

THE BC FIPA BULLETIN

FIPA

BC FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION

OCTOBER 2015

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THIS EDITION

FIPA'S
QUARTERLY
BULLETIN

FEATURED:

Access to Information and the Federal Election [page 1](#)

FIPA Appears Before the Information & Privacy Review Committee [page 3](#)

FIPA Out and About During Right To Know Week [page 4](#)

FIPA Weighs in on Privacy & Open Courts [page 5](#)

ALSO INSIDE:

The latest on the TPP, submitting to the *FIPPA* review, your discount code for Privacy & Access 20/20, and more.

ACCESS TO INFORMATION AND THE FEDERAL ELECTION

Together with the Canadian Taxpayers Federation and Newspapers Canada, FIPA planned to ask the federal parties to describe what they would do to repair and improve transparency policies and practices. This effort quickly expanded to include 22 transparency organizations from across the country.

Jointly with all of those groups, FIPA developed and signed a [joint statement](#), which called on federal party leaders to commit to a comprehensive review of the *Access to Information Act* and to support four specific reforms:

- giving Canada's Information Commissioner order-making power,
- expanding the scope of the *Act* to cover all public bodies,
- limiting the regime of exceptions, and
- creating a legal duty to document decision-making processes.

Following the release of the statement, we were pleased to see the [NDP](#) and [Liberals](#) include commitments in their

Leaders must
take action to
improve our
access system

platforms to improve the *Act*. Green Party leader Elizabeth May sent a [tweet](#) expressing support for transparency, but the party's [platform](#) contained only a general commitment to improving the access law. And unfortunately, the Conservative Party did not see fit to even mention access to information in its [platform](#).

While no party committed fully to all four points, the NDP platform made promises in all four areas while the Liberals committed to fulfil two, and have also

promised to institute regular reviews of the *Act*. Both the NDP and Liberals have also committed to eliminating all access fees beyond the initial \$5 requesting fee.

Now that a Liberal majority government has been elected, FIPA will be reminding them of their commitments, and pushing for much-needed, urgent action to improve the right to information in this country, and bring the *Access to Information Act* in line with international standards. ♦



TPP AGREEMENT REACHED

Those of you who received our [last issue of The Bulletin](#), or who read our [latest press release](#), know that FIPA has been concerned about the effects the Trans-Pacific Partnership (TPP) agreement could have on BC's privacy laws. And our concern has only increased since the agreement was finalized by negotiators at the beginning of this month. The federal government posted a [summary](#) of the agreement, which describes provisions that clearly clash with some of BC's key protections – with no mention of reservations or carve-outs that would

keep our privacy law intact. FIPA raised this in our submission to the Legislative Committee [reviewing](#) BC's FOI and privacy law last week.

Canadians are still waiting to see the TPP's final text, and FIPA is also waiting for the [now-delayed](#) FOI request for the BC Ministry of International Trade's records relating to the TPP's potential effects on *FIPPA*. Citizens have a right to know what their government has signed on to, especially if it affects their right to privacy. ♦

We seek to empower citizens by...

..increasing their right of access to government-held information.

..promoting and defending the principle of universal and affordable access to the basic information channels of our time.

..limiting the surveillance activities of the state, and by increasing our right of access to our own personal information and our ability to control the collection, use and sharing of our personal information,

Join us!

Contact FIPA for more information on becoming a member.

FIPA APPEARS BEFORE THE INFORMATION & PRIVACY REVIEW COMMITTEE

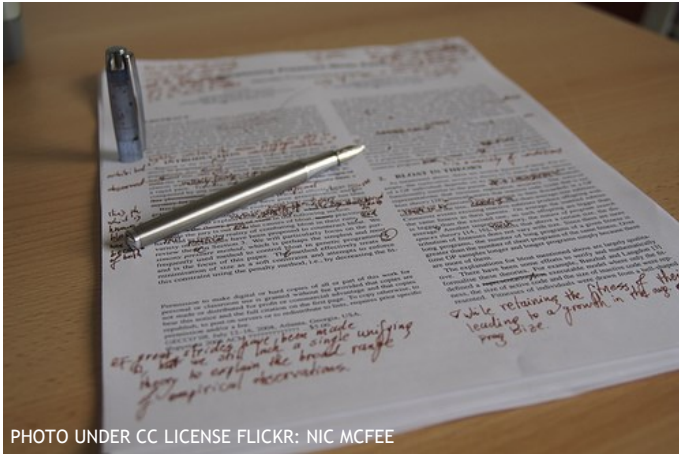


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FIPA was the first witness to appear before the Special Legislative Committee reviewing the *Freedom of Information and Protection of Privacy Act* in Vancouver, BC, and we had lots of material for the committee to consider. You can read our entire submission [here](#), in the “Policy Submissions and Letters” section of our website.

The *Act* is reviewed every six years, and the last review took place in 2010. Some of our concerns have been raised before past Committees, but new and important issues have arisen as well.

One such issue is the need for a legal duty to document—in short, the need for government to create records of its key actions and decisions. FIPA

has raised this in past submissions, but the situation is now a crisis. BC’s Information and Privacy Commissioner has also [recommended](#) the creation of such a duty in several reports over the past two years, but the BC government has done nothing.

In addition to this, FIPA is calling for penalties for those who flagrantly block access rights or who fail to properly document government decisions. Seven other provinces and territories (as well as the Canadian government) have introduced penalties for document tampering into their FOI acts, and it is time for BC to do the same.

Earlier this year we were shocked to hear a former political staffer of BC’s Minister of Transportation allege that he was ordered to [delete dozens of emails](#) relating to the Highway of Tears consultation, which were being requested under the *Act*. The Commissioner has released her [investigation](#) of this case, but it is still not clear what, if any, penalty those responsible for these deletions could face.

Again in this submission, we highlighted the government’s to ensure subsidiaries of public bodies in the education sector are covered by FOI. These bodies include school boards, colleges and universities. The previous review Committee supported this recommendation, and back in 2011 the Commissioner wrote to the government looking for action. To date, nothing has happened.

We also raised concerns about the increasing number of provincial laws that override *FIPPA*. There are 43 laws that contain provisions that take precedence over all or part of the information and privacy law, with yet another one (Bill 39) set to join them. ...Story continues on p.4

SUPPLEMENTAL FIPPA SUBMISSION: SECTION 25

FIPA is working with the Environmental Law Clinic (ELC) at the University of Victoria to develop a very detailed submission on the release of information in the public interest under section 25 of the

FIPPA – and continuing our multi-year partnership with the ELC on this issue.

The ELC will be looking at this section of the *Act* with special consideration of Commissioner Denham’s recent reports, which introduce a new and better interpretation of how this section

should work. Denham sees s.25 as requiring public bodies to release information in the public interest even without an FOI request.

This important analysis will be submitted on FIPA’s behalf before the deadline for written submissions at the end of January 2016.

We commented on how we have seen public bodies misuse a number of exceptions under the *Act* to limit access rights. In particular we raised concerns about the increasingly broad interpretation of what constitutes “policy advice”, how public bodies are using lawyers and legal privilege to keep information secret, and the blocking of FOI requests about the BC Health Ministry firings through use of the RCMP’s [non-investigation](#).

On the privacy side, we pointed out the risk posed by the TPP to BC’s domestic data storage requirements, and the need to find out exactly what is in the agreement to make sure our sensitive personal information isn’t going to be shipped out of the country.

We also raised the issue of government contracting private sector bodies to provide services, and the confusion about whether it is *FIPPA* (which governs the public sector) or the private sector privacy law,

the *Personal Information Protection Act (PIPA)* that applies. We also repeated our call for mandatory data breach notification under both the public and private sector laws.

The Committee is scheduled to report to the Legislature in May 2016. ♦

Don’t forget: This is also *your* opportunity to send the Special Committee your views on potential improvements to the *Freedom of Information and Protection of Privacy Act*. The deadline is Friday January 29, 2016, and details on how to participate are available on the Committee’s [website](#).

(Please feel free to copy from FIPA’s submission if you agree with what we have to say, or to simply let the Committee know you agree with our submission.)

FIPA OUT AND ABOUT DURING RIGHT TO KNOW WEEK

It was a busy Right To Know Week for the FIPA team. In addition to our day-to-day work pushing for a stronger access to information system, we spent this week going out into the world to spread the good word about FOI.

First, we hosted [FOI 101](#), an introductory workshop on filing freedom of information requests. The workshop—led by access expert Mike Larson, a Professor of Criminology at Kwantlen Polytechnic University and head researcher for our popular educational resource, *Access in the Academy*—taught participants the basic practical skills needed to tackle FOI projects, and gave tips, strategies, and answered questions about FOI difficulties.

We were heartened to see so much interest in the

workshop, and we look forward to hosting it again in the coming years! Thank you to all who expressed interest and to those who joined us.

In the afternoon following FOI 101, FIPA Executive Director Vincent Gogolek headed to North Vancouver to participate in a panel discussion about a new book on the controversial Bill C-51, titled [False Security: The Radicalization of Canadian Anti-terrorism](#). Authors Craig Forcese and Kent Roach joined the panel via Skype to speak directly about their findings. Alongside representatives from the BC Civil Liberties Association and OpenMedia, Mike Larsen, and moderator Michael Markwick of Capilano University, FIPA asked questions about the information and privacy implications of Bill C-51, and shared thoughts on the book with attendees.



Later in the week, FIPA set up at the Vancouver Public Library for National Seniors’ Day, and discussed access and privacy ...Story continues on p.6



"THE OLD BAILEY" BY THOMAS ROWLANDSON & AUGUSTUS PUGIN (PUBLIC DOMAIN)

FIPA WEIGHS IN ON PRIVACY & OPEN COURTS

FIPA highlighted the importance of both the right to privacy and the open court principle in our [submission](#) to a consultation the Court Services Online (CSO) system, [which was held](#) by the Chief Judge of the BC Provincial Court of BC.

The open court principle is fundamental in a democratic society, as it allows citizens to scrutinize the workings of the court to ensure the rule of law is being applied. It requires the courts—along with their records and proceedings—to be open to the public (with certain limited exceptions).

However, by putting court records online—especially non-conviction information from criminal cases—the Court found that employers and landlords were doing informal criminal record checks on potential employees and tenants. There have also been instances where people have experienced a great deal of pain and suffering as a result of information contained in online court records.

This builds on principles set out in an [earlier submission](#) about criminal background checks, which informed the Office of the Information and Privacy Commissioner's [investigation report](#) on the question.

In short, our recommendations are as follows:

- People involved in Provincial Court criminal proceedings should be provided with accessible, easily understood information about what types of information about them will be made available online, and what they can do to control that information before they take part in any proceedings.
- Peace Bonds should not be made available on CSO. If the Court decides to make them available, they should only be available for the life of the Peace Bond, and initials should be used instead of names.
- To avoid undermining the existing system of police information checks, non-conviction information should not be made available on CSO.
- The Court should consult with the Office of the Information and Privacy Commissioner before posting new types of records online, in order to produce a document akin to a Privacy Impact Assessment (PIA) for internal use.

Find FIPA's full submission [here](#), in the "Policy Submissions and Letters" section of our website. ♦



PRIVACY & ACCESS 20/20 CONFERENCE
THE FUTURE OF PRIVACY
 NOV 12-13, 2015 | COAST COAL HARBOUR HOTEL | VANCOUVER | BC

WWW.REBOOTCOMMUNICATIONS.COM/EVENT/PRIVACYACCESS2015

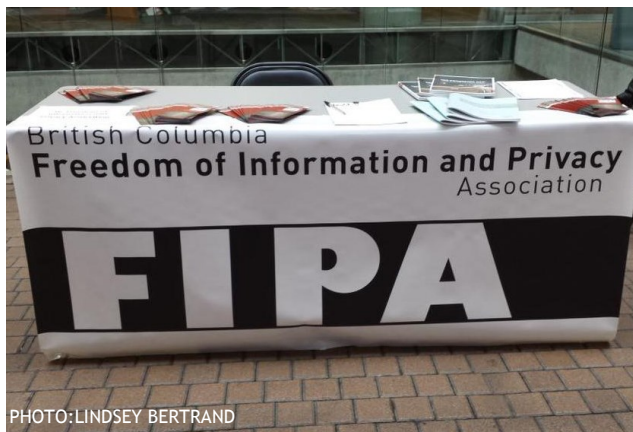
SAVE 10%
 PROMO CODE: SAVETEN

FIPA members are eligible for a 10% discount at the Privacy & Access 20/20 Conference with promo code “SAVE TEN”. Our Executive Director will be moderating a panel on the Connected Car featuring Pippa Lawson, head researcher of our Connected Car report. This is just one panel of a two-day conference, which will feature many great panel discussions about information and privacy. That’s coming up in Vancouver on Thursday, November 12.

More information at: <https://www.rebootcommunications.com/event/privacyaccess2015/>

Continued from p.4... issues with seniors, caretakers, and other interested visitors. The event also featured an all-candidates meeting for the riding of Vancouver-Centre, where FIPA asked MP candidates from the Liberal, Conservative, New Democratic, and Green parties about their stances on access to information reform.

All in all, it was a very successful and informative Right To Know Week. We met some amazing, interesting new people interested in information and privacy, had a chance to connect in-person with existing members of the FIPA community, and were proud to be a part of intelligent discourse about some of the most pressing issues in BC and Canada. ♦



ABOUT FIPA

FIPA 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 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.

WANT TO DO MORE?

There are three main ways you can support FIPA: by becoming a member, by donating, or by becoming a volunteer!

As a non-profit organization, we really rely on the generosity of our supporters to allow us to keep doing this important work.

To become a member, donate, or volunteer, visit us online at www.fipa.bc.ca, send us an email at fipa@fipa.bc.ca or call us at 604-739-9788.

THANK YOU!

FIPA would like to thank you, our members, donors and funders for your generous support in making our work—and this bulletin—possible.

