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Darrell Evans
Executive Director
B.C. Freedom of Information and Privacy Association
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May 9, 2005

Dear Mr. Evans:

Thank you for your May 4, 2005 survey enclosing issues that interest members of the B.C. Freedom of Information and Privacy Association. Attached please find your questions in the order you presented, along with our answers. If you have any further questions, please contact us at 604.606.6000, or by email at surveys@bcliberals.com.

Do you think that access to government information should be increased? If so, what measures will you take to make it more accessible?

The BC Liberal government responded to recommendations from a 1999 all-party special committee of the legislature and strengthened the Freedom of Information and Protection of Privacy Act (FOIPPA). Amendments were made to allow new public bodies to be automatically covered by the Act. As a result, 19 additional public bodies, including the Forest Practices Board, the Employment and Assistance Appeal Tribunal, and Partnerships BC are now required to disclose records under FOIPPA.

The BC Liberal amendments also require that an all-party committee of the legislature engage in public consultations and review the FOIPPA every six years. This will ensure that the appropriate level of access to government information is reviewed on a regular basis.

The first review under this requirement, including public consultations, began in May 2003. The Special Committee to Review the Freedom of Information and Protection of Privacy Act's May 2004 report, *Enhancing the Province's Public Sector Access and Privacy Law*, found general agreement that the purposes and the scope of the Act are appropriate, the Act achieves a balance between openness and privacy protection, and the Act's structure is sound.

The Special Committee recommended amending section 3 to clarify that records, including personal information created by or in the custody of a service provider under contract to a public body, are under the control of the public body for which the contractor is providing services.

The BC Liberal government acted on this recommendation in the Fall 2004. Bill 73 amended the *Freedom of Information and Protection of Privacy Act* to extend provisions regarding the collection, use, storage and

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disclosure of personal information, which currently apply only to public bodies, and extended them to public body employees, public body service providers and employees or associates of service providers. This will ensure that personal information is equally protected, whether held by a public body or by a service provider.

A BC Liberal government will again consider future recommendations made by an all-party committee when the next FOIPPA review is triggered by the six year review requirement.

What specific reforms or amendments would you like to make to the Freedom of Information and Protection of Privacy Act (FOIPPA Act)?

The BC Liberal government made numerous amendments to improve and strengthen FOIPPA including:

- requiring all public bodies to conduct Privacy Impact Assessments for new legislation, programs, projects and systems – a first in Canada;
- extending privacy protection for personal information handled by contractors acting on behalf of public bodies;
- simplifying the process of adding public bodies to coverage by the Act;
- adding 19 public bodies to the Act;
- requiring that an all-party committee of the legislature review the Act every six years.

A BC Liberal government will continue to review outstanding recommendations put forward by the Special Committee

Since 1998, both NDP and Liberal administrations have drastically cut funding for administration and oversight of the FOIPPA act. Most recently, the budget of the Information and Privacy Commissioner's office was slashed by 35%, seriously reducing its effectiveness. When elected, what approach will you take to funding the FOI process? For example, will you restore FOI budgets that have been cut?

The BC Liberal government did not reduce the Information and Privacy Commissioner (IPC) Office budget by 35 per cent. In fact, the IPC budget increased 3.7 per cent from \$2.133 million last year to \$2.211 million this year. In 2001, the IPC's budget was \$2.28, a difference of 3 per cent.

The BC Liberal government strengthened the *Freedom of Information and Protection of Privacy Act* to provide the Commissioner with increased flexibility to act more efficiently, including power to:

- delegate the review of cabinet confidence information;
- delegate the review of law enforcement information;
- delegate order-maker power;
- decide whether to hold an inquiry in a particular case; and
- ask permission not to respond to specific repetitious, frivolous or vexatious requests.

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The all-party Select Standing Committee on Finance and Government Services sets budget targets for the IPC Office. A BC Liberal government will continue to consider the Committee's budget recommendations to ensure the IPC Office has the necessary resources to fulfill its mandate.

When the FOIPP act was passed, it was often stated that “fees will not be a barrier to access.” Today, many FOI applicants find fee estimates to be higher than ever – in fact, a major barrier. Do you think fees are a problem, and will you advocate more cost recovery for FOI or less?

The growth of electronic databases and software developments have given public bodies the capacity to download records quickly and to generate reports in accessible formats. Improvements in electronic records management systems have also dramatically reduced the time it takes to locate and retrieve records. This has reduced or even eliminated the fees that public bodies are authorized to charge for this service.

Section 75(1) of the FOIPP Act states that the head of a public body may require an applicant who makes a formal FOI request to pay fees for the following services: locating, retrieving and producing the record; preparing the record for disclosure; shipping and handling the record; and providing a copy of the record. Subsection (2) then makes it clear that fees are not charged for the first three hours spent locating and retrieving a record, or time spent severing information from a record. Under subsection (3), applicants who make formal requests for their own personal information are not required to pay a fee for the services listed above.

The Special Committee agreed with the Information and Privacy Commissioner's assessment that the current provisions in the Act reflect an appropriate user-pay approach that does not impose an undue cost burden on access applicants. The BC Liberal government agreed with the Special Committee's assessment in this regard.

Do you think there should be a fee for access to one's own personal information?

Under section 75(3) of the FOIPP Act, applicants who make formal requests for their own personal information are not required to pay a fee. The Special Committee concluded that there is no need to change this section and the BC Liberal government agreed with the Committee's conclusion.

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In his annual reports, the Information and Privacy Commissioner has repeatedly indicated that the foremost problem in the FOI process is excessive delay in responding to requests. Do you think action should be taken to reduce delay in responding to FOI requests?

Public bodies receive more than 20,000 FOI requests annually. A large number of straightforward requests are dealt with in a timely manner, with delays occurring mainly in relation to large or complex requests.

The Special Committee made several recommendations to strengthen the role of the Commissioner to help reduce delays in responding to FOI requests, including:

- improving the Commissioner's power to obtain statistical data;
- giving the Commissioner authority to require applicants to attempt to resolve complaints;
- removing calculation of any time taken for an OIPC referral back to the public body from the 90 day limit; and
- combining the complaint process and the review and inquiry process.

The BC Liberal government is reviewing these recommendations as we explore opportunities to reduce delays in responding to FOI requests.

Do you think the FOIPP Act should be extended to quasi-governmental bodies that are currently exempt, such as the new BC Ferries Corporation and the 2010 Olympic Games Organizing Committee?

The FOIPP Act currently covers approximately 2,200 public bodies in British Columbia, including provincial ministries, agencies, boards, commissions, and most Crown corporations.

The BC Liberal government strengthened the Act to allow new public bodies to be automatically added under the coverage of FOIPPA. As a result, an additional 19 public bodies, including the Forest Practices Board, the Employment and Assistance Appeal Tribunal, and Partnerships BC, were added to those government bodies that are required to disclose records under FOIPPA.

A BC Liberal government will continue to add public bodies under FOIPPA coverage where appropriate.

In 1996 the NDP administration changed the FOI Request Tracking System (RTS), so that it now rates requests by political "sensitivity." Since then, requests labeled "sensitive" are delayed significantly and the names of applicants are passed on to officials outside of the FOI branches. Do you approve of this practice, and if not, will you take steps to eliminate it?

The sensitivity ratings process is used in the government's corporate records tracking system (CRTS), an electronic database that installed in the year 2000 to track and monitor FOI requests. These ratings simply identify more complex requests where there may be third-party involvement, legal or cross-government concerns, or large amounts of information requested.

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The Special Committee suggested changing the administrative policy and practice regarding the sensitivity ratings process used in the corporate records tracking system to ensure that complexity becomes the sole criterion for classifying formal requests for government records, and that the new complexity ratings process treats all requesters equally and impartially and protects their personal identity.

The BC Liberal government is reviewing the Committee's recommendation to improve the tracking process to ensure complex requests are processed in a timely manner.

Following the tainted blood scandal, Ottawa passed a law to penalize the improper shredding and alteration of records by officials in the federal government. Will you advocate the same for the provincial government?

The retention and destruction of government records is governed by the Document Disposal Act and associated regulations. All B.C. statutes are periodically reviewed and a BC Liberal government will consider how to best strengthen Document Disposal Act in consultation with interested stakeholders.

A senior BC Government official recently stated publicly that "I delete my email as fast as I can." This highlighted a harmful trend toward a more "oral" style of government, where as little as possible is written down in order to avoid FOI requests. What is your position on such practices? Do you advocate any specific remedies to ensure the creation and preservation of public records?

E-mail is a record under the *Freedom of Information and Protection Act* and government policy makes it clear that it is to be treated as a record and managed appropriately. This is not to say that all e-mail must be retained. The *Document Disposal Act* permits transitory records to be destroyed when no longer needed.

A BC Liberal government will continue to provide access and privacy training to employees and elected officials to ensure these requirements are understood and respected.

Do you think the Legislature itself (eg. Clerks and MLAs' offices) should be covered by the FOIPPA? As well, will you implement recommendation 17 of the Special Committee that reviewed the FOIPPA, which is to extend the definition of officers of the legislature to include, for example the police complaints commissioner and the child and youth advocate?

The BC Liberals believe the application of the FOIPPA to the Legislative Assembly is a decision that should be made by the Members of Legislative Assembly representing all political parties in the Legislature.



FOR BRITISH COLUMBIA

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Thank you for the opportunity to address freedom of information and privacy issues. For your information, we will be posting your questions and our answers on our website, at www.bcliberals.com.

Sincerely,

The BC Liberal Party