

PRESENTATION ON VANCOUVER POLICE DEPARTMENT'S FOI POLICY

July 20, 2011

To the Chair and members of the Vancouver Police Board:

Speaking today as a news journalist, I must strenuously object to any move by the Vancouver Police Department to follow the FOI practices of the BC Ferry Corporation.

On its now-famous “FOI tracker” website, BC Ferries posts the text of FOI requests it receives, a process that tips off rival media to the stories other journalists are working on. Then after it finishes processing them, it posts the records online and sends email notices to a listserv so that anyone can read them instantly. (In some cases, it has posted them even before the requestor received them by mail.)

BC Ferries says it enacted its policy solely for the sake of “transparency,” but most applicants have not one iota of doubt that its main real purpose is to dissuade people from making requests – particularly journalists who would lose their exclusive stories.

I endorse the points on this matter made today here by FIPA, and I wish to add a few more. My key point remains this: Since most members of the public will never make an FOI request themselves (being too busy, amongst other reasons), they depend on the press to do so on their behalf, which is its mandate. So, the practical reality is that the FOI requests that the media file usually enable the public to read what it does. These include police records on vital crime and public safety issues.

BC Ferries’ practice also raises basic questions of fairness and civility. At times, much thought and research goes into the formulation of a well-crafted FOI request, and all that labour would now count for nothing. Moreover, why should any applicant pay thousands of dollars in FOI fees only to lose all of the records’ value when government sends it out to the world to co-opt the applicant?

A better solution would be to consider the (now-defunct) CAIRS system in Ottawa for federal *Access to Information Act* requests. After a month or so pause after release to the applicant, some departments posted just the topic headings online, instead of the full documents, and new applicants could make a new, cost-free, expedited request for those already released records. The Department of National Defense still follows this best practice, which could be a model for this government. (See <http://www.admfincs-smafinms.forces.gc.ca/aip/cr-dc-09-eng.asp>)

Besides harming the FOI applicants, if the Vancouver Police Department chose to duplicate BC Ferries’ FOI practices, this choice would backfire upon it in at least three ways.

1) It would create continuous bad-will, rancour, and conflict between the agency and applicants, including appeals to the Commissioner and the courts. The department would then have to defend itself, at public expense, against applicants' claims of its violating Sec. 6(1), that is, the duty to assist applicants.

2) In this age of internet news, Ferries' posting of FOI records online, and emailing notices of it to all media, created a race amongst journalists to beat the online news competition by a few minutes. This resulted in media errors, and such an outcome is in nobody's interest, least of all governments'.

The issue goes beyond factual errors. After scanning a police policy report, I could write a summary and post it online media in less than 15 minutes if necessary, but I would far prefer not to, for even a little time for reflection, interviews, and supplemental research can make for a story with far more accuracy and context. Instant posting also deprives government spokespersons to voice their positive spin on the records to the journalist for the upcoming story.

In one story about Alberta oilsands records that I found through FOI, although much worried of being scooped, I nevertheless held up my article for two days, to obtain the government's side of the issue. It behooves government to reciprocate this time courtesy. It is far better to work cooperatively with those reporters who prefer to get the news right than to get it first.

3) Why should agencies waste time and scarce public funds to PDF-scan and send out thousands of pages, many of them arcane and unimportant to anybody but a very few? The B.C. branch of the RCMP seemed to realize this general point, for it posted records of completed *Access to Information* requests for a few months in 2010, but then gave up this laborious practice for more important priorities.

There is an article in the UBC Thunderbird magazine of last year about how the RCMP avoids the BC Ferries policy, because it leads to better quality researched journalism.

<http://thethunderbird.ca/2010/11/03/bc-ferries-openness-rankles-foi-requesters/>

Posting responses online before the requester gets first crack at them is still a rare move for a British Columbia public agency. The VPD adopted the same practice, but the RCMP tried and abandoned it in part because formatting and posting every document was too time-consuming.

Also, reporters complained that releasing documents to the public forced them into a feeding frenzy without time for due diligence, said Sgt. Rob Vermeulen, a spokesman for the RCMP in British Columbia. Reporters with the initiative to make the request also wanted first dibs on the documents.

Vermeulen said: "You know what? That's fair. Since the agency resumed sending out documents on a request-by-request basis, the reporter's happy because they got their story, and we're happy because they had time to research their story."

What is the right policy here for the RCMP is right for the VPD as well.

By now you may have heard of the B.C. Information and Privacy Commissioner's report last May on BC Ferries' FOI policy of "simultaneous disclosure" - not to be confused with the term "proactive disclosure" - and how it violates the spirit of the FOIPP Act (if not the letter, per se, although to violate the spirit of a law is really just as pernicious).

The Commissioner advised, "I am recommending a minimum 24-hour delay in all cases and a further delay upon request by the applicant. . . . A short delay in all cases will not negatively affect the public interest in proactive disclosure or impede government accountability. I firmly believe that in cases where the media or others have expressed a legitimate need for exclusive access to the information for a particular purpose, the public body should consider a longer delay that allows that need to be met within a reasonable period of time."

I agree and I urged the B.C. government to prescribe that every public entity in the province must (not may) yield to each applicant's request for a release delay.

I look forward to your co-operation on this matter. There is at least one example of this Board's reversal on its information policy, and its potential to transcend political games, that gives me hope for today. In 1999, I made a request to the Vancouver Police Board for the agenda and minutes of its in-camera meetings. It was denied in full, with the Sec. 12 "substance of deliberations" claim. I appealed, and in Order 00-14, the B.C. Information Commissioner rejected the VPB claims and ordered many of the records opened up, including agenda headings.

Then, after the Board's consideration of that Order, everything changed. Fewer issues were placed into closed session discussions and more into open meetings, and today the Board even proactively posts portions of all its closed meeting agendas online. As I wrote in page 72 of my report to the BC legislative committee studying FOI law reform last year: "I have never before in B.C. seen such a major reversal in attitude and practice on an FOI issue than this - one that I wish all public bodies would follow." Perhaps history can repeat itself here.

In sum, I ask this Board to prescribe these two measures for the VPD FOI branch:

- 1] That the text of the original FOI request not be posted until after the release has been made, as no one else but the applicant has a need to know, and it does not aid transparency itself (plus the fact of unfairly informing others as to what an applicant is seeking)
- 2] After the completed FOI request response is sent to the original applicant, I urge a minimum two week pause (or at the very least one week to accommodate the needs of weekly newspapers) before posting those records to the VPD website or listservs.

I thank you for your attention to this matter.

=====

I wish to briefly address a related issue of public information, to the Board Chair and Mayor.

The Vancouver Police Board started a policy several years ago of simply forbidding board members to speak to the media at all. Only the mayor can speak, because he voices its official policies. I urge the mayor to at least partially rescind this very misguided policy.

The policy was apparently started to prevent the possibility of some confusion amongst a few readers of whether a member is speaking solely for himself/herself, or for the board's official policy. This outcome is somewhat improbable, but even if it did occur from time to time, so be it, as the fair price to pay for the greater principle of free speech. Any supposed harms here would be so minor and transitory that they do not merit the overkill response of shackling their voices entirely – the cure is far worse than the supposed ailment.

The policy supposedly ensures consistency, to present one united face to the public. But a range of opinion and a lack of unanimity on a public board is a defining feature of a democracy. Our Charter of Rights and Freedoms, Sec. 2, guarantees freedom of expression. The right is not absolute, and it has been overridden by the Supreme court of Canada to quell racist speech. But there is no exception for political control, as here.

This is the best solution: When members speak to the media, have them voice the caveat up front that they are speaking solely for themselves and not formal board policy – which indeed is expressed by the mayor. The vast majority of public readers are intelligent enough to understand this difference between personal views and formal policy.

As well, in the larger sense, I urge you the mayor to drop the new policy of no longer allowing senior city staff to routinely speak to the media about their areas of expertise, and on reports they have authored, even non-controversial ones. Common sense says that usually they are the only ones truly qualified to explain complex, technical matters in depth and at length. These are issues that the public and taxpayers need and deserve to be fully informed about, through the media, and technical such as these are things that public relations spokespeople often know little or nothing about.

One wonders where we are headed today in the excesses of information control. White Rock council has just reached a new low, starting a policy that I believe is a first in Canada. It actually forbids *councilors* to speak to the media – a policy rather more characteristic of an authoritarian state than a democracy. One dreads to think of Vancouver drifting down that path.

So to the mayor I plead: Loosen the chains a bit, for police board members and city hall staff. I appeal to the great principle of free expression guaranteed in the Charter of Rights, to the public interest, and to your sense of democracy.

Sincerely yours, Stanley Tromp, journalist
Vancouver