

FIPA Bulletin

August 22, 2011

BC's 'Open Information, Open Data' plan shows promise ...but the other side of 'Government 2.0' requires radical changes to our "antiquated" privacy protections

The B.C. government made quite a splash in July when it launched three new websites aimed at advancing Premier Christy Clark's 'open government' agenda.

"I have issued a direction to all government ministries to make all data and information that does not compromise privacy available to all citizens on an ongoing basis," the Premier stated in a [column](#) distributed to BC newspapers.

The new websites include:

- [gov.bc.ca](#), a redesigned central portal for the provincial government,
- [Data BC](#), a new 'open data' platform where some of the government's many databases are accessible, and
- [Open Information](#), a site where one can find records released through freedom of information requests and other documents thought to be of interest to the public and therefore designated for 'routine release'.

The effort won positive reviews from FIPA, the Information and Privacy Commissioner, and pretty much all of the province's major media. (See government and FIPA news releases [here](#).) Also unanimous was the view that this is a promising start, but just the beginning of any sincere effort to open up government information to the public.

[Data BC](#), the new open data platform at <http://www.data.gov.bc.ca/> offers a catalogue of nearly 2,500 sets of data that, over time, will increase as new datasets become available. This data is free, searchable and available for anyone to use and repurpose. All of the current databases were previously available somewhere on government websites but this make them easier to find and some have been converted into more accessible file formats.



FIPA turns 20!
**You're invited to a birthday party
and fundraiser September 28!**

Click [here](#) or see page 3 for details.

Of [Open Information](#), the site at <http://www.openinfo.gov.bc.ca/>, the government stated, "the B.C. government will proactively release information requested through Freedom of Information...[which] will be posted on the new Open Information website at least 72 hours and up to a maximum of five days after being released to the applicant."

FIPA points out that calling this practice "proactive disclosure" is pure PR spin. Posting records online that have to be dragged out of the government through the arduous process of an FOI request is anything but proactive. The government probably recognizes this, because the Premier's new manifesto states, "To the extent practicable and subject to the Freedom of Information and Protection of Privacy Act (FOIPPA) and other valid restrictions, ministries should use modern technology to disseminate

[Continued next page]

useful information in a routine way rather than waiting for specific requests under FOIPPA.”

Ministers will be expected to provide quarterly reports to Cabinet on their progress in meeting these open government objectives.

Positive Reviews

FIPA executive director Vincent Gogolek said the Open Data initiative “Seems to be a genuine effort to change the culture and set out policies to make the bureaucracy open things up.”

Information and privacy commissioner Elizabeth Denham said she was encouraged by what she saw. “I’m very excited, I think this is a very promising milestone for open information and open data.”

Still, both FIPA and the commissioner cautioned that the web launch should only be seen as a starting point. Both have called for the province to proactively disclose records such as government contracts, cabinet ministers’ calendars, internal audits, and detailed travel expenses for politicians and their top bureaucrats.

The province still doesn’t routinely release contracts, calendars or audits. The government recently started posting travel expenses, but so far they only show totals, rather than a detailed breakdown of how the money was spent.

The Dark Side of Government 2.0: Privacy’s obsolete!

The Premier has made the “Open Information / Open Data Policy” her own and it undoubtedly reflects her personal style of governing – but the policy is actually sourced in a “Transformation and technology strategy for the BC public service” spearheaded in 2010 by Allan Seckel, former Deputy Premier to Gordon Campbell and Dave Nikolejsin, the Chief Information Officer.

The manifestos for the movement are entitled [Citizens @ the Centre: B.C. Government 2.0](#) and [IM/IT Enablers Strategy for Citizens @ the Centre: B.C. Government 2.0](#). (IM/IT = Information Management / Information Technology; Enablers = tools that facilitate.) These documents are an eye-opening read if you are willing to hack your way through a tangled jungle of bureaucratic jargon and do a lot of reading between the vines.

Government 2.0 may be summed up as ‘better governance through information technology’. It is a sweeping plan to transform government communications, management and service

delivery and encompasses the Open Information / Open Data Policy.

It also includes a radical new vision of privacy protection – namely, that such protections are obsolete in our new networked society. Here’s a quote from a confidential briefing document obtained by FIPA:

Privacy barriers can be mitigated by updating three elements: organizational culture, policy and FOIPPA. Existing culture, policies and legislation are antiquated and have collectively become a barrier to the collection and sharing of data and information within government and with citizens. [Source](#)

This document and others, such as the government [submission](#) to the Special Committee to Review the FOIPPA, make it very clear how the province’s Chief Information Officer and the “Deputy Ministers’ Committee on Technology and Transformation” that guides Government 2.0 view privacy: Not as an essential right in a free society, but as a pernicious barrier to the modernization of government and the efficient delivery of public services. They must think that governments had no idea what they were doing over the past 30 years as they created a plethora of privacy legislation.

Electronic Health Records (EHRs), Integrated Case Management (ICM) and the planned new [Secure Care Card](#) – these are all parts of a vision that sees all the walls broken down between discrete data bases of personal information held by government ministries, the health care and education systems, law enforcement bodies, other levels of government and private sector partners that participate in the delivery of services,

This is a vision of a world where government officials will have access to comprehensive, birth-to-death dossiers of personal information and citizens will retain very little privacy from the prying eyes of their government.

With the public launch of the [Health Information Privacy in BC](#) website this period, and the updating of our site on [Integrated Case Management](#), FIPA now has active public information campaigns underway on two leading programs of Government 2.0. Both projects were funded by the Law Foundation of BC.

We continue to work with the media and the stakeholder groups most affected by these issues as we do our best to raise awareness and push to preserve privacy protection for all citizens.

Coalition formed to battle online spying bills

The federal government is about to introduce legislation which will vastly increase police surveillance of Canadians' Internet and telecom communications. Since 2001, privacy watchdog groups, including FIPA, have squared off against successive Liberal and Conservative governments on similar "lawful access" legislation. We are quickly gearing up to oppose it again.

FIPA has worked over the past four months to create a national **Stop Online Spying** campaign along with a variety of partners – primarily Open Media, BC Civil Liberties, and the Canadian Internet Policy and Public Interest Clinic.

More than 46,000 people and organizations have signed the campaign's online petition against the federal government's plan to sneak in internet spy legislation this fall as part of its omnibus crime bill.

On May 9, Public Safety Minister Vic Toews [re-affirmed](#) the government's commitment to passing lawful access legislation within 100 sitting days.



Some of the major concerns with the bills are:

- Canadians' Internet service providers, social networks, and even their handsets and cars will be turned into tools to spy on their activities;
- There will be a minimal and inadequate amount of external oversight;
- Law enforcement will be able to force identification of anonymous online Internet users without adequate court oversight, even where there is no reason to suspect the information will be useful to any investigation; and
- They pave the way for secrecy orders in a way reminiscent of the USA PATRIOT Act.

[Continued next page]

FIPA turns 20! Birthday party September 28

It may be hard to believe, but FIPA has been fighting for FOI and Privacy rights for two decades. The association was incorporated as a non-profit society in January 1991.

The first Executive Director was Darrell Evans, who saw FIPA go from a tiny group of concerned citizens to an efficient and vital part of BC society.

The BC Freedom of Information and Privacy Association invites you to join us in celebration at the Law Courts Inn on Wednesday September 28, 2011 at 6 pm.



Wednesday, September 28
6:00 - 9:00 pm
Law Courts Inn, Vancouver

Entertainment will be provided by the hilarious comedian, writer and CBC Radio personality, **Charlie Demers**.

We will also be honouring the man who symbolizes both FIPA and the fight for better

Freedom of Information and Privacy rights, Darrell Evans.

Raffle ticket prizes include a one-week stay at a luxury villa in the south of France!

Come join friends old and new to celebrate past victories and ensure the organization will be here for another two decades, standing up for FOI and privacy rights in British Columbia and across Canada.

Tickets are just \$65 for lots of food, entertainment and a cash bar.

Don't miss out! Click [here](#) and reserve your tickets today!

The new legislation is being portrayed by the government and police groups as necessary to enable law enforcement agencies to catch up to the new technologies being used by criminals. But federal Privacy Commissioner Jennifer Stoddart and her Provincial counterparts have [argued](#) that such measures go much further than that, giving police powers they did not have in the past and should not have today.

The SOS campaign includes a [website](#), the online petition, a widely-endorsed [letter](#) to the Prime Minister, and a number of [public events](#). See the initial SOS news release [here](#).

FIPA has been very active in the decade-long fight against lawful access bills introduced by both Liberal and Conservative governments. We encourage our members and supporters to sign the petition which is available at <http://www.stopspying.ca/>

Commissioner Denham says BC Ferries-style FOI policy “frustrates the purposes of FIPPA”

BC government backs off adopting similar policy following inquiry

FIPA played a major role over the past year in preventing the BC government from adopting the same FOI disclosure process that was created by the BC Ferries Corporation in order to discourage FOI requests. Widespread adoption of that policy would have been a major blow to FOI rights in the province.

BC Ferries' policy has been to post any records released to an FOI requester immediately on the BC Ferries website – sometimes even before the requester receives them. The result is that requesters are deprived of first use of the information, even though they were the ones making the effort and paying the fees to get the information. This lessens the benefits, motivation and rationale for making FOI requests – especially for media requesters and public interest groups.

"BC Ferries has a duty to assist requesters and we don't see how a system designed to frustrate requesters can comply with the law," said FIPA Executive Director Vincent Gogolek.

The problem threatens to spread

Early this year, a spokesperson for BC's Ministry of Citizens' Services, which processes all provincial government FOI requests, announced that a BC Ferries-style policy ("simultaneous disclosure") would be extended across the entire government.

FIPA filed a complaint about BC Ferries' policy with Information and Privacy Commissioner Elizabeth Denham in October 2010, stating that we "...consider this policy to be a pre-emption of the rights of requesters and highly destructive to the purposes and proper functioning of the Act."

FIPA does favour the eventual public posting of such records, but only after the original requester has first use for a reasonable period of time.

In response to FIPA's complaint, the Commissioner launched an inquiry into so-called "Proactive Disclosure Policies" (in this case a misnomer) and whether or not BC Ferries' practice violates the FOIPP Act.

In addition to making a formal complaint to the Commissioner about BC Ferries' anti-FOI policy, FIPA representatives met face-to-face with both the Commissioner and BC's new Minister of Labour, Citizens' Services and Open Government to discuss this and other issues.

As our contribution to the Commissioner's inquiry, FIPA made a written submission criticizing BC Ferries' policy and recommending how public bodies can be truly proactive in releasing records, while upholding their duty to assist requesters. You can view FIPA's submission [here](#).

The Commissioner's report, [Investigation into the Simultaneous Disclosure Practice of BC Ferries](#), was released on May 16. (Note the welcome change from calling the disputed practice "proactive disclosure" to calling it "simultaneous release". This strips away the false image many governments are attempting to place on the practice.)

The report recommended BC Government not adopt the BC Ferries policy, suggesting instead a minimum 24 hour delay after the FOI requester receives the requested documents before posting them for the broad public.

Government surprises, Hahn disappoints

Following the release of the Commissioner's report, the BC Government announced that it would go a bit further than the Commissioner suggested by giving FOI requesters a minimum of 72 hours and a maximum of five days before public release.

[Continued next page]

BC Ferries CEO David Hahn did not exactly embrace the Commissioner's recommendations. He said the company would comply with the guidelines "to the extent it is administratively convenient" by posting the requested records on its website the afternoon after releasing it to the person who originally requested them. He said that this may not in all cases meet the minimum 24 hours suggested by the Commissioner.

Vancouver Police the final holdout

In a related development, FIPA ED Vincent Gogolek appeared before the Vancouver Police Board to try to get the last public body still defying the Commissioner to fall into line.

The VPD has so far refused to alter its policy of simultaneously releasing FOI'd records. In fact,

the VPD actually managed to do better than that in one case, where it snail-mailed the materials to the columnist who requested it, but released it simultaneously on its website.

"This policy is designed to frustrate requesters who seek information that could embarrass the police, and its management. These requesters are often, but not always, members of the media," Gogolek told the Board. He also pointed out that the Vancouver City Council had recently passed a unanimous motion requiring the city not to use simultaneous disclosure unless the requester asked for it.

The VPD Board referred the matter to its FOI committee for review and recommendations. They are expected to report back some time this fall.

BC Ferries 'loses' 150 pages of controversial material

It seems the more ferry officials look for controversial documents, the fewer they find.

That would be one explanation for why BC Ferries originally responded to an FOI request from the BC Freedom of Information and Privacy Association by saying they had located 189 pages of records, but seven months later sent a [letter](#) saying they could only find 33 pages.

Another possible explanation is that Ferry officials don't want to embarrass the Premier's office by releasing records the Premier's office says don't exist.

FIPA's request was for records of any communications between the Premier's office and BC Ferries related to former premier Campbell's October 2008 announcement that BC Ferries would drop its fares 33 percent. We directed our first request to the Premier's office, which only turned up a few emails from citizens and one [letter](#) to the Premier from BC Ferries CEO David Hahn. The letter made reference to "the proposal" and to a number of different actions that would have to be taken to drop the fares.

Our second request was to BC Ferries for the same information. At that time, BC Ferries had yet

to be brought back under the Freedom of Information Act. Nevertheless, they said they would respond as if they were covered by the Act. After a search for records, they reported finding 189 pages that fit the description in our request.

An investigation by the Office of the Information and Privacy Commissioner, requested by FIPA, found the Premier's office conducted its 33 percent-off deal with BC Ferries without keeping a single record of the agreement or any communications pertaining to it.

Allan Seckel, former deputy minister to the Premier, stated in a letter to the Commissioner that, "...the 'proposal' Mr. Hahn refers to in his letter was oral, hence why no records in relation to such a 'proposal' exist."

We aren't buying it: It simply is not credible that a government decision involving tens of millions of taxpayers' dollars would not have any written records. And it's even less credible that BC Ferries, the other party to this deal, would initially claim to have 189 pages of records, and later only be able to find 33 pages.

FIPA is continuing to pursue the records through a formal complaint to the Commissioner.

Legal actions

IBM contract case to be heard in September

The BC government's continuing battle to keep the \$300 million Workplace Services Agreement with IBM from going public will move to BC Supreme Court in mid September.

This is the latest round in a multi-year battle FIPA has fought to make contracts publicly-available documents.

The government is arguing that the Order from the Commissioner's office is unreasonable and

should be thrown out. They are claiming the security of the provincial government's computer system could be compromised if the contract were to be released.

Pro bono counsel Sean Hern of Fasken Martineau Dumoulin in Victoria will once again be representing FIPA.

FIPA fights insurance company over use of credit checks to determine risk

An Order from the OIPC that insurance companies must get actual consent from their customers to use customers' credit information to determine risk for insurance is being appealed to BC Supreme Court by the insurance company involved.

The adjudicator ordered Economical Mutual to stop collecting and using personal information it had collected in contravention of PIPA; to review the consents it provided to insurance applicants; and to provide adequate notice to its applicants.

Once it has provided adequate notice and obtained the consents, Economical may resume collecting and using credit scores, but only after providing adequate notice to customers and obtained their consent.

The adjudicator also found that the purpose for which Economical Mutual collected the complainant's credit score was one that a "reasonable person would consider appropriate in the circumstances" under the *Personal Information Protection Act*. (See the Order [here](#).)

FIPA was an intervenor on the side of the consumer/complainant in this case, and will be intervening again in the judicial review hearing.

Joseph McArthur and Anthony Purgas of Blake Cassels and Graydon in Vancouver will be representing FIPA *pro bono* in this case, courtesy of Access ProBono of BC.

Cases continue re applicability of FOIPPA to subsidiary companies of universities

A case involving Simon Fraser University's subsidiary companies has died along with the man who requested their records, but a similar case involving UBC's owned and operated subsidiaries has been heard by the OIPC.

FIPA intervened in both cases, which deal with the question of whether the records of these subsidiaries can be obtained through FOI.

A ruling from OIPC is expected shortly.

The Organization

Gaming funds restored!

We reported in the last Bulletin that FIPA's access to gaming funds had been reduced by 50%. We are happy to report that our gaming grant has been fully restored due to action by Premier Christy Clark.

Gaming funds support FIPA's Community Education Program, which includes free services to the community such as our telephone and website HELP Lines, public events and free publications.

FIPA Donations and memberships at the touch of a button

FIPA's website now lets you make electronic donations and renew your membership online. The buttons are on the left hand side of the home page, and it is a secure transaction. We have arranged that only the minimum amount of information required to process the credit card transaction is collected.

Regular cheque processing is still available for anyone who doesn't want to use the on-line facility.

FIPA would like to thank the Law Foundation of BC, the Notary Foundation of BC and the Province of British Columbia Gaming Policy & Enforcement Branch for supporting FIPA programs

BC Freedom of Information and Privacy Association
 #103 - 1093 West Broadway, Vancouver, BC V6H 1E2
 Tel: (604) 739-9788 e-mail: fipa@vcn.bc.ca Website: www.fipa.bc.ca