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Ottawa, September 1, 2011

**VIA EMAIL and REGULAR POST**

Mr Vincent Gogolek  
Executive Director  
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Dear Mr Gogolek, Ms Down, and Mr Hennig:

**Re: Defamatory Comments Regarding Sebastien Togneri and Access to Information**

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We are solicitors for Sebastien Togneri. We refer to your letter to the Chair of a House of Commons committee, released publicly earlier this week along with a news release entitled "Transparency groups urge Commons inquiry into RCMP dropping Access to Info Act investigation".

This material contains content which is false and defamatory, in particular the apparent reference to Mr Togneri as having committed a "white collar crime" as ostensibly found by the Information Commissioner.

The Commissioner made no such finding. In any event, under the Canadian legal system only a court of law, not a bureaucrat, may make a finding that an individual has committed an offence. One would have thought that organizations such as yours would not only be well aware of this fundamental principle of justice, but would wish to be protective of it.

The Commissioner did not even find facts that would indicate that an offence had been committed under section 67.1 of the *Access to Information Act* to which you referred. For your information, it provides as follows:

- (1) No person shall, with intent to deny a right of access under this Act,
  - (a) destroy, mutilate or alter a record;
  - (b) falsify a record or make a false record;
  - (c) conceal a record; or
  - (d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

[emphasis added]

The facts are, as the Commissioner herself found, that Mr Togneri simply hastily questioned why a lengthy document was being released when the information actually sought was contained in only one short chapter of it. He never intended or instructed that information actually sought should not be released.

Thus, despite the hype previously created in the media, the RCMP quite properly determined that there was no evidence that would warrant charges or even an investigation concerning a breach of section 67.1 - which obviously concerns deliberate acts of destruction, falsification or concealment that were manifestly not present in this case. Again, one would have thought that organizations such as yours would be more careful about the actual facts and applicable law before making such serious statements about an individual.

Please consider this letter to constitute notice under the *Libel and Slander Act* of Ontario. We recognize, without conceding, that your organizations may claim that privilege would apply to any false and defamatory statements made in a letter to the chair of a House committee. In any event, please ensure that much more care is taken with any statements that your organizations may make about this matter in future. Apart from avoiding liability for the making of false and defamatory statements about an individual, one would hope that the integrity of your organizations would engender much better understanding of the law, and publicly-available facts, than that indicated in the material which you released this week.

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Paul K. Lepsoe

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