

‘Open Government’ trend is heating up – Will there be light as well as heat?

“Stockwell Day announces expansion of open government.”

“Ottawa launches ‘open data’ portal.”

“Christy Clark promises open government revolution.”

“Clark, Abbott commit to creating ‘open data’ website for BC.”

With lines like these zinging around the news and social media, one might think politicians at all levels have attained enlightenment, decided to release their death grip on government information, and no longer will try to micro-manage the messages we receive.

Sorry, but you and I know that day has not arrived and may never arrive. So what’s with all the current buzz about “open government / open data” initiatives?

The federal Conservatives

With an election looming, the federal Conservatives need somehow to buff up their “Commitment to enhancing transparency and accountability to Canadians”. They also want to one-up an ‘Open Government’ platform the Liberals announced last November. So Treasury Board President Stockwell Day has announced a three-part Open Government program consisting of:

- *Open Data*, which is about offering Government data in more useful and machine-readable formats to enable citizens, the private sector and non-government organizations to leverage it in innovative and value-added ways.
- *Open Information*, which is about proactively releasing information, including on Government activities, to Canadians on an ongoing basis. It is about proactively making Government information easier to find and accessible for Canadians.
- *Open Dialogue*, which is about giving Canadians a stronger say in Government

policies and priorities, and expanding engagement through Web 2.0 technologies.

We don’t have room here to discuss the pros and cons of what is still a very vague proposal, but we must point out that while the federal open data site is welcome, it does nothing to address the Conservative government’s failure to deliver on its promises to reform the federal *Access to Information Act* or improve its abysmal record of frustrating ATI requests.

To be plain, it’s kind of gut-wrenching for us to hear the words ‘open government’ coming from the lips of a government which has set a new Canadian standard for obsessive control of information and whose officials may have broken the law by ordering the ‘unreleasing’ of records that had already been scheduled for release in response to an access request.

Open Data is not Open Government

‘Open data’ is wonderful, but it can never replace freedom of information, the citizen’s legal right of access to government records. In fact, if open government means transparent and accountable government, electronic access to data is not the most important thing.

Most of the data that is being made available by agencies is useful to the public, but does not necessarily improve accountability or diminish government’s discretion over what information it **MUST** release in response to citizen demand.

Releasing datasets or making previously available datasets easier to find and use may be better characterized as increasing data accessibility and not as increasing government transparency.

FIPA to Parliamentary committee: avoid 'open government' models that reduce citizens' information rights

The federal Conservative and Liberal parties both seem to be embracing 'open government' at least partially as a diversion from the unpleasant task of improving the federal access-to-information regime. Both have a history of promising major reform and failing to deliver.

FIPA Executive Director Vincent Gogolek appeared before Parliament's Standing Committee on Access to Information, Privacy and Ethics in February to encourage moves toward web-based Open Government, but not at the expense of the citizens' right to obtain records on demand.

Gogolek reminded the Committee that Canada's Access to Information Act and system

has very serious and well-documented problems. "Initiatives in the field of 'open data' cannot take the place of action to repair our seriously crippled Access to Information system", he said.

"Without the ability to pull information from the government vaults, be they paper or electronic, an open data system that allows the government to push the information it deems suitable for public consumption will be a Trojan horse for those who prefer that information stay within the control of the bureaucracy."

FIPA's submission is available at <http://fipa.bc.ca/home/news/266>

Commissioner investigates so-called "Proactive Disclosure" policies

The Office of BC's Information and Privacy Commissioner (OIPC) is conducting an investigation and consultation into the practice of proactive disclosure of information by BC public bodies. The investigation was prompted by a FIPA complaint about BC Ferries' controversial policy of posting records obtained through FOI requests on their website, along with the names of FOI requesters. FIPA says this policy is actually designed to discourage FOI requesters.

FIPA has responded to an OIPC "consultation questionnaire" with a wide-ranging 13-page response (See box).

FIPA criticizes the disclosure policy used by BC Ferries and points to several sections of the Freedom of Information and Protection of Privacy Act which show how public bodies can be

proactive in releasing material while still upholding their duty to assist requesters.

"FIPA has long supported actual proactive disclosure of information and records by public bodies," we stated. "But we denounce and have formally complained about the "faux transparency" practiced by public bodies like BC Ferries, which do not put up any information except what is dragged out of them by FOI requesters."

FIPA's formal complaint to the Commissioner about how BC Ferries handles FOI requests may be viewed at <http://fipa.bc.ca/home/news/255>
FIPA's response to the Commissioner's questionnaire: <http://fipa.bc.ca/home/news/268>

BC Government goes to court again to contest release of full IBM contract

FIPA's victory before the Information and Privacy Commissioner in our seven-year FOI battle to get a complete copy of the \$300 million Workplace Services Agreement with IBM is being challenged again in court.

The government is going back to BC Supreme Court to argue 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 was to be released in full. FIPA has been fighting for a full copy of the contract since 2004.

The government's petition for judicial review will be their second trip to BC Supreme Court in an attempt to withhold all or part of the contract.

FIPA received a copy of the contract, minus the parts that are being contested for reasons of "Security of any property or system" and personal privacy (FIPA formally declined to request any protected personal information).

The government argued that releasing the full IBM contract would threaten the government's security systems and B.C.'s economic interests, as well as the business interests of IBM. But in a previous 13-page ruling, adjudicator Michael

McEvoy strongly disagreed with the government on all points.

FIPA's Vincent Gogolek said he was dismayed that the government is prepared to waste more taxpayers' time and money withholding information that should be easily accessible on the internet.

"The government is constantly dragging us off to court, but we're not rolling over," he said. "We will continue this fight until government contracts are routinely posted online to promote transparency, honesty, fairness and accountability for the spending of taxpayer dollars."

FIPA welcomes new Minister for Open Government, asks her to post long-awaited IBM contract online

In a letter of welcome to BC's new Minister of Labour, Citizens' Services and Open Government, FIPA has asked the government to take a big step toward real openness by routinely posting its multi-million dollar outsourcing contracts online. "And the first contract to be posted should be the full IBM Workplace Services contract we have been trying to obtain since December 2004," we added.

Information and Privacy Commissioner Elizabeth Denham has also recommended the routine release of outsourcing contracts. We quoted a statement from the Commissioner's

order concerning the IBM contract:

"These decisions demonstrate that public agencies should consider the routine release of these types of outsourcing contracts. Proactively releasing these contracts would save everyone considerable time, money and paperwork." (<http://www.oipc.bc.ca/news/2010Releases/NR-CompassFIPAorders.pdf>)

BC has a new Minister in a ministry with a new and promising name, and we hope she actually will be willing to give open government a try.

Recent Moves to Share Private Information across Government Agencies a Disturbing Trend

2010 was not a banner year for privacy rights in British Columbia, and if current government plans are realized, 2011 could be a lot worse.

In a 100-page submission to the Special Committee to Review *the Freedom of Information and Protection of Privacy Act* (FOIPPA) last year, and in a strategy document called *Citizens @ the Centre: BC Government 2.0*, the province's Chief Information Officer revealed plans for sweeping new powers to share private personal information among government departments and agencies, as well as with non-governmental organizations and the police.

In their presentation, senior government officials demanded that FOIPPA be changed to allow more data-sharing inside and outside government, with reduced privacy protections. The government of British Columbia has specifically stated that their aim is to increase data sharing, both across ministries and with outside contractors, in order to provide "citizen centred services".

The supposed justification for gutting existing privacy protections is that 'government is now horizontal, so we need to throw out all those

Government submission to the Special Committee: http://www.leg.bc.ca/foi/submissions/organizations/BC_Government.pdf
Citizens @ the Centre documents: http://www.gov.bc.ca/citz/citizens_engagement/index.html)
FIPA report on Integrated Case Management: http://fipa.bc.ca/home/hot_topics/17

pesky rules that protect privacy and prevent us from sharing information without restriction'. (Well, OK, we're paraphrasing.) As for protection of our privacy, the government essentially says 'trust us'.

The government also proudly announced a \$180 million contract with Deloitte to set up an integrated case management system, or ICM, for government agents to search and manipulate personal information. This system will involve a massive amount of data collection, including collection on a forced basis all across the social services sector. Contracted non-government service providers will be required to deliver all the information they gather to the government.

Recent legislation also shows that government is increasingly trying to bury privacy incursions in omnibus bills. Case in point: Bill 11 – a lengthy

bill passed last year, one part of which allows the Minister of Health to commandeer all the personal health data of citizens held by health authorities for a “stewardship purpose” and send it to any public body he likes.

It’s time to put an end to this push by government to seize, control and share more and more of our personal information.

In 2009, the Commissioner wrote “It is certainly important that government not move forward with any legislated changes in this area unless and until there has been a full public consultation in

the form of a position paper published by the government, followed by meaningful, extensive stakeholder consultations.” And the Special Committee reviewing FOIPPA unanimously agreed that consultation on data sharing is vital.

The government must start paying attention to privacy rights, and consulting British Columbians on how best to protect them. FIPA is working with affected stakeholders in the health and social service sectors to make this happen. We will have news for you shortly.

The Organization

FIPA access to gaming funds cut in half

FIPA has received a serious financial blow from the provincial gaming authority: The gaming funds granted for our Community Education Program have been cut from \$50,000 to \$25,000. Evidently FIPA and all other groups with programs in the community education category received a 50 percent funding cut.

FIPA staff are working on alternative fundraising plans and are also looking at the budget to see what can be cut to balance the books.

FIPA runs a very tight financial ship (and we passed a recent audit by the Gaming Commission with flying colours), so there isn’t a lot of fat to be

trimmed. Our survival is not at stake, but the amount of educational activity and free service we offer to the public most certainly is.

If you have ever considered making a special donation of \$50, \$100 or maybe even \$500 to FIPA, this would be the time.

FIPA’s website lets you make electronic donations, and of course we will be delighted to accept whatever form of donation you can provide.

And rest assured, the fight for FOI and privacy rights will go on regardless. Thanks for your support as a FIPA member or ally

FIPA fights in Supreme Court of Canada

For the first time ever, FIPA has appeared as an intervenor in the Supreme Court of Canada. The case comes out of Alberta, but has national implications.

The Alberta Court of Appeal decided 2-1 that if the Information and Privacy Commissioner did not complete a hearing within the 90-day statutory deadline (or extend the hearing within that period), the complaint is finished and the complainant is left without a legal remedy.

FIPA does not think people whose FOI or privacy rights may have been violated should lose their right to a fair, impartial hearing because of a technicality over which they have no control.

FIPA’s pro bono counsel, Brent Olthuis and Tam Boyar of Hunter Litigation Chambers, appeared before the Court on February 16, 2011. We are extremely grateful for their generous service to FIPA and their support of FOI in Canada.

Attend the FIPA Annual General Meeting

The AGM will be held on Wednesday April 6, 2011, 7:30 pm at the YWCA Hotel, 733 Beatty Street, Vancouver, BC. You’re invited! See the notice enclosed or attached to this bulletin.

FIPA would like to thank the Law Foundation of BC, the Notary Foundation of BC and the Province of British Columbia 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