

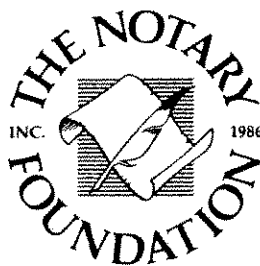
IFIPA

BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

**Annual Report for
2009**

May 12, 2010

The BC Freedom of Information and Privacy Association
wishes to thank the Law Foundation of BC
and all our other donors and funders
for their support of our information and privacy programs.



AN OVERVIEW OF FIPA

Even in the most egalitarian of democracies, human affairs and public decision-making tend to be dominated by those who have superior access to information and greater control over the flow of information.

As a consequence, the need and the demand for what we call “**information rights**” — specifically freedom of information and privacy rights — become more pressing every day.¹

The increasing push for information rights is driven by three powerful trends. First, by the radical transformation the world is undergoing due to information technology. Second, by the need to constantly adjust the balance of power between governments and the public in modern democracies. And third, by increasing public expectations of fairness, transparency, and participation in public decision-making.

The BC Freedom of Information and Privacy Association (FIPA) was incorporated as a non-profit society in January 1991 in order to advance the principles of freedom of information and privacy protection in B.C.

19 years later, FIPA is widely known for its successful campaign to get BC’s *Freedom of Information and Protection of Privacy Act* (“FOIPP ACT”) passed in 1992, followed by Alberta’s FOIPP Act in 1993, and for keeping FOI and privacy issues high on the political agenda ever since. FIPA is highly respected for its ceaseless promotion of FOI and privacy rights in BC and across Canada.

FIPA Activities

Assisting the Public

FIPA has provided thousands of individuals and organizations with information and advice

about access to information and privacy issues. In particular, we offer citizens advice on how to exercise their information rights.

Public Education

FIPA provides public information and education on FOI and privacy issues and legislation through public events, articles, publications and of course, responding to direct inquiries from the public,

Over the last 19 years, we have:

- issued over 50 studies, reports and other publications on information rights issues, including two soft cover books, and
- produced 175 workshops, seminars and other events, including 13 major conferences.

Legal and Policy Research

FIPA is a centre for legal and policy research into freedom of information and privacy issues. In addition to conducting our own studies, we provide research assistance to academics, lawyers, journalists, students and the general public. Our library of books, articles, research papers and subject-indexed files is open to serious researchers.

Public Interest Advocacy and Law Reform

FIPA is Canada’s major public interest advocacy and “watchdog” group for FOI and privacy issues. We promote continuing law reform in these areas where our members and supporters feel it is needed.

We constantly monitor the performance of government bodies and Canada’s Information and Privacy Commissioners, and are consulted frequently on policy issues by politicians and government officials.

Legal Advocacy and Litigation

FIPA participates in reviews conducted by BC’s Information and Privacy Commissioner, judicial reviews, and operates a modest legal assistance program for people with serious privacy and FOI problems.

¹ **Freedom of information, privacy protection and information rights** are defined on the last page of this report.

HIGHLIGHTS – 2009 IN REVIEW

FIPA's mission is to protect and advance the freedom of information and privacy rights of people in BC and throughout Canada, through our programs of legal aid, public legal education, legal research and law reform.

Every year, FIPA's Board of Directors and staff set out the goals and objectives we hope to achieve that year. The following table documents our progress on the objectives we set for 2009.

<i>Main objectives for 2009</i>	<i>What we achieved</i>
<p><u>Public Information and Legal Assistance:</u></p> <p>To increase the quantity and quality of our public information and legal aid services, by completing our Public Legal Assistance Project.</p>	<p><i>The project was completed and legal aid increased in 2009.</i></p>
<p><u>Public Education:</u></p> <ul style="list-style-type: none"> • To enhance the Public Legal Information content on the FIPA website by completing our part of the PLEI Portal Project. • To present at least one conference or seminar during 2009 • To increase our delivery of speeches and media interviews • To maintain the FIPA news service and our electronic bulletin for members • To maintain the National Privacy Coalition Listserv, Canada's major national electronic network of privacy advocates and professionals. 	<p><i>We completed the revision of our FOI AND PRIVACY HELP pages, which we consider to be the best on the Web.</i></p> <p><i>We held 13 events in 2009.</i></p> <p><i>Number of people served through speeches was down, while media interviews were up.</i></p> <p><i>Our news service and number of bulletins were increased, and the NPC Listserv was maintained.</i></p>
<p><u>Law Reform Objectives:</u></p> <ul style="list-style-type: none"> • Positive reform of BC's <i>Freedom of Information and Protection of Privacy Act</i> and the 'culture of denial' that has evolved toward some types of FOI requesters and requests. • Restoration of adequate funding for FOI administration within government (Funding was cut by both NDP and Liberal administrations). • Increased privacy rights for the public vis-a-vis the BC government's E-Health program (which will centralize control of individual health records in a system of "Electronic Health Records"). 	<p><i>FIPA continued to push for FOI reform and funding through our Open Government Campaign.</i></p> <p><i>Commissioner's funding was increased, with a new allotment for litigation.</i></p> <p><i>FIPA continued to push for E-health privacy rights with our Health Privacy Coalition partners.</i></p>

<ul style="list-style-type: none"> • Better management and preservation of archives and official records in BC. • Publicity for improved municipal political fundraising disclosure laws. • Reform of the federal <i>Access to Information Act</i>, bringing it into closer alignment with more liberal provincial FOI acts. • Effective opposition to federal anti-terrorism legislation and initiatives that infringe excessively on access to information and privacy rights – namely, the “No-fly list”, increased surveillance of the Internet, and the creation of a de facto national identity card in the form of a so-called “Enhanced Drivers License”. 	<p><i>We continued to push on all these fronts in 2009, except for the municipal political fundraising issue.</i></p>
<p><u>Legal and Policy Research:</u></p> <p>We will undertake research projects in support of our 2009 law reform objectives.</p>	<p><i>Done.</i></p>
<p><u>Legal Advocacy/ Litigation:</u></p> <p>We will help advance FOI and privacy rights through legal advocacy in reviews before the Information and Privacy Commissioner.</p>	<p><i>Our legal advocacy efforts before the Commissioner and in the courts reached an all-time high.</i></p>
<p><u>Organizational goals:</u></p> <ul style="list-style-type: none"> • To meet the increasing demands for FIPA programs and operations by training an assistant executive director and retaining current contract workers. • To find additional sources of funding for core FIPA activities through the efforts of our contracted personnel and volunteers. • To expand the FIPA board of directors to include a greater diversity of community links, professional backgrounds and skill sets. • To continue to build FIPA’s membership. • To improve FIPA’s management and administrative procedures, including accounting and performance feedback and reporting. 	<p><i>Gains were made on all FIPA’s organizational targets with the exception of expanding the board of directors.</i></p> <p><i>An assistant ED was hired and currently is Director of Policy and Communications.</i></p> <p><i>Funding efforts were diversified and funding was obtained from the federal Department of Justice for a special project on identity theft.</i></p> <p><i>We enjoyed a modest gain in membership numbers.</i></p> <p><i>FIPA received a favourable compliance review by the Gaming branch in late 2008 and our first accounting review engagement in 2009.</i></p>

PEOPLE SERVED, 2009

Helpline / casework	399
Legal Assistance	16
Visitors to website "Help topics"	12,066
Public events	616
Speaking engagements	490
Media interviews	108
National Privacy Coalition Listserv	142
FIPA member & information services	481
Website visits other than 'Help' (incl. publications downloaded)	90,510
Total people served	104,828

PUBLIC ASSISTANCE

Public assistance/ legal aid

Helplines: During 2009 FIPA provided personal assistance to approximately 399 people through our telephone and Internet help lines.

Legal Assistance: We obtained legal information and/or aid for 16 people during 2009., in cooperation with the Access Pro Bono Law Society of BC and other legal sector partners.

Website: People seek guidance on FOI and privacy rights and how to exercise them by visiting the "Help Topics" on FIPA's web site (<http://fipa.bc.ca/home/>). During 2009, a total of 12,066 people visited these topics.

Visitors to website 'Help' topics	Jan – Mar 2009	Apr – Jul 2009	Aug – Dec 2009	Totals 2009
"How to Request Gov't Records"	1,023	1,062	1,173	3,278
"Your FOI and privacy rights"	833	1,036	1,383	3,252
"How to request your personal info"	690	692	907	2,289
"How to make a privacy complaint"	453	524	664	1,641
"Privacy laws for the private sector"	413	523	670	1,606
Total people served	3,412	3,857	4,797	12,066

PUBLIC EDUCATION

Educational Events

FIPA held 13 events during 2009. Of these, 11 were part of our **Free to Speak Campaign** against the provisions of the BC Election Act that limited free speech.

Events were as follow:

Public Forum for NGOs on the BC Election Act

January 14, People's Law School

FIPA organized this forum to help NGOs understand and debate the revised BC Election Act, its broad definition of "election advertising", and its requirements and penalties if communications activities fall within the scope of the Act. Approximately 50 people attended.

Freedom of Information - Highs and lows in access to information

March 27, Simon Fraser University at Harbour Centre

FIPA organized this panel for the BC Library Association's annual symposium on access to Government and legal Information. Approximately 40 people attended.

Free to Speak Campaign Events

FIPA presented 11 events in April and May as part of the Free to Speak Campaign (See below under "Public Interest Advocacy").

Included were two school presentations, a film night at the Vancity Theatre, and two separate information events at the Vancouver Public Library with a display and information booth in the Atrium. More than 500 people attended these events.

"Open Data, Open Standards, Open Source" – Vancouver's Open Government Initiative

Andrea Reimer, Vancouver City Councillor and Director of the Wilderness Committee,

was guest speaker at FIPA's annual general meeting on September 9, 2009.

Ms Reimer described the City of Vancouver's Open Government Initiative, which is vastly increasing electronic access to the city's information and opening up new avenues for citizen involvement in policy development, neighbourhood action and consultation. The event was held at the Plaza 500 Hotel and drew about 26 guests.

FIPA Website

FIPA's website traffic continued to rise gradually during 2009. We logged a total of 102,756 visitors and 652,136 hits – a slight increase over 2008.

New HELP pages

In November, FIPA launched its new and improved "FOI AND PRIVACY HELP" pages for people needing direction on how to make FOI requests and privacy complaints, or obtain access to their own personal information from public and private sector organizations. This project was FIPA's part of a Public Legal Education and Information Project funded by the Law Foundation which produced the new 'Clicklaw' website.

See the icon on the left of FIPA's main page (<http://fipa.bc.ca/home>) stating "How Can We Help You?"

News releases, media interviews and articles

During 2009, FIPA held five news conferences, issued 19 news releases and published two newspaper opinion pieces. Directors and staff gave 108 interviews to media outlets.

Speeches and presentations

FIPA representatives gave 10 speeches during 2009 to a total of 616 people.

The National Privacy Listserv

FIPA continues to co-host this listserv with Prof. Valerie Steeves of the University of Ottawa. This is Canada's major national electronic network of privacy advocates and professionals in the public and private sectors, with about 147 members.

FIPA e-bulletin and electronic news services

In 2009, we sent out two member bulletins and 36 news alerts from our email news service.

REPORTS AND SUBMISSIONS

Culture of Care...or Culture of Surveillance? (Personal Privacy and the BC Government's Integrated Case Management System: Legal, ethical and procedural implications for independent community service organizations)

This ambitious study, funded by the Law Foundation, was completed in November and released in March 2010. The purpose of the study was "To fully understand the privacy impact and the legal, ethical and procedural implications of the integrated case management system proposed by three Ministries of the Provincial Government."

The study has three main goals:

- a) To answer key questions that community service organizations have with regard to the BC government's plan for comprehensive data-matching and tracking of clients that receive government services and benefits.
- b) To give the government a "reality check" on the obstacles independent community service organizations (ICSOs) face with regard to the Integrated Case Management System.
- c) To challenge the legal, ethical and procedural assumptions upon which the Integrated Case Management System is based.

The conclusions and recommendations of this study should be seen as a direct and serious challenge to the assumptions at the foundation of the ICM project, which we conclude present major risks for government, for ICSOs, for client relationships, and for the privacy rights of individuals. Sober second thought about the project is more than warranted.

Failing FOI: How the BC Government flouts the Freedom of Information Act and stonewalls FOI requests

This 15-page report was issued in May. It analyzes the BC Government's response to freedom of information requests during the years 2006 – 2008. It updates our 2006 report *Access Denied*.

Submission regarding Bill C-285, the Modernization of Investigative Techniques Act (MITA)

At the request of the federal Minister of Public Safety, we prepared a brief submission summarizing FIPA's position on the *Modernization of Investigative Techniques Act* and its proposed expansion of "Lawful access" (surveillance by law enforcement bodies) to the public's Internet and telecom communications.

Submissions on Copyright Reform

FIPA made a submission to the Federal Government's national Consultation on Copyright Reform on September 13, 2009.

Submissions on the Information Commissioner's reform proposals for the Access to Information Act

The Commons Standing Committee on Access to Information, Privacy and Ethics is conducting a review of the federal Access to Information Act. FIPA policy director Vincent Gogolek appeared before the committee on April 1 to present a FIPA submission.

Submission to the Trilateral Committee on Trans-border Data Flows

FIPA was one of six organizations that were invited to make presentations to the Trilateral Committee on Trans-border Data Flows. The nations represented are Canada, Mexico and the U.S.A. 'Stakeholder Forums' have been held in Washington, Mexico and, with this latest, in Canada.

LEGAL AND POLICY RESEARCH

The revised BC Election Act and its impact on community free expression

FIPA conducted and received extensive legal and policy analysis of the *Election Act* from several lawyers and policy experts. Our specific interest is the act's suppressive impact on the free speech of individuals and groups who spend little or nothing in pursuing their customary mandate of commenting on political issues, at the time when this is most critical for active engagement in the democratic process.

This project was superseded by a larger study on the Election Act and its impact on free speech which is being conducted by the Canadian Center for Policy Alternatives. Both FIPA and BCCLA are partners in this study, which will be released in 2010.

Privacy implications of "Enhanced Driver's Licenses" to be used for expedited crossing of the Canadian-U.S. border

FIPA has made FOI requests to various agencies of the Canadian, BC and US government for records of government policy discussions on these licenses and the management of the personal information and data bases that will be associated with them. We have received records from the U.S. and are awaiting more records from Canada and BC.

A major sub-goal of this project is to do a formal comparison of FOI responses from the various governments.

The new Centralization plan for processing FOI requests in BC: Will it promote better access to information?

The B.C. government is centralizing all incoming FOI requests under the provincial information law, saying it is an attempt to address chronic complaints about government failure to respond to FOI requests in a timely fashion. Specialized information and privacy staff – about 150 public servants in all, with a budget in the \$10-million range—will be centralized in a single unit in the Ministry of Labour and Citizens' Services.

FIPA continues to study the new administrative regime and will report on this issue in 2010.

Other Research and Casework

FIPA has in progress 24 FOI requests to government agencies for research purposes. They are at all stages, from initial request, through appeals to the Information and Privacy Commissioner, to judicial reviews at the BC Supreme Court.

On the following page is a chart showing some of the issues FIPA researched in 2009.

Complaint or issue	Action taken / result
<p>Sharing of personal health information: Access to personal information collected by the Ministry of Health by other, unrelated provincial government programs.</p>	<p>We continue to investigate this issue as part of our joint advocacy project on electronic health records.</p>
<p>National copyright legislation: FIPA researched this issue, participated in a federal roundtable and provided submissions to a national consultation.</p>	<p>Minister promises new legislation on copyright reflecting submissions received in consultation.</p>
<p>FOI staffing: We contend that some of the current dysfunction in BC government compliance with the FOI act is due to successive staff cuts and administrative changes made to the information and privacy offices of ministries since 1998, and that the under-funding is deliberate.</p>	<p>We made FOI requests for critical information, received an inadequate response, and appealed for review to the Information and Privacy Commissioner. The review is still underway.</p>
<p>“Out of scope”: Widespread use by provincial FOI shops of the arbitrary designation “out of scope” to withhold information in documents. There is no such exception under the FOIPP Act.</p>	<p>We made an official complaint to the Commissioner about this practice and submissions to the Special Committee to Review the FOIPP Act.</p>
<p>Olympic Surveillance legacy: Vancouver and other municipalities will receive an extensive legacy of video surveillance equipment after the Olympics. We are using FOI requests and other inquiries to ascertain what is in the works.</p>	<p>FOI requests have been made to the Cities of Vancouver, Whistler and Richmond, the Vancouver Police Department and the RCMP. The RCMP has committed to return the 900 leased cameras, but their command centre will continue to exist.</p>
<p>Video Surveillance on Skytrain: This research is complete; we know precisely what future plans are for expansion of video surveillance on Skytrain.</p>	<p>We met with Translink in 2009 to discuss both bus and Skytrain surveillance. We are discussing co-operative action with BCCLA.</p>
<p>Reform of the Access to Information Act: Information Commissioner Marleau asked for 12 changes to ATIA to prevent disaster.</p>	<p>FIPA made submissions to the Commons Ethics committee which was examining the proposals. The committee recommended reforms which were then rejected by gov't. FIPA joined with Taxpayers Federation and Newspaper Ass'n to demand action. The Ethics committee has called Minister of Justice to appear and justify gov't response.</p>
<p>Cabinet secrecy: The interpretation in BC and other Canadian jurisdictions of “the substance of deliberations” in Cabinet meetings.</p>	<p>Raised in FIPA submission to Committee reviewing FIPPA, complaints to OIPC and a judicial review (seeking leave to intervene)</p>
<p>Policy advice exception: The use of the FOIPP Act's s. 12 (Policy advice) and s. 13 (Public body confidences) to withhold background studies and reports from public disclosure.</p>	<p>Judicial review now underway with FIPA seeking to overturn OIPC Order expanding s.13 even further.</p>

Statutory Review of the Freedom of Information and Protection of Privacy Act

A special committee of the BC Legislature was created in October to conduct a statutory review of FOIPP Act. The Act is reviewed every six years, and of course this is a major event for FIPA.

We use the review to push for desired reforms of the FOIPP Act and the way it is administered by the government. To this end, we prepare our own submissions, create publicity and try to 'rally the troops' who support freedom of information and privacy so that submissions to the committee are not vastly outnumbered by public bodies seeking to reduce transparency and privacy protection.

Right off the mark, we filed a formal letter of protest with the Premier over the terms of reference set for the committee. These required the Special Committee to report back to the Legislature by May 31, 2010, which is considerably less time than the full year provided for in the Act. In particular, we objected to the time limits this would impose the on hard-pressed public interest groups wishing to make submissions. The deadline for submissions was set at January 29, 2010.

FIPA's lobbying and the receptiveness of the committee had a positive result: The deadline for submissions was extended once and then again to a final date of March 15, 2010.

At year end, FIPA was organizing a January workshop in partnership with the Canadian Centre for Policy Alternatives, for parties wishing to make submissions to the committee.

The Free to Speak Campaign

Early in 2009, FIPA and several other groups came together to fight against changes to the provincial *Election Act*

which severely restrict freedom of expression. The purpose of the "Free to Speak Campaign" was to organize public protest around and push for reform of the *Election Act*.

Because of the very broad and vague definition of 'election advertising' in the *Election Act*, individuals and groups who put out messages on 'political issues' during an election period, and fail to register with Elections BC as official advertising sponsors, face the possibility of onerous penalties, including large fines and jail time.

Election advertising could be something as minor as a blog posting or leaflet circulated in one's neighbourhood. No political candidate or official political party platform need be mentioned, and no money need be spent to qualify a message as 'advertising'.

The campaign's main message was that the Election Act effectively makes freedom of expression not a right, but a privilege you have to apply for like a driver's license. The Free to Speak Campaign urged the citizens of BC to undertake an act of "civil obedience" (as opposed to civil disobedience) by registering en masse as election advertising sponsors.

Our campaign partners were BC Civil Liberties Association, the Canadian Taxpayers Association, BC Library Association and the Trial Lawyers Association of BC.

Campaign actions:

- Campaign website and brochure.
- Op-ed pieces in the Tyee and the Vancouver Sun.
- Six news releases.
- Eight separate events about free speech and the *Election Act*, in which people were urged to demonstrate their disapproval of the Act by signing official forms

registering them as election advertising sponsors.

- Two school presentations on free speech, featuring “Wanted” posters of famous people who made history and inspired positive social change by speaking out against the ‘prevailing wisdom’ or the corrupt authorities of their day.
- A film night at the Vancity Theatre featuring the documentary “Secrecy” about government secrecy and its perverse effect on democracy.
- An election questionnaire circulated to party leaders asking for their position on reform of the Election Act.

Campaign results:

- 31 interviews and reports on broadcast media
- 15 newspaper and magazine articles, including the two op-eds.
- Over 250 people registered as election advertising sponsors
- Endorsements by 25 NGOs and labour unions

The Campaign for Open Government

The campaign was most active during the BC election in April-May. Actions included:

- Regular updates to the campaign website,
- Circulation of a questionnaire on FOI issues to BC political parties (all responded).
- Four news releases and many media interviews, resulting in a significant amount of news coverage, and
- Release of the report Failing FOI: How the BC Government flouts the Freedom of Information Act and stonewalls FOI requests.

5th birthday of FOI Request for BC government’s multi-million dollar contract with IBM

We held a news conference on December 16 to highlight the problems that plague users of FOI in BC. And to make our point, we decided to do this in the form of a fifth birthday party for our oldest unsatisfied FOI request – our request for the IBM contract with BC to provide ‘workplace services’.

Micheal Vonn, Policy Director of the BC Civil Liberties Association, and Maureen Bader, BC Director of the Canadian Taxpayers Federation joined us to share some cake and their own stories of resistance to FOI requests with the media.

This stunt drew some excellent publicity and, we are happy to report, shamed the government into abandoning a possible appeal to the BC Court of Appeal over procedure regarding our FOI request and the ensuing review by the Commissioner.

The Campaign for Open Government will continue until FOI reform is achieved in British Columbia.

Call to bring BC Ferries back under the FOI act

BC Ferries was removed from the coverage of the FOIPP Act in 2002. Following negative publicity in November about huge salaries being paid to BC Ferries executives, FIPA, BC Civil Liberties and the Canadian Taxpayers Federation wrote a joint letter to the Premier and issued a news release urging that the corporation be brought back under the act.

The objective was to highlight the healthy effects of transparency on key issues such as executive compensation.

The 'Big Opt-Out' Campaign for privacy of electronic health records

FIPA and other groups formed a Health Privacy Coalition in 2009 to encourage policy debate and create a public education campaign on this issue. The coalition is composed of FIPA, BC Civil Liberties Assn., BC Persons with Aids Society and BC Coalition of People with Disabilities.

The Health Privacy coalition launched a campaign in April in order to inform the public about the government's e-health initiative and its privacy dangers, and encourage them to demand the right to opt out if they desire to. This campaign is called the 'Big Opt Out' and is based on a similar (successful) campaign in the U.K.

Campaign actions included:

- A news conference for the campaign launch,
- Campaign website with opt-out letters for people who wish to refuse to share their personal health information with the e-Health system,
- Two news releases,
- Several op-eds and presentations by Micheal Vonn of BCCLA and Ross Harvey of the BCPWA Society, and
- A strategic consultation with the BC Medical Association and the BC College of Physicians and Surgeons.

Other consultations and public interest advocacy work

Review of the federal *Access to Information Act*

The Standing Committee on Access to Information, Privacy and Ethics is conducting a statutory review of the federal Access to Information Act (ATIA). FIPA Policy Director Vince Gogolek appeared before the committee in Ottawa on April 1 to

present our submission advocating reform of the Act.

Vince also met with Peter Van Loan, the Minister responsible for the ATIA and with the NDP Opposition critic.

Consultations on the Federal Copyright Act

'By popular request' from FIPA and other parties, the federal ministries of Industry and Canadian Heritage held a consultation on reform of the copyright law in this country. FIPA participated and made a written submission

FIPA President Richard Rosenberg was present at the first roundtable discussion in Vancouver, to set out FIPA's position. Among other things, he stated that:

- Internet Service Providers (ISPs) should not become either arms of the state or agents of rights holders, investigating customers and violating their privacy
- the entire legal principle of Crown copyright should be repealed, and
- there must be reasonable use provisions in any new legislation.

Consultations on Transborder Data Flows

As mentioned above, FIPA was one of six civil society organizations that were invited to make presentations to the Trilateral Committee on Trans-border Data Flows. A teleconference was held in Vancouver on July 20. Richard Rosenberg represented FIPA.

Proposed Amendments to the *Electronic Commerce Protection Act*

On October 20, FIPA sent a letter to Prime Minister Harper objecting to amendments to the Electronic Commerce Protection Act (Bill C-27). The opposition Liberals proposed

amendments which appear to have been drafted by copyright and telecom lobbyists.

The amendments would have allowed for surreptitious installation of computer programs and - even more outrageously - would have allowed copyright owners to secretly access information on users' computers.

Other proposed amendments would have created new exceptions from the *Personal Information Protection and Electronic*

Documents Act (PIPEDA) in order to allow the surreptitious remote collection of personal information from Canadians' computers for the purposes of investigations of breaches of license agreements or copyright infringement.

Due to the efforts of Michael Geist, FIPA and many other advocates of Internet privacy, these noxious amendments were abandoned. We await a new version of Bill C-27.

LEGAL ADVOCACY/ LITIGATION

Illegal destruction of BC Cabinet email records

FIPA made a formal request to Information and Privacy Commissioner David Loukidelis to investigate the destruction by the BC government of years of Cabinet emails in contravention of the Document Disposal Act. The emails were among documents the court ordered the government to produce as possible evidence in the Basi-Virk corruption case.

Several versions of how email records may (or may not) have been destroyed have been given to the court since June. The government has asserted that the destruction was in accordance with routine procedures, but FIPA disputes that.

In an opinion piece published in the Vancouver Sun, FIPA executive director Darrell Evans stated, "Regardless of the format -- paper, electronic or whatever -- no provincial government record may be destroyed without what's referred to as an "approved records retention and disposal schedule."

"In the case of cabinet e-mails relating to the sale of BC Rail, the provincial government broke its own laws and (make no mistake) its entrenched, well-understood policies by failing in its duty to preserve important government records. Evidence

was destroyed either willfully or through gross negligence. Everyone responsible for the illegal destruction of these documents should have to face either criminal charges or disciplinary proceedings."

Legal proceedings

FIPA won some significant victories for FOI and privacy rights this period, before both the Information and Privacy Commissioner and the courts.

A record number of petitions for judicial review of the Commissioner's decisions were filed in 2008 (seven in all), and four more in 2009. A number of these cases involve FIPA either as the FOI requester or intervener. This has required us to engage pro bono counsel to ensure our position is before the court, and has significantly increased our workload in this area. The former Information Commissioner was forced to ask the Legislature for \$400,000 in additional funding to pay legal counsel for these additional judicial reviews.

It might be said that we are a victim of our own success. FIPA has enjoyed a very high rate of success in reviews before the Commissioner, which has led to more requests for judicial reviews by public bodies.

Details of the most important cases are summarized below.

Reviews by the Information Commissioner's office

Crown Copyright victory for FOI requesters

FIPA won a significant victory for FOI users when the provincial government agreed to stop sending copyright notices with records released under FOI.

For reasons not known to us, the inclusion of copyright notices had become a frequent practice. It was having an intimidating effect on requesters, and was inhibiting the dissemination of information and records obtained through FOI requests. FIPA requested that the Commissioner review the practice, and a review was begun.

In a letter to FIPA, Commissioner Loukidelis announced that the government had abandoned the case. He wrote:

"Government has decided to cease including copyright notices in access to information disclosures and has confirmed that, effective immediately and government-wide, copyright notices will no longer be issued in conjunction with disclosure of records in response to access requests under FIPPA."

BC was the only government in Canada to use such notices, and hopefully will be the last, thanks to our challenge.

Decision to privatize BC Ferries

FIPA requested this information, which the government refused to release for the most part on the basis that it would reveal the discussions of cabinet or its committees (s.12 of the FOIPP Act). FIPA complained to the Commissioner, and we are waiting for a decision after make arguments at the written hearing. FIPA won a reversal of a fee decision on the ground of public interest at an earlier stage of proceedings.

This is one of several cases FIPA is currently involved in regarding overbroad claims of cabinet confidentiality.

Matters before the courts

Attorney General v. Harrison

Mr. Harrison lost his job and reputation due to the improper disclosure and misuse by the Ministry of Children and Families of personal information in their files.

The most important issue is the requirement of public bodies under the FOIPP Act 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.

The BC Court of Appeal agreed in large part with the position put forward by FIPA as Intervenor, and sent the question of infringement of Mr. Harrison's s.28 privacy rights back to the Information and Privacy Commissioner for a rehearing.

FIPA's position was that the Office of the Information and Privacy Commissioner should have given Mr. Harrison his remedy for the misuse of his personal information, and that requesters should have an informal, administrative remedy available rather than being forced to go to the courts for judicial review.

Garth Barriere was FIPA's pro bono counsel on the case, which was FIPA's first intervention before the BC Court of Appeal.

IBM case

FIPA's five-year battle for copies of contracts between IBM and the government continues, despite victory in a judicial review application brought by the provincial government.

The government filed a petition for judicial review (although IBM did not) asking the Supreme Court to rule that requesters have no right to a role where a third party claims exceptions to disclosure, and preventing any release of information until all third party proceedings are finished, even if the other

records have nothing to do with the exemptions being claimed by the third party. Justice Grauer completely rejected the government's interpretation of the Act and supported the decision of the Commissioner.

FIPA was represented by pro bono counsel Brent Olthuis and Tam Boyar.

'Submissions to FOI Act review' case

FIPA made an FOI request for all submissions made by outside groups to the BC government in 2005 as part of a consultation on reform of the FOIPP act. The province refused to release the submissions under section 13 of the act, the exception for '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.

At the end of 2009, FIPA sought judicial review, which may provide an opportunity for the courts to restrict the application of the BC Court of Appeal's 'Dr. Doe' decision,

which greatly expanded the scope of s.13. FIPA is represented by Micah Rankin, Tam Boyar and Christine Joseph of Hunter litigation in this matter.

SFU case

This case stems from an FOI request for records held by a wholly-owned subsidiary corporation of Simon Fraser University. FIPA was an intervenor in an appeal to the Information and Privacy Commissioner.

After an initial ruling by the Commissioner's adjudicator that public bodies which control subsidiary companies have control of the records of those subsidiaries, SFU successfully sought judicial review. This case is now on its way to BC Court of Appeal and once again FIPA is participating as an intervenor.

If the current decision stands, it will open a door for every public body in the province to hide information by creating a subsidiary and transferring records to it.

FIPA continues to be represented by Dan Burnett of Owen Bird.

THE ORGANIZATION

FIPA ended 2009 with a deficit of \$6,402.

The society is proceeding with plans to have current Policy and Communications Director Vincent Gogolek assume the role of Executive Director at the beginning of 2011.

This is a major transition for the society, but the FIPA board and long-serving ED Darrell Evans have no reservations whatever about the choice of Mr. Gogolek as future ED.

Over two years, first as a contractor and then as a staff member, Vincent has demonstrated enormous competence and dedication and has won the full confidence of the directors.

The directors and staff of FIPA wish to express a special thanks to the Governors, executive and staff of the Law Foundation for making the transition to a new executive director possible and for their support over almost 20 years.



Exhibit A

To the Board of Directors
B.C. Freedom of Information and Privacy Association

REVIEW ENGAGEMENT REPORT

We have reviewed the balance sheet of B.C. Freedom of Information and Privacy Association as at December 31, 2009, and the statements of income, retained earnings and cash flows for the year then ended. Our review was made in accordance with Canadian Generally Accepted Standards for Review Engagements and accordingly consisted primarily of enquiry, analytical procedures and discussion related to information supplied to us by the company.

A review does not constitute an audit and consequently we do not express an audit opinion on these financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian generally accepted accounting principles.




CHARTERED ACCOUNTANTS

Vancouver, B.C.
April 12, 2010

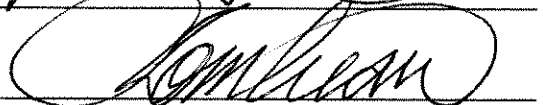
B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION
STATEMENT OF FINANCIAL POSITION
AS AT DECEMBER 31, 2009
(Unaudited)

<u>ASSETS</u>	<u>2009</u>	<u>2008</u>
CURRENT ASSETS		
Cash	\$ 16,990	\$ 32,795
Accounts receivable	16,062	37,500
Goods and services tax recoverable	2,986	3,407
Prepaid expenses	<u>-</u>	<u>500</u>
	36,038	74,202
CAPITAL ASSETS - notes 2(c) and 3	<u>6,279</u>	<u>8,278</u>
 TOTAL ASSETS	 <u>\$ 42,317</u>	 <u>\$ 82,480</u>

APPROVED BY THE TRUSTEE



Director



Director

The accompanying notes are an integral part of these financial statements.

B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION
STATEMENT OF FINANCIAL POSITION
AS AT DECEMBER 31, 2009
(Unaudited)

<u>LIABILITIES</u>	<u>2009</u>	<u>2008</u>
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	\$ 9,101	\$ 43,736
Withholding taxes payable	<u>1,946</u>	<u>1,074</u>
TOTAL LIABILITIES	<u>11,047</u>	<u>44,810</u>
 <u>FUND BALANCES</u>		
NET ASSETS		
Invested in capital assets	6,279	8,278
Externally restricted	(3,852)	(5,201)
Internally restricted	<u>28,843</u>	<u>34,593</u>
TOTAL NET ASSETS	<u>31,270</u>	<u>37,670</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 42,317</u>	<u>\$ 82,480</u>

The accompanying notes are an integral part of these financial statements.

B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION
STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2009
(Unaudited)

	<u>2009</u>	<u>2008</u>
REVENUES		
Law Foundation	\$ 120,503	\$ 187,350
British Columbia Gaming Foundation	50,000	40,000
Conference fees	-	46,550
Donations	23,275	23,100
Other income	<u>14,335</u>	<u>6,654</u>
	<u>208,113</u>	<u>303,654</u>
EXPENSES		
Accounting and legal	5,351	4,109
Advertising and promotion	871	635
Amortization	1,999	2,211
Auto	29	11
Bank charges and interest	471	2,658
Campaign expenses	-	2,145
Conference	3,906	109,450
Consulting fees	68,813	97,776
Office and general	7,251	2,722
Rent	10,442	8,701
Research	6,764	7,400
Telephone	1,975	5,902
Wages	102,481	53,045
Web and internet	<u>4,162</u>	<u>-</u>
	<u>214,515</u>	<u>296,765</u>
EXCESS OF REVENUES OVER EXPENSES	<u>\$ (6,402)</u>	<u>\$ 6,889</u>

The accompanying notes are an integral part of these financial statements.

DIRECTORS, ADVISORS, VOLUNTEERS AND STAFF

FIPA's work would not be possible without the support of a large number of volunteers. We would like to thank the following key people in this support team, as well as the many others who contributed during 2009.

BOARD OF DIRECTORS 2009-2010

President:	Richard Rosenberg, Professor Emeritus, Dept. of Computer Science, University of British Columbia
Vice President:	Paul Holden, Software Engineer, Fortinet Technologies
Treasurer:	Tom Crean, Owner/Manager, Kearney Funeral Home Gwen Barlee, Policy Director, Western Canada Wilderness Committee Carla Graebner, Librarian, W.A.C. Bennett Library, Simon Fraser University Lucas Meyer, System Specialist, Accenture Utilities BPO Services James Symons, President and CEO, Power Diagnostic Technologies Ltd.

BOARD OF ADVISORS

Colin Bennett	Professor, Dept. of Political Science, University of Victoria
Terry Eastwood	Professor Emeritus, Dept. of Library, Archival & Information Studies, UBC
Gerald Fahey	Barrister & Solicitor, Epstein Wood
Philippa Lawson	Barrister and Solicitor
Murray Rankin	Barrister & Solicitor, Heenan Blaikie LLP
Tom Riley	President, Riley information Services, Inc.
Valerie Steeves	Adjunct Professor, Faculty of Law, University of Ottawa
Mark Wexler	Professor, Faculty of Business Administration, Simon Fraser University

OTHER VOLUNTEERS

FIPA would like to extend special thanks to Garth Barriere, Tam Boyar, Dan Burnett, Christine Joseph, Brent Olthuis, Micah Rankin and Jim Quail for their invaluable contributions to our work in 2009.

STAFF AND ASSOCIATES

Darrell Evans, Executive Director	Els Mol, Administrator
Vincent Goglek, Director of Policy and Communications	Stanley Tromp, Research Associate

BC Freedom of Information and Privacy Association
103 - 1093 West Broadway, Vancouver, BC V6H 1E2
Ph: 604-739-9788 • Email: fipa@vcn.bc.ca • Web: www.fipa.bc.ca

DEFINITIONS AND PRINCIPLES

Freedom of Information ("FOI")

In the broadest sense, freedom of information is the public's right to a free flow of information in society. This includes our rights to freedom of expression and access to information without undue restrictions imposed by government, corporations or other entities.

In the narrower sense in which we use it here, FOI is another term for the right of access to government information. We use these terms interchangeably.

Privacy and Privacy Protection

Privacy, as we define it, is the ability or right to have a "private life" - to be left alone, free from illegal or unwanted scrutiny and intrusions.

Privacy rights include informational privacy - the right to control or limit the collection, use and disclosure of one's own personal information by other agencies, whether they are part of government or the private sector.

Since knowledge brings power to those who possess it, knowledge of our private lives tends to increase the power and influence that governments and corporations have over us. Some limits must be imposed in order to maintain the delicate balance of power that sustains our democracy.

"Privacy protection" means defense of the privacy of individuals by legislation or other means.

Information Rights

People often ask why FIPA seeks to advance two human rights that may seem to be contradictory. The answer is, because FIPA's main goal is to empower individuals by helping to increase both their access to and their control of information. Both FOI and privacy rights increase the power of the individual in society, which is why we refer to both of them as "information rights".

Information rights provide individuals with a much-needed counterbalance to the far greater access to and control of information enjoyed by governments and other powerful organizations. Information rights improve our democracy by reducing this imbalance of power in a society that is increasingly dominated by the uses and abuses of information.

Further, our right as individuals to know what is going on in society must exist in balance with the right to individual privacy.

Together, information rights help to create:

- an informed electorate,
- open, honest and accountable government,
- greater citizen participation in the democratic process, and
- greater protection of individual human rights.