



## 2021 Information Access and Privacy Survey

The Ministry of Citizens' Services launched an online survey soliciting input on access to government information and the protection of privacy. The Ministry says it will use this input to make improvements to the rules surrounding access to information and protection of personal information. The survey is open until 4pm PT on July 15, 2021.

We were hoping for a survey that was open to wide-ranging public input and presented an opportunity to contribute to a forward-looking vision which improved the system. On review, what we see is a document that creates the illusion of consultation, with more than a few leading questions.

That aside, this is an important opportunity to have your voice heard and call for much-needed changes to the freedom of information system and long-overdue improvements to the protection of your personal information. FIPA encourages you to complete the survey to let the BC government know your thoughts on the access to information system and current privacy protections.

FIPAs Board of Directors and Staff have reviewed the survey. Below are some of our thoughts on the sections.

**Complete the survey by 4pm PT on July 15, 2021 to have your voice heard.**

## The Survey Sections

### Section 1 – Accessing government information

- This section asks you to identify how you are gaining access to government information, if that has changed during the Pandemic, and what you have used the Government Websites for.

### Section 2 – Data Residency

- This section talks about the requirement that personal information must be stored and accessed only in Canada under the *Freedom of Information and Protection of Privacy Act* (FIPPA).
- Government appears to use data residency protection as a scapegoat for a lack of innovation and responsive online public service delivery. Having qualified data residency at the start of the pandemic with a Ministerial order they are saying the public now believes government service is better than ever. They present choices that create various false equivalencies and ask you to prioritize them.
- FIPA will be using section two's open area to support the data residency requirement. It is an important way to guarantee the protection of your personal information, which is particularly critical for public bodies. This would be compromised if the law was changed to allow British Columbians' data to be stored and processed outside of Canada.
- Public bodies should not be enabled to reduce their responsibility to protect your data by moving it offshore without appropriate protections and options for citizens to opt out and receive equal levels of service and access.

### Section 3 – The FOI Process

- This section seeks input on the process for requesting access to government records.
- Government frames FOI as expensive and lacking cost recovery. They cite a specific per-request cost which appears to attribute the problem to the public making requests. Our desire to seek information which could be made public or better yet proactively disclosed under the Act (e.g. reports, emails, and audits etc.) is being forced through a bureaucratic system which is inefficient and expensive.
- FIPA will be using section three's open area to stress that the biggest challenges with the current FOI system are not the public requesting information, but the costly and slow bureaucratic system with political involvement. Accountability and transparency dictate that governments and local public bodies should be subject to the FOI system as a cornerstone of the democratic process. The Act must be amended to address a specific gap where public bodies through subsidiary corporations can avoid transparency yet receive substantial tax dollars to deliver a public service. For example, the recently-created InBC Crown Corporation was designed fall outside the scope of FOI, despite the fact that it will handle a \$500 million public investment fund. This kind of deliberate exclusion defeats the purpose of transparency law.
- Most importantly, delays in accessing government records need to be curtailed, because access delayed is access denied.

### Section 4 – Reporting Privacy Breaches

- This section seeks input about who should have to report privacy breaches when they happen.
- FIPA strongly agrees that all the sectors identified should be legally required to notify you and/or the Office of the Information and Privacy Commissioner immediately if your private information is breached.

### Section 5 – Offences and Penalties

- This section seeks input on the penalties that individuals should face if they break the laws on access and privacy.
- The Government indicates they are looking at alternative penalties for FIPPA offences and have included the possibility of charges and potential jail time.

- FIPA believes that some penalty should be imposed for all of the offences listed and that repeat and serious offenses with increasing risk or harm should have higher penalties.
- Particularly high fines or jail time should be faced by those who: use a government database to look up personal information without a business reason to do so; shares information they are not allowed to that benefits another person, or collect client names through their work to benefit their side business.

### Section 6 - General

- This section provides an opportunity to enter information. We will be using section 6 to highlight the following.
- FIPA does not believe that every business reason should excuse someone using a government database to look up personal information. There are increasing concerns with police having used Clearview AI and the BarWatch Program benefiting from access to public databases. With everyone's' civil liberties at risk appropriate oversight is required to address ongoing questions.
- FIPA feels a penalty for public employees who deliberately delete information and actively interfere with FOI requests is necessary and long overdue.
- A crucial element that is missing from the survey is any consideration of the duty to document. This is a requirement for public bodies to create full, accurate and complete records of important business activities.
- The Government maintains that the Information Management Act (IMA) creates a duty to document. The IMA lacks independent oversight, enforceability, and application to all public bodies in British Columbia.
- It is time for a mandatory and consistent duty to document that applies to all public bodies with independent oversight and enforcement similar to the OIPC.

### HOW TO COMPLETE THE SURVEY

- In order to complete the survey, you can follow the link here or go to
- <https://feedback.engage.gov.bc.ca/374631?lang=en>
- Scroll to the bottom of the page and click “next” to begin the survey.