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May 3, 2012

Honourable Don McRae  
Minister of Agriculture  
Room 301, Parliament Buildings  
Victoria BC V8V 1X4

Dear Minister McRae:

**Re: Bill 37 – Animal Health Act; OIPC File F12-49123**

I am writing to provide comments on the access to information and privacy implications of Bill 37 – Animal Health Act, which your ministry has tabled before the Legislative Assembly.

The Bill would override the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and remove the public’s right to access various records regarding animal testing, including actions and reports relating to animal disease management.

Key goals of FIPPA, expressly stated in s. 2(1), are to make public bodies more open and accountable to citizens. The importance of these goals is reflected by the fact that FIPPA’s provisions override *every other enactment*, unless the other enactment expressly overrides FIPPA. Only a very small number of these overrides have been enacted in the almost two decades since FIPPA came into force. Bill 37 would unnecessarily add to that number and this is a matter of deep concern considering the importance of disease management measures, and the need for openness and accountability in the monitoring and enforcement of such measures.

This override would be at odds with FIPPA’s policy choices approved by unanimous vote of the house – a balance between the public’s right to know, and individual and commercial interests of confidentiality. In effect, the Bill would establish a separate and very broad access to information regime, without providing compelling evidence that such an extreme step is necessary.

Your ministry has expressed concern that s. 21 of FIPPA, the exception for “harm to third party business interests”, does not adequately protect information related to farmers engaged in animal health programs or subject to disease management actions. Your interpretation that FIPPA is out of step with other jurisdictions, or is overly onerous, is not supported by our research.

I also refer you to this office’s Order F10-06<sup>1</sup>, which required your ministry to disclose the results of random audits related to the presence of disease on fish farms. While this Order may be the basis for the ministry’s desire for greater confidentiality of such test data, the Bill as drafted would result in the protection of records well beyond the scope of those disclosed pursuant to that Order.

Though it may be in the interest of your ministry and of farmers to protect test data in the ministry’s possession from disclosure, it is not clear how the public policy interests carefully balanced in FIPPA are served by a blanket override of this nature.

In addition, s. 60 of the Bill also provides for an override of FIPPA and the *Personal Information Protection Act* (“PIPA”) in relation to emergency powers. When the chief veterinarian declares an emergency under Bill 37, the ministry and other organizations have unlimited powers for collection, use, and disclosure of personal information. The ministry is granting itself these unlimited powers without sufficient evidence of actual need or evidence that FIPPA and PIPA do not already enable this collection, use, and disclosure.

Bill 37 also provides the Minister with broad powers to make regulations in an emergency. The Minister could exempt any person from any provision or modify any requirement in the Bill. While this power may be useful to deal with unforeseen circumstances, it is very broad and potentially compromises both access to information and personal privacy. Further, this authority for emergency regulation making powers precludes oversight to mitigate against unnecessary infringement of personal privacy.

In conclusion, the broad and sweeping strokes taken by this Bill adjust the long established balance of interests between access to information and confidentiality. It also provides a legislative basis for overriding existing privacy protections. I respectfully ask that your ministry amend the Bill to remove ss. 16 and 60, and to provide for oversight of the emergency provisions described in Part 5.

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<sup>1</sup> Order F10-06 can be found at <http://www.oipc.bc.ca/orders/2010/OrderF10-06.pdf>.

Consistent with our longstanding practice when commenting on a Bill tabled in the Legislative Assembly, I am providing a copy of this letter to the Opposition critic for your ministry. In addition, a copy of this letter will be posted on my office's website.

Sincerely,



Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia

Attachment

pc: Lana Popham, MLA-Saanich South  
Opposition Critic for  
the Ministry of Agriculture

Wes Shoemaker  
Deputy Minister  
Ministry of Agriculture