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INFORMATION &
PRIVACY COMMISSIONER
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News Release

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Commissioner recommends changes to freedom-of-information law

VICTORIA – In response to allegations that public bodies are failing in their duty to warn the public about health and safety concerns, a new report from B.C.'s Information and Privacy Commissioner is recommending changes to freedom-of-information law to strengthen proactive disclosure requirements.

“Public bodies are the stewards of large volumes of information about our health, safety, environment, and other matters of public concern,” said Commissioner Elizabeth Denham. “It is their duty under section 25 of the Freedom of Information and Protection of Privacy Act to warn the public of significant harm, and also inform citizens of matters in the public interest.

“What is clear from this investigation is that legal reform is needed to ensure that a public body’s responsibilities under section 25 are properly discharged to the benefit of the public.”

Commissioner Denham launched a systemic investigation into the issue after receiving a written submission from the BC Freedom of Information and Privacy Association (“FIPA”) including a detailed report from the University of Victoria's Environmental Law Clinic. The submission alleged a systemic failure by public bodies to disclose information under section 25.

Section 25 of the Freedom of Information and Protection of Privacy Act (“FIPPA”) contains two grounds which obligate public bodies to provide citizens with timely information in certain circumstances. One is where there is an imminent and significant risk of harm to the environment or to health or safety of the public and the other is where information is, for any other reason, clearly in the public interest. These provisions are mandatory and override every other provision of FIPPA.

Section 25 has been interpreted as representing a high legal threshold for disclosure; situations requiring disclosure need to be urgent and compelling.

Denham reviewed five case studies submitted by FIPA, and found that in one case, the Ministry of Forests, Lands and Natural Resources should have disclosed information to the public relating to the collapse of the Testalinden Dam. In the other four cases involving water quality, air quality, lyme disease, and mould in a student residence, the commissioner found there was no requirement for disclosure under this section.

Denham also completed a survey of public bodies, whose mandate could necessitate a possible disclosure of information under section 25, and determined that public bodies do not fully understand their obligations to inform the public in such cases.

The investigation report, published today, makes three recommendations for change, including policies and training for public bodies and their employees specific to section 25, as well as amending FIPPA to mandate public bodies to disclose information in the public interest, even where the information is of a non-urgent nature.

Investigation Report F13-05: Public body disclosure of information under section 25 of the Freedom of Information and Protection of Privacy Act is available online at:

www.oipc.bc.ca

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