



Vancouver Police Board

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Report #: 1162
Board Meeting: December 14, 2011

To: Vancouver Police Board
From: Board Freedom of Information Committee
Subject: ***FOIPPA and simultaneous disclosure***

Background

At its July meeting, the Vancouver Police Board heard from journalist Stanley Tromp, and Vincent Gogolek of the BC Freedom of Information and Privacy Association. Mr Tromp and Mr Gogolek urged the Board to change the VPD's practice of "simultaneous disclosure", whereby information is posted on the VPD's website at the same time that it is released to the individual who requested it under the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

The VPD's current position is that

If a request is made based on the claim that distributing our information is in the public interest, then we will continue to facilitate and assist that distribution by placing the document on our website. We believe strongly that the public interest is best served by providing them in a timely manner with an accurate, unedited, and uncondensed version of the truth to the full legal limits.

The Board asked the Freedom of Information Committee to look at this issue and come back with recommendations to the Board.

Simultaneous disclosure is now generally defined as the public release of records in response to an FOI request (for non personal information) at the same time or prior to the original requestor receiving the disclosure package. The VPD's practice is to release records to the FOI requestor at the same time that it makes the records available on its website [vpd.ca]. The VPD has not, to date, charged the original requestor a fee to process an FOI request that the VPD has simultaneously disclosed to the public.

In May 2011, BC Information and Privacy Commissioner Elizabeth Denham released her report into the practices of simultaneous and proactive disclosure. The Commissioner provided a set of best practices with respect to proactive disclosure programs. The Commissioner concluded that the practice of simultaneous disclosure

does not violate the individual right of access or the duty to assist under FOIPPA. Commissioner Denham concluded, however, that the practice of simultaneous disclosure frustrates the purposes of FOIPPA, because it may discourage some individuals, particularly the media, from making access requests. The Commissioner identified best practices for proactive disclosure. On the issue of simultaneous disclosure, the Commissioner recommended a minimum delay of 24 hours between the applicant's receipt of the response and the time the response is publicly posted. She recommended that there should be a further delay upon request by the applicant on reasonable grounds.

Mr Tromp and Mr Gogolek strongly supported the Commissioner's position in their submissions, written and oral, to the Board.

Discussion

The Commissioner's recommendations with respect to best practices around proactive disclosure consist of non-binding, albeit informative guidelines. In addition to these guidelines, the Committee has carefully reviewed the submissions of the BC Freedom of Information and Privacy Association and Mr. Tromp, as well as the views of commentators on both sides of the argument.

The Committee recognizes that the purpose of the VPD's policy is to enable it to be open and transparent with its information and to inform the public in the most wide-spread, timely, and comprehensive manner possible. This is a value of the Vancouver Police Department, and one in which the Department has a growing reputation for best practices. The Committee acknowledges that the policy may, at times, conflict with the needs of those who request information for media and/or commercial purposes. The Committee believes, however, that we must side with what we see as the greater public interest. The Committee believes that the public interest is best served by releasing documents in a simultaneous and unedited manner, absent any claim of exclusivity or control over records held by the Vancouver Police Department. We therefore cannot recommend that the VPD end the practice of simultaneous disclosure.

The Committee recognizes the concerns of the BC Information and Privacy Commissioner and agrees that organizations should be encouraged to be more proactively open with their information, and not wait for an FOI request to release records. The VPD should give consideration to how documents could more routinely be made available for the public to access without the necessity of an FOI request. As an example of this practice, following several FOI requests for Board *in camera* agendas and minutes, in 2006 the Board began routinely publishing its *in camera* agendas and lists of *in camera* decisions on its website.

In the spirit of meeting the Commissioner's guidelines with respect to proactive disclosure, the Department is currently reviewing a number of documents routinely requested by the public such as departmental audits, with the intention of releasing them publicly before they are requested.

The Committee believes that these decisions and policies are very much in the spirit of the Freedom of Information legislation and that this approach will continue to provide the public and all journalists with the widest and most timely distribution of the VPD's information in its original form.

Recommendation

THAT the Vancouver Police Board not direct the VPD to alter its policy of simultaneous release of documents in response to requests made under *FOIPPA*;

AND THAT the Vancouver Police Board direct the VPD to consider how it can expand the proactive public release of documents and information; and report back to the Board with recommendations.