IN THE MATTER OF the Inquiry under Part 5 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") between an Applicant, Complainant, **("applicant") and the Vancouver Police Department ("public body") and the BC Freedom of Information and Privacy Association (intervenor) and other intervenors**

OIPC File No.: F15-63155
Public Body File No: 15-2106A
March , 2016

**Submissions of the Intervenor BC Freedom of Information and Privacy Association**

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## 1. Description of the Inquiry

This is an inquiry under the Freedom of Information and Protection of Privacy Act (the "Act"). The inquiry is set for March 24, 2016.

The applicant requested records related to relating to the use of a cell site simulator, or IMSI-catcher (commonly referred to as a Stingray or KingFish) held by the public body (VPD). The public body responded by withholding any potentially responsive records under sections 8(2) and 15(1)(c) of FIPPA. The applicant also argues that section 25 of FIPPA applied to the records. "

Following an investigation and the failure of mediation, the applicant requested that this matter proceed to an inquiry.

*Portfolio Officer's Fact Report*

## 2. Issues under Review in the Inquiry and the Burden of Proof

1. The issues in dispute in this inquiry are three. First, whether the public body is authorized to refuse to confirm or deny the existence of responsive records under section 8(2)(a) of FIPPA. Second, whether the VPD is entitled to refuse to disclose any such records under s.15(1)(c) of FIPPA. Finally, this inquiry must answer the question of whether section 25 requires the disclosure in the public interest of the records responsive to the applicant's requests.

   *Notice of Hearing – Invitation for Written Representations*, January 25, 2016.

2. In the case of the claims under s.8(2)(a) and s.15 (1)(c ) the burden of proof is on the public body ADD CITE

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3. Regarding s.25, in the absence of a statutory burden of proof, it is incumbent on each party to bring forward evidence to support its position.

   *Order F02-38*, Paras 38-39, Order F07-10, Para 11

4. However it is ultimately up to the Commissioner or her delegate in this hearing to decide whether or not the public body has complied with the *Act*, and "…bearing in mind that public bodies are usually best placed to offer evidence that they have complied."

   *Ibid*.
   *Order F13-04*, para 5.

## 3. Argument

### I. Background

5. The Intervenor BC FIPA relies upon the Portfolio Officer's Fact Report, which states that "…the applicant requested, in summary, all records relating to the use of a cell site simulator, or IMSI-catcher (commonly referred to as a Stingray or KingFish) held by the public body. On September 11, 2015, the public body responded indicating it was withholding any potentially responsive records under sections 8(2) and 15(1)(c) of FIPPA. The applicant also argued that section 25 of FIPPA applied to the records. "

   *Portfolio Officer's Fact Report.*

6. The questions to be answered include whether the public body is authorized to refuse to disclose the information at issue under section 15(1)(c) of *FIPPA* or is authorized to refuse to confirm or deny, under s. 8(2)(a) of *FIPPA*, the existence of records containing information described in section 15 of *FIPPA*, as well as the applicant's assertion that section 25 requires the disclosure of information, clearly in the public interest, in the records responsive to the applicant's requests.

   *Notice of Written Inquiry*.

### II Description of IMSI catcher (Stingray)

7. Stingrays, also known as "cell site simulators" or "IMSI catchers," are invasive cell phone surveillance devices that mimic cell phone towers and trick cell phones in the area into transmitting their locations and identifying information. When used to track a suspect's cell phone, they also gather information about the phones of innocent bystanders who happen to be nearby.

   https://www.aclu.org/map/stingray-tracking-devices-whos-got-them

8. It is not clear to what extent police forces in this country are using these devices, but there are indications that these devices are beginning to make an appearance. We also know they are being used extensively by police forces in the United States.

   http://www.theglobeandmail.com/news/national/rcmp-trying-to-keep-lid-on-high-tech-methods-used-to-fight-mafia/article29204759/

   https://www.washingtonpost.com/world/national-security/fbi-clarifies-rules-on-secretive-cellphone-tracking-devices/2015/05/14/655b4696-f914-11e4-a13c-193b1241d51a_story.html

9. There have also been disturbing reports of criminal cases being dropped by American prosecutors in order to keep information about the use of this technology secret..

   Ibid.

10. The cost of these devices is apparently in the hundreds of thousands of dollars.

    http://www.nyclu.org/stingrays

11. In the United States, police have been found to have used these devices without first obtaining a warrant, or without disclosing the proposed use of an IMSI catcher to the judge while obtaining a warrant.

    https://www.eff.org/deeplinks/2015/12/eff-joins-aclu-amicus-brief-supporting-warrant-requirement-cell-site-simulators

## III Interpretation of the *Act*

12. It is well established that the purpose of the *Act* is to provide information to the public for the public interest goal of the greater accountability of public bodies.

> "Section 2(1) confirms that the Act's information access rights are intended to make public bodies accountable to "the public" as a whole, not simply to individual requesters. Access rights may be individually exercised, but they benefit the entire community. They also benefit public institutions: accountability enhances public trust in them, thus contributing to their legitimacy."

Order 00-47, *Inquiry Re: Malaspina University-College Records* -[2000] B.C.I.P.C.D. No. 51

13. The Supreme Court of Canada has repeatedly set out the importance of the acknowledging the purpose of FOI laws when applying exemptions:

> Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable. Consequently, while the Access to Information Act recognizes a broad right of access to "any record under the control of a government institution" (s. 4(1)), it is important to have regard to the overarching purposes of the Act in determining whether an exemption to that general right should be granted.

*Dagg v. Canada (Minister of Finance), [1997] 2 S.C.R. 403*. Paras 62-63 per LaForest J.

14. The special status of *FIPPA* is also indicated by s. 79 of the *Act*, which reads as follows:

"If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act."

12. Interpretation of *FIPPA* has to be made in light of the stated purposes of the *Act*, which are set out in section 2.

> **Purposes of this Act**
>
> 2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
>
> (a) giving the public a right of access to records,
>
> (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
>
> (c) specifying limited exceptions to the rights of access,
>
> (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
>
> (e) providing for an independent review of decisions made under this Act.
>
> (2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.

16. The limitations on the right of access are set out in s. 4.

> **Information rights**
> 4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
> (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but <u>if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record. (emphasis added)</u>

(3) The right of access to a record is subject to the payment of any fee required under section 75.

17. The scheme of the Act as set out in this section is to allow the maximum amount of disclosure even where some information responsive to the request can or must be excepted from release.

18. Under s.4(2), the VPD has an obligation to sever information which could cause harm to investigative techniques rather than refusing to release the entire responsive record and deny the requester's right to access that information.

19. There is no indication that VPD put its mind to if or how to sever information that it is allowed to refuse to release under Part 2 of the *Act*, nor is there any indication that such severing could not be done reasonably.

20. Previous orders have stated that severing would be unreasonable "where the remainder of a severed record consists of disconnected words or snippets of sentences that cannot reasonably be considered intelligible." There is no indication that that is the situation in this case.

*Order F03-16* para 54

21. It is incumbent upon the VPD to show that severing would not be reasonable in this case, and it has not done that. Given the possible scope of records responsive to this request it is unlikely that there are no parts of those records that could be released to the requester after severing.

## IV. Section 8(2)

13. Section 8 of the *Act* reads as follows:

**Contents of response**

**8** (1) In a response under section 7, the head of the public body must tell the applicant

(a) whether or not the applicant is entitled to access to the record or to part of the record,

(b) if the applicant is entitled to access, where, when and how access will be given, and

(c) if access to the record or to part of the record is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 53 or 63.

(2) Despite subsection (1) (c) (i), the head of a public body may refuse in a response to confirm or deny the existence of

(a) a record containing information described in section 15 (information harmful to law enforcement), or

(b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.

22. The modern interpretation of statutes requires that provisions be read "in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada Inc., 2008), at p. 1.

23. In the case of s.8(2)(a), this means looking at the purposes of the *Act*, including the desirability of accountability of public bodies, but also at the specific exception set out in s.15 and how it fits the overall scheme of the law.

24. The *Act* sets out a broad right to information, subject to certain exceptions set out in Part 2 of the Act.

25. Section 15 requires that the public body show not just that the records in question are related to law enforcement, but also that if they were released to a requester that they would probably cause harm to law enforcement. Public bodies also have the discretion to release records that would otherwise be redacted under s.15 as it is not a mandatory exception to release.

26. This means that section 8 (2)(a) should not be interpreted in such a way that it creates a second exception to release of information responsive to a request involving the same subject matter but having a much lower threshold.

27. If information in a responsive record contains the type of information excepted by s.15, it would be contrary to the overall scheme of the *Act* to allow a public body to refuse to confirm or deny its existence based on that fact alone.

28. In this case, the claim is being made by the VPD that to either confirm or deny that the VPD has records related to use of IMSI-catchers would somehow harm law enforcement.

29. This is clearly untenable on a proper interpretation of the *Act*, and the likely content of the records in question. Some of these records would include discussion about whether or not to purchase, lease or otherwise obtain the technology in question, possibly including contracts and other related documents.

30. If this interpretation was to be upheld, it could be applied to almost any other type of police equipment or procurement, resulting in absurd levels of secrecy.

31. A possible request asking for the number and type of police cruisers used in a given year could be denied on the basis that if VPD was to confirm or deny the existence of special police vehicles law enforcement would be endangered because criminals would be able to know the type and capabilities of such vehicles and take measures to counteract them.

32. As noted earlier, the existence and widespread use of IMSI Catchers is well known. It is difficult to believe that any career criminal would not be aware of these devices and the possibility that Canadian police forces including VPD might be using them at any given time.

33. Section 8 (2)(a) is also linked to the requirements under s.15. In this case the VPD has claimed that if such records exist they are entitled to refuse to release them under s. 15(1)(c)

34. The use of s.8(2)(a) cannot simply be used as a substitute for the use of s.15. To do this would result in the creation of a second exception from release related to the same subject matter. One would require the public body to show not just that the records contain information that falls within the scope of the section, but also that the release of this information would probably results in harm to investigative techniques and procedures. The other would be able to be invoked simply because the subject matter of the responsive records relates to law enforcement.

35. A public body should not be able to refuse to confirm or deny whether or not responsive records exist simply because the subject matter relates to law enforcement. This would undermine the overall scheme of the *Act*, which is to require release unless the public body can cite an exception or show that the records are outside the scope of the *Act* under s.3.

36. Proper interpretation of s.8(2)(a) requires the public body not simply use this section to avoid the obligations set out in s.15.

37. That section is discretionary, and harms based. It reads as follows:

> *15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
> *(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,*

38. If a requester asks the Commissioner to review a refusal to confirm or deny the existence of a record, the public body is expected to be able to provide evidence as to why section 8(2) is applicable.

Office of the Chief Information Officer - FOIPP Act Policy and Procedures Manual

http://www.cio.gov.bc.ca/cio/priv_leg/manual/sec01_09/sec8_cs.page?

*Order 260-1998* p.9

39. The proper interpretation of s.8(2)(a) requires that the public body not just state that the responsive records deal with the subject of law enforcement, but also that the simple disclosure of the existence or nonexistence of the responsive records would have the effect of undermining the societal interest protected by s. 15.

40. As noted above, the existence of IMSI Catchers is widely known, and previous orders related to s.15 have stated that "…section 15(1)(c) does not preclude the disclosure of information about commonly known investigative techniques such as wiretapping or fingerprinting.

*Order 50-1995*, p.7

41. Therefore, this is not an appropriate case for the application of s.8(2)(a) to these records.

42. It should also be noted that s.8(2)(b) provides for a similar power to refuse to confirm or deny existence of records that "would be an unreasonable invasion of that party's personal privacy."

43. It is interesting that the effect of allowing the use of s.8(2)(a) in this case would have the effect of undermining the privacy rights that are supposed to be protected by similar means through the use of s.8(2)(b).

**Section 15**

43. The VPD is also relying on Section 15(1)(c) of the *Act*, which reads as follows:

> 15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

44. Section 15 is a discretionary exception, intended to protect the societal interest in allowing law enforcement agencies to carry out their mandates, which in certain specified circumstances, requires information to remain confidential.

45. Section 15 also requires that the public body invoking this exception show that harm may result if the information is disclosed.

*Order F08-03* para 19.

46. The standard for a public body demonstrating the required level of harm has been set out in a number of orders. Former Commissioner Loukidelis used these words to describe the evidentiary burden to establish a reasonable expectation of harm:

> As I have said many times before, the evidence required to establish that a harms-based exception like those in ss. 15(1)(a) and (l) must be detailed and convincing enough to establish specific circumstances for the contemplated harm that could reasonably be expected to result from disclosure of the withheld records; it must establish a clear and direct connection between the disclosure of the withheld information and the alleged harm. General speculative or subjective evidence will not suffice.

*Order F08-03*, para 27

47. In this case the public body has not met this standard, instead relying on s.8(2)(a) to refuse to confirm or deny the existence of the records which may be subject to this section.

48. In Ontario Order 170, May 25-1990 (John McCamus, Inquiry Officer) defined "investigative technique and procedure" as essentially including a harms test. The Order says:

> In order to constitute an "investigative technique or procedure" in the requisite sense**, it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization**. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected [sic] by disclosure and according [sic] that the technique or procedure in question is not within the scope of the protection afforded by section 14(1)(c). (pp. 30-31) (emphasis added)

*Quoted in Order 50-1995*

> 49. The inquiry officer concluded that disclosure of the entire record would not reveal "investigative techniques and procedures" in the sense intended by section 14(1)(c). The actual methods employed by the investigators did not "appear to be anything other than what a lay person would expect." While some portions of the report in dispute might be exempt under other provisions of the Ontario Act, it was held that "disclosure of the report would not provide the requester with information that would hinder or compromise effective utilization of the investigative methods employed in this investigation." (pp. 32-33)

*Ibid*.

**Exercise of discretion:**

50. The exception contained in s. 15 is discretionary.

51. The criteria for the proper exercise of discretion were set out by the Commissioner in *Order 02-38* para 149, and reproduced in the government's *Policy and Procedures Manual* for the *Act*. They include:

- the general purposes of the legislation: public bodies should make information available to the public; individuals should have access to personal information about themselves;
- the wording of the discretionary exception and the interests which the section attempts to balance;
    - whether the individual's request could be satisfied by severing the record and by providing the applicant with as much information as is reasonably practicable;
    - the historical practice of the public body with respect to the release of similar types of documents;
    - the nature of the record and the extent to which the document is significant and/or sensitive to the public body;
    - whether the disclosure of the information will increase public confidence in the operation of the public body;
    - the age of the record;
    - whether there is a sympathetic or compelling need to release materials;
    - whether previous orders of the Commissioner have ruled that similar types of records or information should or should not be subject to disclosure; and
    - when the policy advice exception is claimed, whether the decision to which the advice or recommendations relates has already been made.

52. In this case, VPD either failed to consider, or gave insufficient weight to the general purposes of the *Act* and the stated legislative purpose that public bodies should make information available to the public.

## V Section 25

53. Section 25 of the *Act* reads as follows:

> **25** (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

(a) any third party to whom the information relates, and

(b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the commissioner.

54. This section applies "despite any other provision of this Act".

55. The Commissioner has recently (July 2015) re-examined the operation of this section and set out its proper interpretation.

Investigation Report F15-02, *Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies.*

56. The Commissioner stated that she would be interpreting s.25 with an eye on the purposes set out in s.2 of the Act "when applying the principles of statutory interpretation to determine what the Legislature intended a plain reading of the words to mean."

Ibid., p.24-25

57. It is important to note that s.2 not only includes "giving the public a right of access to records," but also "preventing the unauthorized collection, use or disclosure of personal information by public bodies".

*FIPPA*, s. 2(1)(a) and (d)

58. After examining previous Orders, Commissioner Denham rejected the interpretation that required that "compelling need" or "present significance" or "clear gravity" must be present in order to meet the requirement for release under s.25. As she put it:.

*"I do not find a basis for this in the language of s. 25. The Legislature said no such thing. The language of s. 25(1)(b) is clear: the test is whether, in the circumstances, disclosure of information is ―clearly in the public interest ‖.*

*Order F15-02* p. 26

59. After rejecting the supposed temporal precondition to invoke s.25, the Commissioner went on to set out the interpretation of "clearly in the public interest".

60. As the Commissioner put it, considering the context and the fact that s.25 overrides other provisions of the *Act*:

    *It is not desirable to lay down any hard and fast rule for what the term 'clearly' means in s. 25(1)(b). Nor would it be appropriate to conclude that the Legislature intended to create something like a standard of proof. It seems to me, however, that 'clearly' means something more than a 'possibility' or 'likelihood' that disclosure is in the public interest.*

*Order F-15-02* p.28

61. The Commissioner set out a multi-part test for the possible application of s.25

Ibid, p. 29

62. First, "s. 25(1)(b) requires disclosure where a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest."

Ibid.

63. Next, "a public body should, when deciding whether information 'clearly' must be disclosed in the public interest, consider:

    - the purpose of any relevant access exceptions (including those protecting third-party interests or rights that will be, or could reasonably be expected to be, affected by disclosure).
    - the nature of the information and of the rights or interests engaged, and the impact of disclosure on those rights or interests will be factors in assessing whether disclosure is 'clearly in the public interest'

ibid.

64. Finally, "the public body's assessment will necessarily have regard to what is the relevant 'public interest'. It is not possible to determine whether disclosure is 'clearly' required without considering the public interest in the disclosure."

Ibid.

65. The Commissioner went on to consider what is meant by the public interest.

66. The public body's assessment will necessarily have regard to what is the relevant 'public interest'. It is not possible to determine whether disclosure is 'clearly' required without considering the public interest in the disclosure.

*Order F-15-02* p.29

67. The Commissioner noted that the 'public interest' is not just something the public may be interested in or curious about, but something that affects, or is in the interests of, a significant number of people, and which transcends private interest.

Ibid., p.30

68. The Supreme Court of Canada provided its own view (in the context of defamation law) that a subject will be of public interest if it is "one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens or one to which considerable public notoriety or controversy has attached"

*Grant v. Torstar Corp.*, 2009 SCC 61, at para. 105, cited in *Order F15-02* p.30

69. The Commissioner also cited with approval some Ontario orders - "a key question is whether ―there is a relationship between the record and the Act's central purpose of shedding light on the operations of government‖, with the information having to ―serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices".

Ontario *Order P-3461*, at para. 40, cited in *Order F15-02* at p.31.

70. The 'public interest' is a concept that can only be determined after analyzing the facts and circumstances of a particular case, as is appropriate.

*Order F15-02* p.30

71. The facts and circumstances in this case point to the application of s.25 to require the release of the responsive records in the public interest.

**Is there more than possibility release is in public interest?**

72. It is clear that there is a strong public interest in the release of these records. The capabilities of IMSI catchers to trap not just the cell communications of targeted individuals but of all cell phones within range would affect a large number of people if it was deployed. It is in the public interest to release information that would allow British Columbians to know whether or not the VPD is or is not using this technology.

**Purpose of relevant access exceptions:**

73. The only exception at issue is contained in s.15, which is both harms-based and discretionary. It protects important interests, but the public body must show evidence that is "detailed and convincing enough to establish specific circumstances

for the contemplated harm that could reasonably be expected to result from disclosure of the withheld records; it must establish a clear and direct connection between the disclosure of the withheld information and the alleged harm. General speculative or subjective evidence will not suffice."

*Order F08-03*, para 27

74. This contrasts with mandatory exceptions such as those for cabinet confidences or the protection of personal privacy, factors which must be taken in account in assessing the purpose of this exception to access.

75. As noted above, the VPD has not met the burden required to properly invoke this exception.

76. Section.8(2)(a) is not an exception to release as such, but is a subsidiary linked to the exception contained in s.15, but is not an exception in its own right. It provides a limited opportunity for a public body to refuse to answer whether or not it has records responsive to a request for information.

**Nature of the information and the rights and interests engaged**

77. The precise nature of the information is not known except to the VPD who refuse to confirm or deny that it even exists.

78. However, the records in this case would likely include the preliminary analysis of whether or not obtaining this technology would be a good decision, along with financial and possibly contractual records related to the purchase of this technology.

79. There would also hopefully be records relating to VPD's analysis of the many serious privacy issues involving in the use of such technology, as well as a discussion of what should be included in a Privacy Impact Assessment.

80. There are several rights and interests engaged in this case.

81. The most important would be the privacy interest of the possibly thousands of people whose rights would be affected if this technology was employed. It is vital that the people of this province have confidence that public bodies using mass surveillance technology are using it in the most privacy protective was possible. This is set out as one of the purposes of the Act in s.2(1).

82. There is also the desirability of accountability of the public bodies, which is also set out in s.2(1) of the Act.

83. Part of this accountability is ensuring that the public is able to know the cost to the public body of acquiring and using a given piece of equipment or technology. Accountability also requires releasing information about how such technology is being deployed in privacy protective manner.

84. The Commissioner has repeatedly stated that records such as contracts and audits should be released proactively. This would apply to contracts in this case as well.

Investigation Report F11-02, *Investigation Into The Simultaneous Disclosure Practice Of BC Ferries* p.34

85. These contractual documents would include the terms and conditions of use agreed to by the VPD as part of any purchase of this technology. This information would be necessary for the public to be able to ascertain whether or not such a purchase is worthwhile, cost effective or appropriate.

86. Finally, there is an interest in ensuring that criminals and others do not receive information that would harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement.'

87. As noted above, this interest is protected by s.15 of the Act, and also in s.8(2)(a) where revealing the existence of a technique or procedure would harm law enforcement.

88. Section 25 overrides both of these provisions if it applies in this case.

**What is the relevant public interest in disclosure?**

89. In this case, it is clear that a large number of people in this province, essentially anyone with a cell phone or similar device would be interested in knowing about the possible use of IMSI Catchers by the VPD.

90. This interest is both individual and collective, as deployment of such a device would affect not just individual privacy rights but if not properly constrained has the potential for privacy invasion so broad as to undermine the democratic principle that citizens should generally be free of unwarranted surveillance.

91. There is also a public interest in knowing not just what technology is being considered and/or implemented by VPD, but also what measures they are taking to protect privacy.

92. There is also a public interest in how public money is being spent and for what purpose, in this case hundreds of thousands of dollars could potentially be at issue.

93. These interests go beyond simple curiosity, but relate to basic rights in a democratic society, as reflected in the purposes section of the *Act*.

94. It is therefore respectfully submitted that the records in this case are records which should be released in the public interest under s.25.

## 4. Conclusion

95. The Intervenor FIPA submits that the Applicant is entitled to the records requested for the following reasons:

- The Applicant is entitled to the information because the records are in the custody or control of the VPD and no exception to release applies.
- VPD failed to consider severing information from responsive records, as required under s.4(2) of the Act.
- There is no justification for the VPD to refuse to confirm or deny the existence of records under s.8(2).
- VPD has not shown how harm would be likely to be caused to the effectiveness of investigative techniques and procedures currently or likely to be used in law enforcement under s.15(1)(c) and,.
- The release of this information is in the public interest, and therefore should be released under s. 25 of the *Act.*

All of which is Respectfully Submitted.

Vincent Gogolek
Executive Director
FIPA