the members of the BCACP are not accountable to or controlled by Government, the members are accountable to their employers (which are public bodies) for their actions in pursuit of the goals of the Association.

While the BCACP contains representatives of provincially and federally regulated public bodies, it is not established as a joint venture between the Provincial and Federal Governments.

Types of Services

What types of activities does the organization perform? Does it carry out, or has it taken over, a provincial government program or services which would otherwise be provided directly by a government department?

As the Commissioner has noted, responsibility for policing in British Columbia is highly decentralized. The need for consistency and coordination amongst these various bodies was the genesis for the BCACP. Consistent with this goal, the Constitution of the BCACP describes the purposes of the BCACP as follows:

- a) Encouraging and developing co-operation among all its members in the pursuit of and attainment of their goals;
- b) Promoting a high standard of ethics, integrity, honour, and conduct;
- c) Fostering uniformity of police practices;
- d) Encouraging the development and implementation of efficient and effective practices in the prevention and detection of crime; and
- e) Effectively communicating problems and concerns to appropriate levels of authority.

The BCACP acts as a coordinating body to express views of policing in British Columbia to government and other relevant stakeholders. The viewpoint of the BCACP is often sought by government on important matters of policy in British Columbia, as identified by Mr. Wipond in his submission. This is not a government function in the strict sense, but members of the Association are expressing their views as employees and representatives of public bodies, and not as individuals with their own distinct viewpoints and interests.

We note that while the BCACP is not a creature of statute, its functions are roughly analogous to the Local Police Committees contemplated under Part 6 of the *Police Act*, RSBC 1996, c.367:

Part 6 — Police Committees

Local police committees

- 31 (1) After consulting the councils of municipalities located entirely or partly in the area of British Columbia in which the committee is to have jurisdiction, the Lieutenant Governor in Council may establish a local police committee consisting of not less than 3 members appointed by the Lieutenant Governor in Council.
- (2) A member of a committee must be appointed for a term, of not longer than 3 years, that the Lieutenant Governor in Council determines.

- (3) A person may be reappointed as a member of a committee but must not hold office for a period of more than 5 successive years.
- (4) A member of a committee must not be a judge of a court.

Chair and quorum

- 32** (1) The Lieutenant Governor in Council may designate one member of a committee as the chair.
- (2) In the absence or inability of the chair to act, the other committee members must elect a chair.
 - (3) A simple majority of the committee constitutes a quorum.
 - (4) In case of a tie vote, the chair has a second or casting vote.

Duties of committees

- 33** A committee has the following duties:
- (a) to promote a good relationship among
 - (i) the residents of the area of British Columbia in which the committee has jurisdiction,
 - (ii) the provincial police force, and
 - (iii) any designated policing units or designated law enforcement units that may be operating in that area;
 - (b) to bring to the attention of the minister, the provincial police force, the designated policing units and the designated law enforcement units, any matters concerning the adequacy of policing and law enforcement in the area of British Columbia in which the committee has jurisdiction, and to make recommendations on those matters to the minister, the provincial police force, the designated policing units and the designated law enforcement units;
 - (c) to perform other duties that the minister may specify.

The BCACP is not a Local Police Committee, but fulfills some of the goals identified in section 33. The BCACP promotes cooperation, and acts as an advisory body and communications conduit, for all police departments in the Province as opposed to the more regional approach contemplated under Part 6. If a Local Police Committee were created it seems likely such a body, as a creature of statute, would be subject to the FIPPA.

Funding

The extent of Manitoba government funding is one, but not the most critical, factor to consider.

The BCACP is not funded by Government. Its revenue is primarily provided by public bodies through the reimbursement of membership fees and assessments.

Consistency

Has this type of organization been designated under FIPPA for policy reasons in the past? Conversely, has there been a policy decision in the past to not include the organization under FIPPA – and if so, have circumstances changed?

We are not aware that any policy decision has previously been made regarding the BCACP and FIPPA, or regarding any analogous entity. As noted in the Governance section above, the BCACP is unlike the other entities listed in Schedule B as it is not a creature of statute, is not referred to in legislation, and its Directors are not appointed by Government.

The BCACP is, however, a unique structure. The Police departments whose employees comprise the membership of the Association are themselves subject to the FIPPA or the Federal Privacy Act.

Policy, Political or Historical Considerations

Has the organization traditionally been independent of government and is this independence important to the organization? How would it view being subject to FIPPA?

While the BCACP is independent of Government, we do not believe that this independence, which is essential to the BCACP's role as an advisor to Government on behalf of Provincial police forces, would be compromised if the BCACP were to become subject to FIPPA. As noted above, while the BCACP is independent of Government, its members are acting in their capacity as employees of public bodies.

We acknowledge and agree with your statements regarding the critical importance of the policing function in British Columbia and the importance that the public have faith in its police forces, and their ability to work together in the interests of all British Columbians. We also acknowledge that there may be procedural efficiencies if the BCACP was, like its constituent police forces, subject to privacy legislation affecting public bodies.

Mandate

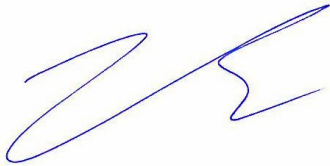
Would coming under the access to information and privacy regime in FIPPA be compatible with the organization's mandate? It should be kept in mind that the access to information scheme in FIPPA was developed with the public sector, not the private sector, in mind. Are there other adequate or more appropriate ways to achieve some of the fundamental purposes of FIPPA – for example, does the organization fall under the federal Personal Information Protection and

Electronic Documents Act? Can privacy issues be addressed by means of a contract with the corporation, etc.?

We have addressed these issues above in our discussion of the other factors. The BCACP is confident that it will continue to be able to exercise its mandate regardless of the Commissioner's decision in this matter. We acknowledge that the mandate of the BCACP is discharged on behalf of the public who are serviced by BC police forces.

Thank you for the opportunity to make submissions on this important issue. I would be pleased to answer any questions arising from our submissions or provide any further information you may require.

Yours truly,

A handwritten signature in blue ink, appearing to be 'L. Goerke', written in a cursive style.

Len Goerke, D/Chief Constable
President, BCACP

APPENDIX "A"



Freedom of Information and Protection of Privacy Act

Designating Organizations Under FIPPA

An organization which does not fall under FIPPA by definition may be brought under the Act by designation. This means that the Manitoba government has decided that the organization should be subject to FIPPA, even though it does not fall under the legislation by definition. An organization can be designated as a government agency, health care body, educational body or Local Government body for purposes of FIPPA.

To be brought under FIPPA by designation, an organization must be named on a Schedule in the Regulation. These Schedules are approved by the Lieutenant Governor in Council (i.e. the Cabinet). The work of drafting the Schedules, including consultations with public bodies and others, is undertaken by the Information and Privacy Policy Secretariat.

An organization brought under FIPPA by designation has the same responsibilities as an organization that falls under the Act by definition. It must respond to requests for access to records and protect personal information as required under the Act. Designated organizations also fall under *The Personal Health Information Act* (PHIA) because PHIA specifically applies to all public bodies falling under FIPPA.

Factors in Deciding Whether to Designate an Organization as a “Government Agency” under FIPPA

When considering whether to recommend that an organization be designated as a government agency under FIPPA, a government department should consider various factors.

- 1. Governance:** What is the governing structure of the organization? Who appoints the members of the organization and the members of the governing board of the organization? If a Minister appoints **all** members of an organization's board of directors, there is a strong argument for designating the organization. Many of the organizations currently designated have boards which are wholly appointed by a minister or are committees whose members are all appointed by a minister. On the other hand, if the Manitoba government (or a minister) does not appoint any members of the board, the organization is probably not a “public” body in the usually understood sense.
- 2. Control and Accountability:** To what extent are the activities of the organization controlled by the Manitoba government and to what extent is the organization accountable to that government? Would application of FIPPA to the organization be inconsistent with its structure? For example, when an organization is jointly established by the federal and provincial governments and each government appoints some directors to its governing board, it is probably not appropriate to bring that organization under provincial access and privacy legislation without the agreement of the federal government. An example is the North Portage Development Corporation which was established by Canada, Manitoba and the City of Winnipeg.
- 3. Types of Services:** What types of activities does the organization perform? Does it carry out, or has it taken over, a provincial government program or services which would otherwise be provided directly by a government department?
- 4. Funding:** The extent of Manitoba government funding is one, but not the most critical, factor to consider.

5. **Consistency:** Has this type of organization been designated under FIPPA for policy reasons in the past? Conversely, has there been a policy decision in the past to not include the organization under FIPPA – and if so, have circumstances changed? Does the organization fall under *The Personal Health Information Act*, but not under FIPPA, and is there a policy reason for this?
6. **Policy, Political or Historical Considerations:** Has the organization traditionally been independent of government and is this independence important to the organization? How would it view being subject to FIPPA?
7. **Mandate:** Would coming under the access to information and privacy regime in FIPPA be compatible with the organization's mandate? It should be kept in mind that the access to information scheme in FIPPA was developed with the public sector, not the private sector, in mind. Are there other adequate or more appropriate ways to achieve some of the fundamental purposes of FIPPA – for example, does the organization fall under the federal *Personal Information Protection and Electronic Documents Act*? Can privacy issues be addressed by means of a contract with the corporation, etc?

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Examples

Manitoba Housing Authority – Designated in 1998

1. established by Order in Council under *The Housing and Renewal Corporation Act*
2. all members of the board of directors are appointed by the Minister of Family Services and Housing

Manitoba Products Stewardship Corporation – Designated in 1998

1. established by regulation under *The Waste Reduction and Prevention Act*
2. board of directors is partly appointed by the Minister of Conservation

Chiropractic Review Panel – Designated in 1998

1. established by policy
2. all members of the board of directors are appointed by the Minister of Family Services and Housing

Child and Family Service Authorities – Designated in 2003

1. established under *The Child and Family Services Authorities Act*
2. the CFSA Act provides how the board of directors of each authority is appointed; all members of the Board of the General Authority are appointed by the Minister of Family Services and Housing; others are appointed by aboriginal organizations
3. minister is responsible for setting provincial objectives, policies and standards, and to monitor how these are carried out
4. funded by the provincial government
5. provide a service to the public which would otherwise have to be provided by the government

Private schools – Not designated

1. government does not appoint directors to the governing boards of private schools
2. minimal regulation of programs under *The Public Schools Act*
3. some funding by government
4. strong tradition of autonomy and sensitivity to government control, especially among faith-based schools

EDS – Not designated

- a private-sector company which provides desktop management services to the government under contract
- government does not appoint any members of the corporation or of the board of directors
- there is no substantial governmental control with respect to its general operations

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manitoba.ca | 1-866-MANITOBA

APPENDIX "B"

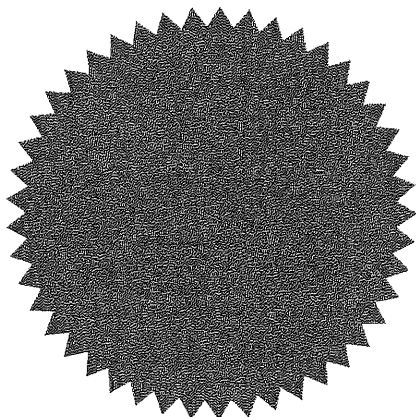


Number: S-0060708

CERTIFICATE OF INCORPORATION

SOCIETY ACT

I Hereby Certify that **BRITISH COLUMBIA ASSOCIATION OF CHIEFS OF POLICE** was incorporated under the *Society Act* on January 4, 2013 at 04:07 PM Pacific Time.



*Issued under my hand at Victoria, British Columbia,
on January 4, 2013*

CAROL PREST
Registrar of Companies
PROVINCE OF BRITISH COLUMBIA
CANADA



BC Registry
Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.bcregistryservices.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
250 356-8609

File Number: S-0060708

BRITISH COLUMBIA ASSOCIATION OF CHIEFS OF POLICE

I hereby certify that the documents attached hereto are copies of documents filed with the Registrar of Companies on January 4, 2013.

A handwritten signature in cursive script, appearing to read "C. Prest".

CAROL PREST

Registrar of Companies
PROVINCE OF BRITISH COLUMBIA
CANADA



Cover Sheet

BRITISH COLUMBIA ASSOCIATION OF CHIEFS OF POLICE
610 DERWENT WAY
DELTA BC V3M 5P8

Confirmation of Service

Form Filed: Incorporation
Date and Time of Filing: January 4, 2013 04:07 PM Pacific Time
Name of Society: BRITISH COLUMBIA ASSOCIATION OF CHIEFS OF POLICE
Society Incorporation Number: S-0060708

A federal Business Number has been assigned to this society as noted below. You will need this number if you are going to apply for charitable status with the Charities Directorate of the Canada Revenue Agency. [IMPORTANT: KEEP THIS FOR YOUR

Business Number: 834898736BC0001

For additional information regarding the Business Number, contact Canada Revenue Agency at 1-800-959-5525 from 8:15 a.m. to 8:00 p.m., Monday through Friday, excluding statutory holidays.

This package contains:

- Certified True Copy
- Certificate of Incorporation

Check your documents carefully to ensure there are no errors or omissions. If errors or omissions are discovered, please contact BC Registry Services for instructions on how to correct the errors or omissions.

APPENDIX "C"



British Columbia Association of Chiefs of Police

**CONSTITUTION
AND
BYLAWS**

SOCIETY ACT CONSTITUTION

ARTICLE I

NAME An organization entitled British Columbia Association of Chiefs of Police, hereinafter referred to as the Association, shall be established in the Province of British Columbia.

ARTICLE II

PURPOSE *The purposes of the Society are:*

- a) Encouraging and developing co-operation among all its members in the pursuit of and attainment of their goals.
- b) Promoting a high standard of ethics, integrity, honour, and conduct.
- c) Fostering uniformity of police practices.
- d) Encouraging the development and implementation of efficient and effective practices in the prevention and detection of crime.
- e) Effectively communicating problems and concerns to appropriate levels of authority.

BYLAWS

Here set out, in numbered clauses the bylaws providing for the matters referred to in section 6(1) of the Society Act and any other bylaws.

ARTICLE III

**ELECTION
OF
OFFICERS**

(1) The officers of the Association shall consist of a:

- a) President
- b) Vice President
- c) Secretary Treasurer

who shall be elected annually by majority vote of members present at the last meeting of the Association in the current calendar year.

- a) The officers shall hold office for one year, or until their successors have been elected.

- b) In the event an officer is unable to continue in office, an election shall be held to select a replacement for the remainder of the current year.

ARTICLE IV

EXECUTIVE COMMITTEE

(1) *The Executive Committee shall:*

- a) Consist of the President, Vice President, Secretary Treasurer, Immediate Past President, and Directors (one representing RCMP and one representing Municipal Police Departments) appointed by the President.
- b) Meet as and when required on call of the President.
- c) Approve expenditures of Association funds as required to an amount not exceeding one thousand dollars (\$1,000).
- d) Approve and manage the use of the BCACP logo in accordance with the Policy and Procedure, as listed in Appendix "B", approved by the Executive Committee and as amended from time to time.
- e) Consisting of either the President, Vice-President, or Secretary-Treasurer shall approve the circulation or dissemination of correspondence or communication of any kind to the whole BCACP membership, or the sharing of the BCACP Contact List with any person or entity.

ARTICLE V

DUTIES OF OFFICERS

(1) *The President shall:*

- a) Preside over all meetings of the Association in accordance with Canadian Parliamentary procedure.
- b) Appoint members to special committees as required.
- c) Ensure the financial records of the Association are reported upon annually.
- d) Superintend the affairs of the Association.
- e) Appoint an interim Secretary Treasurer to assume duties in the event the office is vacated.

(2) *The Vice President shall:*

- a) Assist the President when requested.
- b) Perform the duties of the President during the absence of the President.

(3) *The Secretary Treasurer shall:*

- a) Conduct the correspondence of the Association.
- b) Issue notice of meetings of the Association and Executive Committee.
- c) Keep minutes of all meetings of the Association and Executive Committee.
- d) Have custody of all Association records and documents, including books of account.
- e) Keep the financial records and statements of the Association necessary to comply with the *Society Act* and render financial statements to the Executive Committee, members and others when required.
- f) Provide access to all business records of the Association to any accountant or other auditor selected by the Executive Committee or the Association, as the case may be.
- g) Secure all monies of the Association in an account with a Canadian chartered bank, pay all financial obligations and record all receipts and disbursements.
- h) Collect membership dues and any other revenue or amounts owing to the Association.

ARTICLE VI

MEMBERSHIP

***The Association shall have two classes of membership:
Active & Associate.***

(1) ***Active Membership*** shall be restricted to the following applicants whilst serving in office:

- a) The Chief Constable and each Deputy Chief Constable or designated officer of each municipal police force established in British Columbia.
- b) Commanding officers of "E" Division, British Columbia, Royal Canadian Mounted Police and "M" Division, Yukon Territory, Royal Canadian Mounted Police.

- c) Officers in Charge, Criminal Operations, "E" Division, Royal Canadian Mounted Police; Officer in Charge, Criminal Operations "M" Division, Royal Canadian Mounted Police; Officer in Charge Contract Policing, "E" Division, Royal Canadian Mounted Police; Officer in Charge, Federal Policing, "E" Division, Royal Canadian Mounted Police; Officer in Charge, Major Crime Section, "E" Division, Royal Canadian Mounted Police; Officer in Charge, Police Support Services, "E" Division, Royal Canadian Mounted Police.
- d) Commissioned Officers of the Royal Canadian Mounted Police appointed In Charge of municipal policing detachments and other Commissioned Officers (2 I/Cs).
- e) The Officer in Charge and Commissioned Officers second in command of the Combined Forces Special Enforcement Unit-BC.
- f) District Officers of the Royal Canadian Mounted Police "E" Division and Seconds in Command.
- g) An Active member who is a member of the Royal Canadian Mounted Police who is transferred to a position with the Pacific Region and as a result would no longer be eligible for Active Membership status, may retain his or her Active Membership status upon majority vote of the Active Membership.
- h) The Chief Officer and Deputy Chief Officer of the South Coast British Columbia Transportation Authority Police Service.
- i) The Officer in Charge, Royal Canadian Mounted Police, Pacific Region Training Centre and the Director, Justice Institute of British Columbia, Police Academy.

(2) *Applications for **Active Membership**:*

- a) Shall be submitted in writing to the Secretary Treasurer together with the annual membership fee.
- b) May, if the applicant meets the requirements of Article VI, Section 1(a) to 1(i) be approved by the Executive Committee.
- c) Shall, if not approved by the Executive Committee in accordance with Article VI, Section 2(b), be submitted for discussion at the next general meeting and voted upon by the Active Membership at a subsequent meeting.

(3) ***Associate Membership** may be granted to applicants who are:*

- a) Involved in a restricted sphere of law enforcement and whose membership would contribute to the objectives of the Association.

For greater certainty, paragraph (b) of clause 3 includes: the senior person responsible for security in British Columbia for financial institutions named in Schedule 1 of the Bank Act, one security representative of Schedule 11 banks that carry on business in British Columbia, senior officials of the government of Canada and British Columbia and of Crown Corporations of Canada and British Columbia who have a significant role in law enforcement, but does not include persons in a restricted sphere of law enforcement which is primarily commercial in nature.

*(4) Applications for **Associate Membership**:*

- a) Shall be submitted in writing to the Secretary Treasurer, together with the annual membership fee.
- b) Shall be submitted for discussion at the next general meeting and voted upon by the Active Membership at a subsequent meeting.
- c) May, if the applicant is a replacement for a current Associate member, be approved by the Executive Committee.

(5) Termination of Membership:

- a) Membership is based on a calendar year with an annual membership fee.
- b) Membership in the Association shall be terminated whenever a Member.
 - i. Fails to pay the prescribed annual membership fees to the Treasurer on or before January 31 each year.
 - ii. Ceases to be eligible for membership pursuant to ARTICLE VI, Section (10)
 - iii. Resigns or withdraws his or her membership in writing directed to the President.
- c) Membership in the Association may be terminated for discreditable conduct pursuant to ARTICLE VI, Section (10).

(6) Membership fees shall be:

- a) Established by the Executive Committee.
- b) Set on or before the last meeting of the year, for the following year.

- c) Approved by a vote.
- d) Due in January of the following year.
- e) Returned to applicants denied membership.

(7) *Voting shall be restricted to Active Members with only one (1) vote per Department, Detachment or Unit.*

- a) In the event of the absence of an Active Member of a Department, Detachment or Unit, a designated officer, holding the rank of Inspector or above, and who is an Active Member, may vote on behalf of that Department, Detachment or Unit.
- b) For the purposes of this section, Appendix "A" lists the Departments, Detachments and Units.

(8) A majority of votes shall decide all questions or issues put to vote, or required to be voted upon, except where otherwise stipulated.

(9) *Sub-Committee Participation*

It is strongly encouraged as a requirement of membership in the Association that all Active and Associate members volunteer to participate in at least one sub-committee.

(10) *Conduct of Members*

- a) Any member whose conduct is discreditable or prejudicial to the objectives of the Association, or whose conduct is in breach of this Constitution, may be suspended from membership by the Executive Committee.
 - i. Any suspension declared by the Executive Committee will be brought before the next meeting of the Association for review by way of a motion.
 - ii. A review of suspension by the Association pursuant to this Article may result in the suspension being declared temporary or permanent, subject to any reasonable terms which the Active Membership see fit to apply.
 - iii. A decision by the Association that a suspension is to be declared permanent (expulsion) must be passed by special resolution.
- b) Any Member whose membership is to be reviewed pursuant to Article VI (10) a) ii) will be provided with three (3) weeks' notice in writing by the Executive Committee.

- i. The Member may upon petition present himself or herself at the meeting to address any of the matters under review.
- ii. The Member will be excluded from the meeting when his or her suspension is voted upon by the Active Membership.

ARTICLE VII

MEETINGS OF THE ASSOCIATION

- 1) There shall be three (3) meetings of the Association in each calendar year, one in February, one in June and one in November. The November meeting will be the Annual General Meeting.
- 2) Meetings will ordinarily be called by the President.
- 3) Meetings may also be called on demand by one-third of the voting Active Membership, excluding the Executive Committee, by delivery to the Secretary-Treasurer of a notice duly signed by those Members.
- 4) Reasonable prior notice in writing of the place, date and time of a meeting shall be given by the President to all Members of the Association, together with a draft agenda and the minutes of the last meeting, unless previously distributed by the Secretary-Treasurer.
 - i. The Executive Committee may meet apart from the general membership to discuss issues or concerns relative to the Executive Committee or the general membership.
 - ii. Any Executive Committee member may call such a meeting.
 - iii. Any discussions and decisions made by the Executive Committee at such meetings that affect the general membership of the Association shall be brought forward at the next meeting of the Association for discussion and/or approval by the membership.
- 5) One third of the Active Membership of the Association, including two (2) Executive Committee Members, shall constitute a quorum for the transaction of business at any meeting of the Association.
- 6) The Order of Business for all meetings of the Association will be:
 - Call to Order
 - Announcements
 - Adoption of Minutes
 - Approval of Agenda
 - Introductions
 - New Business
 - Standing Committee Reports
 - Secretary/Treasurer Report
 - Election of Officers (at AGM)

President's Report
Adjournment

- i. The order of business may be amended by the President unless there is an objection presented by an Active Member.
- 7) At all meetings of the Association every motion shall be determined by a majority vote.
- i. Any Active Member may request that a motion be decided by secret ballot, and such a request will be binding on the general membership.
 - ii. In the absence of a request for secret ballot, the President will determine the process to conduct the meetings of the Association.

ARTICLE VIII

GENERAL

- 1) For the purpose of carrying out its objectives, the Association may borrow or raise or secure the payment of money in such manner as it sees fit, and in particular but without limiting that power, by the issue of debentures.
- 2) The authority to borrow, raise or secure the payment of money shall be exercised only under the authority of the Association, and in no case shall debentures be issued without a motion passed by a majority vote at any meeting of the Association.
- 3) The books, accounts and records of the Secretary-Treasurer shall be audited at least once a year by a duly qualified accountant or by two (2) Active Members (excluding the Secretary-Treasurer) elected for that purpose at the Annual General Meeting. A complete and proper statement of the standing of the books for the previous year shall be submitted by such auditor at the Annual General Meeting. For greater certainty, the fiscal year of the Association in each year shall be January 1 to December 31.
- 4) The books and records of the Association may be inspected by any Member at the Annual General Meeting or at anytime upon giving reasonable notice and arranging a time satisfactory to the Officer or Officers having charge of the books and records. The Executive Committee shall at all times have access to such books and records.
- 5) The Association shall comply with the provisions of the *Society Act* (RSBC 1996), Chapter 433 and without limiting the foregoing, the Association shall ensure that any Special Resolutions of the Association are filed with the Registrar of Corporations in a timely manner.

ARTICLE IX

AMENDING CONSTITUTION

The Constitution of the Association may be amended:

- a) Upon the petition in writing of an Active Member in good standing supported by another Active Member in good standing.
- b) After the petition has been placed on the agenda of the next meeting of the Association.
- c) After an adequate opportunity for discussion has been afforded the Active Membership.
- d) After a two-thirds (2/3) majority of the Active Membership present has voted in favour of the change.

APPROVED BY MOTION November 22, 2012

Original Signed By
Chief Constable P.LEPINE
PRESIDENT

Original Signed By
Inspector B.D. HAUGLI
VICE PRESIDENT

Original Signed By
Deputy Chief Constable R.L. GOERKE
SECRETARY TREASURER

Original Signed By
Superintendent D.J. WALSH
DIRECTOR AT LARGE

Original Signed By
Chief Constable J.H. GRAHAM
DIRECTOR AT LARGE

APPENDIX "A" (ARTICLE VI (7) (b))

Each of the listed Departments, Detachments or Units has one vote.

- Each Municipal Police Department;
- Each Detachment of the Royal Canadian Mounted Police commanded by a Commissioned Officer;
- Each Royal Canadian Mounted Police District;
- "E" Division Criminal Operations, Royal Canadian Mounted Police;
- Combined Forces Special Enforcement Unit - BC (CFSEU-BC);
- Commanding Officer "E" Division, Royal Canadian Mounted Police;
- Commanding Officer "M" Division, Royal Canadian Mounted Police;
- South Coast British Columbia Transportation Authority Police Service.

APPENDIX "B" (ARTICLE IV (1) (d))

Authorized Use of the BCACP Logo

1. Policy

- 1.1 In general, the BCACP logo will only be used for authorized Association purposes.
- 1.2 Requests from outside agencies of the BCACP logo will only be granted in accordance with the procedures set out in this policy.

2. Reason for Policy

- 2.1 To ensure that any use of the BCACP logo is consistent with the objectives of the Association.
- 2.2 To provide guidelines for the approval and use of the BCACP logo by outside agencies.

3. Procedure

- 3.1 Use of BCACP logo without the approval of the Executive Committee is not permitted.
- 3.2 Requests from outside agencies for the use of the BCACP logo must be reviewed by the Executive Committee.
- 3.3 Where permission to use the BCACP logo has been granted, only the approved image may be used. Substitution of a different or altered image is prohibited.
- 3.4 Permission to use the BCACP logo is subject to revocation at the sole discretion of the Executive Committee.
- 3.5 Grounds for revocation may include but are not limited to, misuse, misrepresentations, or failure to comply with the conditions of approval presented in the Guidelines section of the policy.
- 3.6 The Guidelines section of this policy will be provided to any outside agency authorized to use the BCACP logo.

4. Guidelines

- 4.1 The Association is the owner and guardian of all copyright, registered marks, and trademarks for the Association, which includes the BCACP logo.
- 4.2 Anyone or any organization that receives permission to use the BCACP logo must maintain the integrity and consistency of the logo and comply with these guidelines at all times.
- 4.3 Any instruction by the Association either to alter or to cease and desist using the logo, as well as any denial or revocation of permission to use the logo must be immediately honoured.
- 4.4 To help maintain the credibility, integrity and image of the Association with respect to the use of the logo, the Association requires authorized users of the BCACP logo to follow these guidelines and expects them to report any misuse or unauthorized use of the logo.
- 4.5 Suspected violations of these guidelines can be reported to the Executive Committee.
- 4.6 The BCACP logo cannot be used for commercial advertising purposes, including commercial ribbon cuttings or private business store openings.
- 4.7 Visual integrity of the logo must be maintained at all times, including the correct colours.

- 4.8 The Association may deny any application for use of the logo without explanation.
- 4.9 The Association will not grant permission to use the logo to anyone who fails to meet moral and ethical standards consistent with the reputation and purpose of the Association.
- 4.10 To confirm that these standards have been met, the Association may conduct a background check or investigation of anyone seeking permission to use the logo. In conducting the background check or investigation, the Association may use any information it receives from the person seeking permission to use the logo or from others. The Association also reserves the right to revoke mission it previously granted where the Association becomes aware that these standards have not been met or are no longer being met.
- 4.11 The Association's decisions regarding these standards are final.
- 4.12 Permission to use the BCACP logo may be subjected to periodic review and renewal requirements, at the discretion of the Association.



British Columbia Association of Municipal Chiefs of Police
 3585 Graveley St Vancouver, BC V5K 5J5 T: 604.717.3705

February 14, 2014

Office of the Information and
 Privacy Commissioner for British Columbia
 PO Box 9038 Str. Prov. Govt.
 Victoria, BC V8W 9A4

Attention: Elizabeth Denham, Information and Privacy Commissioner

Re: Response of the British Columbia Association of Municipal Chiefs of Police (the "BCAMCP")
 to Commissioner Denham's letter of December 6, 2013 regarding a possible recommendation to
 add the BCAMCP to Schedule 2 of the *Freedom of Information and Protection of Privacy Act*
 ("FIPPA")

The BCAMCP writes in response to your letter of December 6, 2013 seeking our association's
 comments regarding a possible recommendation to add the BCACP and BCAMCP as "public
 bodies" to Schedule 2 of FIPPA.

The BCAMCP has had an opportunity to review the BCACP's February 13, 2014 submission in
 which it considers the issues and facts you set out in your December 6, 2013 letter and
 responds accordingly. The BCAMCP confirms that, with the exception of the circumstance that
 the BCAMCP operates as an unincorporated association, the BCACP's summary of relevant
 facts also applies to the BCAMCP's mandate, governance, control, and accountability.
 Accordingly, the BCAMCP supports the submission of the BCACP.

Yours truly,

Warren Lemcke
 Deputy Chief Constable
 Commanding Support Services Division





BY EMAIL

Information and Privacy Commissioner of British Columbia
PO Box 9038, Stn Prov Govt
Victoria BC V8W 9A4

February 13, 2014

Dear Commissioner Denham:

Re: Adding Police Chiefs' Associations to FIPPA Schedule 2

We are writing on behalf of the British Columbia Civil Liberties Association (BCCLA) and the B.C. Freedom of Information and Privacy Association (BC FIPA) in response to your letter of December 6, 2013 regarding the possibility of recommending the government add the BC Association of Chiefs of Police (BCACP) and the BC Association of Municipal Chiefs of Police (BCAMCP) as public bodies to Schedule 2 of the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

We support this move for the following reasons. Some are particular to these two organizations, but we have also attempted to provide some more general considerations that could be used in future situations where the listing of an organization under Schedule 2 may be advisable.

Ambiguous situation of these organizations has caused confusion

The two organizations which are the subject of this consultation have in the past characterized themselves in two completely different ways, depending on circumstances.

There was also some question as to whether these associations had actually incorporated and thereby acquired corporate personality. We understand that this ambiguity has since been resolved.

When a request was made to the police forces of the heads of these organizations for records related to the BCACP and BCAMCP under FIPPA, those public bodies initially responded that they did not have custody or control of those records as they belonged to the two named organizations, not the police force.

In response to a complaint filed under the *Lobbyist Registration Act*, representatives of the two organizations claimed that the chiefs were acting as part of their duties as employees of a municipal government, and therefore not within the definition of lobbyists.

This contradiction was ultimately resolved by the municipal police forces in question agreeing that they did have custody of records for the purpose of FIPPA and released some records. (ORL Investigation report 13-02, paras 25-27)

http://www.lobbyistsregistrar.bc.ca/images/pdfs/orl_investigationreport_13-02_final.pdf

Associations admit they and their members are carrying out governmental functions

The Office of the Registrar for Lobbyists conducted an investigation into the conduct of these two organizations last year (13-02) after a complaint had been made about these organizations carrying out lobbying without being registered.

The Acting Deputy Registrar held that there had been no violation of the LRA, as the members of the two associations communicate with public office holders in their capacities as “employees of a local government authority.”

The BCACP president stated that no member of the association received remuneration for their activities, and that they were required, as part of their contract of employment, to take part in professional associations such as the BCACP. (ORL Investigation report 13-02, paras 15-16)

The BCAMCP submissions were similar.

http://www.lobbyistsregistrar.bc.ca/images/pdfs/orl_investigationreport_13-02_final.pdf

The Deputy Registrar found that when the chiefs took part in these organizations’ activities, and that they did not cease to act as police chiefs. In addition, he found that if they were acting collectively to speak on issues important to them, that collective action did not change the fundamental nature of their action as local government employees.

This may be an arguable position, and the Deputy Registrar indicated that he could have found differently if he had been presented with evidence of action that the organizations “had taken on a life of their own” and were engaged in lobbying outside the area of policing. (ORL Investigation report 13-02, para 27)

Regardless of any deficiencies in procedure or evidence in this investigation, the bottom line is that the two organizations characterize their essential nature as an adjunct to government.

Purposes of the Freedom of Information and Protection of Privacy Act

Those purposes are set out in s. 2 of the Act, and include making public bodies more accountable to the public by giving the public a right of access to records.

It accomplishes that by providing a right of access to “any record in the custody or under the control of the public body” in section 4 of the Act.

In order to achieve these purposes and realize the right of access, a government entity must fall within the definition of “public body” set out in Schedule 1 of the Act. That definition reads as follows:

"public body" means

- (a) a ministry of the government of British Columbia,
- (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2, or
- (c) a local public body

In the case of these two organizations, they would have to specifically be added to Schedule 2 in order to be covered.

The alternative, which you set out in your letter of December 6, 2013, is to continue with the present situation, which involves requests to a series of different police forces each of which may have custody or control of various records, depending on the role played by that force’s chief. As you note, this would not be administratively sound, nor would it provide British Columbians with access to records related to what are very important issues.

Analogous situation to government bodies in Charter cases

An analogy can be drawn between the decision to add an organization to Schedule 2 of the *Act* and the circumstances courts can find themselves in when having to determine whether or not an organization should be subject to the *Charter of Rights and Freedoms*.

One of the considerations is anti-avoidance, which is reducing the possibility of government bodies attempting to avoid their constitutional responsibilities by creating new subsidiary bodies, or investing existing bodies with government powers or responsibilities.

In *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, La Forest J. set out the rationale for the broad coverage of the *Charter* as follows (at para. 48):

Were the *Charter* to apply only to those bodies that are institutionally part of government but not to those that are — as a simple matter of fact — governmental in nature (or performing a governmental act), the federal government and the provinces could easily shirk their *Charter* obligations by conferring certain of their powers on other entities and having those entities carry out what are, in reality, governmental activities or policies. In other words, Parliament, the provincial legislatures and the federal and provincial executives could simply create bodies distinct from themselves, vest those bodies with the power to perform governmental functions and, thereby, avoid the constraints imposed upon their activities through the operation of the *Charter*. Clearly, this course of action would indirectly narrow the ambit of protection afforded by the *Charter* in a manner that could hardly have been intended and with consequences that are, to say the least, undesirable. (emphasis added)

In the FOI context similar considerations apply. Given the quasi-constitutional status of FIPPA, it would be perverse to allow governments to create bodies where records and information would move ‘off book’.

In *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component* 2009 SCC 31, the Court had to determine whether or not Translink, the public transport body in the Lower Mainland, was subject to the *Charter*. At issue was the constitutionality of its refusal of advertising related to encouraging participation by young voters (Rock the Vote).

In a unanimous decision, Deschamps J., writing for the court, found that Translink was subject to the *Charter*.

In *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 (at para 44), La Forest J. set out the two principles for determining whether or not s. 32 of the *Charter* applies.

First is whether the entity is itself “government”. This involves determining if the entity can, either by its very nature or in virtue of the degree of governmental control exercised over it, properly be characterized as “government” within the meaning of s. 32(1). If it is found to fall within this category, all of the activities of the entity will be subject to the *Charter*, regardless of whether the activity in which it is engaged could, if performed by a non-governmental actor, correctly be described as “private”.

Second, an entity could fall under the *Charter* with respect to a particular activity that can be described as ‘governmental’. If the activity is truly “governmental” in nature — for example, the implementation of a specific statutory scheme or a government program — the entity performing it will be subject to review under the *Charter* only in respect of that act, and not its other, private activities.

In the case of FIPPA, the second part of this test is covered by the statute itself in s.3(1)(k) as a negative. The subsection states that the *Act* does not apply to “a record of a

service provider that is not related to the provision of services for a public body.” This means records related to the provision of services for a public body are covered.

We will not deal with the limitations of this wording, except to note that it appears to provide a version of the second part of the test set out in *Eldridge*.

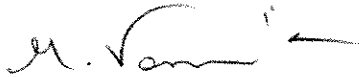
In the case of the two organizations in question here, they would appear to be covered by the first part of the test. This is set out in your letter, and in the reasons in LRC Order 13-02.

Conclusion

Based on both practical and juridical reasons, it is our view that both these organizations should be included in Schedule 2 of the *Freedom of Information and Protection of Privacy Act*.

If you have any questions or require any additional information, please feel free to contact us directly.

Yours truly,



Micheal Vonn
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Vincent Gogolek
Executive Director
BC FIPA
Suite 103 – 1093 West Broadway
Vancouver, B.C. V6H 1E2
vincent@fipa.bc.ca

Date: February 12, 2014

To: David Winkler, Q.C.
President, B.C. Association of Police Boards

Submission of the Delta Police Board regarding the addition of the British Columbia Association of Municipal Chiefs of Police (BCAMCP) and the British Columbia Association of Chiefs of Police (BCACP) as “public bodies” to Schedule 2 of the *Freedom of Information & Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the *FOIPP Act*).

The Delta Police Board has considered the request for consultation received from the Information & Privacy Commissioner for British Columbia, regarding the addition of the British Columbia Association of Municipal Chiefs of Police (BCAMCP) and the British Columbia Association of Chiefs of Police (BCACP) as “public bodies” to Schedule 2 of the *Freedom of Information & Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the *FOIPP Act*). Having informed itself regarding the issues arising, this Board takes the following positions:

- a. the Board supports the principle of the public having a right of access to records of publicly funded agencies, subject to limited exceptions as found in the *FOIPP Act*;
 - b. the *FOIPP Act* does not appear to provide a means of extending its application to the BCAMCP or the BCACP, and the Commissioner’s consultation request letter suggests that the Commissioner is aware of that circumstance; and
 - c. it is not necessary to extend application of the *FOIPP Act* to the BCAMCP or the BCACP, as records held by each municipal policing agency member of either association are already subject to the *FOIPP Act* and access requests for Association records can be made through the individual members or the Association President.
-

■ BACKGROUND

The *FOIPP Act* applies to most every provincial and municipal public sector entity. In addition to entities within the scope of a general definition contained in the *FOIPP Act*, other entities are subject to it as a result of being listed in Schedule 2 of the *FOIPP Act*. The BCAMCP and the BCACP are not captured by the general definition, nor are they included in Schedule 2. The Commissioner wishes to have the *FOIPP Act* apply to the BCAMCP and the BCACP.

It is noteworthy that the same issue exists in terms of the application of the *FOIPP Act* to records of the B.C. Association of Police Boards. The *FOIPP Act* applies to records created and/or held by each individual Board. If grounds exist, in policy or at law, to extend application of the *FOIPP Act* to the BCACP and the BCAMCP, there is every reason to also extend application of the *FOIPP Act* to the Association of Police Boards and, similarly, to every other umbrella organization of any entities to which the *FOIPP Act* applies.

■ DISCUSSION

The rationale for the additional Schedule 2 entities being subject to the *FOIPP Act* is that those entities are: properly public; effectively public; subject to government control; or subject to government oversight. The *FOIPP Act* thereby allows the government to carry out its public policy decision to make the records of such entities publicly accessible, and the entities thereby subject to public scrutiny.

The Minister responsible for the *FOIPP Act* may, by regulation, add entities to Schedule 2; however, to ensure that application of the *FOIPP Act* does not creep beyond the realm of what can reasonably considered a public entity, the *FOIPP Act* contains parameters around what entities can be added. Specifically, section 76.1(1)(a) allows the minister responsible for the *FOIPP Act* to only add to Schedule 2 entities:

- i. of which any member is appointed by the Lieutenant Governor in Council or a minister;
- ii. of which a controlling interest in the share capital is owned by the government or any of its agencies, or
- iii. that performs functions under an enactment.

The BCAMCP and the BCACP do not meet any of the above three conditions. In relation to the third condition, while individual Chiefs of Police perform functions under various enactments, neither the BCAMCP nor the BCACP do so.

A further mechanism for adding an entity is for it to be created and have functions assigned by statute. Once created in such a manner, it would meet the third condition above and could be added to Schedule 2. As an example, the Community Charter Council was recently created by amendment to the *Community Charter Act*. Pursuant to *FOIPP Act* section 76.1, the Community Charter Council was then added to Schedule 2. In the same manner, the BCAMCP and the BCACP could be formally created by amendment of the *Police Act*, and could then be added to Schedule 2; however, this would require a substantive amendment of the *Police Act* by the legislature.

It was not readily ascertainable whether the BCAMCP and the BCACP existed in their current form in 1993 when the *FOIPP Act* came into force. Regardless, the *FOIPP Act* has on three occasions been subject to review by a special committee of the legislature, and to numerous general and specific amendments. On no occasion does it appear that adding the BCAMCP and the BCACP was on the agenda of proposed amendments considered by the legislature.

It is thought that the BCACP may have formally registered as a society, under either the provincial *Society Act* or its federal equivalent, but not able to be confirmed; however, if true, the BCACP would be subject to the private sector privacy legislation, namely the provincial *Personal Information Protection Act* (the *PIPA*) or its federal equivalent. Privacy sector privacy legislation does not extend as broad public access rights to the records of entities so governed; the rationale being that the private sector ought to have, and requires, greater protection from public scrutiny. If having formed a society, this may have implications in terms of the ability of individual members being able to disclose information to what is effectively a separate private sector entity. To a certain degree this parallels issues arising from a recently filed *Police Act* complaint (the Rob Wipond complaint).

If the BCACP is, in fact, registered as a society, the *FOIPP Act* cannot apply to it. It is unknown to whether the BCMACP has registered as a society, but believed that it has not.

Is *FOIPP Act* Application Necessary?

It is not necessary to extend application of the *FOIPP Act* to the BCAMCP or the BCACP in order to create a right of access to their records, as the *FOIPP Act* already applies. Each municipal police agency Chief or other senior member, of either association, is already subject to the *FOIPP Act*, any records in the possession of that individual can be the subject of an *FOIPP Act* access requests. A request for access to Association records can be made through individual members or the Association President. In fact, numerous requests have been, and are, made in this manner, and the Commissioner has confirmed

in a past Order that whichever municipal Chief holds BCAMCP or BCACP records must provide access to the same, subject to limited exemptions in the *FOIPP Act*. Where records are held by a RCMP representative, the federal *Privacy Act* or *Access to Information Act* would govern.

■ CONCLUSION

For 20 years in British Columbia the *FOIPP Act* has acted to facilitate public access to records created or held by public entities (subject to certain exemptions). Given that the *FOIPP Act* applies to any and all records that a Chief of Police creates in the course of carry out his or her statutory duties, it is reasonable to take the position that records created by one or more Chiefs, or other public employees, at a meeting of Chiefs ought also to be readily publicly accessible.

The *FOIPP Act* does not appear to provide a means of extending its application to the BCAMCP or the BCACP, and the Commissioner's consultation letter suggests that she is aware of that circumstance. That said, it is not necessary to extend application of the *FOIPP Act* to the BCAMCP or the BCACP, to make their records accessible and subject to public scrutiny, as each municipal Police Chief is already subject to the *FOIPP Act* and access requests to Association records can be made through individual member Chiefs or the Association President.

As a result, this Board:

- a. supports the principle of the public having a right of access to BCAMCP and BCACP records, subject to certain exemptions as are currently found in the *FOIPP Act*;
- b. finds that, as the Commissioner herself points out, the *FOIPP Act* does not appear to provide a means of extending its application to the BCAMCP or the BCACP; and
- c. finds that it is not necessary to extend application of the *FOIPP Act*, as each Chief is individually already subject to it and access requests for Association records can be made through individual Chief's or the Association President.

13 February 2014

VIA - Email

Reply to: Douglas King
Direct Line: (604) 255 9700 ext. 112
E-mail: doug@pivotlegal.org

Attn: Elizabeth Denham - Information and Privacy Commissioner

Re: Public Submissions on the BCACP and BCAMCP's Status as Private/Public Bodies

Dear Ms. Denham,

Thank you for examining the very important question of whether or not the B.C. Association of Chiefs of Police (BCACP) and B.C. Association of Municipal Chiefs of Police (BCAMCP) should be considered public bodies, and thus fall under the appropriate provisions of the *Freedom of Information and Protection of Privacy Act*. In our opinion, both the BCACP and BCAMCP should be viewed as **public bodies**.

Pivot Legal Society is a small non-profit organization operating out of Vancouver's Downtown Eastside. While we specialize in matters related to the Downtown Eastside, and the marginalized residents who live within its boundaries, our work on police accountability has increasingly taken on a provincial perspective. Over the last ten years we have done intakes with people who have been effected by police policy or actions, taken affidavits of their experiences, and started lawsuits or Service and Policy Complaints. Pivot's mandate and role is to increase police accountability and strive for positive social change.

We have come to the conclusion that the BCACP and BCAMCP should be considered public bodies because the decisions of these organizations have had an important impact on some of the work we have done. It is my understanding that other organizations, such as the B.C. Civil Liberties Association (BCCLA) and Freedom of Information and Privacy Association (FIPA) plan to submit extensive submissions and analysis on this issue. Rather than duplicate their legal arguments and reasons for why the BCACP and BCAMCP should be considered public bodies, which we wholly support, we focus our submission on a real-life example of a time when the BCACP has played a policy-making role, which effectively dictated police policy across our province.

In 2013, Pivot filed a Service and Policy Complaint to the Vancouver Police Board regarding their standing policy on the release of mental health interactions on police record checks. In the VPD's report to the Vancouver Police Board, which I have attached to this letter for your reference, it stated that in 2008 the BCACP recommended to the Director of Police Services that a working group be struck to create provincial guidelines on police information checks. That working group was created and consulted with various agencies, and then made a draft of the guidelines. That draft was given back to the BCACP, which took additional recommendations from your office (OIPC), before creating the final version of the guidelines, which are now used by all police agencies in B.C.

Had the BCACP simply played the role of asking the province for a working group, it could be argued that their role was solely as lobbying group, but in reality the BCACP was the organization that made the final decision on what the policy would look like, and how it would be implemented. This is effectively governance without any mechanism of accountability.

In the VPD's report to the Vancouver Police Board it noted that the OIPC recommended that a 'second tier' of police information check, which released only convictions, should be made available. In response to that recommendation the VPD stated the following:


“There are concerns that by offering this less comprehensive check, the police community may take on liability by not disclosing details of a serious incident notwithstanding an absence of charges where there has been a history of violent behavior attributable to mental illness. This two-tiered service will be discussed at the November 2013 BCACP meeting, where committee members will vote on whether police agencies in BC will increase record check services to include a charge and conviction only option.”

This is not just a tacit acknowledgment that the BCACP votes and decides on policy matters related to policing, it is a clear recognition of the fact. In many ways the BCACP and BCAMCP have taken over the responsibility of the municipal police boards, who are responsible for setting the policies of the police agencies they oversee. Even more concerning is the fact that these provincial guidelines on police records checks do not appear to have ever been added to the VPD's Regulations and Procedures Manual. This suggests that the policy exists with the BCACP, and the VPD is following it, without ever formally adopting it. The question must be asked as to whether or not the BCACP or BCAMCP have created other policies, which police forces have been following, and which the public know absolutely nothing about.

The decision of the BCACP on police record checks, and others like it, will be kept entirely from the public's view if these two organizations are allowed to operate as private bodies. In our opinion this is unacceptable, and needs to be remedied.

Thank you for your attention to this matter,

PIVOT LEGAL SOCIETY


Douglas King
Barrister & Solicitor

Enclosure: VPD Report to Vancouver Police Board, dated October 29, 2013.



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: October 25, 2013
COMMITTEE MEETING DATE: November 12, 2013
BOARD REPORT # 1311C01
Regular

TO: Vancouver Police Board Service and Policy Complaints Review
Committee

FROM: Chief Constable Jim Chu

SUBJECT: Service and Policy Complaint #2013-96SP (Police Information Checks)

RECOMMENDATION:

THAT the Vancouver Police Board Service and Policy Complaints Review Committee (the Committee) dismiss with reasons, the complaint of the complainant and the Pivot Legal Society (Pivot) dated 2013-09-24 and 2013-09-25 respectively.

SUMMARY:

In this service and policy complaint, the complainant and Pivot are asking that the Vancouver Police Department (VPD) remove any reference to an apprehension under the *Mental Health Act* (MHA) from the complainant's Police Information Check results. The complainant states that the VPD released two incidents as offences, "yet no charges were laid, nor were there any court proceedings in relation to either incident." Pivot supports the complainant's request for a clear check, suggesting that by releasing non-conviction information, the VPD could be in violation of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Pivot states that local police information is not covered by legislation or an act, *but simply a request by an individual*. Pivot's letter states that the results of a local police records check are a "potential barrier which would stand in the way of a gainful employment or an enriching volunteer opportunity."

Both parties rightly identify that the complainant received a clear check in 2012. At the time of the 2012 request, one incident meeting the release criteria was missed by VPD staff. Both Pivot and the complainant have been made aware that this was an oversight.

The complaint also notes that the release form describes the released information as an offence. The VPD form will be modified; offence will be replaced by incident type to remove any accusatory implication.

The VPD's policy on releasing mental health incidents on Police Information Checks was developed in an effort to balance two competing interests: the privacy rights of individuals, especially regarding sensitive information, and the risk that some who suffers with mental illness may pose to the community. The VPD worked with police services in British Columbia and across Canada to develop policies that meet this criterion and are congruent with the 2010 Ministerial Directive issued by the Federal Public Safety Minister on the release of criminal record information.

Mental health information is limited to suicide attempts and MHA apprehensions, with the focus of the released information being on the tenor of violence, not mental illness. For example, information released on a Police Information Check regarding mental health apprehensions describes the requestor as *subject* and the incident details are released as *violent or threatening behavior towards self or others*. Further, the information has a set disclosure period, based on the nature of the incident. As with all Police Information Check results, this information is released to the requestor. The obligation for determining whether a citizen presents a risk to an organization is the responsibility of the employer or volunteer organization.

POLICY/BACKGROUND:

Police departments across BC have been providing police record or police information check services for at least 25 years. Police record check services vary across Canada, with a large number of agencies limiting their results to either "no record" or "a record may or may not exist". It is common for employers and volunteer organizations to receive a wide range of information from different police agencies and on a variety of forms that can be difficult to interpret.

Unclear or incomplete information diminishes the ability for agencies to accurately determine whether the applicant poses a risk to their organization. When faced with vague information, the only avenue employers have to confirm the nature of the relationship applicants have with the police is to have them make a request under the BC FOIPPA for a copy of the police report. Such requests further delay the hiring or volunteer process.

Provincial and Federal Initiatives Regarding Records Checks

In the last five years there have been several initiatives, both at the provincial and federal levels, to clarify criminal records checks and what types of information can be released. In June 2008, the BC Association of Chiefs of Police (BCACP) requested that the Ministry of Public Safety and Solicitor General - Police Services (now Ministry of Justice) convene a working group with a mandate of developing guidelines for

completing a Police Information Check in BC. In preparing the provincial guidelines, the working group consulted with several organizations, including:

- Canadian Criminal Real Time Identification Services (CCRTIS)
- Office of the Information and Privacy Commissioner
- BC Police Records Users Group
- PRIME-BC
- Ontario's Law Enforcement & Records Managers Network (LEARN) Committee

Also, the guidelines incorporate provisions of the following:

- Criminal Records Act
- CPIC Reference Manual
- Freedom of Information and Protection of Privacy Act (FOIPPA)
- Personal Information Protection Act (PIPA)
- Youth Criminal Justice Act
- Ministerial Directive on the Release of Criminal Records (2010)
- PRIME-BC Policy
- PIP (Police Information Portal) Policy

At the federal level in early 2010, and concurrent with the work of the BC working group, a federal criminal record working group was struck with a mandate to develop a national standard process for police record checks and that included police agencies releasing more detailed information. Based largely on the work of the federal working group, the Federal Minister of Public Safety issued a Ministerial Directive (2010), addressing the release of criminal record information, including standards for those working with the vulnerable sector.

The Directive states that police agencies providing "Police Record Check" services (referred to as a Police Information Check in BC) to those working with the vulnerable sector must also conduct a query of local police records. These records include details on incidents where charges were not laid, summary offence investigations, MHA apprehensions and suicide attempts. In addition, this database contains information on conviction information on the more serious offences (indictable and dual), not yet entered into the national criminal record repository. The national repository of criminal records is more than two years out of date, with approximately 1.6 million charges and dispositions pending (A/Comm C. Walker 2012).

Historically, it was the VPD's practice to send the results of the checks directly to the employer, thereby eliminating any chance of alteration by the applicant. Since approximately 2005, in an abundance of caution, all results are now released to the applicant, who can then share it with prospective employers. This extra step affords citizens an opportunity to address or challenge the results before they are seen by anyone else. Also, a formal reconsideration policy was established in 2011, providing an avenue for citizens to escalate complaints or concerns that are not resolved by the

Information Management Section. This is the second complaint received through this process and the first involving the release of a mental health incident.

In 2012, a draft of the BC Police Information Check Guidelines was presented to the BCACP, and permission was granted to commence the pilot phase. All municipal agencies and the majority of Royal Canadian Mounted Police detachments in the Lower Mainland are participating in the pilot. The VPD has adopted the provincial guidelines, with one of the most significant changes being the discontinuation of releasing all incidents where the investigating officer identifies a party as being emotionally disturbed.

The draft guidelines were shared with the Office of the Information and Privacy Commissioner (OIPC), which then provided 14 recommended changes relating to privacy issues. The majority of these have been incorporated into the current guidelines. One of the recommendations specifically addresses mental health disclosure, stating that police should only disclose information on mental health issues where a threat of significant harm exists. Any release of information should be revised to reflect the harm, not the particulars of the mental health contact. Taking this into consideration, the provincial guideline stipulates that only mental health apprehensions made under the MHA or recent suicide attempts are disclosed.

Also incorporated in the guidelines is a retention schedule that limits the amount of time information released on a Police Information Check. The retention schedule reflects the severity of the incident, so that violent crimes would be released for a longer period than a property crime offence. Apprehensions under the MHA are released for five years. Lone suicide attempts are released for one year, unless there is more than one occurrence, in which case all of the occurrences will be released for five years.

Mental Health Act

Under section 28 of the Mental Health Act, a police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person is acting in a manner likely to endanger that person's own safety or the safety of others, and is apparently a person with a mental disorder.

Privacy Considerations

In order to engage in suitability assessments and conduct risk management, employers and volunteer organizations may determine that they require certain kinds of background information about prospective employees and volunteers. Police agencies play a neutral role in relation to such decisions regarding employment risk assessment. The Police Information Check process formalizes and standardizes the information that organizations and public bodies obtain from a police agency, should

a prospective employee or volunteer be required to provide the results of such a check. A Police Information Check also acts to limit the amount of detail in the information released.

Businesses and non-profit organizations must comply with the *Personal Information Protection Act* and every public body must comply with the FIPPA. These Provincial Acts, and similar federal laws, contain rules governing how a business, non-profit, or public body is allowed to collect, use or disclose information about a candidate for employment or a volunteer position.

Before requiring a potential volunteer or employee to attend a police agency for a police information check, every organization or public body is expected to be familiar, and ensure compliance, with the legal requirements concerning the collection, use, and disclosure of the information obtained through such a check.

Without the Police Information Check process, employers and volunteer organizations seeking information from police about an applicant's background, may consider it necessary to have applicants make requests for their personal information pursuant to the FIPPA or the federal Privacy Act, and then provide the records received, in some manner, to the employer or volunteer agency. Such a practice is undesirable as it could potentially result in the routine disclosure, to employers and other organizations, of records containing sensitive personal information.

It remains open to an applicant to make a FIPPA request for records relating to any incident disclosed through the Police Information Check process. Police agencies play a neutral role in relation to employment practices, unless a situation exists in which a police agency has a duty to disclose information, due to circumstances that affect the health or safety of others.

Human Rights Considerations

In determining what information should be included on a Police Information Check, the Provincial Working Group strived to balance the privacy and human rights of the applicant against the safety of the public and, in particular, vulnerable individuals with whom the applicant would be interacting.

It is the responsibility of the organization/employer, not the police agency, to determine whether an applicant requires a Police Information Check (PIC) or a Police Information Check with Vulnerable Sector Screening (PIC VS). To avoid potential discrimination under BC's Human Rights Code, the organization/employer should have the applicant obtain any police check as one of the last steps involved in the hiring process, only after a conditional offer has been made.

DISCUSSION:

The current provincial standard for Police Information Checks provides for two types of Police Information Checks, distinguished by whether or not the applicant will be working with a vulnerable member of society such as children, the elderly or a person with disabilities. Federal policy dictates that anyone requesting a Police Information Check who indicates that they will be working with someone in the vulnerable sector must be queried through the national criminal record database to determine whether they have ever received a record suspension (pardon) for a sexual offence. The release of this information is subject to the authorization of the Minister of Public Safety and Emergency Preparedness.

The Police Information Check includes the following information:

- Criminal convictions (summary and indictable) from Canadian Police Information Centre (CPIC) and/or local databases and findings of guilt as per YCJA from local police files;
- Outstanding judicial orders, such as charges and warrants, judicial orders, Peace Bonds, Probation and Prohibition Orders. As per CPIC policy, information obtained from the Investigative Databank must be confirmed and authorized for release by the contributing agency;
- Absolute discharges, for a period of one year from the date the applicant was discharged, and conditional discharges, for a period of three years from the date the applicant was found guilty;
- Charges recommended and/or processed by other means such as Diversion or Alternative Measures;
- Dispositions listed in the CPIC Identification Databank or Criminal Record Level II query under non-convictions including, but not limited to, withdrawn, dismissed, and cases of not criminally responsible by reason of mental disorder;
- Any additional information recorded in police databases documenting the applicant to have been a suspect in an offence (whether or not charged), subject to provincial retention periods specific to the offence type;
- Information from police databases documenting that the applicant has previously exhibited violent, harmful or threatening behaviour related to a mental health incident; and
- As authorized for release by the Minister of Public Safety all record suspensions (pardons) regarding criminal convictions for sexual offences.

The Police Information Check does not include:

- Convictions where a pardon has been granted (except for sexual offences for those working with a member of the vulnerable sector);
- Convictions under provincial statutes unless under exceptional circumstances;
- BC Motor Vehicle Branch information, such as traffic violations or roadside driving suspensions;

- Suspect information that would hinder an ongoing investigation or where the suspect has not been spoken to that may result in the record check being delayed or terminated;
- Youth Criminal Justice Act information beyond applicable disclosure period;
- Special Interest Police category of CPIC;
- Information gathered outside formal occurrence reports (i.e. street checks) except under exceptional circumstances;
- Any reference to contagious diseases;
- Victim/Complainant information unless under exceptional circumstances;
- Information from foreign law enforcement systems; and
- MHA terminology - mental health incidents are reviewed and if the information meets the criteria for release, the applicant will be referred to as “subject” and the incident will be referred to as “violent or threatening behavior towards self or others.”

Year to date, the VPD has provided Police Information Checks to 14,284 citizens. Of those, 41 (.3%) resulted in mental health apprehensions information being released.

If a hiring organization determines that they only require conviction information, this information is available to all Canadians by submitting fingerprints to the Canadian Centre for Real Time Identification Services, either through the RCMP or an accredited private company. Most organizations will not accept this type of check when determining the suitability of a potential employee or volunteer.

The OIPC recommends that another tier of service be made available to the citizens of BC, a “charge and conviction only” check for citizens who are not working with the vulnerable sector. Having this available would provide organizations with an opportunity to collect less information for positions within their organization that are deemed to have less responsibility or present less risk. Mental health incidents would not be released in a charge and conviction only check.

There are concerns that by offering this less comprehensive check, the police community may take on liability by not disclosing details of a serious incident notwithstanding an absence of charges where there has been a history of violent behavior attributable to mental illness. This two-tiered service will be discussed at the November 2013 BCACP meeting, where committee members will vote on whether police agencies in BC will increase record check services to include a charge and conviction only option.

CONCLUSION:

The VPD is following provincial and federal guidelines regarding Police Information Checks. The release of information regarding MHA incidents is not regarded lightly and expertise has been sought in the development of our policy. In an effort to balance privacy concerns with risks to the public, the VPD has taken several steps to create a balanced policy on how MHA incidents are released in the Police Record

Checks progress. Release of this information is now limited to serious incidents, and the disclosure reflects a tenor of violence, not mental health. Further, a retention period has been adopted, thereby limiting the period of time mental health incidents are disclosed.

The complaint notes that the release form describes the released information as an *offence*. The VPD form will be modified; *offence* will be replaced by *incident type* to remove any accusatory implication. Consideration is also being given to having police agencies offer a less comprehensive service where only charge and conviction information is released, and therefore no reference of incidents related to the MHA. This check would only be available to those not working with the vulnerable sector.

For the reasons discussed in this report it is recommended that the Committee dismiss, with reasons, this complaint.

Author: Dawna Marshall-Cope Telephone: 604-717-3505 Date: Oct.25, 2013

Submitting Executive Member: DCC Doug LePard

(signature) Date: October 29, 2013

Rob Wipond

Elizabeth Denham
Information and Privacy Commissioner

re: Police Chief Associations inquiry

February 12, 2014

Dear Elizabeth Denham,

I am writing in response to your request for public input into whether or not you should recommend that government declare BC's two police chief associations, the BCACP and BCAMCP, to be public bodies that should be subject to *FIPPA*.

I expect that people more knowledgeable than I will write to you with suggestions as to how best to establish a transparent process for generally determining what are public bodies and what are not, and how to then apply the criteria in these particular cases. I agree that this is what needs to happen. However, my own area of expertise is the police chief associations themselves, so I will focus my comments on them specifically.

I have already submitted a substantial body of evidence and arguments to your office with respect to these issues in the wake of my efforts to obtain information about the associations through *FIPPA* and through the Lobbyist Registry. In this submission, then, I will simply highlight a few key points and a few new perspectives.

The associations *are* public bodies

There is a huge body of evidence already before you showing that an enormous amount of public policing governance work is being done at BCACP and BCAMCP meetings by a lot of public servants working on public time. Conversely, what evidence is there that the associations are simply private groups, except for their own claims that they are?

Even the associations themselves have argued that they should not be required to register as lobby groups because they've been performing all of their BCACP and BCAMCP activities in their roles as public servants. So if you were to decide *not* to recommend that the associations be declared to be public bodies, then you would have to deal with this claim of theirs and develop a rationale for why the associations should not be, and should not have been in the past, subject to our lobbying laws.

Meanwhile, if the associations were private groups as they claim to be, then what would be the legal status of the many memorandums of understanding and other agreements that the BCACP

and BCAMCP have entered into on behalf of our public police forces with other public and private entities? Could the associations be charged with fraudulently claiming to officially represent our public police forces in these serious legal contexts? It's not a minor matter, and this consideration must weigh in your evaluations and recommendation. Essentially, regardless of what you ultimately recommend, I suggest that it is important in your report to impress upon government that there are a number of extremely significant legal ramifications that hang in the balance either way.

On another tack, I realize that you may currently be thinking that you do not have the authority yourself to declare these associations to be public bodies. I question that. I would ask you, if a group of public servants starts meeting regularly to do public business, and when you come calling for records they tell you to go away because they are actually a private group, will you simply accept their assertion at face value? Is your only legal recourse at that point to ask government to specifically write this group of public servants doing public business into a schedule of *FIPPA*? And in this context, note that prior to me submitting FOI requests, neither the BCACP nor BCAMCP were legally incorporated or registered as societies. From a legal standpoint, they were simply public servants meeting to do public work. And the BCAMCP still today is that. And in this respect the association names are misleading because, as other evidence I've presented to you has shown, both associations don't include only police chiefs but include many senior public servants from many different public bodies. So on what legal grounds are these diverse public servants doing public work able to claim that your office *does not* have authority over the records they generate? I see no substantive legal grounds upon which they can make such a claim. I urge you to consider this aspect of this issue seriously. Adding the associations to a schedule of *FIPPA* may be, with respect, missing the real point. Are we going to have to start asking government to specifically write into *FIPPA* the names of every group of public servants doing public work who come up with a name for themselves and suddenly start unilaterally declaring themselves to be outside the scope of *FIPPA*? Don't these groups have to provide evidence of some kind that they *are* private groups and are *not* doing substantive public work?

In conclusion, it seems to me that the associations include public servants doing substantive public work together and must be declared to be public bodies.

Related complaints that must be resolved

In your request for input, you stated that you had not yet had to adjudicate a complaint with respect to the associations. However, I have now officially put a number of complaints before your office that will almost certainly ultimately require adjudication. All of these complaints in some way go to the heart of the issues before you in this inquiry, so I will summarize some of them here.

However, I need to emphasize a key point first. Personally, it is not actually that important to me at this time to see each of these complaints individually resolved or adjudicated. I have even less interest at this time in a mediation or adjudication process that goes into the documents at issue in each complaint page by page or line by line. In fact, I would find such an approach counter-productive and excessively time-consuming for all concerned. Instead, much like some experts

are suggesting that this case needs a clear set of general parameters about “what is a public body versus not a public body,” I suggest that we need to resolve once and for all in a systemic, broader sense what kind of body the police chief associations are, before we can reasonably adjudicate my individual complaints. I therefore try to articulate the relationship between the individual complaint and that broader issue in each complaint summarized below. And I don’t know how confidentiality provisions work in your office, but from my own end I certainly authorize and encourage you to review all of these complaints of mine with the respective OIPC staff who are or will be handling these files, and to comment upon them and the issues they raise in your final public report.

The official complaints include the following:

- 1) Though I have been told that the approximately fifteen bankers boxes of BCACP archives are stored at an RCMP facility in British Columbia, I was also told that those records are private and not subject to federal Access to Information requests. As you may be aware, the federal Information Commissioner recently publicly complained that the RCMP has largely stopped even responding to ATI requests, and the OIC is overtaxed, so it could be years before these questions are even visited federally. And yet I have reasons to believe that many of those archived records were created by BC municipal police and their staff, and that at times in the past those boxes of records were actually stored in municipal police departments. So what is the legal status of such “mobile” records under *FIPPA*? This decision could have broad relevance, and likely rests first and foremost on whether the entity generating and storing the documents is a public body or not.
- 2) Where are the BCAMCP archives? The BCAMCP has existed for decades, yet I’ve so far found only a few records as old as even ten years. These archives would be an important historical record of policing governance in BC over the past thirty years, but they seem to be “gone”. And what if they are sitting at someone’s home office, or spread across many police department warehouses? Again, it seems to me actually less important right now to try to scrape together historical documents, as it is to clearly establish the principle as to whether the entity generating and storing the documents has been in the past and is today a public body or not. Then, the line of responsibility for finding and properly storing those documents becomes clearer.
- 3) My own personal information, sent as part of a request under *FIPPA* to the Chief of the West Vancouver Police Department, was taken to a BCACP meeting, where it was shared with virtually every major public security agency in BC, five Canadian banks, CSIS, the US Secret Service and others known and unknown. I’ve submitted a complaint first to WVPD, and recently to your office, about the handling of my personal information. However, it is clear that these kinds of transfers of personal information from police departments to the associations and from the associations to the police departments are not uncommon, and so it seems more important to determine if this general practice represents an ongoing and serious privacy breach for many citizens who communicate with our police chiefs and/or with these associations. Again, adjudication of these issues will shift dramatically depending on whether we regard the associations historically and today as having had legal responsibilities under either *FIPPA* or *PIPA*.

- 4) The four municipal police departments that provided association records in response to my FOI requests employed many different types of exemptions under *FIPPA* to withhold records. These included many exemption claims that indicate that the police and government themselves believe the content contains confidential policing information, policy advice, privileged legal opinions and other sensitive information which, if publicly released, could cause significant harm to law enforcement or government relations. Yet at the same time, this same information has already been shared with many other public and some private sector representatives in the associations, who in turn may have shared it further afield (I've seen no indication that the BCACP or BCAMCP have confidentiality protocols in place). So your office will have to determine: Did the chiefs actually share privileged, confidential information with these associations? And if so, by sharing that confidential information with the very large and diverse list of members and associate members of the BCACP or BCAMCP, did these police chiefs already perhaps effectively share the information publicly, thereby making all BCACP and BCAMCP records already public information under *FIPPA*, anyway? Then, your determinations could open the possibility that many of the chiefs have been operating in frequent contravention of the *Police Act* by inappropriately disclosing confidential policing information to these associations. And again, rather than try to weigh all of these questions anew page by page and line by line, it seems some general determinations about whether the associations are public or private bodies are needed first, which could then be applied to particular instances of information sharing and use of exemptions.

Together, these complaints also highlight the impossibility of continuing with the status quo. The associations must be determined to be public or private once and for all as soon as possible, so that we can then begin to meaningfully resolve these conundrums and give direction to the public, police departments, and the associations about appropriate information management.

The lack of public information and understanding is unacceptable

It's important to understand that, outside of the associations themselves, I am probably the most knowledgeable person in British Columbia about the activities of these associations. That's not bragging, that's cautioning and expressing serious concern. The associations have operated under a shroud of secrecy for several decades that has only lifted slightly over the past two years as a result of the documents I've managed to obtain, through significant effort, from various police departments. The reason I point this out is because, when considering all of the input provided to you during this process, and the people and organizations that *did not* provide input to you, it's important to recognize that most people know nothing at all about these associations or what they do. They have not seen the documents, they have not seen my articles, and they don't even know what the issues are so as to develop an opinion about them. In addition, many people who are involved in policing or the public sector in BC will likely not provide input for fear of how their statements could influence their careers. This makes your task all the more challenging, but also all the more important, because you are uniquely positioned to investigate and weigh the issues.

For this reason I believe that in many ways your report on this topic will be equally if not more important than your recommendation. I suggest that your office should investigate these

associations as much as possible and your report should educate the public more fully about what these associations have been doing, both in terms of public policing governance activities and in terms of private lobbying. And the report should clearly explain to the public how important and influential these associations are.

In that regard, you may wish to consult with policing governance experts in BC and elsewhere along the way, in order to be able to properly contextualize what you're seeing in the evidence and the arguments before you. I will advise that my preliminary research indicates that what is occurring in BC may actually be a "national" or even international phenomenon – that is, I've found similar activities going on with some police chief associations in other provinces and countries, where the police chief associations have taken similar positions with respect to their "immunity" to either being subject to public freedom of information laws or registering as private lobby groups. So your decision on these questions before you could be precedent-setting.

Finally, it may be of interest to you that I have recently submitted a complaint to the BC Office of the Police Complaints Commissioner, requesting that they investigate whether there's been any inappropriate police conduct in the context of these associations' activities. This is preliminary; I do not know how substantively their office will or will not investigate. But there may be an opportunity for you to also hear from them on some of the overlapping concerns. I also invite you to contact me for any updates with respect to those processes.

Thank you for considering these important issues.

Sincerely,

Rob Wipond