

BULLETIN

THIS EDITION: INFO SUMMIT RECAP, FOI PERFORMANCE PLUMMETS, HEALTH PRIVACY BREACH + MORE

2012 BC INFORMATION SUMMIT TACKLES “GOVERNMENT 2.0”

On September 19th, some of British Columbia’s leading minds on freedom of information and privacy issues gathered at UBC Robson Square for the 2012 BC Information Summit. Dubbed *This Time, It’s Personal: Freedom of Information and Privacy Under Government 2.0*, the one-day conference dove into the finer points of the BC Government’s sweeping new “Government 2.0” information management initiative.

Since its 2011 unveiling, the Government 2.0 project has been the topic of much discussion and more than a little controversy. As an extensive package of reforms and technological overhauls, Government 2.0 promises to radically change the way that citizens interact with their government, and how their information is collected, used, and disclosed by the various public bodies we rely on for everything from housing to healthcare.

This year’s Info Summit proved to be a timely and engaging discussion of this project, and an important reminder that many of its potential pitfalls and drawbacks remain unknown to citizens.

BC’s Freedom of Information and Privacy Commissioner Elizabeth Denham kicked off the proceedings with a keynote address that explored some troubling developments that took shape during the last sitting of the BC legislature. Despite Premier Christy Clark’s oft-repeated commitment to being the first “Open Government Premier,” Denham noted that a number of the Clark government’s recent bills—particularly amendments to the *Animal Health Act*—follow a trend toward overriding and circumventing the careful balances built into the *Freedom of Information and Protection of Privacy Act*.

Denham, however, also recapped the steps taken over the last two years to advance the principles of accountability and transparency in government, pointing her office’s expanding list of investigations and increased capacity thanks to three new policy analysts.

Her words were an important reminder that Open Government doesn’t flow naturally from open information and data. Instead, it comes about through the measured adoption of new tools, coupled with a dual commitment to sensible policy and sound legislative frameworks. (story continues on page 2)

JUST REWARDS

In addition to providing outstanding commentary, the 2012 was also an occasion to celebrate the achievements of FIPA’s founder and first President, Darrell Evans (right).



Evans, who has selflessly dedicated his career to advancing transparency and accountability, was recognized at Info Summit with the Grace-Pépin Access to Information Award. The award, bestowed by the Office of the Information Commissioner, recognizes an outstanding commitment to access to information principles. Presented by Canada’s Information Commissioner Suzanne Legault and BC Information and Privacy Commissioner Elizabeth Denham, the Grace-Pépin Award is a much-deserved acknowledgement of Darrell’s contributions to the fight for the public’s right to know.

Darrell was also recently honoured with the Queen’s Diamond Jubilee medal, which recognizes significant contributions and achievements by Canadians. It is a fitting honour for Darrell, who has given countless hours to enshrining in law and practice the information and privacy rights of British Columbians and Canadians.

(continued from page 1...) Setting Open Government and technological boosterism aside, many of our panel sessions considered how researchers, advocates, and journalists still face major hurdles in accessing information through FOI.

For example, the “Freedom of Information and Government 2.0” panel, made up of Gwen Barlee (Policy Director, The Wilderness Committee), Chad Skelton (Investigative Reporter, Vancouver Sun) and Mike Larsen (Criminology, Kwantlen Polytechnic University), shared personal accounts of how difficult, time consuming, and expensive FOI remains in many cases.

That said, new technologies also received their due. Our “Open Data Report Card” session, attended by

representatives from the Ministry of Labour, Citizen Services and Open Government, the Community Social Planning Council of Victoria and OpenDataBC.ca explored how open data might deepen our democratic practices.

The event was also a cause for celebration, thanks to the awarding of the Grace-Pépin Access to Information Award to FIPA’s founder, Darrell Evans (see the insert for more details).

Oftentimes when information freedom and open government are addressed, it’s easy to get swept up in the excitement of new tools and technologies. This year’s Information Summit brought that enthusiasm for new possibilities together with the kind of in-depth detailed analysis we need to make informed decisions.

OIPC TO INVESTIGATE GOVERNMENT’S FAILURE TO POST FOI REQUESTS AFTER FIPA COMPLAINT

Responding to a [complaint filed by FIPA](#) in late August regarding the BC Government’s failure to post approximately two thirds of completed FOI requests—against its own policy—BC Information and Privacy Commissioner Elizabeth Denham will be looking into the problem as part of her current evaluation of the province’s Open Government initiative.

In a [letter to FIPA](#) dated August 27th, Assistant Commissioner Michael McEvoy wrote, “As a strong supporter of Open Government, the Commissioner is committed to helping ensure government’s initiatives in this respect meet the needs and expectations of the citizens of British Columbia.”

Denham announced the Open Government review in her September 2011 Report Card on the Timeliness of

Government’s Access to Information Responses. As part of this review, McEvoy stated that the “Open Information program and government’s policies and practices relating to the posting of access requests” will come under scrutiny.

McEvoy assures us that FIPA’s research will be considered in the course of this review, and says the report should be made public later this year..

We’re hopeful that the OIPC will take seriously the gap between the government’s stated policy of posting all completed FOI requests (except in ‘limited circumstances’) and the reality of the situation today: an unwillingness or an inability to post fully 67% (or 43% according to the Government!) of such requests.

PROTECT YOUR INFORMATION RIGHTS

Your support of FIPA essential in the fight for democratic FOI and privacy policy.

Here’s how you can help:

- > **BECOME A MEMBER**
- > **MAKE A DONATION**
- > **SPREAD THE WORD: TWEET US @BCFIPA**

join + donate:
fipa.bc.ca
for more information:
fipa@fipa.bc.ca

BC ELECTION LAW STILL HAS CONSTITUTIONAL PROBLEMS DESPITE BC COURT OF APPEAL RULING*

The ongoing saga of the BC Election Act has to be one of the strangest election stories in recent times. It all started with the government's 2008 attempt to expand the reach of its gag law, which restricts third party political advertising, beyond the election period. That plan was promptly shot down by the courts.

Undeterred, the Liberals put the law back on the hoist at the legislative garage. After some adjustments, the government referred it directly to the BC Court of Appeal for their opinion. In early October, the Court ruled once again that the amendments are unconstitutional, and urged the government to knock off the attempts to limit freedom of expression. The government says it will not appeal the decision.

But the truly strange part is that at no point in this comedy of errors did the government try to fix *another* major problem with BC's Election Act. Unlike federal or other provincial election laws, British Columbia's law fails to define a bottom spending limit in the registration requirements for third party advertisers. This means that anything said by anyone (except in very limited circumstances), if it is at all related to a party or candidate participating in the election, is considered to be 'election advertising'—even if not a single penny is spent communicating the message.

As the BC Court of Appeal described it in their judgment:

“Further, and more significantly, s. 239 prohibits third-party sponsoring of any election advertising unless the third party has first registered. There is no minimum amount that may be spent without registration. In the result, in both the pre-campaign and campaign periods, individuals and organizations

must formally register before engaging in any form of election advertising however minimal” (pp. 10-11).

This requirement—that anybody exercising their right to freedom of expression during an election must first register with Elections BC or face jail—must go. In fact, with all the legal jostling around the Act over the last few years, it's a mystery why it hasn't already been scrapped.

The BC government knew about this problem before the last election, and in 2010, the Chief Electoral Officer highlighted it in his report to the Legislature.

A 2010 report by the Canadian Centre for Policy Alternatives (co-published by FIPA and the BCCLA) entitled *Election Chill Effect*, found that these faulty advertising rules caused extensive problems for small spenders such as non-profits and charities during the 2009 provincial election. The rules led to widespread confusion, wasted resources, anxiety and, most dangerously, self-censorship among organizations that spent little or nothing on election advertising.

The government should (and could) have fixed this situation when it was amending the law this spring, but chose not to. It seems they're just fine dangling jail time over the heads of British Columbians who act on their constitutionally-protected rights. Perhaps it all has something to do with the possibility of an upcoming Senate election, an occasion that Elections BC [recently received a million](#) dollars to prepare for.

Or maybe they just want to go back to court again – third time's the charm?

*Adapted from a blog post originally published by the Huffington Post BC

QUESTIONS?

FIPA provides assistance, referrals, and support to the public on information rights issues free of charge. If you have FOI or privacy concerns, get in touch.

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LOCK DOWN

WALL OF SECRECY AROUND MINISTRY OF HEALTH
PRIVACY BREACH SLAMS THE DOOR SHUT ON
FREEDOM OF INFORMATION.

[ORIGINALLY PUBLISHED BY THE HUFFINGTON POST BC]

If you've ever had a bad first day on the job, you've got to feel for BC's new health minister, Margaret MacDiarmid.

On September 6th, no sooner had Minister MacDiarmid been sworn into her new post than she was rushed into a press conference to announce that her ministry had called in the Mounties to "investigate allegations of inappropriate conduct, contracting and data-management practices involving ministry employees and drug researchers."

Few details about the nature of those allegations have emerged since the story broke. Even with the very public firing of several ministry employees--some relatively high-ranking--control over information has been extremely tight.

Several months before the scandal broke, FIPA received some anonymous tips regarding possible improper (and troubling) data management practices at the Ministry of Health, particularly with respect to data sharing agreements between government and certain researchers and organizations.

At the time, they were only hints and allegations that we were unable to confirm. So on Aug. 2 of this year, we filed a FOI request with the Ministry of Health, requesting copies of various data sharing and/or other

agreements hammered out by the Ministry between Jan. 1, 2011 and the date of our request.

We also asked for internal correspondence pertaining to those agreements, and any emails, memos, or notices sent to ministry staff by the assistant deputy minister of the IT division regarding policy changes around the release of data to researchers. None of the records we asked for pertained to any kind of investigation for the simple reason that we had no idea there was an investigation going on.

All the same, on September 17th, the ministry slammed the door shut.

Citing a whole range of exceptions from legal privilege to law enforcement to personal privacy, the ministry refused to release any of the requested records. This, despite the fact that our request should have little or nothing to do with lawyers or police! An RCMP investigation shouldn't mean that every record held by a ministry is automatically off-limits to FOI requests.

The data sharing agreements we asked for, after all, are government contracts. Thanks to a number of recent precedents (including FIPA's successful eight-year legal battle with the B.C. government for the full disclosure of its \$300 million contract with IBM), the province has said it is giving up on trying to keep such contracts secret.

So why the clamp down? The non-disclosure exemption relating to law enforcement requires the government to show how releasing information would harm an investigation or other law enforcement activity. But in this case, the data sharing agreements we requested were signed well *before* this particular breach and certainly before the RCMP investigation began. Where, then, is the harm?

FIPA has responded to the ministry's blanket refusal with a complaint to B.C.'s Information and Privacy Commissioner.

"An RCMP investigation shouldn't mean that every record held by a ministry is automatically off-limits to FOI requests"

PROVINCIAL FOI PERFORMANCE PLUMMETS OVER LAST DECADE

Despite the government's increasing penchant for the collection, use, and disclosure of citizen data for its own purposes, it seems that when it comes to releasing information about its own operations, the big data goldrush comes to a screeching halt.

In September, FIPA released statistics based on data published by the province's Chief Information Officer that revealed a staggering decline in provincial FOI performance over the past decade. Our initial calculations showed that between July 2011 and June 2012, fully 24% of general FOI requests filed in this province were returned with "no responsive records."

This means that nearly a quarter of all requests made by British Columbians apparently correspond to *nothing* that the provincial government holds.

Troubling enough on its own, this figure became an even greater cause for concern the deeper we dug into the CIO's data. A second set of calculations revealed that the grim FOI situation in BC is the product of a decade-long trend toward non-disclosure, especially among those requesters most likely to ask inconvenient or impertinent questions of our government.

Our calculations, for example, showed that back in the 2002-2003 fiscal year, only about 13% of FOIs filed by interest groups came back non-responsive. By the time this past spring rolled around, however, things looked significantly different, with more than 18% per cent of interest group requests shut down by the government claiming they had no relevant records. This represents an increase of approximately 50%.

The news media fared even worse. In 2002-2003, only 11.3% of the general FOI requests made by media organizations stalled on non-responsive records. By the end of the 2011-2012 fiscal, that figure had

skyrocketed to 33.1%, an increase of almost 200% over 10 years.

In response to these staggering numbers, FIPA filed a complaint with Information and Privacy Commissioner Elizabeth Denham, calling for an investigation.

What's more, the timing of these increases seems to correspond almost exactly with improvements in FOI *timeliness*, which Denham noted in her 2010 timeliness

report. But in that same report, she suggested that improvements in FOI response time might be the product of an increase in denial of access. In Denham's words the province's steady increase in timely responses could be a function of "... simply denying access or determining there were no responsive records to their requests."



After all, it doesn't take long to respond to an FOI request if the response is simply "no records." Based on our findings, we think Denham might have been on to something.

With the complaint now in the Commissioner's hands, we're hopeful that this slide towards non-disclosure can be stopped and reversed.

BY THE NUMBERS

Between 2002 and 2012, rates of non-responsive FOI requests increased...

> 115% OVERALL

> 50% FOR INTEREST GROUP REQUESTERS

> 200% FOR MEDIA REQUESTERS

TROUBLED INTEGRATED CASE MANAGEMENT SYSTEM “STABLE AND SECURE” – MINISTER

FIPA and our allies have finally received an answer to our call for a public inquiry into the disastrous Integrated Case Management System. The official government word on the matter? Everything is fine.

That underwhelming reaction came from Minister of Social Development Moira Stilwell, who was designated by Premier Christy Clark to respond on behalf of the government. FIPA’s request, which is [available through our website](#), followed a scathing statement from Representative for Children and Youth Mary Ellen Turpel-Lafond, who referred several problems with ICM to the Information and Privacy Commissioner and to the Auditor General.

In her letter, however, Minister Stilwell simply states that “With the implementation of any major system project of this scale, challenges present themselves along the way,” later admitting that the Ministry of Child and Family Development “has experienced some challenges.”

The ICM system was supposed to create a comprehensive personal data sharing system involving not just the provincial government, but also hundreds of independent community service organizations contracted to provide government services. It was supposed to provide “the right information, to the right people, at the right time.”

Instead, there has been a litany of concerns over the system, such as whether sensitive personal information is being properly captured, training difficulties, and in the words of Turpel-Lafond, “overwhelming” technical issues.

This government seems to need a reality check on the severity of the issue and the risks it poses to the privacy rights of British Columbians. FIPA is currently considering options for a response that would provide this much-needed dose of facts.

FIPA + THE HUFFINGTON POST BC

FIPA is excited to have joined the blog team with the recently-launched BC branch of Huffington Post Canada. We’ll be posting regular updates and analysis on the information rights issues that matter to British Columbians.

Our first posts are already available at huffingtonpost.ca/vincent-gogolek. Take a look at what we’ve produced so far, make sure to subscribe to the RSS feed, and share them with your friends!

FIPA AT MEDIA DEMOCRACY DAYS

On November 3, FIPA will be joining more than 20 local media and advocacy organizations at Media Democracy Days (MDD) 2012. For 12 years, MDD has brought community members, activists, policy makers, and artists together to address issues in the contemporary media.

FIPA will be sharing a table with the BCCLA to speak with community members about information rights, privacy, and freedom of information.

Visit us in the **Promenade of the Central Library (350 W. Georgia) from 12 PM-5 PM, Saturday November 3rd**. The event is free and open to the public, including the panel sessions and keynote discussions which take place throughout the day.

Visit mediademocracyday.org for more information