



September 12, 2012

Elizabeth Denham  
Information and Privacy Commissioner  
of British Columbia  
PO Box 9038, Stn. Prov. Govt.  
Victoria, BC V8W 9A4

Dear Commissioner,

**RE: Alarming increase in 'No Responsive Records' responses to FOI requests**

I am writing to ask you to conduct an investigation under s.42 of the *Freedom of Information and Protection of Privacy Act* ("the Act") into the conduct of the government of British Columbia. The conduct in question is the Government's failure to meet its duty to assist requesters due to a dramatic increase in the number of general FOI requests returned with 'no responsive records'. We discovered this phenomenon through a ten-year analysis of the government's own statistics on responses to FOI requests.

The reason for the massive increase in requests returned with 'no responsive records' is unclear, but the effect on the requesters' right to know is considerable and negative. In the case of one group of users, the media, the percentage of no responsive records responses has gone from zero in 2002-2003 to 34% for the latest fiscal year (2011-12).

FIPA is concerned that the increasing frequency of requesters being given no records is an indication of a major problem with the proper functioning of the Act. You yourself identified the potential problem in your 2010 report on timeliness *It's About Time*:

"Another possible explanation for the significantly improved performance might be that ministries were simply denying access or determining there were no records responsive to their requests. Such responses could occur quickly thus reducing response times." (p.16)

<http://www.oipc.bc.ca/pdfs/public/F09-37697%20Report%20Card%20%286%20Aug%2010%29%20CVRPG.pdf>

We believe that the pattern revealed by our study of the government's own statistics shows you had good reason for making that statement, and more than adequate cause for conducting a review of this phenomenon.

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## The Facts:

The Government of British Columbia produces statistics on the treatment of Freedom of Information requests in a publicly available database called the Corporate Request Tracking System (CRTS). We commend the Government for its openness in making these statistics generally available.

We used the processing times for general FOI requests for the ten fiscal years between 2002-03 and 2011-12.

[http://www.gov.bc.ca/citz/iao/down/10yrtrends/2002\\_2012/ProcTimes%20AppDisp%20GEN%20-%2010%20Yr%20%28FY%202002-2012%29.pdf](http://www.gov.bc.ca/citz/iao/down/10yrtrends/2002_2012/ProcTimes%20AppDisp%20GEN%20-%2010%20Yr%20%28FY%202002-2012%29.pdf)

We have attached an appendix setting out detailed statistics for three types of requesters, as well as the overall results. We have summarized the most important results below for your convenience.

## Political Parties

In the 2002-2003 fiscal year, none of the FOI requests filed by political parties came back non-responsive.

In 2011-12, however, things looked significantly different, with more than 21 percent of political party requests shut down by the government saying they didn't have any relevant records.

## Media

The news media fared even worse. In 2002-2003, none of the general FOI requests made by media organizations stalled on non-responsive records. By the end of the 2011-2012 fiscal, that figure had skyrocketed to nearly 34 percent of all requests filed by the media that year.

## Interest Groups

Increases in non-responsive rates for Interest Group requests follows the pattern for media organizations and political parties, going from virtually zero in 2002-03 to 18 percent in the 2011-2012 fiscal year.

However, it should be noted that the number of Interest Group requests has actually dropped by almost half since 2002-2003.

## Overall no responsive requests

The percentage of non-responsive records in 2002-03 for general FOI requests was 0.05 percent. Last fiscal year (2011-12) the total was 23 percent.

The duty to assist requesters

The duty to assist requesters is set out in s.6 of the Act.

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.

Based on the government's own statistics, it appears that there is at least a prima facie case that the public body has been making less and less of an effort to assist requesters. Certainly, the numbers show that what is being done by the Government of British Columbia to locate responsive records would not be considered to be "every reasonable effort" to assist applicants. Therefore its actions and its posting policy are in violation of the public body's duty to assist applicants under s.6 of the Act.

Likely consequences for the FOI process in general

The problem is clearly systemic, and the overall statistics show almost a quarter of general FOI requests are sent back to requesters with the statement that there are no responsive records to their request. If this failure to assist is not corrected, it will undermine confidence in the FOI system. Already we can see that the purpose of the Act, which is to make public bodies more accountable, is currently being undermined.

Therefore we urge you to review this matter as soon as possible in the interests of the health and integrity of the FOI process.

If you have any questions, or require any additional information, we would be pleased to assist.

Sincerely yours,

Vincent Gogolek  
Executive Director  
BC FIPA

No Responsive Records Exist/Located\* For Select Requesting Groups  
2002/03 Fiscal-2011/12 Fiscal

Media Requesters:

	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06	2004/05	2003/04	2002/03
30 Days	246	164	104	54	53	41	14	7	0	0
30-60 Days	18	12	6	8	34	20	2	7	0	0
More than 60 Days	0	3	1	7	6	2	0	1	0	0
<i>Total Non-Responsive</i>	<i>264</i>	<i>179</i>	<i>111</i>	<i>69</i>	<i>93</i>	<i>63</i>	<i>16</i>	<i>15</i>	<i>0</i>	<i>0</i>
<i>Total Requests</i>	<i>788</i>	<i>624</i>	<i>446</i>	<i>419</i>	<i>438</i>	<i>542</i>	<i>103</i>	<i>95</i>	<i>80</i>	<i>76</i>
<b>% Non-Responsive</b>	<b>33.5%</b>	<b>28.7%</b>	<b>24.9%</b>	<b>16.5%</b>	<b>21.2%</b>	<b>11.6%</b>	<b>15.5%</b>	<b>15.7%</b>	<b>0%</b>	<b>0%</b>

Political Party Requesters:

	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06	2004/05	2003/04	2002/03
30 Days	202	111	89	14	20	26	10	0	0	0
30-60 Days	13	2	17	14	12	6	3	0	0	0
More than 60 Days	1	0	1	5	17	1	1	2	0	0
<i>Total Non-Responsive</i>	<i>216</i>	<i>113</i>	<i>107</i>	<i>33</i>	<i>49</i>	<i>35</i>	<i>14</i>	<i>2</i>	<i>0</i>	<i>0</i>
<i>Total Requests</i>	<i>1007</i>	<i>678</i>	<i>646</i>	<i>269</i>	<i>387</i>	<i>566</i>	<i>236</i>	<i>56</i>	<i>72</i>	<i>54</i>
<b>% Non-Responsive</b>	<b>21.4%</b>	<b>16.6%</b>	<b>16.5%</b>	<b>12.3%</b>	<b>11.5%</b>	<b>6.6%</b>	<b>5.9%</b>	<b>3.6%</b>	<b>0%</b>	<b>0%</b>

Interest Group Requesters:

	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06	2004/05	2003/04	2002/03
30 Days	26	17	32	19	15	8	6	4	3	1
30-60 Days	2	2	9	9	2	2	0	1	1	0
More than 60 Days	0	0	1	2	1	0	0	0	0	0
<i>Total Non-Responsive</i>	<i>28</i>	<i>19</i>	<i>42</i>	<i>30</i>	<i>18</i>	<i>10</i>	<i>6</i>	<i>5</i>	<i>4</i>	<i>0</i>
<i>Total Requests</i>	<i>155</i>	<i>151</i>	<i>312</i>	<i>184</i>	<i>147</i>	<i>131</i>	<i>138</i>	<i>189</i>	<i>169</i>	<i>301</i>
<b>% Non-Responsive</b>	<b>18%</b>	<b>12.6%</b>	<b>13.5%</b>	<b>16.3%</b>	<b>12.2%</b>	<b>7.6%</b>	<b>4.3%</b>	<b>2.6%</b>	<b>2.4%</b>	<b>0.33%</b>

Overall Non-Responsive Rates, All Requester Groups

	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06	2004/05	2003/04	2002/03
30 Days	681	514	405	169	162	163	70	42	13	1
30-60 Days	53	32	34	45	69	40	13	9	2	0
More than 60 Days	5	12	12	28	25	8	4	3	0	0
<i>Total Non-Responsive</i>	<i>739</i>	<i>558</i>	<i>451</i>	<i>242</i>	<i>256</i>	<i>211</i>	<i>87</i>	<i>54</i>	<i>15</i>	<i>0</i>
<i>Total Requests</i>	<i>3182</i>	<i>2778</i>	<i>2495</i>	<i>1842</i>	<i>1855</i>	<i>2081</i>	<i>1627</i>	<i>2063</i>	<i>1567</i>	<i>1885</i>
<b>% Non-Responsive</b>	<b>23%</b>	<b>20%</b>	<b>18%</b>	<b>13.1%</b>	<b>13.8%</b>	<b>10.1%</b>	<b>5.3%</b>	<b>2.6%</b>	<b>0.96%</b>	<b>0.05%</b>

\*Sum of government-provided categories of “No Responsive Records Exist/Located” and “No Responsive Records Located”