



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
for British Columbia

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**News Release**

## **NEWS RELEASE**

**For Immediate Release**

**Oct. 22, 2015**

### **Investigation reveals major deficiencies in the access to information practices of two government ministries and the Office of the Premier**

**VICTORIA**—In an investigation report released today, B.C. Information and Privacy Commissioner Elizabeth Denham identified major deficiencies in the access to information practices of two government ministries and the Office of the Premier.

*Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* reveals a disconnect between the actions of political staff in responding to access to information requests and the duty to respond openly, accurately and completely to requests for records as mandated by section 6(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

“In the course of this investigation, we uncovered negligent searches for records, a failure to keep adequate email records, a failure to document searches, and the willful destruction of records responsive to an access request. Taken together, these practices threaten the integrity of access to information in British Columbia,” said Denham.

The commissioner launched an investigation after Tim Duncan, a former executive assistant in the Office of the Minister of Transportation and Infrastructure, submitted a complaint on May 27, 2015 alleging destruction of records responsive to an access request about Highway 16/the Highway of Tears filed with the Ministry of Transportation and Infrastructure in November 2014.

“Mr. Duncan came forward with a very serious allegation – that a fellow employee had wilfully and deliberately deleted records from his computer that were responsive to an access to information request about the Highway of Tears. It was imperative that my office give this matter a thorough but timely hearing,” said Denham.

This is one of the most resource-intensive and technical investigations the commissioner has undertaken. Investigators requested monthly email backups, seized and inspected computers, and reviewed mailbox metadata and message tracking logs.

The commissioner’s investigation of Highway 16/the Highway of Tears access request examined two distinct issues. With regard to how the ministry processed the request overall, the commissioner found the ministry contravened s. 6(1) of FIPPA when it

interpreted the applicant's request narrowly and failed to clarify the nature of the records being sought with the applicant.

This same access request was at issue in Tim Duncan's allegation of destruction of records by ministerial assistant George Gretes. Duncan alleged that after identifying 12-20 responsive records in his mailbox, Gretes "triple deleted" the records from Duncan's computer. Gretes denied the allegations.

After multiple interviews under oath and a review of available forensic evidence, the commissioner found that it is more likely than not that the email records were in fact deleted by ministerial assistant George Gretes. Therefore, the ministry contravened s. 6(1) of FIPPA because it failed to openly, accurately and completely respond to the access request.

"I found Mr. Duncan to be a credible witness and that, on a balance of probabilities, his account of the events of Nov. 19, 2014 was truthful. In contrast, I did not find Mr. Gretes to be a reliable witness. He admitted to giving false testimony under oath, and aspects of his testimony was contradicted by other evidence," said Denham.

The commissioner has referred the matter to the RCMP for investigation of possible offences.

The commissioner's investigation also examined two additional access requests directed to the Ministry of Advanced Education and the Office of the Premier, which were brought forward in June 2015 after the commissioner launched her investigation.

In the case of the access request made to the Ministry of Advanced Education seeking emails sent by the chief of staff to the minister from February 2014 to July 2014, the commissioner found that the ministry contravened s. 6(1) of FIPPA due to a negligent search for records by the chief of staff.

In the case of the access request to the Office of the Premier about all emails sent by the deputy chief of staff for certain dates in November 2014, the commissioner found that the office contravened s. 6(1) of FIPPA due to the lack of documentation of the search for responsive records and the overly broad interpretation given to transitory records by the deputy chief of staff.

The commissioner made 11 recommendations in her investigation report, including:

- Technological changes to stop employees from permanently deleting emails;
- Mandatory training in records management, including training on what is a transitory record and what is not;
- Best practices to ensure that employees follow correct processes when responding to access to information requests and meet the duty to assist;

- Legislative changes including a duty to document key decisions of government, and oversight of information management and destruction of records with sanctions for non-compliance; and
- Re-processing of two of the three access requests examined in this report.

*Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* is available for download at: [www.oipc.bc.ca/report/investigation-reports/](http://www.oipc.bc.ca/report/investigation-reports/)

Given that this investigation report describes the actions of a specific individual whose conduct has been referred to the RCMP, the commissioner will not be giving interviews about the report. Communications staff can assist with questions about report content, or with other general inquiries about the report.

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## **BACKGROUNDER**

### **Oct. 22, 2015**

### ***Key Facts and Findings of Access Denied: Record Retention and Disposal Practices of the Government of British Columbia***

#### **The Duty to Assist (section 6(1) of FIPPA)**

Section 6(1) of FIPPA states, “the head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.”

A public body must be able to show that its search efforts have been thorough and comprehensive, and that it has explored all reasonable avenues to locate records and to assist applicants.

The duty to assist includes the duty to produce all responsive records in existence at the time an access request is received. Deliberately refusing to produce responsive records or deleting responsive records is a violation of s. 6(1) of FIPPA.

#### **Issue #1: Access request to the Ministry of Transportation and Infrastructure regarding meetings about missing women and Highway 16/the Highway of Tears**

On Nov. 19, 2014 an applicant made an access request for all government records that reference the issue of missing women along Highway 16/the Highway of Tears and records related to meetings held by the ministry on this issue from May 15, 2014 to Nov. 19, 2014.

The ministry found 36 pages of documents that may have been responsive to the request. The ministry started processing the request in accordance with FIPPA, taking two time extensions in the process. The ministry later decided that the records were not responsive and informed the applicant, who complained to the commissioner's office.

Interviews with ministry employees revealed the change was the result of a difference of opinion as to what the access request was about. Some acknowledged that the distinction drawn by the ministry FOI co-ordinator and a ministry executive between meetings about "missing women" and meetings about "transportation options and community needs" was not clear, while others felt there was a justification for this change in reply to the request.

The commissioner found the ministry contravened its duty to assist under s. 6(1) of FIPPA when it narrowed the applicant's request for records to exclude records about "transportation options" and focus on records that referenced "missing women" without contacting the applicant to clarify the nature of the records being sought.

## **Issue #2: Alleged destruction of responsive records relating to the access request to the Ministry of Transportation and Infrastructure regarding meetings about missing women and Highway 16/the Highway of Tears**

This same access request to the Ministry of Transportation and Infrastructure about Highway 16/the Highway of Tears was at issue in the commissioner's investigation of alleged destruction of records.

In a letter to the commissioner received May 27, 2015, former executive assistant Tim Duncan alleged that on Nov. 20, 2014, ministerial assistant George Gretes deleted emails from Duncan's computer that were potentially responsive to the access request about the Highway of Tears. Mr. Gretes denied the allegations.

In testing the evidence, OIPC investigators interviewed Mr. Duncan and Mr. Gretes, requested email backups, reviewed message tracking logs, asked questions about email management practices including "triple deleting," and questioned other staff in the minister's office.

There were no witnesses to the alleged incident. The investigation into the allegation was limited by the passage of time as well as the lack of forensic evidence. Daily email backups are only retained for 31 days, and monthly email backups were not enabled for Mr. Duncan's account due to a systems upgrade undertaken by the Ministry of Technology, Innovation and Citizens' Services between June 2014 and January 2015.

After consideration of all of the available evidence, the commissioner found that it is more likely than not that Mr. Gretes did delete emails on Mr. Duncan's computer that may have been responsive to the access request. Therefore, the ministry contravened s. 6(1) FIPPA because it failed to openly, accurately and completely respond to the access request.

The commissioner has referred the matter to the RCMP for investigation of possible offences.

### **Issue #3: Access request to the Ministry of Advanced Education**

Investigators examined an access request for all emails sent by the minister's chief of staff to the minister from Feb. 1, 2014 to July 16, 2014. The chief of staff indicated there were no responsive records, however in December 2014, 435 pages of severed records were released, including emails sent by the chief of staff. The responsive records were produced by the minister.

In testing the evidence, investigators reviewed monthly email backups, which revealed approximately 20 responsive emails sent by the chief of staff that he did not produce. The chief of staff explained that he may have conducted a search for responsive records using a smartphone or tablet, which would only have retrieved the last 100 emails he had sent.

The commissioner found that the ministry contravened its duty under s. 6(1) of FIPPA to make every reasonable effort to respond openly, accurately and completely to the access request.

### **Issue #4: Process for tracking access to information requests in the Executive Branch of the Office of the Premier**

Investigators examined two issues with respect to an access request to the Office of the Premier for all outgoing email from the deputy chief of staff between Nov. 3 to 6 and Nov. 17 to 20, 2014.

With regard to the Executive Branch's processes for tracking access requests made to the Office of the Premier, the commissioner found that the office contravened its duty to assist under s. 6(1) of FIPPA due to the lack of documentation of the search for responsive records. The FOI co-ordinator in the Executive Branch processes access requests verbally and does not keep records for the date or results of a search for records specific to an access request.

### **Issue #5: Access request to the deputy chief of staff, Office of the Premier**

The second issue investigators examined in relation to the access request made to the Office of the Premier relates to the deputy chief of staff's records management practices.

The commissioner found that the broad interpretation given to transitory records by the deputy chief of staff, which results in her retaining almost no sent emails, effectively frustrates the Office of the Premier's ability to comply with s. 6(1) of FIPPA.

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