



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

February 14, 2014

Honourable Suzanne Anton, Q.C.
Minister of Justice and Attorney General
Ministry of Justice
PO Box 9290 Stn Prov Govt
Victoria BC V8W 9V1

Dear Minister:

Re: Bill 3 – *Missing Persons Act*; OIPC File F14-56387

I am writing to provide comments on Bill 3 – the *Missing Persons Act*, which you tabled before the Legislative Assembly on February 13, 2014.

I understand the purpose of Bill 3 is to implement the recommendations made by the Honourable Wally Oppal, Q.C., following the Missing Women Commission of Inquiry. I believe the implementation of those recommendations regarding the investigation of missing persons is essential to ensuring the safety of British Columbians. I support the actions taken by government to accomplish this through the enactment of legislation that assists police forces to get timely access to information that may assist in locating missing persons.

In his report Mr. Oppal recommended that government “enact missing persons legislation to grant speedy access to personal information of missing persons without unduly infringing on privacy rights.” I understand and endorse the need to expedite the production of records in instances where a missing person’s life or safety may be in danger, or where there is imminent risk of destruction of those records. However, I am concerned that Bill 3 authorizes this expedited access without providing for sufficient transparency or oversight of emergency demands for records by police forces, and without limiting subsequent disclosure of that information for purposes other than locating missing persons.

I believe the following three proposed amendments would assist in ensuring that personal information is collected in a manner that is transparent to the individuals involved. My proposals would also ensure accountability for the personal information that is subsequently used and disclosed.

Emergency Disclosure Demands

Bill 3 would provide authority for police forces to compel the production of records that may assist them in finding a missing person. The process provided for in the Bill would require the oversight of the judiciary unless a member of a police force believes an emergency demand is justified, at which point s. 2 (b) of the Bill would authorize the member to demand the records without seeking a court order.

The Bill would require that a member making an emergency demand for records file a written report with the officer in charge as soon as practicable, and that the police force report annually on the number of emergency demands that are made by its members. I believe the ability of the state to compel the production of records about its citizens is a significant intrusion on the privacy of those citizens. It is not an action that should be undertaken lightly, which is the reason why such action is generally associated with some level of oversight by the judiciary. In authorizing police forces to make emergency demands for records, the Bill would remove this judicial oversight without providing adequate alternative measures for transparency and accountability.

I recommend that my office be notified after an emergency disclosure demand is made. This would not be designed as an approval mechanism but would enable my office to monitor the use of emergency demands, and evaluate over time whether they are being undertaken in an effective manner that is proportional to the privacy impacts on the individual whose records are disclosed.

This notification could easily occur when the member files the written report with the officer in charge, as is already required by s. 13(2). For example, that section could be amended to require that the officer in charge forward a copy of the written report to my office. This process is similar to that which is followed by a police force when it notifies the public under s. 25 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") that a dangerous offender is being released from prison. My office is simply advised by the police force that it has issued such a notice, and the reason that notification is in the public interest.

Notification to Individuals

The Bill provides authority for police forces to demand the records of missing persons as well as records of third parties who may be in the company of or who were last seen with the missing person. However, it does not provide for notice to those individuals whose records are collected by police forces. Individuals should know who is in possession of their personal information, and the purpose to which that information is being put. I recommend that individuals whose information is collected pursuant to the *Missing Persons Act* be notified of that fact within a reasonable period of time after the information is collected.

This notice should indicate the authority for the collection of the information and what information was collected. A similar provision is in place in FIPPA, where s. 33.1(m) authorizes disclosure of information if compelling circumstances exist that affect anyone's health or safety. In that section, the public body disclosing the information must mail notice of disclosure to the last known address of the individual the information is about, unless giving that notice could harm someone's health or safety.

Disclosure of Information for Purposes other than Investigating Missing Persons

Part three of the Bill provides for the disclosure of personal information, notwithstanding FIPPA. Government's intention is to narrow the disclosure of information collected under the *Missing Persons Act* to the purpose of locating missing persons or to a related criminal investigation. However, s. 21(2)(a) of the Bill also authorizes the disclosure of information for a purpose that is *consistent* with the purpose of locating a missing person. This significantly broadens the authority for disclosure of information collected under the *Missing Persons Act*. I do not believe personal information disclosed under this proposed legislation should be used for any other purpose. Similar provisions exist in FIPPA, where the intent is to provide some flexibility for public bodies that may have diverse and wide-ranging programs and activities. This is not the case with the *Missing Persons Act*. Its purpose is narrow and specific to assist in locating missing persons.

For the reasons stated above, I recommend that the authorization for disclosure of information for a *consistent* purpose be removed from the Bill.

I wish to emphasize that these recommendations will not hinder the timely access to personal information needed for the investigation and location of missing persons. Nor will they result in a significant administrative burden for law enforcement agencies. Rather, they will ensure that the extraordinary authorization for access to personal information that would be enabled by Bill 3 is carried out without unduly infringing on privacy rights, in a manner that is transparent to the public and ensures accountability for the collection, use and disclosure of that information.

Thank you for considering these proposed amendments.

Sincerely,



Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Leonard Krog, MLA
Opposition Critic for Justice
Lori Wannamaker, Deputy Solicitor General
Ministry of Justice