

# 2014



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# **FIPA**

BC FREEDOM OF INFORMATION  
AND PRIVACY ASSOCIATION

2014

# Annual Report

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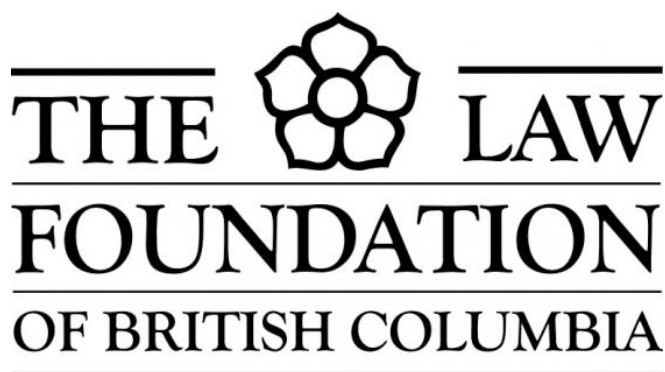
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# 2014 ANNUAL REPORT

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## Funders

The B.C. Freedom of Information and Privacy Association thanks the Law Foundation of B.C. and all our other donors, funders, and contributors for their ongoing support of our advocacy, research, programs, and services. We also acknowledge the financial support of the Province of British Columbia (Gaming Policy and Enforcement Branch).



BC Gaming Policy and Enforcement  
Branch of the Ministry of Public  
Safety and Solicitor General

## Board

### **President:**

Richard Rosenberg  
Professor Emeritus, Dept. of Computer  
Science at UBC

### **Vice-President:**

Gwen Barlee  
Policy Director, The Wilderness Committee

### **Treasurer:**

Tom Crean  
Owner/Manager, Kearney Funeral Home

### **Secretary:**

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Consultant, Master of Laws Student at the  
University of Ottawa

Carla Graebner  
Librarian, WAC Bennett Library, Simon  
Fraser University

Michael Markwick  
Instructor & Convener, Communication  
Capilano University

Keith Reynolds  
National Research Representative,  
Canadian Union of Public Employees

James Symons  
President and CEO, Power Diagnostic  
Technologies Ltd.

## Staff

Vincent Gogolek  
Executive Director

Catherine Hart  
Program Director

# MESSAGE FROM THE EXECUTIVE DIRECTOR

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**To our valued members, partners, friends and allies**

This year was a very busy time for FIPA, with exciting new projects being announced and improvements to our electronic infrastructure (thanks to the Law Foundation). There were also some challenging developments on both the freedom of information (FOI) and privacy fronts.

In 2014 we joined forces with more partners and allies to help build strong movements in the face of emerging hurdles and setbacks, such as those presented by new anti-terrorism legislation. We scored victories in several important complaints and investigations, drawing attention to key issues such as government's duty to document and the increasing reach of state surveillance.

In this challenging context, providing our members and the general public with critical information is more important than ever. This year, we strengthened our capacities in communications technologies by redesigning our website, adopting a new communications interface and upgrading

our computing systems. While improving our ability to circulate important information more efficiently, we continued with our work in public interest advocacy, legal research, litigation and law reform.

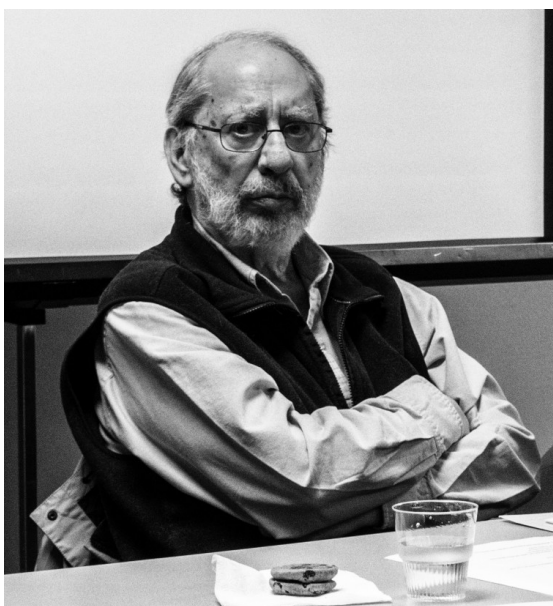
We have also had the tremendous benefit of continuing support from our funders, with a special thanks to the Law Foundation of British Columbia for maintaining our community education funding and allowing us to modernize our website and related systems.

For almost 25 years, B.C. FIPA has played a critical role in empowering people by increasing their access to information and their control over their own personal information. Your continued support is what makes this work possible. We look forward to having you join us in supporting information and privacy rights in the years to come.



## ACKNOWLEDGEMENTS

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*Richard Rosenberg*

This year, we would like to thank **Dr.**

**Richard S. Rosenberg** for his many years of involvement with FIPA. A Professor Emeritus in the Department of Computer Science at the University of British Columbia, Richard joined FIPA as a member of both the Board of Advisers and the Legislation and Policy Committee in 1998. He was elected President of the Board of Directors in 2005, providing us with leadership, guidance and vision until his retirement in 2015.

Richard's academic work focuses on the social impact of computers and he has written many papers on privacy issues, free speech, and ethics. His contributions to FIPA in these and countless other areas have been behind so many of our successes over the past ten years.



*Tom Crean*

We would also like to acknowledge the immense contributions of **Tom Crean**, who served on the Board of Directors and as Treasurer from 1994 to 2015.

The President of his family's third generation funeral home since 1978, Tom became involved in consumer advocacy and public education early in his career. A staunch defender of independent family-owned business, four of Tom's five campaigns against inadequate consumer protection of grieving families have been successful. With more than forty years now in funeral service Tom also serves locally on the board

of several civic and professional organizations in addition to his twenty year contribution to FIPA.

Finally, we would like to thank **Catherine Hart** for her work as Program Director. Catherine's tireless and persistent work in revamping our digital environment is much appreciated and will benefit our organization, its members and the public for years to come.

FIPA's Board of Directors and staff would like to wish Richard, Tom and Catherine all the best in their future endeavors.

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## OUR WORK

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The B.C. Freedom of Information and Privacy Association is a non-partisan, non-profit society that was established in 1991 to promote and defend freedom of information and privacy rights in Canada.

Our goal is to empower citizens by increasing their access to public information and their control over their own personal information. We serve a wide variety of individuals and organizations through programs of public education, public assistance, research, and law reform.

FIPA was the prime non-governmental force behind the passage of B.C.'s Freedom of Information and Protection of Privacy Act (FIPPA). In the more than twenty years since, FIPA has worked tirelessly to defend and expand the reach of the FIPPA and to protect the information rights of British Columbians.

We have fought for the public disclosure of government contracts worth hundreds of millions of dollars. We have convened dialogues, conferences, workshops, and celebrations dedicated to establishing a democratic balance of power between the institutions, the citizens, and the officials who make up our society.

Most importantly, FIPA has helped countless citizens, in one-on-one conversation, understand and act on their fundamental information rights.

With a diverse, intergenerational membership of over 250 individuals and organizations, FIPA is a cornerstone of B.C.'s civil society community. Our two staff members focus on maintaining a dynamic core group of activities.

### *Our main activities include:*

- *Public Assistance and Referrals*
- *Public Legal Education*
- *Public Interest Advocacy and Legal Research*
- *Litigation and Law Reform*

# HIGHLIGHTS: 2014 IN NUMBERS

## Number of People Served

	2011	2012	2013	2014
Helplines	510	285	266	236
Legal Assistance	30	21	23	22
Website Hits	812,867	1,050,575	1,337,097	1,900,834
Website Visits	102,773	97,064	136,277	166,709
Help Topic Hits	20,965	42,540	60,062	47,053
Media Interviews	117	175	168	120
FIPA Event Attendees	210	160	100	205
Speaking Engagement Attendees	544	370	810 (estimate)*	215
FIPA Followers (Twitter, subscribers, members)	650	1221	1650	1825

\* External events organized by colleagues and partner organizations

## Litigation: Number of cases

	2012	2013	2014
Litigation Cases	4	5	7
Litigation Cases Completed	3	2	4

*FIPA's redesigned website helped draw more people to our resources*



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# ACTIVITIES

## Public Assistance and Referrals

A major component of our programming is providing advice and assistance to a wide variety of individuals and organizations. In our increasingly digital world, it comes as no surprise that more people are seeking assistance through our website. Our “Help Topics” pages provide information on how to file FOI requests with various public bodies, appeal the decisions of those bodies if they are thought to be incorrect, request copies of personal records, and make privacy complaints to the appropriate commissioners and offices.

In 2014, we completely overhauled our website, digital communications environment and computing systems to provide a more streamlined, effective and navigable interface. This year, our help topics generated 47,053 hits according to our analytics system.

We also provide telephone and in-person assistance free of charge during normal business hours. In 2014, FIPA provided direct assistance to 236 people through our telephone and email helplines. In cases where more summary advice is needed, we provide basic legal assistance and referrals. In 2014, we provided legal assistance to 22 people.

Some inquiries from people seeking legal assistance necessitate escalation into advocacy work. Calls from the public, for example, led us to look more closely at an ‘ad farm’ website that offers to remove embarrassing court case information that it makes available to Google searches. Another public call resulted in us discovering that Interior Health did not have a designated FOI officer or accurate website, and was failing in its duty to assist applicants in gaining access to records as a result. Our advocacy work caused the Office of the Information and Privacy Commissioner to advise Interior Health to amend the information on its website.

## Public Legal Education

### Self-help materials and online education

FIPA provides the public with access to guided self-help materials where gaps in legal education are identified. Our website, with its help sections and online library, is one of our most accessible means of educating the public on legal systems governing freedom of information and privacy protection in British Columbia and across Canada.

Although we are in the process of revising our analytics for more accurate website monitoring, the numbers we have indicate that our website hits increased by 42% this year and visits increased by 22%.

## Speeches and Presentations

Representatives of FIPA often appear on panels and in conference sessions focused on various information rights issues. In April this year, FIPA's Executive Director spoke at a workshop held by the British Columbia Library Association (B.C.L.A.) on the topic of 'no responsive records' responses to FOI requests. In May, he spoke about surveillance in the workplace at the Federation of Post-Secondary Educators' annual conference and gave an address as part of the closing plenary at the Politics of

Surveillance Workshop hosted by the New Transparency Project in Ottawa. In June, Mr. Gogolek addressed some of the current issues of and challenges to freedom of information for a workshop with the B.C. Federation of Labour Research and Policy Group for COPE 378. In September, FIPA presented at the 2014 Information Summit. In November, FIPA's Executive Director took part in an event on data storage and privacy at Capilano University.

## Events

Each year, FIPA produces a variety of public education events on freedom of information, privacy, and legislative and legal issues. This year's highlight was the 2014 Information Summit, which was held at U.B.C. Robson Square in September. Attracting 115 participants and a number of expert speakers, the Information Summit dealt with question of next steps for Information and Privacy. The keynote speaker was B.C.'s Information and Privacy Commissioner Elizabeth Denham. Panels included: "Innovation vs Transparency?", "John Doe: What does the SCC decision mean for policy advice?", "Information Control: Whistleblowing and Gag Laws", and "Privacy on the front lines: What changes to PIPA do you need?"

FIPA also held our 2014 Annual General Meeting in downtown Vancouver, where we recapped the Association's activities and finances from the preceding year and elected new Directors. This was followed by a guest address from award-winning federal government whistleblower Sylvie Therrien. Therrien is a former Integrity Services Investigator for Employment Insurance with Services Canada who was suspended without pay in May 2013 when she took a stand against the federal government's attempts to find 'savings' from the Employment Insurance funds by creating quotas for EI fraud. These

cost-cutting measures could only be achieved by finding ways to manipulate the facts and deny benefits.

Following up on the success of 2013's *Access in the Academy*, FIPA hosted an FOI workshop to celebrate Right to Know Week in Surrey that was facilitated by Mike Larsen, Instructor in the Department of Criminology at Kwantlen Polytechnic University.

FIPA also participated in Media Democracy Days at the Vancouver Public Library, which allowed us to engage in public outreach alongside other community organizations who were invited to participate in a media fair. This allowed us to increase our visibility with members of the public who are interested in related issues of media democracy and access to information. FIPA representatives were able to raise awareness of current FOI and privacy issues with members of the public, sign up new members to our mailing list, and engage in important discussions with individuals about the access and privacy issues that are important to them. Hundreds of members of the public were in attendance.

# Building Engagement in Freedom of Information and Privacy Rights

## Media Interventions

As the country's only organization devoted to information rights advocacy, FIPA appears regularly in news and media reports, both provincially and nationally. This year, FIPA gave 120 media interviews, speaking on issues as diverse as the failure to release information about the Mount Polley tailings pond, the B.C. Election Act court challenge and Access to Information reforms.

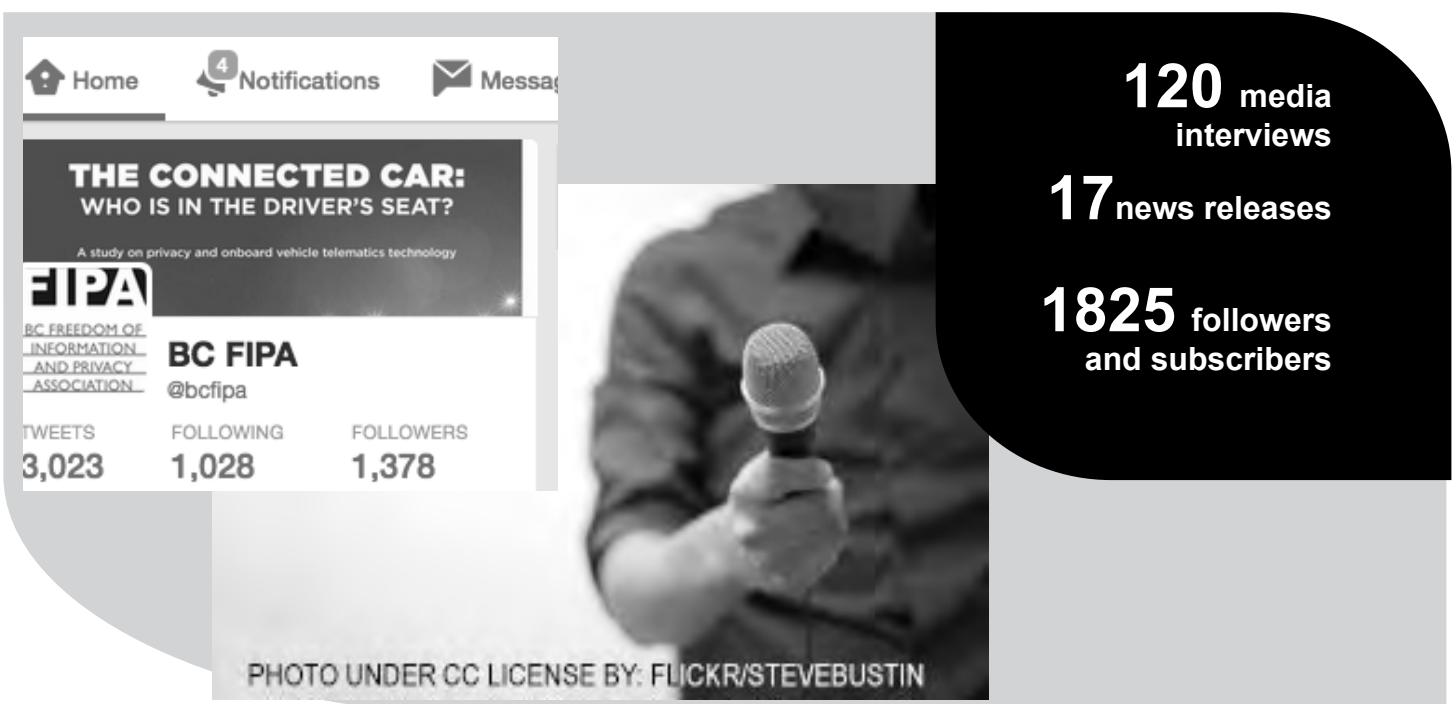
FIPA also self-published a number of articles through website posts and contributions to online outlets. This year, we maintained a blog on the Huffington Post B.C., where we published seven articles.

Additionally, we continue to distribute media alerts and releases to the B.C. and Canadian press. 2014 was an active year and we published 17 news releases, many of which received province-wide and even national coverage.

## Social Media and Online Communications

FIPA uses Twitter and mailing lists to sustain its online engagement. We communicate relevant news, keep our contacts up to date with our work and solicit engagement in our campaigns.

Our website redesign has allowed us to incorporate our social media tools into the website, resulting in greater interaction with members of the public across platforms. In 2014, our Twitter followers and mailing list subscribers increased by over 10% to 1825 people.





# ACTIVITIES & ACCOMPLISHMENTS: HIGHLIGHTS IN BRIEF

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FIPA constantly monitors the performance of government bodies and Canada's Information and Privacy Commissioners. In turn, we are frequently consulted on policy issues by politicians and government officials. We regularly engage in legal advocacy before B.C.'s Information and Privacy Commissioner and various Canadian courts, and coordinate legal action with partner organizations to maximize effectiveness while avoiding duplication and overlap.

FIPA conducts ongoing research into the policy and legal climates that structure access and privacy regimes in B.C. and across Canada. We commission our own studies and provide research support to lawyers, journalists, students, and the general public. In the course of answering inquiries from the public and responding to stories in the media, we research emerging information rights issues by filing FOI requests, thus making use of FOI law as an effective advocacy and research tool.

## Key Complaints

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### *Provincial*

**Mount Polley Mine:** FIPA submitted a complaint to the Office of the Information and Privacy Commissioner of B.C. about the provincial government's failure to release information about the state of the tailings pond at Mount Polley. The Commissioner is now conducting an investigation.

**Police volunteer personal information:** FIPA filed a complaint with the Office of the Information and Privacy Commissioner concerning the types of questions police departments are asking people who are looking to join them as volunteers or employees. The Commissioner is conducting an investigation.

**Ministry of Health data breach FOI:** FIPA had filed a complaint against the Ministry of Health, which had refused to release any information regarding the data breach through FOI. The Ministry claimed the information was related to law enforcement and was therefore exempt under s.15 of the Act. Our challenge that the Ministry had made an over-broad interpretation of the section was accepted by the Information Commissioner's Adjudicator in a convincing victory.

**Ministry of Health Transitory Emails:** FIPA requested copies of emails regarding the Burnaby Hospital Consultative Committee, including one sent to the former Health Minister's private account, after they were leaked and available in the public realm. The Ministry responded that it was unable to find the correspondence. We complained to the Office of the Information and Privacy Commissioner, who found in January that the record had been deleted because it was 'transitory', leading us to suggest that the government was abusing its own policies to keep information from being released. Because Ministry officials were then required to search private emails of two Ministers involved, our successful complaint set a precedent for future requesters.

**Office of the U.S. Trade Representative and Ministry of Citizen Services:** Internal documents from the U.S. Trade Representative (USTR) that FIPA obtained through the American Freedom of Information Act show that major U.S. companies have complained about the requirement in B.C.'s privacy laws that government and other public sector data be stored in Canada. The documents show that a call to discuss this issue was scheduled between a senior USTR official and the Ministry of Citizens' Services in February 2012. When we submitted an FOI request to the B.C. government for records relating to this conference call, no responsive records were found about the call or the complaints. We complained to the Office of the Information and Privacy Commissioner, who stated that the Ministry did not have any records related to this call.

## Key Submissions

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### *Provincial*

**Special Committee to review the Personal Information Protection Act:** FIPA attended a public hearing of the Committee, delivering a verbal and written presentation calling for a variety of potential reforms to the Act. The Special Committee's report is expected in February 2015.

**Consultation on Amendments to FIPPA:** FIPA continued its participation in a consultation held by the Office of the Chief Information Officer at Citizen Services on data-linking initiatives under FIPPA. We resubmitted a joint submission written with the B.C. Civil Liberties Association (BCCLA) in which we reiterated our previous objection to the proposed amendments to the Act, arguing that they trade citizens' essential privacy rights for administrative efficiency and will move the province closer than any other in Canada to being a "surveillance state." We noted that these objections hold even greater salience now, given the increase of data linking and data mining in government service provision.

**B.C. Local Elections Financing Act:** In November, FIPA presented a written submission and appeared as a witness before the provincial Special Legislative Committee on Local Elections Expense Limits. We expressed our concerns about the lack of a lower limit for local elections and outlined our Charter challenge to the provincial Election Act, which has very similar provisions. We are awaiting the Special Committee's report to see if our recommendations were accepted.

**Association of Police Chiefs:** FIPA wrote a joint submission with the BCCLA in response to the Information and Privacy Commissioner of B.C.'s call for public comment on whether the two associations of chiefs of police should be covered by the Freedom of Information and Protection of Privacy Act. The Commissioner agreed with our view that these associations should be covered by the Act for reasons of transparency and administrative efficiency.

## National

**The American Foreign Account Tax Compliance Act (FATCA):** FIPA wrote a submission for a consultation being held by the federal Ministry of Finance regarding the implementation of U.S. tax law in Canada. FATCA conflicts with many of Canada's privacy laws, and we highlighted the damage this would do to privacy rights. We were also able to reveal information about FATCA implementation which we uncovered through FOI requests.

**Open Government Partnership:** FIPA wrote a submission for the second phase of the highly-criticized consultation process to assess the success of the Open Government Partnership. As in previous years, we recommended that the government review the outdated Access to Information Act and included links to our previous submissions.

## Other Research and Casework

*In the course of answering inquiries from the public and responding to stories in the media, FIPA researches a number of emerging information rights issues by filing our own FOI requests and working with our various partner organizations. At the end of 2014, we had 13 outstanding FOI requests with various levels of government at various stages.*

**Duty to Document:** For several years, we have been voicing our concerns over the widespread and growing culture of 'oral government' in provincial government. This year, we filed a complaint to the Office of the Information and Privacy Commissioner that drew attention to another method through which government has avoided documentation: marking records as 'transitory.' Government policy states that a transitory record is needed only for a limited period of time and can be deleted, but officials have been taking a much more expansive interpretation of the word. Commissioner Denham identified this in her 2013 report as one of the reasons that one in five B.C. FOI requests comes back with no records. We continue to press the government to implement a legislated duty to document.

**B.C. Services Card:** FIPA has been following the implementation of the B.C. Services Card since 2012 and executed an effective awareness-raising campaign around the public consultation being held by the government. FIPA spoke to the panel of citizens assessing the implementation of the Card and attended a special forum for experts on identity credentials. The citizen panel report responded to many of our criticisms and recommended against the government's current plan to make the Card mandatory as of 2018. It remains to be seen whether the government will act on these recommendations.

**Compass Card:** This year, FIPA looked into the privacy implications of Translink's new transit pass, the 'Compass Card,' after members of the public contacted us with concerns about the personal information held on the card. Although some of the concerns were addressed by Translink, other Compass Card features, including the option of registering the card, hold potential privacy implications. FIPA voiced these concerns at a consultation with Translink in February.

**Fee waivers:** Responding to complaints by members of the public regarding fees and fee waivers for FOI requests, we submitted an FOI request to the Ministry of Technology, Innovation, and Citizen Services. Our research suggests that fees for FOI requests seem to have been increased and fee waivers have been reduced. We requested further information and are investigating the possibility of filing a complaint with the Office of the Information and Privacy Commissioner.

## FIPA in Court

**B.C. Election Act:** FIPA's constitutional challenge to the provincial Election Act continued in the B.C. Court of Appeal. FIPA's challenge is based on the right to freedom of expression. Individuals and organizations are required to register with Elections B.C. before undertaking any 'election advertising.' The definition of election advertising contained in s.228 of the Act is extremely broad, and there is no minimum amount of spending before being required to register with Elections B.C. As a result, something as simple as putting a handwritten sign in your window could be considered 'advertising.' Failure to register could result in a year in jail and a \$10,000 fine. The B.C. Supreme Court held that the Charter was breached, the breach was not trivial or insubstantial, but was justified under s.1 as relating to transparency of the election process. This year, we filed factums and prepared for the case to be heard in 2015.

**Section 13 Policy Advice Exception:** FIPA appeared as an intervener in a Supreme Court of Canada case regarding the section 13 'policy advice' exception to Ontario's FIPPA. The decision was released in May 2014, and the Court upheld the Ontario Court of Appeal ruling which prevented the release of requested records on the basis that the information was 'advice or recommendation' to the minister. This was a very disappointing result, and likely means that the very restrictive approach used in British Columbia will now spread across the country.

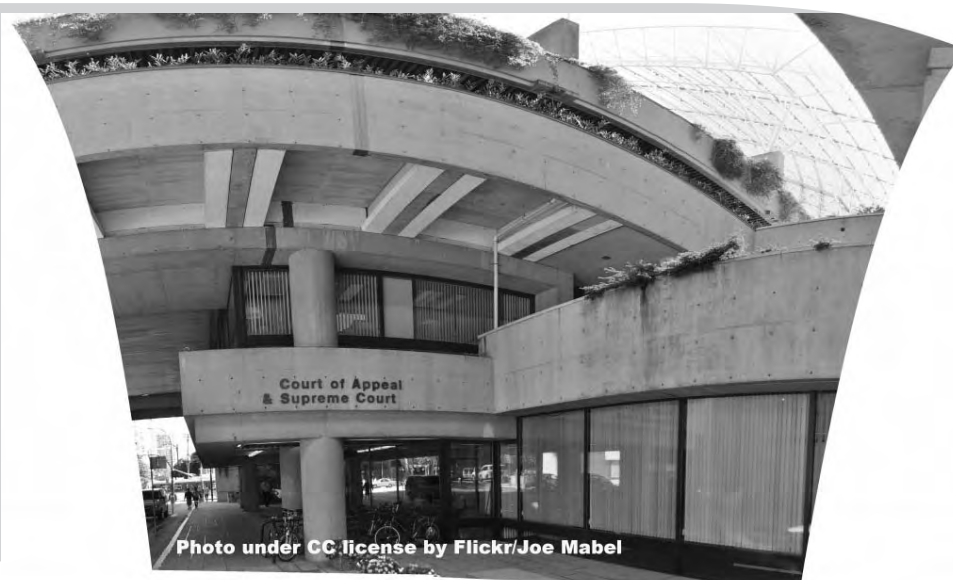


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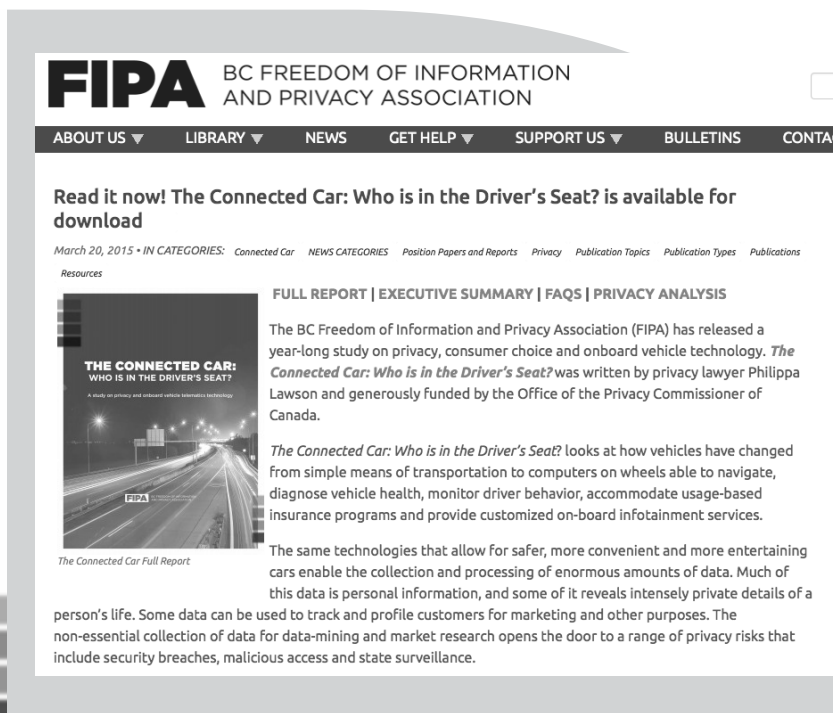
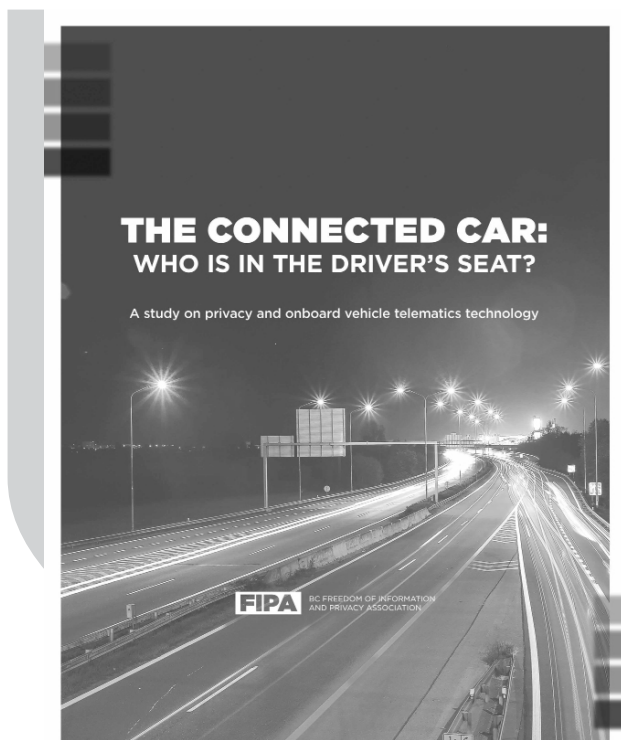
## Special Projects

**Connected Car: Who's in the Driver's Seat? Project:** FIPA was approved by the Office of the Privacy Commissioner of Canada to conduct a year-long study into the effect of electronic monitoring systems in our vehicles on our privacy rights and consumer choice. Lead researcher Philippa Lawson spent 2014 researching the report, which included FOI requests, live interviews and attendance at automotive telematics conferences. The report launch will be held to coincide with the Vancouver International Auto Show in March, 2015.

**Coalition and Partner Work:** This year we joined two major advocacy coalitions. The first, *Our Fair Deal*, is an international coalition that challenges the intellectual property provisions of trade agreements such as the Trans Pacific Partnership and advocates for a more open, transparent negotiation process. The second is the Canada-wide Protect Our Privacy coalition, which brings more than thirty major organizations together in an effort to protect privacy and fight repressive legislation such as Bill C-51, the federal government's anti-terror legislation. We also continue to be active in coalitions opposing the Trans Pacific Partnership and its negative effect on privacy and internet freedom.

FIPA also joined the *Freedom of Information Advocates Network (FOIANet)*, an international information-sharing network of organizations and individuals working to promote the right of access to information.

**Website Renewal Initiative:** Through the Law Foundation's generous funding, we completely redesigned and launched FIPA's website. We upgraded our hardware and now have the computing power to manage these new online tools. These significant upgrades have allowed us to better provide the public with accessible online help and improve our member services.





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2014

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