



VIA EMAIL

June 7, 2019

Honourable Nate Glubish
Office of the Minister
Service Alberta
103 Legislature Building
10800-97 Avenue
Edmonton, AB T5K 2B6

Attn: Minister of Service Alberta, Nate Glubish

Dear Minister Glubish,

Re: Access to Information and Protection of Privacy in Alberta

We are writing to you as organizations committed to strong access to information systems in Canada. As such, we are writing with concern about the dire state of access to information and the protection of privacy in Alberta. As we would plan to make submissions to your government with respect to the *Freedom of Information and Protection of Privacy Act (FOIP Act)*, we want to know when a review of the legislation is scheduled to take place. The *FOIP Act* is long overdue for a review, given that it has not benefitted from a rigorous study since 2010.

Having reviewed recent reports of the Office of the Information and Privacy Commissioner (OIPC) and stories in the media, we are concerned that a culture of

impunity has developed. The following are some of the disconcerting facts and figures that lead us to such a conclusion:

- The lack of respect for statutory timelines is pervasive, although the scope of the problem is unclear because statistics about delays and non-responses have not been reported by the government since 2012-2013. The available information suggests that public bodies are not prioritizing their obligations to respond to Albertans in a timely manner:
 - Recent findings reveal the serious degree to which public bodies are ignoring their obligation to respond to a request within 30 days.¹ One of the outstanding requests that was reviewed was more than 1000 days overdue.² A disturbing conclusion was that delays were due to a “process [that] could be perceived as a form of interference by individuals who need not be involved.”³
 - Public bodies are increasingly requesting time extensions, which are only available in specific and limited circumstances.⁴
 - The number of deemed refusal orders due to a lack of response within the time limit recently increased from 5 to 57 in the span of one year.⁵ In each

¹ Office of the Information and Privacy Commissioner of Alberta, News Release, “Information and Privacy Commissioner Releases Investigation Reports on Delays in Responding to Access Requests” (23 February 2017), online: <https://www.oipc.ab.ca/news-and-events/news-releases/2017/information-and-privacy-commissioner-releases-investigation-reports-on-delays-in-responding-to-access-requests.aspx>

² *Investigation Report F2017-IR-01: Investigation into Alberta Justice and Solicitor General’s delays in responding to access requests*, (Edmonton: Office of the Information and Privacy Commissioner of Alberta, 2017) at 7, online (pdf): *Office of the Information and Privacy Commissioner of Alberta* <www.oipc.ab.ca/media/788396/f2017-ir-01.pdf>

³ *Investigation Report F2017-IR-02: Investigation into Executive Council and Public Affairs Bureau’s delays in responding to access requests*, (Edmonton: Office of the Information and Privacy Commissioner of Alberta, 2017) at 9, online (pdf): *Office of the Information and Privacy Commissioner of Alberta* <www.oipc.ab.ca/media/788394/f2017-ir-02.pdf>

⁴ Alberta, Office of the Information and Privacy Commissioner, *2016-2017 Annual Report*, (Edmonton, Office of the Information and Privacy Commissioner of Alberta, 2017) at 35, online (pdf): *Office of the Information and Privacy Commissioner of Alberta* <www.oipc.ab.ca/media/892822/Annual_Report_2016-17.pdf>

⁵ *Ibid*, at 34.

case reviewed, the public body acknowledged that it had not responded within the required timeframe.⁶

- In the last year, the OIPC received 454 requests to review a public body's decision. This is a sharp increase from the 255 requests made two years before.⁷
- The OIPC has struggled to provide timely reviews due to obstacles such as the scale of redactions in documents provided by public bodies.⁸ The OIPC's lengthy response times to complaints is on average 9 months but in some cases years.⁹
- The Commissioner has recommended mandatory privacy breach reporting by public bodies since 2013, to no avail.¹⁰ Voluntary reporting suggests that privacy breaches have increased in recent years, though it is impossible to discern a trend without comprehensive information.

Individuals, news media, and advocacy groups rely on the *FOIP Act* to gain access to records and to hold public bodies accountable. Albertans also count on it to protect their personal information. The bleak state of affairs outlined above leads us to believe that the *FOIP Act* urgently needs a re-evaluation to ensure it can serve its much needed purpose.

⁶ *Ibid.*

⁷ Elise Stotle, "Stuck again. Getting answers from the City of Edmonton shouldn't be this hard", *Edmonton Journal* (30 January 2019), online: <edmontonjournal.com/news/local-news/elise-stolte-stuck-again-getting-answers-from-the-city-of-edmonton-shouldnt-be-this-hard>

⁸ Charles Rusnell & Jennie Russell, "Alberta information commissioner says her office at 'breaking point'", *CBC* (22 December, 2018), online: <www.cbc.ca/news/canada/edmonton/alberta-information-commissioner-says-her-office-at-breaking-point-1.4954627>

⁹ *Ibid.*

¹⁰ 2016-2017 *Annual Report*, supra at 41.

We are available to work with your government to enhance the information and privacy rights of Albertans.

Please let us know when we can expect a review of the *FOIP Act* to begin.

Sincerely,

Meghan McDermott,
Staff Counsel (Policy)
BC Civil Liberties Association

Sara Neuert
Executive Director
BC Freedom of Information and Privacy Association

Sean Micheal Holman
Associate Professor, Journalism
Faculty of Business and Communication Studies
Mount Royal University

cc: Premier Jason Kenney, Minister of Intergovernmental Relations <premier@gov.ab.ca>
Jill Clayton, Information and Privacy Commissioner <generalinfo@oipc.ab.ca>