

ENHANCING THE PROVINCE'S PUBLIC SECTOR ACCESS AND PRIVACY LAW

REPORT OF THE SPECIAL COMMITTEE TO REVIEW THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT MAY 2004

See the full report at <http://www.leg.bc.ca/cmt/37thparl/session-5/foi/index.htm>

SUMMARY OF RECOMMENDATIONS

The Committee urges the government of British Columbia to implement in a timely manner our recommendations. These relate to administrative policy and practice, the six parts of the *Freedom of Information and Protection of Privacy Act*, and to the 1993 FOIPP Regulation:

Administrative Policy and Practice:

1. Change the administrative policy and practice regarding the sensitivity ratings process used in the corporate records tracking system to ensure that complexity becomes the sole criterion for classifying formal requests for public records, and that the new complexity ratings process treats all requesters equally and impartially and protects their personal identity.

Part 1 — Introductory Provisions:

2. Add a new section (2)(3) stating that the Act recognizes that new information technology can play an important role in achieving the purposes outlined in subsection (1), particularly with respect to promoting a culture of openness and informal access to information and by enhancing privacy protection.
3. Investigate why the B.C. Society for the Prevention of Cruelty to Animals was assigned the dual status of a public body and a non-profit society in the first place and whether there is a case for clarifying or even changing its status.
4. Amend section 3 to clarify that records, including personal information, created by or in the custody of a service provider under contract to a public body are under the control of the public body for which the contractor is providing services.

Part 2 — Freedom of Information:

5. Add a new section at the beginning of Part 2 of the Act requiring public bodies — at least at the provincial government level — to adopt schemes approved by the Commissioner for the routine disclosure of electronic records, and to have them operational within a reasonable period of time.
6. Amend section 4(1) to establish that an applicant who makes a formal access request has the right to anonymity throughout the entire process.
7. Amend section 10(1) to give the Commissioner the authority to grant extensions for rare or unexpected events where the Commissioner considers it fair and reasonable to do so.

8. Amend section 11(1) to make the time limit for transferring a request consistent with section 7(1).
9. Amend section 11 to authorize a public body to transfer an access request to any public sector entity that is subject to a federal, provincial or territorial access-to-information statute.
10. Develop formal information-sharing agreements with each jurisdiction in Canada that already has the statutory authority to transfer files beyond its boundaries and encourage the other jurisdictions lacking such authority to make provision for reciprocal agreements.
11. Amend section 13(1) to clarify the following:
 - (a) “advice” and “recommendations” are similar terms often used interchangeably that set out suggested actions for acceptance or rejection during a deliberative process,
 - (b) the “advice” or “recommendations” exception is not available for the facts upon which advised or recommended action is based; or for factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical opinions.
12. Amend section 13(2) to require the head of a public body to release on a routine and timely basis the information listed in paragraphs (a) to (n) to the public.
13. Repeal section 20(1)(a) and amend section 3(1) to state that the Act does not apply to records available for purchase by the public.
14. Amend section 22(4) to state that it is not an unreasonable invasion of third-party privacy to disclose the personal information of an individual who has been dead for over 20 years.

Part 3 — Protection of Privacy

15. Add a new section at the beginning of Part 3 of the Act encouraging public bodies to incorporate the use of privacy-enhancing technologies, approved by the Commissioner, into their privacy policies and practices within a reasonable period of time.
16. Amend section 36 by adding “or a local school board” after “the archives of public body”.

Part 4 — Office and Powers of Information and Privacy Commissioner

17. Amend section 42 to explicitly give the Commissioner the power to require public bodies to submit statistical and other information related to their processing of freedom-of-information requests, in a form and manner that the Commissioner considers appropriate.
18. Amend section 42 to give the Commissioner the explicit authority to require applicants to attempt to resolve complaints and requests for review with public bodies in a manner that the Commissioner directs. The wording should be similar to that of section 38(4) of the Personal Information Protection Act.
19. Amend section 56 to provide that the 90-day period it sets out does not include any time taken for an OIPC referral back to the public body. The wording should be similar to that of section 50(9) of the Personal Information Protection Act.
20. Amend the Act to combine the complaint process and the review and inquiry process — referred to in sections 42(2) and 52(1) respectively — into a unitary process for the Enhancing the Province’s Public Sector Access and Privacy Law 38 Commissioner to investigate, mediate, inquire into and make orders about complaints respecting decisions under the Act or other allegations of non-compliance with the Act.

21. Amend sections 44(1) and (2) to eliminate incorporation of powers by reference to the Inquiry Act and to provide express powers, applicable to public bodies and others, for the Commissioner to:
 - (a) order the production of records or things; and
 - (b) order the attendance of individuals and their oral or electronic examination on oath, affirmation or in any other manner, in connection with any investigation, audit or inquiry under the Act.
22. Amend the Act to give protection from testimonial compulsion to the Commissioner and those acting for or under the direction of the Commissioner.

Part 5 — Reviews and Complaints

23. Amend sections 58(2) and (3) to permit the Commissioner to order a public body to perform the s. 4(2) duty to sever excepted information and disclose the remainder of requested records
24. Amend the Act to provide a mechanism for the enforcement of the Commissioner's requested records. orders as orders of the Supreme Court of British Columbia.
25. Amend section 59(2) and add a new section 59(3) to inhibit abuse of the judicial review process by time-limiting the automatic stay of the Commissioner's order:
 - (2) If an application for judicial review is brought before the end of the period referred to in subsection (1), the order of the Commissioner is stayed for 60 days from the date the application is brought.
 - (3) A court may abridge or extend, or impose conditions on, a stay of the order of the Commissioner under subsection (2).

Part 6 — General Provisions

26. Amend section 71 to require public bodies to make available to an individual his or her own personal information free of charge and without an access request, but subject to any access exceptions under the Act.
27. Amend the Act's Schedule of Fees in section 7 of the Freedom of Information and Protection of Privacy Regulation to reflect the use of electronic media, such as CDs and DVDs, since the Schedule was created over a decade ago.

1993 FOIPP Regulation

28. Amend section 3 of the 1993 Freedom of Information and Protection of Privacy Regulation to make it consistent with sections 1 to 4 of the Personal Information Protection Act Regulations.