



January 23, 2012

Dave Nikolejsin
Chief Information Officer
Ministry of Labour, Citizens' Services and Open Government
PO Box 9412 Stn Prov Govt
Victoria BC V8W 9V1

Dear Dave Nikolejsin:

Follow-up to Timeliness Report for Fiscal Year 2010/11—OIPC File F11-46478

On September 22, 2011, I issued my report on the Timeliness of Government's access to information responses under the *Freedom of Information and Protection of Privacy Act* ("FIPPA").¹ In that report, I noted that my office observed an increase in the percentage of requests closed with the disposition type "no records released".² I committed to examining this issue further to better understand why this is taking place.³ My office has since done so and I wish to communicate our findings to you.

In conducting our review of this issue, my office requested and received reports from Information Access Operations ("IAO") that showed the total number of requests closed by government in each of the last five fiscal years that resulted in government not releasing any responsive records. From these reports, we could see the number of these requests that were attributable to each ministry and to each applicant type.⁴

After studying the reports, we were able to determine that there has been a trend from fiscal 2006/07 to 2010/11 towards an increase in the percentage of access requests closed with the disposition type "no records released". This increase is from 19% in 2006/07 to 28% in 2010/11.

¹ The report is available online at www.oipc.bc.ca under "Resources and Publications".

² The disposition type "no records released" is a category that includes ministries' responses to requests for records where the ministry denied access to the records in full or where the ministry denied access because it would be publishing the records within 60 days of the applicant's request (s. 20 of FIPPA). It also includes requests where the ministry determined that it had no responsive records or that the records the applicant requested were outside the scope of FIPPA and the ministry did not provide access.

³ See page 17.

⁴ Applicant types consist of business, individual, interest group, law firm, media, other governments, other public bodies, political party, and researcher.

Through further analysis of the reports, we were able to determine that a significant number of “no records released” files are requests from law firms to the Ministry of Public Safety and Solicitor General (“PSSG”). For example, in fiscal 2010/11, 833 of the 1133 (74%) requests made by law firms to PSSG resulted in government not releasing any records. In total, 2192 of 7939 (28%) requests received by government during fiscal 2010/11 resulted in government not releasing any records.

When we looked at all requests closed by government with the exception of requests made by law firms to PSSG, 16% of requests in fiscal 2006/07 resulted in government releasing no records. In fiscal 2010/11, the total figure had increased to 20%. Therefore, a significant portion of government’s increase in the “no records released” response is attributable to requests from law firms to PSSG. There does not appear to be a particular other ministry or applicant type with a significant increase. Instead, there is a slight trend across government.

After analyzing these numbers, members of my staff attended IAO and reviewed various law firm requests made to PSSG. We reviewed 89 files from the last two fiscal years where a law firm’s request had resulted in PSSG not releasing any records. We also reviewed 12 files where a law firm’s request resulted in PSSG releasing records so we could ensure government was following the same process in each instance.

From our review, we have seen that almost all of the law firm requests to PSSG are requests for records related to residential school survivor compensation claims. It appears that as a matter of course, a law firm who is representing a client in a residential school compensation claim will make a request to PSSG to see whether any corrections records exist.

When government receives a request of this type, it conducts a search of the CORNET database. CORNET provides a central provincial repository of data about all offenders in provincial corrections programs. From our review, there are three possible outcomes from such a search:

1. No records are located regarding the client. This was the case with 68 of the 89 files we reviewed where government recorded the file as “no records released”.
2. Only a Client History Report (“CHR”) is located and released to the applicant. The CHR is a list of an individual’s entries into CORNET. In instances where an individual has not had involvement with the provincial corrections programs in seven or more years, PSSG destroys the individual’s records (apart from the CHR) in accordance with the approved Operational Records Classification System (“ORCS”). In 21 of the 89 files we reviewed, government released a CHR to the law firm but still recorded the file as “no records released”.
3. Government released the CHR and accompanying corrections records.

As a result of our review, we recommend that where a CHR is located and released but PSSG has destroyed other records in accordance with ORCS, government should log the request as “full disclosure”. We believe this would be a more accurate reflection of the outcome for such requests.

While law firm requests to PSSG account for a significant percentage of the increase in government’s “no records released” response from 2006/07 to 2010/11, I will continue to monitor this issue as future yearly statistics become available from government.

In an effort to inform the public of my review of this issue, my office will be posting a copy of this letter on our website.

Sincerely,

ORIGINAL SIGNED BY

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for British Columbia

pc: Kathleen Ward
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