



BY FAX: (250) 356-9587

April 22, 2010

The Honourable Kevin Falcon
Minister of Health Services
PO Box 9050 Stn Prov Govt
Victoria BC V8W 9E2

Dear Minister:

Bill 11—2010 Miscellaneous Statutes Amendment Act (no.2) 2010—*Ministry of Health Amendment Act*—OIPC File F10-41328

I write in response to the proposed amendments to the *Ministry of Health Act*, *Public Health Act* and the *Health Authorities Act* found in Bill 11 tabled yesterday in the house. I was taken by surprise to discover these very significant amendments in a miscellaneous bill. The amendments will allow for extensive sharing of personal information across numerous public bodies.

In my recent appearance before the Special Committee to Review the *Freedom of Information and Protection of Privacy Act*, I raised a number of significant concerns about data sharing initiatives in the current environment. I noted that increasingly, expediency is consistently trumping privacy. These proposed amendments continue that unfortunate trend and raise mounting concerns about the privacy of British Columbians.

As you may know, in the first week of March, Ministry officials provided us with a draft of the *Ministry of Health Amendment Act*, 2010. We reviewed the document and had some serious concerns with it. We arranged to meet with program area staff and did so on March 10. We were not advised at that time that there were any urgent timelines. Following the meeting we asked several follow up questions to make sure we understood the Ministry's concerns and plans relating to the proposed amendments and then had a second meeting on March 23, 2010.

In a letter dated March 29, 2010, I wrote to Christine Massey, Executive Director of Legislation and Professional Regulation, setting out in detail my concerns regarding these proposed amendments. I enclose a copy of that letter for your ease of reference. It is my firm view that the collection, use and disclosure of personal information proposed under the *Ministry of Health Amendment Act*, should properly be done using the existing framework of the *E-Health (Personal Health Information and Protection of Privacy) Act* ("E-Health Act"). The details of how I reached that conclusion are set out in the enclosed letter.

In response to my letter, I received a fax on April 20, 2010, from Christine Massey that fails to adequately address any of the concerns raised in my letter of March 29, 2010. The letter also fails to advise that the proposed amendments would appear in a miscellaneous bill the very next day. We discovered the amendments in our regular review of bills yesterday. At 5:59 p.m. last night I received an email from Elaine McKnight, Assistant Deputy Minister, advising that the

amendments had been introduced into the house. Prior to that, her phone messages to my office had been a request for a “meet and greet”, no mention of a discussion of any proposed amendments.

Ms. Massey’s April 20 letter contends that the “the E-Health Act was developed to apply to the development and implementation of the e-health record systems, not to Ministry databases for administrative and secondary purposes.” In a letter to you dated October 5, 2009, my predecessor provided a careful explanation for why it simply cannot be said that the E-Health Act does not apply to Ministry of Health databases whether for administrative and secondary use purposes or otherwise.

It seems that Ministry staff take differing views on the scope and intent of the E-Health Act depending on which area of your ministry they work. As you know, following the discussions you had with the former commissioner last fall regarding the scope and intent of the E-Health Act, we began participating in a working group whose ongoing purpose is to develop designation orders for databases including Ministry of Health databases. The database currently under consideration for designation is a Ministry of Health database.

With respect, I recommend that these amendments be immediately removed from the Miscellaneous Bill so that our offices can continue to discuss the proposals and so that the serious privacy concerns raised by the proposed data sharing are properly and completely canvassed before any further legislative proposals are introduced.

Consistent with the office’s longstanding practice when commenting on a bill tabled in the Legislative Assembly, I am sending a copy of this letter to the opposition critic for your ministry. Similarly, a copy of this letter will be posted on my office’s website today.

Sincerely,

ORIGINAL SIGNED BY

Paul D. K. Fraser, Q.C.
Acting Information and Privacy Commissioner
for British Columbia

Enclosure (1)

Copies: John Dyble
Deputy Minister
Ministry of Health Services

Adrian Dix
MLA, Vancouver-Kingsway
Opposition Critic