



FOI responses posted online irks privacy commissioner

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BY VANCOUVER SUN MAY 17, 2011

B.C.'s Information and Privacy Commissioner rebuked BC Ferries Monday for undermining the spirit of B.C.'s information laws.

Commissioner Elizabeth Denham issued a report criticizing BC Ferries' new practice of posting responses to access-to-information requests on its website either before or at the same time they go to the applicant.

While this policy, which is called "simultaneous disclosure," is legal, said Denham, it nevertheless frustrates the spirit of the Freedom of Information and Protection of Privacy Act, because it could discourage journalists and other individuals from making access requests.

"This ultimately has a negative effect on the ability of citizens to hold public bodies accountable," Denham wrote in her report. "Therefore, in those situations, the practice frustrates the purposes of access to information legislation."

Denham's ruling stems from a complaint by the B.C. Freedom of Information and Privacy Association.

The association argued BC Ferries' policy of posting FOI records online at the same time they are released to the original applicant violates the act, in particular a section requiring public bodies to "assist" requesters.

A number of media outlets, including The Vancouver Sun, raised objections to BC Ferries' immediate-posting policy, telling the commissioner's office that the practice discourages reporters from filing FOI requests because it denies media outlets their "scoop" on a story. BC Ferries became subject to FOI legislation in October 2010 again, after a seven-year hiatus that followed its privatization in 2003.

BC Ferries spokeswoman Deborah Marshall said Monday the corporation had just received Denham's report and would not provide an immediate reaction. The commissioner proposed a set of best practices for public agencies, including a minimum 24-hour delay between the applicant's receipt of the response and when it is publicly posted.

Denham found nothing in the act prohibiting simultaneous disclosure. But the commissioner said the policy had the effect of pre-emptively "sharing the fruits of a journalist's labour with the public at large," which "impairs the information-gathering function of the media and other groups."

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