



August 8, 2024

Patrick Henry Fox
[REDACTED] Street
Vancouver, BC V6B 1K8

PLEASE QUOTE THIS FILE
NUMBER ON REPLY:

292-40

MAG-2024-42440

Sent via email: p[REDACTED]x@gmail.com

Dear Patrick Fox:

**Re: Freedom of Information and Protection of Privacy Act (the "Act")
Request for Information: MAG-2024-42440**

This is further to your request received by our office for reply on June 20, 2024, as your request pertains to the BC Prosecution Service (BCPS) for the following:

The "reasons for a decision not to prosecute" me on the charge of criminal harassment (CCC s. 264), as recommended by the Vancouver Police Department file number VA19-49074 (BCPS file 244069-6-B).

As referenced in the FOIPPA section 15(4)(a), I am "a person who knew of and was significantly interested in the investigation", and therefore, as stated in section 15(4): The head of a public body must not refuse ... to disclose under this section the reasons for a decision not to prosecute...". And, as referenced in section 15(4)(b), "the fact of the investigation was made public". All investigations and court proceedings related to these files have completed.

(Date Range: Mar 15/19 to Aug 19/20)

We acknowledge receipt of your email dated July 26, 2024, requesting the following:

Thank you for your response to me FOIPPA request.

However, your response does not, in any way address what I was requesting and, to be honest, I am sure you are well aware of that.

In my request, I am very unequivocally asking for the reason "the BCPS"

(not the VPD) decided "not to prosecute" the charge of criminal harassment which the VPD recommended. I am NOT asking for anything related to the two charges the BCPS DID decide to prosecute. And I refuse to believe that there is any way you could have misunderstood that.

And, in my request I clearly referred to the sections of the FOIPPA which unquestionably REQUIRE the BCPS to disclose the requested information.

I believe this is just another ploy on the part of the BCPS to avoid having to disclose why they declined to prosecute the criminal harassment charge even though I was allegedly engaging in exactly the same conduct with the BCPS claims was the basis for my criminal harassment conviction (and 3 year prison sentence) in 2017.

So, being that your response does not address my request, I ask that you please provide a response to the information I am requesting. And if the BCPS is not willing to admit why they declined to prosecute me on the criminal harassment charge then just say so and I will proceed with the appeal of this FOIPPA request.

In response to your email, our records indicate that the investigative agency recommended two charges of breach of probation, one charge of disobeying a court order and one count of criminal harassment. Crown Counsel approved two charges of breach of probation order, contrary to section 733.1(1) of the *Criminal Code*.

Charge assessment decisions are made by Crown Counsel based on the investigative materials provided by the police agency and with due consideration of our charge assessment standard and factors described in our Charge Assessment Guidelines policy (CHA 1). That policy can be viewed here:

CHA 1 - [Charge Assessment Guidelines \(CHA 1\) \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/soc/justice/criminal/cha1.htm)

To further assist you, the following information is being provided to you consistent with the principles of section 15(4) of the *Freedom of Information and Protection of Privacy Act* (the Act).

As the necessary legal context for any charge assessment decision, Crown Counsel must consider the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt, and the prosecutor's fundamental obligation to act as a "minister of justice," and see justice done. In discharging the charge assessment function, Crown Counsel must independently, objectively, and fairly measure all the available evidence against a two-part test:

1. Whether there is a substantial likelihood of conviction; and if so,
2. Whether the public interest requires a prosecution.

This two-part test continues to apply throughout the prosecution.

A substantial "likelihood" of conviction requires, at a minimum, that a conviction according to law is more likely than an acquittal. In determining whether this test is satisfied, Crown Counsel must consider what material evidence is likely to be admissible and available at trial, the objective reliability of that admissible evidence and whether there are viable, not speculative defences which will impact the substantial likelihood of a conviction.

It is also important to understand that the onus of proof in a criminal trial is on the Crown and never shifts to the defence. To obtain a conviction, the Crown must prove every element of the offence beyond a reasonable doubt, which is a very substantial burden.

After a thorough review by Crown Counsel, it was determined that, in this case, based on all available evidence provided by the investigative agency, the matter did not meet our charge assessment standard and accordingly, Crown did not recommend a charge for criminal harassment.

You may contact me at (250) 387-3840. You may be transferred to this telephone number free of charge by calling Enquiry BC at (604) 660-2421 in Vancouver or at 1-800-663-7867 outside Victoria and Vancouver.

If you are not satisfied with how your request is being processed by the BCPS, the matter can be reviewed by the Information and Privacy Commissioner. A request for review should be received by the Commissioner within 30 days and should be delivered to:

Information and Privacy Commissioner
P.O. Box 9038, Stn Prov Govt
Victoria, BC V8W 9A4
Telephone 250-387-5629

If you request a review, please provide the Commissioner's office with:

1. the request number assigned to your request (MAG-2024-42440);
2. a copy of this letter; and
3. a copy of your original request for information.

Yours truly,



Sally Torani
Information Access and Privacy Coordinator | Crown Counsel
Headquarters
BC Prosecution Service | Ministry of Attorney General