



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

INVESTIGATION REPORT FO8-01

MINISTRY OF ENVIRONMENT MINISTRY OF FORESTS AND RANGE

January 22, 2008

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Summary: The University of Victoria Environmental Law Clinic, on behalf of a group of eight environmental organizations, brought a complaint against three ministries alleging that there was a system-wide pattern of acting to frustrate environmental groups seeking records under the *Freedom of Information and Protection Act* (“FIPPA”). The groups alleged that there were routine delays in responding to access requests, excessive censoring of records, excessive and unreasonable fees and frequent and unjustified denials of fee waivers. Any one of these allegations, if proven, would be a violation of the s. 6 FIPPA duty to assist applicants. A preliminary investigation determined that while the complaint against the Ministry of Forests was not substantiated, there was some basis for the allegation of systemic problems with requests made to the Ministry of Environment. The parties met and developed a mutually acceptable action plan to resolve the complainants concerns.

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1.0 INTRODUCTION

[1] The University of Victoria Environmental Law Clinic, on behalf of a group of eight environmental organizations,¹ brought a complaint against three ministries alleging that there was a “system-wide pattern of acting to frustrate environmental groups that seek public information.” The three ministries that were the subject of the complaint were the Ministry of Water, Land and Air Protection, the Ministry of Forests and the Ministry of Agriculture, Food and Fisheries, now respectively the Ministry of Environment (“MOE”), Ministry of Forests (“MOF”) and Ministry of Agriculture and Lands (“MAL”).

[2] The complainants identified four areas of concern:

- (i) **Delays** – the complainants alleged that responses to access to information requests from environmental groups are routinely delayed for months and sometimes years;
- (ii) **Exceptions** – the complainants alleged that in some circumstances, information requested by environmental organizations is subject to exception and censoring, beyond that allowed by FIPPA;
- (iii) **Fees** – the complainants alleged that quite regularly environmental organizations are asked to pay excessive and unreasonable fees; and,
- (iv) **Fee Waivers** – the complainants alleged that fee waiver requests by environmental organizations are frequently denied.

[3] They alleged that this activity amounted to a system-wide pattern of acting to frustrate environmental groups that seek public information. In support of their allegations, the complainants referred to 13 individual access requests that they said illustrated their concerns.

[4] This report is the product of an investigation that this Office (“OIPC”) conducted under ss. 42(1)(a) and 42(1)(j) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), which provide:

- 42(1) In addition to the commissioner’s powers and duties under Part 5 with respect to reviews, the commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may:
- (a) conduct investigations and audits to ensure compliance with any provision of this Act, ...
 - (j) bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants.

¹ The eight environmental organizations involved were: Raincoast Conservation Society, Sierra Legal Defence Fund, Western Canada Wilderness Committee, West Kootenay EcoSociety, West Coast Environmental Law, Dogwood Initiative, Shawnigan Lake Watershed Watch and T. Buck Suzuki Environmental Association.

2.0 BACKGROUND

[5] **2.1 Purposes of FIPPA**—The purposes of FIPPA are set out in s. 2(1) and were described in Order 00-47 as follows:

As the first lines of s. 2(1) make clear, the Act's dual purposes are to protect personal privacy and promote accountability to the public of institutions covered by the Act. The Act's accountability objective is achieved, as is acknowledged by s. 2(1)(a), by giving “the public” a right of access to records. That right is, necessarily, exercised by individual applicants on a case-by-case basis. But the ‘right’ articulated in the section belongs to “the public”, not to individual applicants. This provision acknowledges the sea-change effected by the Act in relations between the public, on the one hand, and governments and other public institutions, on the other. The public's right of access to information under the Act compels public bodies to share information with citizens, within prescribed limits, so as to enable them to participate more effectively in society and government.²

[6] When the Bill that became FIPPA was tabled in the Legislature in 1992, Colin Gabelmann, the Attorney General at that time, said this:

It's a critically important piece of legislation. It extends fundamental rights in a democratic society that citizens should enjoy across the entire broad public sector. It also very clearly increases the accountability and openness of all public bodies in this province. This is important, because another important principle there is an attempt to try to restore faith in our democratic system and in our public bodies.³

[7] La Forest J. of the Supreme Court of Canada described the purpose of access legislation in *Dagg v. Canada (Minister of Finance)*:⁴

The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. Access laws operate on the premise that politically relevant information should be distributed as widely as reasonably possible.

[8] **2.2 Access Request Processing Within the Ministries**—In order to determine whether this complaint was well founded, it was necessary to examine the processing of the complainants' requests relative to the processing of all other requests by each of the Ministries.

[9] Requests for access to information are processed by branches within the ministries and they are responsible for administering FIPPA on behalf of the ministry

² [2000] B.C.I.P.C.D. No. 51.

³ During the second reading of the Bill on June 18, 1992.

⁴ [1997] 2 S.C.R. 403, at para. 61.

(known as “FOI offices”).⁵ The head of each FOI office is generally known as the Director/Manager of Information and Privacy (“DMIP”). Some ministries share FOI offices as a means of reducing the costs and sharing staff expertise associated with the processing of requests.⁶ As a general rule, program staff who receive an access request forward the request to the FOI office. FIPPA provides that the ministry has 30 business days to process the request and respond. The 30-business day clock begins running the day the request is received anywhere in the ministry.⁷

[10] When the FOI office receives the request, analysts in the FOI office review the request and determine where responsive records might be within the ministry. They send a copy of the request (without the identity of the applicant) to the program area they believe holds the records. That program area is supposed to copy all possible responsive records and send the copy to the FOI office. If the request is not for personal information, the FOI office or program area may first determine that, because of the volume of records or the time needed to search for the records, a fee will be charged. In that case, the program area is asked to estimate the volume of records and time necessary to search for the records. The FOI office then may issue a fee estimate to the applicant. If the applicant requests a fee waiver, a person within the ministry, usually someone in the FOI office, has delegated authority to decide whether or not the ministry will waive the fee.

[11] When the ministry is ready to disclose the records, it makes a decision as to whether or not any of FIPPA’s exceptions to the right of access apply. If an exception applies, staff in the FOI office remove (or “sever”) that information. The decision regarding what should be severed is made at different levels in different ministries. Generally, ministry executive members have the delegated authority to make severing decisions although directors or managers and staff in the FOI office sometimes have this delegated authority.

[12] Ministries use a cross-government database known as the Corporate Request Tracking System (“CRTS”) to manage their access requests. Generally, staff within the FOI offices enter information about access requests into CRTS. This database proved to be an important part of the investigation of this complaint.⁸

[13] **2.3 Section 6 and Systemic Complaints**—Section 6 of FIPPA sets out a general duty to assist applicants:

⁵ The process described here is known as centralized request processing. Some public bodies, including the Ministry of Forests and Range, use a decentralized model of access request processing. Using this model, some requests are processed at the local or regional level with records being collected, severed and disclosed by local or regional offices without the involvement of the ministry FOI office. All of the decisions described in this section continue to apply regardless of what level the decisions are made at.

⁶ Section 66 of FIPPA allows the head of a public body to delegate any duty, power or function of the head under FIPPA except the power to delegate.

⁷ Subject to s. 5 of FIPPA which sets out a number of requirements before an applicant can obtain access to a record. In practical terms this means that until an applicant satisfies the s. 5 of FIPPA requirements, the 30-day time requirement does not begin.

⁸ There are government statistics relating to the process of requests by applicant type available publicly at: <http://www.mser.gov.bc.ca/privacyaccess/CRTSstats/index.htm>.

- 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.

[14] Numerous orders have held that a public body that fails to respond to an access request within the time required under FIPPA has not met its s. 6(1) duty to respond without delay.⁹

[15] If a public body intentionally delayed its response to a specific access request, or systematically delayed responding in a discriminatory fashion to requests from a particular requester or specific kinds of requests, this would be a violation of s. 6 of FIPPA. As was stated in Order F06-16, “delay can become a systemic barrier to the right of access – access delayed is often access denied.”¹⁰

[16] The complainants also alleged that the public bodies regularly charged environmental groups excessive and unreasonable fees and frequently denied fee waivers in an attempt to frustrate the groups’ access to information. If proven, the allegations regarding fees and fee waiver denials would also be a violation of s. 6 of FIPPA in that a public body that discriminates against a particular applicant or group in this way could not be said to have made “every reasonable effort” to “assist” applicants.¹¹

[17] We accepted, for the purposes of this investigation, that environmental groups, and the eight complainants in particular, form an identifiable group of applicants. Ministries identify applicants by “applicant type” and CRTS allows ministries to record the type of each applicant. In the case of the eight complainants, they are identified and classified in CRTS as “interest groups”.

[18] **2.4 Hallmarks of A Good FOI Program**—There are three key components to a well-functioning FOI program. All three components must exist, consistent with s. 6(1), to ensure that access requests are responded to openly, accurately, completely, and without delay. Those three components are:

1. Strong public body executive support and leadership in the area of access to information. This is in turn evidenced by well funded and well staffed FOI offices, ongoing access and privacy training programs for staff, regular messaging to all staff supporting the goals of FIPPA and by a streamlined and efficient request sign-off process.
2. The public body actively and regularly publishes, without formal access requests, records of interest to the public. This is known as routine release or pro-active release of records. At the very least, records such as program audits, financial audits, impact assessments, records previously released in response to access

⁹ See for example: Order 03-32, [2003] B.C.I.P.C.D. No. 32; Order 01-47, [2001] B.C.I.P.C.D. No. 49 and Order 02-40, [2002] B.C.I.P.C.D. No. 40.

¹⁰ Order F06-16, [2006] B.C.I.P.C.D. No. 23, at para. 56.

¹¹ For an example of an order examining the relationship between s. 6 and s. 75 of FIPPA see Order 01-74, [2001] B.C.I.P.C.D. No. 49 at para. 55.

requests will be posted on the internet and otherwise made available as part of a well-functioning routine release process. As part of a successful disclosure program, program area staff should regularly review their records for posting and staff should be encouraged to identify records for pro-active release.

3. Records are disclosed in a timely fashion and, at least on average, within the initial 30-business day time limit set out under FIPPA. There are numerous strategies a public body can employ to ensure that it meets this goal, including these:
 - Have a fully staffed and well trained FOI office with strong support from the executive.
 - Make meeting the 30 day response time a performance objective of ministry executives.
 - Have trained records management staff in each branch ready to collect requested records as soon as a request is received.
 - Have regular access and privacy training for all existing staff and required access and privacy training for all new staff. Monitor the training using online testing.
 - Use a rational and consistent records management strategy across the public body. Preferably use a central filing system for both electronic and paper records.
 - Delegate as many decisions as possible to the Director/Manager of Information and Privacy and their staff.
 - Limit sign-off (approval) of decisions to no more than two people.
 - Do not include communications staff in the sign-off process. Create a parallel process that allows the ministry to manage communications issues associated with disclosure without interfering with the timely release of records.
 - When requests are for large numbers of records, release records in phases.
 - Interpret requests in a manner that a fair and rational person would consider appropriate in the circumstances. Avoid overly literal or narrow interpretations of requests.
 - Communicate regularly with applicants from the outset and throughout the processing of the request, particularly regarding the scope of the request and the scope of records available.

[19] The executive management of all public bodies covered by FIPPA ought to show leadership in access to information and the above practices should form part of any properly functioning, forward-looking access to information program.

[20] **2.5 Scope of this Investigation**—Having received the complaint, the OIPC made three preliminary decisions regarding the scope of the investigation.

[21] First, it was determined that we would not investigate the allegation that information requests by environmental organizations were subject to severing and censoring beyond that allowed by FIPPA. The reason for this decision was that, when an applicant receives records from a public body in response to an access request, the applicant is entitled to request a review of that response by the OIPC. Several of the examples of inappropriate severing that the complainants provided in the systemic complaint were already matters before the OIPC. In addition, the number of examples of inappropriate severing was small and could not, on that basis, be relied upon to articulate principles beyond those already set out in previous orders regarding the application of exceptions to disclosure.

[22] Second, it was determined that we would not investigate allegations made against MAL. When the complaints were made, access requests made to the MAL were processed by the FOI office in the Ministry of Transportation. However, shortly thereafter responsibility for processing these requests was transferred to the MOE. This meant that, as a practical matter, any finding against MAL would have no effect on the processing of requests, since a different ministry had been doing the request processing. Since the MOE was already covered by the complaint investigation, a review of its processing practices as it related to the eight environmental organizations would address the issues the complainants raised generally in relation to the MAL.

[23] Third, it was determined that our investigation would examine requests processed by the MOE and the MOF for the two-year period immediately preceding the complaint (*i.e.*, June 24, 2003 to June 23, 2005).

[24] **2.6 Preliminary Objections by the Ministries**—The MOE and the MOF both made preliminary objections to the OIPC. Both noted that the complainants had had the opportunity to file individual complaints or review requests for each of the access requests that they advanced to illustrate their allegations of systemic problems. They also noted that 10 of the 13 requests offered as examples had been the subject of individual reviews or complaints to the OIPC. The ministries were of the view that a second review of these individual cases would result in a form of “double jeopardy”. They noted that applicants have 30 business days under FIPPA to file a request for review and that this time limit had expired for all of the examples provided. The ministries argued that administrative justice required that they be given the opportunity to answer allegations of bad faith or interference with respect to the

processing of the requests on a case-by-case basis using affidavit evidence and legal argument. They were of the view that one overarching investigation would therefore not be appropriate.

[25] Since the purpose of the investigation was to take a broader view of ministry response patterns, we confirmed to the complainants and the ministries that the intent of the investigation was not to re-open individual dispute files for negotiation or resolution. We determined there was a basis for conducting a systemic investigation and that such an investigation could be conducted fairly and without prejudice to the ministries. The ministries accepted these decisions and the investigation proceeded.

[26] Following resolution of all of the preliminary objections and issues, we requested information from the MOF and the MOE relating to the time taken to process requests in the two-year period at issue and information relating to the charging of fees and fee waiver decisions during that time period.

[27] **2.7 Information Supplied by the Ministries**—In response to this request, the MOF provided a complete printout of all records in CRTS relating to all access requests it processed during the period June 24, 2003 to June 24, 2005. These records, comprising over 1,000 pages, contained a history of all activities relating to request processing, including dates, fee and fee waiver decisions on all files. Later, in response to a request for statistical reports, the MOF produced two statistical reports comparing average response times, fees and fee waivers for the same time period.

[28] The MOE produced FOI sign-off sheets, known as “FOI Accountability Tracking Forms”, for requests received between June 2003 and June 2004. These sheets included the name, position, signature and signature date of all individuals signing off their approval for the release of records on the particular request. Later, in response to our request for further records, the MOE produced a print-out of an Excel spreadsheet it used instead of the CRTS to track access requests. The spreadsheet listed requests received by the MOE between June 24, 2003 and June 24, 2005. The spreadsheet included the MOE file number, applicant type, applicant name, description of the records requested, short form chronology of events in the processing of the file, received date and due date. The spreadsheet contained significantly less information than the CRTS tracking system was capable of holding.¹²

3.0 DISCUSSION

[29] **3.1 Ministry of Forests and Range**—During the two-year period under review in this investigation, only six of the 580 requests received by the MOF were from the complainants. With such a small group of requests, it was difficult to reach any firm conclusions. However, a review of the responses to the six requests as compared to the response to all requests indicated that, in fact, the average response time for

¹² For example, CRTS contains numerous tab choices to record the timing of various events, steps taken in the processing of a file, reasons for any reviews requested and outcome of those reviews.

requests from the complainants was significantly *lower* than the MOF's overall average response time.¹³ In 2003-2004, the MOF's average processing time for the complainants' requests was 10.5 days shorter than the overall average and in 2004-2005, its average processing time for requests from the complainants was 9 days shorter than the overall average. We concluded there was no pattern of slower responses to access requests from the complainant groups during the time under review. If anything, the figures we saw suggested the contrary.

[30] With respect to allegations of a pattern of regularly charging excessive and unreasonable fees and frequently denying fee waivers, of the 6 access requests made to the MOF, only two involved a fee. One of the two fees was waived and the applicant did not respond at all to the second fee request, so the file was closed. We were unable to discern any particular pattern from this information.

[31] The complainants were given an opportunity to respond to these conclusions and they all agreed the evidence did not support the complaints. We conclude, therefore, that the complaint against the MOF is not substantiated.

[32] **3.2 Ministry of Environment**—During the two-year time period, the MOE did not consistently use CRTS. Instead, it used an Excel spreadsheet to track its responses to access requests. As noted above, in response to this office's request for data, the MOE supplied all FOI sign-off sheets (known as FOI Accountability Tracking Forms) for all requests received between June 2003 and June 2004 and a print-out from the spreadsheet for all requests received between June 2003 and June 2005. The spreadsheet included dates but no calculation of request response times. It also included discussion of fees in the narrative portion of the spreadsheet. In addition, we obtained from the ministry responsible for managing the CRTS database what little CRTS data were available for the MOE during this period.¹⁴

[33] The quality of the data supplied by the MOE was questionable. First, there were inconsistencies between the three sources of data. Second, there were gaps in the data—no data for one group of eight complainant requests on the spreadsheet and many missing sign-off sheets.¹⁵ Third, the spreadsheet did not include a calculation of average response times. Based on the information contained in the spreadsheet, the MOE received a total of 250 access requests during the two years in question, 34 of which were from the complainants. We did the average response time calculation by hand for each of the 34 requests submitted by the complaints to the MOE in the two-year period under review.

¹³ The comparisons that follow do not include one particular request from one of the complainants because the response time badly skewed the overall results and was not generally representative of the response times for requests from the complainants. The complainants were given an opportunity to comment on this decision and they did not object to this approach.

¹⁴ Ministry of Labour and Citizens' Services, IM/IT Privacy and Legislation Branch. Statistics from CRTS are publicly available on this Ministry's website at: <http://www.msar.gov.bc.ca/privacyaccess/CRTSstats/index.htm>

¹⁵ The sign off sheets provided included all requests for the one year period, not just requests from the group of 8 complainants.

[34] Because the spreadsheet did not include average response times and because CRTS was not used consistently, it was not possible to determine the MOE's overall average response time for the 250 requests received during the two years in question.¹⁶ We therefore compared the average response time for the complainant group's requests with the cross-government average response time for the same time period. This did not allow any observation or conclusion on whether or not the MOE's response time for the complainants was any different from its overall average response time. It did, however, allow for some general observations regarding average response times.

[35] From the spreadsheet we were able to determine the number of access requests where the MOE requested a fee and so could compare the MOE's fee request rates for all requests with the MOE's fee request rates for the group of eight complainants.

[36] A final comment on the quality of the data is that the spreadsheet contained obvious date errors, did not clearly identify properly taken on-hold time¹⁷ and did not have a specific column for fee-related issues. We had to rely on the commentary in the spreadsheet for all fee-related information. It was quite possible that information relating to fees or other issues was not included in the spreadsheet. Therefore, the calculations set out below may not be as accurate as we might like.¹⁸

[37] **3.3 OIPC Calculations**—Using the above-noted information, we calculated the following:

Average Response Time June 2003 – June 2005	
MOE for the group of 8	74 business days
MOE for group of 8 (no fee)	61 business days
Cross Government 03/04 and 04/05	45 business days
Required response time (s. 7 FIPPA)	30 business days

Request for Review Rates	
MOE for the group of 8 (June 03- June 05)	33%
03/04 Review Rate Ministry of Forests	11%
03/04 Review Rate for AG/SG ¹⁹	1%
03/04 Review Rate for MCLS, OOP ²⁰	1%

Fees Levied June 2003 – June 2005	
MOE overall rate for June 03 to June 05	18%
MOE rate for group of 8	33%

¹⁶ Further investigation of the relevant underlying data, and considerable labour on the part of this office, likely would have yielded an overall average response time figure. However, in view of the resolution of this complaint, as discussed below, and the limited resources of this office, it was decided not to pursue further data.

¹⁷ A request is placed "on hold" where the requirements of s. 7 of FIPPA are satisfied.

¹⁸ Again, resolution of the complaint as discussed below meant that this is not a great concern for present purposes.

¹⁹ AG/SG = Ministry of Attorney General and Ministry of Public Safety and Solicitor General

²⁰ MLCS = Ministry of Labour and Citizens' Services; OOP = Office of the Premier

[38] On the face of these numbers, there appeared to be a significant problem with the MOE's processing of requests from the group of eight complainants. Even acknowledging that the 74 business days does not exclude on-hold time, this is an extraordinarily long average processing time. We also calculated the response time using only those requests where no fee was charged.²¹ The average response time was still 61 business days, well in excess of the average cross-government processing time reflected in CRTS data. When coupled with a review rate of 33% and a fee-charging rate twice the average for all requests to the MOE, it appeared that—although further analysis would be needed to make any firm findings—there might be some basis for the allegation of a systemic problem.

[39] **3.4 Complaint Resolution**—We then presented the above initial statistical findings to the complainants and to the MOE. The parties met and developed a plan for addressing the complainants' concerns. The plan had six core tasks for the MOE to complete, and timelines associated with each task, as follows:

1. Implement the Corporate Request Tracking System (CRTS)

Recognizing the value of the CRTS system in monitoring the response process, the MOE agreed to use CRTS to track all of its requests. At the time of the initial meeting between the parties, it was already using CRTS for all of its new requests. It has also hired a contractor to develop reports and to set data-input standards to ensure consistent data input by the MOE staff. The MOE also agreed to input all requests received in 2007.

2. Enhance the MOE's Information and Privacy Program for Effective Responses

The MOE restructured job functions within the FOI office to allow more focused attention on two important areas: processing requests and records management. The Information, Privacy, Security and Records Office is the MOE's FOI office responsible for processing access requests. The MOE agreed to appoint a senior analyst and to assign job duties to staff that focus either on processing access requests or on records management, but not on both in one position. The senior analyst (now called the Manager, Information Access) is responsible for supervising three positions dedicated to processing access requests. The Manager, Information Access is also responsible for managing and monitoring complex access requests, including cross-government requests and requests from interest groups. The MOE has completed these tasks and is in the process of re-writing job descriptions and seeking reclassifications of some of the positions in the FOI office.

²¹ One of the main reasons a request would be put on hold as permitted under the Act, would be that a fee estimate has been issued (see s. 7(4) of FIPPA). This calculation takes into account only the 22 requests made by the group of 8 complainants that did not include a fee. Therefore, 61 business days may be more indicative of the average response time.

3. Executive Messaging

The MOE agreed to develop and deliver a message from its executive management informing all staff of their obligations under FIPPA and encouraging the development of information disclosure practices outside the formal FIPPA processes. This message was delivered to staff on October 16, 2007. The MOE FOI office reports that it is monitoring the MOE's access request response times and plans to recommend additional executive messaging if MOE is not meeting or exceeding response time targets. The FOI office regularly canvasses program areas to identify training needs and delivers access training on an as-needed basis.

4. Report Card

Because the MOE has adopted CRTS and is developing specialized reports it will be in a position, by January 31, 2008, to produce a report card on its responses to access requests. The complainants have provided the MOE with their recommendations regarding the contents of these reports. There will be five report types:

- (i) disposition of requests;
- (ii) exceptions applied;
- (iii) fees charged and resolution of fee waiver requests;
- (iv) processing time including time on hold for fee and fee waiver processing; and
- (v) review, complaints or investigations by the OIPC.

Each report will compare the MOE's response by applicant type. For example, in the disposition of requests report, the MOE will report how many requests resulted in full disclosure, in partial disclosure, were abandoned and so on, for each type of requester. Requester types in CRTS include individuals, interest groups, political parties and media.²²

5. Ongoing Communication

The parties agreed to communicate directly with each other in future with a view to discussing and resolving issues as they arise. In particular, the MOE agreed that it would have its first report card ready by January 31, 2008 and would arrange a meeting with the complainants by the end of February 2008 to review and discuss the results of the first report card.

²² For a complete list of applicant types tracked in CRTS go to: <http://www.msar.gov.bc.ca/privacyaccess/CRTSstats/ReportsIndex.htm>.

6. Request Processing Changes

The MOE agreed to implement nine changes to the manner in which it processes access requests. As indicated below, seven of the nine proposed changes were immediately implemented:

- (i) Do not use sensitivity ratings in CRTS (implemented);
- (ii) Consider reducing the number of sign-offs (in process);
- (iii) Only disclose requester's name to program areas with consent or where necessary in order to process request (implemented);
- (iv) Fee waiver requests sent in with an access request will be considered without the need to resubmit a fee waiver request after the MOE issues the fee estimate (implemented);
- (v) Improve explanation for how each fee estimate is calculated—provide more detail (implemented);
- (vi) Re-assign authority for making decisions on fee waiver requests to a more senior position in the MOE (in process);
- (vii) Provide explanation for out of scope or non responsive severing in response packages (implemented);
- (viii) Use phased release of records where appropriate (implemented); and
- (ix) When staff go on vacation or are otherwise unavailable, files will be assigned to other staff who will ensure that the request is handled in a timely manner (implemented).

4.0 CONCLUSION

[40] Because the complainants were sophisticated groups with extensive experience using the access provisions of FIPPA and because new FOI office management within the MOE enthusiastically and willingly faced apparent concerns with its access process, the complaint was resolved by mutual agreement. In agreeing to take steps in the areas identified above, the MOE adopted many of the OIPC's recommended strategies for developing a successful access to information program, as outlined above. While the MOE has not yet fully implemented all of the steps agreed to, we are satisfied that, once implemented, the MOE will at that time have addressed the particular concerns of the complainants respecting past matters.

We recommend, in the interests of transparency and accountability for its compliance with s. 6 of FIPPA, that the MOE publish its first report card and continue to do so annually.

[45] Catherine Tully, Manager, Investigations and Mediation, conducted this investigation and prepared this report.

January 22, 2008

ORIGINAL SIGNED BY

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