
**Balancing Privacy Concerns with the Public Right to Information in the BC
Ministry of Forests, Lands & Natural Resource Operations**

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EXECUTIVE SUMMARY

Introduction

As public registers become more open and accessible, the potential for information abuses such as corporate data-mining, the commoditization of personal information for commercial benefit, and the use of public records for criminal intent may be increasing.

There are two competing expectations for public registers and the management of personal information they contain. The first is the expectation for access to public records, and the second an expectation by some for privacy measures to be in place to protect personal information from unwanted intrusion or abuse.

This report examines how public policy can provide balance between the need to access personal information in public registries with privacy expectations. It focuses specifically on the Land Title Register (LTR) in British Columbia (BC). The research questions examined in this report are:

- 1) What is the expectation, legal or perceived, for the government to respond to privacy concerns in the BC LTR?
- 2) What are the potential causes for concern with relation to the privacy of information contained in the BC LTR?
- 3) What has been done in BC and other jurisdictions with regards to protecting privacy of personal information in public land title registers? How effective is practical obscurity at mitigating privacy concerns?

Land title registers hold public information meant to be accessible and available to the public and are developed to confirm an individual's claim to ownership of a particular piece of land, and to keep record of any encumbrances placed on a title.

This report envisions a LTR system where access for legitimate users remains open but also includes clear measures for protecting the personal information of land title holders with legitimate cause to be protected.

Methods

Methods used in this report include a literature review, cross-jurisdictional scan, and stakeholder consultations. The literature review examined key themes needed to support the report's analysis. Provided is an introduction to the concepts of government information, privacy, transparency and accessibility to government information, public registries, the public's right to access public records, and potential challenges to privacy in public registers.

The jurisdictional scan examines Alberta, Ontario, and the State of Victoria. These jurisdictions were chosen because they offer similar government and historical contexts to those in BC. For an international example the State of Victoria was chosen, and all jurisdictions chosen remain inside the Westminster model of responsible government. The scan begins with a description of the current BC Land Title Register.

Stakeholder consultations were conducted with representatives of groups that regularly use the BC LTR or whose information may be at risk from increased online public access to the LTR, in order to gain information on expectations to privacy, and to explore measures that could be used to help protect privacy.

Conclusion

Public registers are a tool for governments to provide necessary information as a public good in an efficient and accessible way. The BC LTR is one such public register, providing information that would not otherwise be easily gathered in the private sector. Public register policy can address the balance in public registers between the reasonable expectation to privacy and the public's right to information. The LTR benefits from the LTSA's experience in managing and administering the register along with an already built robust internet-platform.

Recommendations

The report recommendations are high level recommendations informed by the evidence and analysis and are meant to address the tension between protecting private information in the LTR while maintaining an appropriate level of access to its information to the public.

The LTSA retains its role as the administrator and operator of the LTR, leveraging the institutional knowledge that already currently resides in the organization.

Recommendation 1 – Allow Searches Only for Property Identifiers, and not Names

By only allowing searches by property identifiers and not names, this recommendation retains the majority of the current level of public access to the LTR, while addressing privacy concerns. For example, a person could not search for all and any interests in property of a family member or acquaintance; however, a person can still seek out information on the interests in a property that is for sale where the civic address is already known.

Recommendation 2 – Develop a Search Suppression Tool for the Land Title Register

The LTSA could use the statutory authority provided by s. 377 (6) of the *Land Title Act*, which allows the Director of Land Titles to exempt by regulation the “name of a particular person or class of persons” from being searchable in the LTR. This search suppression policy could exempt by regulation a class of persons, defined by the Director, who submit evidence that they meet criteria as set by the LTSA or by the Province.

Recommendation 3 – Engage with Relevant Stakeholders on Privacy Issues

The LTSA, in partnership with MFLNRO, could initiate a focus group of relevant stakeholders to discuss privacy issues in relation to the LTR. This could build upon the LTSA's existing Stakeholder Advisory Committee and could help strengthen the understanding of privacy issues, and provide opportunities for collaboration on emerging privacy issues.

Recommendation 4 – Continue to Restrict Bulk Searches of Land Title Register

The LTSA could continue to restrict the ability of clients to conduct bulk searches of the LTR to those it enters into a formal agreement with for bulk data purchases. It currently does with stakeholders such as the BC Assessment Authority. This would limit searching of records to focus on a case-by-case basis, and could continue to prevent data-hoarding for commoditization and data-mining purposes.

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1 INTRODUCTION

1.1 Issue

Governments collect information in order to provide programs and services to the communities they serve. Some of this information is stored in publically accessible registers known as public registers, providing useful information in an efficient and effective way, to those who need it. As this information can sometimes be considered private, a tension exists between the public's ability to access government-held information in public registers and the public's right to privacy.

As public registers become more open and accessible through online access, the potential for information abuses may also be increasing. Abuses may include corporate data-mining, the commoditization of personal information for commercial benefit, and the use of public records for criminal intent. Nevertheless, accessibility is a requirement as a public record is by definition a recorded piece of information that is open and available to the public (Byrne, 2010).

The purpose of this report is to inquire whether the tension between the public's right to privacy and the accessibility of public information exists in relation to the Government of British Columbia Land Title Register, and if so, to provide recommendations on how to minimize this tension. This research takes a proactive approach, as there have not been any large concerns raised regarding the privacy of personal information in the Land Title Register (LTR). This does not mean that a problem could not arise, and it is important for policy makers to be informed in the event that an issue arises. Complaints to the Land Title and Survey Authority or other government or judicial bodies regarding privacy issues arising out of the use of the LTR would be indications of a problem.

The assumptions made in developing this report are that while there may not be current acute privacy concerns with the level of privacy protection in the BC LTR, it is not immune to the danger of developing them. A proactive approach will be the best defense against the development of privacy issues that compromise the effectiveness and public utility of the BC LTR. The analysis identifies potential issues and solutions; however, recommendations found at the conclusion of this report will require further policy analysis and consideration before implementation, as they are high-level and do not necessarily respond to a current need.

1.2 Background

During its colonial period, the Government of British Columbia adopted the Torrens system of land title registration. This system is founded upon the principle of public inspection, which places the onus to retain proof of ownership and interests in land on the government, often through the administration of a property register (Arrieta-Sevilla, 2012)¹. The public is able to rely on the validity and accuracy of the collected registered records, as opposed to conducting lengthy searches for deeds in archived records or by having to rely on outside or third party actors to produce reliable information on a property (Taylor, 2009).

Access to land title records provides the public with a means to gain confidence in matters of property ownership, whether there are any limitations, reservations, or claims to ownership on a

¹ Please see the sections titled "Torrens System" located in the Literature Review for a more fulsome description of the Torrens system.

specific property, and what, if any, registered interests against the title to the land form a charge on the land-i.e., mortgages, caveats, covenants, easements, builders' liens, etc. (Taylor, 2009).

The client for this report is the Land Tenures Branch of the Ministry of Forests, Lands and Natural Resource Operations (“MFLNRO” or the “Ministry”) of the Government of British Columbia (BC). The Ministry provides “integrated natural resource management services” for the people of BC, aiming to create the conditions necessary to enable BC’s forests, land, and natural resources to be accessed efficiently and used sustainably (Ministry of Forests, Lands and Natural Resource Operations [MFLNRO], 2013).

The Land Tenures Branch (LTB) of the Ministry’s Tenures, Competitiveness and Innovation Division delivers guidance on the “allocation and administration of Crown land through the development and implementation of strategic and operational policy, legislation and procedures” (MFLNRO, 2014, para. 2). The LTB is also responsible for providing guidance and leadership on policy and legislation to support BC’s land title and survey systems and the Land Title and Survey Authority of British Columbia (LTSA).

1.3 Research Objectives and Scope

This report examines how BC’s public policy can best achieve a balance between the need to access personal information in public registries with the privacy rights of individuals whose personal information is found in such registries. It focuses specifically on the LTR in BC. The research questions examined in this report are as follows:

- 1) What is the expectation, legal or perceived, for the government to respond to privacy concerns in the BC LTR?
- 2) What are the potential causes for concern with relation to the privacy of information contained in the BC LTR?
- 3) What has been done in BC and other jurisdictions with regards to protecting privacy of personal information in public land title registers? How effective is practical obscurity at mitigating privacy concerns?

These broad questions are examined by exploring the concepts of governance, accountability, civil justice, transparency, accessibility, privacy, government information, and investment confidence; the workings of the LTR; and how information is accessed. The report also examines what other jurisdictions that use the Torrens system of land registration do with regards to the protection of personal privacy.

This research is limited by its focus on public land title registers only; additional research could examine public registers more broadly. Moreover, additional research that expands stakeholder consultation and broadens the scan of jurisdictions could identify issues not raised in this report. The findings of this report are also limited by the low response rate to the invitation to participate in the stakeholder consultation.

Invitations to participate in the stakeholder consultation were limited to organizations that interact with the BC LTR on a regular basis, and generally do not represent "vulnerable" clients of the LTR. It would be beneficial to expand consultations to include organizations that represent those who might be considered vulnerable such as abused women's shelters and law enforcement officials.

The cross-jurisdictional scan could be expanded to include more jurisdictions and not be confined to Torrens- based land registry systems. The research could be expanded to look at how search suppression and practical obscurity work in other jurisdictions' public registers. Direct consultations with the jurisdictions researched could also be undertaken.

1.4 Organization of Report

The remainder of this report is organized in five sections: methodology, literature review, cross-jurisdictional scan, stakeholder consultations, a discussion and analysis, and recommendations for moving forward.

The methodology for the development of the report is described, including a discussion of the research's conceptual framework. The sections of the report are used to explore the necessary policy considerations and research questions on how to balance personal privacy while honoring the requirement to keep a public register accessible to the public.

The literature review introduces main themes, concepts, and considerations that are used when discussing the options and recommendation. It also introduces the policy objective of preserving an appropriate level of privacy of information in a public register.

The cross-jurisdictional scan focuses on similar jurisdictions' land title registers and how they have tackled balancing the right to privacy with the public's right to information in their respective land title registers. Only jurisdictions that use land title registers based on the Torrens system were considered.

The jurisdictions chosen for review are Alberta, Ontario, and the State of Victoria of Australia. These jurisdictions have similar systems of government as BC, all use electronic-based systems for administering and managing their land titles registers, and provide different examples of how they have chosen to move their land title registers into internet-based systems.

Stakeholder consultations were undertaken to better understand the real-world appreciation, use, and concerns that stakeholder groups have with the BC LTR. The stakeholder organizations that were contacted were of interest because they represent persons in the province who interact with the LTR on a regular basis. The stakeholders represented by these organizations range from property owners, the overseeing office of the land titles register, to local governments in BC.

The discussion and analysis section marries the information in the literature review, cross-jurisdictional scan, and stakeholder consultations to present the reader with the opportunities and risks involved with attempting to balance the right to privacy with the public's right to information.

The recommendations section closes this report by providing four recommendations that address the opportunities and risks set out in the discussion and analysis section. Each high level recommendation is presented with its potential positive and negative consequences.

2 METHODOLOGY AND METHODS

This report is underpinned by a literature review, a cross-jurisdictional scan, and stakeholder consultations that inform a discussion and lead to recommendations. The research explores the policy considerations surrounding how to balance personal privacy while honoring the requirement to keep the Land Title Register (LTR or Register) a public register.

The LTR is becoming increasingly accessible due to the increased adoption of information technology and public access to government services online, which can facilitate information abuses. Abuses may include corporate data-mining, the commoditization of personal information for commercial benefit, and the use of public records for criminal intent. As mentioned earlier, this research is proactive in nature, and is not responding to concerns raised regarding current privacy issues with the BC LTR.

The literature search was undertaken using various combinations of keywords and expressions, including: “privacy”, “right to privacy”, “right to information”, “government information”, “information management systems”, “practical obscurity”, “public registers”, “search suppression”, and “government transparency and accessibility”. The literature review addresses the expectation of privacy in government-held information and the LTR and potential privacy concerns. The following search engines were used:

- EBSCO Research Databases
- GOOGLE Internet search engine
- University of Victoria Library databases

Inclusion in the literature review was determined by relevance to governments’ responsibilities in the handling of personal information. All materials used in conducting research for this report come peer-reviewed or from reputable organizations.

The cross-jurisdictional scan examines jurisdictions that adhere to the Torrens system of land title registration. It addresses what has been done in BC and other jurisdictions with regards to protecting privacy of personal information in public land title registers and how effective practical obscurity is at mitigating privacy concerns. The jurisdictions covered are:

- Province of Ontario
- Province of Alberta
- State of Victoria, Australia

These jurisdictions were chosen because they represent similar government and historical contexts to BC. All three currently have Torrens-based land title registration systems, and are advanced Westminster democratic jurisdictions with free market economies and comparably-sized populations. Ontario and Alberta provide Canadian examples, whereas the State of Victoria provides an international example, while remaining inside the Westminster model of responsible democratic government.

Stakeholder consultations were undertaken to better understand the appreciation, use, and concerns that stakeholder groups have with the BC LTR. Individual stakeholder consultations were not undertaken as they would not provide a sample large enough to generate generalizable findings, which is why interviews were instead held with representatives from stakeholder organizations. Stakeholder engagement materials, including a list of questions asked in the consultations is available for review in the appendices: Appendix I contains the text of the

stakeholder introduction email and the attached invitation to participate; Appendix II contains the stakeholder list and consultation questionnaire; and Appendix III contains a copy of the letter of consent for participating in the stakeholder consultations.

The BC Land Title and Survey Authority, the Law Society of British Columbia, the BC Assessment Authority, and the BC Provincial Office of Domestic Violence (Ministry of Children and Family Development) agreed to participate in the stakeholder consultation. These stakeholders were invited to participate because they either represent people who use the BC LTR on a regular basis, or people who may be affected by privacy gaps in the BC LTR.

There was some difficulty soliciting responses from potential stakeholders, and others did not wish to participate. A number of the targeted stakeholder organizations were unwilling to participate due to concerns over possible conflicts of interest or because they did not consider the topic relevant to their current operations.

The consultations were designed to uncover stakeholder groups' opinions on how the LTR is currently working, whether it is successful in providing appropriate access to information while protecting personal information, what issues stakeholders feel the accessible internet-based system (the myLTSA system in particular) could bring as well as what potential high-level policy objectives they would hope to see in any changes to the LTR.

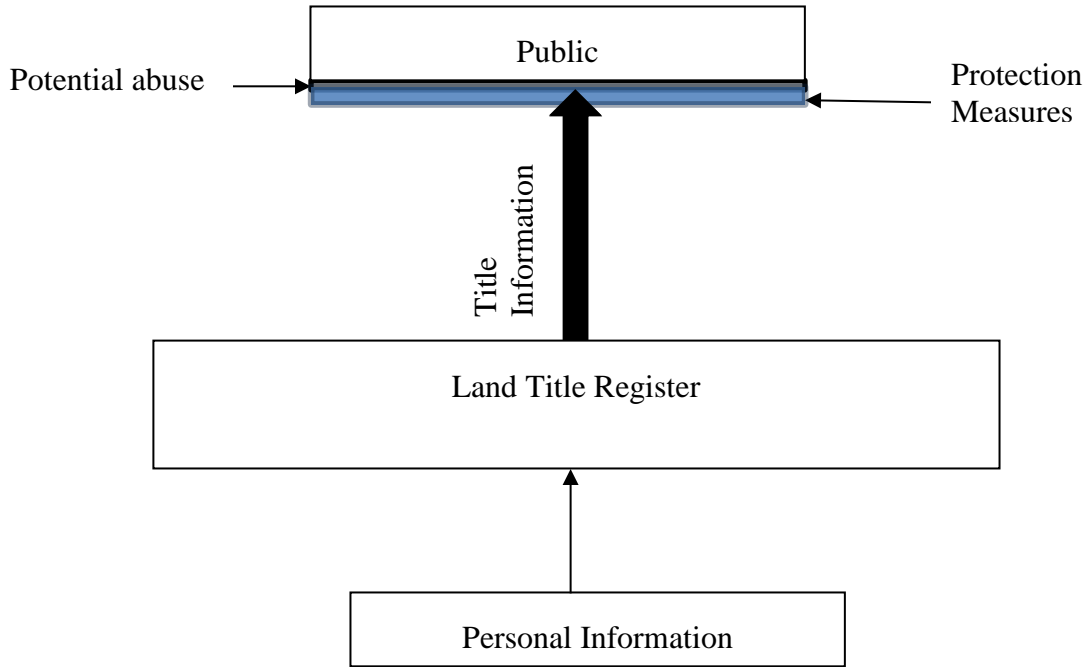
2.1 Conceptual Framework for BC's Land Title Register

BC's LTR should balance a level of information privacy with providing the necessary level of information-access to function properly as a public register.

Individuals who use the register may either search in person or go through the myLTSA interface, and can look up information on all properties registered in BC. Potential sources of abuse of the personal information available in the LTR need to be identified, and measures put in place to minimize the potential for abuse. This is detailed in Figure 1, titled "LTR Search Framework".

Currently the general public can search the register by registering for a myLTSA account or going in person to a land title office. Figure 1 illustrates where privacy protection measures, such as those recommended at the conclusion of this report, can be used to counter potential abuse while respecting the public nature of public registries.

FIGURE 1 – LTR SEARCH FRAMEWORK



3 LITERATURE REVIEW

3.1 Introduction

This report addresses how to balance the protection of personal privacy with the legislated obligation to provide appropriate access to the information contained in the BC LTR. This requires pragmatic balance, and an understanding of what the expectation to privacy is and what the potential sources of abuse are, while respecting the fact that the LTR is intended as a public register. To provide an understanding of the issues, the literature review is organized along the following themes:

- Government information
- The right to privacy
- Transparency and accessibility in government
- Defining public registers
- The right to access public records
- The challenges facing public registers in the information age

This section provides foundational understanding of the broad set of themes needed to support the analysis. The reader is provided an introduction to government information, privacy, transparency and accessibility to government information, public registries, and the public's right to access public records. Potential challenges faced by public registers in maintaining a balance of appropriate freedom of access to public records while introducing potential challenges are also addressed.

3.2 Government Information

Government information is defined as any information that is necessary to fulfil government program operations or policy objectives (Li, 2011). According to Li (2011), it covers a wide range of information sources, from tax information to natural resource stock information. Government information is also characterized as information that is “crucial for the social functioning of citizens” (Bovens, 2002, p. 328).

Bovens (2002) also notes that this information establishes a legal position for citizens, providing individuals with the ability to engage with information held by the government to make informed choices. By providing the information, the source should expect that the government, who is the user, will protect its accuracy and administer it in as prudent manner as possible – this is a strong link to the Torrens system of title registration, which is discussed further on in this section (Bovens, 2002). The accuracy of information in the Torrens system is important to maintain confidence in real estate investments, as the information contained in the land title is an important consideration when undertaking any kind of real estate transaction.

As important as information is to governing, so is the technology used to manage that information. Mayer-Schlonberger and Lazar (2007) state that the move to electronic government applications to manage information has made it possible to build interfaces that better meet client expectations, and has given way to transaction-oriented systems.

Types of Government Information

There are different types of government information, which are collected in a multitude of ways. According to Mayer-Schlonberger and Lazar (2007), the ability to acquire and disseminate

information, and to control its flow, becomes a source of institutional power held closely by governments.

Types of government information include but are not limited to:

- Private data on citizens;
- Economic activity data;
- Geographical data;
- Natural resources data; and
- Environmental data

Government data can also be divided into two distinct classes: the administrative data obtained by governments in the routine functioning of a program or service, and survey data gathered through public censuses (Statistics Canada, 2014). While the forthcoming sections on privacy will at times discuss both classes of information, this report is concerned with administrative data collected by the LTR.

3.3 The Right to Privacy

What is the Right to Privacy?

Privacy is defined differently depending on the context in which it is used. Kemp and Moore (2007) provide high-level definitions of privacy such as:

- Control of personal information
- The right to be let alone
- Limited access to the self
- Privacy as secrecy (pp. 63-64)

Privacy as “control of personal information” is the privacy obtained through private property ownership. Kemp and Moore (2007) state that John Locke envisioned private property as a space where the individual who owned the aforementioned private property could act on, or to, it as he saw fit. According to Allan F. Westin, persons should have the ability to determine when, how, and by whom their information is traded or used by the organizations holding it (McNairn & Scott, 2001). This is particularly relevant to personal information contained in public registers.

Personal information can also be considered as a commodity. An individual uses their personal information in order to become an actor in the information market. Information is provided voluntarily by those who want access to what organizations can provide in the form of other information or services (Kemp & Moore, 2007).

Control of personal information is a different concept than that of the right to be let alone. Rubinfeld (1989) distinguishes the expectation of privacy from the legal right to privacy. The legal right to privacy puts defined limits of the ability of outside persons or organizations to “gain, disseminate, or use information” from a person (Rubinfeld, 1989, p. 740), the owner of the privacy choosing how it is expressed. According to Warren and Brandies “the right to be let alone” is the notion that a person has a right to be protected in some aspects of their life from the interests of large organizations, including the government (as cited in McNairn & Scott, 2001, p. 6).

Limiting unwanted access to the self by others not only limits physical access, but also access to personal information and attention (Kemp & Moore, 2007). While loss of complete access is not

always the aim of privacy legislation, a limit to access can create satisfactory conditions for privacy.

Posner has described privacy in terms of secrecy, or in his words the “right to conceal discreditable facts about oneself” (Kemp & Moore, 2007, p. 63-64). The concepts of something being ‘private’ or ‘secret’ are not synonymous, but are often used interchangeably in common use; information can be private without being a secret, and vice versa. Privacy refers to an individual’s right to act, in a lawful fashion, without constant scrutiny by others, while secrecy prohibits any scrutiny.

Why is Privacy Significant?

Privacy is significant because, as Kemp and Moore (2007) state, it creates a sense of protection or escape from fellow human beings and society in general - a right to be left alone. Privacy concerns change over time as technology and society changes, and as people interact with technology and new privacy expectations are developed (Martin, 2012) there is the potential to lose aspects of privacy - often this is voluntary and as a trade-off for future interactions and the benefits of the society.

Protection from unwanted privacy intrusions allows individuals to have a sense of security as well as a degree of comfort. As technology advances and information becomes more accessible, the expectation of privacy from new technologies and concerns for how personal information is being accessed changes with these new technologies.

Freedom of Information and Privacy Legislation in Canada

The Government of Canada manages its government information through a framework of legislation, policies, technology and business processes that are created to manage information to meet their objectives.

The *Privacy Act* and the *Personal Information Protection and Electronic Documents Act (PIPEDA)* cover how personal information is handled by federal government departments and agencies, and by sectors outside of government (Office of the Privacy Commissioner of Canada, 2014).

The *Privacy Act* covers the personal information that the federal government collects, uses, and discloses regarding individuals or federal employees, whereas *PIPEDA* legislates how private sector organizations collect, use, and disclose personal information during commercial activities, and the information of on employees in federally-regulated industries, such as banking or the airline industry (Office of the Privacy Commissioner of Canada, 2014). *PIPEDA* is superseded in the case of a province having legislation which is substantially similar, which is the case in BC (Office of the Privacy Commissioner of Canada, 2014).

Some types of government information is explicitly protected unless individual consent is provided, such as with the *Statistics Act*. Under this legislation all information provided to Statistics Canada is kept confidential and can only be used for statistical purposes (Statistics Canada, 2014) even if agencies such as the Canada Revenue Agency or the Royal Canadian Mounted Police request access.

Freedom of information and privacy legislation in BC, such as the *BC Freedom of Information and Protection of Privacy Act (FOIPPA)*, will be are discussed in the cross-jurisdiction scan section of this report.

3.4 Transparency and Accessibility in Government

Transparency and Accessibility

Transparency and accessibility are principles of good governance that help citizens become and remain engaged with their government and remain aware of how their government functions². These principles promote civic participation and government accountability, giving an avenue for citizens to hold their governments accountable.

Accessibility to government information is in the public interest because it “promotes equality before the law by ensuring that those of limited means will not be disadvantaged by a lack of access to information” (American Bar Association, 2011, p. 2). Accessibility to government-controlled information is a necessary condition for transparency to exist (American Bar Association, 2011). For this outcome to be achieved, access must not have material barriers. For example the civil justice system is an area where transparency and accessibility of public register information is important for the smooth functioning of its processes.

As another example of the concepts of accessibility and transparency in action, the US federal court system considers it to be in the public interest for certain court documents and decisions to be accessible by the public, as this allows people to be able to remain effectively engaged in, and with, the legal system while holding it to public account. Access to information prevents procedural misconduct and exposes decisions to careful public scrutiny, which may not be otherwise possible (American Bar Association, 2011).

Practical Obscurity

Practical obscurity is defined as the “principle that private information in public records is effectively protected from disclosure as the result of practice barriers to access” (Society of American Archivists, 2013, para. 1). While the records are still available, the public’s ability to access them is limited by practical constraints determined by how and where the records are physically stored, and the time and cost required retrieving them. These constraints translate to barriers that prevent the records from being readily accessible on a large scale.

Historically, practical obscurity was simply a consequence of records management and was not typically intended; the administrator may simply have an inability to provide access to records in a timely and efficient manner (Society of American Archivists, 2013).

In the modern context, records can be stored and administered in an intentional way to indirectly limit unimpeded access. By this means, practical obscurity can be employed as a privacy-protection measure – it creates an environment where even if there is the legislative or regulated authority, and necessity, to provide access to and transparency in government-held information, it can be managed to meet the policy intent to protect personal privacy (Alasdair, 1999). Fees and limited resources – such as limited human resources – available to departments and the public can also hinder the immediate accessibility of intended accessibility of a public register (Alasdair, 1999).

² Transparency is defined as “easily recognized, understood, or detected; manifest, evident, obvious, clear” (Oxford English Dictionary, 2012); accessibility as “capable of being entered or approached; easy of access; readily reached or got hold of” (Oxford English Dictionary, 2012).

Barriers to broad public access are often incorporated in electronic and web-based systems. In electronic-based systems they can take the form of access fees, physical limitations to access, online controls, membership systems, and the use of time-consuming bureaucratic processes (Davis, 2003). Preserving practical obscurity in online registers is difficult, as they do not have the physical barriers offline registers have (Davis, 2003).

Search Suppression in Government Information

Search suppression can be used to protect at-risk individuals by restricting access to their personal information by prohibiting searches that use specific criteria such as an individual's name (Department of Planning, Transport and Infrastructure, 2014).

Bepko (2005) states that before a government can restrict information that is intended to be public, it must demonstrate that there is the potential for imminent harm as a result of its publication. Along the same lines, the Law Commission of New Zealand notes in a 2009 report that in order to fulfil the government mandate for which certain information is collected, search suppression practices should have a high threshold for being applied.

Examples of where search suppression methods are used by government include the Canadian Office of the Privacy Commissioner (OPC) and the Australian Securities and Investments Commission (ASIC). The OPC (2014, 'The approach taken by the OPC' section, para. 4) believes that the suppression of "direct and obvious identifiers" is the best way to protect the personal privacy of individuals involved in OPC tribunals.

ASIC employs search suppression for their Business Names Register, and requires that the organization requesting search suppression to be employed for their records provide information that demonstrates a risk to personal safety or exceptional circumstances in order for it to be granted (ASIC, 2014). ASIC takes a much more "disclosure friendly" stance, however it still demonstrates how search suppression can be applied to a public register to manage access to government information.

3.5 Defining Public Registers

A public register is a formal recording of specific information that is open to public access. The public nature of these registers is a foundational principle of public registers (McDonagh, 2009). Public access does not mean unlimited or unrestricted access; reservations on how much access is provided and to which members of the public it is given may still apply. These reservations are not always explicitly articulated in legislation, but if they are, they govern how information in the register may be accessed by the public.

Public registers provide the public with an accessible repository of pertinent records that would not otherwise be easily collected by a private citizen, or would have a prohibitive cost associated with accessing it, and that has value to the public (McDonagh, 2009). The government collects and manages this information in order to provide equal access and opportunity to those who require the information.

Enabling Access to Public Registers

Access to public registers is enabled in several ways depending on the administration of the register and the type of information contained in the register. Methods for enabling access to the information include:

- Provided by mail
- Provided by electronic methods (e.g. internet)
- Stored on accessible database
- Stored in physical format (e.g. paper-based filing system)

These methods are not mutually exclusive, so that a public register will have multiple methods for public access.

3.6 The Right to Access Public Records

Government must be able to collect, use, and disclose of the public records it maintains and administers in an efficient and open manner, in order for the records to be used to achieve policy and program goals. This ability can come from legislated powers, but also requires an adequate administrative system (Li, 2011).

A public record is a recorded piece of information that is open and available to the public (Byrne, 2010). Defined separately, public is “open to general observation, view, or knowledge” (Oxford English Dictionary, 2012) while a record is “the fact or condition of being preserved as knowledge or information” (Oxford English Dictionary, 2012). Public records often contain personal information, such as a person’s name, current address, and date of birth (Byrne, 2010).

Records are made accessible to the public when deemed appropriate by the government. However, releasing information to the public must not violate individuals’ legal expectations to protection of individual privacy. If a record contains information that, if made public, could adversely impact any individuals involved, access to the information should be limited (Byrne, 2010).

The Torrens System of Lands Titles

The Torrens system was created in Australia in 1858 by Sir Robert Torrens, to provide for the registration of the title of land and creation of an indefeasible title which is “good against the world” (Real Estate Finance, 2004). BC has used the Torrens system since its colonial period, and was one of the first jurisdictions outside of Australia to adopt this land registration tool.

Jurisdictions that use the Torrens system include, but are not limited to:

- Canadian Provinces and Territories: British Columbia, Ontario, Alberta, Saskatchewan, Manitoba, and the Northwest Territories
- Australian States: Victoria, New South Wales
- The Dominican Republic
- Ireland
- New Zealand

- U.S. States: Minnesota, Massachusetts, Colorado, Georgia, Hawaii, New York, North Carolina, Ohio, Washington.
- Singapore (Singapore Land Authority, 2010)

A Torrens land registry and survey system is administered by the LTSA, which provides a title that is conclusive evidence of ownership, and survey plans which provide a spatial reference to the lands to which the title applies. The services the LTSA provides are a “part of BC’s private property market and the civil justice system and to BC’s civic governance, taxation and Crown land management frameworks” (Land Title Survey Authority [LTSA], 2014b, “LTSA Mandate” section, para. 2).

In general, land registration systems are designed to provide reliable information on land titles, thereby creating a stable atmosphere for the ownership and transfer of land (Cooper, 2003). A uniform way to record and confer certainty on land titles increases efficiency in land transfers.

The Torrens system operates under a series of three core principles:

- The mirror principle
- The curtain principle
- The insurance principle

The ‘mirror principle’ states that the certificate of the title must accurately reflect the current facts about the title. The title is a ‘mirror’, accurately reflecting, completely and beyond all argument, that the current facts that are material to a title (Dworkin, 1961). According to Arrieta-Sevilla (2012), informal dealings of land are kept to a minimum under the Torrens system due to the mirror principle, as those who fail to register their titles or interests in land risk losing their priority. The mirror principle does not, however, supersede some public rights and burdens with respect to information sharing and privacy, and can be granted by legislation (Service Alberta, 2013).

The ‘curtain principle’ refers to the title certificate containing all relevant information to the title. As noted by Wu and Chung (2011, “An outline of Torrens” principles section, para. 2) “the register acts as a curtain shielding the purchaser from having to worry about trusts and equities that lie behind the curtain of the register”. Any party who researches a title will not have to look any further than the certificate itself in order to be adequately informed, from the register perspective, which aids in investment confidence as the investor can be assured of having all pertinent title information expected from the land title; this is also applicable to the civil justice system. As with the mirror principle, some public rights and burdens are able to supersede this principle.

The ‘insurance principle’ provides for a guaranteed title and an indemnity to any person who suffers loss if any mistakes occur due to a lack of care by the caretakers of the record (Dworkin, 1961), and provides for the issuing of compensation for a loss of rights by an individual if an error does occur. If an error occurs that is the fault of the government, and a loss occurs as a result compensation will be made available (Service Alberta, 2013). This principle is also important for investor confidence as it protects against loss in the event of an error by the government. As a part of the insurance principle, and to help protect against fraud, an assurance fund is set up through the collection of fees to be paid by persons when registering a title with the government (Arrieta-Sevilla, 2012).

3.7 The Challenge of Public Registers in the Information Age

The Challenge of Public Registers in the Information Age

Public registers must keep pace with technological changes in order to meet the demands of their customers and be compatible with new modes of service delivery. As populations embrace the information age and its technologies, so must government programs and policies. Information privacy in the information age and information disclosure are strongly linked to the form and function of the internet (Camenisch, 2012). As expectations for online public access to information becomes more prevalent in daily life, governments are pressured to examine how to provide for such access to records in their public registries.

Practical obscurity can be difficult to maintain in the information age as physical and time costs are often removed by technology – in fact that is often why the technology is chosen.

A tension exists between providing access to records in public registers to the general public and how the records are stored, monitored, and utilized by others (Elahi, 2009). Traditionally “accessibility” and “transparency” meant that “citizens may use contemporary technology to review current law and redistribute it at will” and as technology and public interest progressed, so did the expectation that it would be available (American Bar Association, 2011).

As technology changes, stakeholders can reasonably expect changes to how records in a public register are stored, accessed and disbursed; as platforms allow for the possibility of greater access it is also reasonable for stakeholders to assume that this access will be available to them.

Potential for Abuse of Information in Public Registers

Public registers and the data contained therein can be abused if appropriate safeguards are not in place. Examples of how records in public registers can be abused include:

- Data-mining;
- Commoditization of personal information for commercial benefit; and
- Using public records to gain access to people for criminal or malicious intent (Byrne, 2010).

Data-mining occurs when corporations, organizations, or individuals acquire a large-scale data set, such as the land titles register, and sift through, sort, and ‘clean’ the data present for their own gain (Byrne, 2010). New technologies allow the ability do this with minimal effort by the abuser. This information can be used to “gain a competitive advantage in the commercial environment” (Byrne, 2010, p.6). According to Byrne (2010) the technology used to sift through large amounts of government records is replete with privacy concerns, and could expose private information to an involuntary release.

The commoditization of personal information is another form of potential abuse. It occurs when an organization, corporation, or individual takes information and with it creates a commodity or product, and proceeds to profit from its existence. The information contained in the register is meant for the public to use, without financial gain. As an example, the creation of mailing lists for direct marketing purposes with information gained from the land title register falls into this category (McDonagh, 2009). While this may seem innocuous from the outside, it can be regarded as an invasion of privacy and an unwanted intrusion.

People with criminal or malicious intent can abuse access privileges to public registries as well. Examples of such abuses include criminals using the information found in public registers to build a personal profile of an individual for identity theft purposes (McDonagh, 2009). Another example of criminal intent is in the case where threats have been made against an individual or family, or the abuse of a restraining order or parole violation. Information found in public registers can potentially be used to track down individuals who have concerns about being sought out by past abusers.

Public officials, criminal justice officials, and public personalities such as politicians also may not want their records easily searched due to the threat to them from malicious intent. The intent to search these types of persons' personal information may not be wanted by the persons involved as they are highly visible and it could lead to intrusions into their personal lives.

4 CROSS JURISDICTIONAL SCAN

4.1 Introduction

The cross jurisdictional scan examines how similar jurisdictions to BC are administering their respective public land title registers. Responding to a key research objective, it examines the similarities and differences in other Torrens-system based registers, and discusses similarities and differences to the approach to the BC LTR. The jurisdictions scanned include:

- Province of Ontario
- Province of Alberta
- State of Victoria, Australia

These jurisdictions were chosen because they represent similar government and historical contexts to BC. Ontario and Alberta present Canadian examples, and for an international example the State of Victoria was chosen, all of which still remaining inside the Westminster model of responsible government. The scan starts with a description of the current BC Land Title Register.

4.2 The BC Land Title Register

Governing Legislation

BC's land title and survey system is established by the *Land Title Act* (the Act). The *Land Title Act* states that the objective of the LTR is to simplify the transfer of land between persons or organizations and provide certainty of proof of title ownership by reference to a Certificate of Indefeasible Title. This certificate establishes ownership of the land through the provisions of the Act (Real Estate Finance, 2004). These records are contained in and accessed by individuals through the LTR; the Act also sets out the criteria for what information is required for an LTR record to be complete. The Act defines the "register" as "that part of the records where information respecting registered indefeasible titles is stored..."

BC's Privacy Legislation

BC's *Freedom of Information and Protection of Privacy Act (FOIPPA)*, enacted in 1992, was created to increase the accountability of government and protect personal privacy (Office of the Information and Privacy Commissioner, 2013a). *FOIPPA* is the main article of legislation guaranteeing that government information will be accessible to the public at appropriate times; information should be available when the safety and security of those potentially affected is not at risk (Office of the Information and Privacy Commissioner, 2013b).

While *FOIPPA* does not explicitly remove the LTR from its scope, it does contain a provision which establishes the ability for other pieces of BC legislation to determine the protection of personal information subject to it. The *Land Title Act* does this and states that its titles must be searchable by any person on reasonable conditions, which the registrar may impose (Province of British Columbia, 2014).

The BC Land Title Register

The LTR is the official legal register of private property ownership in BC (LTSA, 2014b).

As mentioned, the LTR is maintained and administered by the LTSA. Information contained in an LTR record includes:

- Registered owner(s) names
- Historical title information (back to the date when information was first computerized)
- Reference codes that identify any encumbrances that are contained on the search
- Details of encumbrances³ (*Land Title Act*, R.S.B.C. 1996, c. 250)

A properly conducted search can be:

- a general search of the register showing the title to the land that is comprised in one indefeasible title;
- a special search confined to a single instrument;
- a name search to ascertain the land registered in the name of a person; or
- if permitted by the registrar, a search for pending applications against the title to the land that is comprised in the indefeasible title (*Land Title Act*, R.S.B.C. 1996, c. 250).

Records in the LTR take the form as set out in the *Land Title Act* s. 374. Once deposited, the responsibility falls on the Registrar of Land Titles (or “Registrar”) to ensure these records are stored appropriately. All stored records must contain the names of registered owners, as well as the address by which the person can be contacted. Registrars head each of the three Land Title Offices in BC, with the Director of Land Titles (“the Director”) overseeing all three offices’ operations (LTSA, 2014c).

The LTSA uses its Electronic Filing System (EFS) as an online means of collecting documents for submission to the Registrars. There is a specific fee for each type of online interaction along with a general service fee. The EFS is accessed through the myLTSA portal (LTSA, 2014c).

The land title register itself is, as of May 2014, accessible through a separate online portal called myLTSA, which is owned and operated by the LTSA and its subsidiary, LandSure Systems Ltd (LTSA, 2014b). Anyone is able to register for a myLTSA Explorer account, which provides the ability to search active land title records, and to date there are no restrictions on who can hold a myLTSA Explorer account for the purpose of searching the LTR.

Description of the current system for accessing land title register records in BC

The Torrens system is the basis of BC’s *Land Title Act* and its interpretation. The *Land Title Act* is the statute that regulates how rights to land are purchased and transferred in BC, setting out the law for registering titles with the province.

Under the *Land Title and Survey Authority Act*, the LTSA has ownership of all original land title records and all related documents, and title owners and customers/clients are provided with official copies of the records upon request, subject to the payment of a user fee, unless an exemption applies to the record (LTSA, 2014a). The control of original records comes with the responsibility to examine and guarantee the accuracy of all titles in perpetuity.

³ Encumbrances include mortgages, statutory rights of way, covenants, judgements filed in support of debt/tax collection, certificates pending litigation affecting the title, claims of a builder’s lien, and easements (LTSA, 2014a).

As noted previously, customers may conduct searches through a myLTSA Explorer or myLTSA Enterprise account, or can also visit an LTSA office in person to conduct a search through an LTSA representative.

Section 377 of the *Land Title Act* sets out the parameters for searching the land title register. The register and other official records maintained by the land titles office may be searched by any person, subject to any reasonable conditions that the LTSA may impose.

According to the legislation, interested parties are able to search the LTR by:

- Parcel identification number
- Legal description
- Owner name
- Charge number
- Title number (*Land Title Act*, R.S.B.C. 1996, c. 250)

Subsection 377 (6) of the *Land Title Act* states that:

The director may by regulation exempt

- (a) a class of charge, or
- (b) the names of a particular person or class of persons from the application of a search under subsection (4) (c).

This provision authorises the Director, at his/her discretion, to limit access to specific names found in the records of the land title register, by restricting searches relevant to any person's names or classes of persons. This could mean restricting searching on the name of an individual who has formally requested it, or the names of individuals who belong to a particular class of persons, such as those holding active restraining orders and law enforcement officers. It is important to note that the Director's power under section 377(6) to establish exemptions to name searches has never been exercised.

The Registrar's discretion under section 377(1) to impose conditions on the right of inspection and search has never been exercised to suppress searches involving specific individuals. In practice, the registrar's "reasonable conditions" authority has been applied to matters involving operational access.

4.3 Land Title Registers in Other Jurisdictions

Alberta

Alberta's land register system operates under the authority of the *Alberta Land Titles Act* (Service Alberta, 2013). The *Alberta Land Titles Act* sets the criteria for what must be contained in a complete record (Service Alberta, 2013).

The *Freedom of Information and Protection of Privacy Act (FOIP)* came into force in Alberta in 1995, revised in 2002, which provided structure for how public organizations collect, use, disclose, and disseminate personal information under their control (Office of the Information and Privacy Commissioner of Alberta, 2012).

As of January 2004, personal information held by the private sector in Alberta has been protected by the *Personal Information Protection Act (PIPA)* (Office of the Information and Privacy Commissioner of Alberta, 2012).

FOIP and *PIPA* do not apply to any record made from information in a Land Title Office in Alberta (Province of Alberta, 2013), in order to maintain public access to the information.

The Alberta land title register is maintained by Service Alberta. It is operated by Land Title Offices in two major cities in the province, one located in Calgary and the other in Edmonton (Service Alberta, 2013).

The registry system in Alberta has been automated since 1988 and fully accessible in an electronic format since 1999 (Service Alberta, 2013), alongside the option to contact one of the Land Title Office. This system contains over 250,000 plans, including survey plans and original township plans (Government of Alberta, 2013).

The SPIN system allows the land title office staff to perform searches for the public as the records are classified as public records. Staff members are able to perform a search after receiving a completed “Service Request Form” by a requester, which helps to accurately find the requested record and simultaneously keeps a record of the search (Service Alberta, 2013). Searches of the SPIN system can only be conducted by staff at the land title office, and cannot be completed off-site. This is a major difference when compared to Ontario, the State of Victoria, and BC.

Documentation is collected and kept by the Land Titles Offices. Once the search has been collected by the staff the results are returned to the requester – this can be completed off-site. Anyone is able to request a search by the Land Titles Office. Registering documentation comes with related fees to help cover the administrative burden of maintaining the register (Service Alberta, 2013).

Ontario

Ontario maintains a land title register system under the authority of the *Ontario Land Titles Act*.

The *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are the pieces of legislation which protect the handling of personal information in Ontario by provincial and municipal governments (Information and Privacy Commissioner of Ontario, 2014). The types of information protected include all personal information, which includes:

- Name
- Address
- Sex
- Age
- Education
- Medical or employment history (Information and Privacy Commissioner of Ontario, 2014)

Land registration records are not protected by provincial privacy legislation, and access to land title information is referred to in the *Ontario Land Titles Act* (Information and Privacy Commissioner of Ontario, 2014).

The responsibility for the land title register system is held by the Central Production and Verification Services Branch of ServiceOntario. Ontario currently has 54 Land Registry Offices throughout the province which are responsible for the registration, storage, and management of documents such as mortgages, deeds, and survey plans (Ministry of Government Services, 2013a).

Ontario uses an internet-based system, in tandem with the 54 physical locations, for the registration and searching of land title records. This has been done under partnership with Teranet Inc., a private sector information technology firm (Ministry of Government Services, 2013b). Ontario is the first jurisdiction in the world to partner with a private firm to operate its land title register system (Ministry of Government Services, 2013b).

The electronic system in Ontario, which is managed in partnership with Teranet, is called the Electronic Land Registration System (ELRS). The application called “Teraview” provides licensed ELRS clients with remote electronic access to the Government of Ontario's land records database. Users include licensed professionals and government officers (Teranet, 2014). Teraview allows users to perform property searches and submit land title registration applications (Teranet, 2014).

This electronic system's goal is to allow individuals and organizations to register and search land records in a secure and efficient manner (Ministry of Government Services, 2013b). This includes the conversion of land parcels registered through the previous “Registry System” into the current Land Titles system; this, as prescribed by the *Ontario Land Titles Act*, removes the need to search titles back by 40 years when completing a transaction (Ministry of Government Services, 2013b).

In order to combat a rise in real estate fraud, the province of Ontario has stated that the following information must be included in submissions to the land registration system:

- The submission applicant's identity
- Applicant's financial resources
- Proof of “Good Character/Accountability” (Ministry of Government Services, 2013a)

This is only necessary for individuals or organizations who wish to submit and register documents in the system. There are no criteria for those who wish to only have access in order to search records. A small fee is required by the electronic system user for accessing the record. The electronic system which maintains the user portal creates an electronic audit trail that identifies a complete transaction history for each search. Also, in order to use the Teraview application it is required to purchase a license and the software from Teranet (ServiceOntario, 2014).

State of Victoria, Australia

The State of Victoria's land title register is governed by the *Transfer of Land Act 1958*. In Victoria the *Privacy and Data Protection Act 2014*'s objective is to balance protecting personal privacy of information in the public sector while promoting the transparent and accessible handling of said information (Office of the Privacy Commissioner, 2014). The *Privacy and Data Protection Act 2014* does not apply to the State of Victoria's land title register.

The State of Victoria has been using the Torrens system for over 150 years. Land Victoria is the government agency responsible for land administration in the state; it registers approximately 700,000 transactions per year and maintains an internet-based system that is used for approximately 2.2 million online searches annually (State of Victoria, 2013). The state government operates a single physical location, in Melbourne, where the public is able to conduct searches in-person. It is the Land Victoria Information Centre (State of Victoria, 2013).

The online system is called the Victorian Online Titles System (VOTS). VOTS can be accessed by the public after paying a fee to the state government. This system is managed by the Registrar of Titles. The VOTS system maintains a feature where, also for a fee, a user can monitor all activity on a title over a period of 125 days (State of Victoria, 2013) designed for individuals who are interested in a parcel of land and are performing research before making an offer to purchase.

All information contained in the record is guaranteed accurate by the government of the State of Victoria (State of Victoria, 2013), which is consistent with a Torrens system of land title administration.

The information that is included from a title when concluding a successful search request is:

- A description of the land
- Names and the address of the current owners
- The manner of the holding
- All registered dealings affecting the title
- Any unregistered dealings affecting the title, such as those filed but not yet registered

Anyone is allowed to search the Title Register, for a fee; there are also brokerage services available where a search can be completed in your name (State of Victoria, 2013) by a third party, such as a legal representative. Land Victoria does not provide any title search services by mail, fax, or telephone; stakeholders must either complete search requests in person, via the online system, or through a broker.

4.4 How Other Jurisdictions Balance the Expectation to Privacy and Freedom of Access to Information

Other jurisdictions balance between the expectation to personal privacy and freedom of access in order to reduce incidents of abuse of their land title register system; a comparison table can be found in Table 1 – Cross-Jurisdictional Comparison of Land Title Register Features. These jurisdictions incorporate measures and system design with practical obscurity application features which include an application process for stakeholders who wish to request information, fees, and limited brick-and-mortar locations for individuals to perform searches. Table 2 outlines what the jurisdictions discussed use as measures to protect personal privacy.

As noted in Table 2, all jurisdictions examined use subscription or user fees as barriers to potential abuses such as data mining, and require the stakeholder who is requesting a search of the register to confirm their identity.

Alberta does not allow persons outside of the Land Titles Office to directly access the register, as a measure of practical obscurity. Also, Alberta does not allow direct access to its land register to anyone not employed by the Land Titles Office. This is to ensure that only trained Land Titles Office staff has access to this information as well as ensuring that privacy rights are protected.

Table 1 – Cross-jurisdictional Comparison of Land Title Register Features

	TORRENS SYSTEM BASED	OWNER NAME INCLUDED IN SEARCH RESULT	ONLINE TITLE SEARCH CAPABILITY	IN-PERSON SEARCH CAPABILITY	FEE FOR SEARCH REQUEST
ALBERTA	X	X		X	X
ONTARIO	X	X	X	X	X
STATE OF VICTORIA	X	X	X	X	X
BRITISH COLUMBIA	X	X	X	X	X

Table 2 – Cross-jurisdictional Comparison of Measures to Protect Privacy

	FEE FOR SEARCH	SEARCH SUPPRESSION	IN- PERSON ONLY SEARCHES	LIMITS ON HOW SEARCH RESULTS RECEIVED	APPLICATION PROCESS (SIGN-IN) FOR SEARCH OF REGISTER
ALBERTA	X	X	X		X
ONTARIO	X				X
STATE OF VICTORIA	X			X	X
BRITISH COLUMBIA	X				X

In Victoria, there is an option to access records from a physical location available, however no records can be mailed or sent by fax. These two examples demonstrate jurisdictions placing limits on the methods available to accessing the register while maintaining a high degree of accessibility.

Some jurisdictions do employ some search suppression mechanisms to help prevent abuse of public information. For example, Alberta has legislation that specifically provides for “search suppression” and the Name Search Regulation sets out criteria that must be met before records can be accessed through a search of an individual’s name (Government of Alberta, 2013). As an international example, the State of South Australia also provides a search suppression function. To be eligible to have a search of your name suppressed “you must be able to demonstrate that your safety or the safety of another person will be put at risk if your address is displayed in the

results of a name search – e.g. you have been a victim of domestic violence, you work in a profession that might expose you to dangerous people” (State of South Australia, 2014, para. 4).

The safeguards currently in use do not show the protecting of personal privacy as their primary goal, but rather focus on efficient availability of the information.

4.5 Summary of Findings

The results of the cross-jurisdictional scan show that the jurisdictions reviewed have moved toward internet-based user systems, and that these systems can maintain some degree of practical obscurity in their design, but continue to honour the spirit and function of a public register.

While they are not explicitly designed to provide a high level of privacy, they are able to retain aspects of practical obscurity without placing unnecessary barriers to access through the use of registration systems and involving land title register staff in the process of information dissemination. User fees for conducting searches also provide a financial barrier to individuals who may be looking to search a large number of property records.

Information contained in the land title register is public information, and therefore must be available to the public in an accessible manner. There is no right to complete privacy in land title registers, as it is not a legislated guarantee. Individual jurisdictions have built in degrees of privacy and information security for their records, however privacy and information security do not appear to be the primary objective of these agencies.

5 STAKEHOLDER CONSULTATION

5.1 Introduction

Consultations were undertaken to better understand the appreciation, use, and concerns that stakeholder groups have with the BC LTR and to respond to the research questions more directly. The consultations sought to address the research questions to shed light on expectations to privacy, and to explore possible measures which could be utilized to help protect privacy where appropriate.

Interview questions were designed to find stakeholder groups' opinions on how the LTR is currently working, whether it is successful in providing information while protecting personal information, what potential issues stakeholders feel the change to a more accessible internet-based system (the myLTSA system in particular) could bring – both positive and negative – as well as what potential high-level policy objectives they would hope to see achieved in any potential changes to the form or function of the LTR.

5.2 Stakeholder Group Selection and Recruitment

The stakeholder groups selected for engagement represent groups that regularly use the BC LTR or whose information may be at risk from increased online public access to the LTR. The following stakeholder groups were invited to participate:

- British Columbia Real Estate Association
- LTSA
- The Association of BC Land Surveyors
- Condominium Home Owner's Association of BC
- The Law Society of British Columbia
- Office of the Information and Privacy Commissioner of BC
- BC Assessment Authority
- Provincial Office of Domestic Violence (Ministry of Children and Family Development)
- Union of British Columbian Municipalities

Publically-available contact information was used to email invitations to participate to representatives from stakeholder organizations. Questions or concerns interested stakeholder organizations representatives had were answered before they decided on whether or not to participate.

Interview questions were provided to the interview participants in advance to allow them time to prepare. The consultation questions are listed in Appendix II.

5.3 Consultation Feedback

Of the organizations who were invited to participate, five responded to the researcher. The LTSA, the Law Society of British Columbia and the BC Assessment Authority, and the BC Provincial Office of Domestic Violence (Ministry of Children and Family Development) agreed to an interview, while the Office of the Information and Privacy Commissioner of BC cited a potential conflict of interest should it participate, and declined and the Union of BC Municipalities declined as they did not believe they would add value to the research.

Consultation participants' responses to the interview questions are synthesized for content and summarized below. A discussion on common themes and highlights follows.

Law Society of British Columbia

The Law Society of British Columbia (“the Law Society”) participant stated that the majority of its members who are regular LTR users would most likely be lawyers who specialize in real estate law, which would account for approximately 13,000 individuals. The Law Society representative could not speculate on how many hours were spent, or what kind of resources were used in these endeavors, as the Law Society does not collect that kind of information from its members.

As the members of the Law Society are consumers of the data contained in the LTR, the Law Society representative did not have specific privacy concerns to discuss. The only identified real potential issue was that of data mining, but there is no evidence of this currently occurring in the current online LTR system.

The Law Society representative noted that in general there should be a concern for personal information held in an online public register, as there is a heavy reliance on the system functioning to the best of its ability and that reliance is focused on non-human factors.

The Law Society representative did not know of any concerns its members had in relation to the accessibility of the information held in the LTR. The pay wall and fee structure currently in place for access through the myLTSA system provide an appropriate barrier to potentially unwanted access. However, the representative indicated that the cost should not become so high as to limit the accessibility currently enjoyed by members and the public at large.

The Law Society representative did not have any other concerns to communicate, and views the current system for accessing information in the LTR as appropriate for the purposes of its members. The representative stressed the importance of the LTR as a public register, and in keeping it public on an ongoing basis.

BC Assessment Authority

The BC Assessment Authority (“the Authority”) is a consumer of LTR data and accesses information in the LTR on a daily basis. The searches conducted by Authority staff are quite extensive, and include searches for:

- Land Title – Document Image
- Land Title – Plan Image
- Land Title Search
- Owner Name Search – by Owner
- Owner Name Search – Of Owner Index
- Strata Plan Index Search

The volume of searches conducted by the Authority is quite high, reaching between 9000 – 10,000 searches per month. According to the Authority, staff use the data contained in the LTR to support the “core administration and assessment activities” of the organization.

The Authority’s representative did not have any privacy concerns regarding the current online LTR system, and as mainly a consumer of LTR data stated that they “could not speak to the privacy protection measures implemented by the LTSA”. The Authority representative also noted that they have their own privacy and security protocols designed to protect individuals’ information protected, governed by the *FOIPP*, and treat all information under its custody to the standards set by this legislation.

While the Authority's representative noted that there will perennially be opportunities to better protect privacy, they believe that the LTSA has the capacity to meet any challenges to privacy protection while using an online platform. They also stated that they would be pleased to work with the LTSA to improve privacy and security protections going forward if the opportunity arises.

The representative indicated that the Authority is satisfied with the level of accessibility currently provided by the myLTSA system, and did not raise any further concerns with either accessibility to information or regarding privacy concerns. As with the Law Society, the BC Assessment Authority recognized the importance of the LTR as a public register that is accessible to all who require the information contained therein.

BC Provincial Office of Domestic Violence (Ministry of Children and Family Development)

The BC Provincial Office of Domestic Violence ("the Office") has a mandate to lead in "coordinating and strengthening services for children and families affected by domestic violence" in BC (Ministry of Children and Family Development, 2014, para. 2). The Office does not generally use the LTR as a part of its operations, and in fact does not have any normal interaction with it.

The Office's representative stated that they are unaware of any ongoing privacy concerns, but also noted that there are potentially systematic issues present in the LTR's design as a public register, and related anecdotally a recent incident where an individual believed they could be tracked down using the LTR specifically.

The representative had no comment regarding the level of accessibility when using the LTR. They also noted that the old system for searching for information, where the individual wishing to perform a search had to physically seek out the information from a staff-person, may have provided a stronger amount of security and ability to monitor potential wrongdoing; this was mentioned in the context that there is an understanding that the world is increasingly moving online, and that this is now generally-accepted as positive.

Much like the representative from the BC Assessment Authority, the Office's representative showed interest in being engaged by the LTSA or the Land Tenures Branch on potential privacy issues in the LTR, noting that they are always interested in sharing their concerns and working with partners in government.

Land Title and Survey Authority of BC (LTSA)

The LTSA is responsible for stewardship of the LTR in BC, and answered the consultation questions from the operator's perspective.

The LTSA representative estimates that there are approximately 2 million general title searches of the LTR a year, with a further 400,000 exempted searches, which are undertaken by government sources. They estimate that the overwhelming majority of the LTR are in preparation of an impending land transaction; other reasons for searches identified include for estate handling matters, for land development purposes, by public safety officials, debt collection, and by public works organizations.

In the past 1-2 years, few privacy concerns have been noted by the LTSA. They did note that they will receive a few questions on what information is available, and if a person is able to limit

access to their information. The LTSA stated that in these cases they work with the person to find a workable solution for their unique circumstance.

The representative noted that they receive very few complaints regarding privacy of personal information, and believe their current LTR search system is working well from an administration point of view. Where individuals request that access to their records be blocked, the LTSA's advice is that they may structure their affairs to provide an alternate contact address and ownership arrangement for titles they are registering. The representative noted that as an example, when registering their application applicants are not required to provide their personal address, but only one at which they are able to receive correspondence.

The LTSA has a transparent process for statutory decisions, as required by their enacting legislation. The LTR searching system, myLTSA, is designed to be as easy to use as possible while designed to be quite literal; there is a balance of competing interests. The myLTSA system is similar to the BC OnLine system that had previously been used, and is a point of access, but does not manage the entire system. It is back-office functions that actually manage the LTR.

The representative also noted that any analysis of the BC LTR would not be complete without discussing that the LTR generally "sits in the background", and is rarely used without the intent to find property title information. It has a strong interdependence on the tax and civil justice system; in fact it is tailored to and supports these systems.

Common Themes/Highlights

There are two main themes present in the responses of the consultation participants. The first is a lack of known privacy issues present in the LTR and in the current management and system of the LTR, and the second is a positive appreciation for the current level of accessibility to the information contained in the LTR. A third minor theme is a willingness to work with the LTSA and other stakeholders on privacy issues and potential emerging issues related to information privacy and the LTR. It should be noted that the LTSA, as administrator of the BC LTR, believed strongly that its mandate was being fulfilled appropriately.

The stakeholders that were consulted noted a lack of known issues regarding the protection of personal information by the LTSA is the first common theme between the participants. This lack of privacy issues can be partially explained by who the participants are; as primarily consumers of LTR data, the Assessment Authority and the Law Society have little reason to be concerned about the privacy of personal information in the LTR. The LTSA did state that there are rare enquiries regarding the protection of personal information, and that to date they did not believe any individual who interacted with them on these grounds was unsatisfied with the responsive action provided.

The Office of Domestic Violence was more sensitive to potential privacy concerns relating to victims and survivors of domestic violence, and did mention a case of an individual who was a survivor of domestic violence who was concerned that their information in the LTR was being used by their abuser; this is supported by the LTSA – although this particular case was not singled out.

None of the stakeholder organizations were immediately aware of any ongoing issues with the current level of information privacy in the LTR, and are confident in the LTSA's ability to appropriately safeguard all information held in the LTR. There was a consensus that there will

always be challenges protecting privacy of personal information, and that vigilance on the part of the LTSA was needed to help ensure new issues did not arise.

The BC Assessment Authority's representative also discussed the Authority's responsibility to *FOIPP*, and the protection of information held by it as further evidence that they did not believe any issues were present as far as their organization was concerned. The LTSA's representative noted the agency's transparent decision making process as a result of being a statutory decision maker provided authority in legislation.

The appreciation for the current level of accessibility is the second theme that has emerged from interviews with the participants. As the Law Society and the BC Assessment Authority interact as consumers with the LTSA for LTR information, they demonstrated an interest in maintaining accessibility to land titles. Both are satisfied with the level of accessibility available, including being satisfied with the myLTSA online platform. The Office of Domestic Violence is not a regular client of the LTR, and has little interaction with the LTSA or LTR at a working level, and so could not provide much comment on its level of information accessibility.

The stakeholder organizations expected that the data would be available, as it is important for the smooth functioning of their operations, and mentioned the fact that it was a public register and therefore had a responsibility to be available to the public. The LTSA did not comment explicitly on the current level of accessibility, as they are the administrator of the LTR. Even the Office of Domestic Violence made a point of stating that there was an understanding that information in public registers had to be accessible to the public. No stakeholder organization suggested placing too strong of safeguards around land titles that the public has a right to access.

Representatives from the Assessment Authority and the Office of Domestic Violence expressed interest in remaining engaged with the LTSA on privacy issues in relation to the LTR and public registries in general. This willingness to remain engaged could stem from a mutual interest in information management from two perspectives: the first as a major consumer of government information in the case of the Assessment Authority, and the second in the interest of protection personal safety and the protection of sensitive government information overall in the case of the Office of Domestic Violence.

6 DISCUSSION & ANALYSIS

6.1 Introduction

The literature review, cross-jurisdictional scan, and stakeholder consultations provide information to answer the research questions posed at the beginning of this report. This section identifies broad themes, and ties these themes into what the priorities are for the LTR and how to balance between access to public records and the appropriate level of personal information privacy.

As mentioned earlier in this report, the main research questions examined are:

- What is the expectation, legal or perceived, for the government to respond to privacy concerns in the BC LTR?
- What are the potential causes for concern with relation to the privacy of information contained in the BC LTR?
- What has been done in BC and other jurisdictions with regards to protecting privacy of personal information in public land title registers? How effective is practical obscurity at mitigating privacy concerns?

6.2 What are the Issues/Problems Identified?

What is the expectation for a response to privacy concerns in the BC LTR?

There are two competing expectations when discussing public registers such as the LTR and the personal information contained therein. The first is an expectation for access to public records, and the second an expectation by some for privacy measures to be in place to protect their information from unwanted intrusion or abuse.

The information contained in land title registers is public information meant to be accessible and available to the public. As stated earlier in this report, the land title register system was developed to confirm an individual's claim to ownership of a particular piece of land, and to keep record of any encumbrances placed on the title.

This principle is strengthened by the LTR's governing legislation, which guarantees that the information in the land title register will be made available to the public. This allows for the system to be effective in its purpose and provide an efficient means of determining the validity of an individual's claim of ownership. Stakeholder consultations also support the continuing need for information in public registers to be kept accessible to the public at large; all stakeholder organizations consulted recognized this principle.

Transparency and accessibility in government are core concepts of responsible government, and are important for citizens to be able to be engaged and to hold their government to account. Accessibility is also important for the positive functioning of the market where the information in public registers is key to leveling the playing field. A theme that has emerged is the desire to maintain accessibility to the land title records and not place significant barriers to access. The BC Assessment Authority and Law Society highlighted the importance of accessibility to public registers such as the LTR.

Privacy is also important, especially for parties with concern for how their personal information could be used. As shown by the use of search suppression tools, privacy can be maintained for individuals who have met criteria set by the government to be kept off of general searches of

public registers. Alberta and the State of South Australia offer examples of this targeted privacy maintenance tool.

Ontario and the State of Victoria use predominantly online land title register systems, combined with in-person access, with little to no restrictions on the search of records within their land title registers. Alberta provides a different example and only allows its' Land Title Office staff members access to the register itself, with searches being conducted through them. An important theme in all three of these examples is the reliance on record-management to keep track of who is conducting searches, and for what purpose. This provides a mechanism to identify potential privacy issues and to track search patterns of LTR records in the case of wrongdoing.

The stakeholder engagement identified a potential opportunity for ongoing engagement regarding privacy issues and the LTR. Through the stakeholder consultations, multiple organizations registered their interest in engaging on privacy concerns. A working group/forum may be a vehicle for that engagement. This engagement would be beneficial as it would provide a source of valuable information and new resources to use. The LTSA currently already has a Stakeholder Advisory Committee established, which could serve as a model for other stakeholder engagement, or potentially the vehicle for this engagement.

How do we know what is an "appropriate balance" balance between the ability to access personal information in public registers and the protection of privacy rights?

An "appropriate balance" is achieved when a level of privacy is protected that does not interfere with the spirit of transparency and accessibility of public registers and also meets the needs of those wishing to be protected. This balance could be unique to the jurisdiction to which it is applied, and determined by the policy intent of the register. As public registers are meant to be publically available this balance will trend towards the ability to access the information contained therein.

This balance can be seen in the use of practical obscurity measures and tools such as search suppression. These are an attempt to insert measures that will not adversely affect legitimate use of a public register, but also their implementation recognizes the need for some protection of privacy. This balance is achieved by tailoring the use of practical obscurity measures to fit the policy intent of the register; for example, name search suppression is applied on a case by case basis in the State of South Australia, while there is a blanket regulation in Alberta restricting searches of its land title register by an individual's name.

While it would be extremely difficult to develop quantitative measures to determine if the balance is achieved, access policy principles can be developed. These could include, but are not limited to:

- timely access available to register information;
- elements of practical obscurity present in register;
- no significant barriers to access by ordinary citizens;
- access for legitimate purposes unimpeded.

What happens if an appropriate balance is not achieved?

If an appropriate balance between privacy and public accessibility to information in the BC LTR is not achieved, then either the public register in question loses a measure of its transparency and

accessibility necessary to function as a public register effectively, or the government fails in its duty to refrain from putting citizens under its jurisdiction into potential harm's way.

If a public register loses the appropriate measure of transparency and accessibility to function as a public register, it does not meet the policy intention and the public good of the public register is no longer available. On the other side of the balance, a government that does not protect citizens when they are vulnerable from potential abuse of their private information is failing in its responsibility to not cause harm to its citizens. Indicators that an appropriate balance has not been achieved would include complaints from LTR users that their needs are not being met or complaints from the public that their privacy has been violated or that the openness of LTR has threatened or is threatening their safety. Lack of appropriate balance calls for a policy review.

How effective is practical obscurity at mitigating privacy concerns?

The concept and application of practical obscurity is effective depending on the level of commitment to its application and the type of system it is applied to. The use of practical obscurity has lessened in tandem with the move to providing access to register records online, as traditional physical and geographic barriers are no longer present.

Practical obscurity has until recently been a central characteristic in the land title register system in BC. While still present, elements of practical obscurity are diminished, as the shift to an online system and the myLTSA title search function has removed many of the previous physical "barriers" that had once provided an element of this characteristic.

Elements of practical obscurity can be seen in the requirement for an individual wishing to conduct a search to do so either in person or with an account to myLTSA to access the land title register records. Fees also apply before a search can be conducted (LTSA, 2014a). While there are no limits to how many searches can be conducted, each unique search requires that a separate fee be paid.

Practical obscurity remains centrally present in other jurisdictions, and can act as a compromise lever to protect personal privacy in public registers. Practical obscurity still has an important role to play, as evidenced by the BC Law Society representative, who indicated that elements of practical obscurity such as user fees still had their place and should be maintained in the LTR.

Options such as removing the ability to search for a title based on the owner's name would create an element of practical obscurity in the LTR, and would not limit the ability to search out information on any land titles, while adding a barrier to those who wish to search for the interests in land of a specific individual or class of individuals. This is used in Alberta, which limits the ability to search its title records by the name of an individual, with criteria for searching its land title register set by regulation and administered at the Land Title Office level. This kind of approach supports the purpose of the LTR, which is to ascertain who owns a property and not what properties one owns, while protecting individuals' privacy.

Practical obscurity can be applied up to a point before it becomes a barrier to fair access. The Law Society discussed in their consultation that while it regards user fees for conducting a search of the LTR a useful tool, the LTSA should be careful not to raise the price of the fee so high as to discourage legitimate use of the register. Fees are meant to help offset the cost to operate the system, and can also potentially reduce the incidence of potential abuse.

This use of practical obscurity is present in the account-based myLTSA portal to individuals with myLTSA accounts, or having to go through a LTSA representative located in LTSA regional offices as there are steps to gaining access to the search function and records of searches are kept by the LTSA. This is not so extensive that it risks discouraging legitimate users, but could make it more difficult to use the LTR for abusive purposes as it has the potential to drain resources and requires that the user identify them in order to make a record of their search history.

What are the potential causes for concern with relation to the privacy of information contained in the BC LTR?

The forms of public register abuse described in the literature review, such as data mining or access for criminal or malicious intent, are possible when access to information is not sufficiently monitored and the records are not protected by the responsible organization.

Public registers are by definition accessible by the public, and it is in careful organizational design that potential abuse can be mitigated or prevented. An appreciation for the potential of abuse, and for the potential harm that could arise is important for any organization that administers a public register to have.

What have BC and other jurisdictions done to protect the privacy of personal information in public land title registers?

Potential abuse of public registers can be avoided by designing systems and safeguards to how information is stored and shared with stakeholders. As an example, in Alberta all searches of the land title register as conducted in-house at one of the Land Title Offices. Also possible is the use of search suppression tools for high-risk individuals, or by limiting how searches of the register can be conducted.

Incorporating privacy safeguards where appropriate into an information management system is a way of addressing possible abuse. These safeguards include the use of fees, requiring registration for online access, monitoring and recording system usage, or requiring identity verification.

As an example of incorporating a privacy safeguard, the State of South Australia allows for search suppression methods to be in place for people who are able to demonstrate that their safety or the safety of another person will be put at risk if their address is available in a land title search (State of South Australia, 2014). South Australia has set criteria for persons to be eligible for search suppression, including, but not limited to, being a victim of domestic violence and working in a profession that might expose the individual to dangerous people (State of South Australia, 2014).

The stakeholder consultations did not identify any significant abuses of the information contained in the LTR to date. However, this does not mean that the potential for abuses does not exist. The stakeholder consultations focused on organizations which have members which interact with the BC LTR, and did not include potentially vulnerable clients. There is a case to be made for building on the foundation already present, and to continue the work already undertaken to protect information privacy where appropriate in the LTR.

Stakeholders noted their confidence in the LTSA's ability to manage potential abuses of the LTR, and highlighted interest in remaining engaged on the issue in order to help prevent abuse and identify new potential privacy issues.

6.3 What has Been Revealed to be a Priority?

What are the priorities for the BC government?

There is a policy rationale for providing open access to public records, as it is not only provided for by the *Land Title Act*, but is also important to the provincial economy and to the efficient transfer of land between parties.

The existence of a land title register as a public register underpins the market, secure investments in, and transfers of land in BC. This information is essential for stakeholders to act with full knowledge in their dealings in the real estate market; this is especially true to have certainty in investments and the holding of property, which can be bought, sold, and mortgaged.

These economic pursuits should not be hindered by either an onerous process for gathering land title information, or with unnecessary restrictions on conducting lawful searches of the register; the accessibility of land title records must remain a key concern for the management and administration of the LTR. Transparency in government and accessibility to information must also be respected, in order to maintain confidence in the land title registration process in BC.

It is also a priority to protect the information of those who act in accordance with the law and have put their trust in the government. Information can be abused, and it is the responsibility of the government to minimize or mitigate risk of abuse. To that effect, s. 377 of the *Land Title Act* gives the Registrars and Director of the LTSA the ability to set limits or restrictions on how individual searches are conducted, within reasonable grounds. This demonstrates the will to set limits and protect individuals' privacy where warranted, but sets a high bar for the use of restrictive authorities.

Are these priorities manageable?

Public access and privacy protection are manageable by using certain tools available to the BC Government and the LTSA. The LTR is currently available for interested parties to search as long as they do so through the myLTSA online system or by going in-person to a LTSA office. The LTR systems in place are working to meet the priorities now, and it could be simply a matter of building upon already existing policy to strengthen privacy protection measures in the LTR.

Maintaining open and transparent access to information is a priority, and the move of the LTR to a more accessible format will help achieve this. The Freedom of Information and Protection of Privacy Act states that information that is meant to be public must be able to reach the right people in an acceptable timeframe (Flaherty, 1998), and the myLTSA land title search system is a tool meant to help achieve this goal.

If a limited search suppression tool were utilized, it will be strongly important for it to be able to set guidelines which do not interfere with a high majority of LTR searches. As an example, any criteria must be able to demonstrate a reasonable expectation to risk/harm if their address is readily searchable on a public register, for instance, for persons who work in a profession where interaction with dangerous individuals on a regular basis is expected, such as law enforcement personnel. These criteria would also require review at pre-determined timeframes in order to adapt to meet any new challenges that may arise around privacy concerns.

As the LTR continues its move to being an increasingly online-accessible system, through the evolution of the myLTSA platform, privacy could become a greater concern due to the removal of elements of practical obscurity. Stakeholders did not identify any pressing privacy concerns

with the LTR, demonstrating a lack of privacy consequences so far from the move to the online myLTSA platform.

The term “reasonable” is not defined in the *Land Title Act*, or publically by the government, and can be interpreted broadly, providing policy cover to the government and the LTSA to implement measures to protect personal privacy where deems necessary. In collaboration with the Province, the LTSA could develop a set of criteria that defines what is considered reasonable grounds for having restrictions placed on individual land title records, using search suppression tools in limited cases and structuring the searching system to provide targeted results for those who know exactly what they are looking for.

The use of restrictions for, but not moratorium on, bulk searches is an example of a manageable measure which works to reduce the incidence of a potential abuse of LTR information. This practice also incorporates elements of practical obscurity as it presents a barrier to large-scale access to the information contained in the LTR, but not to those individuals who wish to use it on a case-by-case basis; the average user of the LTR should not be effected by this recommendation. The barrier is only in place for a particular set of potential clients, and will not affect the majority of LTR search requests. It also responds to the threat of privacy invasion through data-mining and commoditization of personal information as it will be more difficult to acquire large amounts of LTR data.

7 RECOMMENDATIONS

The following recommendations, set out in no particular order, are informed by the evidence and discussions presented earlier in this report, and are meant to help achieve a balance between protecting private information in the LTR while maintaining the appropriate level of access to its information to the public.

When reviewing these recommendations, it is important to remember that the LTR is a public register, and public access to the information in the LTR must be maintained in order to fulfill its legislated purpose. None of the recommendations presented below have the intention of limiting access to legitimate users of the LTR.

The LTSA retains its role as the administrator and operator of the LTR, leveraging the institutional knowledge which already currently resides in the organization. The recommendations also aim to use current legislation instead of developing new legislation or regulations, lowering any resource costs to implementation.

It is appropriate to note that these are high level recommendations and there may be limitations to implementation of these recommendations. Implementing these recommendations would require more research, policy analysis and stakeholder consultations to more fully identify and address nuances of the issue. Moreover, the LTSA was not consulted regarding the recommendations put forward in this report, and further consultation with the LTSA is advised before any are explored further.

Recommendation 1 – Allow Searches Only for Property Identifiers, and not Names

Those wishing to search for a land title would only be able to search based on having specific property identifiers of the property in question, not including the current owner’s name. Searches of the LTR based on an individual’s name would no longer be permitted.

This recommendation retains the majority of the current level of public access to the LTR, while addressing privacy concerns by protecting information from the first search step. As an example, a person would not be able to search interests in property of their coworkers, while still being able to seek out information on the interests in a property that is for sale where title information such as the civic address is already known.

There will be financial and operational considerations as this recommendation, if implemented, as it will require legislative changes to the *Land Title Act* and limited changes to the operation of the myLTSA search function.

As mentioned, legislative changes would be required to implement this recommendation, as s. 377 (4) of the *Land Title Act* expressly provides for searches of the LTR by name, and would have to be removed. S. 377 (3) provides the Registrar with authority to “direct the manner of conducting a search”, however this would not be expected to extend to the ability to override another section of the same legislation without explicitly stating so.

A potentially negative aspect of this recommendation is that it could be difficult to measure its effect on mitigating individual privacy concerns. There may be concern that this does not accomplish much as it does not limit the results of a title search, and that the effect would not be clear and may be hard to quantify/qualify.

The importance of searching titles “by name” may impact stakeholders adversely and is a consideration which would need more analysis before implementation to ensure that the accessibility overall to the BC LTR is not impacted.

Recommendation 2 – Develop a Search Suppression Tool for the Land Title Register

The LTSA could use the statutory authority provided by s. 377 (6) of the *Land Title Act*, which allows the Director of Land Titles to exempt by regulation the “name of a particular person or class of persons” from being searchable in the LTR. This search suppression policy would exempt by regulation a class of persons, defined by the Director, who submit evidence that they meet the necessary criteria as set by the LTSA or by the Province.

To implement this recommendation the LTSA would need to develop a set of criteria for establishing whether a request for name suppression from a search of the register is valid. The LTSA could work with provincial colleagues – such as at the Ministry of Forests, Lands, and Natural Resource Operations – to develop this criteria and ensure that it respects the government’s policy objectives for the LTR. No legislative changes are required for implementation of this recommendation, as the authority for the LTSA to undertake this is already provided in s. 377 (6) of the *Land Title Act*.

Some financial considerations may be present as resources would need to be devoted for developing the criteria for search suppression. It can also be expected that there would be costs for ongoing program maintenance and monitoring as well, for things such as application adjudication, appeals processes for unsuccessful applications, modifications to the myLTSA online search platform, and other general program administration costs.

Any costs associated with his recommendation could be offset through the application of a fee charged for a request for search suppression to be applied; this could also reduce the incidence of individuals frivolously requesting for search suppression when they cannot demonstrate they meet the established criteria.

Developing a set of search suppression criteria that appropriately meets the privacy challenge but that do not become onerous for the general public to meet – not having too rigid an application that people are not adequately served by it – is a potential challenge for this recommendation. Another potential challenge is ensuring that the search suppression tool put in place is actually working as envisioned, and is adequately protecting at-risk individuals, and not simply putting a veneer of security in place.

Recommendation 3 – Engage with Relevant Stakeholders on Privacy Issues

The LTSA, in partnership with the MFLNRO, could initiate a focus group where relevant stakeholders can discuss privacy issues with relation to the LTR. Engagement with stakeholders will help strengthen the LTSA’s understanding of privacy issues, and provide opportunities for collaboration on emerging issues. One theme that came out of the stakeholder consultations was that they had a positive relationship with the LTSA overall; however privacy concerns were not generally the topic of past engagement.

The LTSA could chair a focus group of relevant stakeholder organizations whose sole focus is to discuss and explore privacy issues regarding the maintenance and ongoing operation of the LTR. The chair would be able to create the relationship conditions and guide the scope of the group. A ‘Terms of Reference’ or other agreement could be drawn up among members to structure the

focus group. As mentioned, the LTSA already has relationships and ongoing engagement with governmental and non-governmental organizations through their Stakeholder Advisory Committee, which it could leverage in bringing together the most relevant stakeholder organizations.

This focus group could also act as an opportunity for the LTSA to reach out to their stakeholders and prompt them to look out for potential instances or concerns regarding information privacy abuse in public registers. Increased annual data collection from focus group members will help facilitate policy development that is informed by emerging concerns and issues. This could also help to reduce response time to emerging issues and head off problems before any event occurs.

There are no significant financial resource requirements expected to implement this recommendation, however there would be a time commitment necessary, as well as some resource requirements for hosting the discussion; these requirements would be determined while designing the format of the engagement.

Potential challenges include garnering sufficient support and participation from relevant stakeholders that the engagement has value, and making sure that the results of the engagement are useful to the LTSA and can be implemented with demonstrably positive results.

Recommendation 4 – Restrict Bulk Searches of Land Title Register

The LTSA could continue to restrict the ability to conduct bulk searches of the LTR to those it enters into an agreement with for bulk data purchases, such as it does with the BC Assessment Authority. This limits searching of records to focus on a case-by-case basis, and could prevent data-hoarding for commoditization and data-mining purposes.

This recommendation would continue to help discourage using the LTR for data-mining or commoditization purposes, and focus on providing service to those who seek to use it for gaining information on specific parcels of property. This recommendation does not seek to end all bulk-data purchases, and the LTSA would retain the ability to provide bulk search services to clients who demonstrate a legitimate need for the information for their lawful use. As mentioned, an example of this could be the BC Assessment Authority or a municipality.

No legislative changes are required for implementation of this recommendation, as the authority for the LTSA to undertake this is already provided in s. 377 (3) of the *Land Title Act*.

No significant financial or resource implications are expected as a result of the implementation of this recommendation other than using existing organizational capacity for negotiating with clients who seek to make bulk data purchases; this capacity is already present, and the LTSA has the institutional knowledge to continue undertaking it.

A potential challenge for this recommendation is signaling to the private and governmental sectors that the LTSA is not removing the ability to make a bulk data purchase. This needs to be clear and consistent messaging so that interested legitimate bulk data purchasers will remain engaged with the LTR.

8 CONCLUSION

Public registers offer an opportunity for governments to provide necessary information as a public good in an efficient and accessible way to the public. The BC LTR is one such public register, providing information that would not otherwise be easily gathered in the private sector. As mentioned throughout this report, it is important to remember that a public record is a recorded piece of information whose policy intent is to be open and available to the public when needed.

This report envisions a land title register system where access for legitimate users remains open, and the LTR includes clear procedures for protecting the personal information of land title holders with legitimate cause to have the access to their records restricted.

The government establishes the strategic direction of its public registers and the LTSA is responsible for the proper administration and maintenance of the register. As some of the information held in the LTR could be considered private, a tension exists between the public's ability to access government-held information in public registers and the public's right to privacy.

The tension between providing a completely open and accessible register and respecting a reasonable expectation to personal privacy is possible. It can be managed by respecting the register's governing legislation and policy intent while also building in viable tools which demonstrate the concept of practical obscurity and offer solutions to potential problem areas of the public register.

It is important for the information contained in public registers to be accessible to the public, as it is a foundational principle for public registers. It is also conveyed in provincial legislation that the register, and the information contained therein, is to be available to the public.

There is also a reasonable expectation of privacy that must be respected by government organizations. When using the Torrens system land title records are public records as a core principle, but there are circumstances that make the restriction of personal information important for safety and security purposes. There is the potential for criminal wrongdoing, and it is prudent to build in an appropriate degree of safeguards to prevent abuses from occurring. Abuses may include corporate data-mining, the commoditization of personal information for commercial benefit, and the use of public records to gain access to people for criminal intent.

BC is fortunate that many other jurisdictions use the Torrens system and have land title register systems that have moved to online platforms that can offer lessons which can be leveraged as it moves forward.

Like those jurisdictions, BC has the opportunity to develop policy on how it would like to address the tension between the reasonable expectation to privacy and the public's right to information contained in public registers. In the case of the land title register, BC has the added benefit of the LTSA's expertise in managing and administering the register along with an already built robust internet-platform.

In light of this, four recommendations are presented, which are informed by the evidence and discussion present in this report. They are meant to address the tension between protecting private information in the LTR while maintaining the appropriate level of access to its information to the public.

Areas of this report which have potential be explored further include the stakeholder consultations and the cross-jurisdictional scan. An example of this is that the number of stakeholders interviewed was limited to stakeholder organizations which interacted with the BC LTR on a regular basis, and generally do not represent "vulnerable" clients of the LTR, with the exception of the BC Office of Domestic Violence. It would be beneficial to expand consultations to include stakeholders that might be considered vulnerable: women's abuse shelters, law enforcement officials, etc.

Another possible avenue for further research and analysis is to broaden the cross-jurisdictional scan to include more jurisdictions and not be confined to Torrens- based land registry systems. The research could be expanded to look at how search suppression and practical obscurity work in other jurisdictions' public registers.

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APPENDICES

Appendix I – Stakeholder Introduction and Invitation to Participate

Hello,

My name is Taylor Johnson, and I am a graduate student at the University of Victoria, pursuing my Master's degree in Public Administration. I would like to invite your organization to participate in a research project I am undertaking by responding to a series of questions regarding the BC Land Title Register and your organization's experience with it.

This research project is titled "Balancing Privacy Concerns with the Public Right to Information in the BC Ministry of Forests, Lands & Natural Resource Operations" and is asking specifically how to maintain an adequate level of privacy to citizens as the land title register moves to an online format. The client for this research is the Land Tenures Branch of the Ministry of Forests, Lands and Natural Resource Operations.

One element of my research consists of conducting stakeholder organization consultations. You have been identified as a potential representative of a stakeholder organization. If you consent to voluntarily participate in this research, your participation will consist of an over the telephone interview, which will take approximately 45 minutes to complete. You will be provided the questions 48 hours before the scheduled interview time for your review, and to help you prepare. You will be given approximately one week to submit any supplementary written material you choose. Organizations who participate will have the opportunity to nominate a representative to participate on their behalf.

Participants can choose not to answer any questions they choose, without repercussion. Attached to this email is a letter of consent for your information, review, and signature. Please let me know if you will be able to participate or not. If you choose not to participate, no further action will be taken, and you will not be contacted again.

Your participation in this research will provide an opportunity to make your position known on the BC Land Titles Register.

If you have further questions or concerns please do not hesitate to contact me by email at taylorjo@uvic.ca.

Thank you for your time, and I look forward to hearing back from you.

Sincerely,

Taylor Johnson
MPA Candidate
University of Victoria

Appendix II – Stakeholder List and Consultation Questionnaire

Project Title:

Balancing Privacy Concerns with the Public Right to Information in the BC Ministry of Forests, Lands & Natural Resource Operations

Target Stakeholders:

- British Columbia Real Estate Association
- Land Title & Survey Authority of BC
- Condominium Home Owner’s Association of BC
- The Law Society of British Columbia
- Office of the Information and Privacy Commissioner of BC
- BC Assessment Authority
- Provincial Office of Domestic Violence (Ministry of Children and Family Development)
- Local Government Management Association of BC

Questions for Stakeholders:

- 1) How much does your organization or its members interact with the BC Land Title Register?
 - a. For what purpose does it interact generally with the Land Title Register?
- 2) Do you think there are any personal privacy concerns regarding the current BC Land Title Register system?
- 3) How satisfied is your organization with the level of privacy protection currently provided by the BC Land Title Register system?
- 4) How satisfied is your organization with the level of accessibility currently provided by the BC Land Title Register system?
- 5) What is your initial reaction to the possibility of the BC Land Title Register system moving to an online format?
- 6) Does your organization foresee any new privacy concerns arising from the BC Land Title Register system moving to an online format?
 - a. If so, how would you like to see these privacy concerns addressed?
- 7) Do you have any other comments or suggestions?

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PARTICIPANT CONSENT FORM

**Balancing Privacy Concerns with the Public Right to Information in the BC Ministry of Forests,
Lands & Natural Resource Operations**

You are invited to participate in a study entitled “Balancing Privacy Concerns with the Public Right to Information in the BC Ministry of Forests, Lands & Natural Resource Operations” that is being conducted by Taylor Johnson. The Land Tenures Branch of the BC Ministry of Lands, Forests, and Natural Resource Operations is the public sector client for this research project.

Taylor Johnson is a graduate student in the School of Public Administration at the University of Victoria and you may contact him if you have further questions by email at taylorjo@uvic.ca.

As a graduate student, Taylor is required to conduct research as part of the requirements for a degree in public administration. It is being conducted under the supervision of Dr. Lynda Gagne. You may contact Dr. Gagne at 250-721-8063.

Purpose and Objectives

This research will examine how BC’s public policy and legislation can best achieve a balance between the need to access personal information in public registers for legitimate purposes and the privacy rights of individuals whose personal information is found in such registers. It will focus specifically on the Land Title Register in BC.

Importance of this Research

Research of this type is important because it addresses the challenge of addressing the public’s need to accessible access to information and balancing this requirement while maintaining the protection of personal privacy. The BC government is modernizing and digitizing it’s Land Title Register and requires options for how to do so appropriately.

Participant Selection

You are being asked to participate in this study because you represent those who interact with the land title register system. The stakeholders represented by these organizations range from property owners, the overseeing office of the Land Title Register, to local governments in BC.

What is Involved

If you consent to participate in this research, your participation will consist of a formal telephone interview, which will take approximately 45 minutes to complete. You will be provided the interview questions 48 hours before the scheduled interview time for your review, and to help you prepare.

Participants will be given approximately one week to submit any supplementary written material they choose.

Inconvenience

Participation in this study may cause some inconvenience to you, including time spent during work hours being used to complete the questionnaire. Participation should not be time intensive. All efforts will be made to schedule interview times at the convenience of the participant.

Risks

There are no anticipated risks to you by participating in this research.

Benefits

The potential benefits of your participation in this research include having the opportunity to make your considerations and concerns known with regard to any potential change to the BC Land Title Register. This research is meant to inform the BC Ministry of Forests, Lands & Natural Resource Operations on how to proceed with potential changes to the Land Titles Register, and you will have a chance to representation your organization's views by participating in this research.

Voluntary Participation

Your participation in this research is voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation necessary. If you do withdraw from the study your data will not be used, and will be destroyed.

Anonymity

In terms of protecting your anonymity all participating stakeholder organizations will be identified in order to maintain the integrity of the research. It is important that the views of stakeholder organizations being sought are properly and appropriately attributed to them.

The nominated representative of the participating stakeholder organizations will be identified by position only, as a representative of their organization.

Confidentiality

This research is not intended to be confidential. This refers to the results of the research only; all raw data and interview transcripts will be protected, and will not be made publically available. Only the principal investigator and the academic supervisor will have access to raw data. The electronic raw data will be stored on a secure external hard drive, while any transcripts will remain in the possession of the principal investigator.

Dissemination of Results

It is anticipated that the results of this study will be shared with others through the public defense of the report, to be undertaken at the University of Victoria. The final report will also be shared with the client for this research, the Land Tenures Branch of the BC Ministry of Lands, Forests, and Natural Resource Operations.

This report will not be a confidential, and will be publically available upon request to the School of Public Administration.

Disposal of Data

Raw data from this study will be erased electronically once the research report has been successfully defended. Raw data will not be shared with the project client.

