
Second Session, Thirty-Ninth Parliament
59 Elizabeth II, 2010
Legislative Assembly of British Columbia

BILL M 2**

Open Government Act, 2010

Mr. Routley

Explanatory Note

This Act amends the *Freedom of Information and Protection of Privacy Act* in order to restore public access to information, update the Act with respect to technological changes in record management and retrieval, and bring a renewed culture of open government to British Columbia.

These amendments restore government accountability by creating a duty to document decision-making, giving the Commissioner power to oversee the *Document Disposal Act*, and increasing the scope of the Act to include information from quasi-public bodies, corporations owned by public bodies and alternative service providers. These changes will ensure public access to information concerning bodies that are paid public dollars for performing governmental functions.

This Act also takes advantage of changes in electronic technology to promote routine disclosure and decrease overall government costs of disclosing information while expanding general public access to information. In addition, this Act recognizes the role of reasonable data sharing of personal information while safeguarding an individual's right to privacy by adding a requirement that the *Freedom of Information and Protection of Privacy Act* provide for privacy impact assessments to be completed in a timely way.

Finally, this Act increases the transparency of government with regards to information available to the public. By expanding the scope of the *Freedom of Information Act*, enhancing the Public Interest Paramount principle, and limiting exceptions under sections 12 and 13, it restores a high standard for public access to information. Coupled with improvements in the time and cost involved, this Act improves government accountability, transparency, and openness.

BILL M 2** – 2010

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Short Title

This Act may be cited as "The Open Government Act".

1 The definition of "public body" in schedule 1 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by repealing it and replacing it with the following:

"local public body" means

- (a) a local government body,
- (b) a health care body,
 - (b.1) a social service body
- (c) an educational body,
- (d) a governing body of a profession or occupation, if the governing body is designated in, or added by regulation to, Schedule 3;
- (f) a designated quasi-public body
- (g) any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in paragraphs (g.1) to (g.12) and all the members or officers of which are appointed or chosen by or under the authority of that body,
 - (g.1) a municipality,
 - (g.2) a regional district,
 - (g.3) an improvement district as defined in the *Local Government Act*,
 - (g.4) a local area as defined in the *Local Services Act*,
 - (g.5) a greater board as defined in the *Community Charter* or any incorporated board that provides similar services and is incorporated by letters patent,

(g.6) a board of variance established under section 899 of the *Local Government Act* or section 572 of the *Vancouver Charter*,

(g.7) the trust council, the executive committee, a local trust committee and the trust fund board, as these are defined in the *Islands Trust Act*,

(g.8) the Okanagan Basin Water Board,

(g.9) a water users' community as defined in the *Water Act*,

(g.10) the Okanagan-Kootenay Sterile Insect Release Board,

(g.11) a municipal police board established under section 23 of the *Police Act*,

(g.12) a library board as defined in the *Library Act*,

2 Schedule 2 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by adding the following "public bodies" and corresponding "heads of public bodies":

Public Body: Translink
Head: Chair

Public Body: Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games
Head: Chair

Public Body: Health Care and Care Facility Review Board
Head: Chair

3 Part 3 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by adding the following section:

The Privacy Commissioner will review and approve schemes for the routine disclosure of electronic records.

4 Section 1 of the Freedom of Information and Protection of Privacy Act Regulation, R.S.B.C. Reg. 229/2005, is amended by striking out paragraphs (g) and (f).

5 Section 2 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) adding the following subsections:

2 (1) (f) providing for the Office of the Information and Privacy Commissioner to review and approve all data sharing initiatives,

2 (1) (g) requiring that any infringement of a personal right to privacy must be considered in proportion to the public interest that is achieved,

2 (1) (h) recognizing a positive “duty to document” key prescribed government decisions on the part of public bodies, and any other body to which this Act applies,

2 (1) (i) requiring that where public bodies can reasonably release electronic records, the records are released in an electronic form,

2 (1) (j) requiring public bodies to create accessible electronic reading rooms, within a reasonable period of time, for the general public to routinely access information,

2 (1) (k) requiring public bodies to consult with the Office of the Information and Privacy Commissioner regarding privacy impact assessments at the conceptual, design and implementation phases of an online electronic project.

6 Section 3 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) repealing subsection (1) and replacing it with "This Act applies to all records in the custody or under the control of a public body, or in the custody of a service provider under a contract with a public body, and includes court administration records, but does not apply to the following: "

(b) adding the following subsection:

7 Section 4 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) repealing subsection (1) and replacing it with "A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record of containing personal information about the applicant. A person making a formal access request may remain anonymous throughout the entire process. "

(b) adding the following subsection:

4 (4) A formal access request is not required for accessing personal information.

8 Section 10 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) repealing subsection (1) and replacing it with "The head of a public body may extend the time for responding to a request for up to 15 days if one or more of the following apply: "

9 Section 11 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by repealing subsection (1) and replacing it with:

11 (1) Within 10 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if (a) the head of the public body is satisfied that the request meets the requirements of the section 5 (1) and

10 Section 12 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by

(a) repealing subsection (1) and replacing it with:

12 (1) The head of a public body may refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission and directly considered by the Executive Council or any of its committees.

(b) repealing subsection (2) (a) and replacing it with:

12 (2) (a) information in a record that has been in existence for 10 or more years,

11 Section 13 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) adding "if that information would reveal a suggested course of action for acceptance or rejection in making a decision or formulating a policy." at the end of subsection (1),

(b) adding "or analysis of factual material," to the end of subsection 13 (2) (a):

(c) adding the following subsections:

13 (2) (a.1) any background explanations or analysis for consideration in making a decision or formulating a policy,

13 (2) (a.2) a professional, scientific, technical or investigative opinion or report

13 (2) (o) internal ministerial audits

12 Section 14 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by repealing it and replacing it with:

14 (1) The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

(2) Subsection (1) is subject to an examination of the records being withheld and ruling on the validity of the non-disclosure by the Commissioner of Privacy.

13 Section 22 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) adding the following to subsection (2):

22 (2) (i) the subject of the personal information request has been dead for over 20 years.

14 The Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by repealing section 25 and replacing it with the following:

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, all information

(a) about a risk of significant harm to the environment, or to the health or safety of the public or a group of people, or

(b) about a risk of harm to a vulnerable group, or

(c) relating to a topic of recent public debate, or

(d) the disclosure of which may yield public benefit, or

(e) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

- (a) to the last known address of the third party, and
- (b) to the commissioner.

15 Section 42 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) deleting the word "and" from the end of clause (i),

(b) adding the following clause:

42 (1) (k) conduct investigations and audits to ensure compliance with the *Document Disposal Act* and

42 (1) (l) require public bodies to release statistical information related to the processing of freedom of information requests.

(c) adding the following subsection

42 (2) The *Offence Act* applies to this section.

16 Section 44 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) adding the following subsections:

44 (1) (c) produce for the Commissioner any record that is being withheld on the grounds that the records are subject to solicitor client privilege.

44 (2) (d) produce and release to the Commissioner any statistical information related to the processing of freedom of information requests.

17 Section 59 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by

(a) striking subsection (2) and replacing it with:

59 (2) If an application for judicial review is brought before the end of the period referred to in subsection (1) or set out in an order given under section 54.1, the order of the commissioner is stayed for 60 days from the date the application is brought.

(b) adding the following to subsection:

59 (3) A court may abridge or extend or impose conditions on a stay of the order of the Commissioner under subsection (2).

18 Section 71 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by:

(a) adding the following subsections:

71 (4) Subsection (2) does not apply to an individual making a request for personal information.

19 Section 75 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is repealed and replaced by the following:

75 (1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees of a reasonable amount for the following services:

- (a) locating, retrieving and producing the record;
- (b) preparing the record for disclosure;
- (c) shipping and handling the record;
- (d) providing a copy of the record.

(2) An applicant must not be required under subsection (1) to pay a fee for

- (a) the first 3 hours time spent locating and retrieving a record, or
- (b) time spent severing information from a record.

(3) Subsection (1) does not apply to a request for the applicant's own personal information.

(4) If an applicant is required to pay a fee for services under subsection (1), the head of the public body

- (a) must give the applicant a written estimate of the total fee before providing the service, and
- (b) may require the applicant to pay a deposit of a reasonable amount, to be set by the head of the public body.

(5) If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services, the head may excuse the applicant if, in the head's opinion,

- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

and must excuse the applicant if

(b) the record relates to a matter of public interest as described in section 25, including the environment, public health or safety or

(c) the request is subject to excessive delay.

(5.1) The head of a public body must respond under subsection (5) in writing and within 20 days after receiving the request.

(5.2) the applicant may request a waiver of the fees in their initial request for the information.

(6) The fees that prescribed categories of applicants are required to pay for services under subsection (1) may differ from the fees other applicants are required to pay for them, but may not be greater than the actual costs of the services.

This Act amends the *Freedom of Information and Protection of Privacy Act* in order to restore public access to information, update the Act with respect to technological changes in record management and retrieval, and bring a renewed culture of open government in British Columbia.

Explanatory Note

This Act takes advantage of changes in electronic technology to promote routine disclosure and decrease overall government costs of disclosing information while expanding general public access to information. This Act also recognizes the role of reasonable data sharing of personal information while safeguarding an individual's right to privacy by adding a requirement that the *Freedom of Information and Protection of Privacy Act* provide for privacy impact assessments to be completed in a timely way so that they may guide all future electronic records projects.

These amendments restore government accountability by creating a duty to document decision-making, giving the Commissioner power to oversee the Document Disposal Act, and increasing the scope of the Act to include information from quasi-public bodies and alternative service providers, ensuring public access to information concerning bodies that are paid public dollars for performing governmental functions.

Finally, this Act increases the transparency of government with regards to information available to the public. By expanding the scope of the *Freedom of Information Act*, enhancing the Public Interest Paramount principle, and limiting exceptions under section 13, it restores a high standard for public access to information. Coupled with improvements in the time and cost involved, this Act improves government accountability, transparency, and openness.