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FOI UPDATE: A REVIEW OF SOME "INTERESTING" FOI DECISIONS

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I. INTRODUCTION

Access to information legislation, such as the BC *Freedom of Information and Protection of Privacy Act* (FIPPA), serves an important public interest—accountability of government to the citizenry. But this purpose is tempered by the need to protect privacy and to allow governments to function and do business in areas where confidentially must be respected. In receiving and responding to access to information requests, much of the focus for local governments is on the provisions in Part 2, Division 2 of FIPPA, which set out exceptions to disclosure where disclosure would be harmful to various affected parties.

The Office of the Information and Privacy Commissioner (OIPC) for British Columbia has issued many interesting decisions this year, some having major implications for local governments in processing access to information requests under FIPPA. This paper will discuss recent OIPC cases that provide guidance on how and when local governments should apply particular sections of FIPPA, how specific terms in the legislation are interpreted, and how to treat "non-responsive" information in responsive records. Overall, this paper hopes to further local governments' understanding of their responsibilities under various provisions of FIPPA.

II. BROAD DEFINITION OF "POLICY ADVICE" UNDER S. 13

The purpose of s. 13 of FIPPA is understood to prevent harm that would occur if a public body's deliberative process was exposed to public scrutiny. Section 13(1) provides:

> 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

In BC, the leading cases on s. 13 are *College of Physicians and Surgeons v British Columbia (Information and Privacy Commissioner)*[1] and more recently, *Insurance Corp. of British Columbia v Automotive Retailers Assn*.[2] In the ICBC case, the BC Supreme Court considered whether certain records of communications between ICBC and the federal Competition Bureau could be protected under s. 13. The records consisted of a long letter marked "confidential" and a memorandum written by ICBC's legal counsel to the Competition Bureau, as well as various correspondences and meeting notes between ICBC and the Competition Bureau. The OIPC found that disclosure of the records would not reveal advice and recommendations under s. 13 and ordered ICBC to disclose them.

[1] 2002 BCCA 665.
[2] 2013 BCSC 2025.

The BC Supreme Court stated that the purpose of s. 13(1) is to ensure that a public body may engage in full and frank deliberations, including requesting and receiving advice, in confidence and free of disruption from requests from outside parties for disclosure. The deliberative process includes:

> [30] … the investigation and gathering of the facts and information necessary to the consideration of specific or alternative course of action. "Advice or recommendations" was intended by the Legislature to include information the purpose of which is to present background explanations or analysis for consideration in making a decision, including the opinions of experts obtained to provide background explanations or analysis necessary to the deliberative process.

In the Court's view, the word "advice" must have been intended by the legislature to mean something other than "recommendations". The Court found that some of the records were obviously advice, and the balance comprised of information that was obviously considered critical to the deliberative process that was assembled by ICBC's counsel and others. The records at issue comprised of highly sensitive commercial information integral to the facilitation of advice and recommendations, which led ICBC to engage in a particular course of action. Since the records were created by ICBC to allow it to obtain and formulate advice or recommendations to govern its future conduct, the Court found that they were integral to its deliberate policy-making process.

The Court concluded that release of the records would defeat the purpose of s. 13, which is to protect a public body's internal decision and policy making processes from disclosure, thereby encouraging the frank flow of advice and recommendations and to prevent the harm that would occur if the deliberative process was subject to excessive scrutiny.

The Supreme Court of Canada recently considered an OIPC decision dealing with a limitation of the right of access to government information in Ontario that also confirmed the broad scope of s. 13 FIPPA application in BC. In *John Doe v Ontario (Finance)*,[3] the Supreme Court of Canada was called upon to determine whether a record containing policy options fell within the terms "advice" or "recommendations" under s. 13(1) of FIPPA, and therefore, qualified for exemption from disclosure. This case concerned section 13(1) of the Ontario *Freedom of Information and Protection of Privacy Act*, which provides that a head of a government institution "may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant..." That section is analogous to the policy advice or recommendation exception in s. 13(1) of BC FIPPA.

[3] 2014 SCC 36.

John Doe, a tax lawyer, made an access to information request after the Ministry of Finance amended tax legislation that was partially retroactive. He requested the Ministry provide all records related to its consideration of the issue of retroactivity, including the effective date of certain amendments to the legislation. The records at issue were undated drafts of a policy options paper examining the possible effective dates of the amendments. The records included an express recommendation against some options and advice regarding all the options. Only a small section of each record included a recommended course of action for the decision maker while the remainder consisted of considerations the decision maker should take into account when making the decision. The Ministry refused to disclose the records on the basis of s. 13(1) exemption.

The OIPC reviewed the records and ordered their disclosure to the applicant. It took a narrow approach to the phrase "advice or recommendations", and concluded that since most of the records did not reveal a preferred course of action for the decision maker to accept or reject, they could not be classified as "advice or recommendations". The Ministry applied to the Ontario Superior Court for judicial review of the OIPC's decision, which was dismissed. The Court of Appeal found the disclosure order unreasonable and ordered the matter remitted to the OIPC.

The Supreme Court of Canada found that that the OIPC's interpretation failed to take into account that "advice" must have a broader meaning than "recommendations" in order to give effect to the words of the statute. The Court reasoned:

> [24] … in exempting "advice and recommendations" from disclosure, the legislative intention must be that the term "advice" has a broader meaning than the term "recommendations"… Otherwise, it would be redundant. By leaving no room for "advice" to have a distinct meaning from "recommendation", the Adjudicator's decision was unreasonable.

The Court found that the term "advice" was broad enough to include "policy options". In the Court's view, the policy options were lists of alternative courses of action to be accepted or rejected in relation to a decision that was to be made. In other words, they constituted an evaluative analysis, as opposed to objective information. Since the information in the records consisted of the opinion of the author of the record as to the advantages and disadvantages of each option, it was prepared to be served as the basis for making a decision between different options. Therefore, the policy options, being part of the decision-making process, were held to be "advice" within the meaning of s. 13(1).

The Court observed that interpreting "advice" in s. 13(1) as including opinions of a public servant as to the range of alternative policy options accords with the balance struck by the legislature between the goal of preserving an effective public service capable of producing full, free and frank advice and the goal of providing a meaningful right of access. The Court found that the Ministry was justified in withholding the records.

III. HOW TO TREAT "OUT OF SCOPE" INFORMATION

Section 4 of FIPPA provides that a person who makes a request has a right of access to any responsive records:

> 4 (1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body …
>
> (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

Three recent decisions of the OIPC, Orders F14-27,[4] F14-31[5] and F14-32,[6] have called into question the practice of many public bodies in how they treat non-responsive information located within records that are responsive to an access to information request. The public bodies in those decisions withheld a number of excerpts from the responsive records on the basis they are "out of scope" of the applicant's request.

In Order F14-27,[7] the Adjudicator interpreted ss. 4(1) and (2) of FIPPA as follows:

> [11] The Legislature confers a right to access to "records" under s. 4(1) of FIPPA, which is subject to information excepted from disclosure under Division 2, Part 2 of FIPPA. These exceptions to disclosure each relate to "information" rather than "records".

The Adjudicator found that even if only a portion of a record is responsive to an applicant request, the public body is required to disclose all of the information in that responsive record unless an exception to disclosure under Division 2, Part 2 of FIPPA applies.

While the Adjudicator acknowledged that imposing such a requirement on a public body may result in the public body disclosing more information than if it was only required to disclose responsive information, he found that the broader disclosure is consistent with the purpose of FIPPA:

> [12] This broader disclosure makes it less likely that there will be a misunderstanding about the real weight or meaning of the disclosed information due to it being out of context. It also helps prevent access requests from being interpreted too narrowly. This more fulsome disclosure

[4] [2014] B.C.I.P.C.D. No. 30.
[5] [2014] B.C.I.P.C.D. No. 34.
[6] [2014] B.C.I.P.C.D. No. 35.
[7] [2014] B.C.I.P.C.D. No. 30.

> is consistent with the stated purpose in s. 2 of FIPPA to make public bodies more accountable, as well as the requirement in s. 6 of FIPPA that public bodies must respond to applicants openly, accurately and completely.

Records at issue in Order F14-31[8] concerned two long chains or strings of emails. Not all information in the string of emails related to the topic of the applicant's request, and the City of Vancouver withheld those portions of the records, concluding that they were not responsive to the request. There were no page breaks, spaces or other markers between the emails to separate them.

While the Adjudicator agreed with the City that not all information related to the topic of the applicant's request, she stated that "the fact that there is unrelated information in a record that is responsive to the access request is not a ground under FIPPA to refuse to disclose the information" (para 11). In other words, even if only a portion of a record is responsive to an access request, the entire record is a responsive record and the public body must disclose the entire contents unless an exception to disclosure under Part 2, Division 2 of FIPPA applies.

The City also withheld some information because it was repeated elsewhere in the records and other information because it amounted to "examples" of the sort of information that could be entered into a log sheet. The Adjudicator concluded that the fact that information is repeated elsewhere or is only an example did not authorize the City to refuse to disclose the information. As for the repeated information, the Adjudicator held that the City should have applied the FIPPA exceptions in Part 2 as it did to the other information.

Likewise, in Order F14-32,[9] the public body withheld a number of excerpts of information that are part of responsive records as out of scope to the request. For example, one of the responsive records was a review written by a social worker, which the public body disclosed a part, withheld a part under s. 22, and withheld the remainder as "out of scope of request". As with the previous Orders, the Adjudicator concluded that regardless of whether the information the public body has marked as "out of scope" is responsive to the substance of the applicant's request, the public body cannot withhold the information for that reason only. It is because the information is part of records that are responsive to the request.

As a result of these decisions, public bodies are required to process the applicant's request for information in responsive records, even if the information itself is not responsive to the request or marked as "out of scope". They are then to examine whether the information is subject to an exception to disclosure under Part 2 of FIPPA and can justify withholding it. If no exceptions apply to the information, the Orders suggest that the information in the records must be released to the applicant.

[8] [2014] B.C.I.P.C.D. No. 34.
[9] [2014] B.C.I.P.C.D. No. 35.

These decisions will undoubtedly (and already have) caused difficulty where long email strings, *in camera* minutes, and other documents pertain to numerous sensitive matters. In these cases where another provision of the Act may apply, how strictly will the government body have to justify the non-disclosure? Will every out of scope *in camera* meeting minutes require a separate justification as to its basis for *in camera* disclosure? For now, we consider that where out of scope information pertains to another ground for withholding the information, this should be clearly indicated, but that the "line by line" justification for this severing is not properly warranted.

IV. CONTRACT NOT LEGAL INSTRUMENT UNDER S. 12(3)(A)

Order F13-14[10] concerned the issue of whether a contract is a "legal instrument" pursuant to s. 12(3)(a) of FIPPA. In that case, the Township of Langley refused to disclose the original and revisions of a storm water management plan for a development on the basis that they were drafts of a legal instrument, a servicing agreement. The applicant acted for several residential landowners whose properties bordered the proposed land development in Langley. A servicing agreement between the Township and the owner of the land under development detailed terms and conditions for the construction and installation of works and services on the development lands. The storm water management plan formed part of the servicing agreement. The Township provided the applicant with the final version of the storm water management plan, but withheld the original and revisions—five versions in total—of the plan, as part of the agreement.

Section 12(3)(a) of FIPPA provides:

> 12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal
>
> > (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private Bill …

The Township submitted that the legal instrument in this case was the servicing agreement between itself and the owner of the land under development. Since the final version of the storm water management plan formed part of that servicing agreement, the Township argued that the preliminary versions of the storm water management plan were drafts of part of the legal instrument.

The Adjudicator found that while the term "legal instrument", used in its general sense, would include all legal documents, such as contracts, it must be read in the context of which it is found. Since "resolution", "bylaw", and "private bill" in s. 12(3)(a) all shared the characteristic of being a legislative or statutory enactment or decision of a public body, the Adjudicator found

[10] [2013] B.C.I.P.C.D. No. 17.

that a contract is not a "legal instrument" because it does not share the trait of being a legislative enactment or decision. The Adjudicator found that the meaning of "other legal instrument" in s. 12(3)(a) did not include the servicing agreement or the storm water management plan, and the Township was ordered to disclose the records requested.

On judicial review,[11] the BC Supreme Court concluded, in obiter, that the Adjudicator's analysis and decision was reasonable, and dismissed the petition.

V. MUNICIPAL COUNCILLORS ARE "OFFICERS" UNDER FIPPA

In *R v Skakun*,[12] the BC Court of Appeal confirmed that the term "officer" in s. 30.4 of FIPPA includes an elected municipal councillor.

Section 30.4 of FIPPA provides:

> An employee, officer or director of a public body or an employee or associate of a service provider who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act.

Mr. Skakun was a municipal councillor in the City of Prince George. He admitted to releasing a confidential and privileged investigative report involving City staff, which he received during a closed council meeting, to the Canadian Broadcasting Corporation (CBC). He did this without authority, or otherwise following the disclosure process prescribed by FIPPA.

In 2011, the BC Provincial Court found that Councillor Skakun was guilty of breaching s. 30.4, and the BC Supreme Court upheld the conviction. The Court of Appeal recently confirmed the lower court's decision that an elected municipal councillor is indeed captured by the definition of "officer" in s. 30.4.

The Court Appeal based its analysis on the plain and ordinary meaning of the term, when read in the context of the broadly-stated purposes and wide range of targets in FIPPA. The Court concluded that both elected and appointed officials are captured by the definition of "officer" in s. 30.4, and Councillor Skakun was an "officer" of a public body under FIPPA.

This was the first time a conviction under s. 30.4 of FIPPA involving a public official had been brought before the courts. The Provincial Court sentenced Councillor Skakun to a fine of $750 plus applicable surcharge. This case is a reminder to local government employees and officials that breaches under FIPPA can have serious repercussions.

[11] *Langley (Township) v De Raddt*, 2014 BCSC 650.
[12] 2014 BCCA 223.

VI. PROTECTING REQUEST FOR PROPOSALS (RFPS) UNDER S. 21

Many local governments apply s. 21(1) of FIPPA when they receive an access to information request about proposals received as part of RFPs, that they believe would be harmful to third parties. Section 21(1) of FIPPA sets out a three-part test for determining whether public bodies can refuse to disclose information when disclosure is harmful to third party business interests:

> **21** (1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal trade secrets, commercial, financial, labour relations, scientific or technical information of or about a third party,
>
> (b) that is supplied, implicitly or explicitly, in confidence, and
>
> (c) the disclosure of which could reasonably be expected to
>
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
>
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

All three parts of the test must be met in order for the information in dispute to be properly withheld. The first part is quite straightforward in a RFP scenario as information on pricing and contractual terms would reveal commercial or financial information about a third party. A public body must then demonstrate that the information was supplied by the third party to the pubic body in confidence. For the last factor, the public body must show that disclosing information the third party supplied could reasonably be expected to cause one of four kinds of harm set out in subsection(c).

In Order F14-21,[13] the applicant requested proposals submitted in response to the District of Mission's RFP for gravel extraction. The applicant was one of seven contractors that submitted a bid, and the proposals contained detailed information on pricing and equipment. At the time of the request, the District had not yet awarded a contract. The Adjudicator found that the first step of the s. 21(1) test was easily met in that the information would reveal financial information of the third party. Since the RFP contained a statement that the District was to hold the proposals in confidence, and that it "will not disclose or discuss any confidential information of another Proponent" (para 18), the Adjudicator found that the information was also supplied in confidence under subsection (b).

As for the final step, the District relied on subsections (i) and (iii), that the disclosure would allow the applicant to estimate other proponents' pricing in similar projects and gain significant advantage over its competitors in future RFPs. The District provided evidence that it was planning to reissue the RFP for the same or similar services on nearby properties. If the disclosure was ordered, the District stated that the applicant will be provided with "undue knowledge about the practices, procedures, and methods of its competitors that the Applicant may not otherwise have access to" and may use this information to increase its competitive edge in the industry (para 20). The proponents also made similar submissions in this regard.

The Adjudicator agreed with the District and ordered it to withhold most of the information included in RFP response submissions by proponents, except for publicly available information and information of a general nature. The factors that persuaded the Adjudicator to withhold the records were that the contract had not been awarded and there was evidence that the parties may be invited to compete for the same or similar work in the near future. It was also important that there were confidentiality provisions in the RFP.

In contrast, in Order F14-36,[14] the City of Vancouver was ordered to disclose all of the requested information pertaining to a RFP. The City awarded a contract for pay-by-phone parking services following a RFP. The applicant requested a list of RFP proponents, including their identities and the value of proposals. The City created a record in response and disclosed some information, but withheld the value of each proposal and information that disclosed the term of the previous pay-by-phone parking services contract it awarded because it believed disclosure would, among other things, be harmful to the business interests of a third party (s. 21(1)).

The Adjudicator found that s. 21(1)(b) did not apply to any of the information in dispute. She observed that the information in this case was commercial information as it was associated with the selling of the proponents' services. However, the Adjudicator found that the term length and the transaction fee amounts for each bid were not supplied in confidence, as the

[13] [2014] B.C.I.P.C.D. No. 24.
[14] [2014] B.C.I.P.C.D. No. 39.

City did not provide any evidence that it told the proponents that it would maintain their bids in confidence, or whether any of the bids it received were marked confidential.

As for the harm argument under s. 21(1)(c)(i), the City asserted that the disclosure would harm the competitive and negotiating position of the third parties for future projects. However, the Adjudicator found that the City made no submissions about whether the harm would be "significant" nor did it provide any evidence to support its claim that the disclosure could reasonably be expected to harm the proponents. The Adjudicator also rejected the City's argument that disclosing prices in this case could negatively influence the bidding process for future RFPs, since the City submitted that it only reissues RFPs for pay-by-phone parking services every three years. In a rapidly changing era of technology, the Adjudicator concluded that disclosing the information at issue could not materially affect bidding three years later.

From these two cases, it is clear that the OIPC will not automatically protect proposals received in response to RFPs from disclosure if public bodies fail to discharge their evidentiary burden. When a contract has not yet been awarded and if there is a possibility that contractors will be invited to compete for a similar work in the near future, that sensitive information in proposals will likely be withheld. It is important for local governments to include language in the RFP documents stating that the bids will be held in confidence, and mark any bids they receive as confidential.

VII. HOW AND WHEN TO APPLY S.25 PUBLIC INTEREST DISCLOSURE

Section 25 of FIPPA requires public bodies to disclose information under two grounds, regardless of whether a request for access is made. One is when there is a risk of significant harm to the environment or to the health or safety of the public, and the other is where the disclosure is clearly in the public interest. This obligation overrides any exceptions to disclosure that might otherwise apply to the information at issue, and must be met without delay.

> 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.

Many public bodies have found this section difficult to interpret since the determination of what triggers an urgent need for disclosure can be open to broad and inconsistent interpretations. To provide guidance to public bodies, Commissioner Denham published Investigation Report F13-05,[15] about how and when public bodies should apply s. 25.

The phrase "without delay" has been interpreted as requiring an element of temporal urgency and the disclosure duty is triggered when there is an urgent and compelling need for public disclosure. According to former Commissioner Loukidelis, the circumstances must be "of a clear gravity and present significance which compels the need for disclosure without delay."[16] Since section 25 precludes mandatory disclosure in all but the most urgent and compelling situations, it sets a high legal threshold for disclosure.

The Commissioner, in her Report, stated that the following types of information would be considered a significant risk of harm as identified in s. 25(1)(a):

- 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; or
- information that allows the public to take action necessary to meet the risk or mitigate or avoid harm.

When a public body discloses information pursuant to s. 25(1)(a), it must be able to provide its reasons for doing so to the OIPC upon request. Reasons should include evidence of the existence of the identified risk, and a description of the nature and extent of anticipated harm.

As for the public interest disclosure pursuant to s. 25(1)(b), public bodies must conduct a two-step analysis. First, there must be an urgent and compelling need for disclosure. Second, there must be a sufficiently clear public interest in disclosure. In order for there to be a clear public interest, the information must:

> … contribute in a substantive way to the body of information that is already available to enable or facilitate effective use of various means of expressing public opinion and making political choices. Section 25(1)(b) does not apply to information that will add little or nothing to that which the public already knows.

[15] [2013] B.C.I.P.C.D. No. 33.
[16] Order 02-38, [2002] B.C.I.P.C.D. No. 38, at para 53.

The Commissioner noted that the *potential* interest of the public in learning about an issue does not necessarily make disclosure of that information *clearly* in the public interest. While the right of access to information is essential in holding public bodies accountable, the Commissioner states that this section is not to be used by the public to scrutinize public bodies. Instead, the public may exercise its general right to access records under FIPPA. The Commissioner noted that s. 25(1)(b) has never been applied by a public body.

According to the Commissioner, when disclosing information under s. 25, public bodies are only required to disclose information that satisfies either the risk of significant harm or clear public interest tests, and not disclose entire records. In other words, information in records that is not compelling is exempt from the disclosure.

In her Report, the Commissioner reviewed five case studies to determine whether public bodies have complied with their obligations under s. 25. The following cases were reviewed:

- Testalinden Dam collapse near the Town of Oliver (Ministry of Forests, Lands and Natural Resource Operations);
- Air quality study in the City of Prince George (Ministry of Environment);
- Lyme disease study results (BC Centre for Disease Control);
- Well water test results (Cowichan Valley Regional District); and
- Presence of mold in student residence (Simon Fraser University).

The Commissioner only found a failure to comply with s. 25 with respect to the Testalinden Dam collapse. In that case, the Ministry of Forests, Lands and Natural Resource Operations was responsible for the inspection and safety of dams. It had information from engineering and inspection reports dating back to 1970s and 80s that the Testalinden Dam was nearing the end of its life and was a hazard to people and property located downstream. The reports strongly recommended the dam be replaced with a new one. When the dam failed in 2010, it released a torrent of mud and debris from the reservoir, seriously damaging houses and farmland situated below.

The Ministry's position was that s. 25 did not require it to disclose the reports because the evidence available at the time did not indicate that there was a level of safety or environmental risk in relation to the dam that reached the threshold required. The Commissioner disagreed, and concluded from the totality of the reports that there was an urgent and compelling need for public disclosure as the dam was clearly referred to as a "hazard". Therefore, the Ministry failed to meet its obligation under s. 25(1)(a) to disclose information about the compromised state of the dam to residents downstream. In coming to this conclusion, the Commissioner noted that while the Ministry's obligation to consider s. 25(1) first arose when FIPPA came into

force in 1993, this did not mean that it was free to ignore information that had come to its attention prior to that time.

In addition to the case review, the Commissioner made two recommendations for public bodies in her Report. First, she recommended that all public bodies should develop policies that provide guidance to officers and employees about the public body's responsibilities under s. 25 of FIPPA, by clearly setting out the following:

- criteria that define a risk of significant harm to the environment;
- criteria that define whether there is a risk of significant harm to the health or safety of the public;
- criteria that define when the disclosure of information is, for any other reason, clearly in the public interest;
- criteria to determine if there is an urgent and compelling need for disclosure of information;
- criteria to determine whether the head of the public body should notify the public or an affected group of people;
- procedures for communicating this information to the head of the public body;
- criteria to determine when to disclose the relevant information to the public or an affected group of people; and
- procedures to notify third parties and the Commissioner.

The Commissioner indicated in her Report that the OIPC will be undertaking an audit of s. 25 compliance across a targeted number of public bodies in 2014/2015.

The Commissioner also called for legislative amendment to s. 25(1)(b) of FIPPA to remove the requirement of temporary urgency. She believes that the reason why s. 25(1)(b) has never been applied by a public body is because the disclosure must be *both* in the public interest and urgent. She believes that the public interest disclosure provision should not require urgent circumstances. Her recommendation is that this section should be amended so that public bodies are required to disclose information of a non-urgent nature, when the disclosure is clearly in the public interest. While no such legislative amendment is proposed to date, if the Commissioner's recommendation were to be adopted, it would significantly broaden local government's disclosure requirements under s. 25.

NOTES