



Ref: 97898

Date

Elizabeth Denham
Information and Privacy Commissioner
Office of the Information and Privacy Commissioner
For British Columbia
PO Box 9038, Stn Prov Govt
Victoria, BC V8W 9A4

Dear Elizabeth Denham:

Re: Investigation Report F13-01: Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia

Thank you for your letter of February 27, 2013 regarding your investigation into the increase in no records responses on government's general FOI requests.

I am pleased with your finding that government is acting in compliance with Section 6 – the Duty to Assist Applicants -- of the *Freedom of Information and Protection of Privacy Act* (FIPPA). I am also pleased to note your comments on the review of 88 government files, that they did not raise any significant issues of compliance with s. 6(1) of FIPPA and that government's search efforts are thorough and comprehensive.

I recognize that you were unable to find a single explanation for this trend of increasing “no responsive records” which is consistent with our own analysis. We too believe that the processing of multiple requests to ministries is a significant factor. For the increasing number of no records responses to the Office of the Premier, I would point out the Office of the Premier has had a dramatic increase in the number of requests overall and, has had an almost 200 per cent increase in the number of requests resulting in responsive records since 2009/10.

Most of your recommendations are aimed at incremental improvements to make it easier for citizens to access information. Below I have specifically addressed the actions we plan to take on each of your recommendations.

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Recommendation 1: I recommend that IAO communicate to an applicant when it is aware that the records the applicant is seeking exist within a different ministry than from where the applicant has originally requested the records.

While I note your review found a single instance where IAO staff did not initially provide this information to the applicant, I appreciate your acknowledgement in the report that IAO staff provided the information to the applicant in a follow-up email. We commit to having IAO make every effort to direct applicants to the ministry that has, or is most likely to have custody and control of the requested records. It is important to note, despite these efforts, applicants retain the right to direct their access request to any public body.

Recommendation 2: I recommend that IAO should be reasonably confident that before narrowing a request, the result will not deprive applicants of records they would otherwise receive, unless IAO informs the applicant that this may be the case.

IAO will work closely with ministry clients to ensure that narrowing requests do not unfairly deprive applicants of the records they are seeking.

Recommendation 3: I recommend that IAO ensure that it interprets requests (including those for government calendars) broadly enough to assist the applicant in obtaining the records he or she is seeking.

I agree with this recommendation and where it is clear from the request that the applicant may be seeking records that are not specifically mentioned in the request wording, IAO staff will make every effort to direct the applicant to the correct records.

Recommendation 4: I recommend that where government does not have records responsive to an access request, IAO provide an explanation to the applicant as to why this is the case.

I support the intent of this recommendation and commit, in those instances when requests are forwarded to multiple ministries and responsive records are located from at least one public body, to ensure that the response letter to the applicant is clarified. We believe this will address the vast majority of files. We will discuss further with you and your staff other possible ways to address this recommendation for other files.

Recommendation 5: I recommend that government create a legislative duty within FIPPA to document key decisions as a clear indication that it does not endorse “oral government” and that it is committed to be accountable to citizens by creating an accurate record of its actions.

You will be aware that the Special Committee to Review the Freedom of Information and Protection of Privacy Act, made up of all parties of the legislature, met in 2010 and reviewed submissions on changes to the FIPPA. Many of the organizations identified in your report made submissions to the Special Committee on this point. The Special Committee's final report (2010) did not include a recommendation to government on this topic. We will examine this recommendation but would also suggest that it be considered by the next scheduled Special Committee. I note that no other access to information legislation in Canada has such a duty prescribed in law.

Recommendation 6: I recommend that the IAO develop a classification system that more accurately reflects where an individual who has made the same request to multiple ministries ultimately receives the records they were seeking, irrespective of how many ministries respond that they do not have records.

I agree with this recommendation and going forward, IAO will more accurately classify no records responses on requests that are made to multiple ministries and where responsive records are located in at least one public body. As you note in your report, were we to apply this change retroactively, government's analysis indicates the no responsive records rate across government would have increased by three per cent over the last three years.

Thank you again for your report and recommendations. I am pleased that your investigation did not find any issues of non-compliance with FIPPA, and appreciate the recommendations you have provided to enable ongoing incremental improvements to the business processes of IAO in order to offer the best service to the citizens of British Columbia.

Sincerely,



Kim Henderson
Deputy Minister

pc: Lynda Tarras, Head of the BC Public Service Agency
Kathleen Ward, Executive Director, Information Access Operations

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March 4, 2013

Elizabeth Denham
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For British Columbia
PO Box 9038, Stn Prov Govt
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Dear Elizabeth Denham:

Re: Clarification Point - Investigation Report F13-01: Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia

Based on discussions with your office, I understand there may have been more than one instance in your review of 88 files where IAO did not communicate to the applicant that responsive records may have existed in another public body. As my original response indicated, IAO remains committed to making every effort to direct applicants to the ministry that has, or is likely to have custody and control of the requested records.

Sincerely,



Kim Henderson
Deputy Minister

pc: Lynda Tarras, Head of the BC Public Service Agency
Kathleen Ward, Executive Director, Information Access Operations