



Privacy and Access in British Columbia

B.C.'s Freedom of Information and Protection of Privacy Act

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Legislation, Privacy and Policy Branch

Ministry of Technology, Innovation and Citizens' Services

February 2014



Agenda

- Introductions
- A high level overview of the *Freedom of Information and Protection of Privacy Act* (FOIPPA)
- Overview of privacy and personal information
- Case Study – collection, use, disclosure, security and retention of personal information
- Access –
 - “FOI” rights
 - Process, (i.e. How to make an FOI request)
 - Case Study - Exceptions (including Public Interest Paramount & Emergency Disclosure)



Legislation, Privacy and Policy Branch of the Office of the Chief Information Officer (OCIO)

What we do:

- Responsible for FOIPPA, *Personal Information Protection Act* (PIPA), *Document Disposal Act* (DDA), and *Electronic Transactions Act* (ETA) and all policy, standards and directives that flow from them.
- Leading strategic privacy initiatives across government
- Establishing government policy, standards and guidelines on access and privacy issues
- Providing services, support and leadership to assist ministries and other public bodies in complying with FOIPPA
- Providing input and advice on legislative proposals and reviews
- Supporting information provision and privacy training
- Responsible for investigating privacy breaches
- Managing the licence and sale of government-owned intellectual property



Information and Privacy Commissioner

- Information and Privacy Commissioner is an independent Officer of the Legislature
- Elizabeth Denham is B.C.'s Information and Privacy Commissioner
- The Office of the Information and Privacy Commissioner (OIPC):
 - conducts reviews and investigations to ensure compliance with FOIPPA
 - mediates FOI disputes
 - comments on FOI and privacy implications of proposed legislative schemes or public body programs



FOIPPA is distinct from B.C. private sector and federal legislation

- ***Freedom of Information and Protection of Privacy Act (FOIPPA)***
public sector access and privacy legislation; applies to “public bodies” in B.C.
- ***Personal Information Protection Act (PIPA)***
private sector privacy legislation; applies to “organizations” (more than just businesses) in B.C.
- ***Personal Information Protection and Electronic Documents Act (PIPEDA)***
applies to federal works, undertakings or businesses (banks, airlines, and telecommunications companies) applies to the collection, use and disclosure of personal information in the course of a commercial activity and across borders.
- Canada’s ***Access to Information Act*** and ***Privacy Act***
are the federal equivalents to the BC FOIPPA (access and privacy obligations for federal government institutions and the federally regulated)



Structure of the Act - Overview

- Part 1: Introductory Provisions
- Part 2: Freedom of Information
- Part 3: Protection of Privacy
- Part 4: Office and Powers of Information and Privacy Commissioner
- Part 5: Reviews and Complaints
- Part 6: General Provisions
- Schedule 1: Definitions
- Schedules 2 and 3: List public bodies
- *Freedom of Information and Protection of Privacy Regulation*

Purposes of FOIPPA (s. 2)

Makes public bodies more accountable to the public by

- providing a right of access to records,
- specifying limited exceptions to the right of access, and
- providing for an independent review of decisions made under the Act.

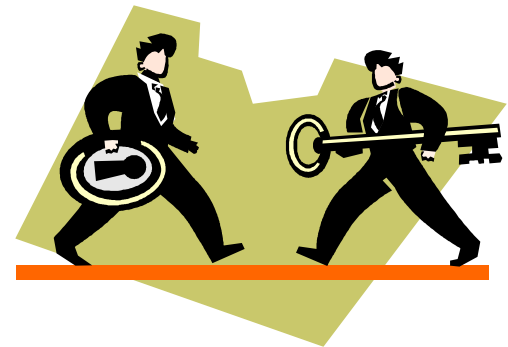
Protects privacy by

- giving people a right of access to their own information,
- a right to request correction, and
- preventing the unauthorized collection, use, or disclosure of personal information by public bodies.



Protection of Privacy

To protect personal privacy by preventing the unauthorized collection, use, or disclosure of personal information by public bodies.





What is privacy?

- It is not defined in FOIPPA, the *Personal Information Protection Act* (PIPA), or any legislation in Canada
- None of the statutes define “privacy” but aim to achieve it with rules for how personal information is to be collected, used and disclosed.
- Different types of privacy:
 - physical, spatial, informational



The foundation of privacy laws

Informational self determination

- an individual's personal information is their own
- to the extent possible, the individual controls how their personal information is collected, used and disclosed



Information Management Guiding Principles

Right Information
Right Person
Right Purpose
Right Time
Right Way

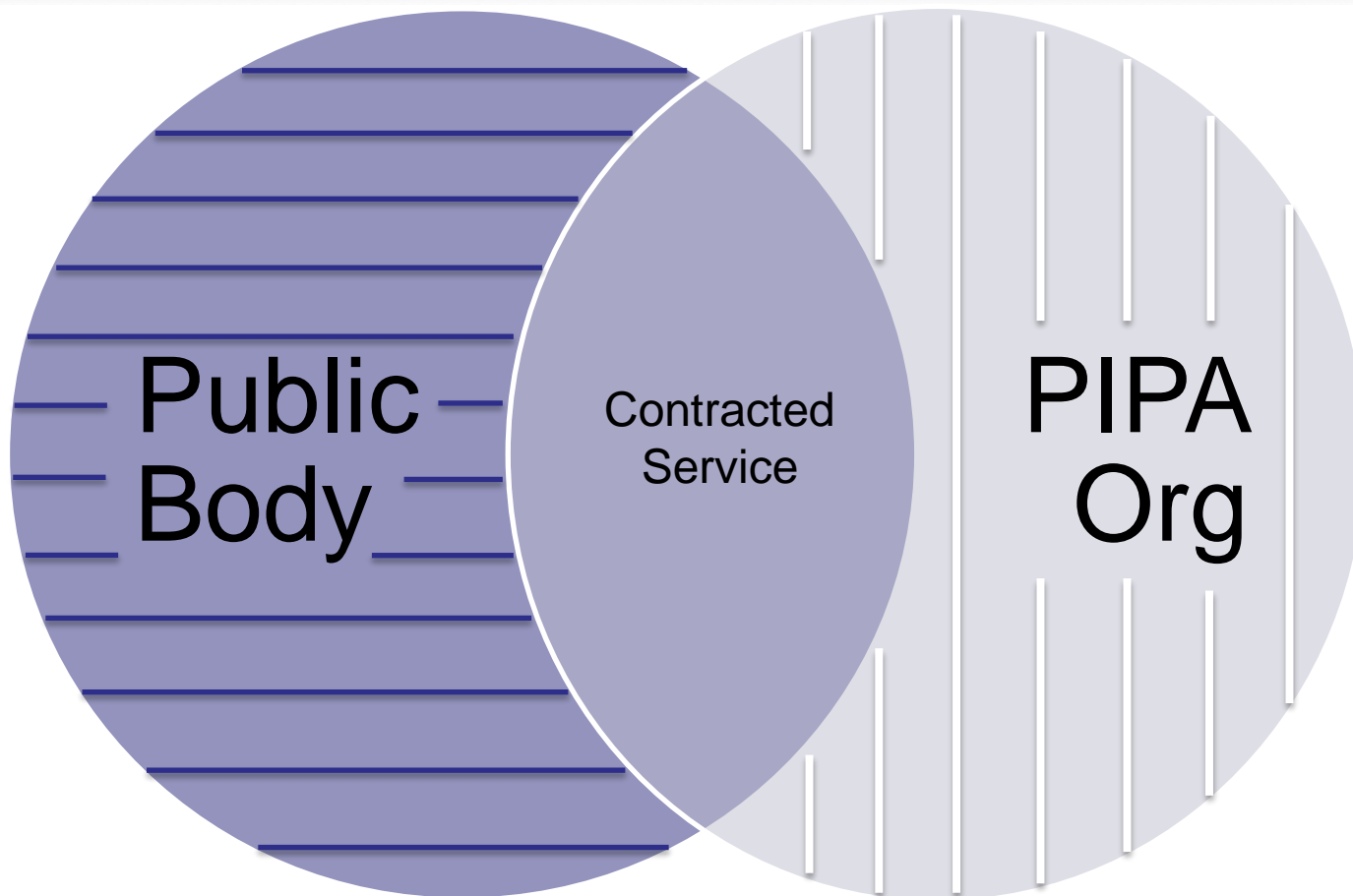
- Managed based on the “need to know” and least privilege principles
- Access only to the minimum amount of personal information required to perform employment duties
- Access permissions should be assigned consistently and kept up to date

The Public Body: Ministry of Wellness (“the Ministry”).

The Initiative: DNA Registration Program (“DNAR”).

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- The Ministry has announced it will be spending \$1 million on an initiative called the DNAR Program, which is intended to “promote good health and combat the detriments of known genetic illnesses for all citizens”;
- Every patient who visits a private laboratory for blood-work will have their DNA registered into the Ministry’s database;
- Labs are private businesses subject to the Personal Information Protection Act (PIPA). They are under contract with the Ministry and have agreed to provide these services for a fee;
- Labs will make patients aware if their DNA code is determinative of, or which predisposes them to, certain serious illnesses later in life (such as TBA) so that they can arrange their affairs and, in some cases, seek preventative medicine.
- In all cases where preventative medicine is required, financial assistance is available from the Ministry of Wellness);



BEACON HILL LABORATORY



Section 1: Contact Information

Patient Name: (Last) _____ (First) _____ (MI) _____
 PHN: _____ SIN # _____ Patient Address: _____
 Home Phone: _____ Cell: _____ Birthdate: _____ Sex: M F
 Education: Elementary High School University/College Graduate School Occupation: _____
 Family Physician: _____ Phone: _____ Do you like your current physician: Y N

Section 2: Past History:

☐ Allergies, Type: _____ ☐ Birth defects or abnormalities
☐ Exposed to tuberculosis ☐ Measles ☐ Big Screen TV ☐ Influenza
☐ Mumps ☐ Diphtheria ☐ Rheumatic ☐ Polio
☐ Tonsillitis ☐ Pneumonia ☐ Diabetes Type: _____
☐ Cancer, Type: _____ ☐ Other Diseases _____
☐ Surgeries (dates) _____ Current Medications (if any): _____

Section 3: Examination Details

Date of last physical examination _____ Reason: _____
 Hospitalizations _____ Dates _____ Reason: _____
 X-Rays: Chest _____ Stomach _____ Gallbladder _____ Kidney _____
 Preferred gender of lab examiner: _____ Gender of previous lab examiner: _____ Political preference _____

Section 4: Disclaimer

The information on this form is collected by the Beacon Hill Laboratory for the purposes of performing blood analysis. The information is also collected by the Ministry of Wellness for the purposes of administering, planning and evaluating the DNA Registration (DNAR) Program under the authority of sections 26(c) and 26(e) of the *Freedom of Information and Protection of Privacy Act*. If you have any questions about this collection, you can contact the Director of the Department of Administration at the Ministry of Wellness, 1234 Seaside Avenue, Victoria, BC, V10 2L2, (250) 111-0000

Section 5: Consent

In the result of a positive identification of a genetic disease/disorder I hereby consent to the Ministry of Wellness disclosing my results to any or all authorized pharmaceutical companies registered inside or outside Canada in order for those pharmaceutical companies to contact me regarding any medication that may assist me (for example, to alleviate symptoms).

Please indicate your consent by signing and dating immediately below:

Patient's Signature _____ Date _____ Patient's Current Mood _____

Section 6: Statement of Accuracy

All Statements on this patient intake form are accurate and true to the best of my knowledge. I understand that treatments will be based on the information provided herein. By signing here I also acknowledge and verify my citizenship as Canadian.

Patient's Signature _____ Date _____

Section 7: FOR OFFICE USE ONLY

Attractiveness of patient (1-10 scale, 10 being the most attractive): _____



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What is “Personal Information”?

- “Personal information” means recorded information about an identifiable individual other than contact information”
(Schedule 1 definition in FOIPPA)
- **Examples of your personal information:**
 - Race, national/ethnic origin, skin colour
 - Religious or political beliefs or associations
 - Age, sex, sexual orientation, marital status
 - Fingerprints, blood type, DNA information, biometrics
 - Health care, educational, financial, criminal, employment history
 - Opinions (unless it is your opinion about someone else)



Collection of Personal Information (s. 26)

- Personal information can only be collected if:
- Authorized under an Act
 - For law enforcement
 - Related directly to and necessary for an operating program or activity
 - Consent in limited circumstances (set out in regulations)
 - Necessary for planning or evaluating a program or activity of the public body
 - The information is collected by observation at a public and voluntarily attended presentation, ceremony, performance, sports meet or similar event
 - Other authorities (domestic violence, provincial identity services)

BEACON HILL LABORATORY



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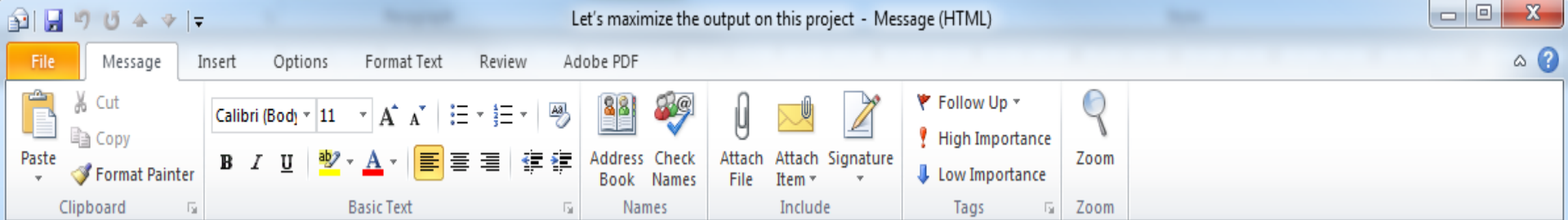
Patient's Signature _____ Date _____

Section 7: FOR OFFICE USE ONLY

Attractiveness of patient (1-10 scale, 10 being the most attractive): _____



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Handout



From: Executive Director
Sent:
To: Senior Manager
Cc:
Subject: Let's maximize the output on this project

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Handout**

Hi Anna,

Can we ask patients where their parents are from?

I saw a documentary that said that people from Atlantis
are more susceptible to TBA!

Martine

Martine Lesterton | Executive Director | Department of Administration
Ministry of Wellness
9 ¾ Hogsmeade Street, Victoria, B.C. V8C 1BZ
(250) 555 5074

BEACON HILL LABORATORY



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Patient's Signature

Date

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Attractiveness of patient (1-10 scale, 10 being the most attractive): _____



From: Executive Director
Sent: Senior Manager
To:
Cc:
Subject: A Great Idea!

Hi again Anna,

I've been thinking, can we send "congratulations" cards to women whom we find out are pregnant through the blood tests?

Martine

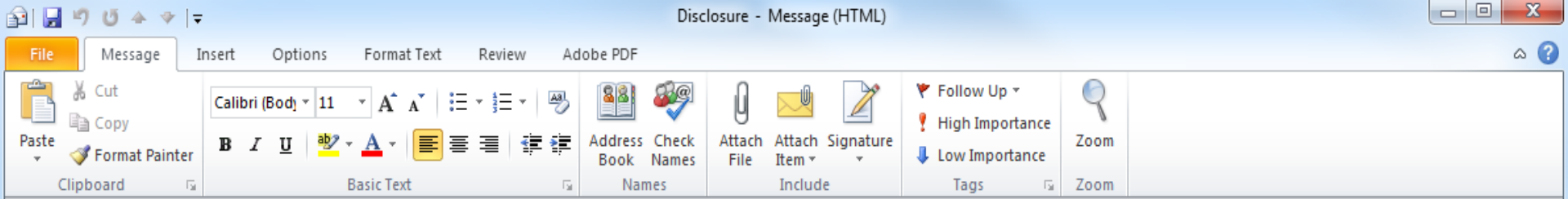
Martine Lesterton | Executive Director | Department of Administration
Ministry of Wellness
9 ¾ Hogsmeade Street, Victoria, B.C. V8C 1BZ
(250) 555 5074

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Use of Personal Information (s. 32)

- A public body may only use personal information:
 - For the purpose for which it was obtained or compiled, or for a consistent purpose.
 - A consistent purpose (s. 34):
 - has a reasonable connection to the original purpose, and
 - Is necessary to perform the duties of, or for operating a legally authorized program, of the public body
 - If the individual has consented to the use.
 - For a purpose for which the personal information has been disclosed to it under the Act.



From: Executive Director
Sent:
To: Senior Manager
Cc:
Subject: Disclosure

Hi all,

I received emails today from our department of Further Study and from the Ministry of Evaluation. Both want us to send them data sets for their own initiatives.

Do you see any problems with this?

Thanks,
Martine

Martine Lesterton | Executive Director | Department of Administration
Ministry of Wellness
9 ¾ Hogsmeade Street, Victoria, B.C. V8C 1BZ
(250) 555 5074

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Disclosure of Personal Information (ss. 33, 33.1, 33.2)

Disclosure only in limited circumstances

For example:

- Consent (written)
- For the purpose for which was obtained or compiled or a consistent purpose
- If an enactment authorizes disclosure
- To comply with a subpoena, warrant, or order

Inside versus outside Canada – important distinction

Disclose based on a need to know

- limit distribution
- limit content

BEACON HILL LABORATORY



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Page 2 of Handout

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Please indicate your consent by signing and dating immediately below:

 Patient's Signature

 Date

 Patient's Current Mood

Patient's Signature

Date

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Attractiveness of patient (1-10 scale, 10 being the most attractive): _____

Accuracy and Completeness (s. 28)

If...

- personal information is in the custody or under the control of a public body, and
- will be used by or on behalf of the public body to make a decision that directly affects the individual

... then the public body must make every reasonable effort to ensure that the personal information is accurate and complete.



The Right to Correction (s. 29)

- Individual has right to request correction of personal information
- Section 29 applies to factual errors or omissions in personal information, not to expressions of judgement
- The right to request correction is distinct from the public body's duty to annotate
- Section 29 does not function as an avenue for appeal





Retention (s. 31)

- Must retain personal information for at least 1 year after it is used to make a decision that directly affects the individual so that the individual has a reasonable opportunity to access it;
- This is the minimum standard – ensure that you also meet other applicable legal and policy requirements.



FOIPPA: security measures

- A public body must make reasonable security arrangements to protect personal information (s. 30)
- Should be appropriate and proportional to the sensitivity of the personal information e.g. suspension information vs lunch order
- Storage & Access must be in Canada (s. 30.1)
- Safeguards should include:
 - Physical measures (e.g. locked file cabinets, restricted access to offices)
 - Technological measures (e.g. user IDs, passwords, encryption)
 - Have policies and procedures for keeping files secured

Questions?



Access to Information a.k.a. Freedom of Information (FOI)



A Culture of Openness

- Increased transparency
- Alters how public bodies handle information
- Common sense (“what if it were my information?”)
- Not to replace other existing methods of access (except for personal information)
- Avenue of last resort





Coverage of FOIPPA

APPLIES TO:

all **records**
in the **custody** or under the **control**
of a **public body**

There are numerous B.C. **public bodies** covered including government ministries, universities, health boards, governing bodies of professions, municipalities, regional districts and police boards.



What is a “Record”?

- A “record” is any information recorded or stored by any means whether in hard copy or in electronic format
- This includes books, documents, maps, drawings, photographs, letters, e-mails, telephone records, black books, vouchers, papers, etc...





What Does “Custody” Mean?

- Physical possession of the record
- May not be responsible for the actual content of the record
- Responsible for providing access to and security of the record
- Responsible for managing, maintaining, preserving and disposing of the record



What Does “Control” Mean?

Control means:

- Authority to manage, restrict, regulate or administer the use or disclosure of a record

Indicators of control are that the record:

- was created by an employee of a public body,
- was created by a consultant for the public body,
- is specified in a contract,
- is subject to inspection, review or copying by the public body under contract.



Right of Access

- The public has a right to request access to any record in the custody or control of a public body (s.4)
 - Includes the right to seek access to personal information whether in a case file, or elsewhere (e.g. email and memos)
- **BUT** right of access limited by exceptions to disclosure (s.12 – 22.1)
- **AND** subject to payment of fees as required (s.75)

Note: no fees if the request is for the applicant's own personal information

“Creative FOI”



Manchester rockers performed a song in front of dozens of the CCTV cameras that proliferate around Britain then made FOI requests for the tapes, thereby saving the cost of video production.

They then cut the tapes into their new video (not all of the footage is from surveillance cameras, but most is).

http://www.youtube.com/watch?v=W2iuZMEEs_A

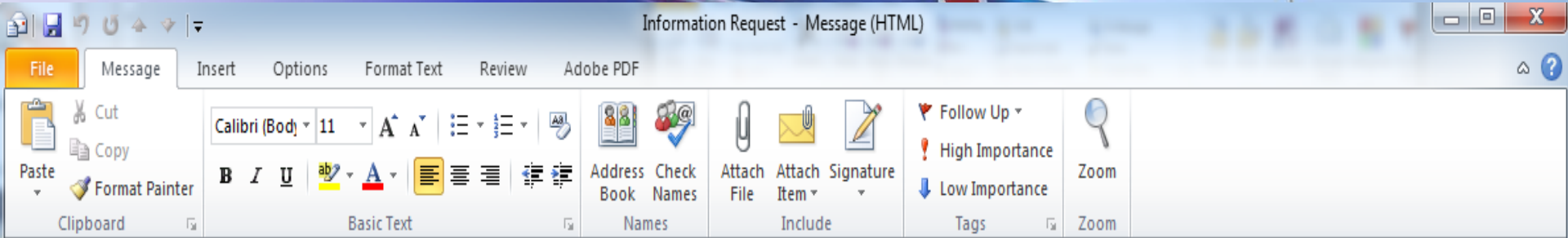
The Request Process (s. 5)

The applicant:

- Must make a **written** request
- Must provide **sufficient detail** to identify record sought
- May ask for a copy or to examine record
- Must provide proof of **authority if acting** for another person*
 - persons under 19 years of age
 - persons who have committees
 - deceased persons



* See also s. 3, 4, 5 of the FOIPP Regulation



From: klm123@webmail.com
Sent: 10 January, 2014
To: Ministry of Wellness General Info Line
Cc:
Subject: Information Request

**Page 6 of
Handout**

To whom it may concern,

I request any and all records regarding the DNA Registry program.

I require these records within 2 weeks of today's date.

Thank-you



Duty to Assist s. 6

- Positive duty in law to ensure that requests are responded to “openly, accurately and without delay”
- Includes a requirement to create records
- If the decision is that “no records exist”-- make sure that is correct
- If there are no records, tell applicant:
 - other sources for the records
 - other available records that are similar to what the applicant has requested.



Timelines for Responding

- A public body has 30 business days to respond to a request (s. 7)
- A public body may extend the timeline for responding by 30 days, if (s. 10)
 - A large number of records has been requested or must be searched
 - There is not enough detail to enable the public body to identify the record
 - More time is needed to consult with a third party or other public body
 - The applicant has consented to the extension
- Further extensions for the above four reasons may be granted to the public body by the Office of the Information and Privacy Commissioner (OIPC)



Fair and Reasonable Extension – s.10(2)(c)

- Even if there are no volume, detail and consultation concerns:

The Commissioner can grant time extensions:

- if the Commissioner considers it fair and reasonable for the public body to take an extension (i.e. when unexpected circumstances occur that prevent them from responding to access requests on time)



Fees

- Fees may be charged for locating, retrieving, producing, preparing, shipping and handling, and copying records
- Cannot charge fees for:
 - Applicant's own personal information
 - First 3 hours of search for records
 - Time spent severing a record
- Written estimates must be provided (track time!)
- Applicants may request a fee waiver
- Fees prescribed by regulation



Disregarding Requests

- The Commissioner may authorize a public body to disregard requests that:
 - Would unreasonably interfere with the operations of the public body because of their Repetitious or Systematic nature
 - OR
 - Are Frivolous or Vexatious



Tips for responding to requests

1. Communicate, communicate, communicate!
2. What does the applicant really want?
3. Raise awareness of legislated timelines and other requirements in FOIPPA
4. It's not personal – It's business!
5. Consider a 'staged' release of records



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The Public Body: Ministry of Wellness (“the Ministry”).

The Initiative: DNA Registration Program (“DNAR”).

- The DNA Registration Program (DNAR) was approved by a cabinet submission on December 1st, 2013
- The program was announced by government on January 4th, 2014

From: Anna Philips
Sent: 5 July, 2013
To: Kevin Adams
Cc: Kris Kyle
Subject: DNA Registration Update - Confidential

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Hi Kevin,

I just wanted to provide you with a bit of an update on the DNA Registration program. As you know, the DNAR Cabinet submission is moving forward as planned and therefore, it is imperative that we proceed in a timely fashion.

I've scheduled a meeting with Bob Anderson, our solicitor, to discuss some of the privacy implications associated with the DNAR program, and I've attached a list of questions that we're planning to ask Bob when we meet. Could you look at this list and let me know if you have any additions, comments or suggestions.

I spoke with Ahmed yesterday, who proposed that we roll this out as a pilot program first with a phased implementation. The following labs were identified as potential first-wave adopters of the initiative:

- Abbotsford Laboratories
- Beacon Hill Laboratories
- Castlegar Laboratories
- Duncan Laboratories

Which reminds me, how is your Cabinet submission going on the Active Youth Program? May I advise that Joan attend that meeting, as she's more of an expert than I when it comes to privacy matters.

It was great seeing you and your lovely wife for coffee yesterday, let's do lunch next week. BTW, I'll be working from home next week, so lunch will have to be uptown.

Anna

**Anna Philips | Project Manager | [DNAR Program](#) | [Department of Administration](#)
[Ministry of Wellness](#)**

9 ¾ Hogsmeade Street, Victoria, B.C. V8C 1BZ
' (250) 555 5074

"I have a condition that prevents me from dieting: it's called being freakin' hungry!" - Maxine



Exceptions and Severing: Applying Exceptions to Disclosure

- Must release unless an exception applies
- Disclosure should be the rule, not the exception
- Two types of exception:
 - Mandatory and Discretionary

**See Matrix
Handout**



Discretionary Exceptions

- The head of a public body may refuse to disclose requested information.
- Two parts to applying a discretionary exception
 - Does the exception apply?
 - Exercise discretion

From: Anna Philips
Sent: 5 July, 2013
To: Kevin Adams
Cc: Kris Kyle
Subject: DNA Registration Update - Confidential

Page 7 of Handout and Matrix Handout

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**Anna Philips | Project Manager | [DNAR Program](#) | [Department of Administration](#)
[Ministry of Wellness](#)**

9 ¾ Hogsmeade Street, Victoria, B.C. V8C 1BZ
' (250) 555 5074

"I have a condition that prevents me from dieting: it's called being freakin' hungry!" - Maxine

Public Interest Paramount – s. 25

Overrides any other provision of the Act:

- Whether or not request for access made
- Must release *information*, without delay
- To the public, affected group or applicant
- Information about a risk of significant harm to environment or health or safety of the public or a group of people; or other disclosure which is, for any other reason, clearly in the public interest.



Useful Links

Legislation, Privacy and Policy Branch: http://www.cio.gov.bc.ca/cio/priv_leg/lpp.page?

OCIO – Freedom of Information and Protection of Privacy - Public Sector (includes Policy & Procedures Manual; PIA Process with Template; Contracting link to PPS; etc):
http://www.cio.gov.bc.ca/cio/priv_leg/foippa/index.page?

The Freedom of Information and Protection of Privacy Act:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

BC Office of the Information and Privacy Commissioner: <http://www.oipc.bc.ca/>

BC Office of the Information and Privacy Commissioner – Sectional Index:
<http://www.oipc.bc.ca/rulings/sectional-index.aspx>

Federal – Office of the Privacy Commissioner of Canada: <http://www.priv.gc.ca>



Questions?





Contact Information

**BC Privacy and Access Helpline:
250-356-1851**

(Enquiry BC 1 800 663-7867)

Privacy.Helpline@gov.bc.ca