



April 27, 2017

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Re: Questions for party leaders on Freedom of Information and privacy issues in British Columbia

Dear Mr. Gogolek and Ms. Yan,

Thank you for your 2017 provincial election questionnaire. For more information on our platform, please visit www.bcndp.ca/platform

Thank you.



1. Do you accept the April 2017 report of the Ombudsperson into the firings at the Ministry of Health, and will you bring in whistleblower protection legislation by March 2018 as recommended?

Yes. The April 2017 report of the Ombudsperson is a scathing indictment of Christy Clark and the BC Liberal government's 2012 unjustified firings of eight BC health researchers and subsequent five-year political cover-up by the BC Liberals. This is the worst human resources scandal in our province's history, leading to the suicide of one of the researchers, and substantial damage to the lives and careers of the seven other individuals who remained under a cloud for years because of the inaccurate information - provided by the BC Liberal government - that the researchers were the target of an RCMP investigation. The Ombudsperson's recommendation for whistleblower legislation that clearly defines the process for investigating allegations to protect both whistleblowers and potentially innocent people who face accusations is a measure we support. The BC NDP introduced whistleblower legislation in the Legislature four times and the BC Liberals refused to even call the bill for debate.



2. Both FIPA and the Information and Privacy Commissioner have recommended the creation of a 'duty to document' in the Freedom of Information and Protection of Privacy Act. The Special Legislative Committee reviewing FIPPA agreed with this recommendation. FIPA has called for the creation of penalties under FIPPA to discourage interference with information rights, as have the Commissioner and the Special Committee.

A. Will your government act on the Commissioner's recommendations to put a "duty to document" in the Freedom of Information and Protection of Privacy Act?

Yes. The BC NDP has introduced legislation multiple times, including the Public Records Accountability Act, 2017, to strengthen Freedom of Information legislation and create a positive duty to document government actions for greater accountability to the public. The BC Liberals have not only repeatedly refused to legislate the duty to document, including in their recent pre-election PR exercise of Bill 6, but Christy Clark and the BC Liberals were found to have flouted and even broken FOI laws to avoid accountability using practices including the willful destruction of emails and documents that the Information Commissioner called a threat to the integrity of access to information in British Columbia. And the rot started right at the top: the Commissioner discovered that the Christy Clark staffer in charge of FOI coordination in the Premier's office was using Post-it notes to avoid proper record keeping, and her deputy chief of staff for operations had not retained a single email over two years working for Clark.

B. Will your government support the creation of penalties against those who interfere with information rights?

Yes. Our proposed legislation creates the duty to investigate instances of unauthorized destruction of government information and removes legal immunity from officials who fail to disclose documents, making contraventions of the Act an offence subject to fines of up to \$50,000.

3. Certain sections of FIPPA that exempt records from release, specifically cabinet confidences (s.12) and policy advice (s.13) have long been criticized as overly broad and in need of change. What specific changes, if any, would you make to those sections?

Anyone who has ever submitted a Freedom of Information request to the Christy Clark BC Liberals knows that more often than not, what they get back (if it's not a "No Records" response") is reams and reams of blank or heavily severed pages. The BC Liberals have used multiple exemptions in order to restrict the public's access to government information, and two key ones are Section 12 and 13. The BC Liberals' use of section 13 to deny even factual information has led to widespread call for reform, including by the Information Commissioner, and we support the Commissioner's



advice, reflected in the May 2016 report of the Special Committee to Review the Freedom of Information Act, that the meaning of this section should be restored to its original, pre-BC Liberal, intent.

We also support the position of the Information Commissioner regarding Section 12: the Commissioner has clearly stated that “the importance for our system of government of generally protecting the confidentiality of Cabinet proceedings and deliberations is beyond question” (<https://www.oipc.bc.ca/special-reports/1274>) but that this should not be applied as a blanket mandatory exemption, as the BC Liberals have done, but rather that “the government can maintain an appropriate and necessary level of confidentiality using a discretionary exception” exercised by Cabinet <https://www.oipc.bc.ca/special-reports/1935m>

4. In 2017, the Special Legislative Committee reviewing FIPPA repeated the recommendation from the 2010 Committee that subsidiaries created by educational public bodies like colleges and universities should be made subject to the Act. Will your government make this change and if not, why?

We support the Act being expanded to capture subsidiaries created by public bodies and will consult with affected organizations.

5. Section 25 of FIPPA states that if government records are deemed to be in the public interest, they must be disclosed, even if no request has been made. FIPA, the Commissioner [and the Special Committee] have called for legislative change to this section to bring it into line with how the Commissioner interprets this requirement.

A. Do you agree that Section 25 needs to be rewritten to reflect this?

B. What other steps would you take to bring public bodies into line with their statutory duty to disclose under this section?

The public interest override section is a key provision for Freedom of Information legislation. After the Mount Polley disaster, the Information Commissioner released a report showing that the Christy Clark government had information indicating the existence of a potential safety risk but did not disclose this to area residents. The Commissioner identified the term “urgent circumstances” in section 25 as the reason for government withholding this information and concluded that urgent circumstances should not be required to trigger disclosure where there is a clear public interest to do so. We believe the spirit of the public interest override should again be reflected both in the Act and the response from public bodies, and we will act to ensure this.



6. As the number of data breaches continues to grow, there have been repeated calls for joining other provinces and federal government in bringing in mandatory data breach notification.

Special Legislative committees examining both the public and private sector privacy laws have recommended including mandatory data breach notification in both the Freedom of Information and Protection of Privacy Act (public sector) and the Personal Information Protection Act (private sector).

A. Will your government bring in mandatory data breach notification for the public sector?

B. Will your government bring in mandatory data breach notification for the private sector?

A report by the Office of Information and Privacy found that privacy breaches had increased by 56 percent in five years under the BC Liberals and that these breaches involved records of the most personal and vulnerable kind including health information and credit card numbers. We agree that mandatory breach notification would benefit the public by enhancing accountability and transparency, and helping to mitigate the serious fallouts of privacy breaches and as government we will take action. We will consider best practices both across Canada and internationally for breach notifications in both the public and private sectors to determine a made-in-BC policy.

7. The B.C. Election Act has no lower limit for third party election advertising unlike most jurisdictions in this country. This means people or groups spending little or no money can face jail or fines for failing to register with the government during an election. This has resulted in absurdities like Elections BC requiring homemade pamphlets to be handed out rather than put in mail boxes, and limiting the number of such pamphlets to 25 per person handing them out.

A. Will your government end this ridiculous situation by bringing in a minimum spending amount of \$500 like most other jurisdictions in Canada?

B. If not, why not?

The Supreme Court recently upheld rules requiring advertising sponsors to register with Elections BC even in cases that do not involved expenditures but also ruled that the application of the third-party advertising provision should not be interpreted as broadly as the BC Liberals have pushed for. Given that the federal government and other provinces allow individuals and organizations to spend \$500 on election advertising before they have to register as an advertising sponsor, this is an issue that we would want to consider, and is a measure we could undertake as part of our commitment to democratic reform and John Horgan's pledge to get big money out of BC politics.

8. BC has been without a full-time Information and Privacy Commissioner since July 2016, with no replacement until later this year at the earliest. Clearly there is a problem with the



appointment process. What will your government do to ensure this situation never happens again?

The appointment is made by a legislative standing committee and requires unanimous approval. We agree that the failure of the legislative committee to reach a unanimous recommendation to appoint a new Information Commissioner is regrettable and indicates the unwillingness of the BC Liberal government to act in the best interests of all British Columbians instead of their own.

9. The BC government now posts the texts of Freedom of Information requests it receives even before releasing any information the requester. This practice has been criticized by FIPA and many others as measure that can intimidate requesters while providing no additional transparency on government operations.

A. Do you agree with this policy, and if so, why?

No.

B. If not, will your government end this practice?

Yes.

10. The United States has again identified BC's domestic data storage requirements in the Freedom of Information and Protection of Privacy Act as a trade barrier. With renegotiation of NAFTA set to begin in the near future, what will your government do to ensure our privacy law is protected?

A BC NDP government will defend the privacy of British Columbians against any move by the Trump administration to undermine these rights and will maintain BC's requirement that government and other public sector data be stored in Canada. Recent steps in Congress to weaken U.S. privacy provisions only reinforces the need for BC to remain firm.