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CRD Update - VFC&YJC Confidentiality Requirements and Background

4 messages

Steven Carey <scarey@crd.bc.ca>

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To: Marie-Terese Little <mtlittle@telus.net>, Marie-Terese Little <mtlittle@4dbrc.com>, Marie-Térèse Little <mtlittle@metchosin.ca>, Adam Flint <flintadam@gmail.com>

Cc: Kristen Morley <kmorley@crd.bc.ca>, Marlene Lagoa <mlagoa@crd.bc.ca>

Marie-Terese and Adam,

I write with some background on confidentiality requirements for CRD commissions and confidentiality at the Victoria Family Court and Youth Justice Committee. You may wish to circulate this e-mail to your members as part of your agenda package for the confidentiality discussion motion raised at the close of your last meeting, as this may resolve concerns.

CRD and Local Government Commission Confidentiality Agreements

Most local governments in the Capital Region use individual confidentiality agreements for elected officials and commission members. Enclosed is CRD's standard agreement and policy. They require holding in confidence of confidential or private information including information protected by the *Freedom of Information and Protection of Privacy Act*.

Most elected officials, prior to involvement with the VFC&YJC, will have completed one of these declarations. A breach of such an agreement, depending on severity, may be grounds for removal from a committee. Standard CRD practice is to require every participant to submit such a form in order to protect confidential information. Forms may be submitted to Legserv@crd.bc.ca in copy to me.

VFC&YJC Confidentiality Oath

The existing confidentiality oath is not required under the *Provincial Court Act* or the *Youth Criminal Justice Act*. Unless mandated by a particular agreement, this oath is unnecessary. It appears to be a holdover from when the committee was involved more directly with the Provincial Court. Some records imply the oath used to be sworn before a Provincial Court Judge.

Given that it is not a sworn statutory declaration under the *Canada Evidence Act*, it is unenforceable. I would not recommend relying on this oath for protection of private or personal information.

Protection of Privacy of Youth and Family Information in Other Legislation, Policies

While the committee has asserted it has never received a referral for a family or youth matter, were it to receive a referral or act as a conference it is likely that specific confidentiality agreements or undertakings would be put in place to protect the privacy of the individuals involved. These would be dictated by the Court or the referring agency, who would ultimately be responsible for protection of personal information and file materials. The Committee may have had such an agreement in place in its former corrections centre visitation agreement.

Youth information and personal information are protected under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 and the *Child, Family and Community Service Act*, RSBC 1996, c 46. At a high level, these generally prevent disclosure of information relating to children (including children in care) unless to their guardian (if under 13) and with their consent (if over 13) and prevent disclosure of personal information (say, specific identifiable personal details of persons involved in a family proceeding and documentation related to same). They also restrict collection of such information except in certain circumstances.

The *Youth Criminal Justice Act* restricts the publication of the identity or other identifying information relating to a young person dealt with under the YCJA and has other provisions relating to non-disclosure of information relating to the young person and any victim or witness. These would apply to any referral or Court Watch action, even absent an oath or confidentiality form.

The BC Provincial and Supreme Courts also have information access policies that restrict the access to family court file information – not the information discussed in open court, but the files themselves – to the parties themselves or their counsel. The Courts also have the ability to order publication bans and anonymize proceedings (which it may do in civil proceedings that may involve youth or specific family circumstances).

Best regards,

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