

August 14, 2015

Anik Laplante
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Attn: Committee on Institutions

Dear Anik Laplante :

Re: Submission re Policy Paper—OIPC File No. F15-62099

Thank you for the opportunity to provide a submission regarding the policy paper: *Orientations gouvernementales pour un gouvernement plus transparent, dans le respect du droit à la vie privée et la protection des renseignements personnels*. Our submission is focused on Direction 30, which proposes to transform the Commission d'accès à l'information into a non-adjudicative body.

Background:

The Information and Privacy Commissioner for British Columbia is an Officer of the Legislature who is independent of government and provides for oversight and enforcement of two statutes: The *Freedom of Information and Protection of Privacy Act* (covering more than 2,900 public bodies) and the *Personal Information Protection Act* (covering more than 380,000 private sector organizations). These laws provide for comprehensive protection of the access to information rights of citizens and regulate the personal information practices of public bodies and private sector organizations.

The Office of the Information and Privacy Commissioner (OIPC) has three primary functions.

First, the office has an adjudicative role. It reviews decisions by public bodies to withhold access from individuals requesting records or their own personal information. The office also adjudicates privacy matters that cannot be disposed of through an investigation. British Columbia's laws further empower the Commissioner to mediate disputes with respect to the access to information and protection of privacy in the public and private sector. The Commissioner or her delegate hold inquiries (formal adjudication) only where mediation is unsuccessful and makes binding orders or decisions.

Second, the OIPC plays a supervisory role, overseeing compliance with the privacy provisions.

Third, the OIPC plays an advisory role in commenting on programs and schemes, technology solutions, and issues guidelines and public education tools.

The inclusion of the adjudication function, with the investigation, mediation, supervisory and advisory roles has not impaired our other roles and responsibilities. In fact, we have found that the adjudicative function creates efficiencies, ensures privacy and access expertise, protects confidentiality and provides educational opportunities brought about by an integrated model of regulation that includes adjudication as a quasi-administrative tribunal within the organization.

We have summarized several of these issues and benefits below.

Administrative Efficiencies

The inclusion of an adjudicative function within the OIPC means that applicants are not required to interact with two different agencies when seeking recourse regarding a decision or action by a public body or an organization. This single point of contact provides for a seamless and direct approach for resolving complaints and requests for reviews. In most cases, the OIPC is able to successfully mediate these issues and adjudication is not necessary. Where mediation is not successful, or if the Commissioner elects to bypass mediation, files may move directly to adjudication. These efficiencies are designed to expedite access to records and information to which applicants are entitled under the legislation.

This structure also gives the Commissioner flexibility in allocating resources. The Commissioner may ask an adjudicator to mediate a file, or where appropriate, the Commissioner may ask that a mediator adjudicate an issue. The ability to reallocate staff makes the OIPC more able to respond to shifting demands which in turn allows for more efficient resolution of files.

Expertise

Privacy and access to information is an increasingly complex field that requires a sophisticated understanding of the law both locally as well as in international contexts. Having adjudicators within the OIPC ensures that they are immersed in a culture of privacy and access to information. This culture helps adjudicators to develop and exercise a level of expertise that may not exist in other tribunals.

The privacy rights of British Columbians can be frustrated when adjudicators without such expertise interpret privacy and access statutes. For example, in 2010, employees of an elevator company took their concerns regarding devices

that track the location of their vehicles to a labour relations tribunal. The adjudicator in that case determined that this tracking data was not personal information, and, therefore, not subject to the *Personal Information Protection Act* ("PIPA"). When the employees brought their concerns to the OIPC they were denied a hearing on the basis that litigating the matter again would violate the principles of judicial economy, consistency, finality and the integrity of the administration of justice.

The OIPC has since adjudicated similar cases involving the collection of data collected from vehicles driven by employees for work and other purposes. In those cases (and in similar cases adjudicated by privacy commissioners across Canada) OIPC adjudicators ruled that such information is personal information and its collection is subject to the privacy protections afforded to employees by PIPA.

It is our experience that the expertise that results from a dedicated adjudicative function contributes to a fair and accurate interpretation of access and privacy legislation. This benefits all parties as they can expect a consistent interpretation of the legislation.

Confidentiality and Education

One of the Commissioner's responsibilities is to inform the public about B.C.'s privacy and access legislation. The OIPC has been able to fulfill this responsibility despite any duty of confidentiality associated with the adjudication function.

Every year, the OIPC engages in a large number of policy consultations and speaking engagements. The OIPC also publishes information on how to adhere to access and privacy legislation, and how individuals can exercise their rights under such legislation. An adjudicator's decision may illustrate the need for such guidance. For example, a recent decision regarding the decision by a ministry to check employment references without advising the candidate or obtaining her consent resulted in a guidance document on how public bodies should collect references when making hiring decisions.

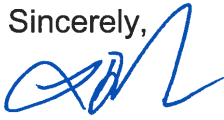
Multiple Roles

The OIPC successfully performs the multiple roles and responsibilities assigned to it by the legislation. The adjudicative function has not deterred public bodies and private sector organizations from consulting with our Office. Through these consultations, public bodies and private sector organizations receive valuable feedback regarding compliance issues and best practices. By identifying these issues upfront, these groups are able to proactively address issues that could otherwise result in a future complaint or adjudication.

In each of these consultations, the OIPC clearly notes that our review does not constitute approval of the initiative or fetter our discretion should the initiative later be the subject of a complaint or investigation.

The OIPC's adjudicative function has been an integral part of our Office. This function has contributed to the Commissioner's standing and efficiency as an oversight body and advocate for British Columbians access and privacy rights.

Sincerely,

A handwritten signature in blue ink, appearing to be 'ED', is written over the word 'Sincerely,'.

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia