



# FIPA Bulletin

## October 1, 2008

### Fall Update for Members

*It's been a fast and furious year for FIPA, and our agenda for fall indicates more of the same. Here's an update while we prepare for our Annual General Meeting on October 15<sup>th</sup>.*

### **FIPA joins with newspaper and taxpayer groups to challenge federal Conservatives on failure to fulfil Access to Information promises**

#### **News release, Sept. 29, 2008:**

Three national organizations concerned about openness and accountability in government have written to Prime Minister Stephen Harper to ask what became of the Conservatives' 2006 campaign promises to reform the *Access to Information Act*.

The Canadian Newspaper Association, Canadian Taxpayers Federation and BC Freedom of Information and Privacy Association are attempting to put the issue on the front burner of the federal election campaign during "Right to Know Week" in Canada – a week devoted to promoting Citizens' rights of access to government information.

"The Prime Minister made a number of specific commitments to reform the *Access to Information Act*," said FIPA Executive Director Darrell Evans. "We want to make sure that these important democratic reforms don't fall by the wayside."

The letter to Stephen Harper states, "We are concerned that your government's actions since it assumed power in 2006 have not matched the commitments you

made as Conservative Party leader during the 2006 election campaign – specifically, your commitment to open up the inner workings of government to scrutiny by reforming Canada's *Access to Information Act*.

The eight commitments related to *Access to Information* contained in the Conservatives' 2006 platform were:

- ◆ To implement the Information Commissioner's recommendations for reform of the *Access to Information Act*.
- ◆ To give the Information Commissioner the power to order the release of information.
- ◆ To expand the coverage of the act to all Crown corporations, Officers of Parliament, foundations and organizations that spend taxpayers' money or perform public functions.
- ◆ To subject the exclusion of Cabinet confidences to review by the Information Commissioner.
- ◆ To oblige public officials to create the records necessary to document their actions and decisions.

- ◆ To provide a general public interest override for all exemptions, so that the public interest is put before the secrecy of the government.
- ◆ To ensure that all exemptions from the disclosure of government information are justified only on the basis of the harm or injury that would result from disclosure, not blanket exemption rules; and
- ◆ To ensure that the disclosure requirements of the *Access to Information Act* cannot be circumvented by secrecy provisions in other federal acts.

The promised *Access to Information* reforms were originally intended to be part of the government's centrepiece *Accountability Act*, but were deferred and seem to have become a casualty of politics-as-usual in Ottawa.

"The government has had a number of opportunities to put these important improvements into law," said CNA president John Hinds. "Canadians are still waiting for action."

## Campaign for Open Government pauses to prepare for 2009 push

The Campaign for Open Government is taking a break while preparations are made for another push early in 2009, culminating with BC's May election. Expect lots of action then, including a

third BC Information Summit, new reports on freedom information issues and government performance, and other newsworthy events.

Campaign url: <http://www.opengovernment.ca>

### Campaign win:

#### Government pulls excessive secrecy clauses in two greenhouse gas reduction bills

Last April, in the face of strong opposition from the Campaign for Open Government, the provincial government deleted confidentiality clauses in greenhouse gas reduction Bills 16 and 18 which overrode the Freedom of Information act.

The clauses would have imposed a wall of secrecy around the government's dealings with corporations with respect to greenhouse gas emissions and carbon credit trading.

"When these bills were put forward with these

over-the-top secrecy provisions, it was clear they favoured corporate secrecy over public accountability," said FIPA ED Darrell Evans.

The issue of government secrecy and accountability will be a major part of the provincial election and we expect the Campaign for Open Government to be a major player in the debate. We have been putting in FOI requests for various types of information, and we expect that we will have a response (or an excuse) in time for 2009.

See <http://www.opengovernment.ca>

### Law reform

#### Electronic health records in BC no cause to rejoice!

FIPA's president and executive director have both participated in the BC Ministry of Health's "Provincial e-Health Privacy and Security Initiative", which started in 2006. These are consultations which we were assured will help shape the Ministry's approach to the privacy and security of electronic health records (EHRs).

At stake is the degree of privacy protection that will be built in, including the degree of control individuals will have over who has access to their personal health records.

We can say with confidence that our participation has made a big difference. However, the results are falling far short of our demands.

In addition to consulting, we formed an **e-Health Privacy Alliance** for policy debate, strategic planning and possibly to mount a public education campaign on this issue. The alliance consists of FIPA, BC Civil Liberties, BC Persons with Aids Society, BC Coalition of People with Disabilities and some individual volunteers.

A landmark was reached on April 10 when the government introduced Bill 24, the *Personal Health Information Access and Protection of*

*Privacy Act* ("e-Health Act"). The Act fell far short of what our alliance was expecting from the lengthy consultation with Health Ministry officials.

As a result, the Alliance members did the following:

- We prepared a detailed analysis and critique of the bill;
- We held a joint news conference and garnered significant news coverage in which we aired our criticisms of the e-Health Act and our demand for improvements in its privacy protections;
- We held three meetings with Health Ministry officials to discuss the bill and negotiate amendments;
- We prepared an extensive briefing kit for the Health Minister George Abbott describing the short-comings and pitfalls of the bill;
- We met with the Minister and his officials to lobby for amendments; and
- We met with Opposition Health Critic Adrian Dix and held discussions with NDP policy makers in an effort to get them onside.

The end result of our research, lobbying and communications effort was a set of amendments which were definite improvements to the bill, but far less than we feel is necessary to achieve real privacy rights and protections for the public.

We will continue to be very active on this file in the fall as the legislation is implemented. This will offer further opportunities to press our case.

***Watch the FIPA website for action on health records privacy this fall!***

## All-party review of BC's Personal Information Protection Act

FIPA and the BC Civil Liberties Association made a joint submission to the all-party committee of the BC Legislature reviewing the province's *Personal Information Protection Act* (PIPA).

PIPA protects the privacy of personal information held by provincially regulated businesses and non-profit groups.

FIPA and BCCLA have called for improvements to the act in order to give individuals

- better knowledge of what corporations do with their personal information,
- easier access when they want to see the personal information a corporation has collected about them,

- more control over what corporations are allowed to do with personal information,
- better protection of personal information, especially when corporations transmit it outside of Canada, and
- prompt notification when security breaches place their personal information at risk.

The submission also calls for stronger penalties for breaches of the act.

The joint FIPA-BCCLA submission is available at [http://fipa.bc.ca/library/Reports\\_and\\_Submissions/PIPA\\_Rvw\\_Submission-Feb\\_29\\_2008.pdf](http://fipa.bc.ca/library/Reports_and_Submissions/PIPA_Rvw_Submission-Feb_29_2008.pdf)

## Federal 'No Fly' list

FIPA's long-standing opposition to this oppressive and ineffective measure was joined by the federal, provincial and territorial Privacy Commissioners, who asked the Prime Minister to suspend the list

and have a parliamentary committee hold public hearings on the issue. FIPA encourages members to e-mail Prime Minister Stephen Harper at [pm@pm.gc.ca](mailto:pm@pm.gc.ca) to tell him they oppose the list.

## Legal actions

### Are Corporate subsidiaries of public bodies covered by the FOI act?

FIPA is an intervener in a case before BC's Information and Privacy Commissioner concerning whether the records of the wholly-owned subsidiaries of universities are subject to the FOI Act (as are the universities themselves).

An individual had made an FOI request for documents of a wholly-owned subsidiary of Simon Fraser University, and was refused access. Simon Fraser and other BC universities are pulling out all the stops in order to keep records relating to their subsidiary companies and organizations secret. The requester appealed,

and FIPA intervened in the resulting inquiry before an adjudicator for the Commissioner.

The adjudicator found that the documents are covered by the act and must be released.

The Universities and third parties have appealed the decision, so FIPA will have to re-fight the battle in BC Supreme Court.

**Dan Burnett** of Owen Bird Barristers and Solicitors was FIPA's pro bono counsel and as usual did great work for FIPA and for the public interest. We are profoundly grateful to Dan and Owen Bird!

### Province using Crown copyright to suppress dissemination of information

The provincial government has developed a nasty habit of claiming requesters cannot disseminate information received under the FOI act unless they first receive copyright permission from (wait for it) the provincial government. After receiving several complaints that the records FOI requesters received were accompanied by

copyright warnings, FIPA asked the Commissioner to review this practice. The government then put forward the argument that the Commissioner had no jurisdiction to look at what they claim is a federal power. Arguments have been made, and we are waiting for the Commissioner's decision.

### Another bad habit: Designating information as 'Out of Scope' of an FOI request

FIPA has noticed that many responses to FOI requests state that some information is blacked out or documents are not released because they are "out of scope" of the person's FOI request. This is not an exception found in the Act, and we have been concerned that this is a black hole

where bureaucrats and politicians can stash documents they don't want to release. We have asked for an inquiry by the Commissioner, and we have made our initial submissions about why this practice should not be allowed to continue.

### FIPA requests submissions to government during consultations on the FOI Act

FIPA requested copies of submissions by outside groups to a provincial government consultation on reform of the FOI act. The government claimed they were not allowed to release the submissions because they were 'advice or recommendations' to the Minister. FIPA complained to the

Commissioner, arguing that this use of the policy advice exception in the act is improper and pointing out that several BC ministries in fact post such submissions on their web sites. We are awaiting the decision of the Commissioner.

FIPA and the Office of the Information and Privacy Commissioner for BC present

## The Privacy and Identity Theft Conference 2008 Creating a Trusted Environment for Commerce and Communication

November 24 & 25, 2008

Fairmont Hotel – Vancouver B.C.

More than 50 speakers include

**Jennifer Stoddart**, Privacy Commissioner of Canada

**David Loukidelis**, Information & Privacy Commissioner for BC

**Brendon Lynch**, Senior Privacy Strategist – Microsoft

**Special admission prices for FIPA members – call 604-739-9788**

Visit the conference website <http://www.idconference2008.com> for details.

#### BC Freedom of Information and Privacy Association

#103 - 1093 West Broadway, Vancouver, BC V6H 1E2

Tel: (604) 739-9788 E-Mail: [fipa@vcn.bc.ca](mailto:fipa@vcn.bc.ca)

Website: [www.fipa.bc.ca](http://www.fipa.bc.ca)

FIPA would like to thank  
the Law Foundation of British Columbia  
the Notary Foundation of British Columbia  
And the Province of British Columbia  
for supporting FIPA programs