

From: [Curtis, David FIN:EX](#)
To: [Kot, Jill MTIC:EX](#); [Cook, Jeannette MTIC:EX](#)
Cc: [Biggs, Jackie FIN:EX](#)
Subject: Backgrounders: Minister's FOIPPA Roundtable Session 1
Date: Monday, November 6, 2017 6:38:06 PM
Attachments: [Roundtable Stakeholder Backgrounder - BC Civil Liberties Association.docx](#)
[Roundtable Stakeholder Backgrounder - BC Freedom of Information and Privacy Association.docx](#)
[Roundtable Stakeholder Backgrounder - Rob Botterell.docx](#)
[Roundtable Stakeholder Backgrounder - Stanley Tromp.docx](#)
[Stakeholder Issues Table.xlsx](#)
Importance: High

Please find the background briefing materials for the Minister's November 10th Roundtable attached.

Regards,

David

November 1, 2017

Context

A broad and open-ended approach is proposed for the first phase of stakeholder consultations related to access to information and privacy rules. The objectives are to identify the challenges and issues that stakeholders may identify, to assess capacity for change and identify areas for improvement across the system, and ultimately to create awareness of and generate buy-in for future legislative, policy, and education/awareness solutions. In this first phase, the Minister of Citizens' Services will hold a number of roundtable discussions with stakeholders to launch the engagement initiative and seek feedback on key areas for improvement. This backgrounder provides information about the interests of a participating stakeholder in one of these sessions.

Representative (s)

Michael Vonn, Policy Director, BC Civil Liberties Association

Stakeholder Profile

Founded in 1962, the B.C. Civil Liberties Association (BCCLA) is the oldest and most active civil liberties group in Canada. The BCCLA is an autonomous, non-partisan charitable society based in Vancouver and is jointly funded by the Law Foundation of British Columbia and by private citizens through donations and memberships. Its mandate is to preserve, defend, maintain and extend civil liberties and human rights in British Columbia and across Canada.

The association is unaffiliated with any other organization or political group; however, the association often works cooperatively with other organizations, such as Pivot Legal Society, the John Howard Society, and the Canadian Civil Liberties Association, on common causes.

The BCCLA has been consulted by both the governments of Canada and British Columbia on proposed actions or policies that may give rise to civil liberties or human rights concerns. The association was consulted by the federal government in its creation of the Personal Information Protection and Electronic Documents Act (PIPEDA, 2000) and by British Columbia's government in its creation of the Personal Information Privacy Act (PIPA, 2003).

Key Issues Likely To Be Raised

Based on their public comments and submissions to the Special Committees, in an open discussion on freedom of information and privacy, it is reasonable that BCCLA may raise the following issues:

- Support for maintaining data residency provisions in FOIPPA
- Support for a legislated "Duty to Document"
- An interest in extending coverage of FOIPPA (specifically to the British Columbia Association of Chiefs of Police [BCACP] and the British Columbia Association of Municipal Chiefs of Police [BCAMCP])

November 1, 2017

- An interest in clarifying the rules around proactive disclosures in the Public interest ("section 25")
- Support for a new offense and penalty related to the unauthorized destruction of records, as well as increased monetary penalties for the existing offenses
- Concerns about fees and delays in processing FOI requests

November 1, 2017

Context

A broad and open-ended approach is proposed for the first phase of stakeholder consultations related to access to information and privacy rules. The objectives are to identify the challenges and issues that stakeholders may identify, to assess capacity for change and identify areas for improvement across the system, and ultimately to create awareness of and generate buy-in for future legislative, policy, and education/awareness solutions. In this first phase, the Minister of Citizens' Services will hold a number of roundtable discussions with stakeholders to launch the engagement initiative and seek feedback on key areas for improvement. This backgrounder provides information about the interests of a participating stakeholder in one of these sessions.

Representative (s)

Vincent Gogolek, Executive Director, BC Freedom of Information and Privacy Association

Stakeholder Profile

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.

FIPA provides a variety of services to individuals and organizations through various mechanisms, including:

- Providing information and summary advice on freedom of information and privacy issues through helplines, access to guided self-help materials;
- Producing public education events on freedom of information; privacy; and legislative and legal issues (e.g. annual Freedom of Information Workshop, bi-annual Information Summit);
- Conducting ongoing research into the policy and legal structures respecting access and privacy regimes in B.C. and across Canada, research emerging information rights issues by filing FOI requests, commission their own studies, and provide research support to lawyers, journalists, students, and the general public;
- Monitoring the performance of government bodies and Canada's Information and Privacy Commissioners; and
- Engaging in legal advocacy before B.C.'s Information and Privacy Commissioner and various Canadian courts, as well as coordinating legal action with partner organizations.

FIPA has presented and made written submissions to the 2010 and the 2015 Special Committees that reviewed the *Freedom of Information and Protection of Privacy Act* (FOIPPA). FIPA made a number of recommendations for amending the legislation. In the spring 2017, FIPA issued a survey questionnaire to all of the BC Party Leaders asking them for detailed statements outlining their positions on a number of key issues.

November 1, 2017

Key Issues Likely To Be Raised

Based on their public comments and submissions to the Special Committees, in an open discussion on freedom of information and privacy, it is reasonable that FIPA may raise the following issues:

- Support for maintaining data residency provisions in FOIPPA
- Support for a legislated "Duty to Document"
- An interest in extending coverage of FOIPPA (specifically to "subsidiary corporations" of public bodies)
- Support for increased proactive disclosure of information in the Public Interest ("section 25")
- Support for a new offense and penalty related to the unauthorized destruction of records
- Ending the practice of monthly postings that include the description of an applicant's Open FOI requests
- Mandatory breach notifications

November 1, 2017

Context

A broad and open-ended approach is proposed for the first phase of stakeholder consultations related to access to information and privacy rules. The objectives are to identify the challenges and issues that stakeholders may identify, to assess capacity for change and identify areas for improvement across the system, and ultimately to create awareness of and generate buy-in for future legislative, policy, and education/awareness solutions. In this first phase, the Minister of Citizens' Services will hold a number of roundtable discussions with stakeholders to launch the engagement initiative and seek feedback on key areas for improvement. This backgrounder provides information about the interests of a participating stakeholder in one of these sessions.

Representative (s)

Stanley Tromp, Journalist

Stakeholder Profile

Stanley Tromp is a freelance journalist based in Vancouver who publishes primarily in B.C. and Canadian publications. Mr. Tromp is a freedom of information (FOI) advocate, with a focus on Canadian and international access to information law. Mr. Tromp has published several articles on his website, <http://www3.telus.net/index100/foi>, related to FOI here in BC and in other jurisdictions such as Alberta.

Over the last decade, Mr. Tromp has petitioned government and select public servants for changes to FOIPPA and in addition, has provided written and oral submissions to past Special Committees reviewing FOIPPA. Significant submissions were made to the 2010 and 2015 Special Committees, in which Mr. Tromp submitted substantially similar lists of 67 recommendations for changes to FOIPPA (See Appendix A). This list makes recommendations for changes not only to the Freedom of Information component of the Act, but to the others parts of the legislation as well. Of the 67 recommendations submitted by Mr. Tromp to the 2015 Special Committee, 13 were either addressed or partially addressed in the Special Committee's report.

Key Issues Likely To Be Raised

Based on his public comments and submissions to the Special Committees, in an open discussion on freedom of information and privacy, it is reasonable that Mr. Tromp may raise the following issues:

- Coverage of subsidiary corporations of public bodies under FOIPPA
- Narrowing the application of section 13 (advice or recommendations) of FOIPPA
- Online Publication of FOI Response Packages
- Online Publication of Summaries of Open FOI Requests

November 1, 2017

Context

A broad and open-ended approach is proposed for the first phase of stakeholder consultations related to access to information and privacy rules. The objectives are to identify the challenges and issues that stakeholders may identify, to assess capacity for change and identify areas for improvement across the system, and ultimately to create awareness of and generate buy-in for future legislative, policy, and education/awareness solutions. In this first phase, the Minister of Citizens' Services will hold a number of roundtable discussions with stakeholders to launch the engagement initiative and seek feedback on key areas for improvement. This backgrounder provides information about the interests of a participating stakeholder in one of these sessions.

Representative (s)

Robert Botterell

Stakeholder Profile

Robert (Rob) Botterell is currently working as Associate Council, Aboriginal, Major Project Negotiation with Lidstone & Company. In this work, Rob focuses on major project negotiations, law drafting, aboriginal law, resource law and advocating on behalf of clients. Mr. Botterell has an LL.B. from UVic and MBA from UBC, and is a Fellow of Institute of Canadian Bankers after having been the TD Bank Regional Comptroller in the 1980's. Mr. Botterell has practiced law in British Columbia for 20 years.

Mr. Botterell is well known for having worked on the team that originally drafted B.C.'s Freedom of Information and Protection of Privacy legislation. He negotiated the key provisions of the Maa-nulth Treaty for Huu-ay-aht and more recently drafted the Huu ay aht Nation's first Access to Information legislation.

Over the last decade Mr. Botterell has presented and provided written submissions to Special Committees reviewing FOIPPA. In his recent submission (2015), he raised particular concerns about disclosure (under section 25 of FOIPPA) of records related to the Site C Dam development project.

Key Issues Likely To Be Raised

- Support for increased proactive disclosure of information in the Public Interest ("section 25")
- Improved employee understanding and practice around the disposal of transitory records
- Narrowing the application of section 13 (advice or recommendations) of FOIPPA

Issue	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Duty to Document	<p>FIPA recommended that that a positive duty to document and create records be incorporated into FOIPPA or “other legislation”. FIPA’s recommendation was that this would be a duty to “record decision making and would set out minimum requirements for record keeping”.</p> <p>FIPA feels that the incorporation of a duty to document in IMA was not adequate.</p>	<p>In its submission to the 2015 Special Committee the BC Civil Liberties Association (BCCLA) endorsed a duty to document similar to the Australian and New Zealand approaches outlined by the Commissioner.</p> <p>What the BCCLA’s views are since Bill 6 was introduced in March 2017, which incorporated the first ever duty to document in Canada in the Information Management Act (IMA). is not known.</p>	<p>Mr. Tromp has recommended adding to Part 2 of FOIPPA a duty for public bodies to document key actions and decisions based on the definition of “government information” in the Information Management Act.</p>	<p>Position on this issue is unknown</p>
Subsidiary Corporations	<p>FIPA supports expanding the coverage of FOIPPA to cover subsidiary corporations or other entities that are publicly funded.</p> <p>In the past FIPA’s primary focus on this issue has been around ensuring subsidiaries created by educational public bodies like colleges and universities are made subject to the Act.</p> <p>FIPA has been critical of government for taking so long in making this promised change to FOIPPA.</p>	<p>Position on this issue is unknown</p>	<p>Mr. Tromp has been a strong advocate for bringing subsidiary corporations, which are under the coverage of FOIPPA, as he asserts that public bodies are able to skirt their FOI requirements by creating entities that are not covered by the Act.</p>	<p>Position on this issue is unknown</p>
Posting Summaries of Open FOI Requests	<p>FIPA continues to criticize this practice as “a measure that can intimidate requesters while providing no additional transparency on government operations.</p>	<p>Position on this issue is unknown</p>	<p>Mr. Tromp and other members of the media have expressed concerns about this practice.</p>	<p>Position on this issue is unknown</p>
Online Publication of FOI Response Packages	<p>Position on this issue is unknown</p>	<p>Position on this issue is unknown</p>	<p>Mr. Tromp and other members of the media have expressed concerns about this practice.</p>	<p>Position on this issue is unknown</p>

Issue	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Narrowing the Application of Exceptions to Disclosure	FIPA has recommended changes to FOIPPA that would narrow the application of sections 12 (Cabinet confidences), 13 (Policy advice or recommendations, 14 (Legal advice) and 15 (Disclosure harmful to law enforcement).	The BCCLA endorses the Commissioner's recommendation that section 13 be amended to clarify the that "advice" or "recommendations" does not apply to facts upon which the advice or recommendations are based and does not apply to factual, investigative, or background material, for the assessment or analysis of such material, or for professional or technical opinions.	Tromp has recommended changes to FOIPPA that would narrow the application of sections 12 (Cabinet confidences), 13 (Policy advice or recommendations), 14 (Legal advice) and 16 (Disclosure harmful to intergovernmental relations or negotiations).	Mr. Botterell has raised concerns in the past about the perceived "overuse" of there application of section 13 of the Act. Mr. Botterell has expressed that, in his view, what qualifies as advice has been broadened to the point that factual background material of many types is exempted from disclosure.
Increasing Proactive Disclosure	FIPA has made several recommendations for additional categories of records to be disclosed proactively without the need for an FOI request.	Position on this issue is unknown	Mr. Tromp has recommended that government consider proactively releasing cabinet minutes on a government internet page 20 years after their creation (subject to FOIPP Act exemptions, other than Sec. 12), eventually moving to 10 years after their creation. Also recommended that section 70 be amended to add a much longer list of records that must be routinely released or proactively published.	Position on this issue is unknown

Issue	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Section 25	<p>FIPA supports the previous Commissioner's view that section 25 should not be interpreted to include a temporal urgency requirement.</p> <p>FIPPA has recommended that FOIPPA be amended to authorize the public disclosure of government reports such as the MacNeil report to be published without a Ministerial Order.</p>	<p>The BCCLA has long urged that the government should be releasing more information under s. 25 of FOIPPA which creates an obligation for disclosures in the public interest.</p> <p>The BCCLA is of the view that the current language is necessary to ensure public bodies fulfill their disclosure obligations in a timely way and that what is needed is an additional clarifying amendment that would ensure the obligation does not only pertain to situations of emergency.</p>	<p>Mr. Tromp supports the previous Commissioner's view that section 25 should not be interpreted to include a temporal urgency requirement.</p> <p>Recommends retaining the term “for any other reason” in section 25, but adding further illustrative examples to it, such as those noted in this report from other nations.</p>	<p>Mr. Botterell supports the previous Commissioner's view that section 25 should not be interpreted to include a temporal urgency requirement.</p> <p>Mr. Botterell has cited government’s refusal to proactively release records respecting the Site C dam project under the section 25 as an example of the section being underutilized.</p>
Data Residency	<p>FIPA remains a staunch advocate that these provisions are retained and to this end undertook a major campaign to make sure decision makers in Ottawa and Victoria were aware of the risks.</p> <p>FIPA has also recommended that the BC government and other public bodies be required to make public the details of any tokenization system they use to avoid the operation of the domestic data storage requirements of FOIPPA.</p>	<p>The BCCLA is of the view that BC’s Data residency requirements remain a model emulated and should remain intact.</p>	<p>Position on this issue is unknown</p>	<p>Position on this issue is unknown</p>

Issue	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Mandatory Breach Notification	<p>FIPA has recommended that mandatory breach notification be enshrined in law to bring broader public sector bodies, such as health care bodies in line with similar practices and processes as government proper.</p> <p>FIPA has also recommended that FOIPPA be amended to provide that where an organization collects personal information on behalf of a public body, it is obliged to ensure that the individual is provided notice and that all the rights including the right to refuse consent and be advised of the consequence of such refusal.</p>	The BCCLA supports mandatory notification to affected individuals and reporting of privacy breaches to the Commissioner in cases where the breach could reasonably be expected to cause harm to individuals and/or where the breach involves a large number of individuals.	Position on this issue is unknown	Position on this issue is unknown
Offenses and Penalties for Unauthorized Destruction of Records	FIPA recommends that a section be added to FIPPA that penalizes any person or public body that flagrantly breaches the duty to assist requesters by obstructing access rights or failing to properly document government decisions.	<p>Supports the Commissioner in gaining broader powers of investigation into destruction of records, like those of its counterparts in Ontario and Alberta.</p> <p>BCCLA has made it clear that they have no issue with government policy provided guidance on determination of when a record is “transitory” and therefore a candidate for destruction.</p>	Mr. Tromp has recommended amendments to prohibit and penalize persons for unauthorized record destruction and handling in the FOI process.	Position on this issue is unknown

Issue	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Extending Coverage of FOIPPA to Police Associations	FIPA has stated publically that they believe these bodies should be covered by the Act for reasons of transparency and administrative efficiency.	For a number of years there has been considerable public pressure from media and special interest groups such as the BC Civil Liberties Association to bring these bodies under the coverage of FOIPPA.	Position on this issue is unknown	Position on this issue is unknown
Amendments to Fee Provisions	FIPA recommends s.75(5.1) be amended to clarify that a fee waiver can be requested as part of the request for information. FIPA has also recommended that automatic fee waiver for non-compliance be implemented.	The BCCLA urged the 2015 FOIPPA Special Committee to review the issue of the overall fee structure. They also endorsed the FIPA recommendation that a fee waiver request can be submitted at the same time as the request for information.	Mr. Tromp has recommended amendments to mandate that when a department's response falls into deemed refusal (i.e., failure to meet lawful deadlines), it loses the right to collect fees (including application fees and any search, preparation, and photocopying charges).	Position on this issue is unknown
Overrides to FOIPPA	FIPA has recommended that no further overrides be made to the FIPPA, and that existing overrides be examined to see if FIPPA's current exceptions would be suitable and that public written justification should be provided for each.	The BCCLA endorses a recommendation put forward by the Commissioner that a review be undertaken of statutes that prevail over FOIPPA.	Position on this issue is unknown	Position on this issue is unknown
FOI Requestor Anonymity	Position on this issue is unknown	BCCLA supports a legislative amendment that would ensure applicant and applicant type anonymity throughout the process of fulfilling the request, up until the point of sending the final response.	Mr. Tromp has recommended an amendment to FOIPPA to ensure that an applicant's identity must not be revealed within government without a strict need to know (which is, mainly to locate the records being sought).	Position on this issue is unknown

Issue	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Data-linking	Position on this issue is unknown	<p>The BCCLA do not support the Data- Linking provisions s they currently stand and endorse the recommendation of the Commissioner to amend the definition of “data-linking” in Schedule 1 of FOIPPA.</p> <p>The BCCLA also supports the Commissioner’s recommendation to include the health sector in the OIPC oversight of data-linking initiatives.</p>	Position on this issue is unknown	Position on this issue is unknown
Delays in Access	Position on this issue is unknown	BCCLA recommended the elimination of a public body’s ability to extend the time limit of a request and instead to require all extensions to be granted only by the Commissioner on the basis of convincing evidence.	Mr. Tromp would like the time-limit for responding to an access request reduced to 20 days and to restore the term calendar days – as it was initially – in place of working days.	Position on this issue is unknown
General Penalties	FIPA has publically supported increases to penalties for failing to comply with FOIPPA	The BCCLA is of the view that general offences under FOIPPA, currently subject to a fine of up to \$5,000 are too low. They are recommending that this is addressed and cite that the Commissioner has recommended a harmonized approach to both general and privacy offences of up to a maximum of \$50,000.	Recommends that penalties for offences committed by individuals under the B.C. FOIPP Act should be raised to be up to a maximum of \$50,000 for both general and privacy offences	Position on this issue is unknown

Issue		BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Botterell
Establishment of Whistleblower Protection Law		In his report on the BC Ministry of Health wrongful firings, Ombudsperson Jay Chalke recommended the government introduce a whistleblower protection law by the end of May 2018 at the latest. FIPA endorses this recommendation.	Position on this issue is unknown	Mr. Tromp recommends that the B.C. Government create a separate Act for general "whistle-blower" protection and that the penalties for violating this new Act should be at least \$50,000.	Position on this issue is unknown

From: [Curtis, David FIN:EX](#)
To: [Kot, Jill MTIC:EX](#)
Cc: [Cook, Jeannette MTIC:EX](#); [Biggs, Jackie FIN:EX](#)
Subject: Additional Online Material
Date: Tuesday, November 7, 2017 8:36:41 AM

Hi Jill,

In addition to the materials provided yesterday, the following links include images of the Roundtable attendees:

BC Civil Liberties Association - Micheal Vonn, Policy Director

<https://bccla.org/wp-content/uploads/2013/07/Micheal-Vonn-bio.jpg>

BC Freedom of Information and Privacy Association, Vincent Gogolek, Executive Director (image included in body of article)

[http://www.google.ca/url?](http://www.google.ca/url?sa=i&rct=j&q=&esrc=s&source=images&cd=&ved=0ahUKEwidzMSF56zXAhVQxGMKHRJcDB8QjRwIBw&url=http%3A%2F%2Fwww.cbc.ca%2Fnews%2Fbusiness%2Fcra-kpmg-accountants-lobbying-1.3584801&psig=AOvVaw2pyjEivPdMRtP7cN8j9wla&ust=1510155821237261)

[sa=i&rct=j&q=&esrc=s&source=images&cd=&ved=0ahUKEwidzMSF56zXAhVQxGMKHRJcDB8QjRwIBw&url=http%3A%2F%2Fwww.cbc.ca%2Fnews%2Fbusiness%2Fcra-kpmg-accountants-lobbying-1.3584801&psig=AOvVaw2pyjEivPdMRtP7cN8j9wla&ust=1510155821237261](http://www.google.ca/url?sa=i&rct=j&q=&esrc=s&source=images&cd=&ved=0ahUKEwidzMSF56zXAhVQxGMKHRJcDB8QjRwIBw&url=http%3A%2F%2Fwww.cbc.ca%2Fnews%2Fbusiness%2Fcra-kpmg-accountants-lobbying-1.3584801&psig=AOvVaw2pyjEivPdMRtP7cN8j9wla&ust=1510155821237261)

Robert Botterell

<http://lidstone.info/team/robert-botterell/>

Stanley Tromp

<https://www.nationalobserver.com/u/stanley-tromp>

Regards,

David

From: Curtis, David FIN:EX
To: Biggs, Jackie FIN:EX
Subject: Friday materials
Date: Tuesday, November 7, 2017 6:04:09 PM
Attachments: Backgrounders Minister"s FOIPPA Roundtable Session 1.msg
RE For Review and Comment Backgrounders Minister"s FOIPPA Roundtable Session 1.msg

Can you please include Melissa's update into my version – I formatted it a bit and adjusted a couple typos.

Once it is in – can you please let me know – will take a look and then hope to send along as an updated version to the DMO (don't believe they have approved the existing package yet).

Thanks,

David

From: [Sexsmith, Melissa M FIN:EX](#)
To: [Curtis, David FIN:EX](#)
Cc: [Fairbairn, Joel FIN:EX](#)
Subject: RE: For Review and Comment: Backgrounders: Minister's FOIPPA Roundtable Session 1
Date: Tuesday, November 7, 2017 5:03:54 PM
Attachments: [Stakeholder Issues Table.xlsx](#)

David,

Attached is a modified version of the Excel sheet we provided yesterday, with more information on Rob B.'s potential positions on the identified key issues. Detailed backgrounders for your backpocket still forthcoming.

Melissa

From: Sexsmith, Melissa M FIN:EX
Sent: Monday, November 6, 2017 5:13 PM
To: Curtis, David FIN:EX
Cc: Fairbairn, Joel FIN:EX
Subject: For Review and Comment: Backgrounders: Minister's FOIPPA Roundtable Session 1
Importance: High

Hi David,

As committed, attached are backgrounders on the four stakeholders and a table of key issues likely to be raised and stakeholder position.

We are continuing to work on detailed notes on several of the key issues and stakeholder positions/perspectives on those.

Melissa

Melissa M. Sexsmith, Director, IM Legislation and Special Projects | Strategic Policy and Legislation Branch | Corporate Information and Records Management Office | 2nd Floor – 546 Yates Street, Victoria BC | 250 514 2173 |

	BC Freedom of Information and Privacy Association	BC Civil Liberties Association	Stanley Tromp	Rob Bottorelli
Duty to Document	FIPA recommended that that a positive duty to document and create records be incorporated into FOIPPA or "other legislation". FIPA's recommendation was that this would be a duty to "record decision making and would set out minimum requirements for record keeping".	In its submission to the 2015 Special Committee the BC Civil Liberties Association (BCLCA) endorsed a duty to document similar to the Australian and New Zealand approaches outlined by the Commissioner.	Tromp has recommended adding to Part 2 of FOIPPA a duty for public bodies to document key actions and decisions based on the definition of "government information" in the Information Management Act.	Position on this issue is unknown
Subsidiary Corporations	FIPA feels that the incorporation of a duty to document in IMA was not adequate. FIPA supports expanding the coverage of FOIPPA to cover subsidiary corporations or other entities that are publicly funded. In the past FIPA's primary focus on this issue has been around ensuring subsidiaries created by educational public bodies like colleges and universities are made subject to the Act.	What the BCLCA's views are since Bill 6 was introduced in March 2017, which incorporated the first ever duty to document in Canada in the Information Management Act (IMA). Position on this issue is unknown	Tromp has been a strong advocate for bringing subsidiary corporations, which are under the coverage of FOIPPA, as he asserts that public bodies are able to skirt their FOI requirements by creating entities that are not covered by the Act.	Position on this issue is unknown
Posting Summaries of Open FOI Requests	FIPA has been critical of government for taking so long in making this promised change to FOIPPA. FIPA continues to criticize this position as "to measure that can intimidate requesters while providing no additional transparency on government operations.	Position on this issue is unknown	Mr. Tromp and other members of the media have expressed concerns about this practice.	Position on this issue is unknown
Online Publication of FOI Response Packages	Position on this issue is unknown	Position on this issue is unknown	Mr. Tromp and other members of the media have expressed concerns about this practice.	Position on this issue is unknown
Narrowing the Application of Exceptions to Disclosure	FIPA has recommended changes to FOIPPA that would narrow the application of sections 12 (cabinet confidences), 13 (Policy advice or recommendations, 14 (Legal advice) and 15 (Disclosure harmful to law enforcement).	The BCLCA endorses the Commissioner's recommendation that section 13 be amended to clarify that the "advice" or "recommendations" does not apply to facts upon which the advice or recommendations are based and does not apply to factual, investigative, or background material, for the assessment or analysis of such material, or for professional or technical opinions.	Tromp has recommended changes to FOIPPA that would narrow the application of sections 12 (Cabinet confidences), 13 (Policy advice or recommendations, 14 (Legal advice) and 15 (Disclosure harmful to intergovernmental relations or negotiations).	Mr. Bottorelli has raised concerns in the past about the perceived "overuse" of these application of section 13 of the Act. Mr. Bottorelli has expressed that, in his view, what qualifies as advice has been broadened to the point that factual background material of many types is exempted from disclosure.
Increasing Proactive Disclosure	FIPA has made several recommendations for additional categories of records to be disclosed proactively without the need for an ROI request.	Position on this issue is unknown	Tromp has recommended that government consider proactively releasing cabinet minutes on a government internet page 20 years after their creation (subject to FOIPPA exemptions, other than Sec. 12), eventually moving to 10 years after their creation. Also recommended that section 70 be amended to add a much longer list of records that must be routinely released or proactively published. Tromp supports the previous Commissioner's view that section 25 should not be interpreted to include a temporal urgency requirement.	Position on this issue is unknown
Section 25	FIPA supports the previous Commissioner's view that section 25 should not be interpreted to include a temporal urgency requirement. FIPPA has recommended that FOIPPA be amended to authorize the public disclosure of government reports such as the Macleod report to be published without a Ministerial Order.	The BCLCA has long urged that the government should be releasing more information under s. 25 of FOIPPA which creates an obligation for disclosures in the public interest. The BCLCA is of the view that the current language is necessary to ensure public bodies fulfill their disclosure obligations in a timely way and that what is needed is an additional clarifying amendment that would ensure the obligation does not only pertain to situations of emergency. The BCLCA is of the view that BCL's Data residency requirements remain a model enshrined and should remain intact.	Recommendations relating the term "for any other reason" in section 25, but adding further illustrative examples to it, such as those noted in this report from other nations. Position on this issue is unknown	Mr. Bottorelli supports the previous Commissioner's view that section 25 should not be interpreted to include a temporal urgency requirement. Mr. Bottorelli has cited government's refusal to proactively release records respecting the Ole C dam project under the section 25 as an example of the section being understudied.
Data Residency	FIPA remains a staunch advocate that these provisions are retained and to this end undertook a major campaign to make sure decision makers in Ottawa and Victoria were aware of the risks.			Position on this issue is unknown
Mandatory Breach Notification	FIPA has also recommended that the BC government and other public bodies be required to make public the details of any information system they use to avoid the operation of the domestic data storage requirements of FOIPPA. FIPA has recommended that mandatory breach notification be enshrined in law to bring broader public sector bodies, such as health care bodies in line with similar practices and processes as government proper. FIPA has also recommended that FOIPPA be amended to provide that where an organization collects personal information on behalf of a public body, it is obliged to ensure that the individual is provided notice and that all rights including the right to refuse consent and be advised of the consequence of such refusal, apply in the circumstances.	The BCLCA supports mandatory notification to affected individuals and reporting of privacy breaches to the Commissioner in cases where the breach could reasonably be expected to cause harm to individuals and/or where the breach involves a large number of individuals.	Position on this issue is unknown	Position on this issue is unknown
Offenses and Penalties for Unauthorized Destruction of Records	FIPA recommends that a section be added to FIPPA that penalizes any person or public body that flagrantly breaches the duty to assist requesters by obstructing access rights or failing to properly document government decisions.	Supports the Commissioner in gaining broader powers of investigation into destruction of records, like those of its counterparts in Ontario and Alberta. BCLCA has made it clear that they have no issue with government policy provides guidance on determination of when a record is "transitory" and therefore a candidate for destruction.	Tromp has recommended amendments to prohibit and penalize persons for the unauthorized record destruction and handling in the FOI process.	Position on this issue is unknown
Extending Coverage of FOIPPA to Police Associations	FIPA has stated publicly that they believe these bodies should be covered by the Act for reasons of transparency and administrative efficiency.	For a number of years there has been considerable public pressure from media and special interest groups such as the BC Civil Liberties Association to bring these bodies under the coverage of FOIPPA. The BCLCA urged the 2015 FOIPPA Special Committee to review the issue of the overall fee structure. They also endorsed the RPA recommendation that a fee waiver request can be submitted at the same time as the request for information.	Position on this issue is unknown	Position on this issue is unknown
Amendments to Fee Provisions	FIPA recommends s.70(5.1) be amended to clarify that a fee waiver can be requested as part of the request for information. FIPA has also recommended that automatic fee waiver for non-compliance be implemented.		Tromp as recommended amendments to mandate that when a department's response falls into deemed refusal (i.e., failure to meet lawful deadlines), it loses the right to collect fees (including application fees and any search, preparation, and photocopying charges).	Bottorelli views fees as a barrier to access and has raised concerns to the Special Committee respecting fees being issued for what he views as records that are in the public interest. Fees fees should be waived when they are for records in the "public interest".
Overrides to FOIPPA	FIPA has recommended that no further overrides be made to the FIPPA, and that existing overrides be examined to see if FIPPA's current exceptions would be suitable and that public written justification should be provided for each.	The BCLCA endorses a recommendation put forward by the Commissioner that a review be undertaken of statutes that prevail over FOIPPA.	Position on this issue is unknown	On a related issue - Bottorelli is generally not supportive of what he refers to as "carve-outs" for particular bodies (i.e. health care bodies) from certain provisions of the Act
FOI Requestor Anonymity	Position on this issue is unknown	BCLCA supports a legislative amendment that would ensure applicant and applicant type anonymity throughout the process of fulfilling the request, up until the point of sending the final response.	Tromp has recommended an amendment to FOIPPA to ensure that an applicant's identity must not be revealed within government without a strict need to know (which is, mainly to locate the records being sought).	Position on this issue is unknown
Data-linking	Position on this issue is unknown	The BCLCA does not support the Data-Linking provisions as they currently stand and therefore endorse the recommendation of the Commissioner to amend the definition of "data-linking" in schedule 1 of FOIPPA. The BCLCA also supports the Commissioner's recommendation to include the health sector in the OPC oversight of data-linking initiatives. BCLCA recommended the elimination of a public body's ability to extend the time limit of a request and instead to require all extensions to be granted only by the Commissioner on the basis of convincing evidence. The BCLCA is of the view that general offenses under FOIPPA, currently subject to a fine of up to \$5,000 are too low. They are recommending that this is addressed and cite that the Commissioner has recommended a harmonized approach to both general and privacy offences of up to a maximum of \$50,000.	Position on this issue is unknown	Position on this issue is unknown
Delays in Access	Position on this issue is unknown		Tromp would like the time limit for responding to an access request reduced to 30 days and to restore the term calendar days – as it was initially – in place of working days. Recommendations that penalties for offences committed by individuals under the B.C. FOIPPA Act should be raised to be up to a maximum of \$50,000 for both general and privacy offences	Bottorelli is not a supporter of the 30 business day legislative deadline. He endorses the original 30 calendar day deadline.
General Penalties	FIPA has publicly supported increases to penalties for failing to comply with FOIPPA			Position on this issue is unknown
Establishment of Whistleblower Protection Law	In his report on the BC Ministry of Health wrongful firings, Ombudsperson Jay Chalkin recommended the government introduce a whistleblower protection law by the end of May 2018 at the latest. FIPA endorses this recommendation.	Position on this issue is unknown	Tromp recommends that the B.C. Government create a separate Act for general "whistle-blower" protection and that the penalties for violating this new Act should be at least \$50,000.	Position on this issue is unknown

From: [Curtis, David FIN:EX](#)
To: [Kot, Jill MTIC:EX](#)
Cc: [Cook, Jeannette MTIC:EX](#); [Biggs, Jackie FIN:EX](#)
Subject: Additional Questions
Date: Thursday, November 9, 2017 10:13:32 AM
Attachments: [Roundtable Stakeholder Questions v0.3 \(3\).docx](#)

Hi Jill,

Please find potential questions to support the Minister in Friday's Roundtable. I will bring copies to this afternoon's meeting in case you would like to share them then.

Regards,

David

November 10, 2017

Standards Questions for All Stakeholders:

Q.1 As advocates for access and privacy, I appreciate your commitment and efforts in ensuring that the rights of B.C. citizens are promoted and upheld.

You have each made a number of recommendations for change, for example through the Special Committees that have reviewed FOIPPA. We have also received recommendations from those committees and through other stakeholders such as the Information and Privacy Commissioner.

This government is now carefully reviewing and considering these recommendations and issues. One of the key objectives of this consultation is to be able to prioritize the many recommendations to understand which of the issues that have been raised are of most importance to our stakeholders.

With that in mind, what do you consider the key issues or recommendations that must be addressed to result in the most impactful and meaningful changes?

(E.g.: the Duty to Document, subsidiary corporations, Mandatory breach notification)

Q.2 Among the many outstanding recommendations provided to government - Are there interdependent or complementary recommendations that you believe should be introduced concurrently?

Q.3 The information environment is subject to rapid change and evolving standards. Accordingly, in addition to the issues you have raised in the past, do you have any new issues or concerns related to access and/or privacy that you would like to bring forward today?

Fleurant, Kathleen CITZ:EX

From: Fleurant, Kathleen CITZ:EX
Sent: Thursday, November 2, 2017 4:13 PM
To: Taylor, Diane Ruth MTIC:EX
Cc: Cook, Jeannette MTIC:EX; Riley, Karl CITZ:EX; Russell, Shannon CITZ:EX
Subject: Pre-Brief - FOI Stakeholders Rountable - Set for Thursday Nov 9 - 3:30-4:25pm

Hi Diane,

The pre-brief for the FOI stakeholders roundtable has been scheduled for Thursday, November 9 from 3:30 to 4:25pm – in the^{s.15}

I am waiting to hear back from VCO for confirmation of a meeting room for the FOI Stakeholders meeting – we are hoping to schedule it for Nov 10, from 2:30 to 4:00pm. I will advise as soon as I have confirmation.

Thank you,

Kathleen Fleurant | Administrative Coordinator
Honourable Jinny Sims' Office | Minister of Citizens' Services
Room 236 | Parliament Buildings
Ph: 250-387-7920 | *Cell:* s.17
e: Kathleen.Fleurant@gov.bc.ca

From Shannon's
Calendar

Fleurant, Kathleen CITZ:EX

Subject: 3:30-4:25pm - Pre-Brief - FOI STAKEHOLDER ROUNDTABLE
Location: s.15

Start: Thu 2017-11-09 3:30 PM
End: Thu 2017-11-09 4:25 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: MINCAL, CITZ CITZ:EX
Required Attendees: Russell, Shannon MH:EX; Riley, Karl CITZ:EX

Fleurant, Kathleen CITZ:EX

Subject: 3:30-4:25pm - Pre-Brief - FOI STAKEHOLDER ROUNDTABLE

Start: Thu 2017-11-09 3:30 PM

End: Thu 2017-11-09 4:25 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: MINCAL, CITZ CITZ:EX

Required Attendees: Russell, Shannon MH:EX; Riley, Karl CITZ:EX

Categories: Briefings