



BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

**Key Recommendations for Reform of the
Freedom of Information and Protection of Privacy Act
January 15, 2003**

FIPA urges the Minister to consider the entirety of our recommendations for reform of the FOIPP Act, contained in our letter to the Minister dated July 2, 2002. However, here in summary are some key recommendations.

1. Reinforce section 25 of the Act, “Public Interest Paramount”

FIPA believes that an effective public interest provision is the cornerstone of access and privacy regimes. To restore the intent of section 25, we make the following recommendations:

i) The Information and Privacy Commissioner should be given the power to prescribe guidelines to be applied by public bodies in deciding whether section 25 is triggered in any case.

ii) Section 25(2) should be amended to make it clear that an exception from disclosure does not apply where there is a clear public interest in public disclosure.

iii) The commissioner should explicitly be given the power to apply this section and override decisions of public bodies to deny access.

iv) A provision similar to section 77(1) of the Alberta *Freedom of Information and Protection of Privacy Act* should be added to B.C.’s Act. Alberta’s section 77(1) allows a government employee to disclose records to the commissioner when the release of the records is clearly in the public interest and the public interest override is not being applied as required. It also provides legal protection for the employee.

2. Limit the collection, use and disclosure of personal information by government without consent

We recommend that, in its continuing review of the FOIPP Act, the government re-examine the standards of privacy protection afforded by sections 27 and 33 of the Act and bring them up to the standards of informed consent exemplified by the

Canadian Standards Association's *Model Code for the Protection of Personal Information* and the federal *Personal Information Protection and Electronic Documents Act* ("PIPED Act").

3. Increase the responsibility of public bodies to respond to requests in a full and timely manner

The Special Committee to Review the Freedom of Information and Protection of Privacy Act agreed that the spirit of the Act is to encourage the routine release of information, and recommended that a statement be added to the Act to emphasize "...that in the interest of supporting a free and democratic society and accountable and responsible government, the Act should support open and ready access to government information."

As the Information and Privacy Commissioner has often stated, undue delay in the response to FOI requests has become the most serious and persistent problem of FOIPPA administration. Whether or not such a statement as above is added to the Act, the government should take positive steps to reinforce the routine release of information and the need to respond to requests in a full and timely manner.

The Special Committee agreed that public bodies should be encouraged to complete information requests in a timely manner. It recommended "That public bodies comply with time lines under section 7 of the Act, and that in the event of non-compliance with time lines, fees for requests that are not fulfilled within the prescribed time be waived." We recommend that this be implemented.

4. Introduce whistleblower protection

Section 77(1) of Alberta's *Freedom of Information and Protection of Privacy Act* provides an excellent model for facilitating disclosure of vital information to the commissioner and protecting employees who disclose information from adverse employment action. However, it is our view that wider protection for whistleblowers should be considered in B.C.

We note that the Special Committee expressed the same view. On page 40 of its report, it stated:

The Committee agreed that the province would benefit from general "whistle-blower" protection, and that the protection of information and privacy administrators could be covered under general legislation. Suggestion: That a separate Act be considered for general "whistle-blower" protection.

We urge the government to begin a process of public consultation on the topic of whistleblower legislation when it introduces amendments to the FOIPP Act in the spring of 2003.

5. Improve the regime for retention and destruction of documents

The system for creating, managing and disposing of government documents should be thoroughly reviewed and improved, not only to facilitate access by citizens, but also to make government information management more sound, efficient and cost-effective.

Two important elements in document management are records retention and disposal. There should be a specific duty to retain documents subject to requests or containing personal information, and there should be penalties for improper destruction of documents.

In our correspondence with the Liberal Caucus while it was in Opposition, we asked the question, "Ottawa recently passed a law to penalize the improper shredding and alteration of records by officials in the federal government. Would you advocate the same for the provincial government?"

The response of the Caucus, under the signature of then Opposition Leader Gordon Campbell was, "We would welcome a public discussion concerning the desirability of introducing similar legislation in British Columbia."

We urge the government to place this issue on the agenda as soon as possible.

6. Take measures to narrow section 14, the exception for matters of solicitor-client privilege

The Special Committee was quite aware of the issues surrounding section 14 and shared our view to a great extent. In its report to the Legislature, the Committee had this to say:

The Committee noted that courts have interpreted the solicitor-client exemption of the FIPPA extremely broadly. Members debated the rationale for keeping such documents permanently exempt from disclosure. It was also considered that solicitor-client privilege, in terms of legal advice to public bodies in their policy-making role, was not intended to be protected to the same degree as solicitor-client privilege in law enforcement matters by the FIPPA. It was noted that solicitor-client privilege can be waived, and that if government is the client in cases of legal advice, government has the option of waiving its right to exemption under the FIPPA.

The Committee agreed to recommend that this issue should continue to be examined, with a view to public bodies' gradual adoption of the latter practice.

The Committee also agreed that it is in keeping with the spirit of the Act that documents containing legal advice on policy issues be subject to severing procedures.

FIPA urges the government to re-examine section 14 and find appropriate ways to narrow the exception. It should at least be clarified that documents must be released after information subject to solicitor-client privilege and other applicable exceptions is severed, and that legal advice should be released when release will not harm the interests of government, or a reasonable period of time has passed.

7. Narrow section 15, the exception for “Disclosure harmful to law enforcement”

We believe the section must be limited, along the lines of Section 16 of the *Federal Access to Information Act*, to proceedings or investigations which could result in penal sanctions. We recommend that the definition of law enforcement be amended to apply in proceedings which lead or could lead to "an offence under an enactment of B.C. or Canada" and "that relate to an investigation in regard to imminent criminal charges."

8. Extend the FOIPP Act’s coverage to the Legislative Assembly

We asked the Liberal Caucus the question, “Do you favour including the Legislature itself (e.g. Clerks and MLAs' offices) in the coverage of the FOIPP Act?”

The response of the Caucus was, “We will undertake a review of the issue whether, consistent with the principles of parliamentary privilege, the administrative operations of the Legislative Assembly can be made subject to disclosure under the FOIPP Act in order to ensure that the Legislative Assembly is accountable to taxpayers, and to thereby enhance public confidence in the institution of parliament.”

FIPA strongly supports this objective, and the Information and Privacy Commissioner's rationale for extending the Act to the Legislative Assembly — namely, accountability for the use of public funds and privacy protection for individuals. We urge the government to undertake a review of this issue as part of the FOIPP Act review this fall.

9. Extend the time period allowable for appeals to the Information and Privacy Commissioner

FIPA receives many public complaints regarding the need for a requester to appeal for review to the Commissioner within 30 days. This places requesters, who often have poor knowledge of the FOI process, at a severe disadvantage. We recommend that the allowable period be extended to ninety days.

Other Considerations Vital to Freedom of Information and Privacy in British Columbia

The following recommendations for review of the FOI regime are of extraordinary importance and have been made by FIPA and BC Civil Liberties in concert:

10. Review the statutory exemptions from the FOIPP Act

FIPA and the B.C. Civil Liberties Association have urged the government to conduct a rigorous review of all the statutory exemptions that have been passed over the last decade that exclude records from the ambit of the FOIPP Act. We were delighted to receive the Minister's assurance in his letter of December 10, 2001, that this review will be part of the legislative review of the Act.

11. Revisit the budgetary needs of the Information and Privacy Commissioner

A crisis in the FOI system can only have a major negative impact on a government that has made openness and accountability one of its major themes.

In its letter to FIPA of April 2001, the Liberal Caucus stated that, "Our commitment to open government means providing a stable funding base for the Information and Privacy Commissioner's office to ensure that the office has the resources it needs to discharge its statutory mandate."

FIPA urges the government in the strongest terms to re-examine the decision to cut the Commissioner's budget in view of the needs of his office, and ensure that B.C. continues to have a functioning FOI system in the future.