



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

Freedom of Information and Protection of Privacy Act

Request for Review / Privacy Complaint Form

Instructions: This form is designed to assist you in requesting a review of a public body's response to your access request or to submit a privacy complaint about how a public body is collecting, using or disclosing your personal information under the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

Fill out this form and send it to the Office of the Information & Privacy Commissioner ("OIPC"). Address information is at the end of this form.

(Do not use this form if your complaint or request for review is with a private sector organization, such as a business or non-profit organization. A special form is available for such complaints or reviews, which are regulated under the Personal Information Protection Act ("PIPA").)

FIPPA and materials that may assist you in completing this form are available at <http://www.oipc.bc.ca/> or by calling (250) 387-5629 in Victoria. For toll-free access call Enquiry BC in Vancouver at (604) 660-2421 or elsewhere in BC at 1-800-663-7867 and ask to be transferred to (250) 387-5629.

Privacy Notice: A copy of this form will be provided to the public body that is the subject of your request for review; a copy may be provided concerning complaint issues. The information you provide on this form, attached to this form or that you supply later, will only be used to attempt to resolve your dispute.

Name: Douglas C. King - Pivot Legal Society

Mailing address: 121 Hentley Ave.

City: Vancouver Province: B.C. Postal Code: V6A 3E9

Contact Phone No.: (604) 229-9625 % Home % Work % Cell % Pager (#: _____)

Alternate Phone No.: (778) 898-6349 % Home % Work % Cell % Pager (#: _____)

Fax No: (604) 255-1552 Email Address: doug@pivotlegal.org

(Provide only if you prefer to receive communication by email)

Please indicate the best time to contact you, as well as any other contact restrictions. (The OIPC office hours are Monday to Friday, from 8:30 a.m. to 4:30 p.m. (PST)).

1. Are you making this request for review or complaint: on behalf of yourself?
 (Please check only one box) on behalf of another individual?

(If you checked "on behalf of another individual", attach supporting documentation proving that you have the authority, or consent of that individual, to act on his/her behalf.)

2. Which public body does your request for review or complaint concern?

Vancouver Police Department

3. Who have you dealt with at the public body to try to resolve your complaint or access request?
 (List the names, titles, phone numbers or addresses of people with whom you have had contact.)

Civilian Analyst VA 9426. identity unknown

4. Tell us about the steps you have taken to try to resolve your complaint (Complaints should first be submitted directly to the public body for response and possible resolution; there are limited exceptions.)

- Have you attempted to resolve the matter with the public body? Yes No
- If yes, did you write to the public body outlining your concerns or to object to the public body's initial decision? Yes No

5. Have you received a written decision from the public body? Yes No

If yes, what was the date of the letter and when did you receive it? (Please attach the letter to this application.)

Dated Sept 11/2015. Received Sept. 15/2015

6. Choose one or more of the following to describe what your appeal to the OIPC relates to:

Requests for review:

- Third Party requesting review prior to disclosure
- Denial of existence of records
- Record not under control or in custody
- How access is to be given
- Withholding records
- Severing information from records
- Deemed refusal (no response within 30 days of your access request) if no extension
- Correction of personal information request
- Records outside the scope of the Act
- Other

Complaints:

- Adequacy of search for records
- Collection, use or disclosure of your personal information
- Fee assessment
- Fee waiver refused
- Extension of time/transfer
- Security
- Retention
- Other

7. Summarize your request for review or complaint (please indicate any file or reference numbers and relevant dates).

See Attached letter

8. How do you think the OIPC can assist you? Describe the result or outcome that you seek.

See Attached letter

Signature:



Date:

Oct. 14/2015

Attach copies of the following documents if you have them:

- %o Your letter to the public body requesting access to records.
- %o Your letter of complaint to the public body.
- %o The public body's response to your complaint or access request.
- %o Any other correspondence between you and the public body regarding this matter.
- %o Documentation authorizing you to act on behalf of another person (if applicable).

Send this form and accompanying documents to:

Office of the Information and Privacy
Commissioner for British Columbia
P.O. Box 9038, Str. Prov. Govt.
Victoria, B.C. V8W 9A4

Fax: (250) 387-1696
Email: info@oipc.bc.ca

Please call the OIPC if you need help completing this form:

Phone: (250) 387-5629 (Victoria)
Toll-free: (604) 660-2421 (Lower Mainland) or 1-800-663-7867 (elsewhere in B.C.); ask for transfer to (250) 387-5629.

For OIPC use only:

Date stamp:

Received by:

Initials: _____

(Print name)

14 October 2015

VIA - Email

Reply to: Douglas King
Direct Line: (604) 255 9700 ext. 112
E-mail: doug@pivotlegal.org

Office of the Information and Privacy Commissioner
P.O. Box 9038 Stn. Prov. Govt.
Victoria, BC V8W 9A4

**Re: Request for Review - Stingray Surveillance Device
FOI Request to Vancouver Police Department - July 23, 2015**

We are writing to request a review of the response from the Vancouver Police Department (“VPD”) regarding a Freedom of Information Request made pursuant to the *Freedom of Information and Protection of Privacy Act*. On July 23rd, 2015, our office sent a request to the VPD for any documents pertaining to the purchase, use, or acquisition of cell site simulator devices, often referred to as the “Stingray” or “Kingfish”.

On September 15, 2015 we received a response from the VPD which denied our request on the basis that the release of this information could harm the effectiveness of investigative techniques and procedures, pursuant to section 15(1)(c) of *FIPPA*. We believe this refusal is unjustified for the following reasons:

1. The recent case of *British Columbia (Justice)(Re)*, 2015 BCIPC 12, addressed a very similar request for information on the name of software device used by the Ministry. In that decision adjudicator Flanagan stated the following:

[62] The standard of proof applicable to harms-based exceptions like s. 15 is whether disclosure of the information could reasonably be expected to cause the specific harm. Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation. In Order F07-15, former Commissioner Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm:

...there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm... Referring to language used by the Supreme Court of Canada in an access to information case, I have said ‘there must be a clear and direct connection between disclosure of specific information and the harm that is alleged’.

It is the obligation of the respondent VPD in this case to provide a clear and direct connection between disclosure of the information requested and a harm that is alleged. It is unclear how simple disclosure of the acquisition of the device, or the terms of purchase, could possibly lead to harm. On the contrary it appears as if the VPD is relying on speculation, and the same basis for refusal which was expressly denied in the above case. In principle this issue is the same as the case above, and the mere existence or name of an investigative tool should be disclosed. Our office has not asked for documents on how the

device is used, the device's capabilities, or how the VPD specifically employs the device, we are simply asking for a response to the query of whether or not the VPD has purchased this device and is using or intends on using it. Clearly this does not meet the threshold of a harm-based exception like section 15(1)(c).

2. There are significant public policy reasons for why this information should be released. Firstly, there have been media reports indicating that the acquisition of this device comes with a requirement that the department purchasing it sign a confidentiality clause which states it will not acknowledge its existence. This is in and of itself an attempt to contract out of a statutory obligation to be open and transparent under *FIPPA*, and should not be allowed. Secondly, this device has been reported to have the capability of monitoring large groups of individuals at once, and can provide access to their information without their consent. There have been indications that the way the device is used may lead to widespread infringements on citizen privacy and *Charter* rights. While we are not asking for specifics on how the VPD uses this device, the public has a right to know what tools the government may be using to conduct surveillance, and what they are capable of. This is one of the fundamental tenants of a democracy and should be respected.

For the above reasons we are asking the OIPC to review this file and order disclosure of the relevant information and documents. In support of this appeal following are attached:

- Article from the New York Times regarding cell-site simulators dated March 15, 2015
- *British Columbia (Justice)(Re)*, 2015 BCIPC 12

Sincerely,

PIVOT LEGAL SOCIETY



per:

Douglas King
Barrister & Solicitor