

FIPA Bulletin

March 1, 2010

It's been six months since our last FIPA bulletin – and what a six months! The Information and Privacy Commissioner resigned, the 6-year review of BC's FOI act began, the number of government staff who handle FOI requests was cut (again), the government was hit with a major privacy breach, and in the ensuing investigation the acting Information Commissioner concluded that there is a “troubling lack of knowledge within Ministries about the rules respecting the protection of personal information.” And that ain't all, folks! More below.

FOIPP Act review committee hears a lot about “How it was meant to be”

In the beginning, the gods who make their home in the BC Legislature passed the Freedom of Information and Protection of Privacy Act...and it was good.

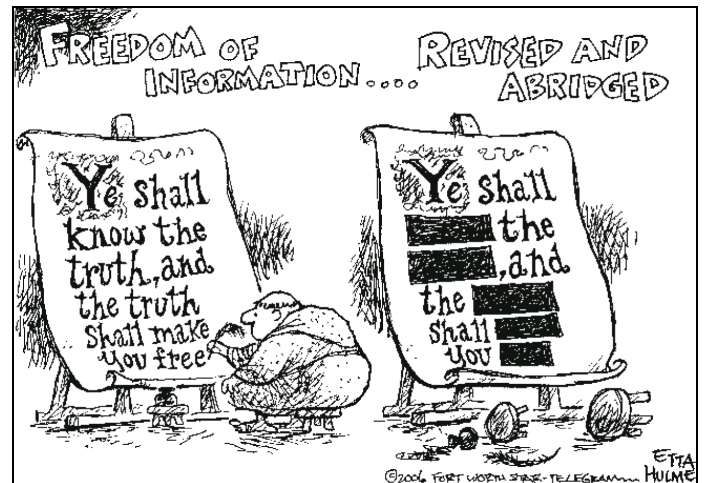
Routine disclosure would be the order of the day, politicians proclaimed. Fees would not be a barrier to access. Public servants would respond to FOI requests openly, accurately, completely and without delay. The information belonged to the People, so how else should it be?

Yes, it was good – for a while. BC's politicians and bureaucrats had not yet eaten of the tree of knowledge about FOI.

Then in 1998, all hell broke loose. Successive administrations took turns beating up the FOI act and torturing its users with interminable delays, huge fee assessments, blatant obstructionism, political meddling, and when all else failed, expensive court cases.

That's pretty much the story the Special Committee to Review the Freedom of Information and Protection of Privacy Act heard in hearings this February – a sad tale of how the good intentions of the BC Legislature in 1992 were derailed by 'politics as usual' over a period of 12 years and three FOI-averse government administrations.

Over two days of hearings in Victoria and Vancouver, Committee members heard from people with a litany of access-to-information and privacy problems, and many proposals for legislative solutions.



In March, the all-party Committee will hear from the 'other side': the provincial ministries who respond to the irritating people and organizations who make FOI requests.

The Committee will report to the House by May 31, 2010. Its recommendations will be adopted or disregarded, depending on the will of the government. But we note that there have been two previous reviews, and not one recommendation that would have made the process easier or less expensive for FOI requesters has ever been adopted.

Perhaps this time things will be different.

FIPA Executive Director Darrell Evans and Policy Director Vincent Gogolek both appeared before the Special Committee, highlighting FIPA's many concerns with the current version of the Act.

FIPA lobbies successfully for extended deadline for submissions

After the Special Committee was struck, FIPA sent a public letter to the Premier protesting the short time frame the government had given for the review and for written submissions to the committee.

We are pleased to report that the committee responded by extending the deadline for receiving written submissions from January 29 to March 15, 2010. This means you still have time to get a

submission in outlining your experience with the law and how it does or doesn't work for you.

Special Committee Website

<http://www.leg.bc.ca/cmt/39thparl/session-1/foi/index.htm>

Submissions to the Committee

FIPA's written submission and those of some other parties may be found at <http://fipa.bc.ca/home/news/235>

Birthday party marks 5th Anniversary of FIPA request for IBM contract

On December 18, FIPA and a few long-term allies got together for a birthday party – but it wasn't exactly a celebration.

We were marking the 5th birthday of our oldest unsatisfied FOI request – the request for the government's \$300 million, 10-year contract with IBM to provide 'workplace services'.

We had birthday cake, balloons and champagne on hand to mark the occasion, using the government's refusal to release the contract with IBM as a prime example of the excessive delays that characterize the FOI process in BC.

"This is not unusual, said FIPA policy director Vincent Gogolek. "We have other requests that have gone on for years and so have other people. If you have what's supposed to be a 30-day process turn into years, it's a huge problem."

FIPA filed its request in 2004, shortly after the provincial government signed a contract with IBM for computer technology and technical support.

The province and IBM objected to the release of the entire contract, saying parts of it were protected under the FOI act. When FIPA appealed to the Information and Privacy Commissioner to review decision, the province and IBM argued that none of the contract could be made public – not even the 'non-sensitive' parts they had already agreed should be released Under the FOI act -- until the Commissioner had ruled on every withheld section of the contract.

The Office of the Information and Privacy Commissioner ordered the non-sensitive parts of the documents to be released in 2007. The province challenged that order in court, and earlier this month, the B.C. Supreme Court upheld the commissioner's decision.

Now FIPA is back before the Commissioner, fighting to see the sections that the province and IBM want to keep secret.

"Chances are we may well be back next year and the year after with a new birthday number up there, having cake," said Gogolek. "I hope we're done before the contract runs out."

MAKING IT BETTER BY MAKING IT WORSE

In 2009, the BC government began centralizing the management of FOI requests in order to speed up the processing of requests. This followed years of complaints about illegal delays by the Commissioner and FIPA, to name a few. However, in the process, they cut staff handling requests by 13 per cent. 24 jobs were eliminated when FOI offices from individual ministries were merged into a new central system. Total staff has dropped from 172 people to 148 people.

In an interview to the Times Colonist, frustrated FIPA ED Darrell Evans asked "Laying off staff isn't going to make things more timely is it? How could that possibly work?"

FIPA protests massive data-matching scheme

The British Columbia government is ignoring the warnings of FIPA and other privacy advocates in its push to adopt a new cross-ministry plan to match the personal data of all people served.

The Feb. 9 throne speech renewed a promise for a \$180-million 'Integrated Case Management System' that "will deliver better front-line services and supports to women, children, income assistance recipients and those most vulnerable."

The system, which will be used at first by the Ministry of Children and Families and the Ministry of Housing and Social Development, will at some point extend its reach outside the public sector to gather all client information held by independent agencies contracted by government to provide social services.

In a letter sent to Premier Campbell on February 11, FIPA warned, "The ICM system will have a severe negative effect on both the privacy rights of British Columbians and the public purse. It will involve massive and unprecedented matching of personal information by the provincial government which...has not demonstrated adequate policies, care or even competence at protecting privacy."

Adopting the system raises concern about the creation of electronic profiles of individuals, FIPA said. "It will create what are in effect massive dossiers of sensitive personal information about citizens without the consent of the individuals whose personal information will be shared."

We also quoted the most recent annual report written by former freedom of information and

protection of privacy commissioner David Loukidelis: "It is certainly important that government not move forward with any legislated changes in this area unless and until there has been a full public consultation in the form of a position paper published by the government, followed by meaningful, extensive stakeholder consultations."

The government should follow Loukidelis' "sage advice" before pursuing the project any further, FIPA wrote.

The provincial government's move to spend hundreds of millions of dollars on this deeply flawed and intrusive system will make a coming FIPA report even more relevant.

The report, entitled *Culture of Care... Or Culture of Surveillance?* will be released in mid-March. It will review the problems Integrated Case Management could pose for independent community service organizations and their clients, and make recommendations on what the government should and should not be doing in this area.

The report will be available on the FIPA website when it is released in mid-March. We wish to thank the Law Foundation of BC for funding this very important research.

FIPA's letter to Premier Campbell:

http://fipa.bc.ca/library/Letters/FIPA_Ltr_to_Premier_Campbell-Feb_11_10.PDF

Push continues for reform of federal Access to Information Act

A well-timed publicity effort by FIPA and two of our allies, the Canadian Newspaper Association and the Canadian Taxpayers Federation, has helped get the access-to-information reform pot boiling in Ottawa.

A strongly worded joint letter and news release questioned the Prime Minister's intention ever to carry out the access reforms the Conservatives promised in their 2006 election campaign.

See http://fipa.bc.ca/library/News_Releases/CTF-CNA-FIPA_Ltr_to_PM_30-10-09.pdf

The catalyst for the joint action was the federal Justice Minister's cavalier rejection of a Parliamentary Committee's very mild and limited proposal for reform of the almost 25 year-old law.

The committee and the government have exchanged a number of shots since the joint letter was sent. The most recent was a demand that the Justice Minister re-appear at the Committee early in January to explain just what he meant in his stark rejection of their report. Prorogation got the minister out of that tough spot. We will see if the committee continues to get tough.

Legal actions

As Vancouver Sun columnist Vaughn Palmer noted in a recent column, there has been an explosion of government appeals of decisions by the Commissioner – so much so that former Commissioner Loukidelis had to ask the government finance committee for almost half a million dollars to fight these court cases. See <http://www.vancouversun.com/news/colossal+was+te+court+time/2297088/story.html>

FIPA is involved in a number of these cases either as a party or an intervenor, and we are fortunate that a number of top-notch lawyers have been willing to donate their time and expertise to fight for what's right.

We want to thank the lawyers who are currently representing FIPA: Dan Burnett, Brent Olthuis, Micah Rankin, and Tam Boyar.

We also want to thank **Pro Bono Law of BC**, who not only help us find counsel for our own cases, but sometimes are able to find counsel for people who come to us for help and need legal representation.

Does FOI apply to the corporate subsidiaries of public bodies?

The BC Supreme Court has made a very damaging ruling regarding SFU's bid to keep records relating to their subsidiary companies and organizations firmly under wraps.

Justice Peter Leask ruled that, in spite of the application of the FOI act to universities, the 'corporate veil' that applies to their wholly-owned subsidiaries cannot be pierced without evidence of fraud or wrongdoing. In doing so he overturned an adjudicator's ruling that the company, 100 percent owned and operated by SFU, had control over the subsidiary's records and therefore had to release them under the FOI act.

The Commissioner's office has filed an appeal, and FIPA's pro bono counsel Dan Burnett will be in the BC Court of Appeal arguing for accountability and openness once again.

A similar case involving UBC has been adjourned until the SFU case is decided by the Court of Appeal.

Are submissions to government consultations policy advice?

FIPA is in court seeking judicial review of an adjudicator's decision that submissions by outside groups to a government consultation on reform of *FOIPPA* could be kept secret because they were 'advice or recommendations' to the Minister. In Order 09-02, the adjudicator found that the submissions were policy advice, but that the Ministry had not properly exercised its discretion to release them. Micah Rankin represents FIPA.

The Organization

Annual General Meeting

FIPA's AGM was held on Sept. 9 at the Plaza 500 Hotel and drew about 26 guests. Gwen Barlee, Paul Holden, Carla Graebner and Richard Rosenberg were all elected to new two-year terms as directors. Richard Rosenberg continues as FIPA President, Paul Holden as Vice President, and Tom Crean as Treasurer. Many thanks to the wonderful volunteers who serve as FIPA directors!

Law Foundation funding renewed

The Law Foundation of British Columbia has renewed FIPA's operating grant for 2010. FIPA was brought to life in 1991 by a grant from the Law Foundation, and its funds have seen us through good times and bad ever since. For this we are profoundly grateful.

FIPA would also like to thank the Province of British Columbia for the gaming funds which help fund our community education program.