



Legislative Assembly of Alberta

The 28th Legislature
Third Session

Standing Committee
on
Legislative Offices

Monday, December 1, 2014
6:15 p.m.

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The 28th Legislature
Third Session**

Standing Committee on Legislative Offices

Jeneroux, Matt, Edmonton-South West (PC), Chair
Starke, Dr. Richard, Vermilion-Lloydminster (PC), Deputy Chair

Bikman, Gary, Cardston-Taber-Warner (W)
Blakeman, Laurie, Edmonton-Centre (AL)
Brown, Dr. Neil, QC, Calgary-Mackay-Nose Hill (PC)
DeLong, Alana, Calgary-Bow (PC)
Eggen, David, Edmonton-Calder (ND)
Leskiw, Genia, Bonnyville-Cold Lake (PC)
Quadri, Sohail, Edmonton-Mill Woods (PC)
Strankman, Rick, Drumheller-Stettler (W)*
Wilson, Jeff, Calgary-Shaw (W)
Young, Steve, Edmonton-Riverview (PC)

* substitution for Gary Bikman

Also in Attendance

Anglin, Joe, Rimbey-Rocky Mountain House-Sundre (Ind)

Legislative Officers

Jill Clayton	Information and Privacy Commissioner
Del Graff	Child and Youth Advocate
Peter Hourihan	Ombudsman, Public Interest Commissioner
Glen Resler	Chief Electoral Officer
Merwan Saher	Auditor General
Marguerite Trussler, QC	Ethics Commissioner

Office of the Information and Privacy Commissioner Participant

Marilyn Mun	Assistant Commissioner
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Support Staff

W.J. David McNeil	Clerk
Robert H. Reynolds, QC	Law Clerk/Director of Interparliamentary Relations
Shannon Dean	Senior Parliamentary Counsel/ Director of House Services
Philip Massolin	Manager of Research Services
Stephanie LeBlanc	Legal Research Officer
Nancy Robert	Research Officer
Corinne Dacyshyn	Committee Clerk
Jody Rempel	Committee Clerk
Karen Sawchuk	Committee Clerk
Christopher Tyrell	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications and Broadcast Services
Jeanette Dotimas	Communications Consultant
Tracey Sales	Communications Consultant
Janet Schwegel	Managing Editor of <i>Alberta Hansard</i>

6:15 p.m.

Monday, December 1, 2014

[Mr. Jeneroux in the chair]

The Chair: All right. Thank you, everybody. We have quorum, so we're going to get started.

I'd like to welcome members, support staff, and guests to the meeting and ask that everyone at the table introduce themselves for the record. If you are substituting for a committee member, please include this information in your introduction. I'm Matt Jeneroux, MLA for Edmonton-South West and chair of the Legislative Offices Committee.

Dr. Starke: Good evening. My name is Richard Starke. I'm the MLA for Vermilion-Lloydminster and the deputy chair of the committee.

Mr. Quadri: Sohail Quadri, Edmonton-Mill Woods.

Mrs. Leskiw: Genia Leskiw, MLA for Bonnyville-Cold Lake.

Ms DeLong: Alana DeLong, Calgary-Bow.

Dr. Brown: Neil Brown, MLA for Calgary-Mackay-Nose Hill.

Mr. Wilson: Jeff Wilson, Calgary-Shaw.

Mr. Strankman: Rick Strankman, Drumheller-Stettler, subbing for Gary Bikman.

Mr. Anglin: Joe Anglin, Rimbey-Rocky Mountain House-Sundre.

Ms Clayton: Jill Clayton, Information and Privacy Commissioner.

Ms Mun: Marylin Mun, assistant commissioner.

Mr. Eggen: Good evening. My name is David Eggen. I'm the MLA for Edmonton-Calder.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Perfect. Meeting materials were posted on the internal committee website last week. Hard copies of the information and the Privacy Commissioner's draft annual report were delivered to members' Legislature or Annex offices last week as well.

A few housekeeping notes before we get started. Microphone consoles are operated by *Hansard*. Please keep your BlackBerrys, like mine, off the table as these can interfere with the audiofeed.

Everybody has a copy of the agenda. Would a member move the adoption of our agenda?

Mrs. Leskiw: I so move.

The Chair: Genia Leskiw moved that the agenda for the December 1, 2014, meeting of the Standing Committee on Legislative Offices be approved as distributed or as amended. All in favour? Any opposed? Thank you. The motion is carried.

Approval of the minutes of September 4, 2014. Are there any errors or omissions to note? If not, could I have a motion to approve the minutes, please?

Mr. Quadri: I so move the motion.

The Chair: Moved by Sohail Quadri that the minutes of the September 4, 2014, meeting of the Standing Committee on Legislative Offices be approved as distributed. All in favour? Any opposed? Perfect. The motion is carried.

All right. We'll be reviewing the 2013-2014 annual reports, business plans, and the 2015-16 budget estimates for the officers of the Legislature during our meetings this week, starting with the office of the Information and Privacy Commissioner. Before we begin, I'd like to point out that decisions on the budget estimates will be made once all officers have been heard as this has been incorporated into our Friday meeting's agenda.

To ensure that our meetings this week run on schedule and provide equal opportunity for questions from all members, I will be following the general format used by this committee, recognizing a government member then an opposition member and continuing on in this fashion. Members will be provided an opportunity to ask one question followed by one supplemental in each round, and I seek the committee's co-operation in this respect. Other members attending the meeting but not as official substitutes are welcome to participate in the discussion within the order listed subject to the participation of the committee members and official substitutes but may not vote on motions.

With all that, I'd like to welcome Ms Clayton and Ms Mun. You can proceed with your 15- to 20-minute presentation, and then we'll turn to questions from the committee. Thanks.

Ms Clayton: Okay. Well, to start with, thank you all very much for being here today. I think that I may have said the same thing last year, that it's really a pleasure for me to be here and to be speaking about the work of the office and what we've accomplished in the last year. I think that it was a very challenging year. Certainly, the current fiscal year has been very challenging and busy also, but I think that we're getting a lot done, and I look forward to our discussion.

Given that time is short, I won't spend a lot of time on the first part of the presentation today. I am going to do just a really quick overview of the office – really quick – and of the 2013-14 annual report, talk a little bit about some of the key projects that we have planned going forward, and then get onto the budget estimate for 2015-16.

First of all, an overview of the office, and as I said, this will be very, very quick. As the Information and Privacy Commissioner I am responsible to ensure compliance with three access and privacy laws in Alberta: the Freedom of Information and Protection of Privacy Act, the Health Information Act, and the Personal Information Protection Act. Those acts apply in the public sector, health sector, and private sector respectively and essentially provide rules for the collection, use, and disclosure of personal information and also a right of access to personal and health information and in the public sector a right of access to general government information.

I have a broad mandate. We are a quasi-judicial oversight body. As you can see from the slide, there's a long list of things that we do. A good chunk of the work of the office is taken up in resolving complaints and reviewing responses to requests for access. It's a quasi-judicial oversight body, so we have an adjudication unit that hears inquiries and issues binding orders. We also have a mandate to inform the public, to provide advice and recommendations, to review privacy impact assessments, to conduct research, all sorts of things. That's the quick and dirty overview.

The 2013-2014 annual report was tabled today. Some of the highlights in the annual report. I think it was 2012-2013 when we first introduced a section on issues and trends. The idea behind that section is to provide some context for the work of the office and talk about what we're seeing. The year 2013-14 was definitely characterized by emergencies and disasters. We saw the floods in southern Alberta, the outages in Calgary. It was also a year of information sharing. There's a section in the report on that topic.

We saw a shift in the types of complaints that were coming to the office and more of a focus on access. We also saw legislative reform. So those are the issues and trends we've chosen to highlight for 2013-14.

Another significant project in 2013-14 was a reorganization of our office. We've traditionally been more reactive, responsive to complaints that come in. The office has been structured according to the three statutes that we have oversight for, so it used to be a FOIP team, an HIA team, and a PIPA team. We've moved away from that structure. We now have two teams. One is mediation and investigation for all three acts. We also have a compliance and special investigations team, which is responsible for more proactive work, commissioner-initiated investigations, privacy breaches, and PIA reviews. That was a big project for the office, to do that reorganization. We spent a lot of last year updating job descriptions and going through a classification review. We're pretty close to finishing reviewing all of the positions in the office. We've still got a handful to go, but we spent a lot of time on that.

We also spent a lot of time in 2013-14 on designing and building a new case management system, and then this year we've spent a lot of time on testing that and getting ready to implement it. We're planning to roll that out in January of 2015. The old system, which has been around for 12 years, is going quiet on December 23.

In terms of education and outreach in 2013-2014 we as an office did all told 73 presentations and speaking engagements. I would like just to say about education and outreach that one of the things that we did for 2013-14 was just to take a step back from the kinds of projects that we had been engaged in, which generally had been things like private-sector privacy conferences, health-sector privacy conferences, and focusing on access-related conferences. Instead of doing that, we've kind of taken a step back from those large conferences that are sector specific to focus more on providing workshops and training, in a sense, in order to help the entities that we provide oversight for to comply with the legislation so that we actually get better information and we can turn it around faster. We started that towards the end of 2013-14 with some PIA workshops. We've also focused on breaches, breach response, breach reporting, PIAs, and time extensions.

In 2013-14 we cohosted a health conference, we provided Right to Know events in Calgary and Edmonton, and we also did Data Privacy Day events. In 2013-14 we also awarded the first ever Robert C. Clark award, which is an award that recognizes a contribution to access to information.

6:25

In terms of regulation and enforcement we published a number of investigation reports in 2013-2014, six of them, in fact. They dealt with issues like decommissioning servers and making sure that you've taken all the personal information off of them. The Project OWE report came out, which had to do with the Edmonton Police Service disclosing information in an effort to clear up outstanding warrants. We did a significant investigation report that dealt with disaster recovery and business continuity planning. We also published a couple of health-related investigation reports that dealt with the misuse of health information by a pharmacist who was looking up a client, trying to strike up a friendship with somebody who was a client of the pharmacy. We also issued a report that dealt with information manager agreements, and I think that is becoming more and more of an issue, so we'll see a little bit more of that in some reports coming out in the future.

In terms of orders, again, we are a quasi-judicial administrative body, and we do hold inquiries. Inquiries result in binding orders, which can be filed in the Court of Queen's Bench and, as I say,

are binding on the respondent organization, public body, or custodian. In 2013-2014 we issued 74 orders, which was a significant increase from the year before, and those dealt with various issues, including disclosing personal information in public decisions, disclosing information about children who died in care – that was certainly an issue in 2013-2014 – and Covenant Health, which had to do with information regarding why an individual had been banned from Covenant Health premises. We issued a couple of orders in the private sector; one in particular was about tracking and monitoring an employer-issued mobile device. Those were some of the significant ones in 2013-2014.

Sometimes when we issue an order, it will also go to judicial review. The parties may ask for a judicial review, and 2013-14 was a year for lots of significant decisions. Many of you will be aware of the UFCW decision, which came out in November of 2013, in which the Supreme Court of Canada struck down Alberta's private-sector legislation, giving the Alberta Legislature 12 months to fix its constitutional infirmity. Another significant decision involved the University of Calgary. That matter is now at the Court of Appeal in January. Imperial Oil was a decision that came out initially in 2013-2014 and has also worked its way through the courts, and we have currently applied to the Supreme Court for leave to appeal the decision in that one. Then we also have the Alberta Teachers' Association versus Buffalo Trail, another matter that was initially heard by the Court of Queen's Bench in 2013-2014 but has since also worked its way through the courts.

Case-related trends: what did we see in 2013-2014? Our total number of cases stayed relatively the same as the previous year, but we've seen an 11 per cent increase over the last two years. I think that what's most important and has been very, very significant and noticeable is the shift in the types of cases that come into the office. What we've seen, as I said, is an 11 per cent increase over two years, essentially the same as last year. Some of the important stats we've seen: a 27 per cent increase in the request for reviews that have come in; a 19 per cent increase in time extensions, which was close to a 90 per cent increase last year. We've seen a huge increase in requests to excuse fees, a 1,000 per cent increase. What that looks like is that last year we had three, the year before we had six, I think, the year before that we had three, and last year, in 2013-2014, we received 33 of them.

We also saw a decrease in complaints under our public-sector legislation and a decrease in third-party requests for review, which had really gone up the year before. I think that mostly the increase had been due to, frankly, just the number of requests for access to expense information, so we've seen that sort of die off a little bit. In the public sector we've seen a 46 per cent decrease in the number of self-reported breaches coming to the office.

One of the things that we did a little bit more of this year in the annual report is to focus on some of those stats that, you know, really stood out, to provide a little bit more detail; for example, time extension requests. Over two years we've seen a 125 per cent increase in time extension requests. Just so you know, with a time extension request there's a limited amount of time under the FOIP Act for a public body to respond to a request for access. The public body can extend that time for various reasons all on its own, but beyond that extension that it's authorized to take on its own, the public body has to come to me for approval to take any longer.

Again, we've seen a fairly significant increase in the number of these requests. We saw 81 of them in 2013-14, and in the annual report and on the slide we've provided a little bit of a breakdown so that you have a sense of where the time extension requests are coming from, which public bodies are asking for them. The

disposition is whether or not I or Marylin, who is also delegated to decide those matters, granted the extension, partially granted the extension, or refused the extension. And in 6 per cent of cases it looks like they were withdrawn by the public body.

Another topic that we dug into a little bit deeper, that I already mentioned, is the 1,000 per cent increase in requests to excuse fees. Again, when an applicant makes a request for access to records, the applicant can request that the public body waive any fees that might apply. Just seeing such a significant increase in the number of requests – oh, and then the applicant can come to my office, and we will review and either confirm the decision of the public body or not. So of the 33 requests that we received in 2013-14, you can see the breakdown of who was asking for the fee waiver and the disposition once the matter came to our office. In about 19 per cent of cases we confirmed the public body's decision to deny the fee waiver request. In 26 per cent of cases the request was abandoned. In about half the cases the public body agreed to waive the fees in full or in part as a result of the mediation process, and in 7 per cent of cases we had no jurisdiction or there was some other reason. So that's a little bit of detail on one of the trends we saw.

Statistics. What we saw in 2013-14 was, as I said, a slight increase in the number of cases opened, a slight decrease in the number of cases that we closed, a fairly significant increase in the total number of orders that we issued, and around about the same total calls and inquiries. We received about 4,000 calls, e-mails, just questions to the office that we responded to. We maintain about the same number of judicial reviews. It's gone up a little bit in our year-to-date number, as you can see, and that may be related to the fact that we just issued so many more orders in 2013-14. We saw around about the same number of self-reported breaches in 2013-14 as we had seen the previous year, and it looks like we're on our way to a very substantial increase at the end of the current fiscal year.

In terms of timelines and case closures we did see a change this year, and we've spent a little bit of time looking into that a little bit more closely. As you can see, for the number of cases that we closed within the first 90 days, the percentage of cases has decreased, and the number of cases that are taking 180 days plus has increased. I think that there are a number of factors at play there. One of them is that during the fiscal year 2013-14, as I mentioned, we went through a fairly substantial reorganization of the office. We had a number of vacant positions in part because a number of people took leaves. We had one secondment and, I think, three or four people taking leaves during the year, and we had one resignation. Because we were in the process of reorganizing and going through a classification exercise, we had some challenges in filling those positions right away. I'm pleased to say that we did manage to get those positions filled earlier this year, so we're operating with a full complement of staff now.

Another factor, I think, that's skewing these numbers is that there is a much higher number of orders that were issued in 2013-14, as I pointed out. These numbers up here: this is a percentage of the total number of cases closed. By issuing more orders, the percentage of cases that closed by order has definitely gone up and is reflected in these numbers. Matters that go to inquiry take longer, and that's just part of it.

Moving on, the next slide shows you that, in fact, we've closed fewer cases through mediation and investigation and more cases through orders. Again, this is a percentage of the total number of cases that were closed in the year.

6:35

Finally, with respect to 2013-2014 we returned just about 10 per cent of our total approved budget, and that has to do, again, mostly with, as I said, some staff vacancies.

Moving on to our business plan, I know I'm running out of time, so I'll do this very quickly. Moving forward, things that we're focusing on: the workshop program, that I also already mentioned. We have plans for an information-sharing workshop that's coming up soon as well as a hackathon in 2015. Alberta is the host of the federal-provincial-territorial commissioners' conference in 2015 as well. We just had one in Ottawa this year. And we have some guidance documents that are coming out soon, including some joint publications with our colleagues in other jurisdictions.

Effective, efficient, timely processes. We've spent a lot of time on that this year. We're starting to see the payoff on that. We will continue with that work as we go forward.

Effective access to and use of our information. I mentioned our new case management system. We put a lot of time into that. We'll be rolling it out in January, and then after that we'll be rolling out our new website, which has also been through design and build. We just need to migrate data.

Finally, in terms of goals and key strategies going forward, we're spending a lot of time on training our staff around our new case management system, mediation and investigation skills, and getting everybody up to speed on all three acts that we have oversight of.

Our budget estimate. The request going forward is a 10.7 per cent increase, and some of that has to do with personnel. Our personnel numbers, the salaries and wages and employer contributions, are based on a 2.25 per cent cost-of-living increase and a 3 per cent merit increase for 2015-16 per direction that we've received from corporate human resources. Also, employer contributions, so benefits: we've calculated those at 26 per cent. That's to account for an expected slight increase in benefits but also changes to vacation thresholds.

In supplies and services the main changes – and I can explain all of those variances if you like, but the two that I'd like to draw your attention to in particular are contract services, nonlegal; and technology. The changes in contract services are mainly for two temporary positions to assist us with our backlog, again because we have had vacancies due to the office reorganization. In the interest of getting things out of the office as quickly as possible, we're requesting two positions to assist with that.

We've also increased that budget because we have some adjudication matters, some inquiries that I have to have external assistance with. We've increased that budget to account for offence investigations. Those are wilful noncompliance with the legislation. They tend to be under the Health Information Act; they tend to involve snooping cases. We've got seven of those in the office right now.

Let's see. The other significant change there is to technology services. Basically, our budget is very similar there to what it was in the previous year. The increase is due to a planned project to work on disaster services. We spent some dollars in the last couple of years building the infrastructure for disaster recovery, and it's worked really well. But now we need a plan, so that's a contract to do that, which accounts for that increase.

We're not asking for anything in terms of capital purchases.

Thank you very much.

The Chair: Wonderful. Almost right on time. Thank you, Ms Clayton and Ms Mun.

Steve, did you want to introduce yourself?

Mr. Young: Sure. Steve Young, MLA for Edmonton-Riverview.

The Chair: Perfect.

We have a few questions, so we'll go to the government members and then the opposition members. We'll start with Neil Brown.

Dr. Brown: Thank you, Mr. Chairman. Thanks, Ms Clayton, for your presentation. Our Premier has made it very clear that we're living in a different world with respect to budgeting. We're looking at anywhere from a \$2 billion to \$4 billion shortfall in our projected revenue for the coming year, and he's made it very clear that it cannot be business as usual. You're asking for, as I understand it, a 10.7 per cent increase over what your budgeted amount was for last year and not what you actually expended. Am I correct in that?

Ms Clayton: Yes.

Dr. Brown: So if I look at the figures for what you actually spent, it's probably in the neighbourhood of – what? – 15 to 16 per cent that you're really asking for over last year. I do not think that those types of increases – 10.7 per cent or 15 per cent or whatever is in your budgeted amount – can be sustained and can be justified. I'm tempted to ask you what the consequences would be of a 5 per cent cut over what you spent last year, but I won't do that.

I'm going to ask you two things. I want to ask you what the burden of the increase would be over what you spent last year for the actual mandated increases in the public service contracts that we have in place – and that's the salary increases and the merit and whatnot, that we are legally obliged to do – over what you actually spent last year. So that's my first question.

I'll follow up with a second one. I'd like to know what the consequences would be if you were asked to live within what you spent last year in terms of your service and your personnel.

Ms Clayton: Okay. Well, first of all, the consequence if we were living within what we spent last year is that for the positions that I filled in the current year, I wouldn't be able to pay those people because the surplus from last year, from 2013-2014, comes from not filling positions and from having vacancies that I wasn't able to fill while we were going through the reorganization and the classification. That is why there was a significant salary savings in our 2013-2014 budget.

I've filled those positions now, so those positions – we have 42 FTEs. As I said, just in the mediation and investigation and the compliance and special investigations team we ended up with about a third of our people who were either on leave and we couldn't fill it or there was a vacancy and we couldn't fill it while we were in the middle of a hiring freeze, essentially, to get some stuff organized, the classifications. So that would be a challenge for us. If we had every position in the office filled, we wouldn't be able to pay them within what we spent last year. So there is that.

Dr. Brown: But I'm not asking about that. I'm asking about the ones that are filled. You know, what would the consequences be of limiting yourself to the contract obligations?

Ms Clayton: Moving on to that, if we stuck within the mandated increases, that would be the – what is it? – 2.25 per cent cost-of-

living allowance for existing staff and the 3 per cent merit increase.

Dr. Brown: But that's not of your overall budget. That's of the salary costs, correct?

Ms Clayton: Yes. That's just the salary costs. The significant changes in supplies and services, as I said, are the two positions to assist us with the backlog. The consequences of not receiving that are that we will continue to implement – we've been working on our processes. We've tried a number of different things. We're piloting different processes to try to deal with the backlog and to close cases that have been in the office, and we will continue to do that.

Mr. Eggen: Thanks so much for your presentation. Excuse me. I'm going to move quickly because we've got to get back to the Legislature. I noticed on pages 20 and 21 of your report that you've seen a 27 per cent increase in the number of requests for review as well as a 19 per cent increase in requests for time extensions. So I'm seeing that as a 125 per cent increase over the last three years. What's driving the number of these applications for review and time extensions? You know, is there an issue around human resources at other public bodies that perhaps are required to report under FOIP and then this is causing a logjam of information?

Ms Clayton: Well, I think that the numbers in our office – as I said, the real shift in the types of cases that are coming to our office. A much higher percentage of the cases in the office are cases under the FOIP Act as opposed to under PIPA and HIA. We're seeing an increase, and I think that that is very much reflected in the numbers that we're seeing Service Alberta put out for the numbers of requests that are going to public bodies under the FOIP Act. So there has been an increase. Those numbers for the last couple of years are now available on Service Alberta's website, and they have seen a significant increase.

6:45

I suspect there are a number of factors that are contributing to the length of time that it takes for requests to receive a response. It could be the complexity of the file. It could be a question of resources provided to the FOIP offices. It could be just the sheer volume of cases that are coming in. As you are aware, I have initiated a review of how the government of Alberta handles FOIP requests in an effort to understand a little bit better: what are the volumes, is it taking longer to get government responses to requests for access, and if so, what are the causes for any delay?

Mr. Eggen: Yeah. We definitely see delays. I mean, we see lack of training and expertise in these bodies that maybe slow things down, and we also see some purposeful rejection of otherwise reasonable claims. There's obfuscation going on as well. I'm wondering. My second question – do we get two questions? Is that how it works?

The Chair: You get two, yeah.

Mr. Eggen: Okay. Despite the explosion in the number of requests for review and time extensions, according to page 57 of your report you actually have spent less on staff this year than last. I'm just wondering how your office is able to cope with a larger volume of work with, presumably, fewer people.

Ms Clayton: Well, that's one of the reasons why I went forward with a reorganization of the office. I thought that instead of three

smaller teams that were legislation specific, having two larger teams would give us more flexibility, would allow us to be more nimble and to be more consistent in our processes. Instead of having different kinds of processes under each act for dealing with a request for review or a complaint investigation or a PIA review, we would be able to look at what we do well and what really works and consolidate and streamline. So we've done that with our intake unit and, as I've said, with the restructure of the office just generally.

We've also worked to improve our processes. We've got a process for focusing on cases that are a priority so that we're not getting in the way of access, to make breaches, especially where individuals have not been notified, a priority. So those are the cases that we focus on. We have a process for triaging cases that were put in abeyance for a time when we didn't have enough staff to respond.

We're working internally to try to do things better, and I think that we're well positioned to do things better and to be more timely and to be more effective. But, as I said, we do have a backlog at the moment as a result of some of the changes that we've put in place and, frankly, because the makeup of cases has changed. Also, last year, when we came in, we asked for a 1.7 per cent increase over the previous year's budget, which was comparable to the rate of inflation at the time. We didn't ask for new staff last year. What I am asking for this year is temporary staff that will help us deal with the backlog.

Mr. Eggen: Thank you very much.

The Chair: Okay. Perfect.

Mr. Young: I just have a quick question. My understanding of the orders: there was the one about Covenant Health disclosing information, that actually went to QB. Didn't it have more of a resulting decision out of it, and weren't there costs associated with that?

Ms Clayton: That one, when reporting for 2013-14, which was when the order was issued, in our current fiscal year has worked its way through the court system, and the court has found against us with respect to that order.

Mr. Young: Right. Not to talk about the contents of any particular case, but there was a decision associated with costs. Is that going to have an ongoing consequence to people requesting orders or in terms of us having had costs found against us?

Ms Clayton: Having costs against the office?

Mr. Young: Yeah.

Ms Clayton: I don't think that that makes a lot of difference to individuals going forward with inquiries or even judicial reviews. Generally, costs are not awarded one way or the other. When they are, they tend to be \$5,000, \$6,000, something like that. I don't like to be in that position, for sure, but certainly when there are certain cases – I don't bring a judicial review. I end up participating in that and assign external counsel or assign my internal litigator to try to reduce the costs of external counsel.

Mr. Young: Thank you.

My other question. It seems to me that information privacy is becoming very technical, the evolving nature of this. Your investigations are not a pen-and-paper exercise. Is this reflected in your costs as well? It becomes very technical when your staff need

to be more IT experts sometimes rather than, you know, policy experts.

Ms Clayton: That's right. We have had some luck in recruiting. As I mentioned, we had a number of vacancies in 2013-2014. One of the positions that we were trying to fill was a position of technical investigator. We did in fact hire somebody who brings that expertise, and we've been able to assign that person to a proactive, guidance-type of activity. For example, when the Heartbleed virus was getting a lot of media attention, we were very quick to put some guidance out on our website, and that's because we had somebody technical on staff who was able to do that.

As we move forward with investigations, one of the investigations that was announced recently involves body-worn cameras and facial recognition technology. I think we're very fortunate that we do have some people on staff who have deep expertise in that area. We also work very closely with our colleagues at the federal commissioner's office. In British Columbia they have staffing resources. They have some great people on staff who have very deep technical knowledge, and their folks work with our folks, and we try to leverage resources in that fashion.

But you're right. It seems that technology drives everything. Technology is ubiquitous. Almost all of the issues that we're looking at – every single PIA that we look at under the Health Information Act has something to do with the health information system.

Mr. Young: And this is sort of my other question. In terms of the proactive nature . . .

The Chair: Steve, we have a long list of people. You snuck two in.

Mr. Young: Okay.

The Chair: Okay. Jeff Wilson, then Alana DeLong.

Mr. Wilson: Great. Thank you, Mr. Chair, and thank you for being here today and for the continued work that your office does. It is certainly very much appreciated.

One of my questions is about one of the recommendations that you made during the FOIP Act review, and that related to documenting decisions, actions, advice, and other sorts of government functions. I'm wondering. Since you made that recommendation, have you noticed a shift in the way that the government is operating?

Ms Clayton: The short answer to that is no, but I haven't been, you know, down in the weeds on a particular file where that has been an issue. I haven't. There may be other folks in the office who have looked at that issue. Clearly, that is an issue in a number of jurisdictions across the country. Certainly, in B.C. it's been a big issue, and in Ontario it's been a big issue. In those jurisdictions there have been specific incidents that have triggered investigations by the respective information and privacy commissioners that have resulted in very public reports calling for a duty to document.

We did put out jointly with the other commissioners across the country a resolution in early November, I believe the second week of November, on information management, and we again reiterated the concept of a duty to document in that resolution. That's the united voice of the federal-provincial-territorial commissioners across the country saying that access rights don't amount to very much if nobody is recording decisions. Frankly,

it's just good business for governments to be documenting and recording. There are lots of exceptions in the legislation that might allow a government to refuse to provide access to something. It is a bit of a concern that that might be going on just generally, this concept of oral government.

Like I said, it's an issue across the country. It was a topic in the joint resolution the commissioners released in 2013. It was covered off in the joint resolution that was issued this year as well. Certainly, I made that recommendation in the hopes that there would be some sort of action on that.

6:55

Mr. Wilson: Okay. Thank you.

Back to the budget. Sort of to follow up on Dr. Brown's question, currently there is an investigation that your office is conducting into political interference in the FOIP process by the government of Alberta. I'm not suggesting that this would be the reason that Dr. Brown would suggest cutting your budget, but how would cutting your budget by 5 per cent impact your ability to conclude that investigation?

Ms Clayton: Well, I can't really speak to how it would impact my ability to conclude that specific investigation. As I said, we have certain mandated increases that we have to make according to the direction from corporate human resources, and those have to do with the cost-of-living increase and the merit increase. The additional dollars that I'm asking for are primarily for temporary staff to help us deal with a backlog. We will complete our investigations regardless; it will take longer.

Mr. Wilson: Great. Thank you.

Ms Clayton: You're welcome.

The Chair: Okay. Perfect. Thank you, Jeff, for your questions.

Rick, did you have any questions? No? Okay. Then after we'll move back to David Eggen again.

Alana.

Ms DeLong: Thank you very much. I did want to reiterate what Dr. Brown said previously, that we are in a different world now. I just checked the price of oil, \$68.90.

There are a couple of things. Your budget does not just affect you. The work that you do doesn't just affect you. I wondered: if we were to move the budget for excused fees over to your department, about how much money is that? If it was a budget item, you know, how much money would that be?

I'm a little concerned about your computer costs. When did you say that your system was going to go live? Is it this December that your system is going live?

Ms Clayton: No. The current system is going quiet on December 23 . . .

Ms DeLong: Of this year?

Ms Clayton: Yes.

. . . and our new system is rolling out in January. So over the Christmas period, while government is closed, while our office is closed, we'll be migrating data from the existing system to the new system so that we're up and running for January 2.

Ms DeLong: So most of that cost, then, is the migration of the data? You actually got an increase, and you should be actually getting a decrease because your development is finished. Ordinarily, leading up to development you've got two systems

running, okay? You're going to be dropping one, so your costs should be going down.

Ms Clayton: That's not actually what's going on. We've been building a new system, and we paid for that out of 2013-14 with the capital request that we made the year prior. That was a capital budget item that was approved by this committee, and we built the system. This year we've been testing it and developing the manuals and doing some staff training, and we're going to be migrating it. But the cost increase in our budget estimate is for a completely different project. There is nothing other than some minor maintenance to our new system that's in the budget. This increase here, the \$46,400, has to do with the disaster recovery plan and project. That's not related to our new case management system.

Ms DeLong: What would your budget be if it was for excusing fees?

Ms Clayton: I'm not sure I understand what you're saying there.

Ms DeLong: Part of your mandate is to excuse fees.

Ms Clayton: No, no. Part of my mandate is to review requests by applicants when they've gone to a public body and the public body has refused to excuse fees. Then they can come to my office, and we will review the public body's decision, and we will either confirm that decision or we will try to mediate with the public body to have the fees waived. It's not a separate budget item; it's part of our operational. It's one of the many, various things that the staff in the office do.

The Chair: Alana, we're going to have to move on.

David, you're up again.

Mr. Eggen: Thanks a lot. In regard to the Personal Information Protection Act you mentioned and made reference to the Supreme Court ruling, which I think was pretty clear, that our Alberta version of that act was a constitutional problem. Right? We're just wondering how your office is planning and then budgeting to deal with changes that the government is now proposing to Bill 3. Have you made provision for that, or is there a budget provision or a change in information that's coming your way and so forth?

Ms Clayton: No. The effects of Bill 3 are to keep the act in force, which I think is important. I wrote to the government speaking about the importance of private-sector privacy legislation with some concerns that the Legislature might not be able to meet the Supreme Court's timeline in terms of amending the constitutional problem with the legislation.

If the constitutional problem is amended, then the act will not lapse. That was my biggest concern, that Albertans, who right now enjoy the privacy protections afforded by that legislation, would lose those rights and that businesses that had spent 10 years developing compliance programs so that they could comply with PIPA would have found themselves under, potentially, federal privacy legislation instead, which, while substantially similar, is not exactly the same. If the legislation is amended within the extended timeline that the Supreme Court has granted – they have given us six months, and Bill 3 has been introduced – it's my understanding that it will be, effectively, business as usual under the private sector.

Mr. Eggen: Does the legislation that's forward here – we're going to be debating it tonight, I guess – in your view, address the concerns of the Supreme Court?

Ms Clayton: I issued a statement on the website saying that, in my view, it's building in a balancing mechanism which is, I think, what was missing and what the Supreme Court was asking for. I did propose a solution. After the court issued its decision in November 2013, I had written to the government proposing a solution to fix the problem. My concern was primarily that there are a lot of different potential options. From my point of view, the one that addressed the court's concern and provided the most protection for Albertans was an exception to consent as opposed to an exclusion from the act for certain kinds of activities that were expressive in nature.

My comments about Bill 3 are that I think it is addressing the Supreme Court's issue, and mostly I'm just very pleased that steps are being taken to address the issue. I think it would have been extremely unfortunate for Albertans had the legislation been allowed to lapse.

Mr. Eggen: Thank you very much.

The Chair: We have about 12 minutes left here before we have to head back. I have Richard, Jeff, Genia, and Neil on the list. If you can all be quick, you'll all get on. Otherwise, I'll have to cut it off at 7:15.

Richard, go ahead.

Dr. Starke: Thank you, Chair. Thank you for the presentation. I have a concern along the lines of Dr. Brown's and Ms DeLong's with regard to what I see is not just a 10.7 per cent increase in budget year over year but actually an 18 per cent increase in budget ask this year compared to the actual of the previous year.

You've given some of the rationale behind that, but the budgetary figures do not allow for proper drilling down of what is spent on specific activities. As an example, in your annual report, starting on page 49, there is a discussion of your education and outreach activities. What is the amount that is expended on those activities in an annual budgetary year?

Ms Clayton: I'm sorry. On what page, again, was that?

Dr. Starke: Well, the description of it in the annual report starts on page 49, education and outreach. It deals with presentations, forums, workshops, media inquiries, the Robert C. Clark award, and collaboration with other jurisdictions. I'm curious to know what that costs annually.

Ms Clayton: I don't have those specific numbers with me, but I can tell you that that does come out of contract services. Let me see if I've got them for last year.

The Chair: You're welcome to provide them via e-mail.

Dr. Starke: So all of those services are contracted? None of those are provided by staff?

Ms Clayton: For the WCHIPS conference, the Right to Know, most of the presentations, forums, and workshops that are listed on page 50, for example, are events that we participate in that somebody else hosts except for the Western Canada Health Information Privacy Symposium. That one is a co-hosted event that we're not doing any longer but we had done for a number of years. We didn't have any budget allocation for that. We had an arrangement with a conference organizer, and the conference organizer takes on the risks and the costs associated with that. We participate on the agenda-planning committee and by providing speakers. That's the WCHIPS.

7:05

Right to Know is an event where we have minimal costs associated with a venue, and we provide coffee and muffins and things like that. Staff within the office organize and arrange that, participate in that, and we may pay some travel costs for somebody to come from Calgary to Edmonton to speak.

Dr. Starke: I guess what I'm asking – and you can get back to me on this – is: what do the overall education and outreach activities of the office cost on an annualized basis?

The other question that I had. You describe a 1,000 per cent increase in requests for fee forgiveness – let's say that – and you mentioned the process by which that occurred in terms of, you know, applications for fee forgiveness coming forward for adjudication. What is the amount of staff time and the annual cost for adjudicating on those requests?

Ms Clayton: Specifically on the fee waivers?

Dr. Starke: Correct.

Ms Clayton: For 33 of them: again, I can't tell you exactly how much time that takes. We turn those around fairly quickly. They become a priority when they come in. I would say that probably – what do you think in days for a fee waiver?

Ms Mun: Less than 90 days.

Ms Clayton: Yeah, less than 90 days. It would be one portion of a caseload that a portfolio officer was handling. We don't break down exactly what it costs to do a fee waiver request.

Dr. Starke: But in terms of numbers you have 10 times as many of those as you had last year. You had three, six, three, and all of a sudden you have 33, right? So that's going to take more time by those who are doing the adjudication of that. I'm just curious to know what that costs.

Ms Clayton: I don't know the specifics of what that costs. I would have to break that down.

Dr. Starke: Okay. I'd be interested in knowing that as well. Thank you.

The Chair: Could you provide that before we vote on Friday, by Thursday afternoon possibly, through the committee clerk?

Ms Clayton: Yeah. I can try and do that.

The Chair: Okay. We have a few minutes left here. Jeff.

Mr. Wilson: Thank you, Chairman. I will ask two questions really quickly. If you could respond, it would be appreciated. Seventy-seven per cent of requests for time extensions were made by the government of Alberta ministries. Is this trending upwards, and what would you, I guess, attribute that to?

The second question is regarding FOIP requests that are being returned with no records found. The *Edmonton Journal* has, you know, published reports that that's something that they're seeing quite often; actually, that's trending upwards as well. Could you comment on the trend, and does it concern you?

Ms Clayton: I'm sorry. The first question: are you interested in the numbers of – you know, we have the stats from Service Alberta about the number of requests that they're receiving, but specifically you're interested in . . .

Mr. Wilson: Well, the fact that 77 per cent of those come from GOA ministries: is that a trend upwards year over year, last year and the year before?

Ms Clayton: We've seen a fairly significant increase in the number of requests for time extensions: 36 in 2011-12, 68 in 2012-13, and 81 in 2013-14. I don't know if I have a breakdown here of exactly where they're coming from other than in the current year. What we are seeing is that – I don't think I have that with me, but we could look into that and tell you what the change is.

Mr. Wilson: Sure. That would be appreciated.

The Chair: Perfect. And you'll get back to the committee clerk on that.

We have Neil Brown and . . .

Mr. Wilson: Sorry, Mr. Chair. With respect, the other question that I asked was in regard to the no-records-found trend as well.

The Chair: You didn't get the answer? Okay.

Mr. Wilson: Thank you.

Ms Clayton: That is an issue that I'm certainly asked about a lot. As I said, it has been an issue in other jurisdictions. At the time of making the recommendations in my submission to the GOA review of the FOIP Act, we didn't have complaints in the office.

Are you aware of that issue? It has been raised.

Ms Mun: No. Part of the problem is that when we get requests for a review in our office, there are multiple issues. Some of them are that there are no records found, and that raises the issue of adequacy of search for us. If the records don't exist, the public body can't produce those records. However, one of the things our office will look at is whether or not they have done a reasonable search for those records.

Mr. Wilson: Gotcha. Thank you.

The Chair: All right. Thanks, Jeff.

Neil and Alana, do you guys both mind reading in your questions, and then if we have a few minutes, you can . . .

Dr. Brown: I don't even have a question, Mr. Chair. I just want to go on the record in regard to Mr. Wilson's suggestion that somehow my fiscal frugality bent was related to some investigation that was under way. I want to say that I had no idea of the nature or circumstances of such an investigation. In fact, if I ever did know about the investigation, I had long since forgotten that there was such an investigation, so it had absolutely no connection to my questions.

The Chair: Okay. Noted.

Ms DeLong: You did mention that you had gone from three teams down to two larger teams. How much faster are those teams capable of resolving issues? How many issues, essentially, get resolved by the two teams versus how many got resolved with the three teams?

Ms Clayton: Well, it's the same number of cases. It's the same teams that are working on the cases. In terms of timelines and whether or not we're being more effective and more timely, it's new, so we're tracking it. We're monitoring it, and we'll be comparing it against last year and our timelines. So I don't have that for you now because we've reorganized the office to try to address some of these issues. It's a new implementation, so I need some time to see how it's working and for us to sort of get the bugs worked out. I'm very optimistic.

The Chair: Thank you, Alana, and thank you, Ms Clayton and Ms Mun, for joining us tonight. Just so you know, committee decisions on the officers' budgets will be sent out next week.

Well done, everybody. We have two minutes. Any other new business to discuss? No.

The date of the next meeting. The committee will be meeting tomorrow from 6:15 to 7:15 again to hear the office of the Ethics Commissioner.

A motion to adjourn? Sohail Quadri. Thank you very much.

[The committee adjourned at 7:13 p.m.]

