Office of the Information & Privacy Commissioner for British Columbia

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INVESTIGATION REPORT F16-02

CLEARLY IN THE PUBLIC INTEREST: THE DISCLOSURE OF INFORMATION RELATED TO WATER QUALITY IN SPALLUMCHEEN

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Information and Privacy Commissioner for BC

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COMMISSIONER'S MESSAGE

This report raises some very important public policy issues – issues that get to the heart of determining what is in the public interest.

The relevant facts of the situation are clear. The Steele Springs Waterworks District in the Township of Spallumcheen advised its water users in March 2014 that nitrate levels in the Hullcar aquifer had exceeded Health Canada's guidelines for drinking water quality. As a result the water was no longer safe to drink for infants and those with compromised immune systems.

The Ministry of Environment had reasonable grounds to believe that the spreading of liquid manure on agricultural fields was causing pollution to groundwater. The liquid manure was being applied to fields as a source of nitrate fertilizer for crops.

In the two years since the issuance of the water advisory, nitrate levels in the water supply have continued to increase, while at the same time the Ministry has continued to authorize applications of manure on farms over the aquifer. The board of the Waterworks, the Mayor and Council of Spallumcheen, members of the Legislative Assembly, and water users have repeatedly requested that the Ministry disclose the soil test results and analysis that justify the continued application of liquid manure despite rising nitrate levels.

The Ministry has not provided this information; neither in response to formal access to information requests nor in response to verbal requests and requests through the media. The Ministry stated in one response that it had released all of the information it was legally able to and that the federal *Copyright Act* did not permit the release of information such as soil testing results and nutrient management plans.

While part of this report concerns the Ministry's duty to properly assist an applicant with their access request, the key focus was on whether the Ministry was obligated to disclose information that is 'clearly in the public interest'. This obligation flows from s. 25(1)(b) of FIPPA – a section that, until very recently was seldom utilized because its threshold for application was inordinately high.

Safe drinking water is a basic human need, and many of the residents of Spallumcheen lack confidence in the regulatory actions undertaken by the Ministry. While this is understandable given the lack of information available to the public, I do not wish to suggest that the Ministry has been anything but diligent in taking actions to address the water contamination. However, the reasoning behind those actions, particularly regarding the authorization of the application of liquid manure to fields after the compliance order, has not always

been apparent to the public. Public confidence can certainly be enhanced through the publication of the soil test data and the Ministry's interpretation of that data.

In this investigation report I have determined that the disclosure of this information by the Ministry is clearly in the public interest in that it will enable the public to assure itself that the Ministry is appropriately discharging its duty in relation to environmental and human health. The disclosure of this information therefore meets the threshold for disclosure under s. 25(1)(b) of FIPPA.

In determining whether disclosure was or was not clearly in the public interest, we researched the application of the public interest test in other jurisdictions. All this evidence helped to inform my findings and orders.

I ask public bodies to review the evidence and reasons used in my determination that disclosure of information was in the public interest, and encourage them to use s. 25(1)(b) when they encounter similar circumstances.

Finally, I would to like note that the records my Office reviewed in the course of this investigation demonstrated that Ministry staff are working to address the water quality issue in Spallumcheen, and that they understand and share the concerns of the residents. In my view, as is often the case in similar investigations, if public bodies were more open with information it would serve their own interest as much as the public interest, and leave little room for suspicion sometimes held by stakeholders, and by some members of the public and the media.

ORIGINAL SIGNED BY

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

EXECUTIVE SUMMARY

This investigation report was issued in response to a complaint from the University of Victoria's Environmental Law Centre ("ELC"). The complaint alleged that the Ministry of Environment had failed to meet its obligation under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") in relation to access to information requests made by the ELC, and that the Ministry had failed to disclose information in the public interest, as required by FIPPA.

The ELC requested information from the Ministry in relation to nitrate levels in drinking water in the Hullcar aquifer caused by the application of liquid manure by farms in the Hullcar Valley, in the Township of Spallumcheen. The complaint also alleged that information regarding nitrate levels in the aquifer and in soil test results should have been proactively disclosed to the public, because it described a risk of significant harm to the environment and to the health of a group of people, and because disclosure was clearly in the public interest.

The Commissioner's findings and recommendations in this report further clarify a public body's duty to assist applicants under s. 6 of FIPPA, and its duty to disclose information that is in the public interest pursuant to s. 25 of FIPPA.

On March 6, 2014, the Ministry of Environment issued a compliance order to a dairy farm over the aquifer, H.S. Jansen and Sons ("Jansen Farm"), prohibiting it from applying liquid manure to its fields unless authorized by the Ministry.

Also in March 2014, the Steele Springs Waterworks District ("Waterworks") notified residents of Spallumcheen about the water contamination issue, followed in July 2014 by a water quality advisory issued by the Interior Health Authority ("Health Authority").

Since March 2014, nitrate levels in the aquifer have remained above the acceptable levels set out in Canadian Drinking Water Guidelines. In that time the Ministry has issued nine pollution abatement and prevention orders to agricultural operations in the area, and based on its review of nutrient management plans and soil test results, granted four approvals to the Jansen Farm to apply liquid manure.

Duty to Assist

The Commissioner found that the Ministry of Environment did not comply with the duty to assist applicants with access to information requests as required by s. 6 of FIPPA. While government has put in place a centralized system for processing and responding to access requests, it cannot rely on applicants to understand how to access and navigate that system. When an applicant makes a valid

access request to an employee of the Ministry, the Ministry cannot require the applicant to withdraw its request and resubmit it through different channels. Rather, it must facilitate the processing of the request and, where necessary, forward the request to appropriate individuals within the Ministry for processing.

The Commissioner recommended that the Ministry train its staff to respond to access requests in a manner that complies with FIPPA.

Public Interest Disclosure

Section 25 of FIPPA provides for the mandatory disclosure of information by a public body where the disclosure is in the public interest. That section sets out two instances where a public interest in disclosure of information is triggered such that disclosure by the public body is required, without delay, whether or not an access request has been made

The first, under s. 25(1)(a), is where there is an imminent risk of significant harm to the environment or to the health or safety of the public or a group of people. The second, under s. 25(1)(b), is where disclosure is, for any other reason, clearly in the public interest.

The Commissioner found that the issue of water quality in the aquifer was significant enough to warrant mandatory, proactive disclosure under s. 25(1)(a) of FIPPA. However, the duty to disclose that information had been met by public notifications by the Waterworks and the Health Authority. Therefore, there was no requirement that the Ministry also disclose that information

Disclosure under s. 25(1)(b) is based on different factors than under s. 25(1)(a). It requires disclosure where it is “for any other reason, clearly in the public interest”. To determine whether information is clearly in the public interest, a public body must consider whether a disinterested and reasonable observer would conclude that the disclosure is plainly and obviously in the public interest.

In making this determination the public body must consider a list of non-exhaustive factors. Some of the factors include whether the matter involves a systemic problem rather than an isolated event, whether the subject is of widespread public debate, and the effect of disclosure in light of the potential benefit to the public.

If the information is determined to be in relation to a matter that is in the public interest, a public body must then consider the nature of the information and weigh competing public interests to determine whether the threshold for disclosure is met.

The Commissioner found that there can be little doubt that a risk to clean drinking water constitutes a matter of public interest. The question that is raised in this investigation is whether it is clearly in the public interest that the Ministry disclose soil test results and analysis because disclosure would enable the public to judge for themselves whether the Ministry has appropriately permitted the application of manure to fields subsequent to the issuing of the water quality advisory and compliance order.

The Commissioner found that the disclosure of soil test results and nutrient management plans in relation to the Jansen Farm, as well other farms under pollution abatement and prevention orders, was clearly in the public interest. The disclosure of this information would provide the public with the ability to be informed of the interpretation of those results by the Ministry, and may restore public confidence that the Ministry's approach to this and similar issues has been appropriate.

The Commissioner ordered the Ministry to disclose the soil test results and nutrient management plans that formed the basis for its authorization of the application of liquid manure to the Jansen Farm subsequent to the March 2014 compliance order. The Commissioner also ordered the Ministry to disclose soil test results and nutrient management plans for any other farms as required by pollution abatement or prevention orders issued by the Ministry with respect to nitrate levels in soil that may leach into the Hullcar aquifer. This order is to remain in effect until the water quality advisory issued for the aquifer by the Health Authority is rescinded.

1.0 PURPOSE AND SCOPE OF REPORT

1.1 Introduction

In March of 2014, approximately 200 residents of the Township of Spallumcheen were informed that their drinking water was no longer safe for infants and individuals with weakened immune systems to drink. Spallumcheen is an agricultural community, and in such communities agricultural waste may affect water quality. In this case, the Ministry of Environment determined that it had reasonable grounds to be satisfied that liquid manure being applied to fields as fertilizer had caused pollution of groundwater.[1]

[1]Ministry of Environment Inspection Order (March 6, 2014) and Pollution Abatement Order (May 12, 2016) issued to H.S. Jansen & Sons Farm, available at: http://www.env.gov.bc.ca/epd/regions/okanagan/envman/hullcar-aquifer.html.

The Ministry issued an order[2] on March 6, 2014, to H.S. Jansen & Sons Farm ("Jansen Farm") requiring that it cease application of liquid manure until a nutrient management plan is submitted to the Ministry by a qualified professional. The Ministry may then approve subsequent applications of liquid manure after evaluating the nutrient management plan to ensure that no nitrate is applied beyond that which will be consumed by the crop.

In the more than two years since, the Ministry has issued pollution abatement or prevention orders to eight additional farms. Nitrate levels have continued to rise and local residents, the Mayor and Council, the Board of the local waterworks, members of the Legislative Assembly, and the media have requested that government provide them with evidence that regulatory actions being taken to improve water quality are appropriate and effective.

This issue came to the attention of my Office in February of 2016 when I received a complaint from the Environmental Law Centre ("ELC") at the University of Victoria requesting that I investigate whether the Ministry of Environment has complied with its obligations under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") with regards to the disclosure of information related to the water quality in the aquifer.

This Investigation Report considers two issues: whether the Ministry has properly responded to these numerous requests for access to information, and whether the Ministry has an obligation to disclose information, whether or not an access request had been made, because disclosure of that information is in the public interest.

1.2 Background

The Ministry of Environment is responsible for the protection, management and conservation of B.C.'s water, land, air and living resources. In carrying out this responsibility the Ministry regulates pollution to land, air, and water under the *Environmental Management Act*, and proactively responds to environmental risks.[3]

On March 6, 2014, the Ministry issued the compliance order to the Jansen Farm, a dairy farm in Spallumcheen. The order stated that the Ministry had reasonable grounds to believe that the Jansen Farm had contravened ss. 13 and 14 of the Agricultural Waste Control Regulation.[4] Those sections prohibit the application of

[2] Ministry of Environment Inspection Order against H.S. Jansen & Sons Farm (March 6, 2014).
[3] Ministry of Environment Service Plan, February 2016, accessed May 17, 2016, available online: http://www.bcbudget.gov.bc.ca/2016/sp/pdf/ministry/env.pdf.
[4] *Environmental Management Act*, Agricultural Waste Control Regulation, B.C. Reg. 131/92, available at: http://www.bclaws.ca/Recon/document/ID/freeside/10_131_92.

agricultural waste in circumstances where it would run off or escape and cause pollution of a waterway or groundwater.

The Steele Springs Waterworks District ("Waterworks") draws water from the Hullcar aquifer to serve approximately 150 residents in Spallumcheen. In addition, there are approximately 22 private wells that draw water from the aquifer.

In March 2014, the Waterworks notified residents who draw water from the aquifer that nitrate levels in the aquifer had exceeded that which is recommended for drinking water. This was followed in July 2014, by a water quality advisory issued by the Interior Health Authority ("Health Authority") which remains in effect as of this writing.

The advisory notified Spallumcheen residents that the aquifer from which the Waterworks draws its water had nitrate concentrations that were higher than recommended by Health Canada's Guidelines for Canadian Drinking Water Quality. Residents were advised that pregnant women, babies under 6 months of age, the elderly, and individuals with weakened immune systems, or chronic heart, lung and blood conditions, should use an alternative source of water until nitrate levels decreased to safe levels. The elevated nitrate level in the aquifer is at least partially the result of the application of liquid manure by farms in the Hullcar Valley.[5]

The Jansen Farm generates liquid manure from dairy cattle. It is stored in a manure lagoon for later application as fertilizer on agricultural fields. Under the terms of the compliance order the Jansen Farm may only apply liquid manure to the "field of concern"[6] with the written approval of the Ministry after completion of a nutrient management plan by a qualified professional.

The Ministry has approved the application of liquid manure by the Jansen Farm on four occasions since issuing the March 6, 2014 compliance order. These approvals are based on the evaluation of requests to the Ministry made by a qualified professional retained by the Jansen Farm, in accordance with the compliance order and the nutrient management plan. The qualified professional determines the amount of liquid fertilizer that may be applied based on the species of crop that is planted in the field, the soil composition, and the analyses of soil tests collected by the qualified professional and analyzed by a laboratory.[7]

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[5] Ministry Submission, at para. 50.
[6] The field of concern is identified in the March 6, 2014 Compliance Order; available here: http://www.env.gov.bc.ca/epd/regions/okanagan/envman/pdf/2014-03-06-jansen-order.pdf.
[7] The Ministry engaged professionals from the Ministry of Agriculture for the purpose of reviewing the applications submitted by Jansen Farm and the qualified professional.

In May 2016, the Ministry issued pollution abatement orders to seven farms over the Hullcar aquifer, including the Jansen Farm. The orders state that the Ministry has reasonable grounds to believe that pollution is being caused by the introduction into the environment of nitrates from agriculture waste from agricultural operations on those farms, and that nitrate from that waste is leaching into groundwater.

In June 2016, the Ministry issued two pollution prevention orders to agricultural operators over the Hullcar aquifer. Those orders state that the Ministry has reasonable grounds to be satisfied that those operations are being performed in a manner that is likely to cause pollution.

Throughout this time, members of the community have requested that the Ministry provide them with the soil test results and the analysis of those results so that they may understand the actions taken by the Ministry in response to the unsafe nitrate concentrations in their drinking water. Community members in Spallumcheen have formed the "Save the Hullcar Aquifer Team" with the objective of advocating for the protection of the water in the aquifer. Members of that group have requested the disclosure of the nutrient management plan and the soil test results so that they may determine whether the Ministry appropriately approved subsequent applications of liquid manure. The ELC and the Mayor and Council of Spallumcheen also requested access to those records.

1.3 Investigation Process

As the Information and Privacy Commissioner for British Columbia, I have a statutory mandate to monitor the compliance of public bodies with FIPPA to ensure the purposes of that Act are achieved.

The purposes of FIPPA, as stated in s. 2(1), are to make public bodies more accountable to the public and to protect personal privacy. Accountability is provided through the access to information provisions in Part 2 of the Act, which sets out a scheme for ensuring the public has a right to access information that is in the custody or under the control of a public body. This includes an obligation to disclose information in response to an access to information request under s. 4 as well as an obligation to proactively disclose information where disclosure is in the public interest under s. 25.

On February 3, 2016, I received a complaint from the ELC on behalf of the Save the Hullcar Aquifer Team, requesting that I investigate whether the Ministry of Environment has complied with its obligations under FIPPA.

The complaint alleges that the Ministry did not proactively disclose information relating to a risk of significant harm to the environment or to the health or safety

of a group of people, or the disclosure of which is, for any other reason, in the public interest, as required by s. 25 of FIPPA.

Additionally, the complaint alleges that the Ministry did not meet its obligations under s. 6 of FIPPA when it failed to make every reasonable effort to assist the ELC and to provide a complete response to its access to information requests.

Pursuant to s. 42(1)(a) of FIPPA, I have the authority to conduct an investigation to ensure compliance with FIPPA and, on February 10, 2016, I initiated an investigation under that section into the issues raised by the ELC in its complaint.

In order to determine whether the Ministry met its obligation under s. 6 of FIPPA to respond to the access requests made by the ELC, I requested that the Ministry provide my office with records related to the processing of these access requests. I reviewed those records, the original requests made by the ELC, and the Ministry's response to those requests.

Regarding the Ministry's' obligation under s. 25 of FIPPA to proactively disclose records in the public interest, I requested that the Ministry provide my office with:

1. Copies of all records, including but not limited to, test results, email, and other correspondence relating to nitrate levels in the Hullcar aquifer from January 2014 to the present;

2. Copies of all records, including but not limited to, test results, email, and other correspondence relating to nitrate levels in soils that may affect water quality in the Hullcar aquifer from January 2014 to the present;

3. Copies of any compliance orders issued by the Ministry in relation to soil or water quality in the Hullcar aquifer from January 2014 to the present;

4. Copies of all records, including but not limited to, test results, email, and other correspondence relating to any compliance orders issued by the Ministry in relation to soil or water quality in the Hullcar aquifer from January 2014 to the present; and

5. A copy of the Ministry's policy and procedures for determining whether information should be disclosed pursuant to s. 25 of FIPPA.

In addition, I requested submissions from the ELC and the Ministry on the following:

1. In light of present circumstances in Spallumcheen, including the current water quality advisory issued by Interior Health Authority and compliance, inspection, and information orders issued by the Ministry of Environment to agricultural operators in the region, should s. 25(1)(b)

apply to require the disclosure of information about soil nitrate test results and analysis?

2. Does s. 25(1)(b) apply to require the disclosure of other records related to compliance, inspection, and information orders issued by the Ministry of Environment to agricultural operators in Spallumcheen, such as authorizations for nutrient application granted subsequent to those Orders?

3. Section 25 applies to "information", which raises the question whether disclosure pursuant to s. 25 requires the disclosure of entire records or only the disclosure of a summary of the information contained within those records. Does s. 25(1)(b) apply to require the disclosure of entire soil test results and analysis or only to require the disclosure of a summary of those results?

In addition, on June 10, 2016, while my deliberations were continuing, I wrote to the ELC and the Ministry and invited further submissions on the following two issues:

1. What is the Commissioner's legal authority under FIPPA to enforce compliance with any finding she may make that s. 25(1)(b) requires a public body to disclose information in the public interest?

2. What remedy would it be appropriate for the Commissioner to grant in the circumstances of this case if she were to find that s. 25(1)(b) requires the Ministry to disclose information described above in the public interest?

In the course of this investigation I reviewed these records as well as submissions provided to my office by the ELC and the Ministry.

2.0 ISSUES IDENTIFIED

The issues in this investigation are:

1. Did the Ministry of Environment make every reasonable effort to assist applicants and to respond without delay to the access requests made by the ELC, pursuant to s. 6 of FIPPA?

2. Did the Ministry have information in relation to nitrate levels in the Hullcar aquifer about a risk of significant harm to the environment or to the health or

safety of the public or a group of people that it should have proactively disclosed pursuant to s. 25(1)(a) of FIPPA?

3. Does the Ministry have information in relation to nitrate levels in the soil or water in Spallumcheen, the disclosure of which is, for any other reason, clearly in the public interest, pursuant to s. 25(1)(b) of FIPPA?

3.0 SECTION 6 OF FIPPA

3.1 Section 6

Section 6(1) of FIPPA sets out a public body's duty to assist applicants when responding to access to information requests. Section 6(1) states:

> **Duty to assist applicants**
>
> 6(1**)** 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.

The wording is clear and instructive of what is required by public bodies. The public body "must make every reasonable effort to assist applicants" in order to establish that it has complied with s. 6 of FIPPA. This includes responding "without delay to each applicant openly, accurately and completely."

When an applicant makes an access request, there is often an inherent knowledge imbalance. On the one hand, you have civil servants who are knowledgeable about what types of records the government has and where those records would be located. On the other hand, you have an applicant who likely has little knowledge of government record-keeping practices, what types of records the government retains and where those records would commonly be stored.

This type of imbalance can cause unnecessary delays in searching for records and in ultimately providing the applicant the records they are seeking. This is because an applicant may frame an access request imprecisely or more broadly than necessary. They may also make their request to a public body that does not have the records, leading to a delay resulting from the transfer of the request to the proper public body.

Section 6 of FIPPA aims to address these challenges. It requires public bodies to make every reasonable effort to assist applicants and to respond without delay to

each applicant openly, accurately and completely. This means that public body employees must use their expertise and knowledge to help any applicant locate records responsive to their request. This allows the applicant to rely on the knowledge of those who are best suited to locate the records they are seeking. In general, this is meant to ensure that public body employees use their knowledge of the workings, and record holdings, of the public body to benefit the applicant. When considering the duty to assist, an important element in the context of this investigation is whether a public body has obtained sufficient clarification of the parameters of a request from the applicant. In interpreting s. 6(1), former Commissioner David Loukidelis stated:

> This does not mean I agree that, where there is some doubt about the precise parameters of an individual access request, a public body should, or is entitled to, interpret the request strictly and not seek any further clarification from the applicant. The duty to assist may well – in appropriate cases – require a public body to ensure it understands clearly what information an applicant seeks, including by contacting the applicant where practicable, in order to clarify the request.[8]

This is particularly the case where an overly narrow interpretation of a request will deprive applicants of records they would otherwise receive. Public bodies must also produce all responsive records in existence at the time an access request is received.

Access to Information Requests

To fully understand the s. 6 issue under investigation, it is necessary to explain how government processes access to information requests. Individuals who request government records must do so in writing, either on paper or through an online form.

Information Access Operations ("IAO") is a branch of the Ministry of Finance that is primarily responsible for processing all access to information requests received by government ministries. Although the formation of IAO centralized the processing of requests, the head of each ministry remains responsible for compliance with FIPPA. The purpose of centralization was to provide consistent, efficient access to government records.

In most cases individuals will make an access request directly to IAO, which assigns each request to an analyst who ascertains the substance of the request and, where necessary, clarifies the response with the applicant. However, individuals are not compelled to make requests for records to IAO exclusively. People can make requests directly to the program area within a ministry. The

[8] Order 00-33, 2000 CanLII 14398 (BC IPC), *Inquiry Regarding British Columbia Lottery Corporation's Search for Gaming Policy Records*.

program area can then respond to the request directly or send the request to IAO for processing.

It is important to note that it is the program area's responsibility, not the applicant's, to forward the request along to the IAO directly if it wants the IAO to handle the request. Simply directing the applicant to the IAO is not sufficient to fulfill the public body's duty under s. 6 of FIPPA. Once a program area receives a request, it must take an active role to ensure that IAO receives the applicant's request.

If the program area responds to the request directly, it must ensure that the response complies with FIPPA. IAO acts as a resource for the ministry in regards to access requests and provides a group of specialized staff who are knowledgeable with FIPPA and can help ensure the ministry responds as required by that Act.

When looking at this case, we will examine the Ministry's actions in light of its obligation to assist applicants and to respond without delay to each applicant openly, accurately and completely.

3.2 Analysis

ISSUE 1: Did the Ministry of Environment comply with s. 6 of FIPPA by making every reasonable effort to assist and to respond without delay to the access requests made by the ELC?

In its complaint, the ELC alleges that the Ministry did not fulfill its obligations under s. 6 of FIPPA. Specifically, the ELC alleges that the Ministry delayed or outright refused to provide information they requested under FIPPA.

Background

On October 5, 2015, the ELC made a request directly to an Environmental Protection Officer who worked for the Ministry. The ELC requested a copy of the Ministry authorizations to spread effluent provided to the Jansen Farm on April 16, 2014, July 16, 2015 and August 28, 2015. The request also asked for additional information regarding these authorizations and whether there had been any other authorizations beyond the dates cited above.

On October 6, 2015, the Compliance Section Head for the Ministry responded to the request as follows:

> [Applicant] thank you for your enquiry for information regarding compliance order (file #76600-20/Armstrong). You have identified yourself as a law student with the Environmental Law Centre at the University of Victoria doing research on an aquifer in the Okanagan. You have not identified the purpose of your research or whether you are, or your law centre is, representing a specific client in existing or pending litigation. The issue you have identified is a sensitive one among a number of parties and we are mindful of privacy rights of everyone involved. For that reason, we are requiring that a formal Freedom of Information request be made to obtain any and all records you may be interested in. As a courtesy to you, I have provided a document that describes several options you may wish to pursue to navigate the FOI process. Best of luck on your research.
>
> Regards,

On October 9, 2015, the ELC submitted an access to information request through the IAO. On October 14, 2015, the IAO responded to this request by issuing a $150 fee for the records requested. The ELC worked with the IAO and agreed to narrow its request in an effort to reduce or eliminate the fee. The narrowed request only asked for four effluent authorizations made pursuant to the original Jansen Farm compliance order.

On November 5, 2015, the ELC also requested soil tests taken from the fields of Jansen Farm. On November 10, 2015, the Compliance Section Head responded to this request as follows:

> [Applicant], forgive me here, but are you asking for additional information that was not included in your original FOI request? If so, you need to formally add this new information to your original request. They will know how you do that.

The ELC did not amend its original access request to include the soil samples. On December 11, 2015, the Ministry provided records responsive to the ELC's narrowed request. To date, the Ministry has not responded to the ELC's November 5, 2015 request for soil sample analysis.

Section 6 Analysis

As stated above, s. 6 of FIPPA requires the Ministry to assist applicants and to respond without delay to each applicant openly, accurately and completely. In this case, the focus of the s. 6 duty to assist revolves around the Ministry's response to the ELC requests of October 6, 2015 and November 5, 2015.

In examining the Ministry's response to the ELC in both instances, there seems to have been some confusion on the part of the Ministry's Compliance Section Head regarding how to respond to an access to information request. The Compliance Section Head appears to have been under the mistaken belief that applicants must make all requests for information directly to the IAO. Despite having received a valid access request, in writing, the Compliance Section Head apparently believed that he could simply direct the applicant to the IAO without the need to take any further action in regards to the request.

Not only does this response not conform with the duty to assist set out in s. 6, but it is also contravenes government's own *FOIPPA Policy & Procedures Manual* which states**:**

> An applicant can direct a formal request for records under the Act to either the Information Access Operations Branch **or to any program area of the public body where the applicant believes the records to be.** [emphasis added]

The Ministry employee, in this case, should have either provided the requested records or forwarded these requests on to IAO for processing. However, he did neither. To his credit, he did direct the applicant towards the IAO, but by doing so he created an unnecessary step in the process and in regards to the November 5, 2015 request, caused it to remain unfulfilled.

Another aspect of the request is that the Compliance Section Head asked the ELC why it was requesting the information. Applicants are not required to provide reasons for requesting records. FIPPA is for the most part blind to an applicant's motives for making a request. This ensures that the public body will process all requests fairly and not let any perceived motives delay the release of records.

Therefore, I find that the Ministry failed to make every reasonable effort to assist the ELC and to respond without delay to the access requests made by the ELC as required by s. 6 of FIPPA. This includes the Ministry's failure to respond to the ELC's November 5, 2015 request.

RECOMMENDATION 1: The Ministry should ensure that all staff are trained to properly respond to access requests as required by FIPPA.

Application of the *Copyright Act*

Finally, the question of the interaction between copyright and access to information rights is periodically raised by public bodies in responding to access requests. It has also arisen in the course of public requests for information about soil tests and water quality in Spallumcheen. While this issue has been addressed in previous Orders and Investigation Reports from my Office, I will briefly address it again here.

In our review of the records provided to my Office by the Ministry and the ELC we came across a request for the soil test results and related documents by the Mayor of Spallumcheen. On March 15, 2016, the Mayor Janice Brown wrote to the Minister of Environment, the Honourable Mary Polak, requesting the disclosure of those records:

> The Ministry of Environment (MOE) issued a compliance order, dated March 6, 2014, to the HS Jansen and Sons Farm Ltd. due to concerns about the application of manure in the vicinity of Steele Springs and high nitrate levels in Hullcar aquifer.
>
> Since that time, MOE has authorized the applications of manure on the field of concern. Community members have sought documents from MOE about these authorizations, including related soil tests which measured the amounts of nitrogen in the field of concern. Some of the requested information was subsequently provided to the Environmental Law Centre after it submitted a Freedom of Information request.
>
> The high nitrate levels in the Hullcar aquifer are a complicated issue. As such, cooperation among jurisdictions and stakeholders will be required to remediate the existing situation and prevent a similar situation from occurring in other locations. Successful cooperation will likely only be achieved if the information collected by the jurisdictions and stakeholders is shared and understood by all.
>
> The Council of the Township of Spallumcheen requests that MOE make readily available to the jurisdictions, stakeholders and public, all information in its possession related to the high nitrate levels in the Hullcar aquifer.

In her April 25, 2016 reply to the Mayor and Council, the Minister refused to provide any records beyond those that had already by disclosed by the Ministry and stated that the federal *Copyright Act* prevented the disclosure of the nutrient management plan:

> Thank you for your letter of March 15, 2016, requesting the release of documents related to the high nitrate levels in the Hullcar aquifer.

> I would like to assure you that the ministry has released all information we are able to legally. The H.S. Jansen Dairy nutrient management plan has not been issued publicly as the publication of these documents would violate the federal *Copyright Act*.

I am troubled by the Minister's statement that the *Copyright Act* applies to prevent the disclosure of the nutrient management plan. This has been an issue that has been addressed in previous Investigation Reports and Orders from my Office,[9] as well as by Commissioners in other provinces. I noted in Investigation Report F13-03, that Government takes a very broad approach to the application of copyright to records, and recommended that Government consider this issue in light of the common law and statutory framework relating to copyright and access to information.

Specifically, I noted that s. 32.1(1) of the *Copyright Act* contains a provision explicitly stating that disclosure of information pursuant to provincial legislation is not an infringement of copyright:

> **No infringement**
>
> 32.1(1) It is not an infringement of copyright for any person
>
> (a) to disclose, pursuant to the *Access to Information Act*, a record within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like material;
>
> (b) to disclose, pursuant to the *Privacy Act*, personal information within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like information;
>
> …

Therefore, in case this argument is again raised in the context of an access request under s. 4 or a requirement for disclosure under s. 25, I note that the *Copyright Act* would not prevent the disclosure of records or information by the Ministry as required by FIPPA.[10]

In addition, while it is not clear to me whether the Mayor intended her letter to be an access to information request under FIPPA, and the Minister did not respond

[9] British Columbia Lottery Corporation (Re), 2007 CanLII 9597 (BC IPC)
[10] The Ontario Commissioner has made the same determination; Order PO-2308, [2004] O.I.P.C. No. 180, at para. 38.

to the letter as though it were such a request, the Mayor's letter does meet the requirements for such a request in that it:

- was in writing;
- provided sufficient detail to identify the records sought; and
- was submitted to the public body that was believed to have custody or control of the record.

Public bodies should recognize that those requirements are all that is needed to constitute an access to information request under FIPPA, and when in receipt of such correspondence public bodies should clarify whether the writer intended such a letter to constitute an access request under FIPPA.

4.0 SECTION 25 OF FIPPA

Background

Since March 2014 when nitrate levels in the aquifer exceeded 10mg/L, residents of Spallumcheen have been requesting information in relation to the application of liquid manure on fields over the aquifer. The difficulty in getting access to this information ultimately led the ELC to make its access to information requests on behalf of the Save the Hullcar Aquifer Team. While the Ministry responded to the ELC's access to information request in October 2015, the ELC received less information than it had originally requested, and as noted above, has yet to receive the records requested in its November 5, 2015 access request.

In its February 3, 2016 complaint to my office the ELC alleged that, in addition to failing to correctly respond to those access requests, the Ministry had information related to nitrate levels in the aquifer that it should have proactively disclosed to the public as required by s. 25 of FIPPA. This part of the ELC complaint is in relation to the information that it had already requested as well as any other information held by the Ministry that meets the threshold for disclosure under that section.

Section 25 of FIPPA provides for the mandatory disclosure of information by a public body where the disclosure is in the public interest.

Section 25 reads as follows:

> **Information must be disclosed if in the public interest**
>
> 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.
>
> (3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify
>
> (a) any third party to whom the information relates, and
>
> (b) the commissioner.

This section sets out two distinct instances where a public interest in disclosure of information is triggered such that disclosure by the public body is required, without delay, whether or not an access request is made in relation to the information.

The first, under s. 25(1)(a), is where there is an imminent risk of significant harm to the environment or to the health or safety of the public or a group of people. The second, under s. 25(1)(b), is where disclosure is, for any other reason, clearly in the public interest.

Section 25 has recently been considered in several investigation reports and orders from my office. Most recently, it was considered in Investigation Report F15-02, *Review of the Mount Polley mine tailings pond failure and public interest disclosure by public bodies* ("Mount Polley Report"), where I interpreted s. 25 in relation to issues that bore some similarity to those being considered here.

Prior to the Mount Polley Report this office had interpreted s. 25 to require that, in order to trigger a requirement to disclose information under either s. 25(1)(a) or (b), there must be an element of temporal urgency to the risk of harm or to the public interest in disclosure. However, in that report I found that, while an element of temporal urgency was required to trigger disclosure under s. 25(1)(a), s. 25(1)(b) should not be read to require any imminence or urgency in order to require disclosure.

While the test for disclosure under s. 25(1)(a) is different than for disclosure under s. 25(1)(b), there are some common requirements that apply to both subsections.

As discussed above, where required, disclosure must be proactive and without delay. Put another way, the public body must disclose information under s. 25 as soon as practicable and without regard as to how to package, explain, or characterize the information.

In addition, s. 25 applies to "information", not to records. This is significant in that disclosure under Part 2 of FIPPA generally applies to "records" in the context of an access to information request. While a public body is required by s. 4 of FIPPA to disclose an entire record (subject to legislated exceptions), there is no such requirement in s. 25. For example, where a record in the custody of a public body describes a risk of significant harm, the public body could conceivably satisfy its obligation under s. 25, in most cases, by disclosing an accurate summary of the information contained in the record. Section 25 may not require the disclosure of the record itself

It is also important to underscore the fact that, as s. 25(2) explicitly provides, the obligation to disclose information pursuant to s. 25 overrides every other section in FIPPA, including the mandatory exceptions to disclosure found in Part 2 and the privacy protections contained in Part 3.

I have interpreted the presence of such a broad override to necessarily mean that the Legislature intended to set a high threshold for disclosure under s. 25. This was also stated by Adjudicator Alexander in Order F15-27:

> Given both the plain meaning of these words and the context of s. 25 as a provision that overrides all other provisions in FIPPA, there is little doubt that s. 25 sets a high threshold that is only intended to apply in serious situations.[11]

I will now discuss how the requirements of s. 25(1)(a) and (b) differ.

4.1 Section 25(1)(a)

In order to trigger disclosure under s. 25(1)(a), a public body must have information about "a risk of significant harm to the environment or to the health or safety of the public or to a group of people". The process for determining whether s. 25(1)(a) applies, has been addressed in previous Orders from this office.

[11] Order F15-27, 2015 BCIPC 29, at para. 29.

In Order 02-38, former Commissioner Loukidelis stated that while each determination will be contextual, and will rely on the specific circumstances of the case, some examples of information which may trigger disclosure under s. 25(1)(a) include:

- information that discloses the existence of the risk;
- information that describes the nature of the risk and the nature and extent of any harm that is anticipated if the risk comes to fruition and harm is caused; and
- information that allows the public to take action necessary to meet the risk or mitigate or avoid harm.[12]

The "risk" described by s. 25(1)(a) must be a prospective one. That is, disclosure under this subsection cannot be triggered by a risk that has already been realized. However, the risk may nevertheless relate to an event which has occurred in the past, but from which a risk may still arise.

Therefore, in order for the Ministry to have been in contravention of s. 25(1)(a), it must have had information about the risk of significant present or future harm, before the harm occurred. I also note that this is not a question of whether the Ministry *should* have had information about such a risk, but whether it actually had such information.

ISSUE 2: Did the Ministry have information in relation to nitrate levels in the Hullcar aquifer about a risk of significant harm to the environment or to the health or safety of the public or a group of people that it should have proactively disclosed pursuant to s. 25(1)(a) of FIPPA?

In order to determine whether the Ministry had information describing a risk of significant harm to the environment or to a group of people, my office reviewed over 7,000 pages of records provided to us by the Ministry. These included:

- water quality test results;
- soil test reports;
- Jansen Farm nutrient management plans;
- email between Ministry staff members;
- maps and photos of the farms in the Spallumcheen area;
- topographic and groundwater maps for the Spallumcheen area;
- rainfall and Climate data for the Spallumcheen area;
- details regarding the Hullcar aquifer;
- information regarding the farms that are above or near the Hullcar aquifer;
- the compliance order for the Jansen Farm;

[12] Order 02-38, 2002 CanLII 42472 (BCIPC), at para. 53.

- correspondence between the Ministry and the farms that are above or near the aquifer;
- correspondence between the Ministry the local public bodies in the Spallumcheen area;
- historical well data for the Spallumcheen area;
- historical water test results for the Spallumcheen area; and
- manure analysis reports.

The first question to be determined is whether the high nitrate levels in the Hullcar aquifer present a risk of significant harm to the health or safety of the public or a group of people such that information about that risk must be disclosed pursuant to s. 25(1)(a).

The water quality advisory released by the Health Authority on July 14, 2015 stated:

> Recent nitrate sampling has shown that current nitrate levels are just above acceptable levels as set out by the Guidelines for Canadian Drinking Water Quality. High nitrate levels are a health concern for infants less than 3 months in age and can also increase the risk of stomach cancer for adults.
>
> Interior Health is advising that pregnant women, babies under 6 months of age, the elderly, and individuals with weakened immune systems, or chronic heart, lung and blood conditions should take precautions and use an alternative source of water (ex. bottled water) at this time. For bottle fed infants, use an alternate source of water to mix infant formula for infants less than 6 months of age.[13]

The advisory contains references to internet addresses that link to further information regarding the health risks associated with high nitrate levels in drinking water. That information further describes the potential for health risks to adults and children, in addition to the aforementioned risk to the elderly, infants, and individuals with weakened immune systems. It also provides further information about the risk to infants:

> Exposure to high levels of nitrates reduces the amount of oxygen in the blood. This condition is called methemoglobinemia. Babies under 6 months are particularly at risk from drinking well water high in nitrates. In severe cases, this can cause an infant to turn a grey-blue colour, mainly

[13] Water Quality Advisory for Residents who may draw water from the Hullcar aquifer in Spallumcheen, Interior Health Authority, July 14, 2014, available at https://www.interiorhealth.ca/YourEnvironment/DrinkingWater/Documents/Hullcar_Area_WQA_Notific_Dr_Corneil-Jul14-2014.pdf, accessed on June 2, 2016.

> around the eyes and mouth due to the lack of oxygen in their blood. Immediate medical attention is necessary, as this serious condition can be fatal. Babies who have diarrhoea or a bacterial infection are at greater risk of the harmful effects from high nitrates levels.[14]

I conclude that, given the health risks described by the drinking water guidelines and the Health Authority, the information described below as to the existence of nitrate concentrations in excess of 10 mg/L in drinking water constitutes information about a risk of harm to the health of members of the public who source their drinking water from the aquifer. Further, the health risk posed to infants, which in the most severe instances may include death, constitutes a risk of "significant" harm.

The disclosure of information about the health risks posed by nitrate concentrations greater than 10 mg/L in drinking water would inform the public about the existence of that risk, the nature and extent of the risk, and would allow the public to take action necessary to mitigate that risk or to avoid harm. Therefore the disclosure of that information meets the threshold for disclosure pursuant to s. 25(1)(a).

The Ministry, the Health Authority, and the Waterworks are all public bodies under FIPPA and each have the same obligation under s. 25 to disclose information about a risk of significant harm. In a situation such as this where multiple public bodies have essentially the same information about a health risk, the obligation to disclose that information need only be discharged by one of the public bodies,

The documents that my office has reviewed indicate that nitrate levels in the aquifer exceeded 10mg/L for the first time in March 2014. On March 18, 2014, the Health Authority advised the Waterworks that it should notify its users that this level of nitrates exceeds that which is recommended by the drinking water guidelines.

The Waterworks had already informed its users of the increasing nitrate levels in the aquifer, and advised them of the health risks associated with this and higher concentrations. In its January 2014 newsletter, the Waterworks had informed its users that nitrate concentrations had risen to 7 mg/L, and that "even though the nitrate in our water has not reached the Canadian Drinking Water Quality's maximum acceptable concentration of 10 ppm [10 mg/L], we recommend that children under 6 months of age and pregnant women avoid drinking raw Steele Springs water."

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[14] *Nitrates in Well Water*; HealthLinkBC File #05a, available at: http://www.healthlinkbc.ca/healthfiles/hfile05a.stm, accessed: June 2, 2016.

Water users were then informed by mail in late March that nitrate levels had exceeded the maximum acceptable concentration, and a copy of the Canadian Drinking Water Guidelines was sent to each user. This was subsequently reinforced at the Waterworks' April 14, 2014 annual general meeting.

I have reviewed the Waterworks' newsletter and consider that its contents, combined with the mailed notification in late March, and the subsequent discussion at the annual general meeting, met the requirement under s. 25 of FIPPA to notify the affected group of people about the risk of significant harm to their health posed by the nitrate concentrations in the Hullcar aquifer. This notice was then reinforced by the water quality advisory published by the Health Authority on July 14, 2014. It follows therefore that there was no requirement in FIPPA that the Ministry also inform the public of that risk.

I find that the Ministry had information about a risk of significant harm to the health or safety of consumers of water in relation to nitrate concentration in the Hullcar aquifer. However, the requirement under s. 25(1)(a) of FIPPA to notify the public of that risk had already been met by the above described public notification undertaken by the Waterworks and the Interior Health Authority.

4.2 Section 25(1)(b)

As noted above, s. 25(1)(b) was recently considered in the Mount Polley Report. Before that report, both s. 25(1)(a) and (b) had been interpreted to require an element of urgency in order to trigger disclosure. However, in that report, I determined that while the "risk of significant harm" in s. 25(1)(a) carries an inherent notion of urgency, the public interest under s. 25(1)(b) does not require imminence or urgency.

Rather, under s. 25(1)(b) the test is solely whether, in the circumstances, disclosure is "clearly in the public interest". This is not to say that the circumstances to be considered cannot include any temporal aspect. Information may be of no public interest at one time, but become of significant public interest at a later time.

As I said in the Mount Polley Report, disclosure will be required under s. 25(1)(b) where a disinterested and reasonable observer, knowing the information and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest.

I also acknowledged that what is in the "public interest" is not easily defined, as the Courts have also acknowledged in a variety of legal settings; there is a

difference between information that has piqued the interest of the public, and information the knowledge of which is in the public interest.

Analyzing the application of s. 25(1)(b) in a specific situation begins by considering whether the information at issue concerns a subject, circumstance, matter or event justifying mandatory disclosure. The list of these things cannot be exhaustively enumerated. However, the following factors should be considered in determining whether they meet the test for further consideration under s. 25(1)(b):

- is the matter the subject of widespread debate in the media, the Legislature, or by other Officers of the Legislature or oversight bodies; or
- does the matter relate to a systemic problem rather than to an isolated situation?

In addition, would its disclosure:

- contribute to educating the public about the matter;
- contribute in a substantive way to the body of information that is already available about the matter;
- enable or facilitate the expression of public opinion or enable the public to make informed political decisions; or
- contribute in a meaningful way to holding a public body accountable for its actions or decisions?

This is not to say that in order for information to be disclosed under s. 25(1)(b) it must be the subject of public debate; there may well be situations where there is a clear public interest in disclosure of information about a topic that is not currently the object of public concern or is not known to the public.

Once it is determined that the information is about a matter that may engage s. 25(1)(b), a public body should consider the nature of the information itself to determine whether it meets the threshold for disclosure. However, this threshold is not static. In any given set of circumstances there may be competing public interests, weighing for and against disclosure, and the threshold will vary according to those interests.

4.3 Public interest disclosure in other jurisdictions

In applying s. 25(1)(b) of FIPPA here, I have reviewed the application of similar provisions in other jurisdictions. While in each instance the statute mandating public interest disclosure in those jurisdictions differed, in some cases

significantly, from FIPPA's language, the circumstances in which they were applied are nevertheless informative in a general way.

Ontario

In Ontario, s. 23 of its *Freedom of Information and Protection of Privacy Act* provides for public interest disclosure.[15] The Ontario Act differs from BC's FIPPA in that it only provides for public interest disclosure after an access request has been made:

> **Exemptions not to apply**
>
> 23**.** An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

As can be seen, s. 23 removes the ability to apply certain exceptions to disclosure in response to an access to information request where a "compelling public interest" clearly outweighs the public interest underpinning the purpose of the exemption.

In Ontario the threshold for disclosure under s. 23 is whether the compelling public interest disclosure clearly outweighs the purpose of the exception. In other words the section expressly requires a balancing between the purpose of exceptions and the public interest in disclosure. Section 25 of FIPPA does not contain similar language. As I have noted above, and in the Mount Polley Report makes clear, public bodies must not apply the disclosure exceptions found in Part 2 of FIPPA when considering whether s. 25 requires proactive disclosure. However, as the Mount Polley Report also affirms, it is appropriate for public bodies to weigh the interests reflected in those disclosure exceptions against the public interest in disclosure.

Ontario's Information and Privacy Commissioner has applied s. 23 of their legislation to require disclosure of information in several situations that may be instructive in a general way with regards to the kinds of circumstances that may justify disclosure in BC.

In Order P-270, the Ontario Commissioner required the disclosure of records that described the actions being taken regarding the safety of nuclear power plants. The public body argued that the disclosure of these records could reduce the frankness of discussions between Ontario Hydro and Atomic Energy of Canada Limited ("AECL"). The Commissioner acknowledged this but observed that he did not consider this would result in either Ontario Hydro or AECL shirking their mandated duty with regards to the safety of the generation of nuclear power.

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[15] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 23; 1997, c. 41, s. 118 (2).

In finding that this information should be disclosed in the public interest, the Ontario Commissioner stated:

> In my view, there is a need for all members of the public to know that any safety issues related to the use of nuclear energy which may exist are being properly addressed by the institution and others involved in the nuclear industry. This is in no way to suggest that the institution is not properly carrying out its mandate in this area. In this appeal disclosure of the information could have the effect of providing assurances to the public that the institution and others are aware of safety related issues and that action is being taken. In the case of nuclear energy, perhaps unlike any other area, the potential consequences of inaction are enormous.[16]

United Kingdom

The United Kingdom's *Freedom of Information Act* provides for 'absolute' and 'qualified' exceptions to an individual's right to access information held by public authorities. Where an access right is qualified, the public authority must consider whether the public interest in maintaining the exception outweighs the public interest in disclosure:

> **Effect of the exemptions in Part II.**
>
> (1) Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either—
>
> (a) the provision confers absolute exemption, or
>
> (b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information,
>
> section 1(1)(a) does not apply.
>
> (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—
>
> (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
>
> (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

[16] Order P-270, 1992 CanLII 4114 (ON IPC), at p. 33.

In its guidance[17] on the public interest test for disclosure in the *Freedom of Information Act* the UK Information Commissioner's Office sets out the following useful considerations:

- the public interest means the "public good", not what is of interest to the public, and not the private interests of the requester;
- there will always be a general public interest in transparency;
- if there is a plausible suspicion of wrongdoing on the part of the public authority, this may create a public interest in disclosure, and even where this is not the case, there is a public interest in releasing information to provide a full picture;
- arguments that the information may be misunderstood if it were released will usually carry little weight;
- media coverage of an issue may indicate that there is a public interest at stake, but is not proof of the fact;
- while an informed and involved public helps to promote good decision making by public bodies, those bodies may also need space and time in which to fully consider their policy options;
- the fact that a prejudice based exception to access is engaged means that there is automatically some public interest in maintaining the exception;
- if information that is already in the public domain is misleading or misrepresents the true position, or does not reveal the full picture, this may increase the public interest in disclosure.

The UK guidance notes that there is a wide range of objectives that represent what is in the best interests of society. For example, there is a public interest in transparency and accountability in relation to public understanding and to safeguarding democratic processes. There is also a public interest in good decision-making by public bodies, upholding standards of integrity, and ensuring just and fair treatment by public bodies.

Perhaps most useful, the guidelines note that if there is evidence of public concern but those concerns do not have an objective basis, there can still be a public interest in disclosure where it would show that the concerns are unjustified and would help restore public confidence in the public body.

[17] UK Information Commissioner's Office, *The Public Interest Test*, accessed May 19, 2016, available at https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf, hereinafter "ICO Guidelines".

4.4 Section 25(1)(b) Analysis

ISSUE 3: Does the Ministry have information in relation to nitrate levels in the soil or water in Spallumcheen, the disclosure of which is, for any other reason, clearly in the public interest, pursuant to s. 25(1)(b) of FIPPA?

The question before me is whether the disclosure of soil test results and analysis, as well as other records related to compliance, inspection, and information orders, is required by s. 25(1)(b) as being, for any other reason, clearly in the public interest. This information is found in records assessed by my office during this investigation. The question of whether s. 25(1)(b) requires disclosure of information in these records is distinct form the issue of mandatory disclosure of information about a risk of significant harm, under s. 25(1)(a).

In my request for submissions from the Ministry and the ELC, I separated the records being considered into two groups:

- soil test results and analysis; and
- records related to compliance, inspection, and information orders.

The soil test results, and analysis of those results, form much of the basis for the Ministry's decision to authorize nutrient application for the Jansen Farm after the compliance order was issued.

This class of records includes actual soil test data, and records that contain information about the interpretation of that data by the qualified professional and by Ministry staff, including nutrient management plans. It is the information contained in these records which is most relevant to whether there is a public interest, not just an interest of Spallumcheen residents, in ensuring that the Ministry is appropriately discharging its duties in relation to the environment; including to the extent the Ministry's actions relate to water quality and human health.

The second class of records, related to compliance, inspection, and information orders, includes the orders themselves, as well as records or information that may explain Ministry decisions to issue, rescind or supersede those orders, and authorizations for nutrient application granted by the Ministry subsequent to those orders.

With the assistance of the submissions and other material provided to me, I will consider the application of s. 25(1)(b) to both of these record groups.

If I conclude that s. 25(1)(b) requires disclosure of information, I must consider whether the Ministry can meet that obligation by providing summaries of information contained within those records, or whether s. 25(1)(b) requires the disclosure of the actual records. This question arises because s. 25 requires the disclosure of "information", and would not necessarily, in all cases, require the disclosure of the actual or entire record containing that information.

Is disclosure clearly in the public interest?

As set out above, residents of Spallumcheen and the surrounding area who are served by the Waterworks or who are served by wells that draw water from the Hullcar aquifer have been under a water quality advisory since March 2014.

The advisory, issued by the Health Authority, stated that the level of nitrates in water contained in the aquifer exceeds that which is recommended by Health Canada's Guidelines for Canadian Drinking Water Quality. Residents were advised that pregnant women, babies under 6 months of age, the elderly, and individuals with weakened immune systems, or chronic heart, lung and blood conditions should use an alternative source of water until nitrate levels decreased to safe levels.

Also in March 2014, the Ministry determined it had reason to believe that the Jansen Farm had contravened the Agricultural Waste Control Regulation. The apprehended contravention in question was the application of liquid manure as fertilizer for the farm's fields. Liquid manure is a high nitrate fertilizer that is generated as a by-product of dairy production. The Hullcar aquifer runs under numerous agricultural operations, including the Jansen Farm, such that any nitrate runoff from those operations will enter the aquifer.

As discussed above, the Ministry issued a compliance order to the Jansen Farm that forbade the application of liquid manure unless authorized by the Ministry after the submission of a nutrient management plan by a qualified professional. The Ministry has since approved four of five requests for the application of liquid manure, based on its analysis of nitrate levels from soil test results.

In May 2016 the Ministry issued pollution abatement orders to seven farms over the Hullcar aquifer, including the Jansen Farm. The abatement orders state:

> [the Ministry is] satisfied on reasonable grounds that pollution is being caused by the introduction into the environment of agriculture waste, including manure and/or manure laden effluent, from agricultural operations located on the following lands.
>
> (…)

> The specific substance causing pollution is agricultural waste, including manure and/or manure laden effluent, from which nitrate is leaching into groundwater.[18]

There can be little doubt that a risk to clean drinking water constitutes a matter of public interest. I observe that in 2010 the United Nations General Assembly passed Resolution 64/292, recognizing a human right to water and sanitation.[19] In addition, the Provincial Health Officer for British Columbia has stated that safe drinking water is essential for human health and survival.[20]

The residents in Spallumcheen who are subject to the water quality advisory are concerned that the Ministry is incorrectly interpreting soil test results such that it is wrongly authorizing the application of liquid manure. Members of the community and of the Save the Hullcar Aquifer Team have requested the disclosure of actual soil test results in order to determine for themselves whether or not the Ministry is correctly interpreting those results, and, if so, is taking appropriate action.

In a March 4, 2016 letter to George Heyman, MLA, Brian Upper, the Chairman of the Steele Springs Water District, explained the basis for the request of soil test data:

> Since the compliance order was issued, the application of effluent was allowed on four separate occasions. The applications were allowed on the basis of nitrogen levels found in the soil and manure that was revealed in soil and manure test reports. The effluent is the very source of the nitrate that leaches through the soil and contaminates the aquifer.
>
> …
>
> These reports have been kept confidential and as of this date have never been disclosed to any members of Steele Springs board. We protest not having access to this information as it is our belief that we should have the right to consult with third-party experts who also can interpret this information. We believe; (1) that the [Ministry] and the [qualified professional]) who decide whether or not to allow applications are **not** interpreting the test reports correctly or as was recommended in the compliance order of 2014 …

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[18] http://www.env.gov.bc.ca/epd/regions/okanagan/envman/pdf/108387-jansen-pao.pdf.
[19] While Canada abstained from voting on this resolution, it is nevertheless an indication of an international consensus regarding the importance that safe and clean drinking water for the full enjoyment of life and all human rights.
[20] Drinking Water, Office of the Provincial Health Officer; accessed May 27, 2016; available at http://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/drinking-water..

> We have requested access to these reports in email communications to the EPO [Environmental Protection Officer] and been promised verbally by the EPO that we could have access to them but we have not seen any of the soil or manure reports.
>
> [Emphasis in original]

The Mayor and Council of the Township of Spallumcheen made a similar request by a letter dated March 15, 2016, directly to the Honourable Mary Polak, the Minister of Environment:

> … Community members have sought documents from [the Ministry] about these [nutrient application approval] authorizations; including related soil tests which measured the amounts of nitrogen in the field of concern. The requested information was not provided. …
>
> The high nitrate levels in the Hullcar aquifer area is a complicated issue. As such cooperation among jurisdictions and stakeholders will be required to remediate the existing solution and prevent a similar situation from occurring in other locations. Successful cooperation will likely only be achieved if the information collected by the jurisdictions and stakeholders is shared and understood by all.
>
> The Council of the Township of Spallumcheen requests that [the Ministry] make readily available to the jurisdictions, stakeholders and public, all information in its possession related to the high nitrate levels in the Hullcar aquifer.[21]

These letters illustrate one of questions raised in this investigation: is the Ministry required to release the soil test results, analysis and related records because it is clearly in the public interest in that the disclosure would enable the public to judge for themselves whether the Ministry has properly allowed the application of effluent?

In order to determine whether the Ministry has information that it must proactively disclose pursuant to s. 25(1)(b) in relation to soil and water nitrate levels, I requested submissions from the ELC and the Ministry on the following questions:

1. In light of present circumstances in Spallumcheen, including the current water quality advisory issued by Interior Health Authority and Compliance, Inspection, and information orders issued by the Ministry of Environment to agricultural operators in the region, should s. 25(1)(b) apply to require the disclosure of information about soil nitrate test results and analysis?

[21] ELC Submission, appendix 1.

2. Does s. 25(1)(b) apply to require the disclosure of other records related to Compliance, Inspection, and information orders issued by the Ministry of Environment to agricultural operators in Spallumcheen, such as Authorizations for Nutrient Application granted subsequent to those Orders?

3. Section 25 applies to "information", which raises the question whether disclosure pursuant to s. 25 requires the disclosure of entire records or only the disclosure of a summary of the information contained within those records. Does s. 25(1)(b) apply to require the disclosure of entire soil test results and analysis or only to require the disclosure of a summary of those results?

In its submissions the Ministry stated that a plain reading of s. 25(1)(b) leads one to conclude that the reference to "for any other reason" is a reference to reasons other than those articulated in s. 25(1)(a), being potential risk to the environment, health, or safety. The Ministry submits that s. 25(1)(b) was clearly designed to apply to information about matters other than future risk to the environmental, health, or safety reasons.[22]

I agree with the Ministry, that s. 25(1)(b) should not be read to apply to the same subject matter as s. 25(1)(a). The purpose for requiring disclosure under s. 25(1)(a) was to provide the public with information about the existence and nature of the risk. However, if s. 25(1)(b) applies to require the disclosure of soil test results and analysis, and records related to compliance, inspection, and information orders, it would be for the purpose of providing information to the public to enable the residents of Spallumcheen to evaluate the actions of the Ministry. It is this purpose that would constitute the public interest in disclosure under s. 25(1)(b), distinct from my finding regarding s. 25(1)(a).

I noted above that in Order P-270, the Ontario Information and Privacy Commissioner found that, in relation to nuclear energy, there is a need for members of the public to know that safety issues are being properly addressed by those responsible for safety oversight. That Commissioner also noted that this is the case whether or not there is a suggestion that oversight is not being properly carried out.

Similarly, the Office of the UK Information Commissioner states in its guidelines that where there is evidence of public concern, there is a public interest in restoring public confidence through the disclosure of information that would show those concerns are unjustified.[23]

[22] Ministry Submissions, at paras. 6 and 10.
[23] ICO Guidelines, at para. 34.

However, as I stated in the Mount Polley Report, and as noted in Ministry submissions, the threshold for disclosure under s. 25 is a high one. Therefore, the s. 25(1)(b) disclosure duty will not always be triggered every time a group of people suspects that a public body is not adequately carrying out its functions, or every time there is an ongoing environmental or public safety risk. There must be an issue of objectively material, even significant, public importance, and in many cases it will have been the subject of public discussion. It is useful here to recall that, as I said in the Mount Polley Report, disclosure must be plainly and obviously required based on a disinterested, reasonable, assessment of the circumstances.

In this case the Spallumcheen residents who draw water from the aquifer have been subject to a water quality advisory for over two years. In that time, despite widespread coverage in the national and local media and requests by the Waterworks, the Mayor and Council, and Members of the Legislative Assembly to see the results of soil tests, the Ministry has not disclosed that information. During this time residents have witnessed, and the media have reported, the subsequent Ministry-approved application of liquid manure on the Jansen Farm, while nitrate concentrations in the aquifer have continued to increase.

In support of its contention that the information relating to soil test results does not meet the threshold for disclosure under s. 25(1)(b), the Ministry cites Alberta Order F2012-14. In that order the applicant requested information relating to water quality. The Ministry notes that the Adjudicator stated as follows:

> While the requested data will assist in determining the extent to which groundwater is being impacted by industrial or agricultural activity and other factors, the Applicant has not established that there currently exists a problem that requires some form of action that could be achieved through disclosure of groundwater data to the public. In short, monitoring and researching a state of affairs, essentially to see if something is dire, is not the same as dealing with a state of affairs already determined to be dire.[24]

[24] Order F2012-14, 2012 CanLII 70607 (AB OIPC) (at para 193). Regarding that decision, I note that unlike the situation in British Columbia, Alberta commissioners have placed on those seeking public interest disclosures a burden to prove, with evidence, that disclosure is required. This is not consistent with the decisions of my office, and it renders the utility of Order F2012-14 open to doubt. Perhaps more important, it is clear that the Adjudicator concluded – and this is consistent with earlier Alberta orders—that, for the equivalent to s. 25(1)(b) to apply, "there must be circumstances 'compelling' disclosure. (Order F2004-024 at para. 57)" (para. 192). At para. 191, he said this: "the sense of urgency required to engage section 32(1)(b) does not have to meet the same threshold as for section 32(1)(a)". If these observations were intended to import and element of urgency or imminence, thus compelling disclosure, I respectfully disagree.

I agree that, certainly generally speaking, the disclosure of information under s. 25 is unlikely to be justified where it is for research purposes alone.

However, the case before me differs markedly from the Alberta decision because while the state of affairs may not be dire in Spallumcheen, it has certainly been determined to be serious. Both the Health Authority and the Ministry have determined that the water quality in the Hullcar aquifer is not safe for infants, people with compromised immune systems, and those with certain health conditions. The Ministry has further found that it has reasonable grounds to be satisfied that the application of manure and other agricultural effluent is causing nitrates to leach into groundwater. In addition, the recent issuance of pollution abatement and prevention orders to nine farms in Spallumcheen indicates that the Ministry is not satisfied that measures taken to date are sufficient to address the water quality issue.

The ELC submits that not only is the disclosure of this information in the public interest as a result of its effect on Spallumcheen residents, but that similar water pollution related to dairy farms exists throughout BC, making this an issue of wider public concern:

> Disclosure of soil test results and of ongoing Nutrient Application Authorizations would clearly enrich the high-profile debate now taking place on how to stop pollution of the Hullcar aquifer and similar water supplies across the Province. [25]

In discussing the information related to the tailings pond failure in the Mount Polley Report I stated that I had little difficulty finding that disclosure of information relating to the failure of the tailings pond and its regulation after the collapse of the damn was both topical and the subject of widespread debate in the media as well as in the Legislature. The essence of my finding was that, were it not for the temporal urgency requirement in place at the time, there existed a clear public interest to justify the disclosure of the information at issue.[26]

If anything, the existence of a public interest in disclosure in this case is more compelling. Not only is the water quality and management of nitrate application in Spallumcheen a subject of debate in the Legislature[27] and media,[28] but the issues giving rise to harm in Spallumcheen give every appearance, according to the material before me, of being ongoing. The public debate is therefore not only

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[25] ELC Submissions, at p. 12.
[26] Mount Polley, p. 17.
[27] BC, Legislative Assembly, Official Reports of Debates (Hansard), 40th Parliament, 5th Session: **Vol. 32, No. 6** (15 February 2016), at 1410; **Vol. 33, No. 10** (1 March 2016), at 1050; **Vol. 33, No. 11** (1 March 2016), at 1535; **Vol. 35, No. 8** (9 March 2016) at 11253; **Vol. 35, No. 1** (10 March 2016), at 1055; **Vol. 35, No. 4** (14 March 2016), at 1420; **Vol. 36. No. 3** (5 April 2016), at 1050; **Vol. 37 No. 4** (14 April 2016), at 1045; **Vol. 38, No. 1** (27 April 2016), at 12434.
[28] ELC Submission, at pp. 13-16.

about how to prevent similar circumstances in the future, but also about how to resolve ongoing issues with respect to pollution runoff and water quality in this case.

I have noted that examples of competing public interests might be found in the exceptions to disclosure set out in ss. 12 to 21 of FIPPA. When determining whether disclosure is required by s. 25(1)(b), a public body should consider whether any of those exceptions, or any other relevant factor, might apply to assist in determining whether disclosure of information is clearly in the public interest. As I have already observed, and as the Ministry itself has noted,[29] this is not because the public body is entitled to apply those exceptions but because the exceptions themselves are indicators of classes of information that in the appropriate circumstances may weigh against the disclosure of information.

In this case the Ministry does not cite any exceptions to access as competing public interests. It does not refer to any Part 2 exception nor is it at all clear in the circumstances how any of these are relevant to whether it is clearly in the public interest to disclose the information at issue.

In considering all of the circumstances in this case I find that the disclosure of information about soil test results and analysis provided to the Ministry as required by compliance, information, pollution abatement and prevention orders in relation to nitrate levels in the Hullcar aquifer is clearly in the public interest, pursuant to s. 25(1)(b) of FIPPA. This includes information in nutrient management plans or soil test results required by authorizations for nutrient application granted subsequent to those orders.

The disclosure of this information would provide affected residents of Spallumcheen, and the public more generally, with the ability to confirm the interpretation of those results by the Ministry, it also may restore public confidence that the Ministry's approach to this and similar issues has been appropriate.

Does s. 25(1)(b) require the disclosure of entire records?

Section 25 requires the disclosure of "information", not necessarily the disclosure of the entire record that contains that information. The Ministry submits that "just because information in a record is subject to s. 25(1)(b) does not necessarily mean that the entire record is subject to s. 25(1)(b)." The Ministry argues that if s. 25 applies to require the disclosure of soil test results then it "does not apply to the remainder of the information in a particular record where that other information does not also meet the s. 25(1)(b) threshold."[30]

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[29] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43; and *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, at para. 43.
[30] Ministry submissions, at paras. 98, 99.

I agree with this reasoning. In many instances the obligation to disclose information to the public, to an affected group of people or to an applicant under s. 25 will be satisfied by disclosing pertinent, relevant, information from a record, without necessarily requiring disclosure of the entirety of a record in which the information is found.

However, in the matter before me a significant factor in determining that soil test results and analysis should be disclosed by the Ministry is that it will enable the public to assure itself that the actions undertaken by the Ministry with respect to authorizing the application of liquid manure are based on an appropriate interpretation of those results. In order to accomplish this objective the public must be able to review the soil test results and nutrient management plans required to be provided to the Ministry under the compliance, information, pollution abatement and prevention orders, and nutrient application authorizations issued by the Ministry in relation to nitrate levels in the Hullcar aquifer. This objective could not be accomplished by the disclosure of the mere summary of information contained in those records.

To be clear, I do not disagree with the Ministry's position about disclosure of information and not necessarily entire records. Rather, I find that as the public interest to be served here is to assist with public understanding of the science, and to assist with evaluation of the Ministry's interpretation of that information and its actions based on that interpretation, disclosure of the entirety of the records containing the soil test results and analyses is necessary.

I find that the soil test data and results and nutrient management plans that formed the basis for the Ministry's authorization of the application of liquid manure to the Jansen Farm subsequent to the March 6, 2014 compliance order constitute information, the disclosure of which, is clearly in the public interest pursuant to s. 25(1)(b).

Accordingly, pursuant to s. 58(3)(a) of FIPPA, I order the Ministry of Environment to perform its duty under s. 25(1)(b) of FIPPA by disclosing to the public, without delay, the soil test data and results and nutrient management plans that formed the basis for its authorizations of the application of liquid manure to the Jansen Farm subsequent to the March 6, 2014 compliance order. As a condition under s. 58 (4) of FIPPA, disclosure to the public includes disclosure to the ELC and to the Township of Spallumcheen, and the Ministry of Environment must without delay disclose this information to each of them.

As noted above, since the initial compliance order was issued to the Jansen Farm on March 6, 2014, the Ministry has issued pollution abatement and

prevention orders to nine agricultural operations over the Hullcar aquifer, including the Jansen Farm. Any soil test results and nutrient management plans which are required by those orders relate directly to the same water quality and human health issues that give rise to the public interest in disclosure of records related to the Jansen Farm. As such, the disclosure of those records is also clearly in the public interest.

I find that the disclosure of information in soil test data and results and nutrient management plans which demonstrate the factual basis and analysis in support of other compliance, inspection, information, pollution prevention or abatement orders issued by the Ministry in relation to nitrate levels in the Hullcar Aquifer is clearly in the public interest pursuant to s. 25(1)(b).

Accordingly, pursuant to s. 58(3)(a) of FIPPA, I order the Ministry of Environment to perform its duty under s. 25(1)(b) of FIPPA by disclosing to the public, without delay, soil test data and results and nutrient management plans required by any compliance, inspection, information, or pollution abatement or prevention orders issued by the Ministry with respect to nitrate levels in soil that may leach into the Hullcar aquifer, as required by s. 25(1)(b) of FIPPA. As a condition under s. 58(4) of FIPPA, this order remains in effect until the water quality advisory issued for the Hullcar aquifer by the Interior Health Authority is rescinded. As a further condition under s. 58(4) of FIPPA, disclosure to the public includes disclosure to the ELC and to the Township of Spallumcheen, and the Ministry of Environment must without delay disclose this information to each of them.

5.0 SUMMARY OF FINDINGS, ORDERS AND RECOMMENDATIONS

5.1 SUMMARY OF FINDINGS

I have made the following findings in this investigation:

1. **The Ministry failed to make every reasonable effort to assist the ELC and to respond without delay to the access requests made by the ELC as required by s. 6 of FIPPA. This includes the Ministry's failure to respond to the ELC's November 5, 2015 request.**

2. The Ministry had information about a risk of significant harm to the health or safety of consumers of water in relation to nitrate concentration in the Hullcar aquifer. However, the requirement under s. 25(1)(a) of FIPPA to notify the public of that risk had already been met by the above described public notification undertaken by the Waterworks and the Interior Health Authority.

3. The soil test data and results and nutrient management plans that formed the basis for the Ministry's authorization of the application of liquid manure to the Jansen Farm subsequent to the March 6, 2014 compliance order constitute information, the disclosure of which, is clearly in the public interest pursuant to s. 25(1)(b).

4. The disclosure of information in soil test data and results and nutrient management plans which demonstrate the factual basis and analysis in support of other compliance, inspection, information, pollution prevention or abatement orders issued by the Ministry in relation to nitrate levels in the Hullcar Aquifer is clearly in the public interest pursuant to s. 25(1)(b).

5.2 SUMMARY OF ORDERS

1. Pursuant to s. 58(3)(a) of FIPPA, I order the Ministry of Environment to perform its duty under s. 25(1)(b) of FIPPA by disclosing to the public, without delay, the soil test data and results and nutrient management plans that formed the basis for its authorizations of the application of liquid manure to the Jansen Farm subsequent to the March 6, 2014 compliance order. As a condition under s.58 (4) of FIPPA, disclosure to the public includes disclosure to the ELC and to the Township of Spallumcheen, and the Ministry of Environment must without delay disclose this information to each of them.

2. Pursuant to s. 58(3)(a) of FIPPA, I order the Ministry of Environment to perform its duty under s. 25(1)(b) of FIPPA by disclosing to the public, without delay, soil test data and results and nutrient management plans required by any compliance, inspection, information, or pollution abatement or prevention orders issued by the Ministry with respect to nitrate levels in soil that may leach into the Hullcar aquifer, as required by s. 25(1)(b) of FIPPA. As a condition under s. 58(4) of FIPPA, this order remains in effect until

the water quality advisory issued for the Hullcar aquifer by the Interior Health Authority is rescinded. As a further condition under s. 58(4) of FIPPA, disclosure to the public includes disclosure to the ELC and to the Township of Spallumcheen, and the Ministry of Environment must without delay disclose this information to each of them.

5.3 SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

The Ministry should ensure that all staff are trained to properly respond to access requests as required by FIPPA.

6.0 CONCLUSION

Section 25 of FIPPA is an extraordinary provision in that it requires the disclosure of information despite any other provision of the Act. Hence it has to be used judiciously. It also requires that disclosure be made proactively and without delay. The protection of the public interest that underlies this section is recognition that information held by public bodies is public information, and private, institutional or government interests cannot override the public's right to that information where there is a risk of significant harm to the public or where disclosure is otherwise clearly in the public interest.

The facts concerning the Hullcar aquifer are such that there could be little doubt that information held by the Ministry of Environment about water quality, and agricultural pollution affecting water quality, meets the high threshold for disclosure under s. 25.

Section 25(1)(b) will not apply to every instance where the public or a group of people question the basis for actions or choices taken by a public body. However, in situations such as this, where there is an objective determination by a regulatory public body that a serious public health concern exists, and the concern is ongoing with no clear indication that it will be resolved, the public body must consider whether disclosure of information related to its remedial actions would be required by s. 25(1)(b).

While this investigation report requires the Ministry to disclose information that it has thus far refused to disclose, I would like to commend the Ministry for the information it is currently making readily available to the public. The Ministry

webpage providing information on the water quality in the Hullcar aquifer is well organized, informative, and regularly updated.[31] I can see no reason why the information at issue in this investigation could not also have been published on that webpage.

I also encourage public bodies to proactively disclose this type of information whether or not disclosure is required by FIPPA. In my view, with respect to the soil test results and analysis which has been requested of the Ministry by community members, the Mayor and Council of Spallumcheen, the ELC, the media, and members of the Legislative Assembly, much public concern and anxiety may have been alleviated by early proactive disclosure, or at least by a prompt reply to access requests for this information.

7.0 ACKNOWLEDGEMENTS

The Ministry of Environment cooperated fully with my Office's investigation.

I would like to thank Trevor Presley, Investigator, and Bradley Weldon, Senior Policy Analyst, who conducted this investigation and contributed to this report.

June 29, 2016

ORIGINAL SIGNED BY

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

[31] *Hullcar aquifer Information*, Ministry of Environment, http://www.env.gov.bc.ca/epd/regions/okanagan/envman/hullcar-aquifer.html, accessed on June 8, 2016.