



BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

Questions for NDP leadership candidates on Freedom of Information and Privacy Issues

John Horgan Responses

March 14, 2011

The BC Freedom of Information and Privacy Association would appreciate receiving your views on the following questions. Please do not be restricted by the format; feel free to elaborate on any point.

Freedom of Information:

1. *What specific amendments would you make to the Freedom of Information and Protection of Privacy Act (FOIPPA) to make it easier for requesters to obtain information and records under the act?*

*The recommendations of the 2009 Legislative Committee include a number that would to speed up FOI requests, including a hard 90-day limit. I would look very closely at implementing all the recommendations of the 2009 committee. In addition, we need consider whether the "FOI process" itself needs to be reviewed more deeply. The FOIPPA was drafted before the widespread use of the internet, at a time when most records were archived in paper form (even if they were initially drafted on computers) and it simply wasn't possible for the public to access government records without **asking for them**. So documents and data were **private by default**, just because they were physical papers stored in cabinets. Now we have the technological option to make data and documents **public by default** since they can easily be stored and archived in publicly accessible servers. There is an opportunity to use technology to invert the FOIPPA understanding of the problem, but it will require a good deal of care and study to ensure that privacy of citizens is not compromised.*

2. Many have described the current government culture as resistant to freedom of information requests, particularly where they are "politically sensitive". What specific reforms would you make to the FOIPPA or the way it is administered in order to improve government performance regarding FOI requests?

Reviewing requested records for privacy concerns can justifiably take considerable time, but as a matter of policy or practice, government should not be deliberately slowing requests or running out the clock. In the near term, I think the most

effective way to reduce many wait times is to adopt a general policy of “proactive disclosure”, identifying classes of information that can be released without concern for privacy, and simply placing them online as a matter of course. I would also consider regulating a common procedure for all public bodies that identifies the officials involved in processing applications for public records and personal information, setting guidelines for how long each step in the process should take and requiring public bodies to disclose the steps and officials involved when making disclosure under the Act. Processing time should incorporate legitimate search, review and redaction functions – not delays strictly for political and communications concerns.

3. Increasing use is being made of several “exceptions” in the FOIPP Act. In particular, section 12 (cabinet confidences) and section 13 (policy advice) are now used to block the release of factual or background information. What will you do to limit or narrow the current exceptions or limit their use?

I think these exemptions are appropriately written in the statute. They clearly describe the duties of heads of public bodies not to use sections 12 and 13 to block the release of factual or background information that would not reveal advice or the substance of deliberations. The problem is that these provisions are being abused. I would ensure that the government’s policy and procedures manual makes it abundantly clear that these exemptions must be applied consistent with the intent of the legislature and ensure that, at least in the public service, these provisions are properly applied.

4. Governments in BC and elsewhere are gradually introducing procedures to routinely release information electronically without the need for FOI requests. What specific measures will you implement to bring about more routine disclosure and better compliance with existing requirements (Reference: S.70 of the FOIPP Act)?

As noted, I think the provincial government should adopt a general policy of “proactive disclosure”, identifying classes of information that can be released without concern for privacy or other exemptions and simply making them available in electronic form as a matter of course. In addition to Ministerial expenses, I would also require the routine release of the calendars of Ministers and Deputy Ministers.

The public service is currently experimenting with open data portals, but I would not want to force the development of new web sites before the data processes that can support them exist. It is more important to establish a government-wide policy on open data that mandates proactive disclosure, the use of open and machine readable formats for data, and the establishment of regular procedures for ensuring open government data files are kept up to date.

A second tier of information that should be routinely available through such a system would be, as suggested in sections 70 and 71, policy and other materials that may require some legitimate redaction, but which should be made available without request. I think that a good way to identify the records that should be included in this next tier would be to review the kinds of records that are most consistently requested by the public and the media.

5. BC Ferries has been brought back under the *Freedom of Information and Privacy Act* in order to improve transparency and governance. However, BC Ferries has introduced policies and procedures that discourage FOI requesters (for example, by depriving media

and other requesters of 'first use' of the records they obtain). What will you do to ensure that BC Ferries abides by the spirit and not just the letter of the law?

FOI should be the tool of last resort that citizens and journalist need to use only when government seeks to keep public information under wraps. In the case of BC Ferries, the corporation's leadership appear to be annoyed that BC Ferries will now be subject to public scrutiny and are seeking to punish journalists. The policy is wrongheaded and should be changed.

6. BC is the only province in Canada which does not have an Archives Act to ensure that important government records are preserved. Currently, government documents are not being properly placed in the provincial archives. What will you do to correct these inadequacies?
7. What will your government do to incorporate the principles of public access into the creation, preservation and destruction of records, including:
 - a positive duty to create and maintain records of key government decisions, orders, actions, deliberations and transactions; and
 - penalties for improperly tampering with or destroying records to avoid disclosure? What will you do to reinforce section 25 of the *Freedom of Information and Privacy Act*, "Public Interest Paramount" to ensure public bodies do their legal duty to release information (without request) when it is in the public interest?

In regard to questions 6 and 7, I would review the document retention and archive legislation provisions in the other provinces. I am not aware of any reason why British Columbia should not implement what emerges as the best practices in the country.

As to section 25 and disclosure without request, I would very much like to hear from FIPA your examples of where the public service has failed to disclose information about a risk of significant harm to the environment of the health and safety of the public or of a group of people. I take such conduct very seriously and believe it warrants appropriate consequences. As to section 25 in relation to information sought by applicants, I support the interpretation that B.C.'s commissioners have placed on this provision.

Privacy Protection

8. The BC government is paying \$180 million (for openers) to introduce an 'Integrated Case Management' system which will allow government to demand more personal client information from outside service providers and to share personal information more freely across ministries and with partners outside government. To date the government has not provided a Privacy Impact Assessment for this project as required by law or conducted a public consultation as requested by the Information and Privacy Commissioner. Will you put the Integrated Case management system on hold pending proper impact analysis and public consultation? If not, what will you do to ensure British Columbians' personal information is protected?

I do not support the implementation of the ICM project prior to the publication of a PIA and an opportunity for the Commissioner to comment on it.

9. Over the past three years, the Information and Privacy Commissioner has called on the government to put a hold on plans for widespread sharing of personal information

until it introduces a White Paper outlining how it plans to protect personal information and conducts a public consultation with stakeholders on the subject. If elected, will you follow the Commissioner's recommendation on this issue, and if not, why not?

Yes.

10. The government is introducing Electronic Health Records (EHRs) which will integrate personal health information from all points in the health care system and provide access to it in accordance with the new *E-health Act*. Privacy advocates have criticized the system for not providing adequate patient control over who may see their information. What specific measures will you introduce to ensure that health care patients in BC have the right and ability to control the use and protect the privacy of their medical records?

E Health initiatives offer the promise of quick, accurate and portable records for patients and health care providers in British Columbia. The move to electronic records is positive and I support it. I also support the development of a clear, easy to understand method for patients to control how much those records will be shared for the purposes of their treatment, teaching, research and other purposes.

Elections Act

11. The BC *Elections Act* requires anyone falling under the very broad definition of "election advertising sponsor" to register with Elections BC or face fines and up to a year in jail, no matter how little they spend expressing themselves. Will you undertake to narrow the definition of 'election advertising sponsor' and (as in the Canada Elections Act) bring in a minimal amount below which citizens do not have to register to express themselves on issues during an election?

I support those provisions of the Election Act as currently written.

Please contact / send your response to:

BC Freedom of Information and Privacy Association
#103 - 1093 West Broadway, Vancouver, BC V6H 1E2
Tel: (604) 739-9788 Fax: (604) 739-9148
E-Mail: fipa@vcn.bc.ca Website: www.fipa.bc.ca