



A look back at 2016



BC FREEDOM OF INFORMATION
AND PRIVACY ASSOCIATION

2016

ANNUAL REPORT

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2016 Annual Report

Funders

The BC Freedom of Information and Privacy Association thanks the Law Foundation of BC 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).



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Message from the President



Dear members, allies, and partners,

It has been a busy year for FIPA, and I am both excited about the work that we have accomplished and mindful of the important work that is pending, given recent and ongoing changes in the information and privacy landscape.

This year's Annual General Meeting is occurring at a particularly interesting and uncertain time. During the recent provincial election campaign, FIPA solicited

positions from the three major political parties on a range of information and privacy issues. While the full implications of the election remain unclear, we will work to ensure that the new government is reminded of its campaign promises and commitments - not least of which being the appointment of a new Information and Privacy Commissioner.

Federally, the last week alone has seen the announcement of new legislation regarding reforms to the *Access to Information Act* and revisions to Canada's national security law. At this time, it appears that both of these developments will produce some meaningful improvements in terms of information rights and privacy protections, but both also fall short of our recommendations and expectations. There is certainly a need for ongoing interventions and advocacy in these areas.

Recent political and legislative developments underscore the important role that civil society organizations and movements can and must play in sorting rhetoric from reality in the information and privacy field. For example, over the last year, we have watched government officials and politicians champion reforms related to the 'duty to document' and 'openness by default'. Such claims reflect an awareness of the power and legitimacy associated with the language of transparency and accountability. Upon closer examination - by organizations like FIPA -

we find that many of these reforms are half-measures that rely on discretionary, proactive, and partial disclosure rather than legally-enforceable extensions of the public's right to know.

Taking all of this into consideration, we expect the next year to be a busy one, and I am confident that FIPA is well-positioned to react to emerging issues and - crucially - to work proactively to enhance and defend information and privacy rights.

Acknowledgements

I would like to acknowledge the important contributions of two dedicated FIPA Directors who will not be returning to the Board this year.

Gwen Barlee, National Policy Director of the Wilderness Committee, and long-time FIPA member, served on the Board of Directors for years - most recently in the position of Vice President. The Board benefited from Gwen's wide-ranging experience in advocacy and civil society, from her vision, and from her commitment to freedom of information and government accountability.

Richard Rawnsley, Senior Manager, Tax, of Hootsuite, is also leaving the FIPA Board of Directors. Richard is our outgoing Treasurer, and the Board has benefited greatly from his insight, his experience in the technology and nonprofit sectors, and his attention to detail.

FIPA's Board of Directors and staff would like to express our gratitude to Gwen and Richard for their contributions and service, and we wish them all the best in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Larsen'.

Mike Larsen
President, BC Freedom of Information and Privacy Association

Message from the Executive Director

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

2016 was FIPA's 25th Anniversary, and we marked the occasion not just with celebration, but with a number of important initiatives.

We were in the Supreme Court of Canada not once, but twice. Our Charter challenge to the BC Election Act was heard in October, and we got the decision earlier this year, in time for the provincial election. Many thanks to pro bono counsel Sean Hern (of Farris Vaughn) and Alison Latimer (of Underhill, Boies Parker, Gage, and Latimer) who represented FIPA throughout the long trip to the top court.

We also intervened in another SCC case involving ability of Commissioners to review claims of legal privilege. Sadly we did not get the result we hoped for, but interestingly the Court that struck down the Alberta law made very favourable comments about its equivalent provision in BC. Thanks to Michael Feder and Emily McKinnon of McCarthy Tetrault for pro bono representation on very short timelines.

FIPA also intervened in a hearing at the OIPC, on the use of Stingrays by the Vancouver Police Department. The VPD initially refused to confirm or deny that they had devices, but ultimately caved and stated that they did not have IMSI catchers but only after FIPA and other intervenors made our submissions to the Commissioner.

We were also active on the law reform front, with reports by review Committees in Victoria and Ottawa both accepting many of FIPA's reform proposals for FIPPA and the ATIA. Of course we now have to get the federal and provincial governments to accept those recommendations and enact them into law. We also made submissions related to reform of the federal Privacy Act, a number of which were reflected in the Commons Committee's report.

FIPA also made extensive submissions on the federal government's Green Paper on national security. Our views were also in demand with the federal Privacy Commissioner, who undertook two major consultations in 2015. The first was on online reputation and the second on consent in the context of Canadian privacy law. Both of FIPA's submissions were well received.

FIPA also released our first ever opinion poll, conducted by IPSOS Canada as part of a supplementary submission to the Special Legislative Committee reviewing FIPPA. The results of the poll were widely circulated, and showed that people in BC wanted improvements to FOI and fast.

In terms of events, we conducted another successful Information Summit in September, followed by FOI 101 (presented by President Mike Larsen) and finally our Soiree to celebrate our 25th Anniversary which featured the awarding of the 25th Anniversary Leadership Award to Tim Duncan for his selfless service to openness in government.

We continue to help British Columbians with their FOI and privacy problems online thru the website and on the phone or in person. Although numbers were down somewhat on our helpline, hits on our help topics on our website more than doubled.

We look forward to moving forward on all these fronts in 2017.



Our work

The BC 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 established as part of an effort to establish access to information and privacy legislation in BC. Our organization was the prime non-governmental force behind the passage of BC's *Freedom of Information and Protection of Privacy Act (FIPPA)*. In the quarter century since, FIPA has worked tirelessly to defend and expand the reach of the *FIPPA* and to protect the information rights of British Columbians.

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

- Public assistance and referrals
- Public legal education
- Public interest advocacy and legal research
- Litigation and law reform

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, we have helped countless citizens, in one-on-one conversation, understand and act on their fundamental information rights.



By the numbers

In 2014, we began the process of transitioning from an inaccurate analytics system to a more accurate one. Starting in 2015, the number of website hits, website visits and help topic hits appear to have decreased sharply but in actuality, this is a reflection in the change of systems. The table below includes figures from both analytics systems. The changes are either noted in the table or as a footnote. Our aim is to fully transition to the new system by the end of 2017 so that only one set of numbers will be tracked and reported in 2018.

People served

	2013	2014	2015	2016
Helplines	266	236	226	173
Legal Assistance	23	22	160	152
Website Visits (Old)	136,277	166,709	230,644	292,490
<i>Website Visits (New)</i>	—	—	14,756	20,831
Website Hits (Old)	1,337,097	1,900,834	2,507,592	3,012,414
<i>Website Hits (New)*</i>				35,412
Help Topic Hits	60,062	47,053	6,812**	13,175
Media Interviews	168	120	135	73
FIPA Event Attendees	100	205	80	171
Speaking Engagement Attendees***	810	215	245	490
FIPA Followers (Twitter, subscribers, members)	1650	1825	2104	2312

*Please note that until July 2014, FIPA's analytics were calculated using a system now considered inaccurate. For comparison purposes, we are using the same system to calculate visits and hits in this report as we transition fully to our new system. The new system does not provide actual website "hits". Rather, it calculates it by multiplying the number of actions per visit by the total number of site visits.

**The "Help Topic Hits" were taken from the new analytics system.

***Estimates from external events organized by colleagues and partner organizations.

Litigation: Number of cases

	2013	2014	2015	2016
Litigation Cases	5	7	5	6
Litigation Cases Completed	2	4	3	2

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.

We also provide telephone and in-person assistance free of charge during normal business hours. In 2016, FIPA provided direct assistance to 173 people through our telephone and email helplines. In cases where more summary advice is needed, we provide basic legal assistance and referrals. In 2016, we provided legal assistance to 152 people.

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 the systems governing freedom of information and privacy protection in British

Columbia and across Canada. Our website hits increased by 20% since last year, and visits increased by 27%.

Speeches and presentations

Representatives of FIPA often appear on panels and in conference sessions focused on various information rights issues. In 2016, FIPA's

Executive Director made a presentation not just in Canada, but also at the Southwestern Law School in Los Angeles conference on freedom of information.

FIPA's Program Director made a presentation as part of the DOXA Documentary Film Festival's Justice Forum, and FIPA's Executive Director made presentations at the Canadian Privacy Summit.



Events

Each year, FIPA produces a variety of public education events on freedom of information, privacy, and legislative and legal issues.

In September, FIPA presented the 2016 Information Summit at UBC Robson Square, a major conference which attracted **109 participants** and a number of expert speakers. The keynote speakers were Suzanne Legault, the Information Commissioner of Canada, and Drew McArthur, the Acting Information and Privacy Commissioner of B.C. This year's theme was *From Trickle to Tide: Preparing for Wave of Transparency*, and had panels including: "Extending FOI coverage – What records, which organization," "Duty to document—what does

this mean and where are we going?" "New perspectives on proactive disclosure," and "Surveillance by individuals—Is legislative action needed?"

FIPA also held its *Annual General Meeting* in June 2016 and its *Special General Meeting* in November 2016. Our guest speaker was Shannon Daub who is Associate Director at the Canadian Centre for Policy Alternatives BC, and she spoke about the *Election Act* chill effect. The AGM was attended by **23 people**, of whom **19 were members**.

Following the Information Summit, FIPA hosted the annual **FOI 101** workshop during *Right to Know Week* in September, facilitated by board member and Kwantlen University professor Mike Larsen. This event teaches the basics of making FOI and ATI requests and how to handle common difficulties. The event was promoted with community and advocacy groups, and through the Law Foundation and other organizations. The feedback we received from

the **8 attendees** indicated that the workshop met or exceeded expectations. We attribute the lower turnout to the timing of the two events; nevertheless, several attendees indicated that they appreciated having a workshop in their community.

In 2016, we celebrated our 25th anniversary and held a celebratory soiree in November where we awarded FIPA's 25th Anniversary Leadership Award to Tim Duncan, a former BC public official, whose courageous actions led to the explosive report *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia*.

Through our 2016 events, 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 Canada's only organization devoted to information rights advocacy, FIPA appears regularly in news and media reports, both provincially and nationally. This year, FIPA appeared in 73 media reports.

FIPA also self-published a number of articles through our website and contributed to online outlets like the Huffington Post BC.

Additionally, we continue to distribute media alerts and releases to the BC and Canadian press. 2016 was an active year and we published 8 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. We have also prioritized our online content curating and development, with more frequent messages to members, website posts and tweets than in previous years.

In 2016, our Twitter followers and mailing list subscribers increased by over 10% to 2312 people.

Highlights

FIPA is Canada's only public interest advocacy and watchdog group fully dedicated to FOI and privacy issues. We constantly monitor 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 BC'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 BC 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.

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Key Complaints

MCFD responses to information requests:

FIPA asked the Information and Privacy Commissioner to investigate the actions by the Ministry of Child and Family Development (MCFD) in responding to requests for information by guardians on behalf of children. As a result of this request, MCFD modified its procedures and forms to eliminate threatening language related to possible legal action. The information provided was not accurate.

Disclosure of details of active FOI requests:

FIPA asked Information and Privacy

Commissioner Elizabeth Denham to further her investigation into the government's intention to post summaries of active FOI requests on its Open Information website- before providing any records to the requester. The Commissioner subsequently added criteria for the posting of such requests, which the government agreed to follow.

Insufficient information provided by the

RCMP: In May 2015, FIPA requested records outlining the total cost of the investigation into the attempted bombing of the BC Legislature on July 1, 2013. The information provided by the RCMP was a single page listing overtime hours and costs. No other information was provided,

and we have not received any clarification of these items despite several e-mail requests to the RCMP. A complaint is currently under investigation by the

federal Information Commissioner's office.

Key Submissions

Supplementary Submission on FIPPA:

In January, FIPA provided a supplementary submission to the one we submitted in 2015 to the Special Legislative Committee reviewing the *Freedom of Information and Protection of Privacy Act*. This supplementary piece included an extensive review of release in the public interest under s. 25 of the *Act* relating to the Mount Polley tailings pond failure, and tables from an Ipsos Canada poll demonstrating that British Columbians are in favour for the relevant legal reforms that FIPA (and many others) have recommended.

Online reputation: In April, FIPA took part in a consultation conducted by the Office of the Privacy Commissioner of Canada regarding the

issue online reputation. Our submission examined policies that would best allow Canadians to have control of information about them, prevent and reduce information-based harm, and ensures reputational privacy that enhances free association and democratic free expression. While FIPA didn't offer specific recommendations, we proposed that emphasis should be placed on public education that takes a rights-based approach to online reputation, higher standards for privacy controls, and legal solution that do not overreach and specifically legislate against unwanted behavior.

British Columbians are in favour of a strong freedom of information system.

Submission to Consultation on Consent: FIPA sent a submission to the Office of the Privacy Commissioner of Canada which was consulting on the issue. The submission concentrated on the findings from our 2015 study, "The Connected Car: Who is in the Driver's Seat," and set out a number of the failings of the consent model in the context of connected cars.

Reform of Access to Information Act: In May, FIPA presented its submission on ATI reform to the House of Commons Standing Committee on Access to

Access to information plays a crucial role providing citizens with the ability to pull information from government.

Information, Privacy and Ethics. This submission highlighted a number of priority areas for reform of the *ATIA* based on our 2011 submission to the same committee.

Canada's Action Plan for Open Government

2016-2018: In May, FIPA submitted a brief submission highlighting the importance government transparency – more specifically, the need to repair the crippled Access to Information (ATI) system. FIPA is supportive of efforts to increase routine disclosure of information of government and public bodies, which can allow for better research, better input to public consultations, and improved representations of members of the public to government. We argue that routine disclosure should be the primary method of information release, but access to information plays the crucial role of providing citizens with the ability

to pull information from government in a way that balances information rights with legitimate requirements for confidentiality.

Privacy Act Reform: In October, FIPA's Executive Director appeared before the House of Commons Standing Committee on Access to Information, Privacy and Ethics to testify to the importance of updating and overhauling the *Privacy Act*. In most cases, we agreed with the recommendations made by the federal Privacy Commissioner, but we also provided additional proposals. FIPA emphasized

the need for legislative modernization, which includes an explicit necessity test, the need to limit exemptions to access to personal information requests under the Act, along with other key recommendations. Adding to the Commissioner's recommendations, FIPA has also recommended adding a requirement for domestic data storage in the public sector to the *Privacy Act*, that the restriction that the Act only applies to 'recorded' information be

eliminated, and that the basic underpinnings of electronic decision-making (i.e. algorithms) be made publicly available.

National Security online consultation: In December, FIPA responded to a series of questions regarding Canada's national security framework set out in the federal government's Green Paper on national security.

FIPA in court

BC Election Act: FIPA's constitutional challenge to the lack of a minimum spending amount in the third party advertising provisions of the provincial *Election Act* was heard on October 11 2016 by the Supreme Court of Canada. FIPA is extremely grateful to our *pro bono* counsel Sean Hern of Farris and Alison Latimer of Underhill, Boies Parker, Gage & Latimer, who represented FIPA from the beginning of this constitutional challenge extending back before the last provincial election in 2013.

FOI and legal privilege: FIPA intervened in this case (which originated in Alberta), which was heard by the Supreme Court of Canada on April 1, 2016. The decision was handed down in November, and unfortunately it upheld the restrictive view expressed by the Alberta Court of Appeal. However, the Court gave a strong indication that the equivalent provision in BC's FOI law is more constitutionally sound than the wording used in Alberta, so may be better able to withstand a challenge.

Coalition and Partner Work

FIPA continues to be an active member of the Protect our Privacy Coalition, a group of more than 50 civil society and public interest organizations working to protect privacy and fight repressive legislation such as the 2015 *Anti-Terrorism Act*. We were also active in coalitions opposing the Trans-Pacific Partnership and its negative effect on privacy and internet freedom.

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.

We had several FOI requests in the system during 2016, mostly dealing with issues related to fees in the BC FOI system.



78% of British Columbians think it is **very important** that BC government officials be **legally required** to keep accurate and complete records of what they do on the job.

Learn more at: fipa.bc.ca/poll

84% of British Columbians believe there should be **penalties** for government officials who interfere with information access rights.



Learn more at: fipa.bc.ca/poll

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