

BULLETIN

THIS EDITION: PROVINCIAL ELECTION REACTION, FEDERAL PRIVACY BREACHES, ELECTION ACT CASE+ MORE

B.C. ELECTION : IT'S TIME TO DOUBLE DOWN ON INFO RIGHTS

On May 14th, defying polls, expectations, and pundits, B.C. voters gave Premier Christy Clark and her Liberals a decisive majority in the provincial legislature. Having spent the past twelve years pushing the government to protect the information rights of British Columbians, FIPA is once again gearing up to defend Freedom of Information legislation while advocating for stronger privacy protections and meaningful accountability mechanisms.

Heading into the election, Clark's government was already saddled with a number of serious access and privacy issues. Most recently it's come to light that, thanks to a widespread culture of what Information and Privacy Commissioner Elizabeth Denham calls 'oral government,' the Liberals have presided over a sharp decline in FOI responsiveness. Similarly, political staffers across government have been found to be hiding, deleting, or failing to produce documents altogether in an effort to keep information about contentious policy decisions out of the public eye.

At the same time, new IT projects like the [disastrous Integrated Case Management system](#) and the [secretive B.C. Services Card](#) have been foisted upon British Columbians at enormous and still not fully disclosed expense. These projects carry on apace, despite the vocal objections of civil society organizations, privacy experts, and legislative officers alike ([FIPA's call](#) for a public inquiry into ICM continues to go unheeded).

As one might expect, however, in [their response](#) to our most recent campaign survey, the Liberals defended their record on information issues. Pointing to the growth of the provincial Open Data portal and reductions in FOI response times, the party appeared to stand by Clark's

efforts to govern as the "Open Government Premier" (though, as we've written time and again, both open data and timeliness reports are incomplete measures of openness).

As for issues that have been festering for some time—such as the [ongoing refusal](#) to put educational subsidiary corporations within the reach of FOI, the [systemic failure of public bodies](#) to proactively release records relevant to the public interest, and the over-application of cabinet and policy advice exemptions to documents released through FOI—they opted to defer to the next scheduled review of the *Freedom of Information and Protection of Privacy Act* (FIPPA), set for 2016. It's better than nothing, but not by much, and it's still a long way off for a problem that's getting worse all the time.

If the Liberals have any real interest in dealing with this raft of problems, the first step they must take is to appoint a minister who is knowledgeable about the issues, has control of their department's agenda, and has an open mind about how FOI and other accountability measures can work better not just for the government but for all British Columbians.

Unfortunately, since 2009, the Liberals have shuffled

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ministers in and out of the role so quickly that there's hardly been a chance to make meaningful progress. In fact, over the past four years, the Campbell and Clark governments have appointed no fewer than five Ministers of Citizens' Services and Open Government. And none of them lasted for more than a year (fun fact: both the first and last ministers were Westside-Kelowna's Ben Stewart).

If the rather dismal information rights situation in this province is to be improved, this revolving door needs to stop spinning for two major reasons.

First, it's critical that ministers have an opportunity to get a grip on their portfolios, in all senses of the term. They are supposed to provide direction to the bureaucracy, not the other way around. But when a minister isn't familiar enough with the issues and policies in play, that's exactly what can happen.

Second, if a ministry becomes known for high turnover, those appointed to the post will tend to treat it as a way station and may (not necessarily incorrectly) assume that they will be shuffled in the not too distant future. Likewise, the bureaucracy may assume that they will constantly have to bring a new boss up to speed. Though these effects can take root unconsciously, they can still have a corrosive effect on a ministry's effectiveness.

The Ministry of Citizens' Services handles many critical issues, often taking the lead on projects that cost hundreds of millions of public dollars and affect the lives of millions of people. It is a full-time job and deserves full-time attention from this new government.

BC ELECTION ACT CAUSES CONFUSION, CHILLS FREE SPEECH--AGAIN

Once again, B.C.'s *Election Act* caused widespread confusion among individuals and organizations during last month's election campaign, undercutting the right to political speech across the province.

Long the subject of opposition from FIPA and others, the *Election Act* contains constitutionally dubious provisions that define any kind of communication with the public that takes a direct or indirect stance on an election issue or candidate as "elections advertising," regardless of how little it costs to produce. This means that something as small as a hand-written sign in your window counts as

LIPS SEALED: PARTY PLATFORMS QUIET ON INFORMATION ISSUES

Though there's never any shortage of issues to tackle during any election campaign, it was a disappointment to see all four major parties sideline information rights.

Despite weighing in at a very healthy 84 pages, the Liberal platform contained not a single mention of Open Government. Likewise with the NDP, whose 55 page platform document registered only one vague mention of information issues, stating simply that they intend to "strengthen Freedom of Information Laws."

As for the Greens and the Conservatives, both gave a small nod to questions of transparency, with the former condemning some of the province's current FOI woes (but failing to say how they'd fix them) and the latter proposing the creation of a Legislative Budget Office.

Beyond these passing mentions, however, the parties seemed reticent throughout the election to address the information issues that matter to British Columbians. That's why we pushed all of them for clearer answers with our election survey, the responses to which can be found in the Library section of our website.

In the coming months, FIPA will work hard to ensure that information rights stay on the new government's policy agenda.

election advertising, and requires you to register with Elections BC as a "third party election advertising sponsor." Failure to do so could result in a \$10,000 fine and up to a year in jail.

Election Chill Effect, a 2010 study co-published by FIPA and the Canadian Centre for Policy Alternatives demonstrates how these provisions had a tangible and corrosive effect on political speech during the last provincial election. Unfortunately, because of the government's refusal to fix the law, we saw the same problems reappear this time around.

A small anti-pesticide blog based in Kamloops, for instance, opted simply to shut down for the duration of the campaign rather than risk fines, investigations, or jail time. Run on a volunteer basis by a parent-daughter team, the blog could hardly be accused of being one of the “big spenders” the government has pointed to in an effort to justify this law. Instead it shows exactly how the *Act* crushes small spenders and sets limits on our most highly protected form of free speech precisely when it matters most.

This is what we were trying to prevent when we filed a [Notice of Civil Claim](#) against the government at BC Supreme Court back in January. We had hoped that the

case would be heard before the election, so that such situations as the one above could be avoided. Unfortunately, the government’s lawyers were successful in arguing that the issues in the case were complicated and that the hearing should be delayed. Our Executive Director has been examined in discovery by government lawyers and we are hoping to have the constitutional challenge heard later this year to finally resolve this issue.

A proper legal fix to this act is long overdue, and we will be working to make sure that it finally happens, either through legal action or legislative amendment. We are not going to let British Columbians go through another election gagged by their own government.

MAJOR DATA SECURITY ISSUES BEDEVIL THE FEDERAL GOVERNMENT

According to [documents](#) recently released to federal NDP MP Charlie Angus in response to an order paper question, Ottawa has a very serious problem with privacy breaches. In fact, between 2002 and 2012, there were more than 3000 breaches at the federal level, affecting nearly every government department and potentially compromising the information of more than a million Canadians. Even more troublesome is the fact that of these breaches, only 399 were ever reported to Privacy Commissioner Jennifer Stoddart.



Photo by Flickr user mcclanahoochie, used under a Creative Commons license

The staggering figures come on the heels of last year’s massive breach at Human Resources and Social Development Canada, where two unencrypted portable hard drives containing the personal information of almost 600,000 Canadians went missing.

When combined with further statistics from Stoddart, we start to perceive a systemic problem with our national

data management practices. In her [most recent annual report](#), for example, Stoddart (who recently launched an [investigation](#) into the HRSDC breach) writes that her office received a total of 986 government-related privacy complaints in 2011 alone. This well outstrips the 281 complaints regarding private companies received during the same period.

However, despite this government’s apparent inability to keep our data secure, they show no signs of slowing down their efforts to vacuum up even more personal information from Canadians. Such is the case with Bill C-12, which proposes a series of amendments to *PIPEDA*, Canada’s private-sector privacy law. And although C-12 has consistently been presented as a privacy-enhancing update to the law, it contains a number of troubling provisions that are giving privacy advocates cause for serious concern.

In the first case, C-12 makes it easier for all kinds of vaguely defined “lawful authorities,” including police, defense officials, and potentially even the employees of private security companies, to access the records that private organizations hold on their clients. Even worse, it doesn’t even require the private organization in question to verify the validity of a “lawful authority” before disclosing your personal information to them.

C-12 also includes provisions for the introduction of gag orders, which, in some circumstances, would prevent

organizations from so much as notifying you in the event that your personal information is accessed or disclosed.

It is perhaps little wonder, then, that in a recent [address](#) and [position paper](#) delivered to the International Association of Privacy Professionals in Toronto, Stoddart cast a critical eye at a number of holes in the current law (even if she stopped short of directly criticizing C-12). In her remarks, she calls for amendments to *PIPEDA* that, unlike C-12, would introduce breach notifications

and compel organizations to report on exactly who is requesting access to our personal information, how frequently, and for what reasons.

Stoddart's words are urgent and important, and it is clear that the government's proposed amendments contained in C-12 aren't even close to her prescription for reform of *PIPEDA*. The government would be well advised to listen closely to what she (and FIPA) are saying and make the necessary changes.

A NATIONAL ID CARD BY STEALTH?

New report digs into the details of the secretive BC Services Card.

A [recent report](#) from the B.C. Civil Liberties Association, supported in part by FIPA, reveals new details of the provincial government's newly minted but highly secretive B.C. Services Card.

The new card, unveiled in mid-February after a delay in late 2012, combines the healthcare functions of the old B.C. CareCard with the identity functions of the provincial driver's license. Though the combined card is not currently mandatory, as it is in its first stages of distribution, by 2018 all B.C. residents will be required to "upgrade."

Privacy advocates, security experts, and civil libertarians have repeatedly raised concerns that the card is essentially, as the BCCLA report puts it, "a mandatory provincial ID card" with the potential to link all kinds of disparate data sets. Again, in the words of Kate Milberry and Chris Parsons, who co-authored the study, "The BC Services Card is a key element of unprecedented changes in the way the province collects, accesses and shares personal information, including highly sensitive health information, amongst departments, agencies, and even private contractors."

Despite these massive implications for how personal data is managed in BC, the Card has been shrouded in secrecy from the outset. Many of FIPA's attempts to access records related to the project have been delayed, returned non-responsive or heavily redacted. Similarly, a number of interview requests from the BCCLA were repeatedly denied over the course of the study.

Luckily, the Commissioners have gotten involved. At the provincial level, Information and Privacy Commissioner Elizabeth Denham, despite finding the first phase of the card's rollout compliant with the relevant privacy laws, has called for extensive public consultations before the project progresses any further. Denham's concerns are echoed at the federal level: the BCCLA's study was funded by Canada's Privacy Commissioner, Jennifer Stoddart.

This national interest is extremely telling. After all, one of the report's major claims is that British Columbia is being used as a kind of testing ground for the development of a federal ID system, or at least a series of "interoperable" provincial regimes.

Though it sounds Orwellian, this vision comes as little surprise given that main contractor SecureKey has already been contracted to deliver a similar authentication system for the federal government, wherein citizens will be able to use their credit cards to access government services online. It seems that the gears required to make SecureKey's stated goal of "wrapping up Canada" a reality are already in motion, nowhere moreso than here in B.C.

The BCCLA's report can be accessed for free [through their website](#).

FIGHTING FOR A FAIR DEAL: FIPA CONTINUES TO OPPOSE TRANS-PACIFIC PARTNERSHIP

Building on our previous commitment to the “Stop The Trap” coalition, brought together by OpenMedia.ca last year in opposition to the highly secretive Trans-Pacific Partnership, FIPA has rejoined its coalition members to fight for a fair deal on intellectual property.

When the intellectual property chapter of the TPP leaked in 2012, it became clear that the negotiators and lobbyists hammering the agreement out behind closed doors had one major goal in mind: tighter control of information. The agreement’s proposed copyright provisions would set strict limits on how the citizens of signatory nations create, share, and distribute intellectual property, and could even criminalize certain everyday uses of the Internet.

The Fair Deal coalition sees such proposals as counter to what the Internet, at its best, could be: a tool that empowers us with greater access to the knowledge we need to be creative, engaged citizens capable of holding power to account. Susan Chalmers of InternetNZ, one of the coalition’s founding members, puts it this way:

“A fair deal on copyright in the TPP takes into account the interests of internet users, libraries and archives, those with disabilities, educators and business innovators as well as creators. We’re all part of the Internet economy. The Fair Deal coalition is promoting fair copyright standards for the TPP that reflect the needs of the broadest cross-section of society.”

More than 138,000 people have already signed the petition calling for a fair deal on copyright in the TPP.

ADD YOUR VOICE TODAY AT
OURFAIRDEAL.ORG



FIPA IS HIRING! JOIN THE TEAM

If you’ve ever wanted to get involved in FIPA’s efforts to support privacy, transparency, and access rights across Canada, now’s your chance! In the coming weeks, we will be hiring a new Program Director to oversee our organizational development, communications, and member services goals.

We’re seeking thoughtful, articulate communicator with a keen interest in public policy, civil liberties, and organizational development to replace our outgoing Program Director, Tyler Morgenstern, who will be starting his master’s degree at Concordia University in September. The ideal candidate will demonstrate strong media/marketing and project management skills, and have an aptitude for raising funds.

But most of all, they will show that they are excited to support the advancement of information rights throughout British Columbia and right across the country. A full job posting can be found on our website at fipa.bc.ca/home/news/351. We will be accepting applications until June 7. Apply today!

TO APPLY:

Send your resumé and cover letter to fipa@vcn.bc.ca by no later than 5 PM on Friday, June 7. Only candidates shortlisted for an interview will be contacted. No phone calls, please.

ACCESS IN THE ACADEMY: FIPA TO LAUNCH NEW ATI/FOI RESOURCE FOR RESEARCHERS

Just in time for the 2013-14 school year, FIPA is gearing up to release a brand new public education resource, generously funded by the Law Foundation of B.C.: *Access in the Academy: Bringing FOI and ATI to Academic Research*.

Compiled by Mike Larsen, Professor of Criminology at Kwantlen Polytechnic University in Surrey, B.C. and co-editor of *Brokering Access: Power, Politics, and Freedom of Information Process in Canada* (UBC Press, 2012), *Access in the Academy* is one of the first resources of its kind tailored specifically for Canadian researchers.

By combining legal reviews of British Columbian and Canadian ATI/FOI legislation with nuanced theoretical perspectives on “the politics and ethics of secrecy and revelation” and plenty of real-world tips for formulating successful access requests, *Access in Academy* provides readers a lucid, theoretically engaged, and highly practical introduction to the world of ATI and FOI.

Although they offer a unique ‘backstage’ look at how, and more importantly why, information becomes (or doesn’t become) public knowledge, FOI and ATI mechanisms remain a rarity in the university classroom. *Access in the Academy* seeks to change that.

It explores ATI and FOI as prime arenas for data and information collection, where patterns of disclosure, delay, and exemption tell compelling stories of policy formation, message control, and secrecy. Together, they reveal what’s at stake when governments act.

FIPA is proud to be offering this excellent resource to the community by donation through our website at fipa.bc.ca. It will be available for download later this summer.

More information about launch events will be on the our website, Twitter feed and the in coming issues of the Bulletin.

SUPPORT FIPA

FIPA relies on the contributions of members, community groups, and individual donors to support its work.

HERE’S HOW YOU CAN HELP:

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Join as an individual or as an organization to receive early notice of events, first-run access to the FIPA Bulletin, special offers, and AGM voting privileges.

BECOME A DONOR

The best way to support FIPA is by signing up as a monthly contributor. One-time gifts and donations are also greatly appreciated! Visit fipa.bc.ca and click “Donate.”

SPREAD THE WORD

Follow us on Twitter (@bcfipa), subscribe to our news updates, and share our Bulletin! We’re always looking to expand the information rights community in B.C.

For any questions about giving or donations, including membership, sponsorship, or legacy funds, contact Tyler Morgenstern at tyler@fipa.bc.ca