

FIPA's annual national legislative comparison provides a unique opportunity to consistently assess leading language.

Canadian Access, Privacy and Enforcement: Leading Language

2023.11.01

Freedom of Information and Privacy Association

Territorial Acknowledgement

FIPA acknowledges with respect the Indigenous Peoples on whose traditional territory we conduct activities. We acknowledge the insight and knowledge of Elders past, present, and emergent and their relationship to this land and these issues. While striving to increase privacy protection and access to information for everyone, we recognize that colonization and associated attitudes, policies and institutions have significantly changed Indigenous Peoples' relationship with this land. For many years, those same things served to exclude Indigenous Peoples from the privacy protection and access to information afforded to others. FIPA is committed to redressing those historic and continued barriers.

About FIPA

The BC Freedom of Information and Privacy Association (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. While we are based in BC, our membership extends across Canada and we regularly partner with organizations throughout the country.

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. We are one of very few public interest groups in Canada devoted solely to the advancement of freedom of information and privacy rights.

Institutional Funders

The BC Freedom of Information and Privacy Association thanks the Law Foundation of BC and all our contributors including donors, funders, and volunteers for their ongoing support of our advocacy, programs, projects, and activities. We also acknowledge the financial support of the Province of British Columbia (Gaming Policy and Enforcement Branch).



Table of Contents

Table of Contents	2
Introduction	3
Summary.....	4
Freedom of Information Legislation	6
Scope of legislation.....	6
Accessibility of request mechanism.....	7
Practicality of request mechanism	7
Duty to document.....	8
Effectiveness	8
Protection of Privacy Legislation	10
Scope of Legislation.....	10
Collection Limitation.....	10
Retention & Correction	12
Use & Disclosures	12
Security	13
Oversight and Enforcement (Commissioner/Adjudicator Terms)	14
Ease of access	14
Equality of access.....	14
Powers of officials.....	15
Appendix 1 Rubric breakdown for freedom of information	17
Appendix 2 Rubric breakdown for protection of privacy.....	19
Appendix 3 Rubric breakdown for oversight and enforcement.....	21
Appendix 4 Tables of Legislation.....	22
Freedom of Information.....	22
Protection of Privacy	23
Oversight and Enforcement.....	24
Appendix 5: BC Statutes with provisions that prevail over FIPPA.....	25
References.....	27

Introduction

An individual's right to privacy has long been implicitly recognized by ss. 7-8 of the *Canadian Charter of Rights and Freedoms*, but the concept of privacy has evolved significantly since its first legislative introduction. The right to privacy is broadly understood as an individual's control over what is known about them and by whom. However, in more specific terms, it can be seen as including the right to enjoy private space, to conduct private communications, to be free from surveillance, and to have the sanctity of one's body respected.

Access to information and privacy protection legislation exists in Canada at the federal, provincial, and territorial levels, as well as unevenly amongst various municipal Acts and Acts specific to First Nations. Such legislation focuses primarily on the safeguarding of personal information and, at the provincial and territorial level, is generally compiled by each jurisdiction into their own statute that economically sets out where and how access is permitted, the exceptions that exist, and the procedures to be followed to manage access requests. These statutes also outline the oversight and enforcement of such legislation as they pertain to and are enacted by appointed Commissioners.

Access to information and privacy protection legislation across Canadian jurisdictions vary according to the type of body to which they apply; some (i.e., the federal Privacy Act and provincial FIPPA equivalents) pertain to the collection, use, and disclosure of personal information by public bodies, while others (i.e., the federal PIPEDA and provincial PIPA equivalents) pertain to that by private and non-profit entities. Additionally, sociopolitical, historical, and economic factors have also shaped legislation in different ways across Canadian jurisdictions. Informed by a fraught history in which individuals' personal information were misused and abused by state actions in the past, some jurisdictions are leading the way today in honouring an individual's right to privacy by better adapting to present sociopolitical and economic contexts. The work to strengthen access to information and privacy protection legislation has become increasingly necessary as public demand for better disaggregated data to shed light on systemic disparities has risen in recent years. According to the Office of the Privacy Commissioner of Canada, Canadians' trust in the federal government respecting their privacy rights has decreased from 63% of Canadians surveyed in 2020 to 58% in 2022. This fading trust and demand for better disaggregated data to identify issues of social inequities intersect with a rapidly growing digital and globally networked society, further underlining the importance of clear and substantive access to information and privacy protection legislation.

This document responds to the growing public interest in the protection of privacy rights and a simultaneous growing public demand for government

transparency, following years of oppositional partisan dynamics relating to information-sharing. This document seeks to act as a user-friendly resource by reviewing information and privacy protection legislation across Canadian jurisdictions. It analyzes such legislation for leading features, where “leading” indicates being most facilitative of the spirit of the law and the principles of transparency and privacy, with minimal barriers or exceptions. Recognition of these leading features is not intended to mark the utmost standard for such legislation—for every legislation, even those leading, is not without its gaps—but rather highlight promising pathways forward.

This analysis is conducted through the application of rubrics which set forth standards for strong legislation in the areas of freedom of information, protection of privacy, and oversight and enforcement based on inter-jurisdictional patterns within the Canadian context and noteworthy deviations from such patterns. While much can be learned from similar international comparisons, this document focuses on the Canadian context to align itself with the focuses of legislative change and interpretation as well as the work of both administrators and Commissioners in Canada.

Analysts at BC FIPA completed this work in 2023, and the resulting findings are intended to be kept updated and re-evaluated by new analysts every year following. It is important to note that this work focuses solely on Canadian jurisdictions and, thus, while jurisdictions internationally certainly have relevant leading legislative features of their own, they are beyond the scope of this research. BC FIPA intends to add to this work in the future through an accompanying “Trailing Language” document which will highlight key shortcomings of existing freedom of information and privacy protection legislation at the Canadian provincial and territorial level.

Summary

An analysis of freedom of information and privacy protection legislation across Canadian jurisdictions—limited exclusively to such legislation and therefore excluding statutes that may have an overriding effect¹—reveals that no one province is superior in all key facets of freedom of information and privacy protection. Rather, there are some provinces that are leading on many facets: British Columbia especially, as well as Newfoundland & Labrador and New Brunswick. Simultaneously, there are provinces with innovative or noteworthy legislative features that, while may not have been sufficient to mark them as leading on a key facet, suggest that they are undertaking legislative reform on the subject that is valuable to monitor. Our use of the term “leading” itself is significant, indicating not a legislation’s immunity to criticism but rather the promising ways in which it

¹ Some statutes contain provisions that expressly prevail over Access and Privacy legislation. See Appendix 5 for a list of such provisions in British Columbia by BC’s Office of the Information and Privacy Commissioner

can, more than its counterparts, serve as a guide in feasibly and effectively following the spirit of the law as well as the principles of transparency and privacy as we move forward.

Canadian provinces and territories share many overarching similarities in their freedom of information and privacy protection legislation. In identifying leading features, this document has sought to highlight the inspirational ways in which some have deviated from the norm. A concluding review affirms that a collaborative inter-jurisdictional approach to further legislative development in the areas of freedom of information and privacy protection proves to be valuable for each jurisdiction and its associated policymakers, analysts, lawyers, and more.

Freedom of Information Legislation

Scope of legislation

1. **Quick context:** Legislation with the fewest exclusions and exemptions is more likely to be leading, and each jurisdiction sets out its own unique exemptions. Important to note for this section that this document does not consider override provisions found in other statutes.
2. **Province/territory of leading language:** British Columbia
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Expands the scope of the legislation by allowing it to 1) affect the power of a court/tribunal to compel a witness to testify or to compel the production of documents; 2) prohibit the transfer, storage, or destruction of any record in accordance with another Act or a regulation under another Act.
 - i. Unlike Alberta, Manitoba, New Brunswick, PEI, Saskatchewan, the Northwest Territories, and Nunavut
 - b. Act applies to all records in the custody or under the control of a public body, including court administration records, with certain exceptions [s. 3(1)].
 - i. Unlike Ontario, Québec, and Saskatchewan
 - c. Limited additional exclusions of certain records from the application of Act [s. 3(3)].
 - i. Unlike Alberta and PEI
 - d. Does not explicitly discretionally limit the disclosure of information by the head of a public body if such information—relating to testing or auditing procedures or techniques, details of specific tests to be given or audits to be conducted, or standardized tests used by a public body, including intelligence tests—being disclosed could reasonably be expected to prejudice the use or results of particular tests or audits.
 - i. Unlike Federally and in Alberta (s.26), Manitoba, PEI, Saskatchewan, the Northwest Territories, and Nunavut
 - ii. While this limit is not explicitly stated in BC, [there may be an argument](#) that these records are exempt from FIPPA under s.17 because providing access to testing or auditing procedures or techniques may be harmful to the financial or economic interests of a public body in some cases
 - iii. Rubrics for the scoring of personal profiles fall within the definition of “a record of a question or answer to be used on an examination or test” ([University of British Columbia \(Re\), 2018 BCIPC 26](#), [University of British Columbia v. Lister, 2018 BCCA 139](#))
5. **Conclusion:** What makes British Columbia leading in scope of legislation is its firm commitment to reducing legislative limitations,

particularly by broadening the application of its Act to various types of records and having a minimal number of additional exclusions compared to other jurisdictions.

Accessibility of request mechanism

1. **Quick Context:** Requiring written access requests is a common practice across jurisdictions, but most permit oral requests in the case of a language barrier or impairment. Only some jurisdictions allow for one person to exercise the access rights of another, and this allowance is only made in limited circumstances. Generally, requests can be made by Canadian citizens, permanent residents, or individuals present in Canada.
2. **Province/territory of leading language:** Newfoundland & Labrador
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Permits oral requests where the requester has difficulty understanding either official language of Canada or has a disability impairing their ability to make a request [s.11(3)].
 - b. In specified instances, a right granted to an individual may be exercised by another person, including any person holding written authorization from the individual to act on the individual's behalf [s. 108].
 - c. Applicant may be required to pay fees for service, excluding requests for personal information. The head of the public body may waive the fee where the applicant cannot afford the fee or where the record relates to a matter of public interest, including the environment or public health or safety. Fee is a "modest cost" after the first 10 or 15 hours of locating the record, depending on who the request was made to [s.26 (3)].
 - i. Distinct from British Columbia, for example, which exempts only the first 3 hours spent on a request, or Alberta, where there is an initial fee of \$25 for a non-continuing request or \$50 for a continuing request.
5. **Conclusion:** What makes Newfoundland & Labrador leading in accessibility of request mechanism is its financial and service-oriented accommodations of different experiences of systemic disadvantage, especially on the bases of (dis/)ability, migration background, and socioeconomic status.
6. **Note for further consideration:** In Québec, if the applicant is a handicapped person, reasonable accommodation must be provided on request to enable the applicant to exercise the right of access.

Practicality of request mechanism

1. **Quick Context:** Requests may be ineffective if submitted to a public body that does not control the record; public bodies can transfer the request to the appropriate public body, and the time period for that transfer varies between jurisdictions.

2. **Province/territory of leading language:** New Brunswick
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Includes a duty to assist applicant, where it is the responsibility of government institutions to assist persons making a request for access to a record, and to respond accurately and completely, and in a timely manner [s. 9].
 - b. The public body that originally receives the request must transfer the request to the other public body within 10 days of having received the request [s. 13(1)].
 - i. Distinct from Newfoundland and Labrador (5 days), Manitoba (7 days), federal, Alberta, Ontario, PEI, and Saskatchewan (15 days), British Columbia and Québec (20 days), and the Northwest Territories, Nunavut, and Yukon (no time limit).
5. **Conclusion:** What makes New Brunswick leading in efficacy of request mechanism is the greater obligation it places upon public bodies to not only assist applicants through the process but also do so in a timely manner.

Duty to document

1. **Quick Context:** Most jurisdictions have not yet established a duty to document.
2. **Province/territory of leading language:** British Columbia
3. **Legislation:** [Link](#); [further information](#)
4. **Leading features:**
 - a. First province to include a duty to document, which requires that government departments and public bodies create and maintain complete and accurate records of important decisions.
 - b. S. 25 imposes an obligation to disclose certain information even where no request for it was made, and this obligation overrides every other section of the Act, including the exceptions to disclosure in Part 2 and privacy protections in Part 3.
5. **Conclusion:** What makes British Columbia leading in duty to document is its inclusion of an explicit duty to document provision, which no province or territory had previously done before.

Effectiveness

1. **Quick Context:** Discretionary exemptions to disclosure requirements for public bodies vary between jurisdictions.
2. **Province/territory of leading language:** Nova Scotia
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. The head of a local public body may refuse to disclose information if the disclosure could reasonably be expected to

reveal a draft of a resolution, by-law or other legal instrument by which the local public body acts, or the substance of deliberations of a closed meeting of its elected officials, or of its governing body or a committee of its governing body. The exemption does not apply if the information has been considered in a public meeting or has been in existence for 15 years [s. 19A (a)].

- i. Distinct from New Brunswick and PEI (20 years) and Manitoba (30 years).
 - b. Provides that where a complete record cannot be disclosed pursuant to an exemption, then the head of the public body must disclose the remainder of the record as can reasonably be severed from the document. The institution must balance the effort required to sever the information against the resulting quality of the information provided to the individual [s. 5(2)].
5. **Conclusion:** What makes Nova Scotia leading in degree of practicality is that it allows disclosure to be refused where necessary for the sake of the public interest but imposes upon that ability stringent standards intended to keep omissions to a reasonable extent.
6. **Note for further consideration:** British Columbia includes a provision where the head of a public body must refuse to disclose information related to abortion services.

Protection of Privacy Legislation

Scope of Legislation

1. **Quick Context:** The most variation between jurisdictions arises in application sections, with the other considerations being purpose and definition sections. Definitions of “personal information” and “public body” are very similar nationwide and most privacy-specific purpose sections are nearly identical.
2. **Province/territory of leading language:** British Columbia
3. **Legislation:** [Link](#)
4. **Leading Features:** It is standard for privacy legislation to be expressly inapplicable to records created by or in the control of officers of the jurisdiction’s legislative assembly. British Columbia’s FIPPA stands out because certain privacy provisions, with respect to administrative records, expressly apply to officers of the Legislature, including:
 - o S. 25.1, the limitation against unauthorized disclosures of personal information
 - o S. 30, a protection of personal information provision
 - o S. 30.3, whistleblower protection
 - o S. 30.5(2), notice of unauthorized disclosure
 - o S. 33, disclosure limitation
 - o S. 33.1, limitation of disclosures outside of Canada
 - o S. 65.3, which makes it an offence to willfully conceal, destroy or alter a record to avoid compliance with a request
 - o S. 65.4, more privacy offences
 - o S. 65.5, which implicates

BC’s officers of the Legislature are subject to many of the same general privacy framework as all other public bodies in the province. This is not the case in other jurisdictions.

5. **Conclusion:** British Columbia is leading in scope because of the legislation’s application to officers of the Legislature.

Collection Limitation

1. **Quick Context:** Collection frameworks are similar across jurisdictions. Although the language may vary, the general rule that “there must be a legitimate purpose for collection and only information that is necessary for that purpose should be collected” is consistent nationwide (Von Tigerstrom, 2020 at pg. 252). The most meaningful points of comparison arise regarding indirect collection and notice of collection.
2. **Province/territory of leading language:** Quebec
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Aside from the federal *Privacy Act*, s.64 *Quebec’s Act Respecting Access to Documents Held by Public Bodies and*

the Protection of Personal Information (“Public Sector Act”) has the most limited exceptions to the general rule of authorized collection.

- i. Only the “rights, powers, and programs of another public body with which the collecting public body is cooperating under a written agreement” are exempt from the general rule (Von Tigerstrom, 2020 at pg. 253).
- b. S.65 of the Quebec Public Sector Act establishes the most “extensive requirements for what information must be provided to individuals upon collection” (Von Tigerstrom, 2020 at pg. 252).
 - i. The following must be provided: “the purposes of collection, the identity of the public body for whom the information is collected, the categories of persons who will have access to the information, whether providing the information is optional and any consequences of refusing, the rights of access and correction of the personal information.”
 - ii. For reference, some other jurisdictions have exceptions to the requirement of giving notice of collection (for example, BC FIPPA s. 27[3]).
 - iii. S.65.0.1 also imposes specific requirements on public bodies that, when collecting, use “technology that includes functions allowing the person concerned to be identified, located or profiled must first inform the person.” They must inform the person of the use of that technology and of “the means available to activate the functions that allow a person to be identified, located or profiled.”

5. Conclusion: What makes Quebec leading is its limited exceptions to the general rule of collection and its stringent notification requirements.

6. Note for further consideration: The interpretation of Quebec’s Public Sector Act is uniquely impacted by the right to privacy enshrined in the Quebec *Charter of Human Rights and Freedoms* (Von Tigerstrom, 2020 at pg. 257). The *Charter* necessitates a proportionality analysis on top of the usual “legitimate purpose” analysis employed by all other jurisdictions. It is not immediately apparent how this additional analysis impacts the effect of the Quebec collection limitation provision. It is also noteworthy that Quebec also does not explicitly restrict indirect collection, but “does require certain information to be given to third parties from whom personal information is collected” (Von Tigerstrom, 2020 at pg. 253).

Retention & Correction

1. **Quick Context:** Correction and retention frameworks tend to be very similar in most provinces; retention is typically mandated for at least one year.
2. **Province/territory of leading language:** New Brunswick
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. What makes New Brunswick the leading language is its complaint mechanism, which is the most favourable to individuals. Section 40(7) expressly forbids heads of public bodies from charging any applicant a fee for submitting a request.
 - b. New Brunswick's *Right to Information and Protection of Privacy Act* sets out a standard and effective framework for ensuring that personal information held by public bodies is complete, accurate, and up to date.
 - c. It creates a broad provision within the statute mandating this standard. It also sets out a standard framework for individuals to request access to their own personal information held by public bodies; individuals may submit such a request in writing to the head of the public body and the head must respond within 20 days.
5. **Conclusion:** New Brunswick has the leading language for retention and correction because it expressly disallows fees for correction requests directly in the legislation.

Use & Disclosures

1. **Quick Context:** Variation between jurisdictions exists regarding the definition of a purpose consistent with collection and the circumstances in which disclosures are authorized.
2. **Province/territory of leading language:** Ontario
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Ontario's FIPPA has much of the leading language for uses and disclosures of personal information by public bodies. Sections 41 and 42 stipulate that uses and disclosures are only permitted when the individual consents to the use or disclosure or when the use of the personal information is consistent with the purpose for which it was collected.
 - b. Like other jurisdictions, Ontario requires the use or disclosures to have a "reasonable and direct connection" with the purpose for its collection, but Ontario also mandates that the use or disclosure can be consistent "only if the individual might reasonably have expected such a use or disclosure." [ON FOIPPA, above note 17, s 43]. This stricter language creates an added layer of control over personal information for individuals relative to all other jurisdictions.

5. **Conclusion:** Ontario is the leading language for uses and disclosures because of s. 43, which adds a unique reasonable expectation limit to consistent purposes.
6. **Notes for further consideration:** British Columbia's consent framework within its FIPPA and Alberta's consent regulations are also leading in uses and disclosures. The Québec public sector legislation expressly prohibits disclosures of personal information by public bodies in jurisdictions outside of Québec (including international) unless they provide equivalent safeguards to the PI [s. 70.1].

Security

1. **Quick Context:** Protection measures for personal information are generally enabled by a broad provision and specified in regulations.
2. **Province/territory of leading language:** Newfoundland and Labrador
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. It is best practice for each jurisdiction to protect lawfully collected personal information from loss, theft, or other potential privacy breaches. Most privacy legislation addresses safeguards and the protection of data with one broad provision.
 - i. For example, s. 41 of Manitoba's Freedom of Information and Protection of Privacy Act expressly mandates that public bodies follow the regulations around physical and technical protections of data.
 - b. Section 64 Newfoundland and Labrador's Access to Information and Protection of Privacy Act follows that best practice. It also goes further by expressly mandating that public bodies protect personal information in their control from unauthorized copying or modification and that such personal information is securely retained and disposed of. In other jurisdictions, such language is usually only present in the regulations.
5. **Conclusion:** Newfoundland and Labrador is leading for security because it expressly sets out security obligations within the four corners of its legislation as opposed to delegating this to the regulations.
6. **Note for further consideration:** The Québec public sector legislation expressly prohibits disclosures of personal information by public bodies in jurisdictions outside of Québec (including international) unless they provide equivalent safeguards to the PI (p. 285)

Oversight and Enforcement (Commissioner/Adjudicator Terms)

Ease of access

1. **Quick Context:** Most, but not all, jurisdictions allow appeals of a decision by a Commissioner. Only Alberta, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, and Nova Scotia have enacted whistleblower protection legislation.
2. **Province/territory of leading language:** Alberta
3. **Legislation:** [Link](#) + [Public Interest Disclosure Act](#)
4. **Leading features:**
 - a. Provides that an adjudicator may be appointed to investigate and resolve complaints against the Commissioner where there is a conflict of interest [s. 75].
 - i. Note: Further review is only permitted through an adjudicator, who is expressly excluded from reviewing an order of the Commissioner.
 - b. Public interest disclosure/whistleblower legislation: Includes a provision to curtail any adverse employment action taken against an employee for properly acting or disclosing information in good faith [s. 24(2)(b)] and sets a maximum penalty of up to \$100,000 for contravening the provision [s. 49]
5. **Conclusion:** What makes Alberta leading in ease of access is its allowance of further pathways for review beyond the Commissioner and encouragement of public interest disclosure via whistleblower protection.

Equality of access

1. **Quick Context:** Fines and imprisonment have a disproportionate deterring effect based on socioeconomic status and the carceral system and its associated procedures often lean on and exacerbate systemic inequities.
2. **Province/territory of leading language:** Québec
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Offences and associated penalties for contravention of the Act: The provisions set a maximum fine for first conviction of \$200 to \$1,000, and for a second or subsequent conviction of \$500 to \$2,500 [s. 159]. British Columbia has a maximum fine of \$5000, the lowest alongside Ontario, the Northwest Territories, and Nunavut, besides Québec where it varies from \$100 - \$1,000 depending on if it's the first conviction.
 - b. Does not list imprisonment as a possible penalty.
 - i. Unlike Newfoundland and Labrador, Nova Scotia, and Saskatchewan
5. **Conclusion:** What makes Québec leading in equality of access is its penalties, which are the lowest financially and do not include imprisonment. These mark Québec as leading because fines have a

disproportionate deterring effect based on socioeconomic status and the carceral system and its associated procedures often lean on and exacerbate systemic inequities.

Powers of officials

1. **Quick context:** There is a wide degree of variation of the power of officials. The penalties they can hand out to public bodies, the enforceability of those penalties, and exemptions from access and privacy legislation can all impact officials' degree of influence over the practices of public bodies.
2. **Province/territory of leading language:** British Columbia
3. **Legislation:** [Link](#)
4. **Leading features:**
 - a. Information obtained by the Commissioner or staff in the performance of their functions and duties may only be disclosed in certain circumstances.
 - i. Unlike in New Brunswick and Québec
 - b. The head of the public body or the service provider to whom the order is directed must comply with the order not later than 30 days after being given a copy of the Commissioner's order unless an application for judicial review of the order is brought before that period ends [s. 59].
 - i. Distinct from Alberta (50 days) and PEI (40 days)
 - ii. The commissioner cannot require compliance within 30 days for orders to sever information from records that are subject to review [s. 54.1].
 - c. Distinct from federal, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Saskatchewan, Northwest Territories, Nunavut, and Yukon where the head of the public body has a discretion whether to accept or reject the Commissioner's recommendations.
 - d. British Columbia's Adjudicator also has the same authority for making Orders as the Commissioner after completing an inquiry [s.65], and the enforcement measures available for Commissioner's Orders also apply to Adjudicator's Orders.
5. **Conclusion:** What makes British Columbia leading in powers of officials is that its Commissioner's orders are imperative rather than suggestive, allowing the Commissioner broader reach in its investigations, and its findings are protected from disclosure in certain cases.
6. **Note for further consideration:** Under the federal Act, and in Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Ontario, despite any other Act or any privilege of the law of evidence, in exercising powers or performing duties under the Act, the Commissioner has the right to enter any office of a public body and examine and make copies of any record in the custody of the public body.

Appendix 1 Rubric breakdown for freedom of information

Scope of legislation

- Q1) Does the legislation apply to all records in the custody or under the control of a public body, including court administration records?
- Q2) Are several specific records excluded from the legislation's application? Which records?
- Q3) Are the circumstances in which disclosure is allowed limited to preventing unreasonable infringements? (e.g., if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits)

Accessibility of request mechanism

- Q4) Are oral requests permitted where the requester has difficulty understanding either official language of Canada or has a disability impairing his or her ability to make a request?
- Q5) To what extent can an individual authorize another to act on their behalf?
- Q6) Is reasonable accommodation mandatory upon request of a disabled person? Are the circumstances in which disclosure is allowed limited to preventing unreasonable infringements? (e.g., if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits)
- Q7) Is there an application fee? In what ways is it limited? (e.g. for how much time spent on the request is a requester charged?)

Efficacy of request mechanism

- Q8) Does the legislation include a duty to assist an applicant?
- Q9) In how many circumstances must the head of a government institution refuse to disclose a requested record?
- Q10) How many types of information is the head of a public body mandated to disclose upon request?
- Q11) Is there a time limit for how a public body who originally receives a request must transfer the request to the other relevant public body?

Transparency and proactivity

- Q12) Is there a duty to document?
- Q13) Is there a purpose outlined in the legislation for the exemptions stated in the act, highlighting transparency as a goal?
- Q14) Is consent required for the collection, use, and disclosure of personal information? Must individuals be reasonably expected to understand the nature, purposes, and consequences of the collection, use and disclosure of such information in giving their consent?

Degree of practicality

Q15) Is there an exemption allowing heads of public bodies to refuse disclosure if it is expected to reveal a draft of a legal instrument or deliberations of a closed meeting? Is it rendered inapplicable if the information has been in existence for over a decade?

Q16) Is the head of a public body mandated to disclose the remainder of a record that cannot be disclosed completely, as can be reasonably severed? Is the institution mandated to balance the effort required to sever the information against the resulting quality of the information provided to the requester?

Appendix 2 Rubric breakdown for protection of privacy

Scope of legislation

- Q17) How broad are the key definitions of “personal information,” “public body,” “organization”?
- Q18) To what extent are scope-setting provisions sufficient for the protection of individual privacy rights?
- Q19) To what extent are scope-setting provisions overbroad to the point of being impractical?

Collection limitation

- Q20) Are oral requests permitted where the requester has difficulty understanding either official language of Canada or has a disability impairing his or her ability to make a request?
- Q21) To what degree is consent required for the collection of personal information?
- Q22) To what degree is purpose specification required for the collection of personal information?
- Q23) To what extent does the framework limit overcollection?

Individual access and correction

- Q24) To what extent does the framework ensure that PI must be:
- Accurate
 - Up to date, and;
 - Complete?
- Q25) To what extent does the framework ensure that individuals have the right to:
- Confirmation of whether a public body or organization is holding their own personal information;
 - Access to their own personal information being held by a public body or organization provided through reasonable means; and
 - The correction, deletion, completion, or general rectification of incorrect, incomplete, or over collected information?

Use and retention

- Q26) To what extent does the framework restrict the use or disclosure of PI unless the use:
- Is for the purpose for which the PI was collected;
 - Is carried out with the consent of the PI’s subject, or;
 - Otherwise lawfully authorised?
- Q27) In the case of an otherwise unauthorised use of PI that is authorised due to the consent of the subject of the PI, to what extent must the consent be:
- Voluntary,
 - Informed, and,
 - Ongoing?

Safeguarding

Q28) To what extent does the framework protect against the following risks regarding personal information, assuming the actions in this list are all unauthorized? This list is not exhaustive.

- a) Loss
- b) Access
- c) Destruction
- d) Use
- e) Modification
- f) Disclosure

Q29) Are there limits to retention of personal information?

Appendix 3 Rubric breakdown for oversight and enforcement

Ease of access (complaint and review mechanisms)

Q30) Is the Commissioner's order final or are there further pathways to appeal their order, especially where there is a conflict of interest?

Q31) Is there whistleblower legislation?

Q32) Are individuals complying with a request or requirement to produce a record or provide information to the Commissioner protected from persecution?

Equality of access (complaint and review mechanisms)

Q33) What are the maximum fines? Is there a distinction between first convictions and second or subsequent convictions?

Q34) Is imprisonment a possible penalty?

Powers of officials (degree of independence, scope of jurisdiction, accountability for denied complaints, efficacy of penalties)

Q35) Does the Commissioner have the right to enter any office of a public body and examine and make copies of any record in their custody?

Q36) What is the timeline by which the head of a public body or service provider must comply with an order provided by the Commissioner?

Q37) Does the head of a public body have discretion to accept or reject the Commissioner's recommendations?

Appendix 4 Tables of Legislation

Freedom of Information

	Jurisdiction	Title	Date Introduced	Date Last Amended
Scope of Legislation	BC	<i>Freedom of Information and Protection of Privacy Act</i>	1992	2021
Accessibility of Request mechanism	NL	<i>Access to Information and Protection of Privacy Act, 2015</i>	2015	2019
Efficacy of Request Mechanism	NB	<i>Right to Information and Protection of Privacy Act</i>	2009	2022
Duty to Document	BC	<i>Freedom of Information and Protection of Privacy Act</i>	1992	2021
Degree of Practicality	NS	<i>Freedom of Information and Protection of Privacy Act</i>	1977	2018

Protection of Privacy

	Jurisdiction	Title	Date Introduced	Date Last Amended
Scope of Legislation	BC	<i>Freedom of Information and Protection of Privacy Act</i>	1992	2021
Collection Limitation	QC	<i>An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information</i>	1982	2021
Retention and Correction	NB	<i>Right to Information and Protection of Privacy Act</i>	2009	2022
Use & Disclosures	ON	<i>Freedom of Information and Protection of Privacy Act</i>	1988	2023
Security	NL	<i>Access to Information and Protection of Privacy Act, 2015</i>	2015	2019

Oversight and Enforcement

	Jurisdiction	Title	Date Introduced	Date Last Amended
Ease of Access	AB	<i>Freedom of Information and Protection of Privacy Act</i>	1995	2022
Equality of Access	QC	<i>An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information</i>	1982	2021
Powers of Officials	BC	<i>Freedom of Information and Protection of Privacy Act</i>	1992	2021

Appendix 5: BC Statutes with provisions that prevail over FIPPA

From the March 2022 “Submission to the Special Committee to Review the Freedom of Information and Protection of Privacy Act” by the BC Office of the Information and Privacy Commissioner.

Legislation	Sections with clauses that fully or partly prevail over FIPPA
<i>Administrative Tribunals Act</i>	61
<i>Adoption Act</i>	70(3), 74
<i>Adult Guardianship Act</i>	46(1)
<i>Animal Health Act</i>	16(2), 60(a)
<i>Architects Act</i>	51.2(3)
<i>Child, Family and Community Service Act</i>	24(2), 74, 75, 77, 96
<i>Civil Resolution Tribunal Act</i>	90(1)
<i>Coroners Act</i>	64, 66
<i>Criminal Records Review Act</i>	6(4)
<i>E-Health (Personal Health Information Access and Protection of Privacy) Act</i>	20(1)
<i>Election Act</i>	275(7)
<i>Emergency Communications Corporations Act</i>	9(3), 9(4)
<i>Employer Health Tax Act</i>	90(9)
<i>Employment Standards Act</i>	75(2), 101(2)
<i>Evidence Act</i>	51(7)
<i>Family Law Act</i>	11(2), 133(4), 243(3)
<i>Family Maintenance Enforcement Act</i>	43(1)
<i>Health Professions Act</i>	26.2(6)
<i>Heritage Conservation Act</i>	3(3)
<i>Income Tax Act</i>	64(8)
<i>Laboratory Services Act</i>	29(1)
<i>Legal Profession Act</i>	88(2), (7) & (8)
<i>Local Elections Campaign Financing Act</i>	63(3)
<i>Local Government Act</i>	49
<i>Mines Act</i>	34(8)
<i>Missing Persons Act</i>	21(1)
<i>Motor Vehicle Act</i>	93.1
<i>Pharmaceutical Services Act</i>	7, 25
<i>Pharmacy Operations and Drug Scheduling Act</i>	16(1)(c)
<i>Police Act</i>	182
<i>Professional Governance Act</i>	110(7)
<i>Provincial Immigration Programs Act</i>	10(2)
<i>Public Guardian and Trustee Act</i>	17(3)
<i>Public Health Act</i>	53
<i>Public Inquiry Act</i>	26(1), 28(7)

<i>Public Interest Disclosure Act</i>	51(2)
<i>Recall and Initiative Act</i>	168(8)
<i>Securities Act</i>	148(2)
<i>Speculation and Vacancy Tax Act</i>	120(10)
<i>Statistics Act</i>	9(2)
<i>Teachers Act</i>	53(9)
<i>Temporary Foreign Worker Protection Act</i>	34(2)
<i>Vancouver Charter</i>	8.1
<i>Victims of Crime Act</i>	7(2)
<i>Witness Security Act</i>	38(2)

References

[Canada's Federal Privacy Laws: Background Paper](#)

[Halsbury's Laws of Canada - Access to Information and Privacy \(2020 Reissue\)](#)

[Report and Draft Recommendations: Police-Reported Indigenous and Racialized Identity Statistics via the Uniform Crime Reporting Survey](#)

[Submission to the Special Committee to Review the Freedom of Information and Protection of Privacy Act, BC Office of the Information and Privacy Commissioner \(March 2022\)](#)

[2022-23 Survey of Canadians on Privacy-Related Issues](#)

Von Tigerstrom, B. (2020). *Information and privacy law in Canada*. Irwin Law.