

Disclosures in the Public Interest

How to know when you must disclose information under section 25 of the *Freedom of Information and Protection of Privacy Act*

Overview

Section 25 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) is a general override provision that obligates the head of a public body to disclose information where disclosure is clearly in the public interest. Even if information falls within an exception to disclosure, section 25 requires the release of the information.

Whether or not a formal request for access under FOIPPA is made, the head of a public body must disclose, without delay, information to the public, to the applicant or to the group of people affected:

- which reveals a risk of significant harm to the environment or to the health and safety of the public or a group of people, or
- the disclosure of which is, for any other reason, clearly in the public interest.

Before disclosing information under this section, the head of a public body must, if practicable, notify any third party to whom the information relates and the Office of the Information and Privacy Commissioner (OIPC).

Responsibilities

Employees must:

- Be aware of their s.25 obligations;
- Be able to identify records containing information subject to immediate release in the public interest;
- Forward any applicable records to the Minister or head of the public body, through the appropriate channels (e.g. via supervisors, or Executive Directors), for decision on its release without delay.

Heads of public bodies (including Ministers) must:

- Approve any potential release of information under s.25. This approval must not be delegated below the Deputy Minister or equivalent level;



TIP SHEET

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- Provide notification (before the disclosure of information) to any third party to whom the information relates and to the OIPC if providing notice does not result in a delay that adversely affects the public interest.
- If notice was not provided before the disclosure of information, notify any third party to whom the information relates (last known address) and the OIPC as soon as is practicable and in the template provided in the Useful Links section below.

Process

1. Identify the record containing information believed to be of public interest, and forward to the Minister's Office or to the head of the public body, through the appropriate channels, for decision on release, without delay.
2. The head of the public body determines whether there is a risk of significant harm or that, for any other reason, disclosure is clearly in the public interest.
3. If practicable, notify any third party to whom the information relates and the OIPC, in writing, before the disclosure of the information. In some cases, a public body may initially give notice to the individual by telephone rather than writing if urgency dictates that this is appropriate. A link to the letter of notification template can be found in the Useful Links section below.
4. The head of the public body must ensure that the information is released in a manner designed to reach the intended audience; i.e., the public, the affected group or the applicant.

Examples

- An example of a “risk of significant harm to the environment” could be the accidental release of a pesticide into a stream, which will affect fish and other aquatic life.
- An example of a “risk of significant harm to the health of the public or a group of people” could be the presence of the polio virus in the public drinking water.
- An example of a “risk of significant harm to the safety of the public or a group of people” could be a natural gas leak which could cause an explosion in a populated area.

Best Practices

Nobody knows your business like you do, so you are in the best position to assess whether information you are holding is about a risk of significant harm. It is possible to prepare for instances where information must be released to the public:

- Consider what types of information your business area receives, holds, or creates. Identify places where you are more likely to receive information that could be about a risk of



Ministry of
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significant harm. For example, if your business relates to food regulation, then contaminated food sources would be a potential area where notification may be required.

- If applicable, try to create thresholds where you believe an area of risk has become a risk of significant harm. For example, at what levels do nitrates in a water source constitute a health risk?
- A list of criteria is useful in considering what factors might qualify information as being about a risk of significant harm. In the example of a geologist's report on a potential rock slide, conditions affecting notification might include: proximity to residences or roads, proximity to other buildings, probability of passersby in the affected area, etc. For each factor met, the probability that the risk represents a "significant harm" increases.
- Create an approval process outlining who needs to be consulted or informed of a decision to release information under s.25. This list can help front-line staff begin the process of assessing, with their superiors, whether information constitutes a risk of significant harm. Records of these consultations should be kept in order to document the decision-making process.
- Create a list of those individuals who need to be informed of a decision to release information under s.25 (beyond the third party to whom the information may relate, and the OIPC). For example, if your public body has a communications or public relations department, they may require notification of any public notices.
- If possible, maintain a current list of groups or individuals that may be notified of a public notice (i.e. those not limited to individuals, or small, distinct groups). For example, a list of local media contacts would be useful for required public notices.
- If the information does not meet the conditions of a release under s.25, you may consider it for release anyways if it does not involve personal information, or information that must be withheld in an access request under FOIPPA, and it is of general interest to the public.

Useful Links:

FOIPPA: http://www.bclaws.ca/Recon/document/ID/freeside/96165_00

Required notice of disclosure template:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/155_2012#Schedule2

Office of the Chief Information Officer (OCIO) FOIPPA Policy and Procedures Manual:

http://www.cio.gov.bc.ca/cio/priv_leg/manual/sec20_29/sec_25.page

OIPC's Sectional Index: <http://www.oipc.bc.ca/rulings/sectional-index.aspx>

OIPC Report on "Public Body Disclosure of Information under Section 25 of FOIPPA":

<https://www.oipc.bc.ca/investigation-reports/1588>



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