



BC FREEDOM OF INFORMATION
AND PRIVACY ASSOCIATION

NEWS RELEASE

April 27, 2018

BC Government introduces *Public Interest Disclosure Act*

Bill is a significant step in the right direction, but highlights problems with the current *Freedom of Information and Privacy Act (FIPPA)*

VANCOUVER, APRIL 25, 2018 – On April 25, BC Attorney General David Eby introduced legislation that would create a framework allowing public service employees to disclose serious wrongdoing, and provides general provisions to protect the discloser.¹ The BC Freedom of Information and Privacy Association (FIPA) has called for whistleblower protection legislation for British Columbia and sees this as a significant step in the right direction.

According to a Ministry of the Attorney General press release,

The Public Interest Disclosure Act (2018) will enable concerned public servants to report incidents to their supervisor, an internal designated officer or the ombudsperson. The act makes it an offence to commit or direct a reprisal against such employee, which could take the form of a demotion, termination or disciplinary measure. Protection from reprisal is vital to employees feeling safe to report wrongdoing without fear that they may suffer consequences for doing so.²

The legislation includes a number of much-needed components, including multiple reporting options for disclosers, confidentiality provisions, investigative powers, protections against reprisals, and the requirement that public bodies and the Office of the Ombudsperson file annual reports about disclosures.

While we strongly support the introduction of whistleblower protection legislation, BC FIPA is concerned that the definition of ‘wrongdoing’ under the *Public Interest Disclosure Act* would not encompass deliberate efforts to interfere with access to information rights under the *Freedom of*

¹ Bill 28 – 2018: Public Interest Disclosure Act: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/first-reading/gov28-1>

² Government introduces public interest disclosure legislation for public service: <https://news.gov.bc.ca/releases/2018AG0026-000729>



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Information and Protection of Privacy Act (FIPPA). Section 7(1) of the PIDA defines wrongdoings to include:

- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
- (c) a serious misuse of public funds or public assets;
- (d) gross or systemic mismanagement;
- (e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

The FIPPA contains offences related to its privacy protection provisions and offences related to interference in investigations undertaken by the Office of the Information and Privacy Commissioner. It does not, however, contain offences related to general interference with access to information rights by public officials - including the unauthorized destruction of documents with the intention to avoid access rights. This means that such actions would fall outside the scope of 7(1)(a) of the PIDA. It is also not clear that the interference with access to information rights would be considered 'gross or systemic mismanagement' under 7(1)(d) of the Act.

There is a well-documented history of interference with access to information rights in BC, including routine destruction of records.³ The 'triple delete' scandal is a particularly egregious example, and it is important to recall that this case came to light through the actions of a whistleblower in the public service. This is precisely the sort of activity that should be covered by public interest disclosure legislation, and public service employees who wish to disclose such practices should know that can expect support, confidentiality, and protection from retaliation. The fact that such whistleblowing would not be covered by the PIDA is a serious shortcoming.

BC FIPA believes that this shortcoming could and should be addressed through the reform of the *Freedom of Information and Protection of Privacy Act*. The Act requires a legislative 'duty to document' and the inclusion of an offence related to the alteration, concealment, or destruction of records with the intention of denying or interfering with access rights. The creation of such an offence would bring these practices under the scope of wrongdoing under s. 7(1)(a) of the PIDA.

³ See OIPC Investigation Report F15-03 - Access Denied: Record Retention and Disposal Practices in the Government of British Columbia, Oct. 2015: <https://www.oipc.bc.ca/investigation-reports/1874>



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Mike Larsen states “The effectiveness of whistleblower protection measures rests, in large part, on the forms of wrongdoing they contemplate and apply to. We need to be certain that public service employees who know about efforts to delete, conceal, or alter records with the intention of denying information rights can disclose this wrongdoing and receive full support and protection.”

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