

# FIPA Bulletin

April 24, 2009

## Spring Update for Members

*With a provincial election coming up on May 12, FIPA will be doing everything we can to make Freedom of Information and Privacy issues part of the campaign.*

*More attention is being paid to FOI issues since Information and Privacy Commissioner Loukidelis issued a scathing report in February called*

*“Timeliness of Government Access to Information Responses – Report for Calendar 2008”<sup>1</sup>. It details how deficient the current system for providing access to public records has become.*

*Under the Campaign for Open Government, FIPA will be putting out some FOI performance reports of our own over the next few weeks.*

## **Free to Speak Campaign urges mass demonstrations of “civil obedience”**

FIPA and several other groups have come together to fight against changes to the provincial *Election Act* which severely restrict freedom of expression.

The Election Act effectively makes freedom of expression a privilege, not a right. In protest, the **Free to Speak Campaign** is urging the citizens of this province to undertake an act of civil obedience (as opposed to civil disobedience, which could result in large fines and jail time) by registering *en masse* as election advertising sponsors. Details of the campaign and the unjust law it is fighting against can be found at [www.freetospeakbc.com](http://www.freetospeakbc.com).

This law poses a real danger to citizens and small groups who wish to spend a few dollars communicating with the public but have no idea what they are doing may fall under the very broad and vague definition of ‘election advertising’.

The danger is real because there are very serious penalties for violations (up to \$10,000 fine and a year in jail!), and at least two small groups have already been contacted by Elections BC about potential violations.



Register your Protest with a simple  
**ACT OF ~~DIS~~OBEDIENCE**

Check out the campaign events,  
action steps and posters available  
for download at  
[www.freetospeakbc.com](http://www.freetospeakbc.com)

<sup>1</sup> [http://www.oipc.bc.ca/investigations/reports/F08-35580\\_Calendar\\_2008\\_Report\\_Card\(Feb\\_2009\).pdf](http://www.oipc.bc.ca/investigations/reports/F08-35580_Calendar_2008_Report_Card(Feb_2009).pdf)

## Campaign for Open Government starts 2009 push

The Campaign for Open Government will issue a series of bulletins and special reports on freedom information issues during the provincial election campaign.

The long-term goal of the campaign is reform of the FOI act and the BC government's abysmal performance in responding to FOI requests – but our short-term goals are modest. We are asking government to:

1. Amend section 13 of the Freedom of Information Act (which allows governments to withhold policy advice) in order to restore the act's

original intent. The improper use of this section to withhold background information used in making policy decisions is the single biggest barrier to an open and transparent government in BC.

2. Restore funding to the FOI departments of government ministries so they have sufficient resources to “meet or beat the statutory disclosure timetables” for FOI requests. (The Liberal Caucus stated they were “strongly committed” to this in 1998.)

Stay tuned by checking the campaign's website for the latest news. <http://www.opengovernment.ca>

### Law reform

## E-Health Records roll out in BC without promised privacy protections

The transition from paper to electronic health records in BC is almost upon us. The first stages of the BC Government's eHealth strategy is about to roll out, and the automatic expectation of confidentiality patients have enjoyed for hundreds of years regarding their personal health information may never be the same.

FIPA's president and executive director spent hundreds of hours over the last two years participating in a consultation process with Ministry of Health officials. A decent scenario was hammered out regarding privacy rights, but it appears that many of the protections will not be ready for the roll-out, and in our opinion may never be delivered.

There is widespread public concern about the scope of “eHealth” systems generally, and about the numbers and variety of individuals who may have access to personal health information. But very few people in British Columbia have any concept that a massive change is about to occur in the way their most sensitive personal information is protected and shared.

Polling has shown that although about three quarters of patients feel comfortable with their personal physician having control over their electronic records, that drops to a third or less storage moves outside their doctor's office.

Because of the lack of public awareness and discussion of eHealth and its impact on privacy, FIPA is working with two other citizen advocacy groups to create a website and online campaign called “BC's Big Opt-out”.

FIPA has worked for over a year with BC Civil Liberties, the BC Persons with AIDS Society to shape the public education and advocacy effort.

### So, what do we want?

We demand the BC Government ensure that e-Health offers the following:

- The right of every British Columbian to determine for themselves whether or not to participate in e-Health by giving or withholding informed consent.
- The right of every British Columbian who decides to consent to participate in eHealth to determine the degree of their participation through record-level disclosure directives
- The implementation of a substantial and widespread information campaign informing all British Columbians about e-Health, their rights, and how to exercise those rights.

**To learn more about eHealth and what you can do to safeguard your records, go to:**  
[www.bcoptout.ca](http://www.bcoptout.ca)

## Olympic Surveillance legacy no gift to privacy rights

The 2010 Winter Olympics will be covered by about 4,000 surveillance cameras, and there is a great deal of concern about what will happen with these cameras after the Games are over. Vancouver and other municipalities were supposed to be given this video surveillance equipment as a 'legacy' after the Olympics. Both

the federal and BC privacy commissioners are opposed to this, and the federal assistant Privacy Commissioner recently told a Commons Committee that the cameras were leased, and would be returned after the Games. FIPA has filed several FOI requests and other inquiries to find out what is in the works.

## Enhanced Driver Licences and Enhanced Identification Cards

ICBC is working to produce drivers licences equipped with RFID chips designed to comply with the *United States Western Hemisphere Travel Initiative* (WHTI). WHTI will require land travellers to the USA to have approved travel documents like a passport or an 'enhanced' drivers licence after July 2009. These licences

and the databases involved are serious privacy threats.

FIPA is working with academics and groups across Canada to inform the public and lawmakers about these dangers. We have also made FOI requests for documents that may illuminate policy discussions among the governments involved.

## Crown Copyright/Anti-Counterfeiting Trade Agreement (ACTA)

FIPA sent a letter to Prime Minister Stephen Harper in May to protest the secretiveness of the 'closed-door' negotiations in progress on an International treaty called the Anti-Counterfeiting Trade Agreement (ACTA).

The agreement would require a significant increase in policing and surveillance of the Internet and border crossings. We called for open consultations with the Canadian public.

At some point the federal government will have to reintroduce amendments to the *Copyright Act*. When that happens, FIPA plans on being part of that debate.

We have also filed a complaint with the Information and Privacy Commissioner about the provincial government using notices of Crown copyright to intimidate FOI requesters. We are waiting for the Commissioner's decision on that case.

## A new public service: The Canadian FOI Resource Website

FIPA was the major sponsor for a new research resource on freedom of information laws around the world that was launched in October 2008. The Canadian FOI resource Website was created by long-time FIPA associate and international FOI expert Stanley Tromp. It consists of:

- ***Fallen Behind: Canada's Access to Information Act in the World Context***, a comparative study of almost 400 pages which details how Canadian access-to-information legislation and practice fail to conform to international standards and the practice of other democratic States.

- ***The World FOI Chart***, a table that cross-references by topic key primary documents on freedom of information law, including 73 FOI laws, 29 draft FOI bills, 12 Canadian provincial and territorial FOI laws, and the legal commentaries of 31 non-governmental organizations.

### The Canadian FOI Resource Website

may be viewed at

<http://www3.telus.net/index100/foi>

## **Legal actions**

Much of what we do in this area depends on experienced lawyers donating their time and expertise to fight for what's right.

We want to thank those who are currently representing FIPA (and the people of British Columbia when you get right down to it).

For their excellent work on the following cases, our thanks go to:

**Garth Barriere, Vancouver**  
**Dan Burnett, Vancouver**  
**Sucha S. Ollek, Nanaimo**  
**Brent Olthuis, Vancouver**  
**Micah Rankin, Vancouver**

## **FOI and University subsidiaries**

Simon Fraser University and other universities in this province are trying their best to make the case that records relating to their subsidiary companies and organizations should not be available under the FOI act.

FIPA intervened at the inquiry stage of a case before the Office of the Information and Privacy Commissioner (OIPC) involving access to records of a subsidiary corporation of Simon Fraser University. The Adjudicator accepted many of the arguments of the Requester and FIPA in finding that their documents are subject to the act and must be released.

The Universities and third parties have appealed the decision, and FIPA counsel Dan Burnett will be in BC Supreme Court once again making arguments for accountability and openness.

## **Consultations on FOI**

FIPA requested copies of submissions by outside groups to the Ministry of Labour and Citizens' Services during a consultation on reform of BC's FOI act. The ministry refused to release the submissions, claiming they are 'advice or recommendations to the Minister'. We appealed to the OIPC for a review of this decision.

In Order 09-02, the adjudicator found that the submissions were policy advice, but the Ministry had not properly exercised its discretion to release them. He ordered them to reconsider

## **Robert Harrison privacy appeal**

Robert Harrison lost his job and reputation due to the improper disclosure and misuse by the Ministry of Children and Families of false personal information in ministry files. The most important issue here is the requirement of public bodies to "...make every reasonable effort to ensure that personal information is accurate and complete" if it will be used to make a decision that directly affects the individual.

After an unsatisfactory order by the OIPC, Harrison took his fight to the BC Supreme Court, where the court ordered the OIPC to reconsider their decision.

Both the OIPC and the Attorney General appealed that decision, and FIPA decided to seek intervenor status to address the important privacy issues in this case.

Garth Barriere was FIPA's able and active pro bono counsel on our application and the two-day hearing in the Court of Appeal. We are awaiting the court decision

## **IBM case**

FIPA requested copies of contracts between IBM and the government and won an interim order from the OIPC granting us access to most of the documents. The government has asked the Supreme Court to review the Commissioner's decision, and FIPA will be represented at the May 2009 hearing by pro bono counsel Brent Olthuis.

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