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BC FREEDOM OF  
INFORMATION  
AND PRIVACY  
ASSOCIATION

## **Open government: BC Liberals promise much, deliver little**

**FIPA grades the performance of the BC government  
on Freedom of Information issues, 2001-2004**

In their 2001 “New Era” platform, the BC Liberals promised to bring in “the most open, accountable and democratic government in Canada.”

Research by FIPA shows that the Liberal government has done much more to erode open government during their four years in office than they have done to enhance it. In fact, they have accelerated actions begun under the NDP to undermine the freedom of information act and re-assert strict government control over access to information.

BC’s *Freedom of Information and Protection of Privacy Act* (FOIPP Act) was passed in 1992. In recent years, there has been a serious decline in the health of the FOI process, resulting in increasing barriers to timely access to information for many citizens. These problems began with severe budget cuts to FOI administration under the last NDP administration, but have continued and even increased under the current Liberal administration.

Over the past 10 years, a government culture has developed that employs every possible tactic to discourage and delay requests for information that it considers in any way “sensitive”. The culture of denial has employed a combination of budget and staff cuts, legislative and policy changes, government reorganization, delaying tactics, excessive use of the Act’s exceptions, and the extension of secrecy to additional government committees.

The problems mainly concern access to general (that is, non-personal) information. FIPA’s research shows that delays and fee assessments for general FOI requests have risen sharply, and that the functionality of the office of the Information and Privacy Commissioner is badly impaired following cuts to its budget of 35 percent. When FOI requesters lose patience, they are forced to appeal to a Commissioner whose staff and budget have been slashed to the bone and where an appeal can easily take more than a year.

The increased barriers to access seem to be achieving results: the number of requests made by what the government FOI tracking system calls “Interest Groups” has dropped dramatically over the past three years, from 302 in 2002 to 143 in 2004.

### **Cuts to Ministry FOI staff**

In 1998, the current Premier wrote a letter to FIPA stating “The BC Liberal Caucus is strongly committed to...ensuring that resources are available so that all provincial government bodies are able to meet or beat statutory disclosure timetables.”<sup>1</sup>

The reality: Both the Liberals and NDP cut the numbers of ministry staff who respond to FOI requests. In 2003, the Information Commissioner noted that “Cuts to provincial government staff are taking their toll on government’s capacity to respond promptly and completely to requests for information.”

### **Information and Privacy Commissioner crippled by budget cuts**

In a letter to FIPA during the 2001 election campaign, the Liberals stated “Our commitment to open government means providing a stable funding base for the Information and Privacy Commissioner’s office to ensure that it has the resources to discharge its statutory mandate.”

Following the election, the Liberals broke this pledge almost immediately by slashing the Commissioner’s budget by 35 percent over three years. The office was forced to cut its staff to a skeleton crew of 17, handling work related to both the FOIPP Act and the *Personal Information Protection Act*, which came into effect on January 1, 2004. This compares to a staff of 23 for FOIPP Act work alone in 2002-03.

As a comparison, the office of the Alberta Commissioner, with about one-quarter the workload, has a staff of 30 and almost twice the budget.

Thanks to the budget cuts, the workload of portfolio officers has roughly doubled. Each officer now handles an average of 161 complaints and requests for review annually, up from 84 in 1999-2000. In addition, each officer handles about 100 policy consultations, and some do additional duties related to educating the public and stakeholders concerning both access and privacy.

BC’s Commissioner stated in 2002 that the cuts ultimately would prevent his office from effectively carrying out its statutory mandate.<sup>2</sup> FIPA can attest that this dire prediction has come to pass. Our monitoring verifies the office can no longer deal effectively with its caseload of appeals, mediations and investigations. An ordinary review of a decision to refuse an FOI request can easily take one to two years.

### **Other government watchdogs also de-fanged or eliminated**

The officers of the Legislature are independent watchdogs with mandates to provide oversight, transparency, fairness and accountability. They always provide a vital check and balance in our democratic system, but even more so in an unusual situation such as 2001-2005, where there has been no Official Opposition in BC.

At such a time, one would hope that a democratically-minded government would take generous measures to increase oversight, not reduce it. The Liberal administration failed this crucial test.

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<sup>1</sup> Letter from Gordon Campbell to FIPA, July 22, 1998

<sup>2</sup> OIPC Annual Report and news release, May 30, 2002.

In spite of their pledge to provide “the most open, democratic and accountable government in Canada”, the Liberals:

- Cut the Auditor General’s Budget by 15% (Versus their New Era promise to “Increase funding for the auditor general’s office, to help identify and prevent waste, and to increase value-for-money.”<sup>3</sup>)
- Cut the budget of the Police Complaint Commissioner by 30%.
- Cut the budgets of the Ombudsman and Information and Privacy Commissioner by 35%.
- Eliminated the Mental Health Advocate.
- Reduced the Children’s Advocate from an independent officer reporting to the legislature, to a bureaucrat reporting to the government.

The Vancouver Sun stated, “There is a responsibility that comes with an extraordinary majority. The Liberals should cast their minds back a year or two, and recall the many reasons they found to praise the work of these same offices and agencies. Those are precisely the reasons that the public interest will not be served if the watchdogs are starved of funds now.”<sup>4</sup>

### **Cabinet secrecy extended to Liberal Caucus Committees**

The government’s pretense of openness in holding open Cabinet meetings stands in stark contrast to an actual step they took to *increase* Cabinet secrecy: they amended the FOIPP Act to extend traditional Cabinet secrecy to Liberal Caucus Committees. This step was without precedent in BC history.

### **Amendments to the FOIPP Act add time and barriers**

The Liberals passed two sets of amendments to the FOIPP Act in April 2002 and March 2003 that weakened the Act, making the process easier for government officials and harder for requesters.

At least six changes were made to the Act in order to give public bodies more time to respond to FOI requests. Some examples:

- Previously, public bodies had to respond to requests within 30 days; now they have 30 “working” days.
- The clock may be stopped for a number of reasons, including the transfer of an FOI request from one body to another.
- The allowable time for a transfer has been doubled to 20 days, a change which FIPA’s lawyer called “an extraordinary acknowledgement of bureaucratic delay and incompetence.”

### **Hard times for FOI requesters**

By all reports, support and administration of the FOIPP Act are at a ten-year low. Fees for FOI requests are up, response times are longer and information is harder to get under the new administration.

Only about one in six access requests result in full disclosure of the records sought.

<sup>3</sup> *A New Era for British Columbia*, B.C. Liberal Party, 2001, p. 8.

<sup>4</sup> Vancouver Sun Editorial, March 4, 2002

Fewer than half of FOI requests for general information are processed within the required 30-day time period.

The number of requests taking more than the required 30 days increased to 53.4% in 2004 from 45% in 2002 – in spite of the change allowing public bodies 30 working days rather than 30 calendar days to respond.

### **“Sensitive” requests**

One of the more worrisome of government information-handling activities is the way it singles out certain FOI requests for special treatment. The government’s Corporate Requests Tracking System (CRTS) allows each ministry to award a “sensitivity ranking” to each new access request. A request is assigned a sensitivity of High, Medium or Low, or none at all.

Research shows that FOI requests given higher ratings receive discriminatory treatment, resulting in greater obstruction and delay. Prof. Alasdair Roberts, the leading researcher into Canadian FOI laws, says that requests are marked in this manner for political reasons. About six out of 10 sensitive requests miss the statutory deadline, compared with just over three in 10 of those with low sensitivity. In addition, sensitive requests take longer to finally be completed than others.

Finally, applicants making sensitive requests are more likely to withdraw them. This could be due, suggests Roberts, to high fee estimates or delays.

The increasing barriers to access – delays, higher fees, refusals that necessitate appeals to the Commissioner – seem to be achieving the desired results. As mentioned, the number of requests made by “Interest Groups” has dropped dramatically, from 302 in 2002 to 143 in 2004.

### **Liberals Ignore urgent calls for reform of FOI Act**

In the last decade, a number of serious deficiencies in the FOIPP Act have become apparent. The Act is overdue for reform and updating. The need for FOI reform has been recognized and called for by FIPA, the Information and Privacy Commissioner, and two Special Committees of the Legislature. The Liberals have persistently ignored calls to update the Act.

#### **Positive FOI moves by the BC Liberals**

There are a few bright spots in the BC Liberals’ record on open government. FIPA would like to commend them for:

- Adding a “Whistleblower Protection” section to the FOIPP Act.
- Introducing B.C.’s first-ever registry of lobbyists.
- Passing the *Public Sector Employers Amendment Act 2002*, making it easier to obtain access to the employment contracts of top public officials.
- Creating a Personal Information Directory describing all the personal information held by the government.

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