



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
for British Columbia

Protecting privacy. Promoting transparency.

## STATEMENT

**May 17, 2019**

### **Statement from BC Information and Privacy Commissioner regarding independent oversight over government's duty to document and use of personal communication tools**

**VICTORIA**—BC Information and Privacy Commissioner Michael McEvoy has issued the following statement:

#### **Duty to document**

“My office received correspondence from counsel on behalf of an individual on May 12, 2019, alleging that the Minister of Citizens’ Services deliberately defied a duty to document important government decisions fully, accurately, and completely.

“The Minister’s alleged failure to fulfill her duty to document is not a matter under my authority. This is a significant shortcoming of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

“As it now stands, the *Information Management Act* designates the Minister herself as primarily responsible for ensuring her Ministry’s compliance with the duty to document its decisions. Citizens would find it very surprising that, on its face, the current law makes a Minister responsible for investigating their own conduct. This is unacceptable and falls short of the independent oversight required to ensure public trust and accountability.

“It is time for government to amend FIPPA to ensure that the vitally important duty to document has the oversight of my office, which is independent of government. The public interest requires this.

#### **Use of personal communication tools**

“It has also been alleged that the Minister used personal email and other non-government applications to conduct government business.

“As stated in my office’s guidance, [‘Use of Personal Email Accounts for Public Business,’](#) FIPPA does not explicitly prohibit public body employees or officials from using personal applications and, by extension, non-government applications. For this

reason, the individual's concern is not, by itself, evidence of a violation of FIPPA that would cause my office to investigate.

I have advised the individual's counsel that should their client have evidence suggesting a possible failure to comply with FIPPA, my office will of course consider it.

"However, I can't emphasize strongly enough, yet again, that it is extremely poor practice to use personal communication tools for public business. This kind of behaviour poses considerable challenges for proper documentation of government decisions and for accountability through freedom of information. I call on all public bodies to prohibit such practices wherever possible.

"I also remind all public body officials that using personal email or messaging doesn't oust the public's right of access to information. When an access request is made, I expect government officials to produce all responsive records for the public body to decide on their release. Retaining records of public business, regardless of medium, underscores the need for the duty to document to be located in FIPPA."

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