

Rob Fleming
Victoria-Swan Lake
Parliament Buildings
Victoria BC V8V 1X4
Phone (250) 387-3655
Fax (250) 953-4795



John Horgan
Juan de Fuca
Parliament Buildings
Victoria BC V8V 1X4
Phone (250) 953-4793
Fax (250) 387-4680

January 28, 2010

Paul Fraser, QC
Acting Information and Privacy
Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC V8W 9A4

By Fax: (250) 387-1696

Dear Paul Fraser:

We are writing you today to raise our concerns over steps that government appears to have taken to effectively evade its responsibilities under the *Freedom of Information and Protection of Privacy Act* (FIPPA). It is our understanding that government structured its communications with its recently-appointed Green Energy Advisory Task Force in a manner that ensured that this public body operated free from public scrutiny, and we believe that this should be of concern to your office.

By way of background, in November 2009 the province established four inter-related advisory groups to provide advice to government on energy acquisition. The Task Force on Procurement and Regulatory Reform, the Task Force on Carbon Pricing, Trading and Export Market Development, the Task Force on Community Engagement and First Nations Partnerships, and the Task Force on Resource Development were comprised of 27 publicly-appointed private citizens and two quasi-public servants who were charged with advising government on a variety of energy matters. While we applaud these individuals for their contribution to public policy, we nonetheless believe that they should have conducted their deliberations in a manner that is both transparent and documented.

We have two specific concerns with the provincial government's administration of these groups. First, we understand that the meetings of the Task Force groups were conducted behind closed doors and that they will not be releasing written minutes of their deliberations; second, we understand that the government aided group members in establishing temporary Gmail accounts for communicating on government business rather than providing them with government-administered email accounts that are subject to FIPPA and the *Document Disposal Act*.

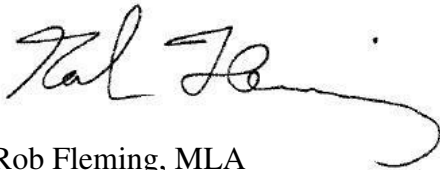
According to the *Recorded Information Management Manual* government records are defined as: “any record created, received, deposited, or held by any ministry, agency, board, commission, Crown corporation, institution, committee or council reporting or responsible to the government of British Columbia.”¹ As the *Green Energy Advisory Task Force* reports directly to a cabinet committee these records are government records and would fall under the *Document Disposal Act*. The creation of private email accounts would allow individuals discretion to retain or dispose of documents as they see fit. This runs counter to the requirements of the *Document Disposal Act* and attempts to defeat the purpose of the *Freedom of Information and Protection of Privacy Act*.

The larger concern that we have relates to the decision to conduct the process of public policy making in an intentionally secretive manner. In a similar situation, concerns were raised in 2007 when the Premier set up the Cabinet Committee on Climate Action and exempted that body from FIPPA. Although this committee was tasked with consultation on issues of climate change, the move signaled an attempt prevent access to the public and drew criticism from various sources, including an expression of surprise from the then Commissioner, David Loukidelis.

We would like to request that your office look further into the issues laid out above, as per Section 42 (e) and (f) of the *Freedom of Information and Protection of Privacy Act*. If you have any further questions, please feel free to contact me directly.

We look forward to your response.

Sincerely,



Rob Fleming, MLA
Victoria-Swan Lake
Critic for Environment



John Horgan, MLA
Juan de Fuca
Critic for Energy, Mines,
and Petroleum Resources

¹ http://www.cio.gov.bc.ca/legislation/policy/rim_manual/pol01_01.pdf