Office of the Information & Privacy Commissioner for British Columbia

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# ADDRESS TO VIP SPEAKERS' DINNER

## ACCESS AND PRIVACY CONFERENCE - EDMONTON, ALBERTA

## THE INFORMATION REVOLUTION: OPEN GOVERNMENT – OPEN DATA

## PRESENTED BY ELIZABETH DENHAM, JUNE 16, 2011

I have been in access to information and privacy almost as long as the Alberta and British Columbia laws have been in existence. At the beginning of my working life, in the early 1980's, it just wasn't possible in Canada to decide to "go into" the access and privacy field, and it certainly wasn't on any career counsellor's list of options available to humanities grads! The federal access to information law was under consideration, but still really a glint in the eye of Communications Minister Francis Fox. Most of the provincial laws were still a decade or more down the road.

My first job in access and privacy was at the Calgary Health Region in 1996. Health authorities were just coming under the Act, and the CHR needed someone to plan and steer the organization's compliance with the Act. The Health Region was a bit of a firestorm of access requests then, a political target in the wake of Ralph Klein's government's closing or blowing up hospitals. The Region's decision-making documents were hotly sought after by media, special interests groups and the opposition.

Freedom of Information was the focus of that job. And requests were paper based, there were no internet technologies, and most official documents still existed primarily in hard copy form. Imagine!

I left the CHR at the turn of the century, on the eve of Y2K (I was afraid of all the computers blowing up and I didn't want to deal with it!) and for the next ten years, focused almost exclusively on privacy work – as a consultant, and then as a privacy regulator in Alberta and in Ottawa.

And now I have come full circle, am back in the thick of the access to information world, and HOLY CRAP HAS THIS WORLD CHANGED!!!!!!!! I thought privacy was challenging—most days privacy and technology made my head hurt! But access to information is equally challenging, and equally sexy. Accelerating technology and accelerating public expectations are game changers in access to information.

We have new channels for dissemination of information, and a call for data in the raw! We have new advocates and exciting new voices at the access to information table. It is heartening that grass roots groups such as ChangeCamps are meeting across the country. We have websites dedicated to government data leaks—Wikileaks may have changed the landscape forever. In the past two years, on the international level, there are exciting new legislative and policy initiatives improving government transparency—including Obama's vaunted Open Government Directive, and the UK and Australia and New Zealand's open government programs. Our own federal government launched its open government data portal in March of this year—citing the need to provide access to government data to foster innovation, job creation and community services for Canadians. Heady stuff! The BC provincial government has led the country in releasing geographic data through GEOBC. The BC government also has significant plans in the works to implement a comprehensive open government initiative. I've been consulted in the past few months and am very encouraged with their plans to date. The BC government has an opportunity to be a leader in Canada in this regard, as open government is one of our new Premier's top three stated priorities.

And there are many laudable **local** government initiatives—for example—the City of Edmonton and the cities of Vancouver and Nanaimo are opening up information and data in electronic reading rooms and portals.

These Open Government initiatives are part of a larger movement often called "Gov 2.0". Gov 2.0 attempts to provide more effective ways to deliver relevant information to people—promises of openness, participation and collaboration. Gov 2.0 includes integration of tools such as wikis, development of government specific social networking sites, use of blogs, RSS feeds—all of these tools are helping governments provide more information in a way that is more immediate and useful to the people involved. In many cases, the users are able to combine different kinds of data in ways that governments may not have considered, but are useful to citizens and businesses themselves.

Open information and Open Data, a subset of Open Government, are all about public bodies adopting the PUSH method of information disclosure, supplementing but not substituting the need for the FOI process. They are about letting routine disclosure into the FOI game.

Given how hard it is to change how government works, we know that adopting the push method requires an internal culture shift equal to, no GREATER than the pressure from the outside. And that's fantastic! Making data available without the necessity of a formal access request will, hopefully, free up our access professionals' time to work

on the requests that still require careful consideration and application of the laws. The default under the Act is set to access, after all, unless there is a clear reason to withhold.

**BUT HERE'S THE RUB**. Federal, provincial, territorial and local governments often announce or rush to open government initiatives or issue directives, embracing the opportunities of the technology and the momentum without thinking the whole thing through. Make no mistake—I am a fierce proponent of open government, but there are risks in moving too quickly on implementation.

I want to share with you a couple of cases on point.

In October 2010, after a seven-year hiatus, BC Ferries once again became subject to the FIPPA in BC. BC Ferries adopted a policy whereby responses to FOI requests would be posted on line and made publicly available. Their policy was to release the information before, or at the same time that the person who actually requested the records received them. My office received a complaint from an advocacy group arguing that BC Ferries' practice of simultaneously disclosing information to the applicant—and posting it to the world, offended the purposes of the Act. The complaint was based on media's concern that this practice would prematurely share the fruits of a journalist's labour with the public at large, and would waste what they may have paid—hundreds or thousands of dollars in fees for the documents, only to have the records posted and available to other media outlets. The complainant argued that the practice contravened the duty to assist and an individual's right of access under the Act. BC Ferries argued that their practice was not only legally compliant with the Act, but that it was an important open government initiative.

I examined the disclosure log issue in excruciating detail—it is clear to me that the devil is really in the details. Although there are no legal grounds for prohibiting this practice, (not surprising considering that the Act was drafted before internet technologies)—I found that the simultaneous disclosure practice **impairs the information gathering function of the media**, and this ultimately has a negative effect on the ability of citizens to hold public bodies accountable. I found that the practice frustrates the spirit of the legislation, and recommended that public bodies build in a minimum 24 hour delay before posting FOI results on line. BC Ferries complied, and other public bodies considering that practice have told us they will implement a delay. On first blush, this practice seemed like a no-brainer, get more information out to more people and this will bring more expertise and more perspectives in civil discourse. But there is a nuance here—I deeply believe that it is in the public interest to protect the ability of the media and other groups to identify issues and instigate dialogue in the first place.

Another case on point—open data initiatives must be embraced, but again, careful thought and planning has to be put into the decisions to publish machine searchable data, especially to ensure that privacy is protected. It is critical that in the rush to provide online datasets, privacy is protected. This is no simple task. Governments may remove identifiers from data sets, but, given the power of analytics today, we are all

making a mistake if we think we have privacy when we "scrub data". Scrubbing data just isn't enough to keep our privacy interests protected. Examples of the failure of anonymization and the possibility of re-identification are common in the private sector: AOL's release of anonymized search queries, and Netflix's release of a data base of movie recommendations. These were altruistic moves on behalf of the companies to provide useful data for researchers and the public.

In the Netflix case, the data itself seemed anonymous, but when some smart young techies combined movie recommendations found on the internet with the Netflix data, they identified individuals. The trouble with personal information is that it is an ever-increasing category. Ten years ago no one would argue that search queries were personal information. Today, that debate is over. As Paul Ohm and Latanya Sweeney have written, advances in analytics and re-identification expose promises of privacy protection as illusionary. The real difficulty is that we have no clear idea in advance which pieces of seemingly harmless data will turn out to identify individuals.

**So, what do we do here?** What are our respective roles in stoking the open government flames, and mitigating risks of the programs going off the rails? We HAVE to find ways to encourage the culture shift, use the e-channels, and support these somewhat vulnerable initiatives, but also to move at a thoughtful pace.

As Information and Privacy Commissioner, I have a clear responsibility to assist and advise as we work out the kinks in the armour. But usually, regulators have the law behind us—here, we mainly have the goodwill of bureaucrats and politicians. Commissioners can advocate for proactive disclosure to be mandated in law. And in the meantime, we can use the tools available to us—develop guidance and best practices (as we did in the BC Ferries report), white papers, consultations, report cards, persuasion and charm! And we can allow the public bodies the space to get it wrong sometimes. It is understandable, if, in their enthusiasm to be open and transparent, they occasionally have to back up or rethink a new initiative due to unforeseen consequences. I am not saying we turn a blind eye to negligence, but we need to support efforts to thoughtfully get information in the hands of citizens. We can't encourage them to make information available, to be on the bleeding edge—if we are too scared of possible surface wounds. It is the deep cuts we want to avoid.

Public bodies have to see incentives to invest in these initiatives, and it takes a great deal of courage, and determination to get through the technical and policy challenges. They need support from the public (and from Commissioners) when they move forward. They need acknowledgement for the data that is released, not just criticism from the media and interest groups for what is NOT yet posted. All of this will only dampen the enthusiasm. On the flip side, public bodies will shoot themselves in the foot if the "information" they routinely release is in fact spin, propaganda. There is definitely a tension in open information initiatives.

We need to move slowly through comprehensive programs that balance access and privacy. Provincial and territorial commissioners with responsibility for both, are uniquely placed to provide guidance to government, and to find ways to support this cultural shift.

Like any cultural shift, we do not yet realize where this is going. But we do know that the public expects something more from government. And I believe that government leaders are catching on to the fact that traditional models of reactive information access must be updated to account for the enormous changes brought about by revolution of information technologies.

After 10 years away, I know that there has never been a better time to be in access to information. This will be fun!

Thank you all for your kind attention to my musings tonight. And I congratulate Wayne MacDonald and the University of Alberta for the yeoman work you have done with the IAPP program, and especially in hosting this important conference over the past 11 years—a conference which focuses on access to information. Recognized nationally and internationally, the award-winning Information Access and Protection of Privacy Certificate program (IAPP) at the University of Alberta is Canada's first and only post-secondary information rights program. The IAPP program serves the needs of a rapidly-emerging profession and an area of increasing importance in the public and private sectors. I thank both Wayne McDonald and Frank Work for their work and support for this important program.

It is critical to keep the focus on access and keep the dialogue going!

Thank you again for your attention this evening, and to Deloitte for sponsoring this dinner.