

FIPA Bulletin

August 24, 2009

As might be expected, FIPA was at a peak of activity during the BC election period. Our goal was to use the election spotlight to raise public awareness on three major issues: First, the repressive effect the province's revised Election Act was having on free expression and public debate during the election period. Second, the continuing saga of the Liberal government's terrible FOI performance. Third, the province's failure to provide adequate privacy protections as it moves to introduce universal electronic health records. Details below.

**ATTEND FIPA'S ANNUAL
 GENERAL MEETING
 SEPTEMBER 9, 2009**

Formal notice enclosed!

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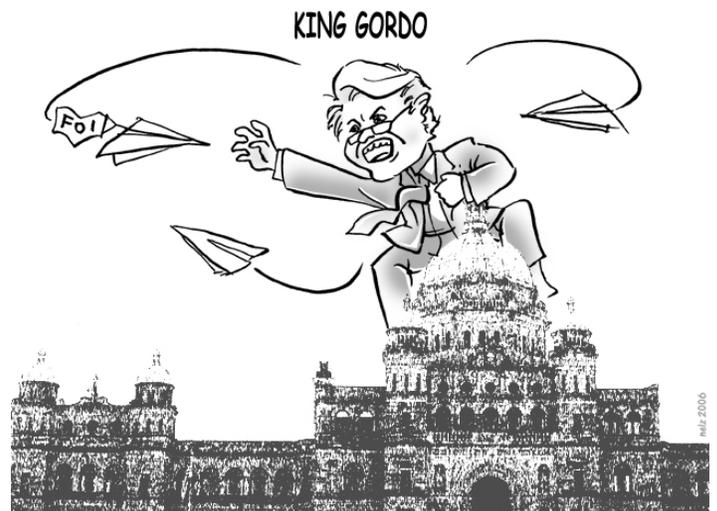
FIPA asks Commissioner to Investigate illegal destruction of BC Cabinet e-mail

FIPA has asked Information and Privacy Commissioner David Loukidelis to investigate the destruction by the BC government of years of Cabinet emails in contravention of the Document Disposal Act. The emails were among documents the court ordered the government to produce as possible evidence in the Basi-Virk corruption case.

Several versions of how email records may (or may not) have been destroyed have been given to the court since June. The government has asserted that the destruction was in accordance with routine procedures, but FIPA disputes that.

In an opinion piece published in the Vancouver Sun, FIPA executive director Darrell Evans stated, "Regardless of the format -- paper, electronic or whatever -- no provincial government record may be destroyed without what's referred to as an "approved records retention and disposal schedule."

"In the case of cabinet e-mails relating to the sale of BC Rail, the provincial government broke its own laws and (make no mistake) its



entrenched, well-understood policies by failing in its duty to preserve important government records. Evidence was destroyed either willfully or through gross negligence. Everyone responsible for the illegal destruction of these documents should have to face either criminal charges or disciplinary proceedings."

E-Health privacy campaign urges people to demand rights or opt out

E-Health is the BC Government's soon-to-be-introduced system of managing the personal health information of every British Columbian through a shared electronic data system. Anyone who is given access to the e-Health system will be able to review an individual's

recorded medical history – psychological, pharmaceutical and otherwise.

FIPA and the other members of BC's Health Privacy Coalition say that the e-Health system falls short in protecting the privacy of citizens' information. See next page →

Our response has been to create the 'Big Opt Out campaign', which demands:

- The right of every British Columbian to determine for themselves whether or not to participate in e-Health by giving or withholding informed consent,
- The right of every British Columbian who decides to consent to participate in eHealth to determine the degree of their participation through disclosure directives, and

- The implementation of a substantial and widespread information campaign informing all British Columbians about e-Health, their rights, and how to exercise those rights.

To learn more about e-Health and what you can do to safeguard your records, go to:
www.bcoptout.ca

Campaign for Open Government hammers BC Liberals' FOI performance

The Campaign for Open Government poured on the coal in the final two weeks of the BC election, with a series of reports and media releases about the increasingly-pervasive secrecy of the BC government. Here's a recap:

April 29

Campbell's office charges 100 times more than Washington governor for same FOI request

Identical FOI requests filed on the same day with the offices of Washington Governor Christine Gregoire and BC Premier Gordon Campbell got very different results. The requests asked for information about inter-governmental meetings related to the new radio frequency-ID (RFID) equipped drivers' licences designed to meet the requirements of the Western Hemisphere Travel Initiative (WHTI). The WHTI requires a passport or other authorized ID to enter the United States.

Governor Gregoire's office responded in full in less than a month. Copying costs were US \$5.30. In contrast, the Office of the Premier didn't provide their initial response until after the Washington Governor's office *had sent all the requested documents*. They still haven't provided any documents, but did send FIPA a bill for \$620.

Interestingly, a week after the story ran, FIPA received a letter saying the Premier's office had reconsidered the fee, and were now waiving it.

April 29

Ministry responsible for FOI has no idea how many people work on FOI

In March 2008, FIPA filed an FOI request with the Ministry of Labour and Citizens' Services asking for "the number of staff employed in managing and responding to FOI requests in the information and privacy offices of each ministry, for each year from the year 2000 to the present day."

The BC Liberals came into office promising to increase the resources dedicated to answering FOI requests, but actually cut resources and staff. We wanted to measure how deep the cuts were, and if any staff had been restored since then.

The Ministry responded by supplying 10 pages of near-unintelligible emails sent between ministries on a single day in November 2007, containing staff figures for two ministries. There are 19 ministries in the BC government. The response included a statement that these were the only records responsive to the request.

FIPA has filed a complaint regarding the inadequacy of the response.

New FIPA study says BC's FOI performance is even worse than last reported by the Information Commissioner

During the May election, FIPA released a new study called *FAILING FOI: How the BC Government flouts the Freedom of Information Act and stonewalls FOI requests*. It updates our 2006 FIPA report *Access Denied*.

FIPA found that, over the three-year period from 2006 to 2008, the rate at which the government violated statutory timelines for general requests was 51.5%. And if the 30-day extension of time a ministry can "award" to itself in extraordinary

circumstances were removed, almost 60% of general requests would have been deemed refusals.

FIPA also found that the number of FOI requests continued to fall. In 2008 the government received 1793 requests for general information. That compares with 2381 general requests in 2006 (6.6% decline) and 2225 in 2007 (19.4%

decline). Based on complaints received from FOI applicants, we conclude this is because the numerous roadblocks that characterize the FOI process are causing people to give up on the system.

Failing FOI is available on the FIPA website at http://fipa.bc.ca/library/Reports_and_Submissions/Failing_FOI-May_2009-FINAL.pdf

Enhanced Driver Licences and Enhanced Identification Cards

Last year, FIPA made a series of FOI requests to government agencies in Canada and the United States to learn about the initiative to equip drivers' licences with RFID chips and biometric identification, etc.

The 'upgrades' to licenses are designed to bring us into compliance with the U.S. Western Hemisphere Travel Initiative, which requires land travellers to the USA to have an approved travel document like a passport or an 'enhanced' drivers licence. We believe these enhanced

licences and the databases involved are serious privacy threats.

FIPA's researcher is now poring over the hundreds of pages of documents we obtained. Hopefully we will gain insight into what the various governments were discussing and what they thought about the need to protect privacy.

FIPA is working with academics and groups across Canada to inform the public and lawmakers about the privacy dangers involved.

Consultations on federal Copyright Reform

The federal ministries of Industry and Canadian Heritage are holding a consultation on potential reform to the copyright law in this country until September 13, 2009. FIPA is participating.

The decision to hold a public consultation followed public protest and is a welcome change from the previous attempt to amend the law, which had no public input and which failed miserably.

FIPA President Richard Rosenberg was present at the first roundtable discussion in Vancouver, to set out FIPA's position. Among other things, he stated that:

- Internet Service Providers (ISP) should not become either arms of the state or agents of rights holders, investigating customers and violating their privacy

- the entire legal principle of Crown copyright should be repealed (see legal action below) and
- there must be reasonable use provisions in any new legislation.

FIPA will also be putting in a written submission, and the Canadian Internet and public interest Clinic (CIPPC) has put together an easy to use kit for anyone interested in making a submission, including a draft letter.

The kit is available at:

<http://www.digitalagenda.ca/copyright/act>

The federal government's consultation site is www.copyrightconsultation.ca

Legal actions

FIPA wins Crown copyright case

FIPA won a significant victory for FOI users when the provincial government agreed to stop sending copyright notices with released records.

In a June letter to FIPA announcing that the government had abandoned the case, Commissioner David Loukidelis wrote: "Government has decided to cease including copyright notices in access to information

disclosures and has confirmed that, effective immediately and government-wide, copyright notices will no longer be issued in conjunction with disclosure of records in response to access requests under FIPPA.”

FIPA filed a complaint over the practice more than a year ago, stating that these notices amounted to intimidation of users. BC was the only government in Canada to use such notices, and hopefully will be the last, thanks to our challenge.

Submissions on FOI reform

FIPA made an FOI request for all submissions made by outside groups to the BC government in 2005 as part of a consultation on reform of the FOIPP act. The province refused to release the submissions under the exception for ‘advice or recommendations’ to the Minister. In Order 09-02, the adjudicator found that the submissions were policy advice, but that the Ministry had not properly exercised its discretion to release them. FIPA is considering its options after a partial victory.

Robert Harrison privacy appeal

There have been further developments in the vital case of Robert Harrison, in which FIPA is an intervenor. Harrison lost his job and reputation due to the improper disclosure and misuse by the Ministry of Children and Families of false personal information in their files.

The most important issue here is the requirement of public bodies to “...make every reasonable effort to ensure that personal information is accurate and complete” if it will be used to make a decision that directly affects the individual.

After an unsatisfactory order by the OIPC, Harrison took his fight to the BC Supreme Court, where the court ordered the OIPC to reconsider their decision.

Both the OIPC and the Attorney General appealed that decision, and FIPA was accepted as an intervenor to help address the important privacy issues in this case.

The BC Court of Appeal has agreed in large part with the position put forward by FIPA, and has sent the question of infringement of Harrison’s privacy rights under s.28 of the FOIPP act back to the Information and Privacy Commissioner for a rehearing.

FIPA’s position was that the Office of the Information and Privacy Commissioner should have given Mr. Harrison his remedy for the misuse of his personal information, and that requesters should have an informal, administrative remedy available rather than being forced to go to the courts for judicial review.

Garth Barriere was FIPA’s able and active pro bono counsel on our application and the two-day hearing in the Court of Appeal.

IBM case

FIPA’s five-year battle for copies of contracts between IBM and the government continues. We won an interim order from the OIPC granting us access to most of the documents. The government asked the Supreme Court to review the Commissioner’s decision. FIPA will be represented at the August 2009 hearing by pro bono counsel Brent Olthuis.

For their excellent work on the following cases, our thanks go to:

Garth Barriere, Vancouver
Tam Boyar, Vancouver
Dan Burnett, Vancouver
Sucha S. Ollek, Nanaimo
Brent Olthuis, Vancouver
Micah Rankin, Vancouver

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