



March 18, 2013

Honourable Ben Stewart  
Minister of Citizens' Services and Open Government  
Room 232, Parliament Buildings  
Victoria BC V8V 1X4

Dear Minister Stewart:

I am writing further to one of the recommendations made in my recent Investigation Report F13-01, *Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia*.

In my report, I recommended that:

*... "government create a legislative duty within the Freedom of Information and Protection of Privacy Act ("FIPPA") to document key decisions as a clear indication that it does not endorse "oral government" and that it is committed to be accountable to citizens by creating an accurate record of its actions."*

The idea behind this recommendation was that government should entrench, in legislation, a requirement for public bodies to document the decisions, actions, advice, recommendations and deliberations of their officials. The duty to document would include requirements for the securing and preservation of records in the custody of the public body.

All of the current legislation dealing with records and information management, whether it be the *Document Disposal Act* (enacted in 1933) or the *Freedom of Information and Protection of Privacy Act* (proclaimed in 1993), was designed in a paper-based environment. The nature of records and the basis on which they are produced and shared has changed dramatically. Record keeping in an environment where documents are developed and shared through mobile devices and instant messaging is a huge challenge.

One possible solution is a new broad regulatory regime based on modern records management principles that incorporates the complete life-cycle of each record, from creation to use, storage and disposition. A statutory duty to document could form one component of a package of measures, including adequate security for information, in both paper and electronic form, and facilitate convenient and reliable access.

In order to ensure that records are secured and preserved, new regulations should also clarify the concept of transitory records so that substantive records are preserved, and limit the use of personal email accounts by employees in the conduct of business.

Regardless of the form of regulation, it should include effective independent oversight and sanctions.

Dealing with the challenges of records management in an electronic age would bring several benefits to both government and the public. Good records management provides the following benefits:

- openness and transparency,
- effective decision-making,
- preservation of corporate memory as public servants change positions or retire,
- accurate reporting of decisions to the public, and
- documentation of government's legacy for future generations.

There are many precedents for a statutory duty to document, notably the US *Federal Records Act*, the UK *Public Records Act*, the NZ *State Sector Act*, the *Public Records Act* in Queensland, and a State Records Act in other Australian states. From my perspective, it would be preferable for a new information management regulatory regime in B.C. to apply in some form to all public bodies because it is in citizens' interest to have consistent and comprehensive records management standards across the public sector (an advantage of including the duty within FIPPA).

The Government of British Columbia has been recognized as a leader in the area of open government. Government can demonstrate leadership in this field by committing to a modern information management regulatory regime, of which a duty to document is a key element. It would be a new and important step towards improving accountability, transparency, good governance and good government. It would enhance public trust and confidence in both elected officials and in the public service.

I am available to meet with you to discuss this matter further at your convenience.

Sincerely,

**ORIGINAL SIGNED BY**

Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia

pc: Kim Henderson, Deputy Minister  
Ministry of Citizens' Services and Open Government