

## Biggs, Jackie CITZ:EX

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**From:** Pridmore, Kerry CITZ:EX  
**Sent:** June 4, 2019 8:17 AM  
**To:** Biggs, Jackie CITZ:EX  
**Subject:** FW: May 10th DMC - High level discussion summary

For discussion.

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**From:** Pridmore, Kerry CITZ:EX  
**Sent:** May 12, 2019 12:56 PM  
**To:** Kot, Jill CITZ:EX <Jill.Kot@gov.bc.ca>  
**Cc:** Fairbairn, Joel CITZ:EX <Joel.Fairbairn@gov.bc.ca>; Ritchie, CJ CITZ:EX <CJ.Ritchie@gov.bc.ca>; Cook, Jeannette CITZ:EX <Jeannette.Cook@gov.bc.ca>  
**Subject:** May 10th DMC - High level discussion summary

Hi Jill:

Just for our collective record, enclosed is a high level list of the main items raised in discussion at DMC Friday:  
s.13

If I missed anything major to track as we move forward, let me know.

**Kerry Pridmore** | Assistant Deputy Minister |  
Corporate Information and Records Management Office |  
Ministry of Citizen Services |  
Cell: 250-507-1485 |

# Engagement Plan – Improving Provincial Public Sector Freedom of Information, Access to Information and Privacy

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## Context and Background

Government is committed to making real and meaningful improvements to its information management practices, including freedom of information (FOI), access to information and improvements to the protection of privacy. Specific deliverables consistent with this direction have been identified in the Honourable Minister Jinny Jogindera Sim's July 18, 2017 Mandate Letter, including:

- Improve access to information rules to provide greater public accountability.
- Improve response and processing times for freedom of information requests.

This initiative will involve consideration of, and potential changes to, policy, practice, education and awareness, regulation and legislation with implications for approximately 2,900 entities.

Government has received a number of recommendations for improvement from Special Committees of the Legislative Assembly, the Information and Privacy Commissioner, and other stakeholders. Using these recommendations as the basis for continued engagement, this initiative will seek to identify priorities, determine dependencies, and assess the capacity for improvement to the information management system across the public sector.

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## Engagement Objectives

1. Foster meaningful, trusted and comprehensive engagements with key stakeholders, public bodies and members of the public s.13

3. Support greater public accountability and transparency through measureable improvements to the public service's access to information and privacy environment.

## Timeline

The engagement's design has been structured to provide senior officials with expedited options for their consideration that include discrete decision-points at key phases of the engagement. The overall timeline for completion of the engagement will be dependent upon senior officials' direction with respect to the emergent findings and recommendations.

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## Engagement Approach

|                             | Problem & Priority Identification   | Design & Validation | Socialization & Capacity Development |
|-----------------------------|---|---------------------|--------------------------------------|
| Key Channels for Engagement | Minister's Roundtables<br>Minister's Bi-Laterals<br>Engage BC<br><br>Service Design (GCPE)<br><br>BC Stats Survey<br><br>Review of Special Committee Recommendations<br><br>Internal Engagement<br><br>Special Project: Subsidiary Corporations | s.13                | Awareness and Education              |

A multi-channel approach will be taken, with level of engagement, key messaging, and mechanism for engagement customized to each stakeholder group depending on their needs and interests.

## Phase 1 - Problem and Priority Identification

In the first phase, a broad and open-ended approach should be taken to identifying the challenges and issues that stakeholders may identify. This phase includes direct engagement by Minister Sims with stakeholders and other public consultations. s.13

## Direct Ministerial Engagement - Minister Roundtables

Eight roundtable engagements to occur through February 2018 (order subject to availability of potential participants):

- |   |                               |
|---|-------------------------------|
| 1. Stakeholder Associations (completed November 2017)   | 6. Health Bodies              |
| 2. ADMs of Corporate Services (completed December 2017) | s.13                          |
| 3. Postsecondary Educational Bodies                     |                               |
| s.13  |                               |
| 4. Educational Bodies (k-12)                            | 7. Professional Associations: |
| s.13  | s.13                          |
| 5. Local Government Bodies                              |                               |
| s.13  |                               |
|   | 8. Crown Corporations         |
|   | s.13                          |
|   | 9. Media                      |
|   | s.13                          |



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## Appendix: Stakeholder Level of Engagement

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**Inform:** Provide information to assist in understanding the problem, alternatives, opportunities, and solutions.

**Consult:** Obtain feedback on analysis, alternatives, and decisions.

**Involve:** Work directly with, throughout the process to ensure concerns and aspirations are consistently understood and considered.

**Partner:** Partner in each aspect of decision making including the development of alternatives and identification of preferred solutions.

## Appendix: List of Stakeholder Contacts

| Stakeholder  | Key Contacts  |
|--|---|
| <b>Ministries</b>  | CIRMO Subject Matter Experts<br>Ministry Privacy Officers<br>Ministry Security Officers |
| <b>Other Public Bodies</b><br>Crown Corporations<br>School Districts<br>Educational Bodies<br>Healthcare Bodies<br>Social Services Bodies<br>Local Government Bodies<br>Schedule 2 Public Bodies<br>Schedule 3 Public Bodies | Privacy and Access Managers and Contacts<br>Security Officers<br>Information Officers   |
| <b>Treaty First Nations</b><br>Tsawwassen First Nation<br>Maa-nulth First Nation   | Chiefs or their Legal Representatives<br>Privacy and Access Managers and Contacts       |
| <b>Office of the Information and Privacy Commissioner</b>  | Commissioner<br>Deputy Commissioner   |
| <b>Professional Associations</b><br>Canadian Bar Association<br>The Research Universities Council of British Columbia  | Privacy and Access Managers and Contacts  |
| <b>Special Interest Groups</b><br>BC Civil Liberties Association<br>Freedom of Information and Privacy Association   | Executive Director, Policy Director<br>President, Vice President                        |
| <b>Media</b>   |   |
| <b>Public</b>  |   |

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|--|--|--|
| <b>November 10, 2017 -</b>                   | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• BC Civil Liberties Association</li> <li>• Freedom of Information and Privacy Association</li> <li>• Stanley Tromp</li> </ul>  |
| <b>December 12, 2017 -</b>                   | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• Assistant Deputy Ministers of Corporate Service</li> </ul>  |
| <b>February 26, 2018 -</b>                   | Online Public Engagement (six weeks)       | <ul style="list-style-type: none"> <li>• Organizations/Experts</li> <li>• General Public</li> </ul>  |
| <b>March 2, 2018 -</b>                       | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• Fraser Health Authority</li> <li>• Northern Health Authority</li> <li>• Vancouver Island Health Authority</li> <li>• Vancouver Coastal Health Authority</li> <li>• Interior Health Authority</li> <li>• Provincial Health Services Authority</li> <li>• Ministry of Health</li> </ul>   |
| <b>March 2, 2018 -</b>                       | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• University of British Columbia</li> <li>• Simon Fraser University</li> <li>• University of Victoria</li> <li>• University of Northern British Columbia</li> <li>• Thompson River University</li> <li>• Royal Roads University</li> <li>• Research Universities' Council of British Columbia</li> <li>• Ministry of Advanced Education, Skills and Training</li> </ul> |
| <b>March 2, 2018 -</b>                       | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• BC Association of School Business Officials</li> <li>• British Columbia School Trustees Association</li> </ul>  |
| <b>March 20, 2018 -</b>                      | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• BC School Superintendents</li> <li>• BC School District Secretary Treasurers</li> </ul>   |
| <b>March 20, 2018 -</b>                      | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• Roper Greyell Law Firm</li> </ul>   |
| <b>April 11, 2018 -</b>                      | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• BC Government Employees' Union</li> </ul>   |
| <b>April 20, 2018 -<br/>April 20, 2018 -</b> | Minister Roundtable<br>Minister Roundtable | <ul style="list-style-type: none"> <li>• BC Teachers' Federation</li> <li>• Translink</li> </ul>   |
| <b>June 14, 2018 -</b>                       | Minister Roundtable                        | <ul style="list-style-type: none"> <li>• Union of British Columbia Municipalities</li> </ul>   |

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## 2018 Information Note Advice to Minister

**Date:** August 17, 2018

**Ref:**

**Issue:** s.12

### Conclusion:

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- CIRMO staff continue to monitor project timelines and report on progress.

### Background / Facts:

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### Analysis:

- CIRMO has dedicated project management support to assist in scheduling, charting key deliverables and tracking progress.
- These three streams of work are under tight time constraints and involve significant workloads.
- The work is currently on schedule.
- Several risks have been identified which could affect timelines.

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- CIRMO staff are working to mitigate these risks to the extent possible.

**Contact:** David Curtis, Chief Records Officer & Assistant Deputy Minister, (778) 698-5845

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## Background:

- FOIPPA provides people with a mechanism to access government records and protects personal privacy by establishing appropriate authorities for the collection, use and disclosure of personal information by public bodies. FOIPPA has not been amended, since 2011.
- The mandate letter for the Minister of Citizens' Services contained the direction to:
  - improve access to information rules to provide greater public accountability; and
  - improve response and processing times for FOI requests.

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- The Ministry of Citizens' Services has been actively engaging key stakeholder groups through a series of engagements, since September 2017.
- This includes an engagement with over 200 indigenous communities in the Province, as well as an online public engagement and face-to-face meetings between the Minister and key stakeholders across the public sector.

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# FINDINGS PRESENTATION

FOI Rules Project | June 5, 2018



# TODAY'S PRESENTATION

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- Goals:
  - Review research goal
  - Share fieldwork findings
  - Unpack challenge themes
  - Close discovery phase
  - Prepare for opportunity phase

# RESEARCH GOAL

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The big picture goal was to look into the current state of the Freedom of Information service touch-points and find opportunities for improvements to the rules, timeline and processes.

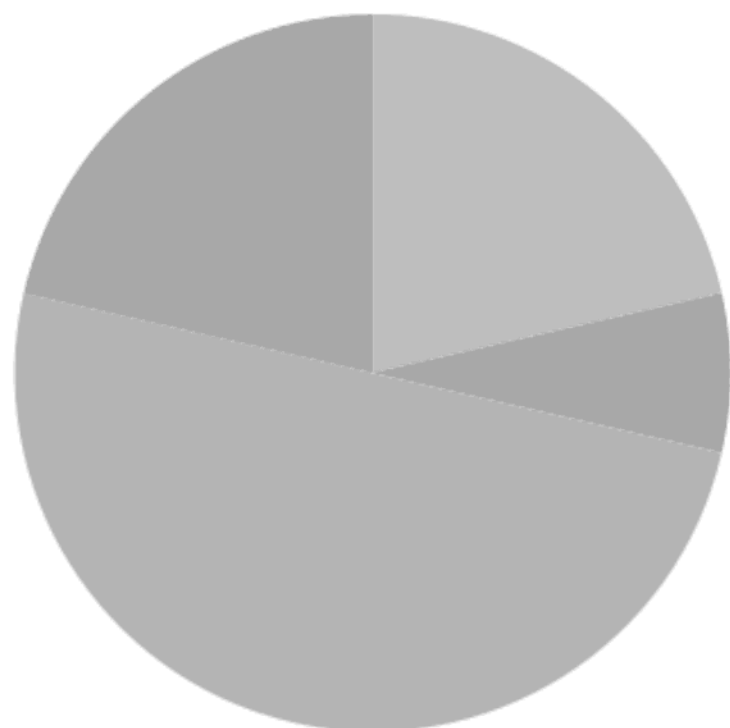
This was done by identifying and understanding:

- User pain-points, things working well and challenges
- Gaps in the current service experience
- How users interact with the FOI service touch-points
- User needs to improve the service for the future
- The back-end processes around FOI requests

# FIELDWORK

# RESEARCH SUMMARY – PARTICIPANTS

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- FOI Analysts & Staff (6)
- CIRMO Policy & Legislation Staff (2)
- Ministry FOI Coordinators (14)
- Program Responders (6)

28 Staff  
17 Applicants  
**= 45 People**



- Individuals (2)
- Interest Groups (2)
- Researchers (6)
- Lawyers (2)
- Media (4)
- Businesses (1)



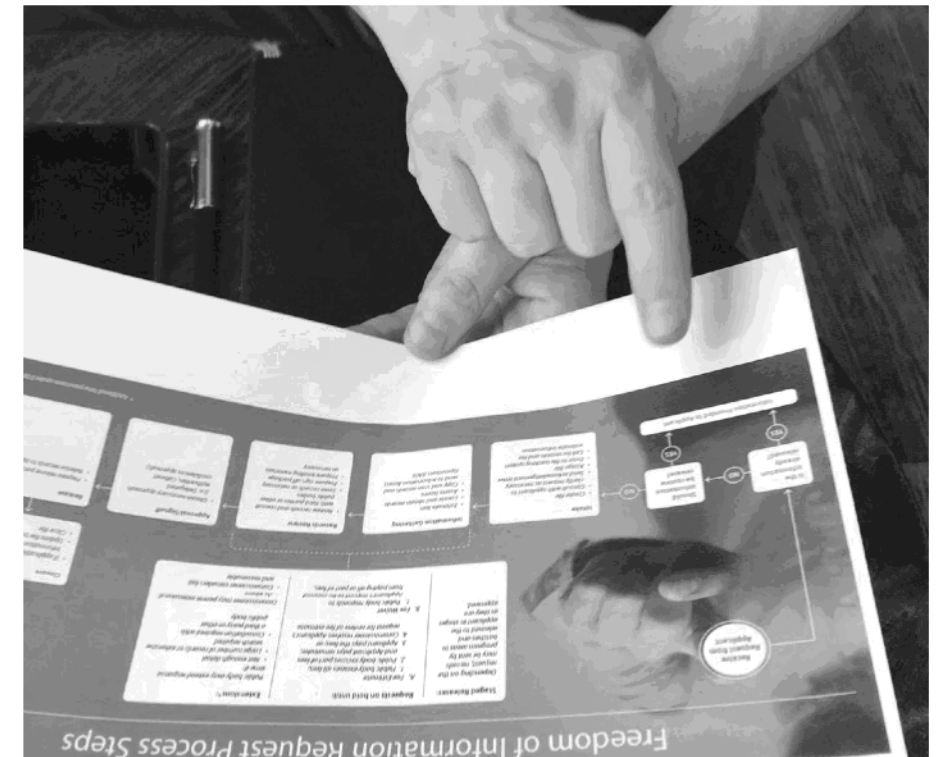
# RESEARCH METHODS

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- One-on-one behavioural interview sessions
- A group process mapping exercise

# FIELD RESEARCH

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# METHODS – ANALYSIS – TAGGING DATA

ne Import Codes Variables Analysis Mixed Methods Visual Tools Reports MAXDictio

ew Project Open Project Document System Code System Document Browser Retrieved Segments Logbook User Management External Files

Document Browser: 051118\_JK-WC-Media

Documents 1,493

- Citizen Applicants 63
  - 042618\_JD 18
  - 050118\_JMDC 45
- Business Applicants 364
  - 051118\_ST-Media\_part 2 84
  - 051118\_ST-Media 35
  - 051118\_JK-WC-Media 36**
  - 051118\_RS-Media 57
  - 050218\_LF 41
  - 050218\_ML 39
  - 050218\_MO 23
  - 042718\_MW 31
  - 050118\_KF 18
- Policy & Legislation Staff 96
- IAO Staff 240
  - 032219-SJ-IAO-Notes 30
  - 032119\_LM-IAO-Notes 36
  - 031608\_JO-IAO-Notes 34

Code System 1,493

- Ext Quotes 9
- Ext Working Well 35
- Ext Ideas 73
- Ext Challenges 152
- Privacy 5
- Legislation 28
- Policy 6
- Extensions 23
- Fees 52
- Ideas 108
- Staff Challenge 237
- Working Well 24
- Timelines 64
- High Frequency Requestors 3
- Culture 19
- Communication 78
- Consultations 6
- Internal Process 42

Retrieved Segments

Feas s.13

Ext Challenges Phase: Delivering

Ext Challenges Harms & Severing

Ext Challenges Culture

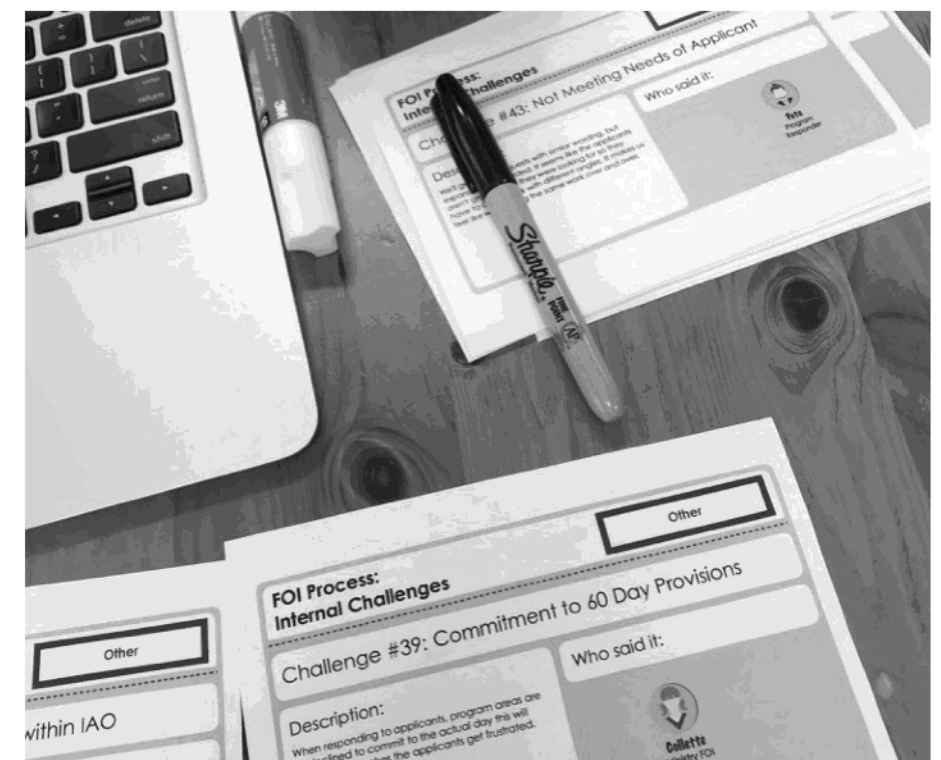
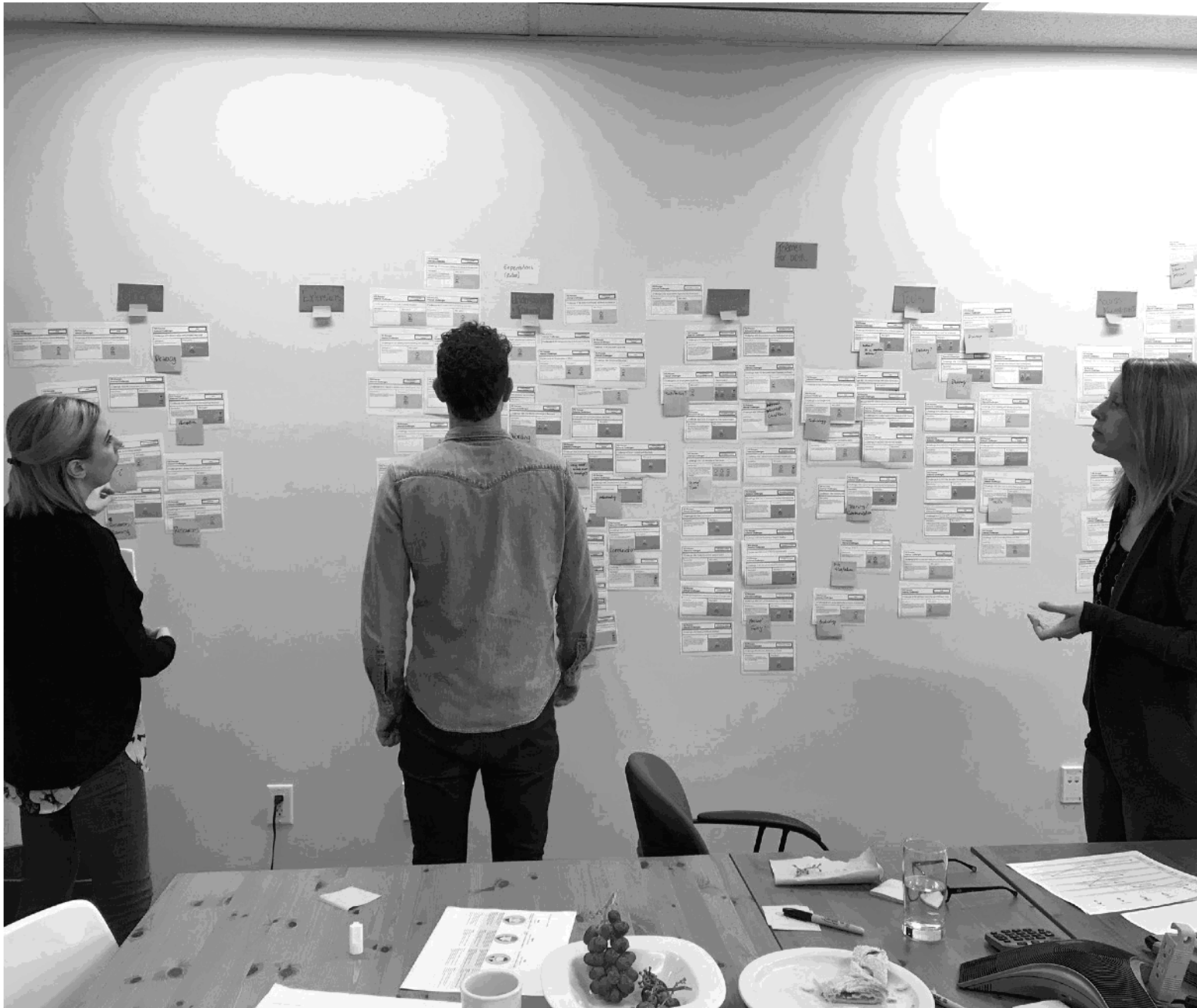
Ext Working Well

Ext Challenges Culture

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# METHODS – ANALYSIS – CHALLENGE CARD SORTING

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# ARTEFACTS

# PERSONAS

# PERSONAS

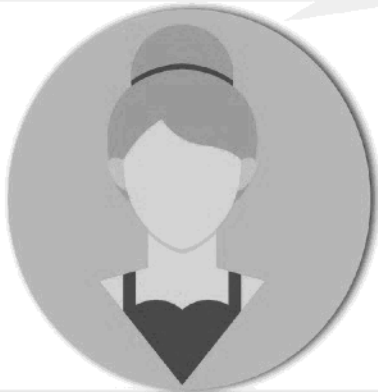
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- Personas are fictional characters created based upon the research to represent the different user types that use the service
- Persona answers the question "Who do we design for?"
- Describe real people with backgrounds, goals, and values
- Give a clear picture of the user's expectations and how they're likely to use/access the service

## Margo

Interest Group

*"I'm left with the David and Goliath feeling. It's like no one cares about what you're doing."*



**BIO:** Margo works for an environmental advocacy non-profit. She's an activist and a researcher, and she often makes FOI requests that can span across ministries. She's been doing this work for 15 years and has a deep knowledge of the issues.

### Cares About:

- The people and wildlife that are affected by the governments decisions and programs
- Being thorough, informed and current on her research topics

## Andrew

Individual

*"I was expecting hundreds of records, I've seen them and I know they exists. And I only got 11 pages."*



**BIO:** Andrew works for the BC Government and has submitted personal FOI requests for particular employment disputes. He understands HR internal policies and what employees are

### Cares About:

- His reputation and the confidentiality behind FOI requests
- Human right issues and how technology itizens privacy
- Full disclosure for citizens under the FOIPPA

### Frustrations:

- Not knowing what records exist or how they are structured and managed makes it difficult to form the request
- Feeling politically profiled and like ministries or staff are withholding information to protect themselves
- Decisions are being made while she's waiting for information – it prevents her from being part of the consultation process

### Frustrations:

- Confusion with the personal and general form intake
- Can't trust that the records gathering is unbiased and handled fairly
- Inconvenient to print off the personals request form
- Receiving the personal records via mail isn't secure enough

## Lucille

Lawyer

*"I get pressure from clients when records are delayed and I have to explain to them that it was requested. But I'm sitting here over 60 days waiting for the records."*



**BIO:** Lucille is a lawyer for a personal injuries law firm who submits personal FOI Requests on behalf of her clients who have been involved in motor vehicle accidents. She submits a very high volume of on average 100 information requests a week or more with litigation files.

### Cares About:

- Proving clients with the service that they are paying for
- The office staff who support her administration workload
- Respecting her own timelines and that of her clients to avoid legal implication

### Frustrations:

- Paper documents have to be scanned which is largely time consuming for support staff and clients
- When requests go over 60 days there's no notification and the client is left waiting
- Original signatures are hard to get for authorization change forms
- Inconsistent communication from government support staff

## Jeffrey

Media

*"The trust issue goes both ways. Program staff don't want to talk to you if they don't trust you."*



**BIO:** Jeffrey is a journalist for a BC newspaper. He mainly covers local and provincial political stories. FOI requests are an essential part of his research and he makes them often.

### Cares About:

- Holding government accountable to their promises and the interests of BC citizens
- Transparency and open information – it belongs to the public, so it should be easy to access it
- Working towards a trust-based relationship between media and government

### Frustrations:

- The Open Information website publishes FOI request results too quickly – there's very little time to write his story and it feels intentionally mean-spirited
- Records come back overly severed and there's no way to tell if it's been done accurately expect to use the frustratingly broken complaints process
- It's like communicating with a black box and he has to track his requests and follow-up or else he'll never hear anything back

Anna

FOI Analyst

*"Because we're bound by legislation, we have no choice but to take the volume."*



**Job bio:** Anna works at Information Access Operations on the MCD and MCFD team where she processes, severs and delivers personal FOI requests.

- Cares about:**
- Supporting ministry clients through the FOI process
  - Following the internal process timeline
  - Delivering an organized and accurate package of information back to the applicant

- Frustrations:**
- Poor records management practices in program areas can increase volume and delay the process
  - Program areas don't often prioritize responding to FOI requests and can be uncooperative when files go overdue
  - The volume of requests feels unmanageable and it's a struggle to keep up

Colette

Ministry FOI Coordinator

*"30 days is just not possible when we're managing 133 requests."*



**Job Bio:** Colette works in the DMs office FOI and Correspondence Unit. She's the only ministry-dedicated FOI staff member to support their hundreds of open requests. She receives the application, then works with the ministry program area to complete the information gathering process.

- Cares about:**
- Giving good support to ministry program staff to gather and combine the records package
  - Getting through the volume as efficiently as possible

- Frustrations:**
- 3 days for sign-off isn't enough to go through so many people with busy schedules
  - Not feeling connected to or supported by FOI staff
  - Program area staff keeping transitory records, which increases the volume of records

Pete

Program Responder

*"Every time it feels like I'm learning it all over again."*



**Job Bio:** Pete is the subject matter expert in his program area. When an FOI request comes in he needs to provide responsive records back to the ministry FOI Coordinator. He doesn't have any FOIPPA experience and doesn't really understand the process.

- Cares about:**
- Getting the right records package back to the ministry coordinator before the deadline ends
  - Prioritizing current workload and provide accurate information for requests

- Frustrations:**
- It can be hard to understand what the client means in their request
  - Record gathering has a big impact on his existing workload
  - Lack of experience gathering records
  - There's all kinds of records: paper, offsite, electronic, emails, data – and they all require different strategies for finding and delivering

Parker

Policy & Leg Analyst

*"When you increase access, then privacy and operations have to take a hit. It's hard to explain this to stakeholders."*



**Job Bio:** Parker has worked in the Strategic Policy & Legislative Office for 4 years both on the policy and then the legislative side. He crafts corporate information management policy and legislation while working with Information Access Operations.

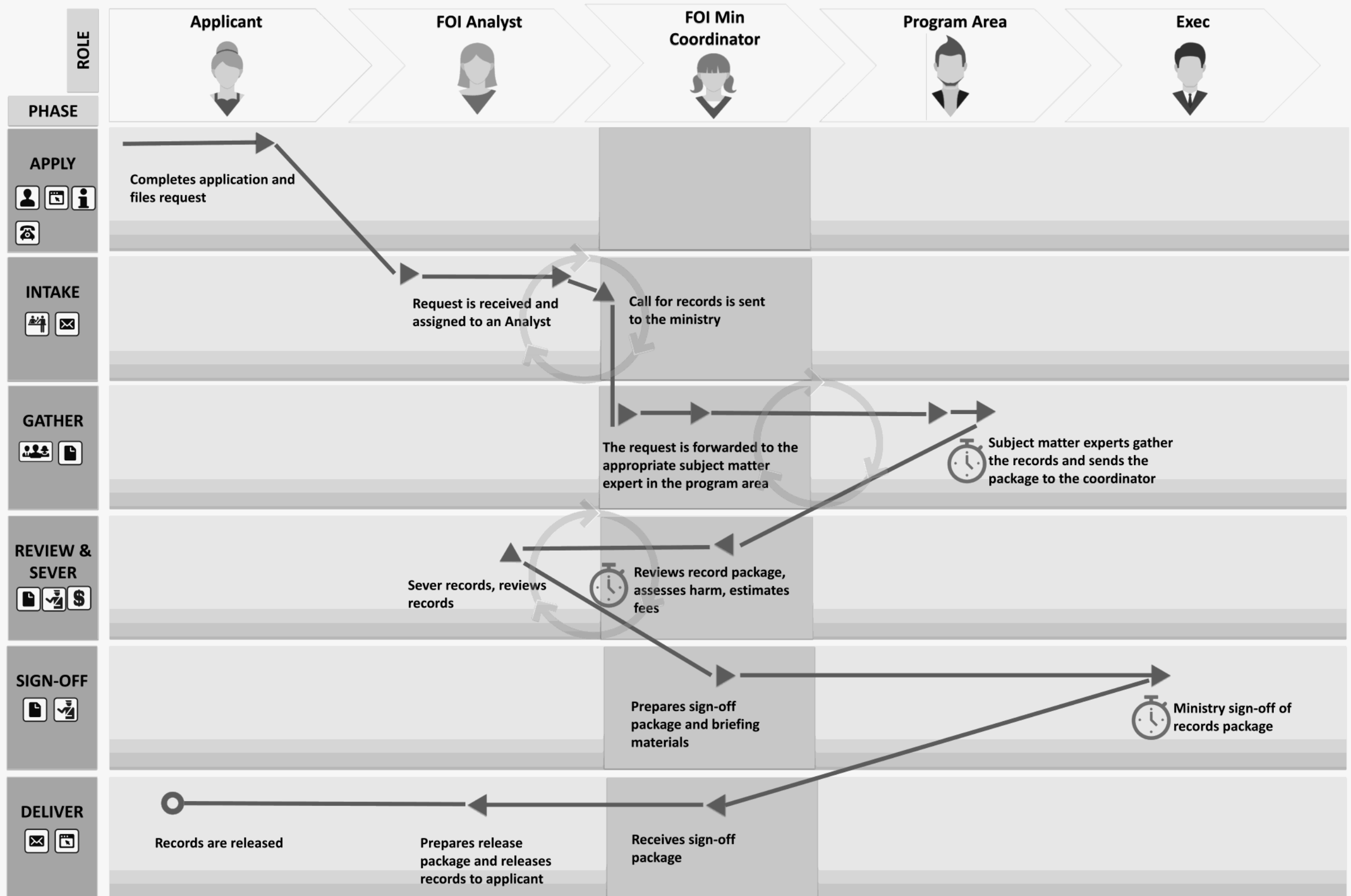
- Cares about:**
- Writing good policy related to processing FOI requests and FOIPPA
  - Sharing FOI and policy expertise with ministry clients, public bodies and staff

- Frustrations**
- Some applicants are overloading the system with requests
  - It's difficult to improve the FOI request process without amending the act
  - Non-experts are answering calls for FOIPPA support which can result in misinformation

# JOURNEY MAP

# FOI RULES Project | Journey Map

Current State of Roles & Phases to Process an FOI Request



# WORKING WELL



# WORKING WELL

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“Provincial government is actually gold star, AAA excellence in comparison to local government, health authority, etc. Does best job in all of province” - Applicant

“The people working in the FOI office are wonderful. I know their job is stressful, they’ve always been really helpful.” - Applicant

“ I like that the ministry posts online the letter and the package. Providing the justifications is very useful and I review these right away.” - Applicant

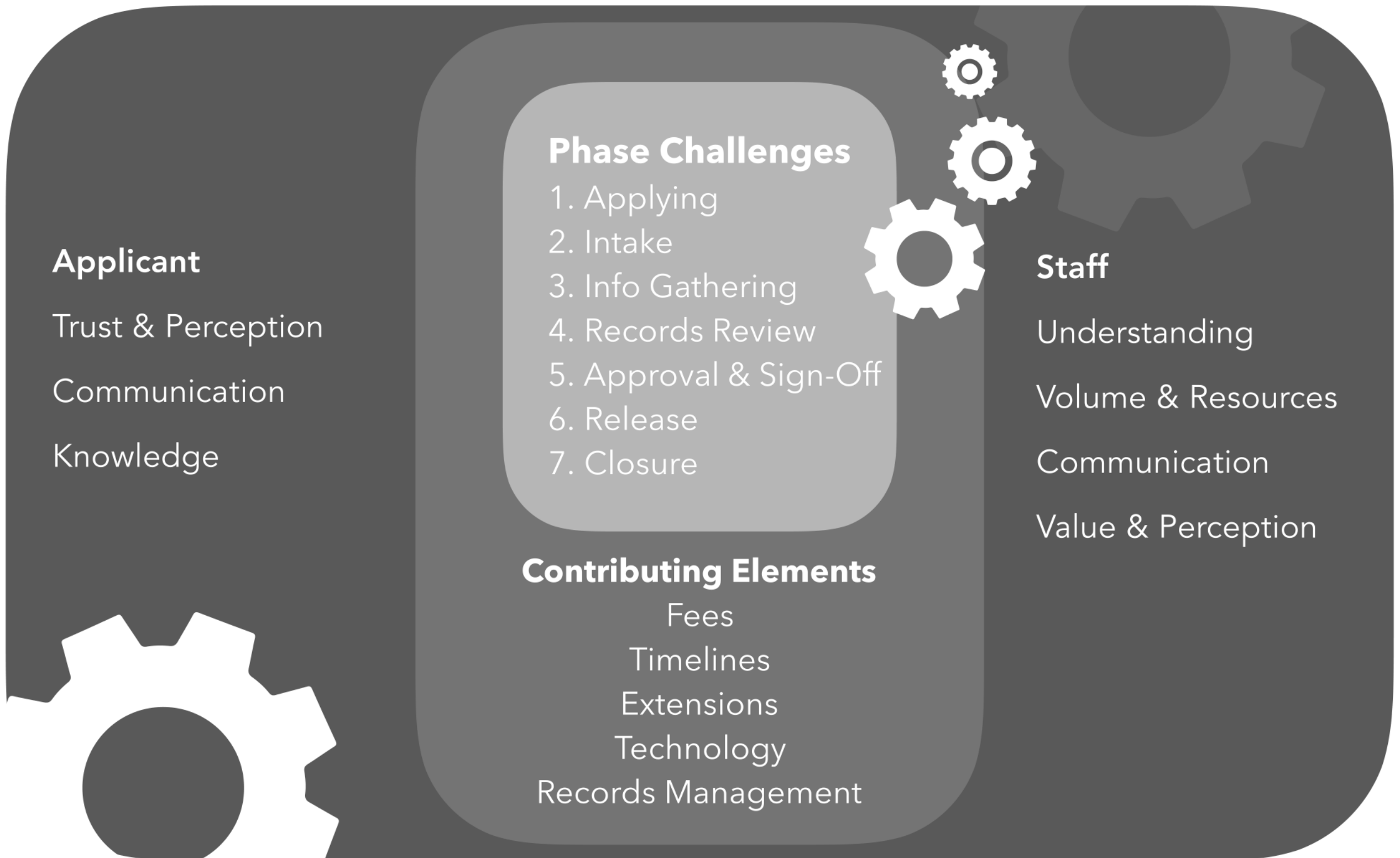
“Relationship with IAO is good and very important, extremely valuable” - Min Coordinator

“MAR 101 learning series type sessions, great communication outward, people know the process document, great for new staff” - Program Responder

# CHALLENGE THEMES

# CHALLENGE CATEGORIES

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# PHASE CHALLENGES

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## Phase Challenges

1. Applying
2. Intake
3. Info Gathering
4. Records Review
5. Approval & Sign-Off
6. Release
7. Closure



# PHASE CHALLENGES

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## APPLYING

### Problem:

- Confusion with submitting the correct forms and printing hard copy request forms are a large inconvenience.
- Hard to know how to word requests.
- Selecting multiple ministries or agencies in the online form is difficult.

### Impact:

The applicant starts out the process confused and lacking confidence in how to follow the process to get what they need.

### Problem:

- Call for records most time-consuming part of the process – long waiting periods.
- Call for records form is dated – can't estimate amount prior to doing a search, the call for records email to program areas is often missed.

### Impact:

Creates delays in the process for FOI Analysts and Ministry Coordinators, the long waiting periods impact the workflow of processing the request and the 30 day timeline.

# PHASE CHALLENGES

## INFORMATION GATHERING

### Problem:

- Program Responders are unaware of what to provide in a package, feel unprepared and untrained. Program responders are responding too slowly to requests.
- Gathering records are delayed due to staff resourcing, lack of staff training and knowledge, how records are managed.
- Tracking logs and meta data are being requested but aren't human generated.
- Sorting through off-site hard copy records is labour intensive and time consuming.
- Staff packing records – poor practice and methods, confusion of efficient PDF'ing (attachments).

### Impact:

The lack of knowledge and time staff have to gather the information is frustrating and discouraging for them to accomplish on time. Inconsistent package gathering creates confusion for all staff involved in the process, time delays, higher rate of errors, less relevant record content for applicant.

### Problem:

- Labour intensive for Min Coordinators to review records.
- Inconsistent severing or duplicates accidentally being released.
- Disputes or lack of awareness of who owns records.
- Difficulties for ministry staff to meet Information Access Office expectations.
- Straining for staff to review thousands of electronic records – electronic records are growing.

### Impact:

FOI Analysts spend additional time filtering and removing unnecessary records. The duplicates create admin burden and errors under the Act (inconsistent severing, unwarranted volume extensions).



# PHASE CHALLENGES

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## APPROVAL & SIGN OFF

### Problem:

Each ministry has their own processes and tools (or lack of tools) for the sign-off phase. Requests often get held up while one or two people review records that have already been reviewed by different people at other phases.

### Impact:

Approvals and sign-off practices can create bottlenecks and inconsistencies, which make this a point of high frustration among FOI analysts and ministry coordinators.

# PHASE CHALLENGES

RELEASE

## Problem:

Applicants are frustrated and often unsatisfied with the records that are released to them.

- Technology: They have trouble accessing them due to limitations around technology (like a lack of a CD drive or too large PDF files) or due to poor quality PDF copies of records that are illegible.
- Delivery: Post mail and faxing create significant delays.
- Volume: They are disappointed with the amount of information that is severed or not found, which may lead them to feeling like their request wasn't fulfilled or to filing a complaint.

Some ministry staff are concerned that sensitive information is being released due to incorrect severing, but they have no method of confirming this.

## Impact:

After going through the full process and often experiencing delays, applicants are disappointed with the final results. This erodes their trust in the process and in government.

# PHASE CHALLENGES

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CLOSE OUT

## Problem:

After a request is delivered, applicants are informed that their file is closed. This leads to frustration if they feel the delivered information didn't meet their needs. Often they don't feel like there are channels available for follow-up questions or conversations.

## Impact:

Unsatisfied applicants may file another similar request, file a complaint or become distrustful of the FOI process.

# CONTRIBUTING ELEMENT CHALLENGES

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## **Contributing Elements**

Fees

Timelines

Extensions

Technology

Records Management

# CONTRIBUTING ELEMENT CHALLENGES

## FEES

### Problem:

The fee waiver is complicated and is inconsistently applied. Fee amounts are unreasonable and narrowing the request to reduce the amount is problematic without knowing what the records are.

### Impact:

Applicants spend additional time corresponding with staff to reduce the fee amount and understand the fee waiver.

### Problem:

Current timelines are difficult to meet. There isn't enough time to fulfill the requests because of bottlenecks, and inefficient process flow or delays often add to the pressure.

### Impact:

Both staff and applicants are frustrated by the timelines. Staff feel annoyed and helpless when other touch points hold up the flow, and applicants feel left in the dark and responsible for tracking and following up on their own to make sure their request gets filled. There's a general sense that the timelines are impossible to meet and therefore irrelevant.

### Problem:

Extensions have become a common part of the process. Staff need to take them in order to fulfill requests, and both staff and applicants often don't understand why or how the extension process works.

### Impact:

Because extensions have become the norm, there are frustrated and uncomfortable feelings from both staff and applicants about this part of the process. Staff feel guilty for requiring to take them, and ministry staff often don't understand IAO's justifications for extensions. Applicants feel like they have no agency around extensions, even though it's framed as a choice.

# CONTRIBUTING ELEMENT CHALLENGES

## TECHNOLOGY

### Problem:

The technology used through the FOI process is not in line with current expectations from both staff and applicants. Both sides are frustrated with methods of communication, authorizations, tracking and reporting.

### Impact:

Both staff and applicants are frustrated with the inefficiencies and limitations of working with out-dated technology. It contributes to processing time, inaccuracies and communication problems.



### Problem:

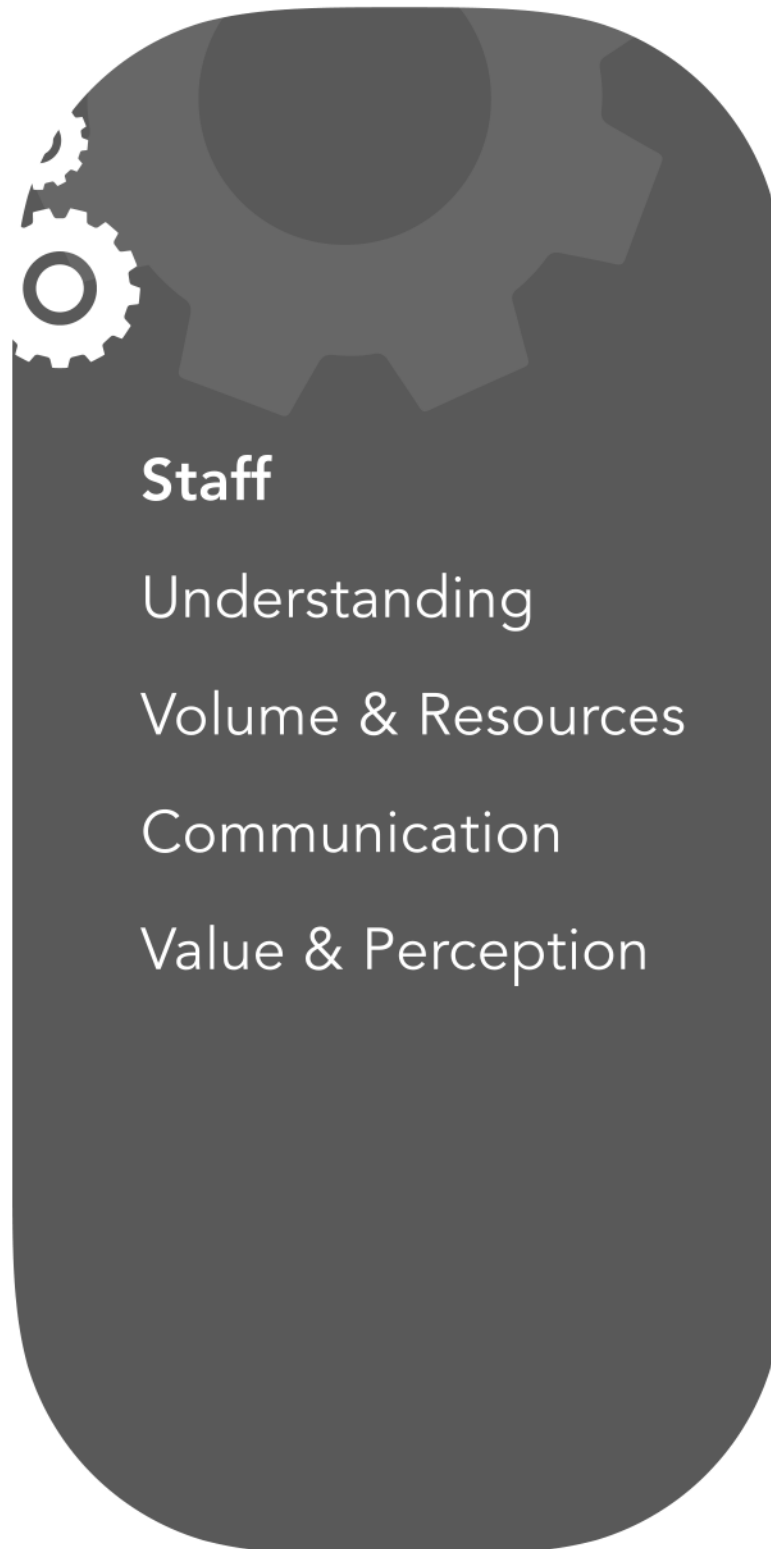
Poor record management practices including duplicate, misplaced, transitory and portable records create gaps. Programs process and store records a siloed approach specific to their technology and needs.

### Impact:

Inconsistencies of best practises and record gaps create delays for staff processing the request and interrupt the application processing timeline for applicants.

# STAFF CHALLENGES

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# STAFF CHALLENGE

## UNDERSTANDING

### Problem:

There are information gaps and a lack of understanding around the FOI process across government.

- Training Gaps: The FOI process is not always well understood by staff. There are gaps in training and support that leave staff in the dark and trying to fill in the gaps by creating their own training or support materials.
- Different Interpretations: Parts of the process and their justifications can be confusing and are often interpreted differently by different parties.

### Impact:

FOI is understood and implemented differently across government, both in terms of the "how" and the "why."

# STAFF CHALLENGE

## VOLUME & RESOURCES

### Problem:

The high volume of requests and the high turnover rate in FOI-related jobs results in a working environment that is often under pressure but can be lacking in efficiency.

- Resources: High turnover in jobs results in a lack of embedded expertise.
- Volume: High volume of requests, staff feel like they are constantly under pressure and behind.
- Roles & Responsibilities: Confusion around the parameters and expectations of each different role, their responsibilities and how they fit together in the process.

### Impact:

Staff who have a role in the FOI process may be frustrated because they don't feel like their work is done in efficient and effective ways. Because of the volume, they are focused on getting the work done and don't have time to clarify or continuously improve their methods.

# STAFF CHALLENGE

## COMMUNICATION

### Problem:

Communication breaks down at many internal phases of the FOI process.

- Ministry staff are frustrated that getting clarification on requests has to pass through multiple channels.
- FOI staff feel like this part takes too long even though it's a common part of the work.

### Impact:

Important information can get lost when communication is passed through multiple channels, especially under a time crunch.

Communication from a place of frustration can result in rushed actions and mistakes.

# STAFF CHALLENGE

## VALUE & PERCEPTION

### Problem:

Staff feel that the process isn't being used for what it was intended, both within government and by applicants.

- Valuing the FOI Process: Staff feel that requests aren't treated with respect or as a priority from program areas, which makes it harder for them to do their jobs.
- Perceptions of Applicant Behaviour: A perceived lack of trust in government from applicants creates an antagonist environment with staff feeling frustrated by tactics from applicants that seem intended to trip them up.

### Impact:

Perceived tactics and lack of trust creates an antagonist environment where each side is frustrated with the other and they don't feel supported or inspired to do worthwhile work.

# APPLICANT CHALLENGES

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## Applicant

Trust & Perception

Communication

Knowledge



# APPLICANT CHALLENGE

---

## TRUST & PERCEPTION

### Problem:

Applicants feel uncertainty and disbelief from government, which discourages them to apply or continue on in the process of a request.

### Impact:

The lack of credibility from government for the service provided jeopardizes the overall experience for the applicant.



# APPLICANT CHALLENGE

## TRUST & PERCEPTION

### Distrust mind-set

- Seems like a game, lack of support for public interest, David and Goliath
- Lack of genuine interest from Analyst
- No consequence for government to honour the response time
- Discouraged by the process with lack of transparency; redactions, complaint process, abandoning requests

### Perception

- Difficult to navigate the process when it's perceived intentional to over complicate or use tactics to dissuade applicants
- Bias reasons to with hold, manipulate or stall records

### Satisfaction

- Unsatisfied applicants reapply after receiving irrelevant records

### Open Information

- Open information catalogue is incomplete and unhelpful, not enough information posted, individuals forced to create own submission tracking system

# APPLICANT CHALLENGE

## COMMUNICATION

### Problem:

Applicants experience frustration when communicating with government to to receive or provide the information necessary to meet their request.

### Correspondence

- Too much back and forth, too many delays from Analysts, method of conversations isn't convenient (phone).
- Nonconstructive conversations with program areas.
- Unaware of file status.

### Website

- Content doesn't have clear categories and navigation isn't intuitive.

### Impact:

Negative interaction sways the applicants outlook on providing government what they need in order to fulfill the request, which creates delays and increases workload for analysts.

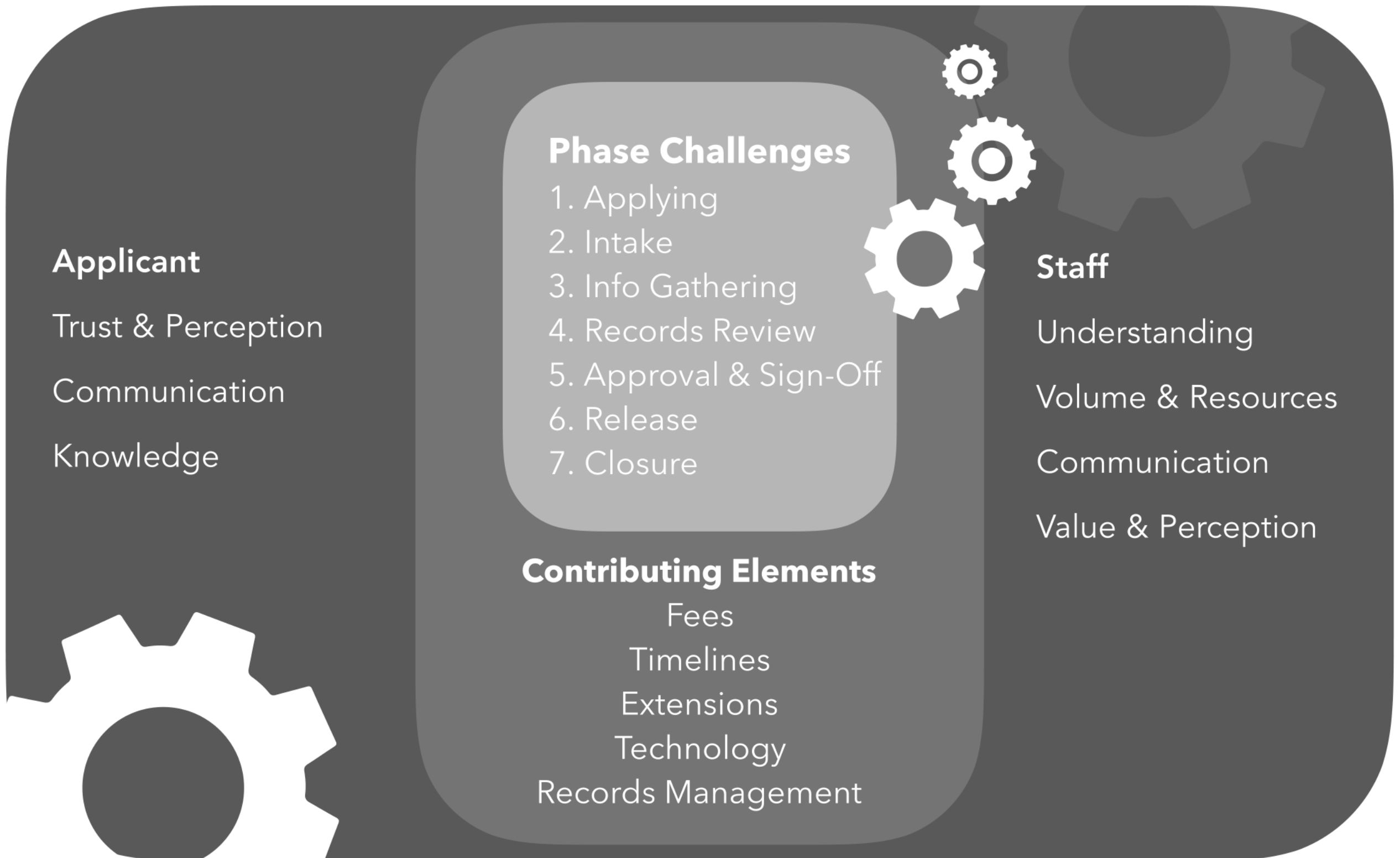
# APPLICANT CHALLENGE

## KNOWLEDGE

| Problem   | Impact  |
|---|---|
| Application Form: confusing to complete – selecting ministry/program and citing file without record number.                 | Errors and delays are generated in the application due to the lack of applicant's awareness and confidence in completing the application. |
| Wording Requests: Unfamiliar with how to correctly (to Information Access Office standards) word requests.                  | The final records package could be limited or too broad – applicants are apprehensive.  |
| Interpretation of Package: Lack of guidance to interpret the records along with zero context to support the record package. | The final records package is devalued leaving the applicant dissatisfied.   |

# CHALLENGE CATEGORIES

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# NEXT STEPS

# NEXT STEPS

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- Opportunities Workshop > Prototype prioritization
- Challenge book
- Prototype planning



# OPPORTUNITIES + PRIORITIZATION WORKSHOP

FOI Rules Project | June 7, 2018

# TODAY'S WORKSHOP

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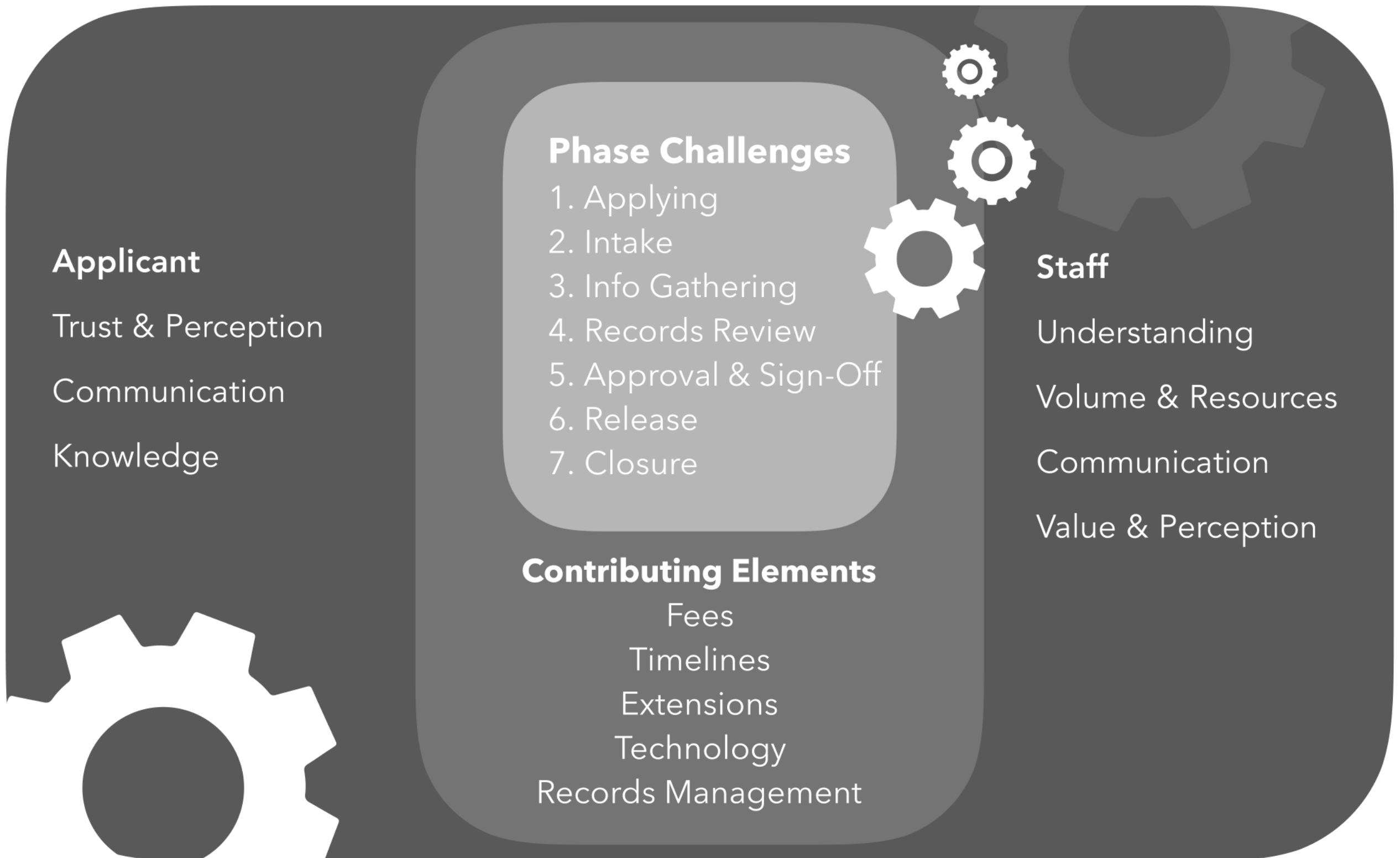
- Goals:
  - Explore opportunities from research
  - Generate and explore additional opportunities
  - Prioritize opportunities based on impact + feasibility
  - Start to envision prototypes



# **REVIEW CHALLENGE THEMES**

# CHALLENGE CATEGORIES

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# PRIORITIZATION

# ACTIVITY PRIORITY MATRIX

# PRIORITIZATION

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## Impact

Significant benefit for applicants who access the service and the staff to provide it.

- Reduce time delays
- Increase accuracy, efficiency
- Increase perception, trust, communication and knowledge

*Will this alleviate the most challenging issues?*

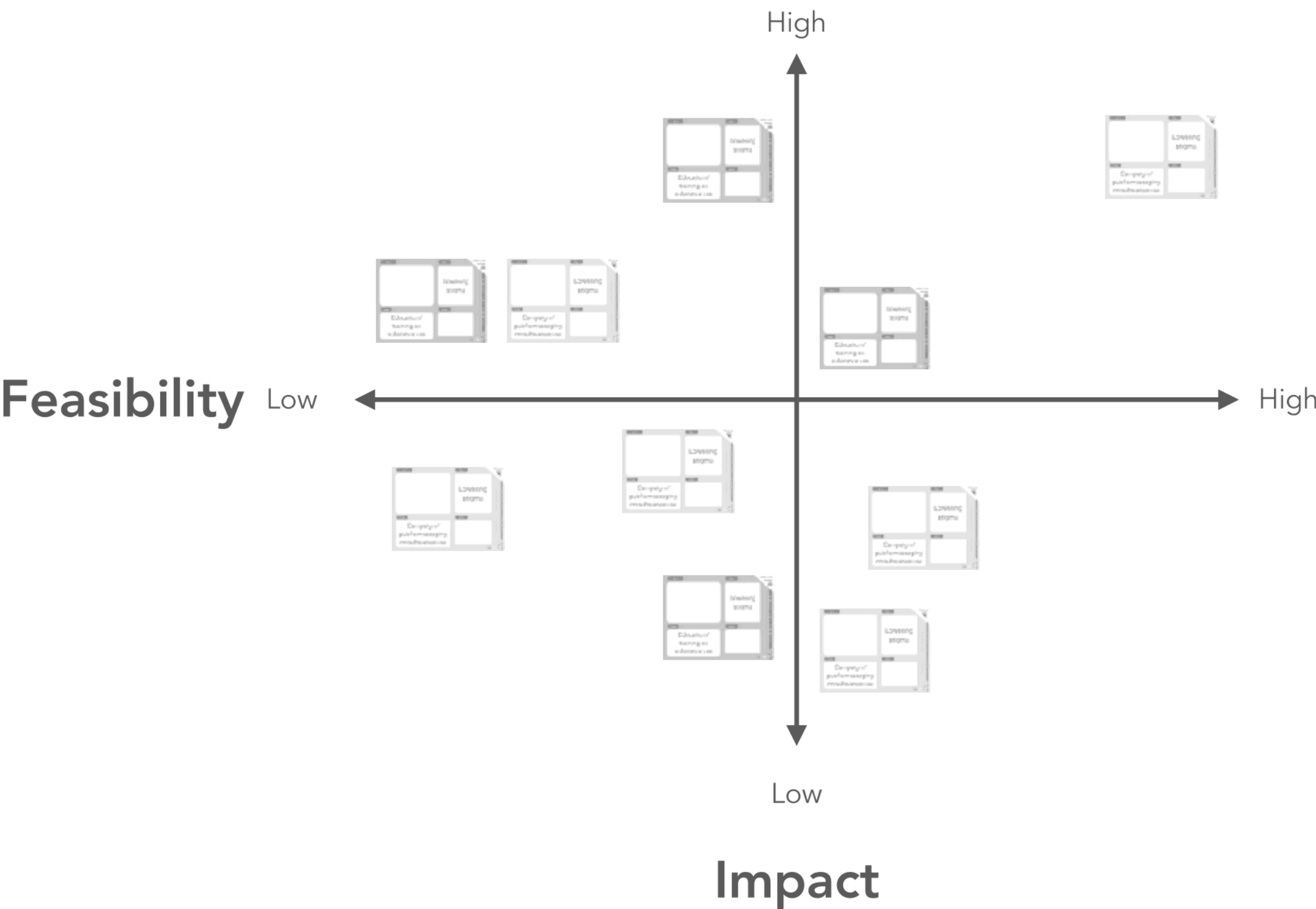
## Feasibility

Likelihood to be accomplished, implemented or successful.

- Decision-makers are already engaged
- Resources are present
- Path forward is clear

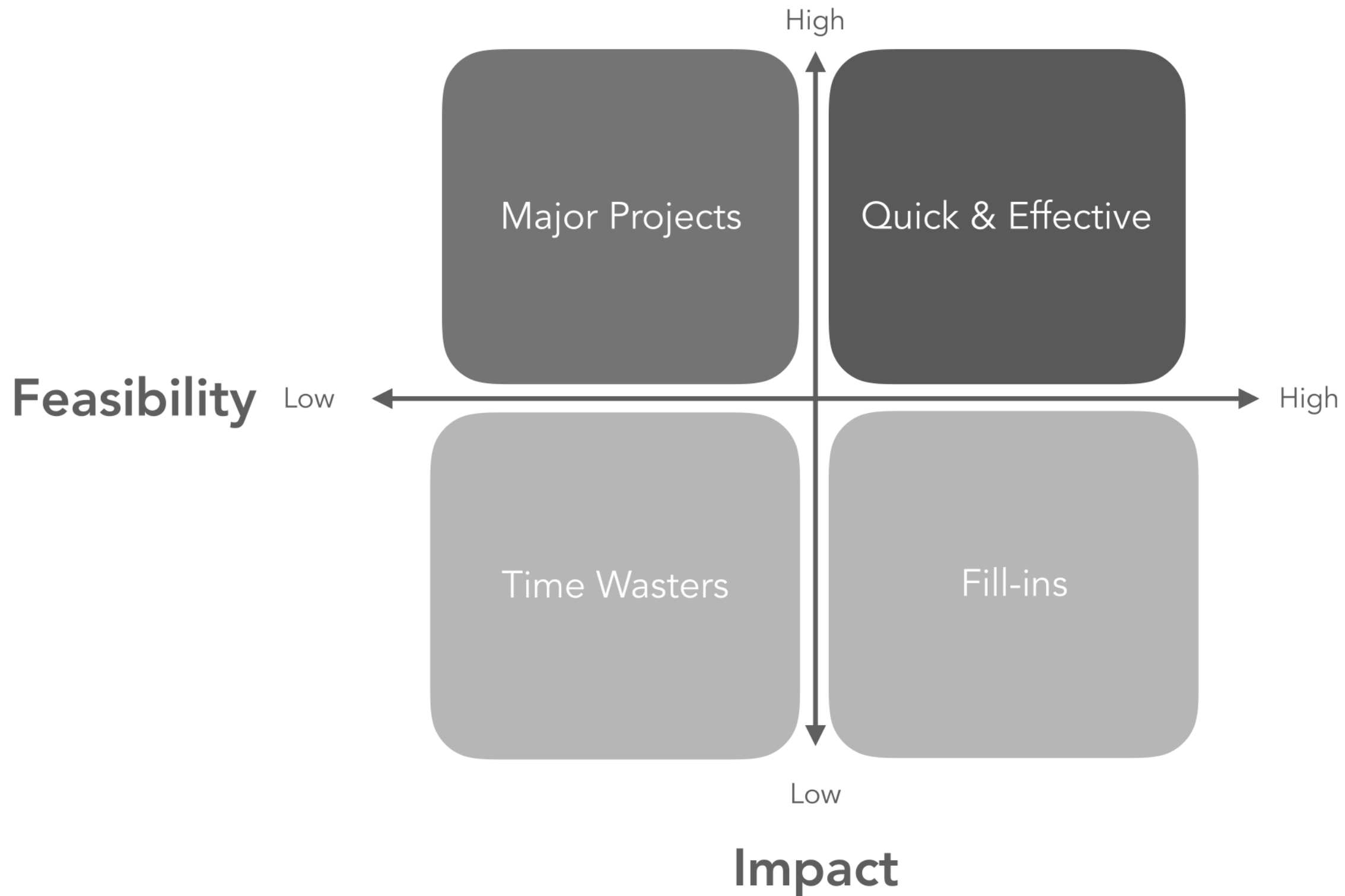
*What amount of effort will this take?*

# PRIORITIZATION



# PRIORITIZATION

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# PRIORITIZATION

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## Impact

Significant benefit for applicants who access the service and the staff to provide it.

- Reduce time delays
- Increase accuracy, efficiency
- Increase perception, trust, communication and knowledge

*Will this alleviate the most challenging issues?*

## Feasibility

Likelihood to be accomplished, implemented or successful.

- Decision-makers are already engaged
- Resources are present
- Path forward is clear

*What amount of effort will this take?*



# GROUP DISCUSSION

# **ADD NEW OPPORTUNITIES**

**BREAK**

# PURPOSE OF A PROTOTYPE

# PROTOTYPE PURPOSE

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- Trying new ideas with real people before fully implementing those ideas.
- Risk mitigation - helps avoid costly changes
- Works to develop new ideas and opportunities for better service delivery, we can start prototyping those ideas to see how they work in the real world
- Lowers the risk of investing in opportunities that will produce fewer benefits for the ministry
- *Low-fidelity now is better than high-fidelity someday*

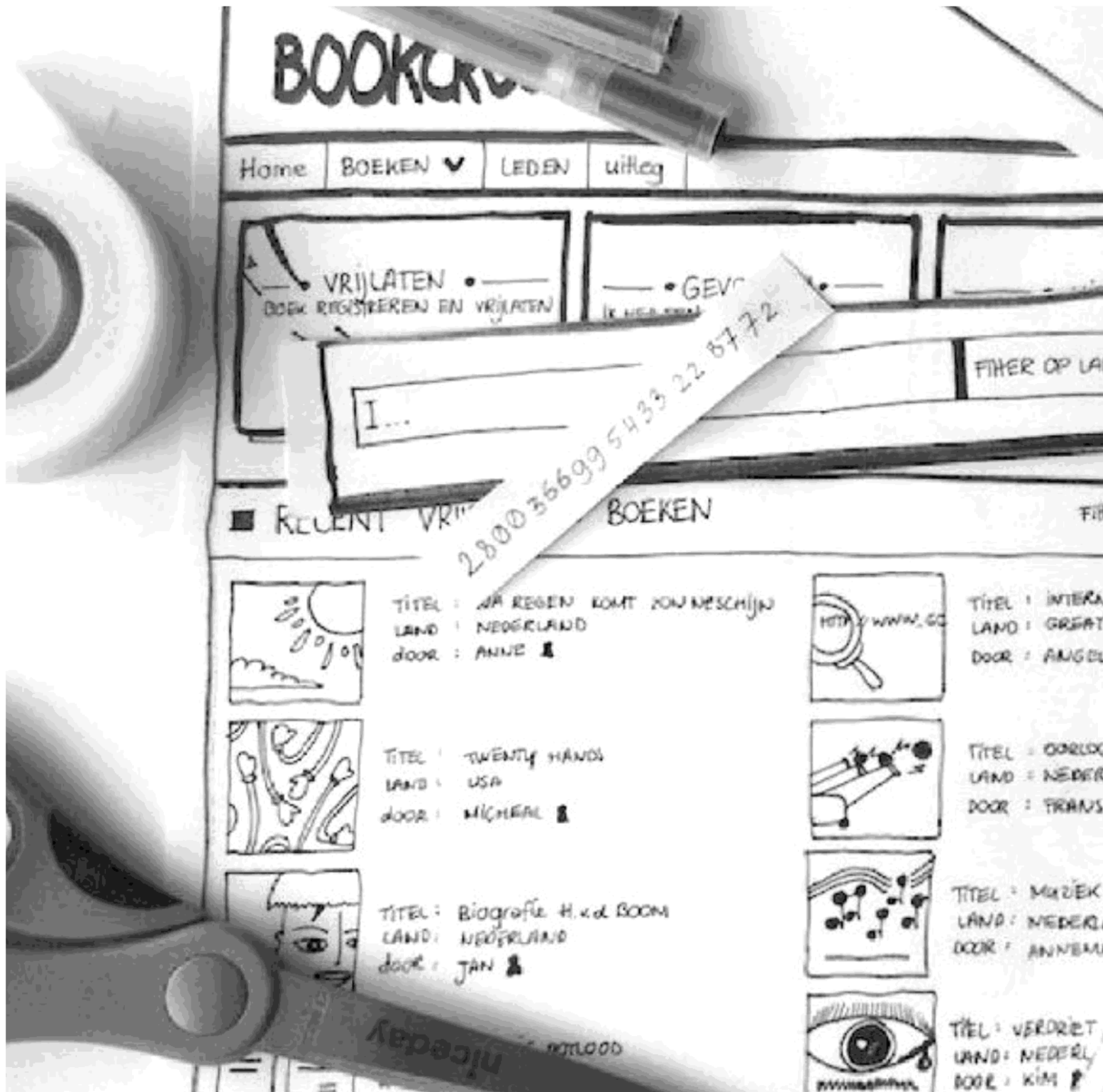
# LOW-FIDELITY PROTOTYPES

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- Paper (sketch, storyboard, comic)
- Screen (PowerPoint, Excel, html)
- Desktop Walkthrough (business origami, lego)
- Physical Mock-Up (poster, brochure, foam core/cardboard)
- Infographic



# PROTOTYPE EXAMPLES



# ACTIVITY STICKER VOTE



# REVIEW

# NEXT STEPS

# NEXT STEPS

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- Send summary of this week's sessions
- Steering Committee to review & determine focus
- Prototype proposals based on what is chosen

| Number | Source | Opportunity Name |
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|--------|--------|------------------|

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**Description****Impact/Feasibility Rating**

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# 1. Workshop Summary

## 2. Idea Groups

## 3. Potential Prototypes

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## 1. Workshop Summary

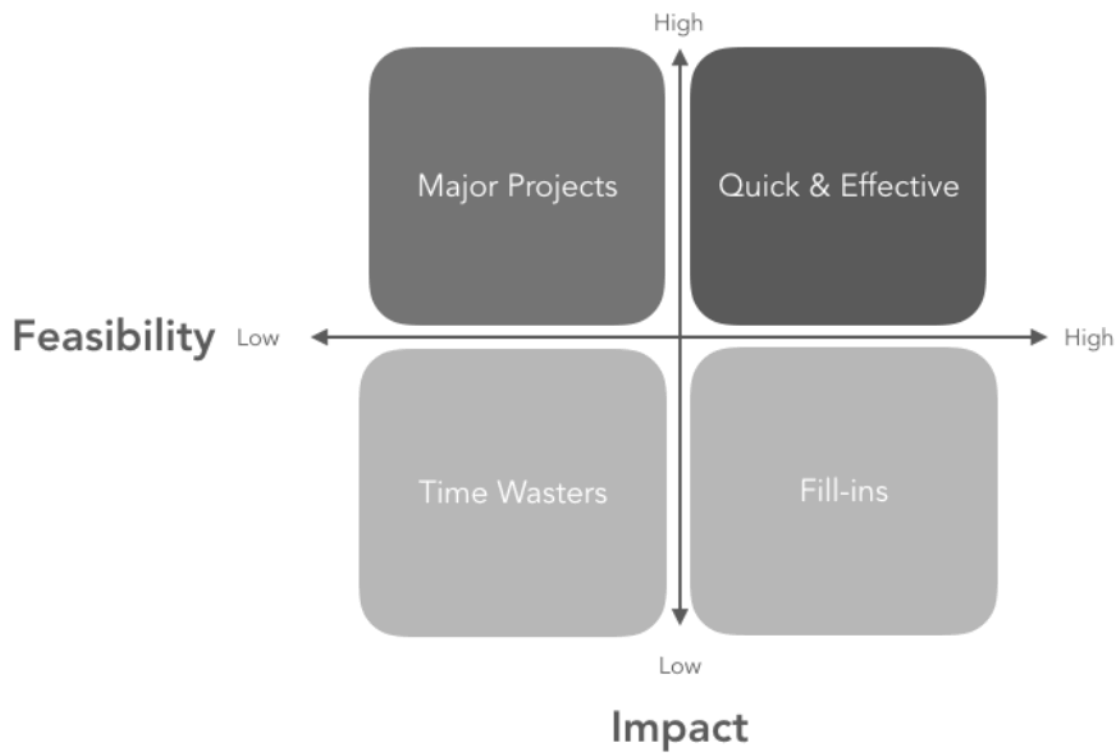
### Workshop Goals:

- Explore opportunities from research
- Generate and explore additional opportunities
- Prioritize opportunities based on Impact & Feasibility
- Start to envision prototypes

### Workshop Methods:

- Opportunity Cards
  - Synthesized ideas from research including applicants and staff
  - Edited to provide context, duplicates removed
- Prioritization Matrix
  - Tool for rapidly identifying what ideas to focus on
  - Establishes starting points for further reflection and exploration of potential barriers, ways to expand or group ideas
  - Ranked on:
    - **Impact** – Providing significant benefit for applicants who access the service and the staff who provide it. Focussing on ideas that could increase timeliness and increase access to information.
    - **Feasibility** – Reflection of the amount of effort that would be required to accomplish the idea, including alignment, resources, time, clear pathways forward.
- Results in 4 categories of ideas:
  - **Major Projects** – Provide long-term returns, but may be more complex to execute.
  - **Quick & Effective** – Easier to implement and provide good results, may be already underway.
  - **Time Wasters** – Time-consuming work that may have low impact.
  - **Fill-ins** – Easier to implement, but don't provide significant benefits.





## 2. Idea Groups

Prioritization and the accompanying group discussed resulted in natural groups of ideas. While these aren't comprehensive of all the ideas we discussed, 5 strong groups emerged:

**Group 1:** s.13 !

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**Group 2:** s.13

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**Group 3:** s.13

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**Group 4:** s.13

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**Group 5:** s.13

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### 3. Potential Prototypes

Prototyping is an effective way to test an idea with real people before fully developing and implementing it. It lowers risks and allows us to gather more specific and detailed information before investing a significant amount of resources.

The team discussed options, specifically focussing on ideas that would have the most benefit to applicants. They voted on what they'd like to see prototyped, with the following ideas emerging as having the most potential.

| Idea | Votes | Prototypes Ideas |
|------|-------|------------------|
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|      | 2     |                  |
|      | 4     |                  |
|      | 1     |                  |
|      | 5     |                  |
|      | 3     |                  |
|      | 4     |                  |

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# FOI RULES PROJECT STAKEHOLDER REPORT

Corporate Information & Records Management Office + Service Design | June 2018



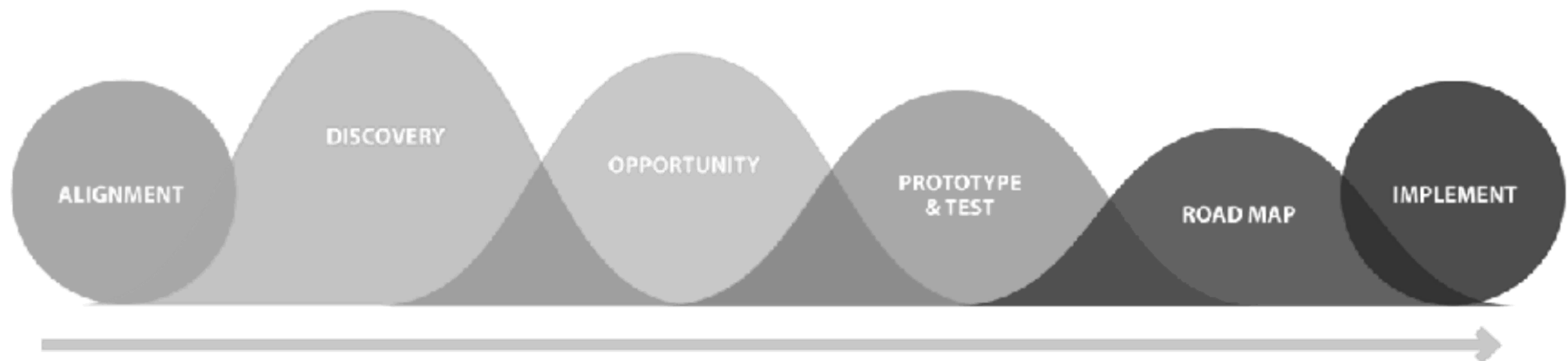
# PROJECT OVERVIEW

Corporate Information & Records Management Office (CIRMO) engaged the Service Design team to better understand the Freedom of Information (FOI) request process, the experiences of applicants and staff, their challenges and their ideas for improvements.

## SERVICE DESIGN IN THE BC GOVERNMENT

Service design is about people: what they do, how they do things, and understanding why and when they look to access services. Our approach includes:

- Conducting deep qualitative research into the service experience
- Evaluating and measuring the service experience
- Planning what is required to deliver a new or improved service experience
- Working as a multi-disciplinary team with stakeholders and end-users throughout the project



# OUR METHODS

## Interviews

One hour conversations to learn about people’s experiences submitting or responding to an FOI request, their challenges and their ideas for improvements.

## Interpreting

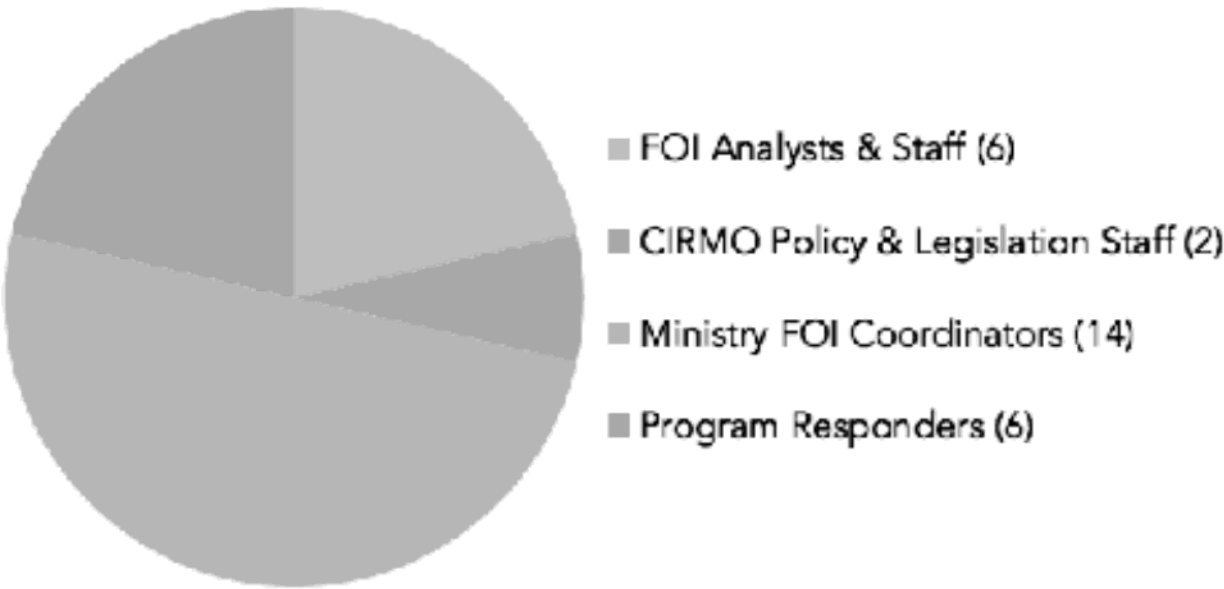
Using approaches like qualitative data analysis, journey mapping and personas we uncovered pain points and patterns in the process.

## Ideation

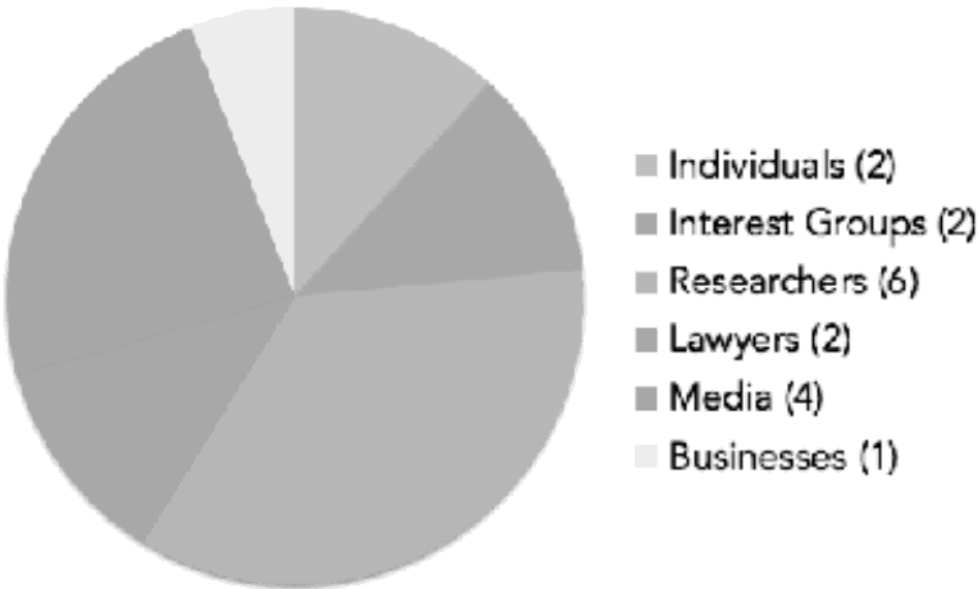
Through workshops and co-design sessions we unpacked, validated and prioritized ideas for how to improve the process.

# WHO WE TALKED TO

## Internal Staff



## Applicants





# WHAT WE LEARNED ABOUT OUR CHALLENGES

## Phase Challenges



- Applying
- Intake
- Info Gathering
- Records Review
- Approval & Sign-Off
- Release
- Closure

- Applicants often start out confused about how the process works and what is required of them.
- Delays occur at all phases of the process, causing frustration among staff and applicants and resulting in requests that exceed the 30 day timeline.
- Different ministries have different processes for records management and gathering which can result in inconsistencies and time delays.
- Applicants may be unsatisfied with the results of their requests, resulting in eroding trust in the process and often in more requests.

## Contributing Elements



- Fees
- Timelines
- Extensions
- Technology
- Records Management

- Lack of clarity results in additional time spent corresponding with applicants about how fees work and how to reduce fees through narrowing requests.
- Staff and applicants are frustrated and feel helpless about timelines. It can feel impossible to meet timelines given the broad scope of requests.
- Broad and complex requests may warrant time extensions, which can be frustrating for staff and applicants. Staff feel guilty for needing to take them and applicants feel like they have no agency around them.
- Inefficiencies and technological obstacles during the application and file-delivery stages contribute to processing time, potential inaccuracies and communication problems.

# WHAT WE LEARNED ABOUT OUR CHALLENGES

## Staff Challenges

- Understanding
- Volume & Resources
- Communication
- Value & Perception

- The process for responding to FOI requests is understood and implemented differently across government.
- Staff are frustrated because of a lack of efficiency and a high volume of requests. They are focused on getting the work done and don't have time to improve their methods.
- Information is travelling through multiple people and channels, resulting in increased processing time and decreased clarity.
- Staff feel that the process isn't being used for what it was intended, resulting in frustration and feelings of mistrust and anxiety.

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## Applicant Challenges

- Trust & Perception
- Communication
- Knowledge

- Applicants feel like government discourages them from making requests, which results in a lack of trust in the process.
- Information isn't clear or helpful. Starting the process this way results in scepticism, frustration, errors and requests that are unclear or too broad.
- Applicants don't feel supported through the process. They don't feel like government cares about their requests.

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# NEXT STEPS & ACTION

The final phases of this project will focus on making plans for applying the insights found in the research to improve the FOI process for applicants and staff.

## Prototype & Test (July)

- 'Improving the application process' has been selected for prototyping and testing
- We'll build low-fidelity prototypes of the application form and its contextual information to explore with testers to learn how to best improve the process

## Roadmap (August)

- Further defining opportunities to uncover pathways to action and barriers
- Looking at short, medium and long-term work
- Ensuring that plans consider user needs and will provide tangible benefit

## Implementation (August)

- Aligning plans with concrete action
- Establishing plans for ongoing, iterative testing and continuous service improvements

## **Title: Making Government Records Easier for Everyone: Freedom of Information Rules**

### **Section 1: Context and Questions**

The Freedom of Information and Protection of Privacy Act (FOIPPA) enables the public to request and obtain government records. The Freedom of Information (FOI) process is a fundamental part of a transparent and open government, yet can be complex for both applicants and government staff to navigate.

Legislation requires that staff reply to an information request within 30 days of receipt, but the volume of requests makes it difficult to keep up with demand and extensions are often required. On average, 1.7 million pages are processed per year.

The Corporate Records and Information Management Office (CIRMO) wanted to improve the FOI process for everyone. The project had three goals:

- Understand the current state of the FOI process
- Develop opportunities and prototypes to improve access to government records
- Recommend enhancements to the process based on the needs of citizens and stakeholders

### **Section 2: Our Approach**

Working together, CIRMO and the Service Design team took a human-centred approach to understand the FOI process.

The project included four phases:

- 1. Understanding the process.** The team conducted interviews with 45 people (including 28 staff members and 17 applicants) and then created a journey map and eight personas to represent user stories.
- 2. Mapping challenges and prioritizing opportunities.** After theming the interviews, the team mapped out the most common challenges faced by citizens making requests and government staff processing the requests. The team also prioritized all opportunities, ranking them in order of feasibility and impact.



### Section 3: Outcomes that Matter

**Helping government understand citizens.** The legal and privacy considerations the FOI process creates cause stress and anxiety for staff who process the requests. The project helped staff see the FOI system from a citizen's perspective and the important impact it has on British Columbians' lives.

**Helping citizens understand government.** Citizens told us they simply didn't know the right wording to use when submitting an FOI request. *Were they asking for the right information?* By prototyping an application form that helps citizens write a request, applicants were put at ease and created better requests.

### Section 4: Artefacts

**Journey Map:** The Journey Map details how a request currently moves through the FOI phases and interacts with multiple internal roles. The map also demonstrates common areas of confusion or delay. (Internal document)

**Personas:** Based on project research, personas were created to represent different FOI users. Personas helped the project team answer the question, "Who do we design for?" (Internal document)

**Prototype:** The online application prototype guides citizens through the type of request they're making and provides resources and support for making an effective request. (Internal document)

**Implementation Plan:** The Implementation Plan contains a detailed roadmap, as well as a measurement plan and testing script to guide the online application from prototype to reality. (Internal document)

**Citizen Update:** Based on the research, a public update was released that detailed the key project findings. (TBD)

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# A Strategy to Enhance Public Access to Government Information and Improve FOI Timeliness

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*March 2018*

**DRAFT**

## Introduction

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Public access to government information is one of the cornerstones of a democratic society. It promotes openness and accountability in the decision-making processes of government. Our goal is to enhance public access to government information and improve FOI timeliness while maintaining personal privacy.

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### Purpose and Scope

On July 18, 2017 the Minister of Citizens' Services, Jinny Jogindera Sims, was mandated by Premier John Horgan to:

- Improve access to information rules to provide greater public accountability; and
- Improve response and processing times for freedom of information (FOI) requests.

The purpose of this strategy is to advance government's commitment to improving access to information and FOI timeliness.

This report is based on an analysis of the current legislative framework, government operations, and recommendations previously made by key stakeholders such as the Information and Privacy Commissioner and the all-party Special Committee of the Legislative Assembly that reviewed *Freedom of Information and Protection of Privacy Act* (FOIPPA)<sup>1</sup>.

Concurrent to the drafting of this strategy, a public engagement and engagements with other key stakeholders are underway. The strategies provided in this paper have informed these engagements — and will be further refined by their results. The engagements are scheduled for completion in the summer of 2018.

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<sup>1</sup> FOIPPA has two purposes — access to information and the protection of privacy. While several recommendations have been made by key stakeholders on improvements to the privacy protections in FOIPPA, they are not the focus of this report. However, future amendments to FOIPPA could consider these recommendations.

### Background

Government is the steward of a large amount of information, including personal information. Providing public access to government information while maintaining strong privacy protections helps to inform decision-making, enhance service delivery, engender public trust and accountability, and facilitate community development and economic growth.

BC led the way in providing access to government data by launching the first Open Data program in Canada. In addition, government routinely makes information available to the public through the Open Information website and other online and print sources.

The BC government also provides access to information through formal requests for information under FOIPPA. Each year, BC ministries receive approximately 10,000 requests — one of the highest annual volumes in Canada.

Government is committed to improving access to information through a citizen-centred approach that will enhance British Columbians' access to the information they are interested in, in the way that is most convenient for them.

## Information Management: Legislative, Regulatory, Policy and Operational Context

Information Management (IM) in British Columbia includes three distinct but interdependent disciplines: privacy, access to information and records management. IM in the public sector<sup>2</sup> is governed by two pieces of legislation – the *Freedom of Information and Protection of Privacy Act* and the *Information Management Act*. Additionally, there are a number of IM policies and procedures that apply to ministries.

### Freedom of Information and Protection of Privacy Act (FOIPPA)

FOIPPA came into force in 1993<sup>3</sup>, and applies to over 2,900 public bodies including ministries, Crown corporations, health authorities, universities and local governments.

Public bodies covered by the Act range from small boards such as the British Columbia Cranberry Marketing Commission, to large Crown corporations such as BC Hydro. There is vast difference in capacity across these bodies to respond to legislative change.

The Information and Privacy Commissioner, an independent Officer of the Legislature, has broad responsibility for overseeing and monitoring how FOIPPA is administered and for ensuring that its purposes are achieved.

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<sup>2</sup> The *Personal Information Protection Act* (PIPA) applies to the privacy practices of all private and not-for-profit sector organizations in BC (except those that are federally regulated or where British Columbia organizations subject to PIPA engage in commercial trans-border personal information flows, in which case Canadian federal law applies.) For the purposes of PIPA, an “organization” includes, among others, an individual, a corporation, a partnership, an unincorporated association, a trade union, a trust, a political party and a not-for-profit organization. There are over 380,000 organizations within British Columbia that are subject to PIPA.

<sup>3</sup> FOIPPA was brought into force in 1993 and its scope of coverage was expanded in phases. It came into force for ministries and other public bodies (Crown corporations, boards, commissions, etc.) in October 1993; coverage was expanded to local public bodies (municipalities, regional districts, health authorities, school boards, etc.) in November 1994, and to governing bodies of self-governed regulated professions in May 1995.

The original legislative intent of FOIPPA was to provide people with a mechanism to access government records of individual or public interest with minimal exceptions.

FOIPPA gives any person<sup>4</sup> the right to request information about themselves (personal requests) and about government (general requests). British Columbians exercise these rights regularly, making approximately 10,000 requests annually — more than Alberta, Manitoba and Saskatchewan combined. Public bodies are required to respond to an FOI request within 30 business days (unless a legally authorized extension can be taken).

There are a number of regulatory instruments available to the minister responsible for the Act. These instruments include directive-making authority that permits the Minister to require one or more ministries to make specified records available without a request.

### Information Management Act (IMA)

The IMA provides a legislative framework for modern, digital information practices, which, over time, will increase worker productivity, reduce costs for taxpayers, enable timelier services to citizens, and improve access to information.

The IMA enables modernized information management across government by establishing a Chief Records Officer (CRO) to provide timely and effective oversight and to approve information schedules that govern the appropriate retention and disposal of government information.

The IMA applies to ministries and 41 designated government bodies. The CRO has directive-making ability in the IMA respecting the digitizing and archiving government information. Amendments made to the Act in 2017 (but not yet in force) strengthened the oversight mandate of the

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<sup>4</sup> “Person” is defined in the *Interpretation Act* and includes “a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law”.



CRO, including expanded directive-making ability, and created a requirement to record key government decisions.

### **Policy and Operational Context**

In general, the BC government has a robust IM policy framework, including privacy and records management policy.

However, a recent policy inventory found that there was a lack of consistent access to information policy across ministries. For example, there is limited corporate direction on how employees can meet their legislated obligation to assist an FOI applicant.

### **Special Committee of the Legislative Assembly**

Every six years FOIPPA requires that a Special Committee of the Legislative Assembly be established to review the Act. The most recent Special Committee tabled their report in 2016 after reviewing almost 200 submissions from advocacy groups, public bodies, individuals, the Information and Privacy Commissioner and government. The Special Committee received presentations on a collection of topics covering privacy, access, records management, and government processes.

The Committee made 39 recommendations<sup>5</sup> to government, including:

- Legislating a mandatory privacy breach notification;
- Legislating a “duty to document”;
- Extending coverage of FOIPPA to subsidiary entities of public bodies;
- Expanding proactive disclosure requirements; and
- Changing timelines for response from 30 business days to 30 calendar days.

### **Information and Privacy Commissioner**

The Commissioner has made a number of recommendations to government on improving freedom of information and protecting

privacy. In her submission to the Special Committee, former Commissioner Elizabeth Denham called for:

- Requiring mandatory privacy breach notification;
- Extending coverage of FOIPPA to subsidiary entities of public bodies;
- Clarifying the rules around data linking; and
- Introducing a “duty to document” in FOIPPA with oversight by the Commissioner.

The Commissioner has also been active in calling for expanded releases of government information without an FOI request, incorporation of access by design principles in IM practices and increased review and compliance monitoring of IM practice in government.

The recommendations from the Special Committee and other stakeholders have informed government’s current public engagement initiative hosted on the EngageBC website.

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<sup>5</sup> Please see Appendix A for a summary of the recommendations made by the Special Committee.

## Freedom of Information Requests

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Freedom of Information exists to provide British Columbians with a mechanism to access government records of individual and public interest with minimal exceptions. Realignment of the FOI system with the original spirit and intent will help improve access and timeliness.

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### The Information Explosion

Since FOIPPA came into force, the advancement of modern technologies has made it easier than ever before to create, retain and store records, many of which have little or no ongoing value. This makes high value information difficult to find and retrieve, causing inefficiencies across government, including when responding to an FOI request.

In addition, the ease with which digital records are created and shared has led to duplicate versions of the same record being held in multiple offices by multiple employees. In 1993, digital communication technologies were in their infancy — today, government sends and receives over 350 million emails a year (containing over 53 terabytes of data). Government record holdings are increasing at an estimated annual rate of 15% — resulting in a projected doubling of records in approximately five years.

This explosion of information and modernization of technologies have had a profound impact on the nature of FOI requests and government's ability to respond to them in accordance with legislated timelines.

### The Changing Nature of Records Responsive to FOI Requests

FOIPPA gives people the right to make a request for access to information. British Columbians are active in exercising this right and ministries receive approximately 10,000 FOI requests every year.

When the Act was brought into force, employees were largely conducting manual searches for paper based records; the act of

searching for and assembling records responsive to an FOI request was inherently time consuming as a result.

### Searching for Responsive Records

Based on reasonable time estimates for carrying out these kinds of activities, FOIPPA was written to provide an applicant the first three hours of search time free of charge and to apply a fee of \$7.50 for every additional quarter hour of search.

In 2018, technology and keyword searches have made it considerably easier to perform searches for documents, making the three-hour search time inapplicable in most cases. In addition, technological advancements have also resulted in an exponential growth in the volume of records being created and stored in government, which are therefore subject to FOI requests.

### Severing Responsive Records

The purpose of FOIPPA is twofold: to provide the public access to information and to protect privacy. The Act requires that public bodies review records before they are released, and apply exceptions to disclosure where appropriate. While many of those exceptions are discretionary, some are mandatory — for example, information must be withheld where its disclosure would be harmful to another person's personal privacy or the business interests of a third party.

Reviewing records to determine whether exceptions apply is not an action that can be charged for under FOIPPA's current fee structure. When the Act was brought into force, government's information management environment was characterized by small volumes of topic-

based physical records making such reviews less time consuming to undertake.

Legislators could not have contemplated new types of record resulting from advancing technologies. For example, system-generated logs are now created without human involvement. These logs are not related to a government program or initiative and when requested by applicants, they may result in surveillance of public service employees.

### Responding to Requests on Time

BC ministries' current on-time FOI response rate is 90% — a ten percentage point improvement over the same time period in the prior fiscal year.

Ministries are forecast to receive 10,200 requests in 2017/18, and increase of 11% over the prior fiscal year. The number of requests in the fourth quarter of 2017/2018 is 24% higher than in any other quarter over the past three years. See Appendix A.

### Disregarding Requests

The average British Columbian will make very few FOI requests throughout their lifetime. Many individuals will never make a request, and if they do it will be for their own personal information.

A small number of very active applicants regularly use the system. To date, in 2017/18, three applicants are responsible for approximately 64% of all general requests (2,709 requests) at a cost of approximately \$5.9M in FOI services. One media applicant has accounted for 484 requests, one political party/researcher has submitted 2,075 requests and a single individual has submitted 150 requests.

In the 2016/17 fiscal year, the highest volume applicant made 847 requests and was estimated to have received \$2M in FOI services without incurring any associated fees.

In 2017/18, one applicant is forecast to submit more than 2,200 requests, and to date has only paid \$90 in fees.

The high volume of requests made by these few applicants has adverse effects on the thousands of other applicants who made an FOI request this fiscal year. This means that the average individual may have to wait longer to receive the information that they are looking for, and ministry staff are diverted from their other duties, such as providing key public services, to respond to these requests.

The Information and Privacy Commissioner has had similar challenges with their complaint process where one person was submitting a significant number of complaints. The Commissioner restricted the individual to five open complaints at one time.

There is no ability under FOIPPA for a public body to limit the number of requests that a single applicant can make to a public body.

The Act allows a public body to disregard a request only if the Commissioner has agreed that a request would *unreasonably interfere with the operations* of the public body either because of the *repetitious or systematic nature* of the requests or because the request is *frivolous or vexatious*.

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### Fees and Fee Waivers

Access to information fees are not intended to recover the full costs of operating the FOI system. It is also a fundamental principle of access to information that fees should not be a barrier to access.

The FOIPP Regulation sets out the maximum fees that can be charged for processing an FOI request. Fees cannot be charged for the first 3 hours of search time or for an applicant's own personal information. Fees can be charged to applicants for such things as copying records and searching for a record (after the first 3 hours).

The fee schedule was reviewed in 2013, and some fees were removed or reduced — the fees have not increased since the Act was brought into force in 1993.

The fees are discretionary, and applicants can request that a fee be waived if they cannot afford to pay the fee, or if the record relates to a matter of public interest.

The changing nature of FOI requests and the ability to conduct searches more expediently means that the government's ability to charge fees is reduced while the level of effort – and associated costs – required to respond is increased.

The Regulation permits public bodies to charge commercial applicants<sup>6</sup> the actual cost of processing for activities listed in the schedule of fees (e.g. search time, copying pages). The “actual cost” that can be charged a commercial applicant does not apply to anything outside the schedule of fees. For example, “actual cost” cannot be charged for the time spent severing a record. The Information and Privacy Commissioner has set out criteria to assist in determining when an applicant is a “commercial applicant”. For example, if the applicant intends to sell the information, either in its present form or in some reformatted version or if the applicant is acting as an agent for another individual (e.g. a lawyer). **See Appendix B.**

BC's FOIPPA is the only act in Canada that provides for different fees to be charged to commercial applicants.

While other BC public bodies have made use of the commercial applicant fee schedule, ministries have rarely applied it. Policy considerations associated with the limited application of commercial applicant fees to date include:

- Limited potential recoveries due to the current fee structure.

- Commercial applicants are frequently entitled to fee waivers (e.g. because they are media applicants and the information relates to a matter of public interest). Therefore, the rate at which a waived fee may have been charged becomes moot.
- Differential fee estimates could motivate commercial applicants to submit their requests as individuals. While FOIPPA allows for the potential to charge higher commercial fees, it does not include a mechanism to recover fees in the event that an individual's request is subsequently used for commercial purposes. Collection of additional personal information in order to verify an individual's identity for these purposes would not be authorized under the Act.
- There is an inability to validate whether an applicant is acting as an individual or in a commercial capacity.

## Public Awareness

Interest in the FOI system is significant and is the subject of ongoing scrutiny. For many stakeholder communities, it is a proxy for government's commitment to overall transparency and democracy.

Within this context, general knowledge of the FOI system's costs and operations, including the impacts that technological changes and high volume users have on average users and front-line services is limited.

Accordingly, changes to strengthen the alignment of the current FOI system with the legislation's original intent would benefit from a disciplined approach to increase public awareness and interest in the FOI system.

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<sup>6</sup> A commercial applicant is defined in the FOIPP Regulation a person who makes a request for access to a record to obtain information for use in connection with a trade, business, profession or other venture for profit.

## Making Information Available Without an FOI Request

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Open government is of vital importance to our democracy. British Columbians need information about government's actions and decisions to hold government to account, engage in informed debate and participate in democratic processes.

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One strategy to improve access to information is to make types of information that are of interest to the public available without a formal access request. British Columbians increasingly expect to be provided with on demand, easy access to information about the issues that are important to them.

Since 2011, the Open Information website has provided access to routinely released public information. This includes responses to "general" FOI requests, summaries of open and closed general FOI requests, Minister and Deputy Minister calendars, receipted travel expenses and summaries of contracts over \$10,000.

Some of these directives have met with criticisms, in particular the release of summaries of open and closed FOI requests. There is a concern that releasing the description of the information that is being requested before the applicant has had an opportunity to see the records could result in a chilling effect on certain types of applicants, in particular investigative journalists. Similar concerns have been raised

about posting responses to FOI response packages on the Open Information website (responses are posted five business days after the applicant receives the package and there have been calls to raise this threshold).

In addition, over 2,000 datasets are currently available through DataBC's online data catalogue. These datasets represent a broad range of quantitative information about natural resources, the economy, education and many other subjects.

FOIPPA requires that ministries establish categories of information for disclosure on a proactive basis. The Information and Privacy Commissioner is currently investigating the implementation of this requirement and is expected to issue a report in the spring. s.13 s.13

## Stakeholder Engagement and Systematic Review

Engaging with the public in a collaborative and transparent way demonstrates accountability, drives innovation and contributes to better outcomes for British Columbians.

Building on the consultation completed by the Special Committee in 2015/16, the Ministry of Citizens' Services is currently engaging stakeholders on the timeliness of FOI and about ways to improve access to information.

### Service Design – Assessing the FOI process

Government Communications and Public Engagement (GCPE)'s Service Design team uses a user-centred approach to design or redesign services. The team is currently completing an assessment of how the FOI process works for applicants and ministry employees. Results of the assessment are expected to surface tangible enhancements to improve both FOI response times and the overall service experience.

### Public Consultation on Access and Privacy

A public engagement on FOIPPA was launched on the EngageBC website on February 26, 2018. The engagement seeks public input on key concepts such as fees, proactive disclosure, privacy breach reporting and offences and penalties. The engagement will be open for six weeks, closing on April 9, 2018. This engagement will help inform government on key policy and legislative questions.

### Minister's Roundtable Discussions

The Minister of Citizens' Services has been actively engaging key stakeholder groups through a series of roundtable discussions since September 2017. Stakeholders include members of the media, advocacy groups, health authorities, the Law Society of BC and research universities.



## Next Steps

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Page 391

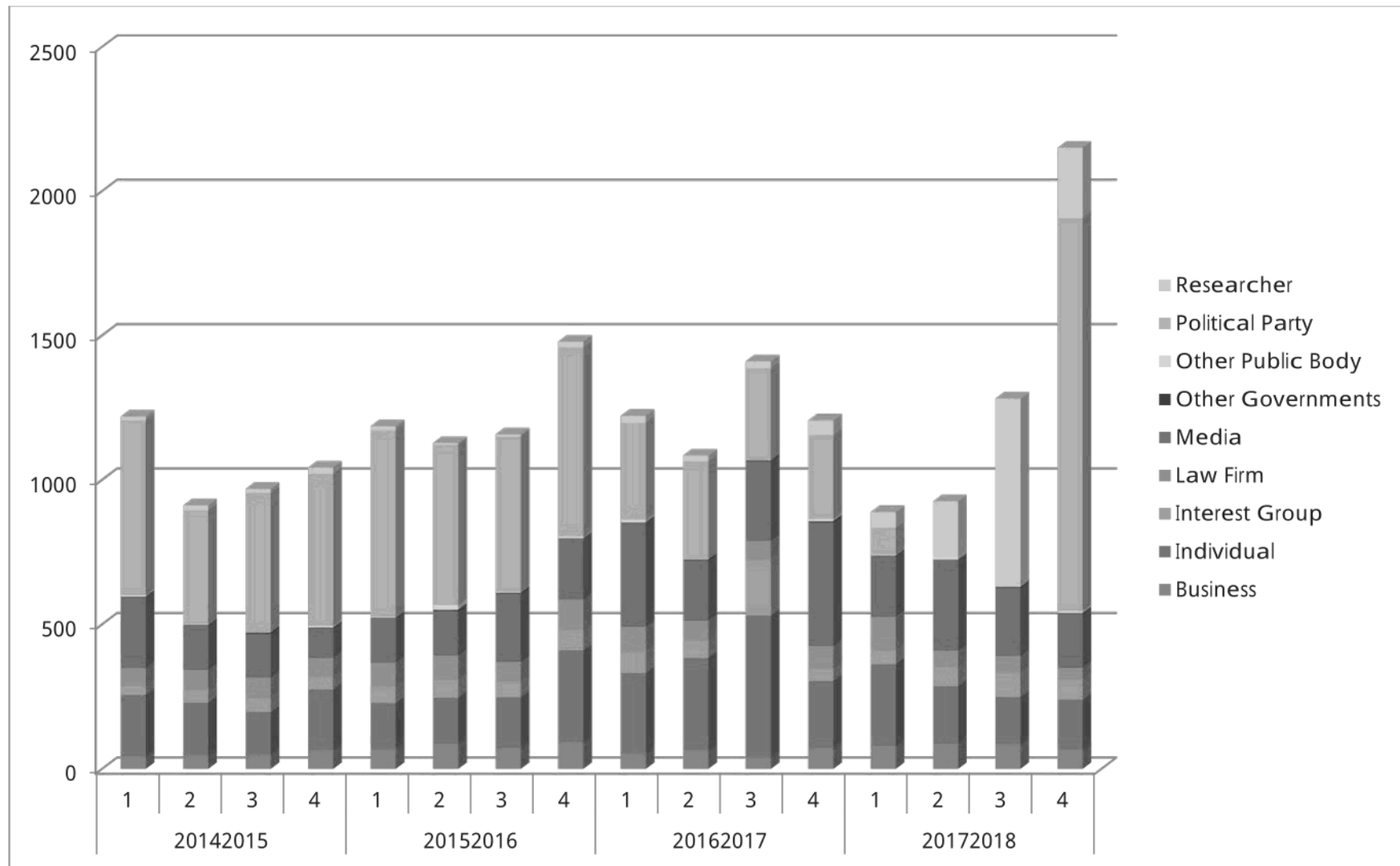
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## Appendix A – General FOI Access Requests and Processing Costs by Applicant Type (FY 2015/16 to Present)

| General FOI Access Requests and Processing Costs by Applicant Type  |                    |              |              |                          |                                |
|---|--------------------|--------------|--------------|--------------------------|--------------------------------|
| Applicant Type  | Number of Requests |              |              | Total Number of Requests | Estimated Total Cost to Gov't* |
|   | 2015/16            | 2016/17      | 2017/18      |                          |                                |
| Individual  | 814                | 1,319        | 817          | 2,950                    | \$7.11M                        |
| Interest Group  | 241                | 371          | 268          | 880                      | \$2.12M                        |
| Political Party   | 2,389              | 1,279        | 1,452        | 5,120                    | \$12.34M                       |
| Other Governments   | 8                  | 10           | 5            | 23                       | \$0.05M                        |
| Other Public Body   | 30                 | 22           | 21           | 73                       | \$0.18M                        |
| <i>Researcher**</i>   | <i>48</i>          | <i>119</i>   | <i>1,141</i> | <i>1,308</i>             | <i>\$3.15M</i>                 |
| <i>Business**</i>   | <i>318</i>         | <i>230</i>   | <i>319</i>   | <i>867</i>               | <i>\$2.09M</i>                 |
| <i>Media***</i>   | <i>757</i>         | <i>1,271</i> | <i>949</i>   | <i>2,977</i>             | <i>\$7.17M</i>                 |
| <i>Law Firm**</i>   | <i>342</i>         | <i>299</i>   | <i>272</i>   | <i>913</i>               | <i>\$2.20M</i>                 |
| <b>Total</b>  | <b>4,947</b>       | <b>4,920</b> | <b>5,244</b> | <b>15,111</b>            | <b>\$36.42M</b>                |
| <p>*Based on 2016/17 estimated costs of \$2,410 per request.</p> <p>**Some or all of these types of applicants may be considered commercial applicants.</p> <p>***Media applicants are commercial applicants. However the OIPC has ordered fee waivers based on the request being in the public interest.</p> |                    |              |              |                          |                                |

## Appendix B – Summary of General Requestors by Applicant Type (FY 2014/15 to Present)



## Appendix C - Summary of Recommendations of the 2015 Special Committee

### Major Recommendations

#### Proactive Disclosure

1. Amend FOIPPA and initiate proactive disclosure strategies to reflect the principle that information that is in the public interest should be proactively disclosed, subject to certain limited and discretionary exceptions that are necessary for good governance and to protect personal information. Among other things, this could be accomplished by:

- strengthening s. 25(1) to remove the requirement of temporal urgency;
- establishing a publication scheme that would apply to all public bodies,
- that includes, among other things, mandatory proactive disclosure of those records listed in s. 13(2)(a) to (n); and
- developing a system within government to proactively disclose the calendar information of ministers and senior officials that would be disclosed in response to an access request.

#### Duty to Document

2. Add a duty to document to FOIPPA.

#### Information Management in Government

3. Make all obligations related to the entire life-cycle of government records part of a cohesive and robust information management scheme; and 4. Ensure that archiving is a high priority.

#### Data Sovereignty

5. Retain the data sovereignty requirement in s. 30.1 of FOIPPA.

#### Application of FOIPPA

6. Extend the application of FOIPPA to any board, committee, commissioner, panel, agency or corporation created or owned by a public body and all the members or officers of which are appointed or chosen by or under the authority of that public body; and

7. Consider designating all publicly-funded health care organizations as public bodies under FOIPPA.

#### FOI Process

8. Reduce the timeline in which a public body must respond to an access request from 30 business days to 30 calendar days.

9. Review other timelines established in FOIPPA with a view to reducing them in order to promote the efficiency and timeliness of the FOI process.

10. Amend section 4(1) of FOIPPA to establish that an applicant who makes a formal access request has the right to anonymity.

#### Mandatory Breach Notification and Reporting

11. Add a mandatory breach notification and reporting framework to FOIPPA that includes:

- a definition of a privacy breach (includes the loss of, unauthorized access to or unauthorized collection, use, disclosure or disposal of personal information);
- a requirement to notify individuals when their personal information is affected by a known or suspected breach, if the breach could reasonably be expected to cause significant harm to the individual;
- a requirement that a public body report to the Commissioner any breach involving personal information under the custody or control of that public body, if the breach or suspected breach could reasonably be expected to cause harm to an individual and/or involves a large number
- of individuals;
- a timing requirement that the process of notification and reporting must begin without unreasonable delay once a breach is discovered;
- authority for the Commissioner to order notification to an individual affected by a breach or the public; and
- a requirement that public bodies document privacy breaches and decisions about notification and reporting.

## Other Recommendations

### Access

#### ***Duty to Assist***

12. Amend s. 6 of FOIPPA to add a specific requirement for public bodies to make the contact information of the person responsible for ensuring compliance available to the public.

#### ***Cabinet Confidences***

13. Amend s. 12 of FOIPPA to permit the Cabinet Secretary to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees where the Cabinet Secretary is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception.

#### ***Personal Privacy***

14. Consider initiating a review of whether a parent of a child who was in care should have access to personal information about their deceased child.

#### ***Policy Advice or Recommendations***

15. Amend s. 13(1) of FOIPPA to clarify that the discretionary exception for “advice” or “recommendations” does not extend to facts upon which they are based; or for factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical opinions.

#### ***Legal Advice***

16. Amend s. 14 of FOIPPA to make it a mandatory exception unless the public body is the client and can choose to waive privilege, or if the client is a third party, the client agrees to waive privilege.

#### ***Law Enforcement***

17. Consider whether an explicit reference to investigations that are within the mandate of a professional regulatory body should be added to the definition of “law enforcement” in Schedule 1 so that a

professional regulatory body may refuse to disclose information that may harm an investigation.

### ***Fees***

18. Review the Schedule of Fees with a view to ensuring that fees are not a barrier to individuals’ right of access, and that they provide reasonable compensation for substantial costs incurred by public bodies in responding to complex requests.

19. Amend s. 75 of FOIPPA to provide an automatic fee waiver for applicants when a public body has failed to meet the statutory timeline for responding to access requests.

20. Consider reducing or eliminating fees when records have been completely severed such that, in essence, there are no responsive records because none of the information the applicant is seeking is disclosed.

21. Make fee waivers available as a matter of course, without the applicant having to make a specific request, when there is significant public interest in disclosure.

### **Privacy**

#### ***Privacy Management Program***

22. Add to FOIPPA a requirement that public bodies have a privacy management program that:

- designates one or more individuals to be responsible for ensuring that the public body complies with FOIPPA;
- is tailored to the structure, scale, volume, and sensitivity of the personal information collected by the public body;
- includes policies and practices that are developed and followed so that the public body can meet its obligations under FOIPPA, and makes policies publicly available;
- includes privacy training for employees of the public body;
- has a process to respond to complaints that may arise respecting the application of FOIPPA; and
- is regularly monitored and updated.

### ***Notification for Collection of Employee Information***

23. Amend FOIPPA to permit a public body to not notify the employee that it is collecting their personal information, either indirectly or directly, for the purpose of managing or terminating the employment relationship, where it is reasonable to expect that doing so would compromise (a) the availability or the accuracy of the information, or (b) an investigation or a proceeding related to the employment of the employee.

### ***Disclosure Outside Canada***

24. Amend s. 33.1(1) of FOIPPA to permit public bodies to post non-statutory investigation or fact-finding reports on-line where the public interest in disclosure outweighs the privacy interests.

### ***Disclosure for Planning or Evaluating a Public Body***

25. Amend s. 33.2(l) of FOIPPA to permit only de-identified personal information to be disclosed for the purposes of planning or evaluating a program or activity of a public body.

### ***Privacy Impact Assessments***

26. Amend s. 69 of FOIPPA to clarify and strengthen requirements with respect to privacy impact assessments.

## **Oversight of the Information and Privacy Commissioner**

### ***Unauthorized Destruction of Records***

27. Amend s. 42 of FOIPPA to expand the Information and Privacy Commissioner's oversight by granting the Commissioner the jurisdiction to review matters or allegations of unauthorized destruction of records within public bodies.

### ***Data-Linking Initiatives***

28. Amend the definition for "data-linking" in Schedule 1 of FOIPPA to define data-linking as the linking or combining of datasets where the purpose of linking or combining the information is different from the original purpose for which the information in at least one of the datasets that was originally obtained or compiled, and any purposes consistent with that original purpose.

29. Address the privacy risks associated with data-linking initiatives within the health sector in consultation with the Information and Privacy Commissioner.

### ***Unitary Process***

30. Amend Parts 4 and 5 of FOIPPA to combine the complaint process and the review and inquiry process into a unitary process for the Commissioner to investigate, review, mediate, inquire into and make orders about complaints respecting decisions under FOIPPA or other allegations of non-compliance with FOIPPA.

### ***Enforcement of FOIPPA***

### ***Unauthorized Destruction of Documents***

31. Amend FOIPPA to make the alteration, concealment, or destruction of records with the intention of denying access rights under FOIPPA an offence under FOIPPA.

### ***Privacy Protection Offence***

32. Amend s. 74.1 of FOIPPA to make the unauthorized collection, use, and disclosure of personal information in contravention of Part 3 of FOIPPA an offence under FOIPPA.

### ***Penalties***

33. Increase the maximum amount of fines for general offences from \$5000 to \$10,000 and increase the amount of fines for privacy offences committed by individuals to up to \$25,000.

34. Institute a fine of up to \$10,000 for the offence of destroying, altering, or concealing a record with the intention of denying access rights under FOIPPA.

## **General**

### ***Correction***

35. Amend FOIPPA to require public bodies to correct personal information at the request of an individual the information is about if there are reasonable grounds for the public body to do so.

***Review of Provisions that Prevail over FOIPPA***

36. Appoint a special committee to conduct a review of the existing overrides of FOIPPA and make recommendations to the Legislative Assembly as to whether they should be amended or repealed.

***Sector-Specific Privacy Legislation***

37. Enact new stand-alone health information privacy law at the earliest opportunity.

38. Consult with stakeholders in the education sector as to whether there is a need for special provisions in FOIPPA that are tailored to the education sector.

***Chief Privacy and Access Officer***

39. Establish the position of Chief Privacy and Access Officer within government.

## 2018 Information Note Advice to Minister

Date: 19 April 2018

Ref: 108443

Issue: Improving Access to Information Rules and FOI Timeliness

### Conclusion:

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### Background / Facts:

- On July 18, 2017, Premier John Horgan mandated the Minister of Citizens' Services to: "Improve access to information rules to provide greater public accountability", and "Improve response and processing times for freedom of information (FOI) requests."
- The intent of BC's FOI system is to provide British Columbians with a mechanism to access government records of individual and public interest with minimal exceptions.
- Since the *Freedom of Information and Protection of Privacy Act* (FOIPPA) first came into force in 1993, the advancement of modern technologies has made it easier than ever before to create, retain and store records, many of which have little or no ongoing value. This makes high-value information difficult to find and retrieve, causing inefficiencies across government, including when responding to an FOI request.
- Additionally, a small number of applicants are making a large number of requests to ministries; many of these requests are either overly broad "fishing" requests, or are for records unrelated to a government program or initiative and which may result in surveillance of public service employees or elected officials in a manner that is not conducive to increased public scrutiny of programs and decisions of government.
- In 2017/18, three applicants were responsible for approximately 64% of all general requests (2,709 requests) at a cost of approximately \$5.9M in FOI services. The high volume of requests made by these few applicants has adverse effects on the thousands of other applicants; the average individual may have to wait longer to receive the information that they are looking for, and ministry staff are diverted from their other duties, such as providing key public services, to respond to these requests.
- Improvements to policies, business processes, training and awareness, in conjunction with improved tools and technologies, will help address the proliferation of information and ensure that efficiencies are realized.

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## Analysis:

- Improving access to information and FOI request timelines will involve a phased, multi-pronged approach.

## Key Strategies & Actions

### Phase 1: Initiatives That Do Not Require Amendments to FOIPPA

- Opportunities exist within the current legislative framework to enhance access to information:
  - Updating and expanding ministerial directives on proactive release.
  - Bringing amendments to the *Information Management Act* (IMA) into force:
    - Enhancing oversight for the Chief Records Officer (CRO), including:
      - Clarify the circumstances under which the Chief Records Officer can access the information they need to carry out their mandate;
      - Provide specific authority to the Chief Records Officer to undertake reviews of information management practices and to make recommendations for improvement; and
      - Provide transparency for the public by requiring the preparation of an annual report, which will be tabled in the Legislative Assembly
    - Implementing the requirement to document government decisions.
  - Implementing the new Information Management (IM) Practice Review Program with responsibility for assessing core government's compliance with legislation, regulations and policies across the four IM domains (records management, access, privacy and security).
  - Updating IM policy and guidance, including on the duty to assist applicants.
  - Clarifying in policy, for ministries, existing FOIPPA requirements to establish categories of information that must be made available without an FOI request.
  - Raising public and stakeholder awareness of the issues associated with access to information, including provincial operations, usage trends, costs and service impacts. Further, assess opportunities to identify and communicate the total costs attributed to the production of individual FOI requests.
  - Exploring tools and technologies within government's FOI processes (e.g., new search, auto-classification and de-duplication tools).

### Phase 1 Timeline:

|                       |  |
|-----------------------|--|
| <b>May 2018</b>       | <b>Public Announcement:</b> <ul style="list-style-type: none"> <li>• Announce bringing into force IMA provisions regarding Documenting Government Decisions and enhanced CRO oversight.</li> <li>• Release of amended ministerial directives on responses to general FOI requests and open and closed FOI request summaries.</li> <li>• Release 5 new ministerial directives on proactive disclosure.</li> <li>• Announce planned implementation of the IM Practice Review Program.</li> </ul> |
| <b>September 2018</b> | <ul style="list-style-type: none"> <li>• Documenting government decisions in effect.</li> <li>• IM Practice Review Program officially launched.</li> <li>• Enhanced CRO oversight.</li> </ul>  |

**2018 - 2019**

- Updated policy and guidance on the duty to assist FOI applicants, documenting government decisions, and expanding categories of information that ministries must make available without an FOI request.
- Continued policy and technology implementation, and continued public education and communication.

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**Contact:** *David Curtis, ADM 250-480-9803*

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# INFORMATION ACCESS AND PRIVACY PUBLIC ENGAGEMENT

## “WHAT WE HEARD”

Corporate Information & Records Management Office |  
Ministry of Citizens' Services |

January 2019



# ENGAGEMENT OVERVIEW

The Ministry of Citizens' Services asked for thoughts and ideas from interested members of the public on how to improve access to information and enhance privacy protection.

As one component of our overall engagement strategy, an online public engagement was initiated in the spring of 2018, inviting stakeholder organizations, subject matter experts, and individuals to provide a formal written submission, or participate in public dialogue on a series of topics.

This report summarizes the considerations, ideas and responses from participants compiled during this online public engagement process.

The Ministry has already received a number of recommendations for changes to FOIPPA and other valuable feedback from a variety of groups — including a Special Committee of the Legislative Assembly.

We also met with others who helped inform future changes and improvements, including users of the FOI system, interest groups, public bodies and the Information and Privacy Commissioner

The conversation with British Columbians is ongoing, and we will continue to look for more opportunities to involve our stakeholders in designing improvements.

# FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIPPA) OVERVIEW

British Columbia's *Freedom of Information and Protection of Privacy Act* (FOIPPA) came into force in 1993 and applies to approximately 2,900 public bodies. These bodies include ministries, Crown corporations, municipalities, universities and colleges, school boards, health authorities and governing bodies of professions and occupations (e.g., the College of Physicians and Surgeons of British Columbia).

FOIPPA aims to balance the duties government has to be transparent and accountable to the public, while also protecting the privacy rights of British Columbians.

FOIPPA has not been substantively amended since 2011. While strides have been made to improve policies and processes in recent years, it is important to ensure we are continuously improving in the areas of access to information and protection of privacy.

# WHO WE HEARD FROM

Organizations/Experts

15



Individuals

19



Blog Respondents

39



## WHAT WE ASKED YOU TO WEIGH IN ON

**We posted information about topics including:**

- The FOI process;
- Protecting your privacy;
- Getting access to the information you want;
- Fees for FOI requests;
- Reporting privacy breaches; and
- Offences and penalties in FOIPPA.

# WHAT WE HEARD

## CHALLENGES & OPPORTUNITIES

Challenges

Opportunities

Outcomes

Transparency

Create adequate government records

Ensure exceptions to disclosure are applied appropriately

Expand coverage of FOIPPA to subsidiary entities

- Increase availability of records of importance and interest to the public
- Increase trust and accountability

The FOI Process

Enhance communication about when fees are charged and for what

Simplify and modernize fees

Increase timeliness

Enhance support to applicants in directing their requests to the right place

Increase staff allocation and enhance staff training

- Process and expectations are clearer
- Fees are easier for public bodies to apply and for applicants to understand
- Increase timeliness

Protecting Privacy

Enhance communication about privacy breaches

Increase protection for "whistleblowers" \*

- Increase trust and accountability

Proactive Disclosure

Continue to identify information for disclosure without a request

Enhance communication about what information is available

- Increase transparency and accountability
- People can more readily access the information they are interested in, in the formats most useful to them

Other Issues

Ensure archival of government information of lasting value

Increase and enforce penalties

Support release of information in the public interest

Reduce response times at the Commissioner's office

- Ensure completeness of the historical record
- Increase transparency and accountability

# CHALLENGES & OPPORTUNITIES

- Accountability and transparency of public bodies were at the core of most submissions.
- Participants called on public bodies to share information in the public interest, to enhance public trust.
- Several participants supported a requirement to document government decisions.
- Barriers to accessing information were identified by many participants as suggested areas of focus for reform. These included:
  - perceived delays or failures to produce records;
  - difficult and time-consuming processes;
  - broad application of exceptions to disclosure;
  - coverage of subsidiary entities owned or controlled by public bodies; and
  - fees for requests.
- Participants also focused on opportunities to make more information available without an FOI request.
- Participants noted the importance of notifying affected individuals when their privacy has been breached.
- There was confusion about fees, and several participants made recommendations about changes to the fee structure.
- Many participants felt that the Office of the Information and Privacy Commissioner should be held to a time limit (e.g. 30 days) for the resolution of a complaint.
- Several participants noted that entities that perform public functions should be held to the same level of transparency and accountability as public bodies.
- There were misconceptions identified around FOI response timelines and extensions, and whether contracted service providers are covered under the Act, suggesting a need for improved awareness for the public about the Freedom of Information process and the rights afforded by the Act.





# WHAT WE HEARD: TRANSPARENCY

## Exceptions to the Right of Access to Information

People have the right to access any public record through FOI and receive those records, subject to certain exceptions contained in legislation. These exceptions are designed to protect information that could be harmful to government or a third party, like businesses, individuals, or law enforcement. Some of these exceptions are applied at the discretion of the head of the public body, while other exceptions are mandatory and must be applied in all cases.

A few participants expressed concern respecting what they perceived as frequent or broad application of these exceptions.

One submission suggested these exceptions might be a barrier for Indigenous groups seeking records they need to substantiate land claims, seek reparations or foster reconciliation.

# WHAT WE HEARD: TRANSPARENCY

## **Documenting Government Decisions**

A duty to document is a positive obligation, in law or policy, to create records of government decisions. To promote accountability, there was support among some participants for a requirement to document government decisions.

Several participants supported including a requirement to document government decisions in FOIPPA. A few suggested that if public bodies fail to create and retain appropriate records, the public's perception of government transparency is negatively affected.

## **Expanding Coverage of the Act to Subsidiary Entities**

Some public bodies own or control other entities, which have been created to carry out specific functions on behalf of the public body.

Several participants noted that entities that perform a public function should be held to the same level of transparency and accountability as public bodies.



# WHAT WE HEARD: THE FOI PROCESS

## Fees for Requests

FOIPPA authorizes public bodies to charge applicants fees for specific activities associated with responding to requests for general information. Fees are not charged when a person makes a request for their own personal information.

Some participants were concerned that fees could discourage low-income British Columbians or not-for-profit groups from making requests. Some suggested that fees should be either reduced or simplified, for example by charging a flat-rate application fee for general requests.

A few participants suggested that no fees should be charged for electronic documents.

Finally, a few participants were under the misconception that government charges fees for requests for personal information, which is not the case. This indicates an area in which the Ministry could enhance its public education and awareness.



# WHAT WE HEARD: THE FOI PROCESS

## Fee Waivers

While processes to reduce or waive fees exist, a few participants noted that these were resource-intensive processes that delayed access to information. A few participants also noted that fees should automatically be waived when large amounts of information are redacted before records are released to the applicant.

## Fees for Broad or Voluminous Requests

Some participants recognized that fees are a useful tool for encouraging applicants to better focus requests. However, they also noted that, where a request is so broad as to result in a large number of responsive records or a significant amount of effort in responding, public bodies should assist an applicant in refining the topic of the request, to reduce or eliminate potential fees.

## Training and Resources

To support timely responses to information requests, several participants agreed that offices handling information requests need to be adequately funded and staffed. Further, participants noted that staff in public bodies should receive training and education to ensure they can fulfill their duty to assist applicants.

# WHAT WE HEARD: THE FOI PROCESS

## The Application Process

In order to obtain access to information in a record, an applicant must make a written request that provides sufficient detail and submit it to the public body that the applicant believes has custody or control of the record.

Several participants raised concerns over what they perceived as a difficult and time-consuming process. Specifically, a few participants mentioned delays that resulted from being asked to clarify information requests. Others reported that some public bodies may not have enough staff available to respond to requests.

Some participants suggested applicants should be provided more assistance in locating the relevant public body or ministry to which they should send their requests.

# WHAT WE HEARD: THE FOI PROCESS

## Timelines for Responding to Requests

Public bodies are required to make every effort to respond as quickly as possible to requests for information.

FOIPPA establishes a maximum time limit of 30 business days for responding to a request. In some circumstances, a public body is permitted to extend this time limit by 30 or more business days, to provide enough time to adequately respond to an applicant's request.

Some participants felt that the timelines should be reduced, and that timelines for their requests were frequently extended. Some participants felt that responses need to be provided sooner, especially if a request is in response to an imminent need.

# WHAT WE HEARD: PROTECTING PRIVACY

Some participants supported a mandatory requirement for public bodies to report privacy breaches to the Office of the Information and Privacy Commissioner, and to notify affected individuals who have been adversely impacted by a breach. Participants also reported a need for timely resolution of privacy breaches.

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# WHAT WE HEARD: WHISTLEBLOWER PROTECTION

Several participants expressed support for “whistleblower protection”. While FOIPPA contains protections for employees in limited circumstances, experts believed that broad “whistleblower protection” through a separate Act would ensure increased transparency. The Public Interest Disclosure Act received Royal Assent on May 17, 2018; however, it is not yet in force.



# WHAT WE HEARD: DUTY TO ARCHIVE

A few participants felt that there is a need to ensure that government records are created, retained and transferred to government archives to overcome perceived gaps in public record keeping.

Government continues to work toward the implementation of a permanent trusted repository for digital government records. Government information in paper format that is scheduled for permanent retention is held at BC Archives.

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# WHAT WE HEARD: PROACTIVE DISCLOSURE

To support transparency, several participants agreed that government has a duty to provide routine, timely proactive access to records, without the need for an FOI request. A few participants noted that information that is already frequently requested via FOI requests should be released proactively.

Some respondents felt that the routine and timely, predictable and proactive release of records may reduce the quantity of FOI requests, therefore improving timeliness.



# WHAT WE HEARD: DISCLOSURE IN THE PUBLIC INTEREST

FOIPPA contains a public interest override, which applies in spite of any other exception to disclosure in the Act, and mandates the disclosure of information about a risk of significant harm to the environment, the health or safety of the public or a group of people, or is in the public interest for any other reason.

A few participants reported the need for increased transparency through the use of this override.

Those individuals noted that when information may protect public safety, public bodies have a duty to inform citizens.

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# WHAT WE HEARD: OFFENCES AND PENALTIES

FOIPPA contains both general and specific offences for which an individual or organization is liable, upon conviction, to a fine.

Several participants felt that public bodies need to be held more accountable, and supported increased penalties or fines for those who fail to meet the requirements of the Act.

# NEXT STEPS & ACTION

Thank you to all of the people who took the time to provide input to help shape government's next steps regarding the *Freedom of Information and Protection of Privacy Act*.

This report provides a summary of the most common themes identified in the written submissions and blog responses we received during our online public engagement.

In addition to these common themes, we heard a lot of other comments from the individuals, organizations and experts who sent us written submissions or responded to our blog posts. Several participants supported previous recommendations raised by past Special Committees, Member's Bills and reports issued by the Information and Privacy Commissioner.

In addition to this online public engagement, the Minister of Citizens' Services and staff also met face-to-face with a number of stakeholder groups to better understand their perspectives. In addition, we took a user-experience approach to the FOI process and interviewed a sample of users to understand common challenges and experiences.

We are carefully reviewing all of the feedback we've received through these engagements.

The B.C. government is committed to making real and meaningful improvements to its information management practices. This includes looking at ways to improve the Freedom of Information process and enhancing privacy protection to safeguard your personal information.

The results of this engagement will inform future changes and improvements to access to information and privacy protection.

## 2018 Information Note Advice to Minister

Date:

Ref:

Issue: Report on EngageBC access and privacy engagement process ready for publication

### Conclusion / Next Steps (if any):

- The Ministry's report, *Information Access and Privacy Engagement: "What We Heard"*, will be published online.
- The report summarizes key themes from the engagement process:
  - The importance of government transparency;
  - The need for improvements to the freedom of information (FOI) process;
  - The importance of protecting privacy; and
  - The need for increased disclosure of information outside of FOI ("proactive disclosure").

### Background / Facts:

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- In the spring of 2018, the Ministry held an engagement process with the public regarding access and privacy on the EngageBC online forum.
- The Ministry committed to publishing a report describing "what we heard" on that forum.
- The report, *Information Access and Privacy Engagement: "What We Heard"*, summarizes key themes from the engagement process:
  - The importance of government transparency;
  - The need for improvements to the freedom of information (FOI) process;
  - The importance of protecting privacy; and
  - The need for increased disclosure of information outside of FOI ("proactive disclosure").

### Analysis:

- Publishing the report will allow participants, as well as the general public, the opportunity to review what was shared and the resultant analysis.
- Publishing the report also fulfills the Ministry's commitment, made at the outset of the engagement.
- Overall, the challenges and opportunities revealed in the engagement process echo those shared in submissions to the 2015 Special Committee of the Legislative Assembly that reviewed FOIPPA, as well as in the Committee's report to government, and reports from past and current Information and Privacy Commissioners.

**Attachment(s):** *Information Access and Privacy Engagement: "What We Heard"*

**Contact:** David Curtis, 778-698-5845

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |   |
|-------------------------|---|
| Date                    | November 10, 2017   |
| Time:                   | 2:30pm to 4:30pm  |
| Location                | s.15  |
| Attendees:              | Michael Vonn, Policy Director, BC Civil Liberties Association<br>Vincent Gogolek, Executive Director, BC Freedom of Information and Privacy Association<br>Mike Larsen, President, BC Freedom of Information and Privacy Association<br>Stanley Tromp, Journalist |
| Minister(s) Present:    | Minister Jinny Sims   |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, ADM, Corporate Information and Records Management Office<br>Shannon Russell, Senior Ministerial Assistant<br>Karl Riley, Ministerial Assistant   |

| Topics Discussed (not in chronological order) |
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Minister Jinny Sims

- Premier Horgan has made FOI timeliness and information access a priority for government as illustrated in the Minister's Mandate Letter (July 18, 2017)
- Government is committed to making informed and disciplined changes based upon inclusive and meaningful consultations with an array of stakeholders. Central to this process will be a focus on ensuring that all actions are supported by, and consistent with, a long-term plan.
- The initial phase of the consultation is being expedited will not be concluded within the next three months.
- The timing of initiatives to enhance the system will be defined through the consultation process and Cabinet consideration.
- Appreciation for the expertise and thoughtful perspectives and advice provided by the group and interest in reconvening the group at a future date.

## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |  |
|-------------------------|--|
| Date                    | December 12, 2017  |
| Time:                   | 1:00pm to 2:30pm   |
| Location                | s.15   |
| Attendees:              | Nancy Bain, ADM Transportation; Wes Boyd, ADM CSNR; Tara Richards, ADM Finance; Danine Leduc, Executive Director Municipal Affairs and Housing   |
| Minister(s) Present:    | Minister Jinny Sims  |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, ADM, Corporate Information and Records Management Office (CIRMO)<br>Joel Fairbairn, Executive Director, CIRMO<br>Melissa Sexsmith, Director, CIRMO<br>Shannon Russell, Senior Ministerial Assistant |

### Topics Discussed (not in chronological order)

- **Transparency and Accountability**

- Participants shared a strong sentiment that public access to information and the protection of privacy are critical foundations for effective government transparency and accountability. Additionally, that effective legislative, policy and operational frameworks were essential to support this public policy – and democratic objective.

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- **Importance and Success of Proactive Disclosure**

- Participants noted that the increased disclosure of information about matters of interest to the public has led to a direct reduction in FOI requests for information about those matters, in some cases.
- Participants also noted that the corporate directives issued last year had led to efficiencies in processing information for disclosure.

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- **Importance of Effective Records Management**

- Participants agreed that the foundation of an effective access to information program is

good records management.

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |   |
|-------------------------|---|
| Date                    | March 2, 2018   |
| Time:                   | 9:00am – 10:30am  |
| Location                | s.15  |
| Attendees:              | <p><u>University of British Columbia</u><br/>Hubert Lai, University Counsel<br/>Paul Hancock, Legal Counsel, Information and Privacy</p> <p><u>Simon Fraser University</u><br/>Li-Jeen Broshko, General Counsel,<br/>Ian Forsyth, University Secretary</p> <p><u>University of Victoria</u><br/>Bill Trott, Chief Privacy Officer<br/>Don Barnhardt, General Counsel</p> <p><u>University of Northern British Columbia</u><br/>Heather Sanford, University Secretary</p> <p><u>Thompson River University</u><br/>John Sparks, General Counsel and Corporate Secretary</p> <p><u>Royal Roads University</u><br/>Roberta Mason, Associate Vice-President, Student &amp; Academic Services,<br/>Student and Academic Services</p> <p><u>Research Universities' Council of British Columbia</u><br/>Robin Ciceri, President</p> <p><u>Ministry of Advanced Education, Skills and Training</u><br/>Jeremy Oaten, Manager, Business Services and MCRU</p> |
| Minister(s) Present:    | Minister Jinny Sims   |
| BC Gov't Support Staff: | <p>Jill Kot, Deputy Minister<br/>David Curtis, ADM, Corporate Information and Records Management Office (CIRMO)<br/>Melissa Sexsmith, Director, CIRMO<br/>Shannon Russell, Senior Ministerial Assistant</p>   |

## Topics Discussed (not in chronological order)

### Proactive Release

- Participants emphasized the importance their institutions placed upon the proactive release of information of general interest (e.g. Senate and Board of Governors Calendars, strategic plans and institutional plans) and support for the direct provision of information upon request.

### **Freedom of Information (FOI)**

- **FOI Context**

- The sector has experienced a substantial increase in the number of FOI requests, received in the last five years, with some estimates ranging from a 40% to 80% increase. Within this context, larger institutions were understood to have been subject to the most significant increases.
- The nature of individual FOIs has also been found to have evolved with an increased number of requests that are broadly-based, reoccurring, complex and voluminous. Expansion in the number of information systems within the institutions has also increased the volume of records available and subject to FOI requests.

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- **FOI Fees**

- The representatives agreed that fees should not be a barrier for accessing records of interest nor are they intended to recover the costs of the FOI process.

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |   |
|-------------------------|---|
| Date                    | March 2, 2018   |
| Time:                   | 1:00pm – 1:30pm   |
| Location                | s.15  |
| Attendees:              | <u>BC Association of School Business Officials</u><br>Patti Dundas, President<br><br><u>British Columbia School Trustees Association</u><br>Gordon Swan   |
| Minister(s) Present:    | Minister Jinny Sims   |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, ADM, Corporate Information and Records Management Office (CIRMO)<br>Melissa Sexsmith, Director, CIRMO<br>Shannon Russell, Senior Ministerial Assistant |

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| <b>Topics Discussed</b> (not in chronological order) |
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Representatives indicated that the education sector experienced a range of unique challenges related to the *Freedom of Information and Protection of Privacy* (FOIPPA) legislation. These include:

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |  |
|-------------------------|--|
| Date                    | March 2, 2018  |
| Time:                   | 3:00pm – 4:30pm  |
| Location                | s.15   |
| Attendees:              | <p><u>Fraser Health Authority</u><br/>Alexis Kerr, General Counsel, Legal Services, Risk Management,<br/>Adult Guardianship and Information Privacy</p> <p><u>Northern Health Authority</u><br/>Kirsten Thomson, Regional Director, Risk &amp; Compliance (teleconference)</p> <p><u>Vancouver Island Health Authority</u><br/>Kathy MacNeil, Interim President and CEO</p> <p><u>Vancouver Coastal Health Authority</u><br/>Steven Tam, Chief Privacy Officer</p> <p><u>Interior Health Authority</u><br/>Tony Yip, Manager, Freedom of Information, Privacy &amp; Policy Management<br/>(teleconference)</p> <p><u>Provincial Health Services Authority</u><br/>Sandra MacKay, Chief Legal Officer &amp; Chief FOI and Privacy Officer</p> <p><u>Ministry of Health</u><br/>Alison Pearce, Chief Privacy Officer<br/>Patrick Eagan, Director of Health Information Privacy, Security and Legislation<br/>Anne Stearn, Director, Deputy Minister's Office</p> |
| Minister(s) Present:    | Minister Jinny Sims  |
| BC Gov't Support Staff: | <p>Jill Kot, Deputy Minister</p> <p>David Curtis, ADM, Corporate Information and Records Management Office (CIRMO)</p> <p>Melissa Sexsmith, Director, CIRMO</p> <p>Shannon Russell, Senior Ministerial Assistant</p>   |



## **Topics Discussed (not in chronological order)**

### **General Context**

- Health Authorities' operations were noted to be diverse with respect to the resources and capacity of the various programs and communities served as well as the design and delivery of services with health care partners (e.g. physicians in patient care centers).
- A number of the participants noted that the management and administration of privacy and access to information responsibilities were centralized within specialized common units. Accordingly, workload impacts in one mandate (i.e. access to information) area affected the centralize team's ability to deliver services in its other mandate area (i.e. privacy).

### **Proactive Release**

- Participants all shared a common commitment to the proactive release of information. FOI was noted to be a last resort and that substantial efforts have been made to address applicants' questions directly where possible.

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### **Freedom of information (FOI)**

#### **• FOI Context**

- Participants noted their organization's commitment to the FOI system as essential for ensuring appropriate transparency and accountability to the public. Organizational culture, supported by effective policy, procedures and staff communications, were recognized as foundational in this regard.
- The volume of FOI requests was found to have increased significantly in recent years. This trend was attributed, in part, to the increase in electronic records and a fee structure that, due to electronic searches, effectively eliminates costs for applicants' use of the FOI system while dramatically increasing costs to the system associated with activities such as harms assessments and the application of exceptions to release.
- Requests in general were noted to be increasingly complex, broad-based and detailed. New types of record requests were also noted, including ongoing general surveillance of individuals and the holdings of common information systems.

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |   |
|-------------------------|---|
| Date                    | March 20, 2018  |
| Time:                   | 8:30 am – 9:15 am   |
| Location                | s.15  |
| Attendees:              | <u>BC School Superintendents</u><br>Claire Guy, Exec Director<br><br><u>BC School District Secretary Treasurers</u><br>Joan Axford, Executive Director  |
| Minister(s) Present:    | Minister Jinny Sims   |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, Assistant Deputy Minister<br>Corporate Information and Records Management Office (CIRMO)<br>Melissa Sexsmith, Director, CIRMO<br>Karl Riley, Ministerial Assistant |

**Topics Discussed** (not in chronological order)

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |   |
|-------------------------|---|
| Date                    | March 20, 2018  |
| Time:                   | 10:30 – 11:15   |
| Location                | s.15  |
| Attendees:              | Keri Bennett - Partner, Roper Greyell   |
| Minister(s) Present:    | Minister Jinny Sims   |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, ADM, Corporate Information and Records Management Office (CIRMO)<br>Melissa Sexsmith, Director, CIRMO<br>Karl Riley, Ministerial Assistant |

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| <b>Topics Discussed</b> (not in chronological order)   |
| <b>Context</b> <ul style="list-style-type: none"><li>• Ms. Bennett advises in all areas of workplace law with a focus on privacy law.</li></ul> s.13 |

## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |  |
|-------------------------|--|
| Date                    | April 20, 2018   |
| Time:                   | 3:15pm – 4:00am  |
| Location                | s.15   |
| Attendees:              | Kevin Desmond, Chief Executive Officer<br>Jennifer Johnston, Privacy Officer<br>Sabina Kunkel, Manager Information Access                                    |
| Minister(s) Present:    | Minister Jinny Sims  |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, ADM, Corporate Information and Records Management Office (CIRMO)<br>Shannon Russell, Senior Ministerial Assistant |

### **Topics Discussed** (not in chronological order)

The following expands upon the discussion, which focused upon an accompanying presentation provided by TransLink.

#### **Access to Information**

- **Volumes and Applicants:**

- TransLink noted a significant growth in the volume of access requests under the *Freedom of Information and Protection of Privacy Act* (FOIPPA).<sup>s.13</sup>

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## Minister Jinny Sims Mandate Letter Consultation - Freedom of Information & Access

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|                         |   |
|-------------------------|---|
| Date                    | June 14, 2018   |
| Time:                   | 9:30 am – 10:30 am  |
| Location                | s.15  |
| Attendees:              | <u>Union of British Columbia Municipalities</u><br>Wendy Booth<br>Arjun Singh<br>Gary MacIsaac  |
| Minister(s) Present:    | Minister Jinny Sims   |
| BC Gov't Support Staff: | Jill Kot, Deputy Minister<br>David Curtis, Assistant Deputy Minister<br>Corporate Information and Records Management Office (CIRMO)<br>Melissa Sexsmith, Director, CIRMO<br>Karl Riley, Ministerial Assistant |

**Topics Discussed** (not in chronological order)

**UBCM Written Submission to Minister**

- The Union of British Columbia Municipalities (UBCM) issued a survey to its members to solicit feedback for the purposes of this engagement.
- UBCM also provided a comprehensive written submission.

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Date

Ref:

Name  
Title  
Office/Organization  
Address Line 1  
City BC Postal Code

Dear [insert name]:

I would like to take this opportunity to thank you for taking part in our roundtable session on March 2, 2018. I very much appreciated hearing your views on how government can improve across a range of important areas including access to information rules to provide greater public accountability and response and processing times for freedom of information requests.

One of the issues raised during the roundtable session was with respect to information sharing within the health sector. I would like to draw your attention to a guidance document prepared by the Office Information and Privacy Commissioner in January of this year entitled: Access to Data for Health Research which may be of assistance to you. This guidance document can be found at the following link: <https://www.oipc.bc.ca/guidance-documents/2115>.

The feedback and information you provided is valuable and — over the course of the next few months — will be reviewed and carefully considered along with the input we receive from other stakeholders in upcoming sessions.

Draft meeting minutes that summarize the key priorities, issues and concerns we heard from you during our discussion will be provided to you in approximately one to two weeks. Once received, please let me know if these minutes do not accurately reflect your understanding of our discussions and Ministry staff will revise the material accordingly.

Once again, I want to thank you for taking the time to participate and helping us improve access and privacy within British Columbia. I firmly believe that only in reaching out to those who work with our access to information and privacy resources can we understand the full scope of what is needed to make meaningful changes.

Sincerely,

Jinny Jogindera Sims  
Minister

Attachment(s): November 10, 2017 Roundtable Meeting Minutes

pc: Jill Kot, Deputy Minister

David Curtis, Assistant Deputy Minister and Chief Information Officer

Date

Ref:

Name  
Title  
Office/Organization  
Address Line 1  
City BC Postal Code

Dear:[ insert name]

I would like to take this opportunity to thank you for taking part in our first roundtable session on November 10, 2017. I very much appreciated hearing your views on how government can improve across a range of important areas including access to information rules to provide greater public accountability and response and processing times for freedom of information requests.

I also appreciate your offer to help with government's consultation process. The feedback and information you provided is extremely valuable and over the course of the next few months will be reviewed and carefully considered along with the input we receive from other stakeholders in up-coming sessions.

Attached you will find draft meeting minutes that summarize the key priorities, issues and concerns we heard from you during our discussion. Please feel free to let me know if these minutes do not accurately reflect your understanding of our discussions and we will revise the material accordingly.

I would also like to take this opportunity to respond to your question regarding which ministry has been tasked with responsibility for the development of 'Whistleblower' legislation. The BC Public Service Agency is the lead entity and has been actively pursuing this important initiative.

Once again, I want to thank you for taking the time to participate and for being strong advocates for access and privacy within British Columbia. I firmly believe that only in reaching out to all of those who work with, utilize our access to information and privacy resources can we understand the full scope of what is needed to make meaningful changes.

Sincerely,

Jinny Jogindera Sims  
Minister

Attachment(s): November 10, 2017 Roundtable Meeting Minutes

pc: Jill Kot, Deputy Minister  
David Curtis, Assistant Deputy Minister and Chief Information Officer



### **Why does the use of a blanket consent not comply with the requirements of FOIPPA?**

- FOIPPA is an authority-based law, not a consent-based law; therefore consent is rarely relied upon in the collection, use, disclosure, storage of or access to personal information under FOIPPA.
- However, there are some provisions in FOIPPA that use consent. Storage and access outside of Canada (section 30.1) is one of these provisions — one of the ways that personal information can be stored or accessed from another jurisdiction is where consent has been given.
- FOIPPA states that a consent must be “in the prescribed manner”. The FOIPPA Regulation sets out the requirements for a legally-valid consent under FOIPPA.
- The Regulation requires a consent to:
  - Be in writing;
  - Specify what personal information the consent applies to<sup>1</sup>;
  - Specify to whom the personal information will be disclosed;
  - Specify the purpose of the disclosure of the personal information;
  - State the date on which the consent is effective and, if applicable, the date on which the consent expires; and
  - If practicable, state the jurisdiction to which the personal information will be disclosed.
- A blanket consent does not contain these elements. Therefore it is not considered a valid consent under FOIPPA.

### **Is encrypted personal information still subject to the data residency requirements under FOIPPA?**

- While encryption is an effective security measure, it does not anonymize personal information such that is no longer personal information for the purposes of FOIPPA.
- It is important to distinguish privacy from security. Public bodies are required by law to protect personal information by making reasonable security arrangements.
- When encrypted personal information is disclosed, there also remains the ability for the information to be unencrypted.
- There are other solutions that would allow the use of emerging technologies and tools — in a number of consultations that have occurred to date, the OIPC has been supportive of the direction proposed by the Province to move to Canadian-based cloud service providers.
- Ministry of Citizens’ Service staff are working to identify and assess authorized cloud service providers in consultation with the OIPC.

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<sup>1</sup> The degree of detail that is appropriate will vary according to the circumstances. In some cases, it may be appropriate to refer to a category of personal information, such as “a hospital file”. In others, it may be appropriate to list specific types of information, such as “the report on my medical examination by Dr [name] on [date]”. Or it may be appropriate to list specific elements, such as “my name”, “my age” or “my blood type”

November 10, 2017

### Opening Statements

I welcome any brief opening statements that you may have.

### 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** 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?

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

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## 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)

### 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

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



March 20, 2018

## 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.

## Stakeholder Profile

TransLink was created in 1999 and is legally named the South Coast British Columbia Transportation Authority. TransLink is Metro Vancouver's regional transportation authority, responsible for regional transit, cycling and commuting options as well as Intelligent Transportation System programs. TransLink services are delivered through contractors, as well as operating companies and subsidiaries such as Coast Mountain Bus Company, British Columbia Rapid Transit Company Ltd. (SkyTrain) and West Coast Express Ltd.

TransLink also shares responsibility for the Major Road Network (MRN) and regional cycling with municipalities in Metro Vancouver. TransLink is the first North American transportation authority to be responsible for the planning, financing and managing of all public transit in addition to major regional roads and bridges.

## 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 Translink may raise the following issues:

- Legislative mechanisms for addressing high frequency FOI applicants.
- Fees.
- Data residency.

April 20, 2018

### Stakeholder Profile

Federation of Post-Secondary Educators of BC (FPSE) is a federation of nineteen member locals, each with its own autonomous, democratic structure. Its member locals are independent faculty and staff unions in British Columbia's public and private post-secondary institutions. The FPSE is not a public body and is not subject to the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Some of the members represented by the FPSE are employees of public bodies.

### Key Issues Likely To Be Raised

Given that the FPSE is not a public body under FOIPPA, it has never made a submission to the Special Committee, nor have they contacted the Ministry in past. Based on the fact that some of their members are employees of public post-secondary institutions, they may share common interests with other education sector bodies. This could include an interest in amending the data residency requirements.

## Appendix A - Data Residency

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### I. ISSUE

Data Residency

### II. BACKGROUND

- In 2004, as part of package of amendments<sup>1</sup> that was aimed at mitigating the risk of British Columbians' personal information being accessed by US authorities under the USA PATRIOT ACT, the *Freedom of Information and Protection of Privacy Act* (FOIPPA) was amended to include a robust set of data residency requirements. The intent of these provisions was to ensure that BC citizens' personal information remains within Canadian borders and outside the grasp of foreign law enforcement agencies.
- A public body must ensure that personal information in its custody or under its control can only be stored, accessed or disclosed within Canada, unless specific conditions are met, as outlined in the Act.

### III. DISCUSSION

- Several stakeholders have noted that BC's data residency provisions make it difficult to take advantage of new and emerging technology available outside of Canada.

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- Over the last five years, there has been an increase in the number of companies, which have demonstrated a willingness to become FOIPPA-compliant in this regard (e.g. by establishing Canada-based facilities).
- Despite calls to repeal these data residency requirements, government has remained committed to maintaining these protections in FOIPPA to ensure that the personal information of BC citizens remains protected from foreign entities.
- Submissions to the 2015 FOIPPA Special Committee from stakeholders, such as the Office of the Information and Privacy Commissioner, the BC Freedom of Information and Protection of Privacy Association and the BC Civil Liberties Association, recommend emphatically that these data residency provisions are kept in place. The committee recommended that these provisions be retained.

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<sup>1</sup> The "Patriot Act provisions" amendment package also included provisions which (a) clarify that the privacy provisions of the Act extend to service providers, (b) provide for whistleblower protections, and (c) provide for offenses for contravening the Act or the whistleblower provisions.

## **Appendix A**

### **Stanley Tromp's Recommendations to the 2015 FOIPPA Special Committee**

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Recommendations for Raising British Columbia's Freedom of Information and Protection of Privacy Act to World Standards, by Stanley Tromp, January 2016

(Attachment to a submission to the British Columbia Legislative Special Committee to Review the Freedom of Information and Protection of Privacy Act)

#### **Complete list of 67 Recommendations**

##### **Recommendation No. 1**

Change the Act's title to The B.C. Right to Information and Protection of Privacy Act

##### **Recommendation No. 2**

Amend Section 2 to state that the B.C. FOIPP Act's purposes include increasing public participation in policy making, scrutinizing government operations, and reducing corruption and inefficiency; and add phrases on the models of purpose clauses in the FOI laws of Nova Scotia or Finland.

##### **Recommendation No. 3**

Add a clause to Section 2 to state that access to government information is to be regarded in British Columbia as "a basic human right."

##### **Recommendation No. 4**

Amend the Act so that the B.C. government may not enter into a "shared jurisdiction" arrangement or contract, or create a new institution with federal, provincial, municipal or other governmental partners, unless the records of that arrangement, etc., are available under a freedom-of-information law of at least one of the partners.

##### **Recommendation No. 5**

Retain the terms "custody or control" of public entities in Sec. 3, but add definitions of the terms.

##### **Recommendation No. 6**

Amend the B.C. FOIPP Act to state that the Act's coverage extends to any institution that is controlled by a public body; or performs a public function, and/or is vested with public powers; or has a majority of its board members appointed by it; or is 50 percent or more publicly funded; or is 50 percent or more publicly owned. This includes public foundations and all crown corporations and all their subsidiaries. The OIPC should be granted extra resources when its mandate is expanded to include such subsidiaries.

##### **Recommendation No. 7**

Amend the Act so that government and public agencies must post all P3 partnership and large supply contracts on their websites within one week of their finalization, subject only to FOIPP Act exemptions (which may be appealed to the OIPC). Amend the Act to prohibit any restrictions on readership of these records. Copying or redistribution rights should conform to the terms of the "Crown copyright" Recommendation No. 10 in this report.

##### **Recommendation No. 8**

If recommendation No. 6 is not followed, there is an interim measure: To ensure better FOIPP Act coverage, regarding the addition of entities, amend Section 76.1(1), "The minister responsible for this Act may, by regulation, amend Schedule 2 to do one or more of the following [...]" by changing "may" to "must."

##### **Recommendation No. 9**

State that government and agencies may not invoke the rationale of "out of scope" (or any equivalent term) to withhold any part of any record requested under the FOIPP Act. Records or parts of records may only be withheld

if they fall under an exemption in the FOIPP Act, not if the government asserts that they fall outside the Act's scope.

**Recommendation No. 10**

Add a clause to the FOIPP Act to state that government and agencies may not assert "crown copyright" regarding records released in response to FOIPP Act requests. The only exceptions to this clause would be very limited and must be detailed in the FOIPP Act (not regulations), and could include situations where "such material is subject to an existing legal obligation of the Province, i.e., a licence, or someone makes copies of something purporting to be the official version of Provincial material, but which is out of date, and distribute those copies to others, thus creating the potential for inconvenience, or worse, to third party recipients of that material." Applicants would retain the right to appeal a wrongful or overly broad assertion of "crown copyright" in regards to FOIPP Act responses to the Commissioner, who could prohibit the government from asserting copyright claims in cases where such assertions do not conform to this relevant section of the Act.

**Recommendation No. 11**

Amend the Act to mandate an initial reply in 20 days (instead of the current 30 days), extendable for another 20 – the standard in the FOI laws of Quebec, New Zealand, the United Kingdom and the United States.

**Recommendation No. 12**

In November 2006, the B.C. Information Commissioner launched an effective new 'expedited inquiry' process to curtail delays. Consider amending the Act to enshrine this "expedited inquiry" plan into law.

**Recommendation No. 13**

Amend the Act 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).

**Recommendation No. 14**

Amend the Act to implement the approach in some laws (e.g. Mexico), so that if an agency is in a deemed refusal situation, it is required to gain the approval of the Commissioner before withholding information.

**Recommendation No. 15**

Amend the law to mandate that where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours (a model found in many other FOI laws).

**Recommendation No. 16**

Restore the term calendar days – as it was initially – in place of working days, in regards to B.C. FOIPP Act response and appeal times.

**Recommendation No. 17**

Amend the Act to mandate that B.C. FOIPP Act performance measurements including response times will be recorded, and that these measurements shall be published online in an annual FOI report card of all public bodies.

**Recommendation No. 18**

Amend the Act to mandate that failures to respond would be reflected in the reduced bonuses of the "head of the public body" on FOIPP issues (such as deputy ministers in ministries).

**Recommendation No. 19**

To reduce delays, "sign off" authority levels and processes must be streamlined and simplified. Consider vesting such authority at the lowest reasonable level, normally with the information officer if there is one.

**Recommendation No. 20**

To lessen overall response times, public bodies must give records to the applicant in staged releases if he or she requests it.

**Recommendation No. 21**

Amend the Act to permit “continuing” or “rolling requests” on the model of Alberta’s FOI law Sec. 9.

**Recommendation No. 22**

In Section 11, “Transferring a request,” restore the original 10 day limit (not 20 days).

**Recommendation No. 23**

Add a harms test for the Sec. 12 cabinet records exemption, modeled upon the terms used in Scotland’s FOI law Sec. 30.

**Recommendation No. 24**

Amend Sec. 12(2) to state that the Sec. 12 exemption does not apply to agendas or topic headings, including such examples as “items for discussion” and “legislation review.” Such records could still be withheld under other sections of the Act.

**Recommendation No. 25**

Consider posting the cabinet meeting topic headings on the internet - as several public bodies’ boards do, subject to an exception for emergencies.

**Recommendation No. 26**

Amend the Act to state that “government caucus committees” are not committees for the purposes of Sec. 12.

**Recommendation No. 27**

If the recommendation above is not accepted, there is a second option: Amend Sec. 12 to state that at least 2/3 of the members of the committee must be members of the Executive Council (not 1/3), and the cabinet members of the committee must have attended at least 50 percent of the meetings in the calendar year in order for the committee records to qualify for Sec. 12 coverage. Include all cabinet or caucus committees dealing with climate change. As well, state that parliamentary committees fall within the scope of the B.C. FOIPP Act, though excluded from Sec. 12.

**Recommendation No. 28**

Change Sec. 12 on cabinet records from a mandatory exemption to a discretionary one, whereby deliberative records may be released if cabinet consents.

**Recommendation No. 29**

Delete clause “or prepared for submission” from Sec. 12(1). Records can only be withheld under Sec. 12 if they were actually submitted to and considered by cabinet, not if they were “prepared” to be but never were. (They could still be withheld under other exemptions.)

**Recommendation No. 30**

Amend Section 12 to state that the cabinet records exemption cannot be applied after 10 years (as in Nova Scotia’s FOI law), instead of the current 15 year time limit. 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.

**Recommendation No. 31**

An amendment to the B.C. FOIPP Act should remove all potential uncertainties in the wording around cabinet documents, making it clear that they are defined solely by their substance, not by their titles.

**Recommendation No. 32**

As FIPA advised in 2004, amend the Act so that Section 12(3), which applies to local public bodies, has parallel provisions to s. 12 (2)(c) which applies to Cabinet confidences. The lack of similar qualifying language in 12(4) allows local public bodies to withhold background materials or analysis in conditions not allowed to Cabinet, and this omission should be corrected.

**Recommendation No. 33**

Add a provision to the B.C. FOIPP Act Sec. 12 to state that all decisions of the Cabinet along with the reasons thereof, and the materials on which the decisions were taken shall be made public within five years after the decisions have been taken and the matter is complete.

**Recommendation No. 34**

Amend Sec. 13 to include a section on the model of Quebec's FOI law Sec. 38, whereby the B.C. government may not withhold policy advice records after the final decision on the subject matter of the records is completed and has been made public by the government. If the record concerns a policy advice matter that has been completed but not made public, the B.C. government may only withhold the record for two years. If the record concerns a policy advice matter that has neither been completed nor made public, the B.C. government may only withhold the record for five years (on the model of Nova Scotia's FOI law, Sec. 14).

**Recommendation No. 35**

Amend Section 13 to include a harms test, wherein a policy advice record can be withheld only if disclosing it could cause "serious" or "significant" harm to the deliberative process. The best models can be found in the FOI laws of South Africa (Sec. 44), and the United Kingdom (Sec. 36). Also clarify and emphasize that Section 13 cannot be applied for facts and analysis. Enact FIPA's recommendation that "the section 13 advice and recommendation exception be amended to include only information which recommends a decision or course of action by a public body, minister or government."

**Recommendation No. 36**

Amend Section 14 (legal advice) to state that the exemption cannot be applied to records 30 years after they were created (per the model of the UK FOI law's Sec. 43). As well, add a harms test, to state the exemption can only be applied to withhold records prepared or obtained by the agency's legal advisors if their release could reveal or impair procedural strategies in judicial or administrative processes, or any type of information protected by professional confidentiality that a lawyer must keep to serve his/her client.

**Recommendation No. 37**

Amend Sec.16(1)(a) by changing the word "relations" to "negotiations." Also change the term "harm" to "serious harm based on reasonable expectations of secrecy."

**Recommendation No. 38**

Amend Sec. 16(1)(a) and (b) to state that, upon receiving an FOI request that might trigger this section, the B.C. government must consult with the other government to ask if it would object to disclosure of the records, as likely to cause "serious harm based on reasonable expectations of secrecy" to negotiations, not just unilaterally presume that it might do so without inquiring.

**Recommendation No. 39**

Amend Sec. 16 (1)(b) to state that information may be withheld if it would "(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies" and add "where there is an implicit or explicit agreement or understanding of confidentiality on the part of both those supplying and receiving the information, and where disclosure would cause serious harm based on reasonable expectations of secrecy."

**Recommendation No. 40**

Amend Sec. 20 to state that if the government does not release requested information within 60 days if it promised to do so, then upon the 61st day, it must release all the sought information immediately, without exemptions or costs to the applicant, unless doing so would cause “grave harm” to the public interest.

**Recommendation No. 41**

Amend Sec. 22 to state that a B.C. FOIPP Act applicant’s identity must not be revealed within government without a strict need to know (which is, mainly to locate the records being sought).

**Recommendation No. 42**

Amend Sec. 22 to state that bonuses of named officials and employees of all entities covered by the FOIPP Act are not the private information of individuals, and encourage the government to post them online, as it does for salaries and expenses.

**Recommendation No. 43**

Amend the Act to state that all salaries and expenses of officials and employees of all entities covered by the FOIPP Act must be available for routine release, without an FOI request, and encourage all such entities to publish such figures online annually, as the B.C. government does for ministries for salaries over \$75,000.

**Recommendation No. 44**

The government must publish all winning and losing bids for supply and service contracts, outside the FOI process. Amend Sec. 21 (1.)(b), re: “that is supplied, implicitly or explicitly, in confidence.” Change to – “that is supplied or negotiated, implicitly or explicitly, in confidence.”

**Recommendation No. 45**

Delete Sec. 22.1. Disclosure of information relation to abortion services. Such information is already protected by other exemptions.

**Recommendation No. 46**

Add student societies of educational bodies to the Act’s coverage.

**Recommendation No. 47**

Clarify that government statistics and datasets – if all personal identifiers have been removed - cannot be withheld under any exemption.

**Recommendation No. 48**

Retain the term “for any other reason” in Sec. 25, but add further illustrative examples to it, such as those noted in this report from other nations.

**Recommendation No. 49**

Amend Section 25 in accordance with the Commissioner’s recommendation to remove the temporal requirement. Encourage the Commissioner to devote a chapter of his annual report to describe serious cases of failure (whether or not an FOI request for access was made) where the government and agencies had an obligation to proactively disclose information in the public interest per Sec. 25, but did not. Seek and consider input on further measures to guarantee the Sec. 25 duty of proactive publication.

**Recommendation No. 50**

The deadline to appeal to the Commissioner on a B.C. FOIPP Act related matter should be doubled to 60 days. The deadline to file an appeal of a FOIPP ruling to Judicial Review should also be doubled to 60 days.



**Recommendation No. 51**

Amend the Act so that upon the conclusion of an investigation, the Commissioner's office will have the power to recommend to the Attorney General's office that it lay charges and fine public bodies for obstructive behaviour where warranted and/or to impose costs on public bodies in relation to the appeal. These amounts will be determined in further amendments or regulations.

**Recommendation No. 52**

Place a provision in the Act to preserve pre-existing access to information, on the model of Ontario's FOI law Sec. 63 (2).

**Recommendation No. 53**

Amend Sec. 70 to mandate that B.C. cabinet minutes be routinely released onto government websites after 20 years, a period gradually moving to the 10 years advised in this report for the termination of the cabinet records exemption.

**Recommendation No. 54**

Amend Sec. 70 to add a much longer list of records that must be routinely released or proactively published, on the examples of Article 19's Model of Freedom of Information Law (2001), and those of many other nations and commentators noted in this report.

**Recommendation No. 55**

Amend the B.C. Act's Section 74 to prohibit and penalize persons for the unauthorized record destruction and handling in the FOI process, perhaps with the wording of the Canadian Access to Information Act, Sec 67.1.

**Recommendation No. 56**

Regarding penalties, consider amending the B.C. Act's Section 74 along the models of Article 19's Model Freedom of Information Law (2001) and the Commonwealth Secretariat's Model Freedom of Information Bill (2002). 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."

**Recommendation No. 57**

Amend Section 74 to raise the fine for obstructing the Commissioner to \$50,000. Consider the advisability of prison terms for the same offense.

**Recommendation No. 58**

Amend Sec. 75 (2)(b) to change the wording from "time severing..." to "time reviewing the record and severing information from a record."

**Recommendation No. 59**

Consider extending the free time "spent locating and retrieving a record" from the current 3 hours up to 5 hours (which is the standard in the federal Access to Information Act, Sec. 11).

**Recommendation No. 60**

First option: Repeal B.C. FOIPP Act Sec. 79 and its related schedule. If that is not accepted, there is a secondary option (which was FIPA's recommendation in 2005): Extend coverage to categories of records exempted by "notwithstanding clauses" in other statutes.

**Recommendation No. 61**

Consider a policy directive for the ministry that administers the FOIPP system to educate and promote the FOIPP process to the general public. Alternatively, the Commissioner could be encouraged to educate and promote the FOIPP process to the general public. If so, government must provide adequate funds for this task, and it would be a dedicated, stand-alone part of the Commissioner's budget.

**Recommendation No. 62**

The B.C. government should pass an effective Archives and Information Management Act, designed to regulate the entire life-cycle of government-held information.

**Recommendation No. 63**

Add to Part 2 of the B.C. FOIPP Act a duty for public bodies to document key actions and decisions based on the definition of "government information" in the Information Management Act. Enact all the recommendations of Implementing Investigation Report F15-03 by David Loukidelis.

**Recommendation No. 64**

Either the B.C. FOIPP Act or a new Archives Act should set record retention rules on cell phone and blackberries and all communication technologies (and which accounts are private or public), and computer backups of these – and be reviewed often to keep current with new technologies.

**Recommendation No. 65**

Pass a B.C. Open Meetings Act, to establish which agencies must hold open meetings, and set rules on what they must discuss matters in open session, and may discuss in closed session. Certain smaller or specialized agencies could continue to meet entirely in private (although their minutes could still be requested by FOI). Alternatively, such rules could be set in the B.C. FOIPP Act, or in the legislation currently governing each agency.

**Recommendation No. 66**

That the B.C. government create a separate Act for general "whistle-blower" protection, as was done at the Canadian federal level – though the laws of UK and South Africa are better overall models. The penalties for violating this new Act should be at least \$50,000.

**Recommendation No. 67**

That the Committee request that the B.C. Premier ask the Prime Minister and other premiers to begin discussions on amending the Canadian Constitution to include the public's right to obtain government information - which is a provision that 42 other nations have in their Constitutions or Bill of Rights, and one that was urged by B.C.'s first information and privacy commissioner.

## Appendix B – Documenting Government Decisions

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### I. ISSUE

Concerns have been raised respecting the requirement recently enshrined in the *Information Management Act* (IMA) to document government decisions.

### II. BACKGROUND

- A legal or policy requirement to create records is commonly known as a “duty to document”. Such a requirement is typically posed as an obligation to document “actions, decisions and reasons”, but is sometimes extended to include “advice and deliberations”.
- In BC, the former Information and Privacy Commissioner, Elizabeth Denham, recommended that government legislate a “duty to document” in multiple investigation reports, most notably in her October 2015 report: “Assess Denied”. She also recommended this in her presentation to the 2015 all-party Special Committee of the Legislative Assembly that reviewed the *Freedom of Information and Protection of Privacy Act* (FOIPPA).
- While she previously supported the inclusion of a “duty to document” in the IMA, she later advocated for its inclusion in FOIPPA due to its broader scope and independent oversight<sup>1</sup>.
- In his report, David Loukidelis recommended that government give the most serious consideration to Commissioner Denham’s recommendation that a “duty to document” be created in legislation, with the details to be worked out in policy at a ministry or program level.
- In March 2017, BC became the first province in Canada to legislate a requirement to document government decisions, and it did so through an amendment to its new IMA. The IMA was deemed to be the logical fit for such a provision given that IMA set out a number of requirements for the appropriate management of information throughout its lifecycle, starting with creation and ending with destruction or permanent archiving.

### III. DISCUSSION

- The provision in IMA requires heads of government bodies to ensure that they have appropriate policies, procedures, training, awareness, and technologies in place for creating government information that constitutes an adequate record within their organization to document key decisions and decision-making processes. This is intended to capture decisions that relate to continuity of operations, development of policy and programs, or which are needed for evaluation, audit and review purposes.
- Government’s Chief Records Officer (CRO) is responsible for overseeing compliance with this provision and requires the CRO to issue directives or guidelines to support government bodies in operationalizing this requirement.
- As it stands these new provisions would be brought into effect by regulation in order to provide government bodies some time to review and assess the policies, processes and systems they currently have in place to support good information management practices and to enable the CRO

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<sup>1</sup>FOIPPA covers 2900 public bodies, with oversight by the Information and Privacy Commissioner. IMA covers government ministries and 41 other government agencies and is not subject to the Information and Privacy Commissioner’s oversight.

to develop and issue the necessary directives/ or guidance to assist government bodies in achieving compliance with their duties under the Act.

- Having said this, the Acting Commissioner, some media and the Freedom of Information and Privacy Association (FIPA) have criticized the IMA amendments as inadequate in terms of addressing the “duty to document” issue.
- Specifically FIPA, as well as the then-opposition, raised the following issues when the bill was introduced:
  - That the provision intended to require documentation of government decisions is linked to a discretionary provision whereby the Chief Records officer “may” issues guidelines and direction respecting the creation of records.
  - That the IMA does not allow for independent oversight by the Information and Privacy Commissioner.
  - That the requirement is not incorporated into FOIPPA, as was recommended by the former Commissioner and the 2015 FOIPPA Special Committee, thereby limiting its scope of coverage and not allowing for independent oversight.

## Appendix B – Subsidiary Corporations

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### I. ISSUE

Corporations owned by entities subject to the *Freedom of Information and Privacy Act* (FOIPPA)

### II. BACKGROUND

- On October 20, 2011, the Minister responsible for FOIPPA received a letter from the OIPC asking the ministry to draft amendments to FOIPPA to ensure coverage of subsidiary corporations of local public bodies.
- The Commissioner made this request in response to a 2009 B.C. Supreme Court decision (Simon Fraser University [SFU] v. British Columbia [Information and Privacy Commissioner], 2009 B.C.S.C. 1481) which held that FOIPPA did not extend to the records of SFU's subsidiary corporations.
- The 2010 Special Committee that reviewed FOIPPA made a similar, but slightly broader, recommendation to expand the definition of "public body" in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body.
- Currently, corporations that are created or owned by "local government bodies" (which include municipalities and regional districts) are, by definition, already covered by FOIPPA.
- However, this is not the case for corporations created or owned by ministries, crowns, universities, school boards, health authorities, and other types of "local public bodies". These corporations are not covered by the Act.
- Government has entered into preliminary consultations with ministries, crowns, universities and school boards to understand the scope of the issue and the impact of covering these public bodies' corporations.
- These consultations have indicated that this is a very complex issue due to the divergent types of corporations that are affiliated with local public bodies.

### III. DISCUSSION

- The Office of the Information and Privacy Commissioner (OIPC), media and other privacy advocates continue to press government to adopt changes to FOIPPA that will bring public bodies' subsidiary corporations under FOIPPA.
- s.13  
However, the range of organizations that can fall under the term "subsidiary corporations" is extremely broad and they vary greatly in role and structure.
- Factors contributing to the complexity of this issue are that subsidiary corporations are commercial in nature and would face competitive disadvantage, are controlled by multiple bodies under varying regulatory regimes (e.g. multiple universities, a government ministry, a federal department, and a private business), and are generally not seen, or thought to be a "government organization".
- As a result, it is important that government thoroughly understand the complexities of this issue.

## Appendix C – Duty to Document

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### I. ISSUE

Concerns have been raised respecting the “Duty to Document” recently enshrined in the Information Management Act (IMA)

### II. BACKGROUND

- A “duty to document” is a positive obligation to create records. It is typically posed as a duty to document “actions, decisions and reasons” but is sometimes extended to include “advice and deliberations”.
- In BC, the former Information and Privacy Commissioner, Elizabeth Denham, recommended that government legislate a “duty to document” in multiple investigation reports, most notably in her October 2015 report: “Assess Denied”. She also recommended this in her presentation to the 2015 all-party Special Committee of the Legislative Assembly that reviewed the Freedom of Information and Protection of Privacy Act (FOIPPA).
- While she previously supported the inclusion of a “duty to document” in the Information Management Act (IMA), she later advocated for its inclusion in FOIPPA due to its broader scope and independent oversight<sup>1</sup>.
- In his report, David Loukidelis recommended that government give the most serious consideration to Commissioner Denham’s recommendation that a “duty to document” be created in legislation, with the details to be worked out in policy at a ministry or program level.
- In March 2017, BC became the first province in Canada to legislate a “duty to document” and it did so through an amendment to its new Information Management Act (IMA). IMA was deemed to be the logical fit for such a provision given that IMA set out a number of requirements for the appropriate management of information throughout its lifecycle, starting with creation and ending with destruction or permanent archiving.

### III. DISCUSSION

- The “duty to document” provision within IMA requires heads of government bodies to ensure that they have appropriate policies, procedures, training, awareness, and technologies in place for creating government information that constitutes an adequate record within their organization to document key decisions and decision-making processes. This is intended to capture decisions that relate to continuity of operations, development of policy and programs, or which are needed for evaluation, audit and review purposes.
- Government’s Chief Records Officer (CRO) is responsible for overseeing compliance with this provision and requires the CRO to issue directives or guidelines to support government bodies in operationalizing this requirement.
- As it stands these new provisions would be brought into effect by regulation in order to provide government bodies some time to review and assess the policies, processes and systems they

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<sup>1</sup>FOIPPA covers 2900 public bodies, with oversight by the Information and Privacy Commissioner. IMA covers government ministries and 40 other government agencies and is not subject to the Information and Privacy Commissioner’s oversight.

currently have in place to support good information management practices and to enable the CRO to develop and issue the necessary directives/ or guidance to assist government bodies in achieving compliance with their duties under the Act.

- Having said this, the Acting Commissioner, some media and the Freedom of Information and Privacy Association (FIPA) have criticized the IMA amendments as inadequate in terms of addressing the “duty to document” issue.
- Specifically FIPA, as well as the then opposition raised the following issues when the bill was introduced:
  - That the provision intended to address ‘duty to document’ is linked to a discretionary provision whereby the Chief Records officer “may” issues guidelines and direction respecting the creation of records.
  - That the IMA does not allow for independent oversight by the Information and Privacy Commissioner.
  - That the “duty to document” is not incorporated into FOIPPA, as was recommended by the former Commissioner and the 2015 FOIPPA Special Committee, thereby limiting its scope of coverage and not allowing for independent oversight.

## Proactive Disclosures under FOIPPA

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### I. ISSUE

“Proactive disclosure” is a term used broadly by government and stakeholders to refer to the disclosure of information to an individual or the public without a formal or informal request.

### II. BACKGROUND

#### Section 71 Disclosures

- Section 71 of FOIPPA states that the head of a public body must establish categories of records that are in the custody or under the control of the public body and are available to the public without a request for access.

#### Section 71.1 Disclosures

- Section 71.1 of FOIPPA provides the Minister responsible for the Act with the discretionary authority to establish proactive disclosure categories that include records that must be available to the public without a request for access under the Act.
- Where a proactive disclosure category is established, ministries must follow any directions issued by the Minister relating to the disclosure of the information.
- The following eight categories have been established:
  - Summaries of information about Community Gaming Grants
  - Ministers’ travel expenses
  - Ministers’ and Deputy Ministers’ calendars
  - Summaries of information about directly-awarded contracts
  - Summaries of open and closed FOI requests
  - Records released in response to FOI requests
  - Summaries of information about contracts with values over \$10,000 CAD
  - Summaries of information about alternative service delivery contracts

#### Section 25 Disclosures

- Section 25 of FOIPPA overrides the exceptions to disclosure in the Act.
- It requires that, whether or not there has been an FOI request, public bodies disclose information to an applicant, the public or an affected group of people, without delay, in certain circumstances:
  - a) if the information is about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
  - b) the disclosure of which is, for any other reason, clearly in the public interest.
- Examples include records that would indicate:
  - the accidental release of a pesticide into a stream, which will affect fish and other aquatic life;
  - the presence of a norovirus in the public drinking water; or
  - a natural gas leak which could cause an explosion in a populated area.



### III. DISCUSSION

#### Section 71 Disclosures

- The OIPC recently conducted an investigation into government's compliance with section 71.
  - s.13
- The OIPC has not yet released its findings.

#### Section 71.1 Disclosures

- In addition to the disclosures made under section 71, the Corporate Information and Records Management Office continues work to identify new categories of records for disclosure under section 71.1 of the Act.
- As with disclosures made under section 71, stakeholder groups have long called for an increase in the number of categories established by the Minister responsible for FOIPPA for disclosure.

#### Section 25 Disclosures

- Given the potential gravity of this override, government's use of section 25 has been infrequent.
- Past interpretations of this section by the OIPC and government included a requirement for temporal urgency. This meant that government was disclosing information under section 25 only when the information related to an imminent matter.
  - Ex. "This bridge is about to collapse" vs. "This bridge may collapse in the next 5 years"
- Following the Commissioner's 2015 investigation into the lack of information released regarding the Mount Polley mine tailings pond, the Commissioner released a report which stated that section 25 should no longer be interpreted to require an element of urgency in order to require the disclosure if it is clearly in the public interest.
- The Commissioner released another report in 2016 concerning section 25 following an investigation into the lack of records released regarding nitrate levels in the Hullcar aquifer in Spallumcheen. In this report the Commissioner made it clear that the requirement is not merely that the public be notified of an issue in the public interest, but also that the records that relate to the issue be publically released.
- Following the 2015 and 2016 reports, the OIPC indicated that it expects government take action to address the reinterpretation and ensure that disclosure under section 25 is made where it is legally required.
- Government has bolstered its training and awareness on section 25 and recently issued a policy to guide government employees on the appropriate factors for consideration when applying section 25 and the necessary steps required in making such a disclosure.
- Though efforts to increase awareness of section 25 within ministries have been made, there are many stakeholders that believe that government is still not utilizing this provision appropriately and should be making disclosures under this provision more frequently.

## Appendix F – Police Associations

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### I. ISSUE

Coverage of Police Associations under the *Freedom of Information and Protection of Privacy* (FOIPPA)

### II. BACKGROUND

- FOIPPA applies to over 2,900 public bodies, including ministries; local public bodies; crown corporations; and governing bodies of professions or occupations.
- On December 11, 2013, the former Information and Privacy Commissioner issued an open letter to the public seeking comments on whether to recommend that the British Columbia Association of Chiefs of Police (BCACP) and the British Columbia Association of Municipal Chiefs of Police (BCAMCP) be added to Schedule 2 of the FOIPPA Act.

### III. DISCUSSION

- Following that open consultation, on April 2, 2014, the Commissioner issued a letter to the minister responsible for FOIPPA officially recommending that both associations be designated as public bodies under the Act.
- There have also been requests from media and special interest groups such as the BC Civil Liberties Association to bring these bodies under the coverage of FOIPPA.
- s.13
- In its presentation to the 2015 FOIPPA Special Committee, government committed to undertaking an amendment to FOIPPA that would ensure the BCACP was covered.

## Appendix F – Subsidiary Corporations

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### I. ISSUE

Corporations owned by entities subject to the *Freedom of Information and Privacy Act* (FOIPPA).

### II. BACKGROUND

- On October 20, 2011, the Minister responsible for FOIPPA received a letter from the Office of the Information and Privacy Commissioner (OIPC) asking the ministry to draft amendments to FOIPPA to ensure coverage of subsidiary corporations of local public bodies.
- The Commissioner made this request in response to a 2009 BC Supreme Court (BCSC) decision (Simon Fraser University [SFU] v. British Columbia [Information and Privacy Commissioner], 2009 BCSC 1481), which held that FOIPPA did not extend to the records of SFU's subsidiary corporations.
- The 2010 Special Committee that reviewed FOIPPA made a similar, but slightly broader, recommendation to expand the definition of "public body" in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body.
- Currently, corporations that are created or owned by "local government bodies" (which include municipalities and regional districts) are, by definition, already covered by FOIPPA.
- However, this is not the case for corporations created or owned by ministries, crowns, universities, school boards, health authorities, and other types of "local public bodies". These corporations are not covered by the Act.
- Government has entered into preliminary consultations with ministries, Crown corporations, universities and school boards to understand the scope of the issue and the impact of covering these public bodies' corporations.
- These consultations have indicated that this is a very complex issue due to the divergent types of corporations that are affiliated with local public bodies.

### III. DISCUSSION

- The OIPC, media and other privacy advocates continue to press government to adopt changes to FOIPPA that will bring public bodies' subsidiary corporations under FOIPPA.
- s.13  
However, the range of organizations that can fall under the term "subsidiary corporations" is extremely broad and they vary greatly in role and structure.
- Factors contributing to the complexity of this issue are that subsidiary corporations are commercial in nature and would face competitive disadvantage, are controlled by multiple bodies under varying regulatory regimes (e.g. multiple universities, a government ministry, a federal department, and a private business), and are generally not seen, or thought to be a "government organization".
- As a result, it is important that government thoroughly understand the complexities of this issue.

## Appendix D – Data Linking

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### I. ISSUE

Data-linking provisions in the *Freedom of Information and Protection of Privacy Act* (FOIPPA)

### II. BACKGROUND

- Amendments were made to FOIPPA in 2011 to clarify rules and requirements for linking personal information between public bodies.
- This included defining the terms “data linking” and “data-linking initiative” in the legislation.
- It also included oversight powers for the Information and Privacy Commissioner<sup>s.13</sup>

s.13

- In addition, the former Commissioner has since expressed concern that the data-linking provisions did not achieve their policy intent and that, in particular, they failed to capture the kinds of data linking that the Commissioner considered should be subject to greater oversight and regulation.
- The Commissioner’s main concerns are:
  - data linking done for purposes that are different from the purpose for which personal information was initially collected is not captured under the current definition.
  - the potential for adverse action to be taken against specific individuals as a result of large scale, automated data linking
  - the potential for public bodies to misuse information sharing authorities without considering the purposes, risks and benefits

### III. DISCUSSION

- Stakeholders including the Acting Commissioner and special interest groups like the Freedom of Information and Privacy Association (FIPA) and the BC Civil Liberties Association (BCCLA) have called on government to resolve the shortcoming in the definition of “data linking” in the legislation.
- The 2015 Special Committee that reviewed the Act concurred with these stakeholders and also recommended that the legislation be amended.

## Appendix G – Miscellaneous Issues

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### I. ISSUES

Several issues of particular interest to the stakeholders have been addressed in standalone notes.

In addition to these, there are several issues of common interest, which may be raised by one or all of the stakeholders attending the roundtable:

- *Freedom of Information and Protection of Privacy Act (FOIPPA) Overrides*
- Mandatory Breach Notification
- Applicant Anonymity
- Timelines and Timeliness
- Whistleblower Legislation

### II. BACKGROUND

#### FOIPPA Overrides

- There are approximately only 44 statutes that have some kind of limited override to specific provisions in FOIPPA.
- A number of stakeholders, including the Office of the Information and Privacy Commissioner and the 2015 Special Committee have recommended a review of the existing overrides to FOIPPA to ensure they are relevant and necessary, the latter suggesting that a special committee be appointed to conduct this review.
- Government acknowledges that overrides to FOIPPA should be considered the exception and undertaken with due care and only in limited circumstances where warranted in order to ensure there is no diminishment of access or privacy rights of individuals.

#### Mandatory Breach Notification

- A privacy breach is an information incident involving personal information about people, such as names, birth dates, social insurance numbers or client information. Information incidents occur when unwanted or unexpected events threaten privacy or information security. They can be accidental or deliberate and include the theft, loss, alteration or destruction of information.
- Both the Information and Privacy Commissioner and the 2015 Special Committee have recommended mandatory breach notification to be enshrined in law (FOIPPA).
- Government established a formal breach management process in 2010.
- In practice, government currently provides monthly reports to the Office of Information and Privacy Commission (OIPC) about each privacy incident investigated and reports all “serious” privacy breaches directly to the Commissioner.
- It is acknowledged that the Commissioner’s and Special Committee’s recommendation to enshrine this requirement in law is aimed at bringing broader public sector bodies, such as health care bodies in line with similar practices and processes as government proper.
- Government has publicly supported this recommendation in the past.

#### Applicant Anonymity

- In practice, Information Access Operations (IAO), government’s central office for processing Freedom of Information (FOI) requests, discloses the identity of the applicant to ministries

only when it is necessary to assist the applicant or when the applicant's identity is required to process or respond to the request. The only information about the applicant that is routinely revealed to ministry staff is the applicant type, which is categorized as:

- Individual
- Political Party
- Business
- Media
- Special Interest Group
- Other Public Body
- Other Government
- Researcher
- The Special Committee has recommended FOIPPA be amended to ensure that both an applicant's name and type remain undisclosed to ministry staff, similar to Newfoundland and Labrador's access legislation.
- Government agrees, in principle, that confidentiality should be respected to the extent reasonable and practicable.
- The following situations are ones where the identity of the applicant must be shared with ministry staff involved in the processing of an FOI request:
  - Where the identity is necessary to identify responsive records (e.g., applicant is requesting access to his or her own personal information).
  - Where the identity is necessary to verify the applicant's claims that they are acting on behalf of another individual or organization (e.g., custodial parent, power of attorney, company president, legal counsel).
  - Where the applicant is requesting a fee waiver and the identity is relevant to verifying the applicant's claim that they cannot afford to pay or is in a position to effectively disseminate information that is deemed to be in the public interest.
  - There are also situations where discussion with ministry staff, who have detailed knowledge of the ministry's records and business processes, would assist the applicant in identifying the records the applicant wishes to access.

s.13

#### Timelines and Timeliness

- There are several legislated timelines within FOIPPA, which put deadlines on the actions of a public body, an applicant, third parties and the Commissioner.
- Chief among these timelines is the time limit for responding to a FOI request, which is 30 business days per section 7 of the Act.
- At the behest of several stakeholder groups, who requested that the time limits for responding to an FOI request be restricted, the 2015 FOIPPA Special Committee recommended that government review all timelines in FOIPPA.

s.13

- In 2016/17, government's timeliness rate improved from 74% on-time to 80% on-time. So far, in 2017/18, the rate has climbed even higher to 90% on-time. This level of performance has not been seen since 2012/13.

- In a recent cross-Canada freedom of information audit conducted by the Canadian Newspaper Association, BC received a “B”.

#### Whistleblower Legislation

- Several stakeholders, as well as the 2015 FOIPPA Special Committee, have called for legislation to protect whistleblowers.
- These recommendations stem largely from the 2012 Ministry of Health employment terminations and the corresponding investigation report released by BC’s Ombudsperson.
- Though whistleblower legislation is an issue that is often raised alongside privacy and access to information, it does not fall within the mandate of the Minister of Citizens’ Services.

## Subsidiary Entities of Public Bodies

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### I. ISSUE

Entities created or owned by public bodies subject to the *Freedom of Information and Privacy Act* (FOIPPA) are not currently covered by FOIPPA.

### II. BACKGROUND

- The 2015 Special Committee of the Legislative Assembly that reviewed the *Freedom of Information and Privacy Act* (FOIPPA) made the following recommendation to government:  
*“Extend the application of [FOIPPA] to any board, committee, commission, panel, agency or corporation that is created or owned by a public body and all the members or officers of which are appointed or chosen by or under the authority of that public body.”*
- The 2010 Special Committee that reviewed FOIPPA made a similar recommendation.
- A 2006 report (the “Hibbins Report”) submitted to the Minister of Education recommended that school district business companies comply with FOIPPA.
  - While the ministry made changes to the School Act in 2007, enabling school boards to create business entities that could generate extra funds for school districts, it decided not to add school district business companies to coverage of FOIPPA and chose instead to achieve the accountability goals in other ways.
- A 2009 B.C. Supreme Court decision (Simon Fraser University [SFU] v. British Columbia [Information and Privacy Commissioner], 2009 B.C.S.C. 1481) held that FOIPPA did not extend to the records of the University’s subsidiary corporations.
  - This decision held that Simon Fraser University did not exercise control, for the purposes of FOIPPA, of the records of its subsidiary corporations because the relationship between it and the corporations did not meet the common law test for “piercing the corporate veil.” The Court also found that it was not appropriate for the records of a corporation to be subject to two legislative regimes with respect to privacy. As a result, the Court found that the requested records were not subject to the FOIPPA.
- The Office of the Information and Privacy Commissioner (OIPC), media and other privacy advocates continue to press government to adopt changes to FOIPPA that will bring public bodies’ subsidiary corporations under FOIPPA.
- Currently, corporations that are created or owned by “local government bodies” (which include municipalities and regional districts) are covered by FOIPPA.
- However, this is not the case for corporations created or owned by ministries, crowns, universities, school boards, health authorities, and other types of “local public bodies” (a phrase defined in FOIPPA to mean a local government body, health care body, social services body, educational body, or a body listed in Schedule 3 of the Act).

### III. DISCUSSION

- This issue has evolved over time, with recommendations in 2006 calling for the coverage of school district companies only, and then later recommendations (2010 and 2011) calling for the coverage of “local public bodies”.



- The latest recommendation is to cover any board, committee, commission, panel, agency or corporation that is created or owned by a public body and all the members or officers of which are appointed or chosen by or under the authority of that public body.
- The number and nature of boards, committees, commissions, panels, agencies and corporations that are created or owned by public bodies is unknown.
- Preliminary consultations with ministries, crowns, universities and school boards have revealed that the range of such entities is extremely broad and that they vary greatly in role and structure.
  - While some subsidiary entities of public bodies are closely affiliated with the public body's mandate and /or use public funds, others are distinct entities which may not appropriately be considered "public bodies".

s.13

## Summary of Issues - Universities

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### University of Victoria

2010

- Amend section 22(4)(i) by adding the words “university degree, diploma and certificate”. Disclosure of the graduate’s name, degree (diploma or certificate) and the year of degree would be permitted through the existing reference to this section in section 33.1(1)(a.1).

#### Summary of Issues

- Authority for universities to disclose, without an access request, names of individuals who have received degrees, diplomas and certificates, the names of these degrees, diplomas and certificates and the years in which they were awarded.

### University of British Columbia

2010

#### Summary of Issues

- Data Residency
- Section 22 and the protection of the content of a personal recommendation or reference
- Collection of employee personal information for the purpose of employment investigations

### UBC AMS Student Society

2010

- Fully implement the 2004 Special Review Committee’s recommendations
- Address public bodies’ non-compliance with Section 6—obligation to assist applicants—through penalties and automatic fee waivers for non-compliance with FIPPA by public bodies
- Address underfunding of the Office of the Information and Privacy Commissioner— to address delays—especially since appeals to the Commissioner’s Office are routinely necessary
- Revoke the 2006 amendments to the Act that increased the ability of public bodies to delay, and remove the ability of public bodies to request extensions of deadlines to respond
- Automatically waive fees for records requested in the public interest, and introduce a set fee schedule in order to reduce and control fees, and to prevent fee estimates from being used as a deterrent or as a delaying tactic by public bodies
- Reduce reasons to sever records
- Address the “corporate veil” problem at universities and school boards where the public body established a wholly-owned and controlled subsidiary for the purpose of withholding records

- Clarifying legislation to allow student societies to meet their obligations under the Society Act to maintain a register of their members.

2015

- Address the “corporate veil” problem at universities and school boards where the public body established a wholly-owned and controlled subsidiary with the ability to withhold records.
- Remove provisions in the Act giving public bodies the abilities to reasonably delay, and remove the ability of public bodies to request extensions of deadlines to respond
- Address public bodies’ non-compliance with section 6-obligation to assist applicants-through penalties and automatic fee waivers for non-compliance with FOIPPA by public bodies
- Automatically waive fees for records requested in the public interest, and introduce a set fee schedule in order to reduce and control fees, and to prevent fee estimates from being used as a deterrent or as a delaying tactic by public bodies.

#### Summary of Issues

- Duty to Assist
- Offences and Penalties
- FOI Timelines and Extensions
- Fees
- Subsidiary Corporations

#### **Ubyyssey – UBC Student Newspaper**

2015

- Public bodies should not be able to withhold records by routing operations through their wholly-owned subsidiaries.
- Public bodies should be required to fill requests within 30 days and face penalties for failing to do so. Public bodies should not be able to unilaterally apply extensions to requests.
- Fees for requests made in the public interest should be automatically waived.

#### Summary of Issues

- Subsidiary Corporations
- FOI Timelines and Extensions
- Offences and Penalties
- Fees

#### **Confederation of University Faculty Associations of BC**

2015

- That Schedule 1 be amended to include the definition of a “faculty member”.

- That no changes be made to the exemptions of examination and test questions (s. 3(1)(d)) and teaching materials and research information (s.3(1)(e)) from the scope of the Act.
- That s. 3(1)(e) be amended by replacing the phrase “employees of a postsecondary educational body” with “faculty members” as per Recommendation 1.0.
- That no changes be made to s. 22(3)(g), which presumes that the disclosure of personal recommendations, evaluations and references is an unreasonable invasion of a third party’s personal privacy.
- That s. 35(2) be amended to allow researchers from all fields of inquiry to seek permission to use personal information found in the course of approved research to contact a person to participate in the research.
- That a new provision be created under s. 75 (Fees) to require that fees be excused for researchers at public post-secondary educational institutions.
- That new provisions be created in s. 3(1) to clarify that the records of a faculty member at a public post-secondary institution are excluded from the scope of the Act.

#### Summary of Issues

- Add definition of a “faculty member” to FOIPPA
- Maintaining Section 3 (Scope of this Act), concerning records to be used on an examination
- Maintaining Section 22 (Disclosure harmful to personal privacy), concerning personal recommendations, evaluations or references.
- Authority for researchers to use personal information found in research to contact individuals for the purpose of research
- Fees for researchers
- Excluding records of faculty members of post-secondary institutions from FOIPPA

#### Research Universities Council of BC

- We recommend that sections 30.1(c) and 33.1(1) be amended to expressly authorize public bodies to store and disclose personal information outside Canada only when the head has determined that (a) this relates directly to and is necessary for a program or activity of the public body; (b) a reasonable Canadian-based alternative is not available; (c) security measures, proportional to the risk posed by the type(s), sensitivity and volume of personal information are in place to protect the data; and (d) it is impractical to obtain consent. Section 69 should also be amended with a requirement to share the privacy impact assessment for the project with the Office of the Information and Privacy Commissioner for its review and comment.

#### Summary of Issues

- Data Residency

## **Common Issues**

### **Universities**

- Data Residency
- Section 22

### **Student Groups**

- Subsidiary Corporations
- Fees
- Offences and Penalties
- FOI Timelines and Extensions

## Appendix F – Offences and Penalties

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### I. ISSUE

Offence and penalty provisions under the *Freedom of Information and Protection of Privacy Act*

### II. BACKGROUND

- FOIPPA contains a number of general offences, including for
  - making a false statement to, or mislead or attempt to mislead, the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act,
  - obstructing the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act, or,
  - failing to comply with an order made by the commissioner under section 58 or by an adjudicator under section 65(2).
- FOIPPA also contains several privacy protection offences.
- The Information and Privacy Commissioner and other stakeholders have recommended an offence and penalty be added with respect to the willful destruction of records.

### III. DISCUSSION

- The 2015 special Committee that reviewed FOIPPA heard from a number of stakeholder groups, including the Freedom of Information and Privacy Association, that called on government to address the issue of independent oversight over destruction of records and to increasing the maximum penalties for existing privacy offences.
- The Special Committee recommended:
  - Amend s. 42 of FIPPA to expand the Information and Privacy Commissioner's oversight by granting the Commissioner the jurisdiction to review matters or allegations of unauthorized destruction of records within public bodies
  - Amend s. 74.1 of FIPPA to make the unauthorized collection, use, and disclosure of personal information in contravention of Part 3 of FIPPA an offence under FIPPA.
  - Increase the maximum amount of fines for general offences from \$5000 to \$10,000 and increase the maximum amount of fines for privacy offences committed by individuals to \$25,000.
  - Institute a fine of up to \$10,000 for the offence of destroying, altering, or concealing a record with the intention of denying access rights under FIPPA.

## Appendix E – Section 13 Discretionary Exception (Policy Advice and Recommendations)

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### I. ISSUE

Applying the Section 13: Policy Advice and Recommendations exception under the *Freedom of Information and Protection of Privacy Act* (FOIPPA)

### II. BACKGROUND

- One of the primary purposes of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) is to make public bodies more open and accountable by providing the public with a legislated right of access to public body records, subject to limited exceptions.
- Section 13 is one of a number of discretionary exceptions to the right of access to information under an FOI request. It permits public bodies to withhold information that would reveal advice or recommendations developed by or for a public body or a minister.
- The purpose of section 13 is to allow for full and frank discussion of policy issues within the public service, thereby preventing the harm which would occur if the deliberative process were subject to excessive scrutiny.
- The provision also provides a non-exhaustive list of specific types of information that *cannot be withheld* under this exception, such as factual material, a final audit, a public opinion poll, or a statistical survey.
- Former B.C. Information and Privacy Commissioners have argued that “advice” and “recommendations” should be read as having similar meaning, thus keeping the scope of s.13 exemptions narrow.

### III. DISCUSSION

- It has been argued that some public bodies are using an overbroad interpretation of this provision by withholding factual information presented to provide background analysis or explanation for consideration in making a decision, in spite of the provision’s specific reference to factual material as being information that must be disclosed.
- Government has long interpreted “factual material” as follows: a cohesive body of facts distinct from advice or recommendations. It does not refer to isolated statements of fact, or to the analysis of the factual material. Factual material refers specifically to information that cannot be withheld under section 13(1) and which must be separated from advice or recommendations if those are being withheld. Where factual information is intertwined with advice or recommendations in a manner whereby no reasonable separation can be made, then the information is not factual material for the purposes of section 13(2)(a).
- On May 9, 2014 the Supreme Court of Canada ruled on an appeal from an Ontario court on a similar provision. The decision supports the BC government’s more broad approach to section 13, and is contrary to the B.C. Commissioner’s position on this issue.
- The 2015 Special Committee of the Legislative Assembly that reviewed FOIPPA made a recommendation that section 13 of FOIPPA be amended to ““clarify that the discretionary exception for “advice” or “recommendations” does not extend to facts upon which they are based; or factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical options.”

## Appendix I - Data Residency

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### I. ISSUE

Data Residency

### II. BACKGROUND

- In 2004, as part of package of amendments<sup>1</sup> that was aimed at mitigating the risk of British Columbians' personal information being accessed by US authorities under the USA PATRIOT ACT, FOIPPA was amended to include a robust set of data residency requirements. The intent of these provisions was to ensure that B.C. citizens' personal information remains within Canadian borders and outside the grasp of foreign law enforcement agencies.
- A public body must ensure that personal information in its custody or under its control can only be stored, accessed or disclosed within Canada, unless specific conditions are met, as outlined in the Act.

### III. DISCUSSION

- Several stakeholders have noted that B.C.'s data residency provisions make it difficult to take advantage of new and emerging technology available outside of Canada.

s.13

- Over the last five years there has been an increase in the number of companies which have demonstrated a willingness to become FOIPPA-compliant in this regard (e.g. by establishing Canada-based facilities).
- Despite calls to repeal these data residency requirements, government has remained committed to maintaining these protections in FOIPPA to ensure that the personal information of B.C. citizens remains protected from foreign entities.
- Submissions to the 2015 FOIPPA Special Committee from stakeholders such as the Office of the Information and Privacy Commissioner, the B.C. Freedom of Information and Protection of Privacy Association and the B.C. Civil Liberties Association, recommend emphatically that these data residency provisions are kept in place. The committee recommended that these provisions be retained.

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<sup>1</sup> The "Patriot Act provisions" amendment package also included provisions which (a) clarify that the privacy provisions of the Act extend to service providers, (b) provide for whistleblower protections, and (c) provide for offenses for contravening the Act or the whistleblower provisions.



## Appendix C – Fees

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### I. ISSUE

Fees for Access to Information

### II. BACKGROUND

- Section 75 of the Freedom of Information and Protection of Privacy Act (FOIPPA) authorizes public bodies to charge applicants fees for specific activities associated with responding to requests for general information (fees cannot be charged for a request to accessing one's own personal information). Fees can be charged for:
  - a) locating, retrieving and producing the record;
  - b) preparing the record for disclosure;
  - c) shipping and handling the record; and
  - d) providing a copy of the record.
- Fees cannot be charged for the first three hours of time locating and retrieving a record or for time spent severing information from a record. The public body also has the latitude to waive fees under certain circumstances<sup>1</sup>.
- The Schedule of Maximum Fees is set out in the FOIPP Regulation.
- The fee schedule was amended in 2012 for the first time since the Act came into force in 1993. The amendments made in 2012 were intended to decrease outdated fees to reflect actual current costs of materials and better reflect modern day technologies and included:
  - removing the contentious mainframe processor fee of \$16.50 per minute;
  - adding new, modern media (e.g., CDs and DVDs) and removing obsolete media (e.g., some video cassettes);
  - adding an item indicating that "actual cost to the public body" will be charged for preparing copies of records in any medium not listed; and
  - consolidating similar fees to minimize the number of fees in the fee schedule; thereby decreasing the ministry's regulatory requirement count.

### III. DISCUSSION

- In 2016/2017 there were a total of over 9, 800 FOI requests received by the Province of British Columbia and of these only 2% (188) resulted in the payment of a fee.
- The estimated cost to government to operate the FOI program is 24 million annually, while only 0.3 % of this is recovered through FOI fees to applicants.
- While the vast majority of responses to FOI requests are provided without payment, fees are one way that government can recover a small fraction of the costs associated with large or broadly worded requests.
- In fact, fees remain one of the only incentives for requesters to clarify or narrow their requests to target specific records on subjects important to them.

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<sup>1</sup> Fee waiver may be granted in instances where the applicant cannot afford to pay, the record relates to a matter of public interest, including the environment or public health or safety or for any other reason it is fair to excuse payment.

- Complex, broadly worded or large volume requests often take considerably more time to process, often making the ability to meet the legislated due date difficult. In such instances, instituting an automatic fee waiver for an overdue request may encourage requesters to broaden their requests rather than clarify or specify the information they are seeking.
- B.C.'s fees remain comparable to those of most other jurisdictions and have not increased in the 20 plus years since FOIPPA came into effect.
- Unlike a number of other jurisdictions (e.g. Alberta, Ontario, Newfoundland, Nova Scotia, etc.), B.C. does not charge an application fee for access to general records. In fact, a number of other jurisdictions also charge an application fee for access to personal records (e.g. Ontario and Newfoundland).
- B.C.'s fees for computer media (e.g. DVDs) are lower than those of most other jurisdictions and other jurisdictions provide only two hours free search time or provide no free search time at all.

## Appendix J – Ministerial Directives

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### I. ISSUE

Online publication of FOI response packages and summaries of open FOI requests.

### II. BACKGROUND

- In May 2016, the minister responsible for the Freedom of Information and Protection of Privacy Act (FOIPPA) issued two ministerial directives respecting the proactive disclosure of information related to Freedom of Information (FOI) requests:
  - Directive 05-2016: Disclosure of Summaries of open and closed FOI requests [excludes requests for personal information]
  - Directive 06-2016: Disclosure of Records Released in Response to a FOI Request [excludes requests for personal information]
- With the exception of summary information respecting open FOI requests, which introduced a new element, the directives were intended to simply formalize already established government practice dating back as far as 2011.

#### **Directive 06-2016**

- With respect the Directive 06-2016 and the publishing of general records released in response to an FOI request, the former Information and Privacy Commissioner expressed the view that while nothing in the FOIPPA prohibited simultaneous disclosure of these records to both the applicant and online, that the act of simultaneous disclosure would have the effect of pre-emptively “sharing the fruits of a journalist’s labour with the public at large”, which “impairs the information-gathering function of the media and other groups.”
- As a result of that report, the former Commissioner had provided a set of best practices to be followed by public agencies in proactive disclosure programs, including a minimum 24-hour delay before publicly posting responses to access to information requests.
- In issuing its own policy requirements, government chose to go above and beyond that standard. Therefore the policy was drafted to require a minimum delay of:
  - 72 hours after its release, if the response is sent electronically to the Applicant; or,
  - Five business days after its release, if a hard copy is mailed to the Applicant.
- After concerns were raised by media stakeholders that the 72 hour delay afforded for publishing electronic response packages, was still not enough time, Directive 06-2016 was modified and now requires the publishing of records released in response to any FOI request a minimum of five business days after its release to the applicant, regardless of the format the records are provided to the applicant.

## Directive 05-2016

- Directive 05-2016 requires the mandatory posting of status summaries of open FOI requests that are in various stages of active processing by Information Access Operations, government's FOI service provider.
- Specifically, the directive requires the summaries of open FOI Requests to include at a minimum, the following information for each FOI Request:
  - The date the request was opened;
  - The ministry or ministries to which the request is made;
  - A description of the request;
  - The request file number;
  - The applicant type;
  - The status of the request; and
  - The date by which the ministry or ministries must respond.
- Even though the identity of the applicant of the applicant remains anonymous and only the applicant "type" is revealed, the Information and Privacy Commissioner and the media have expressed early concerns about this directive. Specifically, concerns were raised that media and other applicants may be deterred from making requests if the subject of their request is made public, and especially if this occurs shortly after the request is made and before the applicant has received a response to the request.
- Following a meeting with the commissioner it was agreed that the summaries of open requests should be published after a minimum delay of 30 days.
- Publishing weekly summaries of FOI requests 30 days after they were received was seen as a balanced approach that, among other things, allows applicants to track the status of their requests and create more incentive for ministries to meet their legislative timelines.

## III. DISCUSSION

- Despite the changes made:
  - The modification of Directive 06-2016, which now supersedes policy and requires the publishing of records released in response to any FOI request a minimum of five business days ( as opposed to 72 hours) after its release to the applicant; and
  - The modification of Directive 05-2016, which requires a 30 day delay before the status of an open FOI request appears in the weekly summaries, some stakeholders are still expressing concern with these directives.

## Sexsmith, Melissa M CITZ:EX

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**Subject:** Engagement Meeting - Access to Information and Privacy  
**Location:** Conference Call

**Start:** Wed 2018-10-31 10:30 AM  
**End:** Wed 2018-10-31 11:30 AM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** Sime, Mark CITZ:EX  
**Required Attendees** Robyn Laba; Jody Woods; Colin Braker; Sexsmith, Melissa M CITZ:EX; Plater, Carmelina CITZ:EX; Ghag, Kris CITZ:EX

**Categories:** FOIPPA

Good afternoon,

I want to thank all of you for patiently working with me to find a suitable date and time for this meeting.

As I mentioned in my initial communication on September 14<sup>th</sup>, we want to ensure that we have a solid understanding of the unique impacts that access to information has on Indigenous groups, as government examines how it might make improvements. To this end, we are hoping to have a one-hour discussion focussed on the issues raised in the submission provided to the Minister by the Union of BC Indian Chiefs, as well as some of the concerns that Indigenous groups have conveyed to government's Natural Resource Sector. Finally, we're hoping you might be able to highlight any issues that we might be missing, so that we can ensure that as we move through the problem identification phase of this project, all pertinent issues are carefully considered.

We are really looking forward to this discussion and hope it may serve to open a continuing dialogue between our organizations.

Regards,

**Mark Sime**  
A/Director, Legislation and Special Projects  
Strategic Policy and Legislation Branch  
Ministry of Citizens' Services  
[Mark.Sime@gov.bc.ca](mailto:Mark.Sime@gov.bc.ca)  
(778) 698-5838

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**Sexsmith, Melissa M CITZ:EX**

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**From:** Sime, Mark CITZ:EX  
**Sent:** September 14, 2018 4:03 PM  
**To:** jwoods@ubcic.bc.ca; mgrant@bcfn.ca; cbraker@fns.bc.ca  
**Subject:** Invitation to Participate - Access to Information and Privacy  
**Attachments:** FOI Reform Submission.pdf

Hello,

As you may be aware, earlier this year, the BC Government conducted an online public engagement respecting access to information and privacy. Government received the attached submission from the Union of BC Indian Chiefs (UBCIC), which outlines the unique impacts freedom of information has on Indigenous groups.

I am contacting you today because staff with the Corporate Information and Records Management Office in the Ministry of Citizens' Services have carefully reviewed this submission and would be interested in better understanding these important issues. We received your contact information from our colleagues in the Ministry of Indigenous Relations and Reconciliation, who suggested that you might be interested in having a discussion. As government examines how it might improve access to information, we wanted to ensure that we have a solid understanding of the issues faced by Indigenous groups in this regard, and would be grateful for your perspectives.

Recognizing that we are all located in different cities, we would like to suggest a conference call sometime in the coming weeks. We would kindly ask that you please confirm your interest in having a discussion at your earliest convenience. Once confirmed, we will work to book a call that agrees with everyone's schedules.

Regards,

**Mark Sime**  
A/Director, Legislation and Special Projects  
Strategic Policy and Legislation Branch  
Ministry of Citizens' Services  
[Mark.Sime@gov.bc.ca](mailto:Mark.Sime@gov.bc.ca)  
(778) 698-5838



September 4, 2018

Ref: 110489

Grand Chief Stewart Phillip, President  
Chief Robert Chamberlain, Vice President  
Kukpi7 Judy Wilson, Secretary Treasurer  
Union of British Columbia Indian Chiefs  
401-312 Main St  
Vancouver BC, V6A 2T2

Dear Grand Chief Stewart Phillip, Chief Robert Chamberlain, and Kukpi7 Judy Wilson:

Thank you for providing a submission on behalf of the Union of British Columbia Indian Chiefs to the Ministry of Citizens' Services' (CITZ) recent public engagement on information access and privacy. Government is committed to making improvements to access to information and privacy, and input from organizations such as yours will help to inform our approach.

The issues raised in your submission are important. Your submission asks government to work in full partnership with Indigenous Nations to develop and enact mutually agreed upon changes to policy and legislation.

I agree that full partnership with Indigenous groups affected by changes to CITZ policy and legislation is crucial. Staff in your organization should expect to be contacted by staff from CITZ in the near term to engage in discussions about access to information and privacy.

I look forward to continuing to work closely with you.

Sincerely,

Jinny Jogindera Sims  
Minister



# INFORMATION ACCESS AND PRIVACY ENGAGEMENT

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UNION OF BC INDIAN CHIEFS  
FIRST NATIONS SUMMIT

# AGENDA

1. Backgrounder on FOIPPA and recent public consultation
2. Submission from the Union of BC Indian Chiefs
3. Concerns conveyed to the Natural Resource Sector
4. What are we missing?
5. Next steps

# FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIPPA)

British Columbia's Freedom of Information and Protection of Privacy Act (FOIPPA) came into force in 1993.

The Act applies to approximately 2,900 public bodies.

FOIPPA's dual purpose is to:

- Provide people with the right to access records held by a public body, and
- Prevent the unauthorized collection, use, disclosure, access and/or storage of personal information by public bodies.

FOIPPA has not been substantively amended since 2011.

# ONLINE PUBLIC ENGAGEMENT

The Ministry of Citizens' Services asked for thoughts and ideas from interested members of the public on how to improve access to information and enhance privacy protection.

An online public engagement was initiated in the spring of 2018, inviting stakeholder organizations, subject matter experts, and individuals to provide a formal, written submission, or participate in public dialogue on a series of topics related to access to information and privacy.

These topics included:

- The FOI process;
- Protecting your privacy;
- Getting access to the information you want;
- Fees for FOI requests;
- Reporting privacy breaches; and
- Offences and penalties in FOIPPA.

# UBCIC RECOMMENDATION

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Page 10 to/à Page 11

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s.13

Page 12

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s.16;s.13

# WHAT ARE WE MISSING?



# NEXT STEPS

- Currently in the problem identification stage.
- Further consultations are planned with the Union of BC Indian Chiefs, First Nations Summit, and other stakeholder groups.
- Any future changes to FOIPPA trigger a notification requirement under the Maa-Nulth and Tsawwassen Final Agreements.

## Access to Information and Privacy:

UBCIC and FNS Engagement Summary- October 31, 2018

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*Following a brief Backgrounder on FOIPPA and the recent Public consultation, UBCIC and FNS were asked if they had any initial questions:*

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**FNS:** Wanted to know if government's intention was to make operational / or practice changes or if the intention was to reform the FOIPPA legislation?

**SPL:** Advised government is looking to improve the FOI rules and this would necessitate looking at both areas.

**UBCIC:** Commented on SPL noting that while some very small/ minor changes to the FOIPPA have occurred in the intervening years – the last significant changes were back in 2011- BCIC wanted to know what was meant by minor changes and what is process for going about those changes?

**SPL:** Clarified that minor changes primarily include housekeeping changes to the FOIPPA schedule 2 and 3 which list the public bodies covered under the legislation. Changes to the schedule are done via a ministerial regulation.

*BCIC was provided option of going through the summary of recommendations provided in their submission to government in order to provide them an opportunity to clarify or provide detail if they so desired, otherwise SPL was amenable to further discussing recommendation #7 in hope of getting a better understanding of the issue this recommendation was aimed at addressing.*

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**BCIC:** Did not have further information to add and expand on respecting recommendations 1-6. With respect to #7- BCIC acknowledges this recommendation is unclear to them as well and they would like the opportunity to go back and review their notes to determine what prompted this particular recommendation. It may be that they were intending to highlight the subsidiary issue but they are uncertain and will get back to us.

*BCIC and FNS was asked for their thoughts regarding* s.13

s.13

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Both BCIC and FNS concur with the NRS recommendations.

BCIC conveys that they have heard these concerns echoed from other researchers that represent first Nations groups and from various advocacy groups that are unwilling to support government initiatives based on these concerns.

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## Sexsmith, Melissa M CITZ:EX

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**Subject:** CIRMO Update - OIPC  
**Location:** s.15

**Start:** Thu 2018-09-20 1:30 PM  
**End:** Thu 2018-09-20 2:30 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** Curtis, David CITZ:EX

**Required Attendees** Weldon, Bradley OIPC:EX; Laidlaw, Susan CITZ:EX; Sexsmith, Melissa M CITZ:EX; Dupuis, Maria OIPC:EX; Ghag, Kris CITZ:EX

Kris Ghag to attend in Chad's absence.

## **Analysis of Acting Commissioner's Recommendations and Issues Raised**

### **Issues Raised in the August 4, 2017 Letter to Minister Sims**

| <b>Issue</b> | <b>Background</b> | <b>Suggested Response</b> |
|--------------|-------------------|---------------------------|
| s.13         |                   |                           |

Page 03 to/à Page 14

Withheld pursuant to/removed as

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## Sexsmith, Melissa M CITZ:EX

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**Subject:** Problem Identification and Definition Discussion: FOIPPA  
**Location:** s.15

**Start:** Thu 2018-08-30 1:00 PM  
**End:** Thu 2018-08-30 2:00 PM

**Recurrence:** (none)

**Meeting Status:** Meeting organizer

**Organizer:** Sexsmith, Melissa M CITZ:EX

**Required Attendees:** Sexsmith, Melissa M CITZ:EX; Bradley Weldon; Plater, Carmelina MTIC:EX  
(Carmelina.Plater@gov.bc.ca)

**Optional Attendees:** Nathan Elliot; oline Twiss

**Resources:** s.15

## Sexsmith, Melissa M CITZ:EX

---

**Subject:** s.12  
**Location:** +1 (250) 952-9304 Conference ID: s.15,s.17  
  
**Start:** Thu 2018-07-05 11:00 AM  
**End:** Thu 2018-07-05 11:30 AM  
  
**Recurrence:** (none)  
  
**Meeting Status:** Meeting organizer  
  
**Organizer:** Sexsmith, Melissa M CITZ:EX  
**Required Attendees** Sime, Mark MTIC:EX (Mark.Sime@gov.bc.ca); Plater, Carmelina MTIC:EX (Carmelina.Plater@gov.bc.ca); Campbell, Corrie L PSSG:EX

Hi Corrie,

You'll have seen a flurry of emails going back and forth about s.12  
s.12

s.12 Happy to meet in person if that suits!

Melissa

Melissa M. Sexsmith, A/Executive Director | Strategic Policy and Legislation Branch | Corporate Information and Records Management Office |  
2<sup>nd</sup> Floor – 546 Yates Street, Victoria BC | 250 514 2173

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### Join online meeting

<https://unite.gov.bc.ca/gov/meet/melissa.m.sexsmith/MD1JYYGJ>

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