

Privacy advocates blast government over loophole in freedom of information laws

BY ROB SHAW
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Privacy advocates are attacking the provincial government for failing to close a loophole in its freedom of information laws.

Although the legislature is currently debating a bill that makes changes to the Freedom of Information and Protection of Privacy Act, critics say the government has failed to address concerns over the transparency of private corporations created by public bodies such as school boards and universities.

A recent court ruling on the issue, combined with government inaction, means the public doesn't have access to records from for-profit private companies, even if they are 100 per cent owned and operated by a school district, said Vincent Gogolek, executive director of the Freedom of Information and Privacy Association.

"What we're talking about is accountability," he said.

The issue has been a particular concern for school boards, which

were given the power in 2002 to create "business entities" that could generate extra funds for school districts.

Some of those private school board companies, mainly involving international education, quickly turned into money-losing "fiascos," said Gogolek, and local taxpayers weren't able to get any information because they didn't fall under the FOI act.

The government promised to fix the issue in 2006, in the wake of a review that pointed to flaws in the system. But it never passed the necessary legislation.

The problem was compounded when Simon Fraser University won a court ruling allowing it to withhold documents from its private companies on the grounds it didn't actually have custody of the records. The province's privacy watchdog used that court opinion to rule last week that the University of British Columbia did not have to disclose documents from its private companies.

The government was reminded of the problem in 2010, when a special committee reviewing the

FOI act made a recommendation to fix the issue, said Gogolek.

But when the government introduced a bill last week that makes broad changes to the act, the issue was not addressed.

"It's a loophole that still exists," said Gogolek.

The Ministry of Citizens' Services, Labour and Open Government said in a statement that private companies created by municipal or regional governments are covered by FOI legislation and records should be available to the public.

But that doesn't address school boards or universities.

The government had no specific reply to that issue, but in its statement, said it can choose to make a regulation to add a specific company under the FOI act if it wishes.

Debate on the bill continued in the legislature Monday.

<http://www.timescolonist.com/news/Critics+want+province+close+privacy+loophole/5599776/story.html>

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BC Liberal changes to FOI law leave loophole open

By Andrew MacLeod
The Tyee
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The British Columbia government is amending its freedom of information legislation, but is failing to close a loophole they said five years ago would be fixed.

"It's very odd the government would have a minister announce 'we are going to do this,' and then not do it," said Vincent Gogolek, the executive director of the advocacy group B.C. Freedom of Information and Privacy Association.

When public bodies such as schools or universities own companies, those companies are

not subject to the Freedom of Information and Protection of Privacy Act. On Oct. 18, 2006, then education minister Shirley Bond said in a [news release](#) the government accepted a recommendation to bring school-owned companies under the FOIPPA.

The change, however, was never made. So in 2010 a special committee considering the FOI act made a broader recommendation in its [report](#): "Expand the definition of 'public body' in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body."

Asked why the government chose not to make the change while it is making other [amendments](#) to the act, the Minister of Labour, Citizens' Services and Open Government Margaret MacDiarmid, said, "There's many things that have come forward over the years that have not yet been addressed, and this would fall into that category."

Noting that she has been the minister responsible for one month, she said, "There are many, many recommendations that have come forward from a whole bunch of bodies that continue to be looked at." They include technical issues, legal drafting issues and the ability to consult, she said.

Including in the act corporations that public bodies own "I think it's something we need to look at," she said.

"The act is still open," said Gogolek. The legislature could fix the problem in a way that increases transparency, but the government has chosen not to, he said. "It says this is not an issue for them. They

appear to be totally happy to have these entities beyond the reach of FOI."

In other situations, such as BC Ferries, the government has recognized that public scrutiny can lead to better management, he said. "We're dealing with public money here. Public money, public accountability."

Andrew MacLeod is The Tyee's Legislative Bureau Chief in Victoria. Reach him [here](#).

<http://thetyee.ca/Blogs/TheHook/BC-Politics/2011/10/25/InfoLoophole/>

B.C. bill could open up your private information

Proposed changes would radically alter freedom-of-information law

BY VINCENT GOGOLEK
TIMES COLONIST
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Your privacy is at risk as never before in B.C., and the immediate threat isn't coming from Facebook or Canada's spy agency - it's a bill before the B.C. legislature.

Without consulting you, our premier and a gaggle of techno-bureaucrats have decided to sacrifice B.C.'s privacy law and radically increase their power to collect, use and share your personal information.

The government has put the pedal to the metal in trying to get a vast shift of our privacy rights in place before anyone gets a chance to say boo about it.

Bill 3, which eliminates many of the privacy protections in the Freedom of Information and Protection of Privacy Act, was introduced Oct. 4 and has already had second reading. It could be law by the end of the month if they keep pushing.

So what is the big scary Halloween shocker?

Hiding behind euphemisms like "citizen-centred services," the

government is making a big grab not just to get, but to pass around and use our private personal information as it sees fit.

Some of the proposed amendments to the FOIPP Act would make it easier for government to collect our personal information and pass that information along to other persons, "partner" organizations and other governments (including U.S. Homeland Security). They would also allow the government to bring in (at some unspecified later time) regulations to govern new "data linkages" - while exempting the entire health-care sector from those regulations.

Officials talk about how citizens are demanding convenience in dealing with government, but the convenience they are really talking about is their own.

And they are definitely not talking to British Columbians about how, when, why and with whom the government will be sharing some of our most intimate information.

Successive information and privacy commissioners have called for public consultation on government data-sharing plans. In 2009,

then-commissioner David Loukidelis' annual report said: "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."

A special legislative committee that recently reviewed the FOIPP Act unanimously agreed that consultation on data sharing is vital.

The government has decided against asking British Columbians what we think about its brave new world. Instead, it conducted a secret process and "province-wide focus groups and surveys to help government gain a better understanding of the public's expectations of government services," according to Open Government Minister Margaret MacDiarmid.

The supposed justification for gutting existing privacy protections is that government is now "horizontal" (managed through a variety of public and private-sector partnerships), so it needs to share information without restriction.

The other reason for the big rush is that the government has committed \$180 million to a contract with Deloitte to set up an "integrated case management" system which will allow government agents to search and manipulate personal information. It will involve a massive amount of data collection on a forced basis across the entire social services sector. Both government and non-government service providers will be required to report the personal information they gather.

These massive centralized systems have a problematic history, including in this province.

Just last month, a system to centralize information on students

called BCesis was found to be an \$89-million failure.

In the U.K., the Commons public accounts committee blasted these schemes in a report entitled "Government and IT - 'a recipe for rip-offs': time for a new approach."

It's time to put an end to this government push to seize more and more of our personal information and spend more and more of our money on IT "solutions" that really aren't solutions.

It is vital for the government to start paying attention to privacy rights, and consulting British Columbians on how best to protect them.

Premier Christy Clark said: "Our government is changing the style

and approach of governing to provide citizens with opportunities to influence and improve policies that impact them and their quality of life."

Maybe she doesn't think the creation of a massive data system with hundreds of millions of our dollars is one of those "policies that impacts them and their quality of life."

Vincent Gogolek is executive director of the B.C. Freedom of Information and Privacy Association.

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