AMS Submission to the Special Committee to Review FOIPPA
1 THE AMS STUDENT SOCIETY OF UBC VANCOUVER

Established in 1915 and celebrating its centennial year, the AMS Student Society of UBC Vancouver is the official, elected representation of the 52,000 students attending the Vancouver campus of the University of British Columbia. It is the largest Canadian student association and represents a vast percentage of university students in British Columbia. The mission of the AMS is to improve the quality of the educational, social, and personal lives of the students of UBC. The primary mandate of the Office of the Vice-President, External Affairs includes the establishment of effective relations between students, the University, and external entities like fellow student associations, non-profit societies, and the municipal, provincial and federal governments.

2 INTRODUCTION AND EXECUTIVE SUMMARY

The AMS is pleased that this Special Committee is undertaking a review of the Freedom of Information and Protection of Privacy Act. We have long been subject to lengthy processes, stagnations, and denials of grants of requests due to a lack of proper coverage of wholly-owned and controlled subsidiaries of public bodies under the Act.

We are pleased to have the opportunity to comment on four key areas where the legislation can be updated to better meet the needs of British Columbia’s students by improving access to records and rectifying current practices.

The AMS makes these four recommendations:

1. Address the “corporate veil” problem at universities and school boards where the public body established a wholly-owned and controlled subsidiary with the ability to withhold records
2. Remove provisions in the Act giving public bodies the abilities to unreasonably delay, and remove the ability of public bodies to request extensions of deadlines to respond
3. Address public bodies’ non-compliance with Section 6—obligation to assist applicants—through penalties and automatic fee waivers for non-compliance with FOIPPA by public bodies
4. Automatically waive fees for records requested in the public interest, and introduce a set fee schedule in order to reduce and control fees, and to prevent fee estimates from being used as a deterrent or as a delaying tactic by public bodies.
3 PREAMBLE

3.1 AN OPEN AND TRANSPARENT GOVERNMENT

The AMS Student Society of UBC Vancouver (AMS) has four recommendations for ways the Freedom of Information and Protection of Privacy Act can be amended to increase the transparency of government through its public bodies and to increase access to public records. We have had the opportunity to make similar recommendations at previous submissions to past committees. All of these recommendations speak to our experience as frequent requesters of records from the University of British Columbia. These last touch on public bodies’ duty to assist applicants, addressing delays, the use of fees as deterrents for filing and as delaying tactics, and working towards a clarification of access to information for shell companies and subsidiaries of public bodies. With a sizeable amount of control of the university’s finances being invested in wholly-owned subsidiaries like UBC Properties Trust (UBCPT), there is an ever increasing need for open access and transparency with information and records held by such entities.

4 WHOLLY-OWNED SUBSIDIARIES AND THE CASE FOR COVERAGE

Increasingly, school boards and universities are establishing private companies that they control for other legal reasons. The consequence for access to information applicants is troubling.

At UBC, we see several entities that operate on the campus, use university resources and have overlapping board appointments with the University. These are specifically UBC Properties Trust (UBC PT), UBC Properties Investment Ltd, (UBC PTI) UBC Investment Management Trust (UBC IMANT) and UBC Research Enterprises (UBC RE). These carry out operations that had previously been conducted in house by various offices such as UBC Campus and Community Planning, the UBC Treasury, The UBC Business Development Office, and the UBC University Industry Liaison Office, respectively. We can observe analogs at other post-secondary institutions like Simon Fraser University’s SF Univentures Corporation.

UBC Properties Trust has exclusive rights for all development on the UBC campus. Whether for private market housing, student housing, or academic buildings, UBC PT has exclusive project management rights. No other firms are allowed to operate on university owned lands, meaning there is no competition, making it a monopolistic enterprise, if not the direct development arm of the university. The AMS would understand the need to privacy if UBC PT’s competitive advantage was at stake, but seeing as they enjoy the status of sole developer, we believe that they should be subject to FOIPPA just like UBC Campus and Community Planning, the former iteration of UBC PT.

AMS request for records from these UBC subsidiaries were refused when the public body argued that these agencies are not subject to FOIPPA. Appeals of OPIC rulings on requests for records from entities at both campuses have been brought before the courts. The AMS requests for information are consequently on hold indefinitely.
In April 2009, OIPC adjudicator Michael McEvoy ruled in favour of an FOI request made by Mr. Stanley Tromp, deeming UBC to have control of the requested records, and of the entities named in the request. Previously, there had been points in time when the AMS had nine outstanding FOI requests between UBC PT, UBC IMANT, and UBC RE, all of which were refused on the basis of their organizations not being subject to FOIPPA.

If the records we requested are ever released, they will be so dated that their utility will be limited. More troubling than the specifics of this request are the implications that public private partnerships, and public bodies doing business through their own subsidiaries is having on the access to information regime in British Columbia.

Recommendation: Address the “corporate veil” problem at universities and school boards where the public body established a wholly-owned and controlled subsidiary for the purpose of withholding records.

5 PROVISIONS ALLOWING FOR DELAY

Non-compliance of public bodies leads to delays. Underfunding of the OIPC exacerbates these delays. Recent legislative changes have moved in a direction away from remedy. There is little else the Commissioner can do to solve the problem—the solutions must be legislative.

Former Commissioner David Loukidelis states: “My attempts, and the attempts of the OIPC staff over more than a decade to advocate for change and resolve the challenge of delay have not succeeded overall.”

In 2006, FOIPPA was amended at several sections. The result of these amendments was an increase in delays for applicants.

The Act was amended at Section 10 to give public bodies the unilateral ability to extend their deadlines to reply to applicants by an additional thirty days if a large number of records were requested. In our experience, public bodies wishing to delay for this reason tend not to ask or give a reason for the time extension—they just take the time.

The definition of a day made clear in the Interpretation Act was overridden to specify that public bodies had business days instead of calendar days to respond to requests. Public bodies continue to have the ability to ask for permission to extend their deadlines to reply to applicants. We find this to be unhelpful.

Lengthy delays threaten the fact and the appearance of transparent government and frustrate the FOI request process.

1 OIPC TIMELINESS OF GOVERNMENT’S ACCESS TO INFORMATION RESPONSES. Report for Calendar Year 2008 http://www.oipc.bc.ca/investigations/reports/F0835580_Calendar_2008_Report_Card%28Feb_2009%29.pdf Retrieved 2010/03/11. 5
Recommendation: Remove provisions in the Act giving public bodies the abilities to unreasonably delay, and remove the ability of public bodies to request extensions of deadlines to respond

6  THE OBLIGATION TO ASSIST APPLICANTS

Section six clearly outlines the duty of a public body to assist an applicant in making a request:

6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

Our experience with the University of British Columbia suggests that public bodies are failing applicants in this duty. Our recourse in situations like this—be it a failure on the part of the public body to respond, or excessive delays in answering correspondence or delivering records—has been to appeal to the Office of the Information and Privacy Commissioners to compel the public body to respond to our requests.

The absence of an enforcement mechanism to compel the public body to meet this obligation is an obvious shortcoming in the legislation as it stands. This lack of enforcement mechanism not only denies access to the information which it is the purpose of the act to furnish, but it puts unnecessary pressure on an already overburdened Commissioner’s Office to constantly intervene in mundane issues of process.

We strongly support the creation in legislation of enforcement measure, or automatic fee waivers in cases when the public body can be shown to have been remiss in its duty to assist applicants. We feel the committee would be wise to consider a whole system of penalties and fees for public bodies for noncompliance with the Act.

Recommendation: Address public bodies’ non-compliance with Section 6—obligation to assist applicants—through penalties and automatic fee waivers for non-compliance with FOIPPA by public bodies

7  CHANGES TO FEES

When public bodies receive a request for records, they have the ability to set fees for photocopying and searches. Search fees in particular are arbitrary, and if the public body has poor records management practices, the fees can be exorbitant.

A June 2009 request filed by the AMS for UBC records related to the University’s development plans for the UBC farm cost the society $6022.00 for 2000+ pages.2

Applicants may apply for fee waivers, but the process is needlessly onerous. Since public bodies can set any fees they want within guidelines, and there is no automatic fee waiver for non-

2 The payment was made in October 2009.
compliance with other sections of the Act, or if the request was made in the public interest, many requests for records are abandoned. We support calls by other participants in this consultation process for amendments to Section 25 so that public interest fees would automatically be waived.

It would be unfortunate if this were a deliberate attempt by public bodies to deter requests for information.

Recommendation: Automatically waive fees for records requested in the public interest, and introduce a set fee schedule in order to reduce and control fees, and to prevent fee estimates from being used as a deterrent or as a delaying tactic by public bodies.

8 SUMMARY

The AMS Student Society of UBC Vancouver is pleased to offer these comments on FOIPPA. We hope the committee will find these remarks useful in updating the Act to improve access to records, particularly those responsive to the requests of students.

Once again, the AMS makes these four recommendations:

1. Address the “corporate veil” problem at universities and school boards where the public body established a wholly-owned and controlled subsidiary with the ability to withhold records
2. Remove provisions in the Act giving public bodies the abilities to unreasonably delay, and remove the ability of public bodies to request extensions of deadlines to respond
3. Address public bodies’ non-compliance with Section 6—obligation to assist applicants—through penalties and automatic fee waivers for non-compliance with FOIPPA by public bodies
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Respectfully Submitted,

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