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Privacy watchdog sounds alarm on transparency

Victoria's curious case of the missing emails 'deeply concerning'

Elizabeth Denham was out with an update whose title, A Step Backwards, reflected much backsliding on the file.

Three years ago, information and privacy commissioner Elizabeth Denham had mostly positive things to say about the B. C. Liberals' handling of requests under provincial access to-information legislation.

But this week, Denham was out with an update whose title, A Step Backwards, reflected much backsliding on the file.

"Since the publication of our last timeliness report in 2011, the average on- time response across all ministries has dropped from 93 per cent to 74 per cent, average processing times have increased from 22 business days to 44, and the average number of days overdue rose from 17 to 47," Denham wrote.

"By every measure except on- time percentage, which was slightly lower in 2008, the government's performance is at its lowest point since our office began examining these statistics."

She found it "disheartening" and "deeply concerning." Plus her report strongly suggests that the problem starts at the top.

In an effort to understand the number of cases where government responded to requests for information by saying it was unable to locate any relevant records whatsoever, Denham's investigators probed a dozen and a half instances involving the premier's office.

Eight of the non- responses involved requests for the daily calendars of officials. The investigators wondered how the premier's staffers were able to perform their duties without a daily schedule of meetings and the like.

"The office of the premier stated that each of these positions were supporting roles where the individual did not attend external meetings and was focused on the day- to- day work of the premier or other senior- level executives," Denham wrote. "My investigators confirmed that each of the calendars in question did not relate to senior- level executives."

Still, Denham had some strong advice on that score. Calendars now account for almost a fifth of all requests under access- toinformation legislation, with most of the filings coming from the opposition parties. Why not spare everyone the trouble and simply release all calendars as a matter of routine?

"I appreciate that government has some personal safety concerns," she acknowledged. "However, I am confident that it can address these concerns in a manner that makes the proactively released calendars meaningful for political parties and more administratively efficient for both government and political parties by reducing the need to process as many as 1,800 requests per year."

More disturbing is what her investigators uncovered in probing two other instances where it did not seem "plausible" that the premier's office had been unable to locate any records in response to a specific request for information.

"In both instances, an applicant had asked for all emails sent or received from senior ranking government officials on a specific day or over two days. In one instance, the request was sent only three days after the date range the applicant was seeking emails for."

The explanation from the premier's office went as follows: "Everyone is encouraged to practice good records management. The response doesn't suggest that (the individual in question) did not send or receive emails that day but rather that, at the time the request was received, no responsive records were located."

Her investigators were further informed "that many senior ranking officials within the office of the premier do not do much substantive work by email. Instead, email is often used as a means to set up meetings or forward invitations or questions to others."

But lest anyone conclude that it was policy to scrub the record of anything substantive, the government hastened to add "that the office of the premier does not instruct staff to delete all sent or received emails on scheduled

intervals."

Not in so many words, at least. "However, the office of the premier confirmed that at least some staff members regularly delete emails that they consider transitory, including their sent emails," Denham wrote.

Or perhaps they were simply doing what observers have long suspected — namely, communicating via personal emails through private back channels, insulated from public scrutiny.

In any event, the lapse in record-keeping was enough to prompt an admonition from the information watchdog: "Given the importance of the work by senior- ranking officials within the office of the premier, it is difficult for the average citizen to understand how any such individual could not have a number of emails over a two- day span that were of importance and needed to be kept for future work ... I remain concerned with the records management of that office."

By way of remedy, she invoked "the duty to document," meaning her long- standing view of the need to establish and maintain a proper written record of government decisions and public policy- making.

"The office of the premier's lack of responsive records on broad requests to senior officials supports the need for government to enact a legislated duty to document key decisions," she wrote.

"As a step toward this legislated duty, government could implement an email management system that preserves the email of senior government officials so that it preserves records responsive to future access- to information requests."

Not likely will the government go that far. Still, in the course of issuing a half- dozen recommendations dealing with other problems in access to information, Denham also put the Liberals on notice that in light of recent backsliding, she'll be monitoring their progress more closely in the months ahead.



Last time her office did that — this was five years ago — response times improved. They could do so again, given the right direction from the top.

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