

BRITISH COLUMBIA

FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION

2012 Annual Report

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FIPA's Annual General Meeting.
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Vancouver, British Columbia.

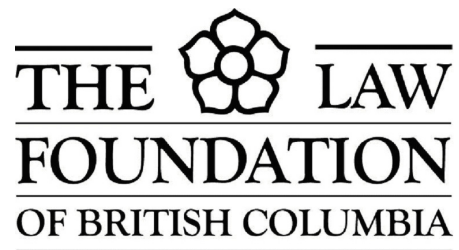
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The B.C. Freedom of Information and Privacy Association thanks the Law Foundation of B.C. and all our other donors, funders, and contributors for their ongoing support of our advocacy, research, programs, and services.



We also acknowledge the financial support of the Province of British Columbia (Gaming Policy and Enforcement Branch)

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MESSAGE FROM THE EXECUTIVE DIRECTOR

To our valued members, partners and allies...

It's no exaggeration to say that 2012 was a busy year for FIPA. As you'll see throughout this report, the last twelve months have seen the Association take on extensive litigation, advocacy, education, and law reform work on a number of urgent issues.

Since our last Annual General Meeting, we have worked with a broad range of communities and struck many exciting partnerships in our efforts to defend and advance the principles of Freedom of Information. We also continue to push government to release important public records, and to research and critique privacy-invasive information technologies and policies in the interest of keeping access, privacy, and transparency on the public agenda.

2012 was also filled with exciting internal changes. New staff and board members have helped the Association branch out and reach new communities, resulting in new individual and organizational memberships, increasingly diverse event and program attendance, and significant increases in our reach, both online and off.

This growth was bolstered by several major victories, including the release of the government's \$300 million contract with IBM after eight years of delays and an extremely successful Information Summit.

But challenges persist. Low interest rates and general economic uncertainty have put a strain on organizations across the non-profit sector, and FIPA is no exception. In the coming months, we will be working hard to diversify and expand our income streams to ensure that we can continue providing excellent service to our members and to the community at large.

I'd like to thank you all for your support of the Association. We're looking forward to working with our members as we face new challenges and achieve new victories in 2013.

Vincent Gogolek,
Executive Director

OUR WORK

The B.C. Freedom of Information and Privacy Association is a non-partisan, non-profit society that was established in 1991 to **promote and defend freedom of information and privacy rights in Canada.**

Our goal is to **empower citizens** by increasing their access to information and their control over their own personal information. We serve a wide variety of individuals and organizations through programs of public education, public assistance, research, and law reform.

Emerging in the early 1990s out of a grassroots coalition dedicated to advocating for the passage of B.C.'s *Freedom of Information and Protection of Privacy Act (FIPPA)*, FIPA is a tireless defender of information rights. For the past twenty-one years, we have addressed the information rights issues that matter to British Columbians. We have fought for the public disclosure of government contracts worth hundreds of millions of dollars. We have worked to defend and expand the reach of the *FIPPA*. We have convened dialogues, conferences, workshops, and celebrations dedicated to establishing a democratic balance of power between the institutions, the citizens, and the officials who make up our society. Most importantly, we have helped countless citizens, in one-on-one

conversation, understand and act on their fundamental information rights.

With a diverse, intergenerational membership of over 200 individuals and organizations, FIPA is a cornerstone of B.C.'s civil society community. Our main activities include:

Assisting the Public:

Every year, FIPA provides hundreds of individuals and organizations with information and advice on freedom of information and privacy issues. We provide this advice free of charge during regular business hours via our telephone and email helplines, as well as around the clock through our online help topics and resources.

Public Education Programming:

FIPA produces a variety of public education events on freedom of information, privacy, and legislative and legal issues. Recent examples include our non-profit and small organization-focused Privacy Skills Networking Breakfast, our annual Freedom of Information Workshop, and our bi-annual Information Summit. Over the last 21 years, we have also issued more than sixty publications and reports, including two soft cover books, all of which advance public legal education in B.C.

Legal and Policy Research:

We conduct ongoing research into the policy and legal climates that structure access and privacy regimes in B.C. and across Canada. In addition to conducting and commissioning our own studies, we provide research support to lawyers, journalists, students and the general public. Our library of books, articles and research papers is also available to researchers upon request.

Public Interest Advocacy and Law Reform:

We are Canada's only public interest advocacy and watchdog group fully dedicated to FOI and privacy issues. We constantly monitor the performance of government bodies and Canada's Information and Privacy Commissioners, and are frequently consulted on policy issues by politicians and government officials.

Legal Advocacy and Litigation:

FIPA regularly engages in legal advocacy before B.C.'s Information of Privacy Commissioner and various Canadian courts. In cooperation with other organizations, we also operate a modest legal assistance program for people with serious and/or complicated FOI and privacy issues.

HIGHLIGHTS: 2012 in Numbers

FIPA's mission is to protect and advance the freedom of information and privacy rights of people in British Columbia and across Canada. We fulfill this mission by providing programs of legal assistance, public legal education, legal and policy research, law reform, and community outreach and advocacy.

PEOPLE SERVED: 2009-2012

	2009	2010	2011	2012
Helplines	399	462	510	285
Legal Assistance	16	42	30	21
Website Visits	102,576	107,439	102,773	97,064
Website Hits	652,136	750,757	812,867	1,050,575
Help Topic Hits	12,066	13,145	20,965	42,540
Media Interviews	108	118	117	175
FIPA Event Attendance	616	255	210	160
Speaking Engagements	490	319	544	370 (estimate)*
NPC Listserv	142	145	163	163
Followers (Twitter, News, Members)	481	522	650	1,221

*External events organized by colleagues and partner organizations.

Notes:

In 2012, at the request of the Law Foundation of B.C., we began recording the number of legal cases we initiate and complete annually. As this is a new metric, we have no previous figures for comparison, but legal intervention and litigation did indeed make up a significant portion of our activities in 2012.

Grand totals are not provided for this table as some metrics (website hits and visits) cannot reliably be read as indicators of unique or independent visits.

In April 2012, FIPA had approximately 180 Twitter followers. Less than a year later, in March 2013, we have just over 720 – a 400% increase!

HIGHLIGHTS:

2012 in Accomplishments and Challenges

NOTABLE ACCOMPLISHMENTS

Victory in IBM FOI Case: In June 2012, FIPA succeeded in getting the B.C. government to disclose its \$300 million workplace services agreement with IBM, after eight years of costly and unnecessary delay. This was a major victory for the Association, but more importantly, for the access and information rights of British Columbians.

FIPA hopes that this victory establishes a new standard of openness and transparency when it comes to the disclosure of government contracts and service agreements.

Federal government kills Bill C-30: In February 2012, FIPA joined a coalition of organizations led by OpenMedia.ca dedicated to fighting back against Bill C-30, the government's 'lawful access' legislation; or, as it became known, the 'warrantless online spying bill.' This coalition sparked and mobilized a massive public outcry against the bill and in early 2013, Justice Minister Rob Nicholson announced that C-30 would not be returning to Parliament. More information on C-30 and FIPA's other advocacy efforts can be found on page 11 of this report.

Effective Legislative Interventions: The numerous submissions, complaints, and research reports that FIPA produced in 2012 are currently under review at all levels of government, from the Office of the Information and Privacy Commissioner in British Columbia to the House of Commons Committee on Access to Information, Privacy and Ethics. As well, our litigation efforts, particularly our work on B.C.'s *Election Act* (page 13), have been highly effective at drawing attention to the legislative deficiencies that impinge upon the rights of individuals.

CHALLENGES AND OPPORTUNITIES

Resources and Funding: As in past years, scarcity of resources was a major obstacle in 2012. Low interest rates have taken a toll on the Law Foundation's income, and general economic uncertainty continues to make personal and corporate giving challenging and highly competitive. FIPA has weathered this storm better than many organizations, but we are still working to diversify our funding model to ensure our continued success. Efforts include increased corporate membership fees, new resources released on a 'pay-what-you-wish' basis, and the development of new cost-sharing community partnerships.

Infrastructure: Much of FIPA's office infrastructure--particularly our computer systems--is outdated. In the next 2-3 years, we are facing the prospect of losing support for certain operating systems. As well, structural gaps between our web analytics environment, our email client(s) and our constituent management system continue to create inefficiencies that, while minor in an individual sense, quickly accrue and take time away from important project work. In response, FIPA is collaborating with our long-time IT consultant to develop a cost-effective upgrade and replacement plan for key systems.

Media presence and mix: Over the past twelve months, FIPA's online presence has increased markedly, with web traffic reaching its highest levels ever. Conversion rates, however, remain low. We're seeing more visitors, yet only a few become donors or members. As we face the prospect of uncertain foundational funding, this gap needs to be addressed. Our website development initiative (page 9), though facing its own obstacles, is a first step in this direction. By working toward a stronger end-user experience, we hope to increase conversion rates and more effectively develop our member and donor base.

PROGRAM REVIEW

Public Services

In 2012, FIPA provided direct assistance to **285 people** via our telephone and email helplines. This is a decrease from 2011 levels, but the drop is offset by growth in other areas, particularly in overall web traffic, Help Topic visits, news subscriptions, and social media following (Twitter).

Our online Help Topics are one of the most important elements of our public assistance program. In 2012, they received a total of **42,540 hits**. This is an **increase of approximately 103%** over 2011 levels. This accounts, at least partially, for the drop in direct helpline service over the past twelve months. It also reflects our growing investment in online constituent engagement strategies

as well as our increasing use of digital tools to reach new publics.

FIPA's Help Topics provide information on how to file FOI requests with various public bodies, appeal the decisions of those bodies, request personal records, and make privacy complaints to the appropriate commissioner(s).

In cases where more than summary advice is required, we provide basic legal assistance to our constituents. In 2012, we **provided legal assistance to 21 people** (a slight drop from last year) and made two referrals to legal representation.

Public Legal Education

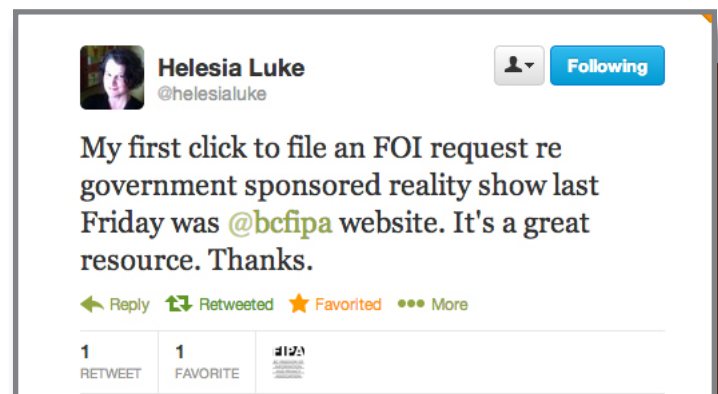
Outreach and Communications

Website: Over the past year, FIPA's website received **1,050,575 hits** (a 27% increase over 2011 and the first time we have passed 1,000,000 hits) and **97,064 visits** (a slight 5.5% drop from 2011 levels). Traffic reached its highest point in November, at more than 140,000 hits, and dropped slightly in December, reflecting typical holiday season slowdowns in civil society and government activity.

These overall increases can likely be attributed to our new, more comprehensive communications strategy, which leverages expanded digital publishing activity and social media networking to drive traffic.

Media Interventions: FIPA continues to appear frequently in news and media reports throughout B.C. and across Canada. Together, our Executive Director and President provided commentary in **157 print, web, television, radio, and documentary film items** in 2012, spanning such outlets as the Canadian Press, CBC/Radio-Canada, CTV Television News, Global TV News, The Times Colonist, and the Vancouver Sun. This is a **49% increase** in coverage over 2011. Further, in September, Executive Director Vincent Gogolek became a regular blogger for the **Huffington Post BC**,

allowing FIPA to publish commentary on information rights issues several times per month in a high traffic forum. In 2012, we published ten pieces, all of which are available in [Mr. Gogolek's author archive](#).



In March 2013, journalist Helesia Luke made national headlines and sparked widespread public outcry when she broke the story that Public Safety Minister Vic Toews had personally endorsed the filming of a Canadian Border Services Agency raid on a Vancouver construction site by a reality TV crew. Luke's first step in getting the story? A visit to FIPA's online FOI resources.

Speeches and Presentations: In May, Vincent Gogolek addressed approximately **250 people** at a Vancouver Coastal Health privacy workshop, and in September, he moderated a panel session at the 2012 B.C. Information Summit, attended by **approximately 100 people**. Finally, in October, Mr. Gogolek spoke to **30 people** at the B.C. Society of Transition Houses' Annual Training Forum.

Events

1) 2012 Annual General Meeting: On April 18th, 2012, FIPA held its Annual General Meeting at the YWCA Hotel in Vancouver. In addition to updates on the past year's operations, the event featured guest speaker Mike Larsen, a Professor of Criminology at Kwantlen Polytechnic University and co-editor of the *Journal of Prisoners on Prisons*. Drawing on his recently-released collection *Brokering Access*, Larsen delivered a talk on the use of ATI and FOI as research methodologies in the social sciences, and has since agreed to partner with FIPA on further projects and initiatives.

2) 2012 B.C. Information Summit On September 19th, FIPA hosted approximately 100 of the province's leading information and privacy experts at our bi-annual Information Summit. Featuring more than twenty outstanding speakers who addressed a wide variety of pressing information issues, Info Summit 2012 was a success on multiple fronts. Feedback on the conference was uniformly positive while providing plenty of suggestions for growth, improvement, and expansion.

In November, Tyler Morgenstern represented FIPA at Media Democracy Days Vancouver, which was **attended by approximately 3000 people**. He also gave a talk on privacy and surveillance to a group of about **40 students** at the School of Communication at Simon Fraser University. In February, President Richard Rosenberg spoke to a group of **20 UBC students** on a number of privacy issues.

The conference was also a financial success, turning a small profit for the Association. Finally, Info Summit 2012 allowed us to establish a number of new institutional and community partnerships across a number of key interest groups with whom we haven't historically engaged.

3) Open Data, Freedom of Information and You-Strategies for Access: Shortly after the Information Summit, on September 28th, FIPA hosted our annual Freedom of Information skills workshop at the People's Law School. Approximately 40 people from various sectors (non-profit, social mission, advocacy, journalism, higher education, and government) attended the session, which featured commentary from and discussion with three local veteran users of FOI: Frances Bula, Keith Reynolds and Bob Mackin.

This event was also very well received in evaluations, and demand seems to be high for more programming of this sort.



“...I found it **INVALUABLE**—full of great ideas, important public policy criticism and top-notch speakers. Government transparency and accountability is the cornerstone of democracy and summits like this one are a key part of ensuring our rights are respected.”

Jordan Bateman, B.C. Director, Canadian Taxpayers Federation on Info Summit 2012

B.C. Information and Privacy Commissioner Elizabeth Denham addresses the 2012 B.C. Information Summit

Special Projects

1) Grace-Pépin Access to Information Award: At the Information Summit, Canada's Information Commissioner Suzanne Legault and B.C. Information and Privacy Commissioner Elizabeth Denham presented FIPA founder and former Executive Director Darrell Evans with the Grace-Pépin Access to Information Award. The award, which recognizes an outstanding commitment to the principles of access and transparency, was the result of a nomination submitted by FIPA and several of its partners in July. It is a fitting tribute to Darrell's tireless work in founding and developing FIPA over the past twenty years, and an important marker of all that the Association accomplished under his direction.

2) Website Renewal Initiative: Over the past twelve months, FIPA has seen a steady increase in web traffic, meaning that more of our services than ever are being provided online. Our website is now a vital component of our public service delivery strategy. As such, in 2012, we began taking steps to redevelop the FIPA website, which has existed in its current form since the early 2000s. An application for funds to support the redevelopment was submitted late in the year. In the event that the funds are not confirmed, we will work with the Board of Directors to develop a new strategy for 2013.

3) FOI Academic Resource Project: In December, FIPA submitted an application to the Law Foundation of B.C. for funding to develop a "minibook" focused on academic uses and applications of FOI and ATI. Discussions of content and preliminary drafting are already under way with our lead researcher and writer, Mike Larsen of Kwantlen Polytechnic University. Law Foundation adjudication of applications is now complete and FIPA's funding has been confirmed in the amount of \$14,000. The project will be developed through the spring and summer of 2013.

4) Contribution to new collection on environmental law reform: In the second half of 2012, Executive Director Vincent Gogolek co-authored a chapter with privacy and FOI expert (and new Member of Parliament) Murray Rankin for the new collection, *Maintaining SuperNatural BC for Our Children: Selected Law Reform Proposals* (Ed. Calvin Sandborn, Environmental Law Clinic, University of Victoria). The chapter, entitled "Reforming Freedom of Information Law," outlines how a more functional provincial FOI regime would contribute to a broader public understanding of environmental policy making. In January 2013, it was serialized as part of a *Tyee* feature on the collection, and remains freely available through the ELC's website.

Public Legal Education

Submissions and Complaints

1) Request for an Investigation into Disregard of Section 25 of FIPPA by Public Bodies: On June 6th, the Environmental Law Clinic at the University of Victoria (ELC) submitted a new complaint to the Office of the Information and Privacy Commissioner on FIPA's behalf. Outlining six cases where the public was not told about potentially hazardous situations, the submission requests an investigation into the disregard of Section 25 of the *Freedom of Information and Protection of Privacy Act* by several public bodies and government departments. Section 25 requires that public bodies release records if they are relevant to environmental and/or public health risks, even when no FOI request has been made.

The commissioner's office is now investigating this issue. A report is expected sometime in the spring or summer of 2013.

2) Response to Treasury Board Consultation on Open Government: Released early in 2012, this submission outlines FIPA's response to the Open Government Partnership consultation process undertaken by the federal Treasury Board in 2011. Our submission presents a comprehensive examination of the Conservatives' failure to fully implement even one of the eight Access to Information promises on which they campaigned in 2006. It also contends that "open government is more than just open data," arguing that any meaningful open government policy must be accompanied by an overhaul of our badly broken ATI system.

3) Complaint to Information and Privacy Commissioner regarding FOI posting policy: In August, following the completion of research into the state of provincial FOI performance, FIPA filed a complaint with the Information and Privacy Commissioner regarding the

government's failure to post all completed FOI requests online, despite their stated policy to do so as part of their open government commitments. Our research found that 67% of requests completed by government were not available online. Assistant Commissioner Michael McEvoy responded to our complaint, noting that this issue would be investigated as part of the OIPC's overall open government evaluation, set to conclude in mid-2013.

4) Submission to Chief Information Officer and Ministry of Labour, Citizen Services and Open Government regarding FIPPA regulation consultation: This submission, produced jointly with the B.C. Civil Liberties Association, outlines FIPA's opposition to most of the amendments included in the 2011 review of the *FIPPA*. Our critique centred on the expansion of the collection, use, and disclosure of British Columbians' personal information in the name of providing "citizen centred services."

5) Call for public inquiry into Integrated Case Management system: In July, Mary Ellen Turpel-Lafond, B.C.'s Representative for Children and Youth, released a statement slamming the government's leaky, ineffective, insecure Integrated Case Management computer system. In her statement, Turpel-Lafond claimed that the \$182 million system is plagued with "overwhelming" technical deficiencies that seriously compromise the safety and well-being of B.C.'s children and families.

In response to this statement, FIPA, the B.C. Civil Liberties Association, the B.C. Society for Transition Houses, Positive Living B.C., the B.C. Coalition for People with Disabilities and ASPECT formed a coalition to call on the government to conduct a public inquiry into the system's many technical and practical shortcomings. The government has declined to carry out the inquiry, but our coalition continues to track and critique the system, demanding stronger privacy protections and support for frontline service providers.

6) Complaint to Information and Privacy Commissioner regarding declining FOI performance: In September, FIPA submitted a complaint to the OIPC regarding a staggering decline in provincial FOI performance over the past ten years. Based on data published by the Chief Information Officer, FIPA found that the number of general FOI requests returned with "no responsive records" has doubled since 2002.

This means that nearly a quarter of all requests submitted to public bodies in B.C. come back with no records whatsoever. Non-responsive rates for some requester groups even saw spikes in excess of this overall jump. More than one third of requests submitted by media workers, for example, now come back non-responsive.

In response to this complaint (and several more submitted by journalists following news that the two-week investigation into the resignation of Ken Boessenkool, Christy Clark's former Chief of Staff, had apparently generated no records), the commissioner's office initiated an investigation into the issue. That report was issued in March 2013. Despite finding that government is technically compliant with their legislated duty to assist requesters, the report also noted a large and growing "oral culture" at the top levels of government, particularly the Office of the Premier, which returns 45% of requests with no records. FIPA responded to the commissioner's report in numerous media and news items.

7) Submission to federal Access to Information Consultation: In December, FIPA completed a comprehensive submission to Information Commissioner Suzanne Legault's consultation on Canada's *Access to Information Act*. The submission, which is publicly available on our website, focuses on lowering fees for requesters, expanding rights of access beyond Canadian citizens, giving the commissioner full order-making powers, making electronic records available to requesters, and mandating the disclosure of records if they are deemed in the public interest.

8) Submission to ETHI study on privacy policy and social media technology: Also in December, FIPA contributed to a parliamentary study currently underway in the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI). The study examines the privacy implications of new social media technologies and explores possible policy directions for safeguarding the rights of Canadians, even as those technologies change at a rapid and increasing pace. The full submission, which focuses on creating policies that respond to the mechanics of big data by (re)defining privacy as a shared and social value, as opposed to an individual one, is available through our website.

The study is expected to wrap up in mid-2013 with the release of a report on the committee's findings.

“If the information used to breach our privacy rights increasingly comes from our encounters in digital space, and not simply our individual patterns of disclosure, then any policy framework that would defend privacy must take seriously the concepts of INTERACTION AND SOCIALITY. It must approach the notion of privacy on broad, flexible terms...”

Excerpt from FIPA’s December, 2012 submission to ETHI

Other Research and Casework

In the course of answering inquiries from the public, FIPA researches a number of information rights cases and investigates emerging issues with our own FOI requests. In 2012, we filed upwards of 20 FOI requests with a wide range of government agencies and public bodies. Due to delays and negotiations, a number of these requests remain in process and are at various stages of completion, from initial research to appeals with the Information and Privacy Commissioner. Some of the notable issues that we investigated through these means in 2012 include:

1) Piecemeal erosion of the *FIPPA*: Over the summer, FIPA investigated and responded in the media to a series of provincial bills that, while ostensibly unrelated, nonetheless worked together to undermine the privacy rights of British Columbians by eroding the statutory protections of *FIPPA*. Our opposition was echoed by the Information and Privacy Commissioner, who issued an unprecedented four letters to different ministries in a single week, calling on them to respect provincial information law. FIPA continues to watch for this kind of activity in the course of policy development across government.

2) Government Contracts: In June, the B.C. Supreme Court once again ruled in FIPA’s favour in our eight-year fight for the disclosure of the B.C. government’s \$300 million workplace services agreement with IBM. In that ruling, the court ordered the release of the full, unredacted contract. We continue to research and monitor contracting across government, and are currently assessing which agreements should be pursued.

3) Lawful Access, Surveillance and Border Privacy: As a partner in the Stop Online Spying campaign, led by OpenMedia.ca, FIPA played an active role throughout 2012 in fighting back against the federal government’s attempts to expand its powers of surveillance through Bill C-30, its controversial and extremely unpopular ‘lawful access’ legislation. In early 2013, federal Justice Minister Rob Nicholson announced that, in response to the massive public outcry raised in no small measure by Stop Online Spying, Bill C-30 would not be returning to parliament. This is a major victory for the coalition, and more importantly, for the privacy rights of Canadians.

4) Transparency in higher education: For some time, FIPA has been pushing the provincial government to close a loophole in the *FIPPA* that allows public education institutions like universities and colleges to set up wholly-owned subsidiary corporations that are not subject to FOI. Following a cabinet shuffle in the fall, FIPA sent a letter to the new Open Government minister Ben Stewart to request that he move forward with his predecessor’s commitment to address this issue. In a response, Stewart stated that he would do so, but we have yet to see any concrete action. We have also been monitoring, through FOI requests and conversations with allies, emerging issues around university donor agreement transparency. This research is still preliminary, and has mostly been developed by other organizations. But in light of recent controversies with respect to the integrity of academic freedom, we plan to continue pressing for the proactive disclosure of major funding agreements between universities and private donors.

5) Development and implementation of new provincial ID card: In 2012, we spent a significant amount of time researching and tracking, in collaboration with the B.C. Civil Liberties Association, the implementation of the new B.C. Services Card, which after a delay last November was unveiled in February 2013. Our work on this matter has consisted primarily of filing FOI requests to obtain data on the procurement and development of the cards, while the BCCLA has been developing a full report on the project, funded by the federal Office of the Privacy Commissioner. Despite the climate of silence that surrounds the project, we have managed to gather enough information to produce an FAQ-style fact sheet on the card, and are working towards a more comprehensive and coordinated public opposition for 2013.

6) “Stop the Trap” Coalition and trade agreement advocacy: In the fall of 2012, FIPA joined more than twenty civil society organizations from around the globe to voice opposition to the Trans-Pacific Partnership (TPP). The TPP is a secretive trade deal among Pacific

Rim countries currently being hammered out behind closed doors by national governments and corporate lobbyists. Canada joined the negotiations in October.

By pushing for changes to intellectual property regimes and increasing data sharing among signatory nations, the TPP threatens to undermine Canadian privacy and copyright legislation while clamping down on free speech by criminalizing several everyday uses of the internet. British Columbia’s privacy laws have been singled out by the US Trade Representative as potential barriers to so-called ‘free flow’ provisions that would increase the movement of Canadian data between nations who ratify the agreement.

The conversation about the TPP has also expanded in recent months to include resistance to the largely discredited ACTA (rejected by the European Parliament), along with a number of other multilateral trade agreements. Efforts are now underway to mobilize the Stop the Trap Coalition against these agreements in a broader sense, but this work is in its infancy.

Public Interest Advocacy & Law Reform

1) Ongoing BC Ferries FOI Battle: FIPA is still awaiting a hearing date for the ongoing refusal of the BC Ferries Corporation to release records related to a 2008 announcement of rate reductions by then-Premier Gordon Campbell. Successive requests and complaints have seen BC Ferries initially claim that 189 pages of documents would be made available for \$900. That fee has since been whittled down to nothing, but so too has the number of responsive pages dropped to 33 (minus claimed exceptions to release). We hope a hearing will be set in early 2013.

2) Ministry of Health data breach FOI: In early 2012, FIPA received anonymous information about possible impropriety in the sharing of data with outside researchers by the B.C. Ministry of Health. After attempts to confirm this information informally proved unsuccessful, FIPA filed an FOI request for records confirming the alleged problems. A month later, Health Minister Margaret MacDiarmid held a press conference to announce an inquiry into and firings associated with this alleged breach. The ministry has since refused to release any records on the incident to FIPA, claiming that, since the issue is under investigation, it is exempt from

doing so under section 15 of the *FIPPA* (law enforcement). We are challenging this as an overly broad interpretation of the section, since there is no indication that the RCMP is actually investigating the matter. There should be no reason, then, to withhold all records.

3) Use and misuse of personal information by government: FIPA has been asked to intervene in a hearing convened by the Office of the Information and Privacy Commissioner related to a government department receiving employment references from a job applicant. Instead of contacting the references that the prospective employee provided, the department contacted three other people, without the applicant’s consent.

This case will help determine whether section 26(c) of the *FIPPA* authorizes a ministry to collect personal information from individuals other than those an applicant or other individual has authorized. It will also determine whether section 27 (1) authorizes public bodies to collect personal information directly, without consent.

FIPA has agreed to intervene in this case, to be heard in spring 2013.

4) FOI for ministers' private emails regarding Burnaby Hospital Community Consultation: This FOI request relates to a series of messages that were sent from the Burnaby Hospital Community Consultation Committee to Health Minister MacDiarmid's personal email account, but which nonetheless dealt with ministerial and public business. FIPA has requested copies of all emails from this committee to both the former and current Ministers of Health, expressly including personal accounts. In recent weeks, this issue has expanded in scope, with various leaked documents and investigation reports showing that throughout government, the use of

personal emails by staff and bureaucrats to keep records out of the reach of FOI requests is commonplace. Given these controversies, we view this as a potential test case, with links to the issue of "no responsive records." The UK Information Commissioner has issued guidelines and made orders pertaining to the release of private ministerial emails. At the time of writing, the B.C. Information and Privacy Commissioner had just released a similar set of guidelines, along with an announcement of a preliminary investigation into the issue. We look forward to seeing if and how these guidelines are adopted by government.

Litigation and Matters Before the Courts:

1) PIPA case between client and insurance company regarding inappropriate use of credit information: At the request of the Information and Privacy Commissioner, FIPA intervened in this private sector privacy hearing. An unrepresented individual made a complaint to the OIPC against his insurance company under the *Protection of Personal Information Act* for alleged improper use of his personal credit information. The client consented to the collection and use of his information for a credit check, but it was subsequently used for a different, unrelated purpose: to assess risk and claims level.

The OIPC ordered that, although the collection was reasonable, the company was still required to get the consent of its customers to justify its disclosures. The company filed for a judicial review of the decision and FIPA stood as an intervenor at the hearing in January 2013, though by the time it took place, the company in question had conceded on the main privacy issue, which dealt with distinguishing informed from implied consent. Joseph McArthur of Blake Cassells and Graydon is acting for FIPA *pro bono* in this case.

2) Possible intervention in Supreme Court of Canada in 'policy advice' FOI case: In November, the Ontario Information and Privacy Commissioner was granted leave to appeal a decision of the Ontario Court of Appeal, which would allow public bodies more scope to refuse to release information it considers to be 'advice and recommendations.' This case is important to B.C. because our Court of Appeal made an even more restrictive ruling in 2002, which has had negative effects on transparency and access ever since. FIPA has retained Brent Olthuis of Hunter Litigation as *pro bono* counsel in this matter and will be seeking intervenor status.

3) Election Act Litigation: In January 2013, FIPA filed a notice of civil claim against the provincial government at B.C. Supreme Court to challenge the unconstitutional third-party advertising provisions in its *Election Act*. FIPA's intervention in this issue began when, in the summer of 2012, the government sent its latest amendments to the *Act* to the Court of Appeal on a constitutional reference. The question posed to the court related to the constitutionality of provisions that restrict freedom of expression before and during pro-

"I want to recognize [those] who have partnered with us, who have challenged us, complained to us, and who work hard to put access and privacy issues on the front burner and on the front page. FIPA is one of the BEST EXAMPLES of that kind of public interest advocacy at work. You play a VITAL ROLE in contributing to the terms of the debate, and the public dialogue and public interest"

Elizabeth Denham, Information & Privacy
Commissioner of B.C.

vincial election periods. FIPA was an intervenor at this hearing and challenged the extremely broad definition of what constitutes "election advertising," as well as the lack of a lower spending limit on the registration requirement for election advertising sponsors. FIPA's position was that the requirement to register as a sponsor with Elections BC before exercising the constitutional right to free speech is invalid.

The Court of Appeal found that the government's amendments were contrary to the Charter and infringed upon freedom of expression in the pre-campaign period. The Court also addressed some of the issues that FIPA raised, but as the spending floor question was not itself included in the reference, it was not dealt with substantively.

In 2013, FIPA will be collaborate with our pro bono legal counsel, Sean Hern of Farris Litigation, to press government further on this issue.

“FIPA’s recent panel on Open Data and the Freedom of Information Act (September 28, 2012) brought together active, experienced journalists and researchers who provided INCREDIBLY USEFUL KNOWLEDGE of the FOI process that isn’t being offered anywhere else in Vancouver...The panel was in fact so diverse that it sparked a dialogue that revealed the real frontiers of the Freedom of Information process and the changes in the culture of public information that are currently taking place. I benefitted greatly, as did the many young activists, journalists, and researchers who took part.”

Sean Antrim, Executive Director
Coalition of Progressive Electors

ORGANIZATIONAL CHANGES

Financial Report: Variance reports and financial statements for 2012 are appended to this report.

Staff Changes: In April, 2012, founding Executive Director Darrell Evans left the Association to lead the Canadian Institute for Information and Privacy Studies. Tyler Morgenstern joined FIPA as its new Program Director.

In May 2012, the FIPA Board of Directors also elected new officers as follows:

- Richard Rosenberg was re-elected as President
- Gwen Barlee replaced Carla Graebner as Vice President
- Tom Crean was re-elected as Treasurer
- Bruno Godin was re-elected as Secretary

Board Changes: During the summer, Board members Meera Nair and Mark Weiler resigned their posts to pursue personal work elsewhere. At FIPA’s October board meeting, Keith Reynolds, a national research representative with CUPE and Ann Rees, an instructor of journalism at Kwantlen Polytechnic University, were confirmed as new directors in the place of Mr. Weiler and Ms. Nair.



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