

## Biggs, Jackie CITZ:EX

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**From:** Robyn Laba <rlaba@ubcic.bc.ca>  
**Sent:** April 9, 2018 3:32 PM  
**To:** FOI Reform CITZ:EX  
**Cc:** Stewart Phillip; Bob Chamberlin; Judy Wilson; Jody Woods  
**Subject:** FOI Reform Submission  
**Attachments:** LetterReFOIreform.pdf; FOI Reform Submission.pdf

To the BC Freedom of Information and Privacy Review,

Please find attached the Union of BC Indian Chiefs' submission to the Ministry of Citizens' Services public engagement process related to Freedom of Information and Privacy Protection. It outlines the unique impacts of information management policies and legislation on Indigenous Nations in BC and calls on your government to work in full partnership with Indigenous Nations and their representative organizations to develop and enact mutually agreed-upon changes to policy and legislation as per the UNDRIP and your government's commitment to reconciliation.

We look forward to your timely response acting on the recommendation made in the submission.

Sincerely,

Robyn Laba

**Robyn Laba**  
*Senior Researcher*

### Union of B.C. Indian Chiefs

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OUR LAND IS OUR FUTURE



# OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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Ministry of Citizens' Services  
Information Access and Privacy  
Freedom of Information and Privacy Review

Submitted via email: [FOI.Reform@gov.bc.ca](mailto:FOI.Reform@gov.bc.ca)

April 9, 2018

To the BC Freedom of Information and Privacy Review,

***Re: Necessary Reforms to the BC Freedom of Information and Protection of Privacy Act***

Please find attached the Union of BC Indian Chiefs' submission to the Ministry of Citizens' Services public engagement process related to Freedom of Information and Privacy Protection. It outlines the unique impacts of information management policies and legislation on Indigenous Nations in BC and calls on your government to work in full partnership with Indigenous Nations and their representative organizations to develop and enact mutually agreed-upon changes to policy and legislation as per the UNDRIP and your government's commitment to reconciliation.

We look forward to your timely response acting on our recommendation.

ON BEHALF OF THE UNION OF BC INDIAN CHIEFS,

Grand Chief Stewart Phillip  
President

Chief Robert Chamberlain  
Vice-President

Kukpi7 Judy Wilson  
Secretary Treasurer

## **Submission to the BC Ministry of Citizens' Services Freedom of Information and Privacy Review**

**Submitted by the Union of BC Indian Chiefs  
April 9, 2018**

### **About the Union of BC Indian Chiefs**

The Union of BC Indian Chiefs (UBCIC) is a not-for-profit organization that supports Indigenous Nations in asserting and implementing their Aboriginal title, rights, treaty rights, and right of self-determination as peoples. The UBCIC is also an NGO in Special Consultative Status with the Economic and Social Council of the United Nations. Since its inception in 1969, the UBCIC has worked with Indigenous Nations in BC to ensure that they are supported in their efforts to have their title and rights recognized, respected, and addressed by governments and industry so that our connection to our lands is sustained. We are directed by the resolutions from our Chiefs Council Meetings and Annual General Assemblies, at which representatives of our over 100-member Nations gather.

Among the core principles of the UBCIC is the right to knowledge and a steadfast commitment to information sharing to strengthen the abilities of Indigenous peoples to implement, exercise, and secure our rights, title, and treaty rights, and in so doing safeguard our lands and resources for future generations.

The UBCIC's policy advisors, analysts, and research staff regularly rely upon British Columbia's Freedom of Information process to obtain necessary records from BC public bodies in the course of their work on behalf of Indigenous Nations and communities in BC. The UBCIC advocates at the federal and provincial levels to ensure government transparency and accountability and to remove existing barriers to Indigenous peoples' access to information.

### **The Unique Impacts of Freedom of Information on Indigenous Peoples**

The right to knowledge via access to information is integral to Indigenous peoples' pursuit of justice – to seeking justice for Indigenous women, children, and families; securing safe drinking water and housing in our communities; and exercising our jurisdiction over our lands and natural resources.

The right to know and to access information are also fundamental components of Indigenous peoples' efforts to resolve historical land rights grievances, such as specific claims. Because Indigenous Nations are required to produce a wide range of government records to substantiate their land claims and historical land-related grievances against the Crown, Freedom of Information has direct impacts on the ability of these Nations to seek justice through government mechanisms for redress for the dispossession of lands and resources. The importance of disclosing records to Indigenous Nations for legitimating these grievances is underscored in section 22(2)(d) of the FOIPPA which states that public bodies must consider whether disclosure of personal information will "assist in researching or validating the claims, disputes or grievances of aboriginal people."<sup>1</sup>

Barriers to provincial government records significantly inhibit Indigenous peoples' ability to achieve justice for past wrongs through the state mechanisms established for this purpose. Indigenous people's

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<sup>1</sup> *Freedom of Information and Protection of Privacy Act* [RSBC 1996] accessed at [http://www.bclaws.ca/Recon/document/ID/freeside/96165\\_02#section22](http://www.bclaws.ca/Recon/document/ID/freeside/96165_02#section22).

right to redress for historical wrongs is articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>2</sup> When the BC NDP Government assumed power in July 2017, it committed to working in partnership with Indigenous peoples to fully adopt and implement the UNDRIP as a step towards reconciliation.<sup>3</sup> Your government has also agreed that BC's Freedom of Information policy and procedures and the current Freedom of Information and Protection of Privacy Act (FOIPPA) have proven insufficient in overcoming barriers and safeguarding rights to information, as well as ensuring government transparency and accountability. The barriers faced by Indigenous Nations seeking information access must be specifically and systematically targeted, such that rights to redress are advanced and protected.

### **Current Barriers to Freedom of Information Faced by Indigenous Nations**

Indigenous Nations routinely experience the following barriers when attempting to obtain provincial government records through Freedom of Information:

1. Prolonged, unacceptable delays in obtaining information. Our researchers are regularly asked to waive legislated timelines – often multiple times for a single request for records – resulting in serious delays meeting our own deadlines, jeopardizing relationships with funders and the communities on whose behalf we carry out our work.
2. Unreasonably broad applications by public bodies of the exceptions to disclosure under the Act, resulting in excessive redactions or failures to release information. Sections 14, 16, 21, and 22 are routinely invoked, even in cases where disclosure would not prejudice a third party or constitute an unreasonable invasion of privacy under the Act. We note that the discretion given to public bodies under section 22(2)(d) of the Act, which implicitly recognizes the resolution of Indigenous claims and grievances as a matter of justice, is extremely broad and in practice often fails to yield the necessary disclosure of records. Since Nations are compelled to produce a wide range of provincial government records to substantiate their land claims and grievances against the Crown, challenges obtaining these records are a substantial barrier to achieving justice for land-related grievances.
3. Public bodies using extra-legislative rationales, such as “out of scope” or “not responsive” as a basis for withholding information. Redactions are routinely made, and disclosure is regularly refused without statutory justification, even if records are publicly available elsewhere.
4. Public bodies failing to create and retain records as required under the Act<sup>4</sup> resulting in gaps in the public record. In addition to withholding information vital to matters of justice, health, dignity, and safety, these bodies make frequent, deliberate attempts to keep government dealings from public scrutiny; the result is further erosion of trust in government and the undermining of efforts to bring about reconciliation.

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<sup>2</sup> United Nations General Assembly, Article 8.2(b), *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007.

<sup>3</sup> <https://www.bcndp.ca/reconciliation>

<sup>4</sup> Revealed by BC's Information and Privacy Commissioner, Elizabeth Denham, in Investigation Report F15-03 *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia*, October 22, 2015.



5. Public bodies failing to transfer records to government archives,<sup>5</sup> resulting in decades' worth of missing information. This is resulting in inexplicable gaps in the historical record upon which Indigenous Nations depend to substantiate their claims and grievances.
6. Prohibitive fees required for documents and the denial of requests for fee waivers. With document requests for the purposes of substantiating claims and grievances, costs can amount to thousands of dollars, beyond the resource capacity of many Indigenous Nations and organizations.
7. Information produced by public bodies or their subsidiaries is often required to substantiate Indigenous Nations' grievances, yet this information is currently excluded from either mandatory or discretionary disclosure under the existing legislation.

**Recommendation:**

**That the BC NDP Government work in full partnership with Indigenous Nations and their representative organizations to develop and enact mutually agreed-upon changes to policy and legislation regarding Freedom of Information and privacy, such that transparency, openness, and fairness are enhanced and Indigenous Nations' rights (especially the rights to joint oversight and redress for past wrongs) are implemented, as per the UNDRIP and the BC NDP Government's commitments to reconciliation.**

Any attempt to modify Freedom of Information and privacy policies or legislation will have a unique impact on Indigenous Nations. Our membership insists that your government act upon the concrete recommendations of Indigenous Nations and organizations on matters of fundamental concern to our communities. The BC NDP Government has a standing promise to "review policies, programs and legislation to determine how to bring the principles of the Declaration to action in British Columbia" so that Indigenous rights are upheld without discrimination.<sup>6</sup> The UNDRIP requires governments to consult and cooperate in good faith with Indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.<sup>7</sup>

A Freedom of Information review must make meaningful, direct dialogue with Indigenous Nations a priority and reject cursory actions that only create the illusion of meaningful change. This work must be guided by transparency, due process, and full enactment of the government-to-government approaches articulated within the UNDRIP. These guiding principles are not just future outcomes of some consultative process but must be built into these processes from the start.

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<sup>5</sup> Documented in IPC's Special Report *A Failure to Archive-Recommendations to Modernize Government Records Management*, July 22, 2014.

<sup>6</sup> Ibid.

<sup>7</sup> United Nations General Assembly, Article 19, *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007.

## Quick statistics

Survey 119916 'Access to information and privacy protection for Indigenous communities'

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## Results

### Survey 119916

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Number of records in this query:	11
Total records in survey:	11
Percentage of total:	100.00%

## Summary for S1Q01

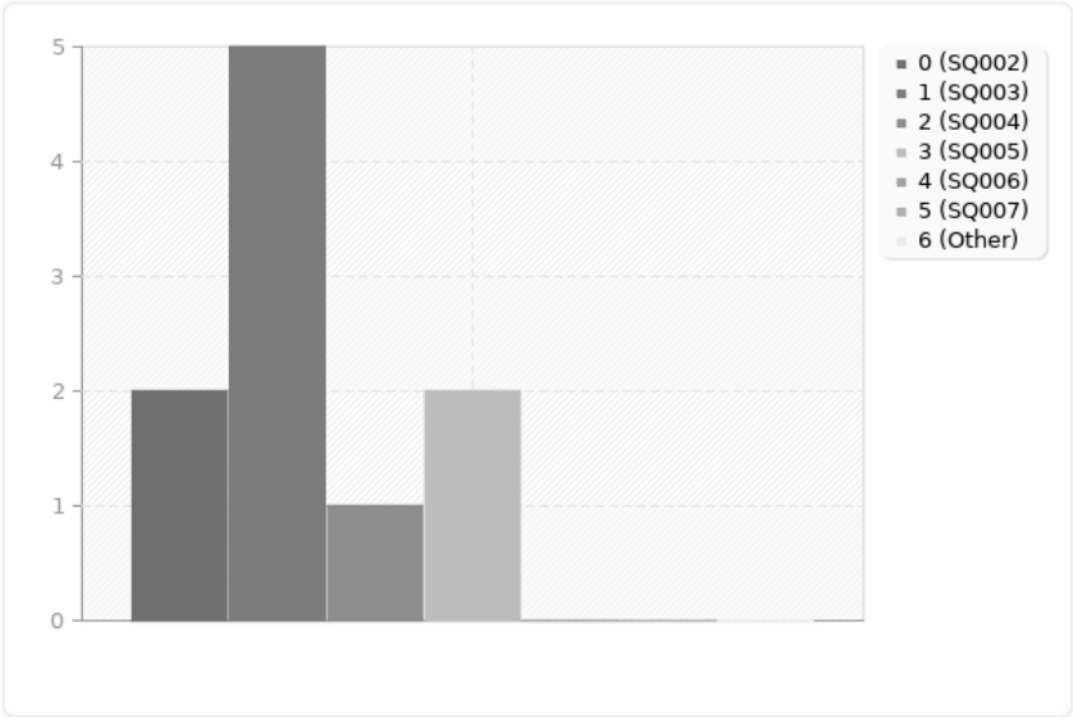
What best describes your role in responding to this questionnaire?

Answer	Count	Percentage
Representative of a First Nations government (SQ002)	2	18.18%
Representative of a First Nations community (SQ003)	5	45.45%
Representative of an Indigenous organization (SQ004)	1	9.09%
Interested member of the public (SQ005)	2	18.18%
Representative of a commercial or non-profit organization (SQ006)	0	0.00%
Representative from a local government (SQ007)	0	0.00%
Other	0	0.00%

ID	Response
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Summary for S1Q01

What best describes your role in responding to this questionnaire?



## Summary for S1Q02

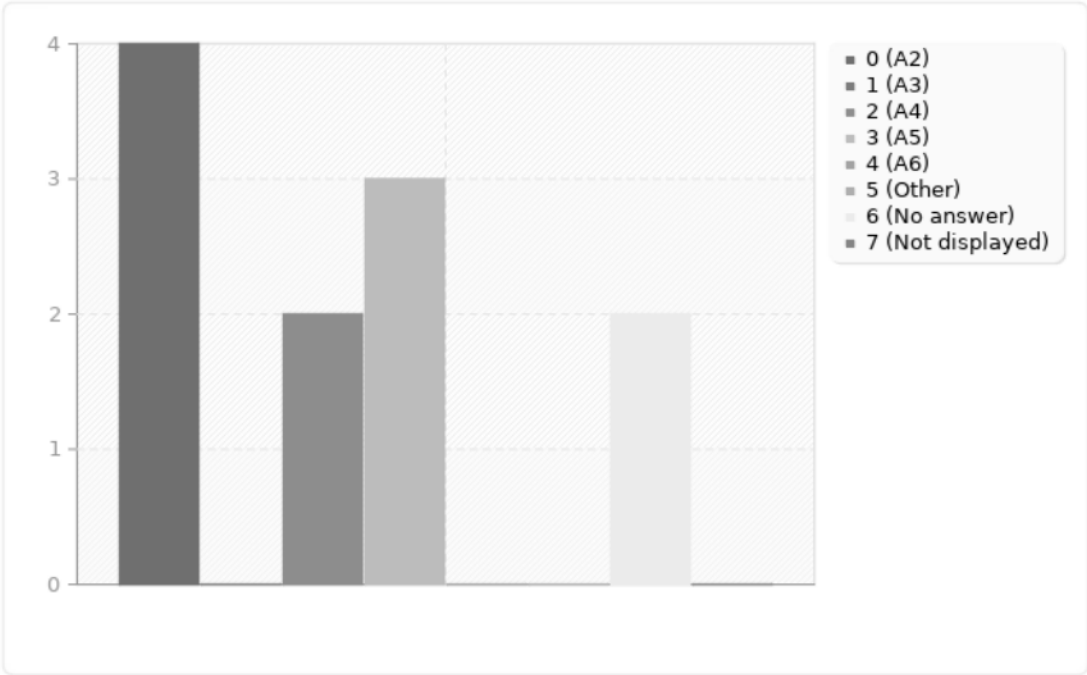
Currently, what is your primary source for information from government?

Answer	Count	Percentage
Government websites (A2)	4	36.36%
Newspapers (A3)	0	0.00%
Government social media channels (e.g. Facebook, Instagram, Twitter etc.) (A4)	2	18.18%
Other social media channels (e.g. Facebook, Instagram, Twitter etc.) (A5)	3	27.27%
TV (A6)	0	0.00%
Other	0	0.00%
No answer	2	18.18%
Not displayed	0	0.00%

ID	Response
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Summary for S1Q02

Currently, what is your primary source for information from government?



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## Summary for S1Q03

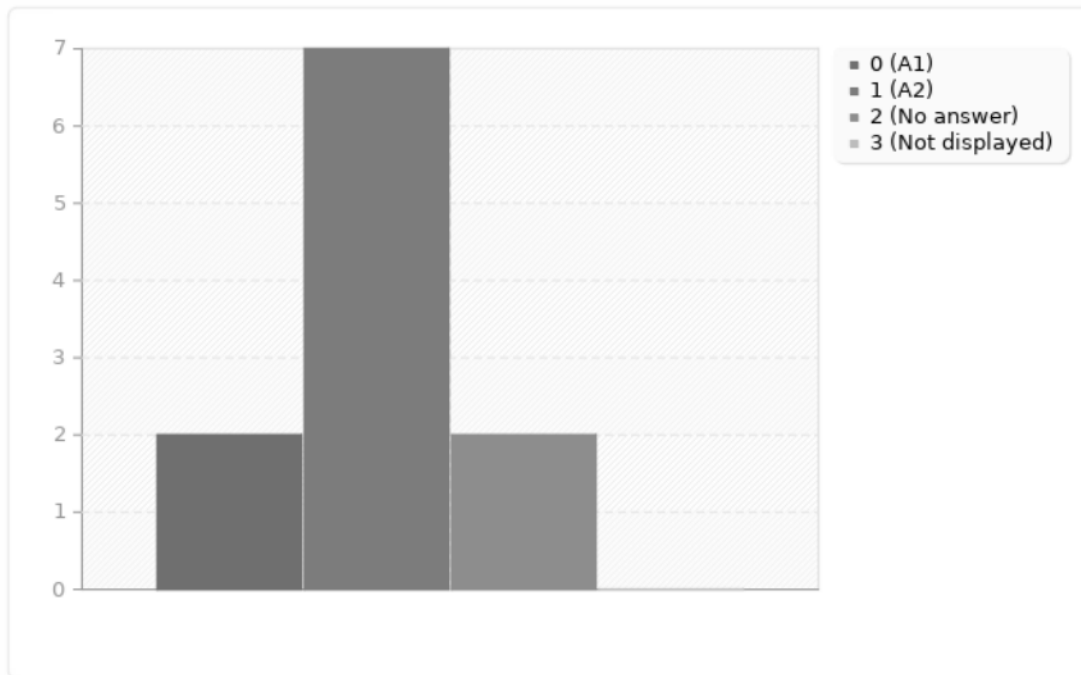
Has your primary source of government information changed since the start of the pandemic (compared to before March 2020)?

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Answer	Count	Percentage
Yes (A1)	2	18.18%
No (A2)	7	63.64%
No answer	2	18.18%
Not displayed	0	0.00%

## Summary for S1Q03

Has your primary source of government information changed since the start of the pandemic (compared to before March 2020)?





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## Summary for S1Q03b

How has your primary source of provincial government information changed since the start of the pandemic?

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Answer	Count	Percentage
Answer	2	18.18%
No answer	0	0.00%
Not displayed	9	81.82%

ID	Response
116	More social media use.
146	TV news and Facebook

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## Summary for S2Q04a

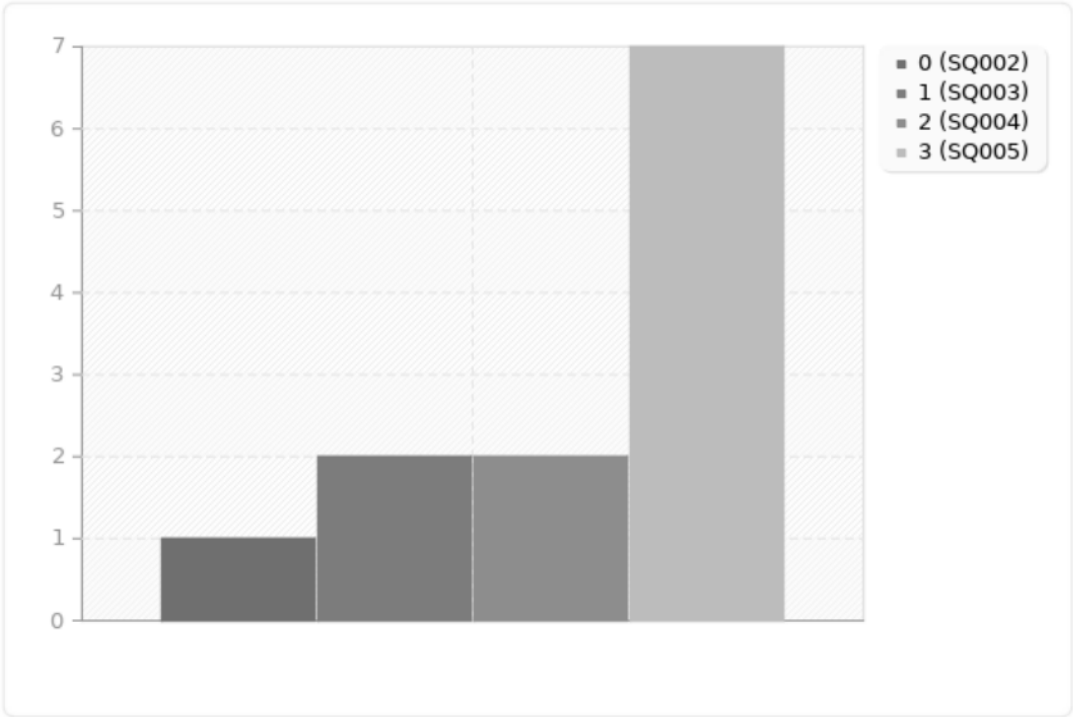
Have you ever made a Freedom of Information (FOI) request? I have made a request for:

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Answer	Count	Percentage
My own information (e.g. employment record with a public body) (SQ002)	1	9.09%
Information about my community (e.g. health statistics) (SQ003)	2	18.18%
Other government information (e.g. infrastructure proposals or planning documents) (SQ004)	2	18.18%
None of the above (SQ005)	7	63.64%

Summary for S2Q04a

Have you ever made a Freedom of Information (FOI) request? I have made a request for:



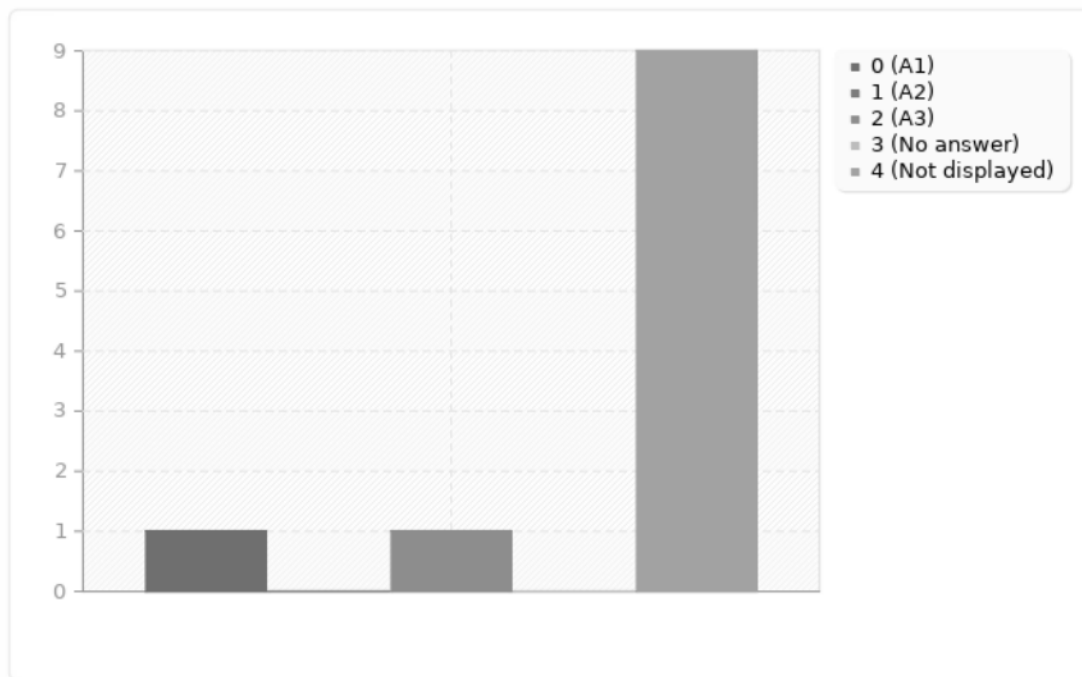
## Summary for S2Q04b

In the previous question, you answered that you had made an FOI request for "Information about my community" and/or "Other government information". Do you think the FOI request you made for this information should have been accessible in another way?

Answer	Count	Percentage
Yes (A1)	1	9.09%
No (A2)	0	0.00%
Unsure (A3)	1	9.09%
No answer	0	0.00%
Not displayed	9	81.82%

## Summary for S2Q04b

In the previous question, you answered that you had made an FOI request for "Information about my community" and/or "Other government information". Do you think the FOI request you made for this information should have been accessible in another way?



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## Summary for S2Q04c

If yes, please provide more detail on why.

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Answer	Count	Percentage
Answer	1	9.09%
No answer	0	0.00%
Not displayed	10	90.91%

ID	Response
126	Should have been proactively disclosed and open without the need for access request

## Summary for S2Q05

What types of information held by the provincial government do you feel your community needs more access to?

Answer	Count	Percentage
Answer	7	63.64%
No answer	4	36.36%
Not displayed	0	0.00%

ID	Response
51	Need better information on when there is possible provincial jurisdiction or involvement in activities that may take place on reserve, or be carried out by First Nations - for example, tobacco/cannabis sales and licensing, fuel sales, forestry, roads etc
61	Data specific to our First Nation community, such as health and mental health, children and families, legislation and policies that apply to Reserve Lands, land use plans in our traditional territory (from complementation to post-projects), etc.
91	when people do surveys or research about our heritage and culture it should be accessible for the community in which it is about.
106	How money allocation works
116	All kinds
126	Ethnographic or related reports; updates to Consultative Areas Database (other than spatial data); any other documentation, reports, information that the Province of BC is using to determine and direct consultation with FNs, including any policies, procedures or rationale for engagement decisions and preliminary strength of claim analysis. From my perspective, it looks like proximity to existing reserves is used as an early indicator of strength of claim; does not align w/FN perspectives.
146	Anything related to our Nation.

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Summary for S2Q06(SQ001)[My community has appropriate access to information held by the provincial government.]

What best describes your level of agreement with the following statement?

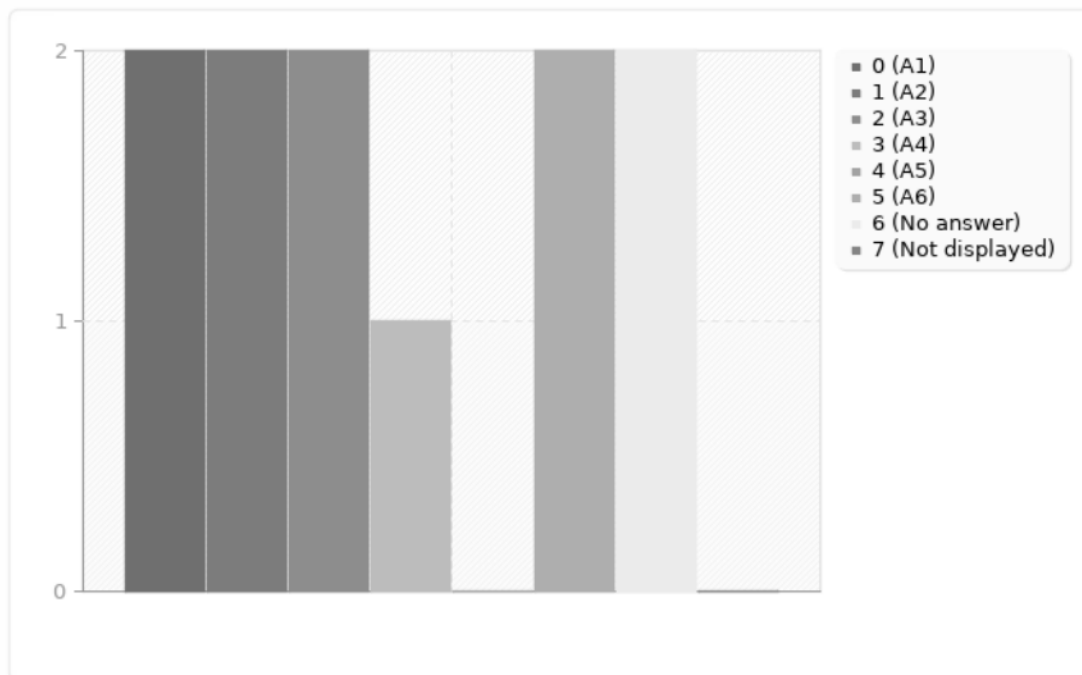
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Answer	Count	Percentage
1- Strongly Disagree (A1)	2	18.18%
2 (A2)	2	18.18%
3 - Neither Disagree nor Agree (A3)	2	18.18%
4 (A4)	1	9.09%
5 - Strongly Agree (A5)	0	0.00%
Unknown – I have never tried to access information on my community. (A6)	2	18.18%
No answer	2	18.18%
Not displayed	0	0.00%



## Summary for S2Q06(SQ001)[My community has appropriate access to information held by the provincial government.]

What best describes your level of agreement with the following statement?



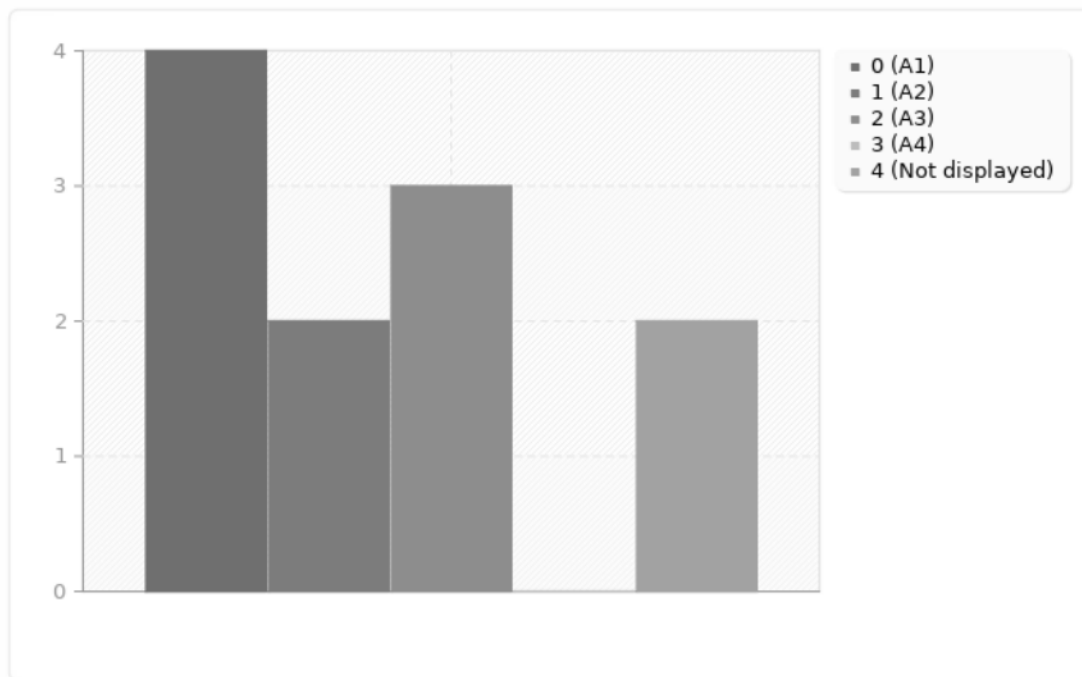
## Summary for S2Q07 [1]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 1]

Answer	Count	Percentage
My own personal information (A1)	4	36.36%
Personal information about members of my community (A2)	2	18.18%
Information about my community's cultural heritage, traditional knowledge and traditional cultural expressions (A3)	3	27.27%
Information about companies operating on Indigenous territories (A4)	0	0.00%
Not displayed	2	18.18%

## Summary for S2Q07 [1]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 1]



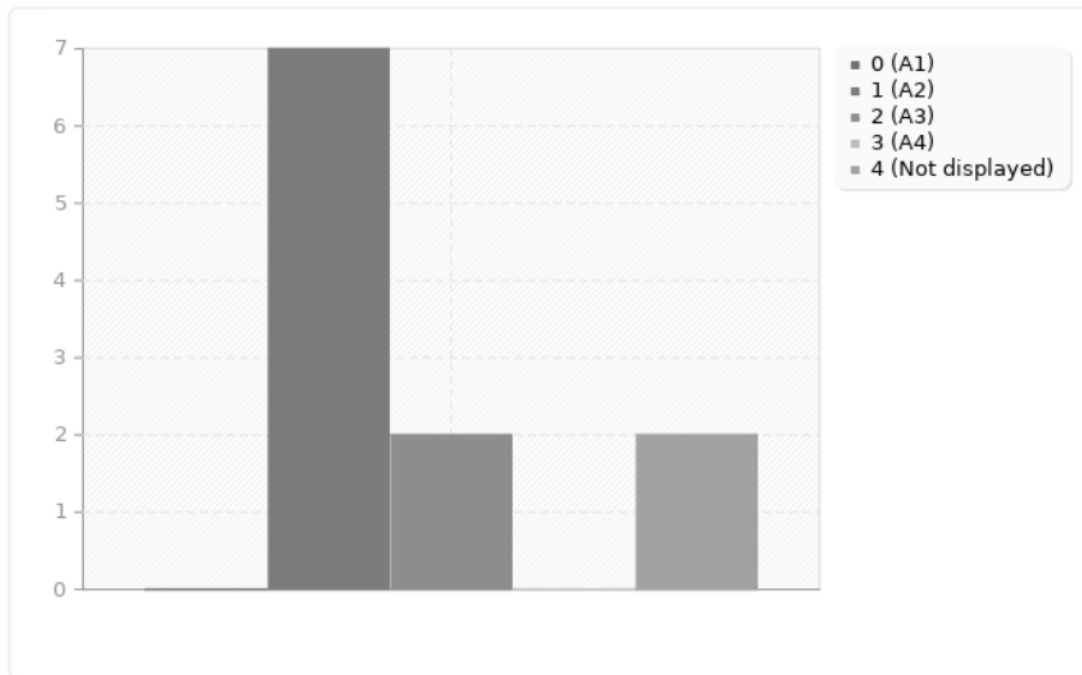
## Summary for S2Q07 [2]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 2]

Answer	Count	Percentage
My own personal information (A1)	0	0.00%
Personal information about members of my community (A2)	7	63.64%
Information about my community's cultural heritage, traditional knowledge and traditional cultural expressions (A3)	2	18.18%
Information about companies operating on Indigenous territories (A4)	0	0.00%
Not displayed	2	18.18%

## Summary for S2Q07 [2]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 2]



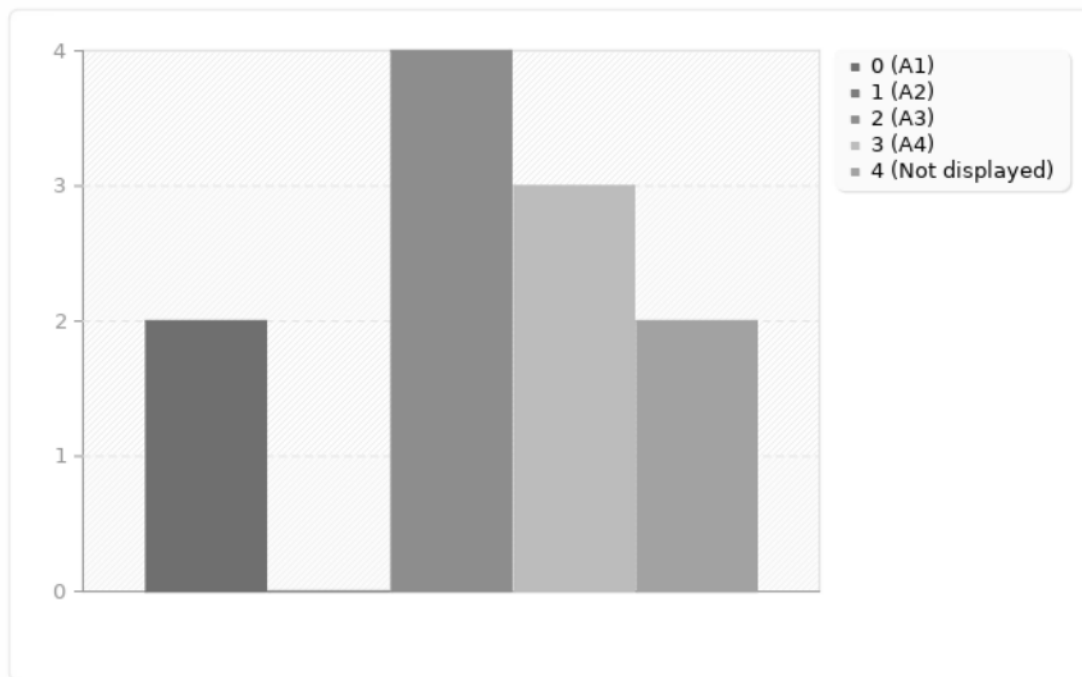
## Summary for S2Q07 [3]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 3]

Answer	Count	Percentage
My own personal information (A1)	2	18.18%
Personal information about members of my community (A2)	0	0.00%
Information about my community's cultural heritage, traditional knowledge and traditional cultural expressions (A3)	4	36.36%
Information about companies operating on Indigenous territories (A4)	3	27.27%
Not displayed	2	18.18%

## Summary for S2Q07 [3]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 3]



## Summary for S2Q07 [4]

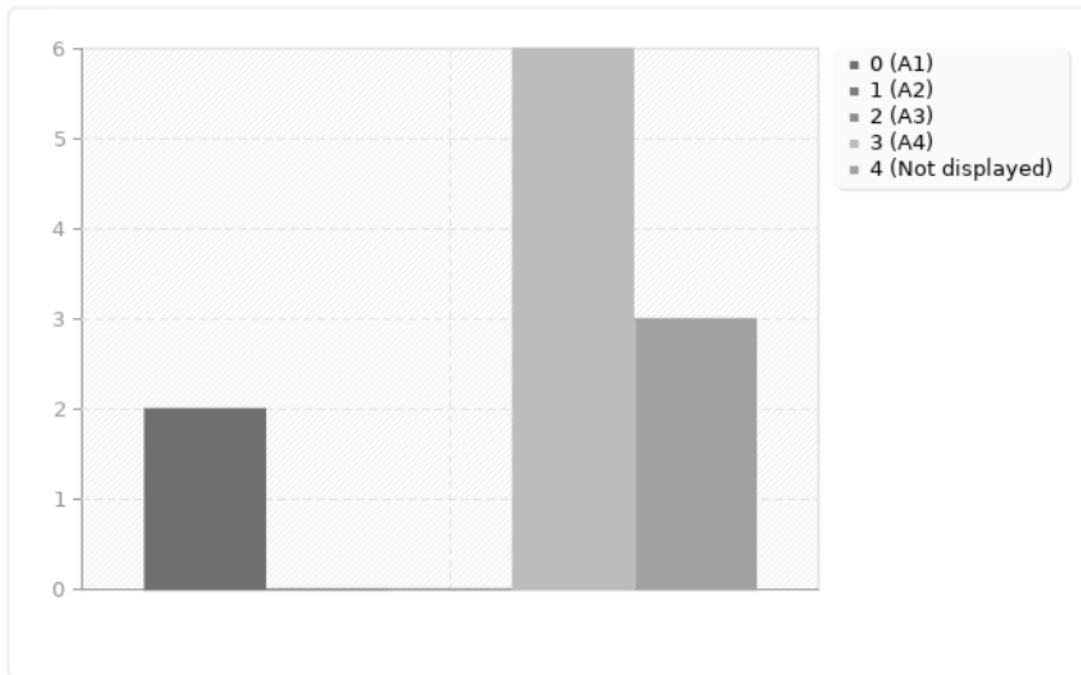
The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 4]

Answer	Count	Percentage
My own personal information (A1)	2	18.18%
Personal information about members of my community (A2)	0	0.00%
Information about my community's cultural heritage, traditional knowledge and traditional cultural expressions (A3)	0	0.00%
Information about companies operating on Indigenous territories (A4)	6	54.55%
Not displayed	3	27.27%



## Summary for S2Q07 [4]

The more sensitive a piece of information is, the more strongly we should protect it. How would you rank the sensitivity of the following information types?[Ranking 4]



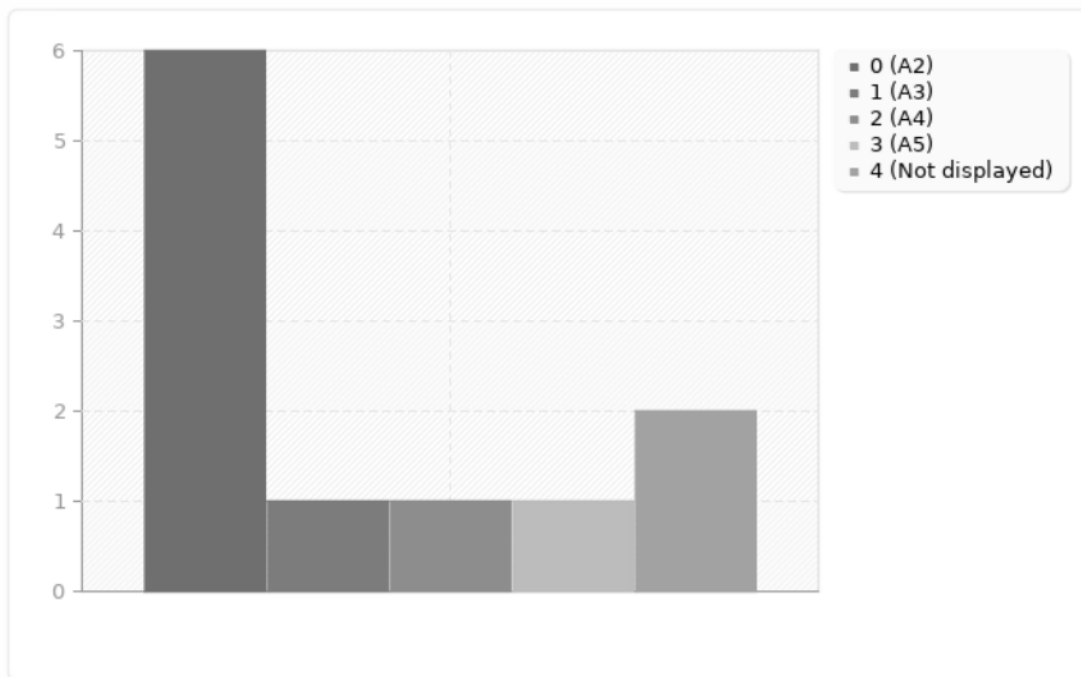
## Summary for S2Q08 [1]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 1]

Answer	Count	Percentage
Ease of access for community members (A2)	6	54.55%
Enabling provincial government decision-making with the participation of community members (A3)	1	9.09%
Limiting access rights solely to community members (A4)	1	9.09%
Enabling easier sharing between Indigenous communities and representative organizations (A5)	1	9.09%
Not displayed	2	18.18%

## Summary for S2Q08 [1]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 1]



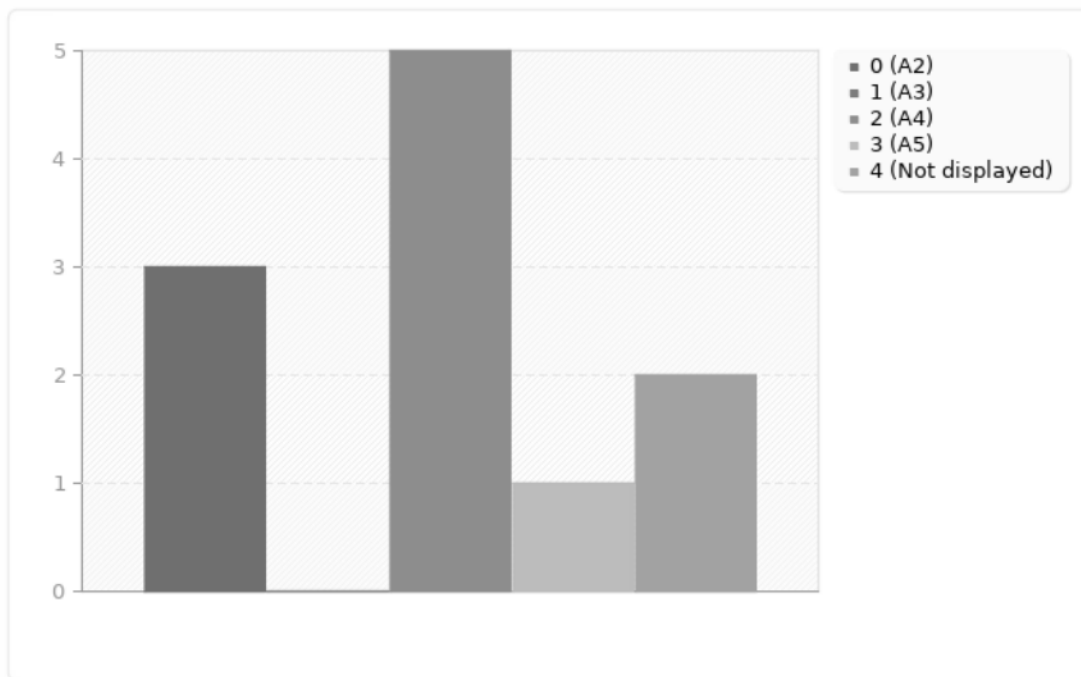
## Summary for S2Q08 [2]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 2]

Answer	Count	Percentage
Ease of access for community members (A2)	3	27.27%
Enabling provincial government decision-making with the participation of community members (A3)	0	0.00%
Limiting access rights solely to community members (A4)	5	45.45%
Enabling easier sharing between Indigenous communities and representative organizations (A5)	1	9.09%
Not displayed	2	18.18%

## Summary for S2Q08 [2]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 2]



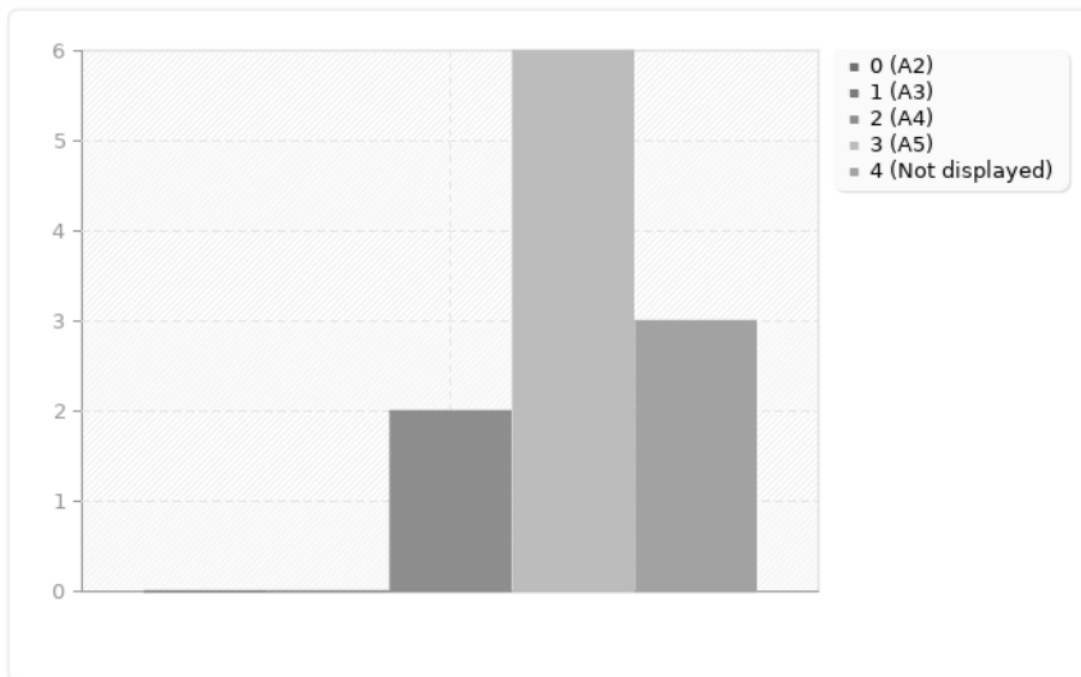
## Summary for S2Q08 [3]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 3]

Answer	Count	Percentage
Ease of access for community members (A2)	0	0.00%
Enabling provincial government decision-making with the participation of community members (A3)	0	0.00%
Limiting access rights solely to community members (A4)	2	18.18%
Enabling easier sharing between Indigenous communities and representative organizations (A5)	6	54.55%
Not displayed	3	27.27%

## Summary for S2Q08 [3]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 3]



## Summary for S2Q08 [4]

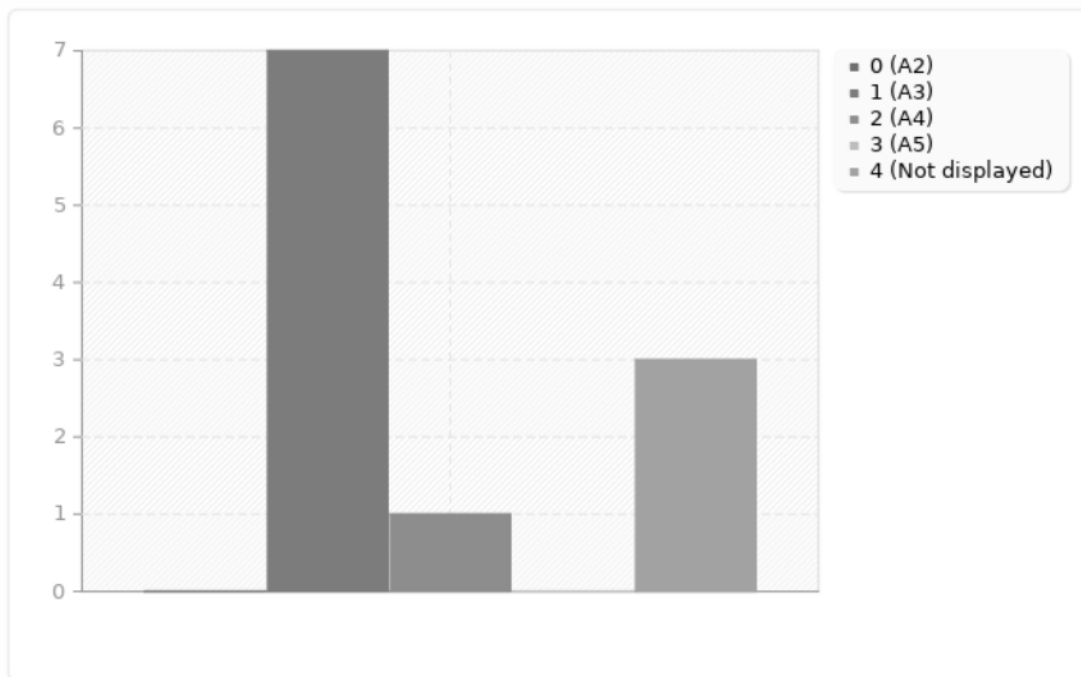
When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 4]

Answer	Count	Percentage
Ease of access for community members (A2)	0	0.00%
Enabling provincial government decision-making with the participation of community members (A3)	7	63.64%
Limiting access rights solely to community members (A4)	1	9.09%
Enabling easier sharing between Indigenous communities and representative organizations (A5)	0	0.00%
Not displayed	3	27.27%



## Summary for S2Q08 [4]

When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Ranking 4]



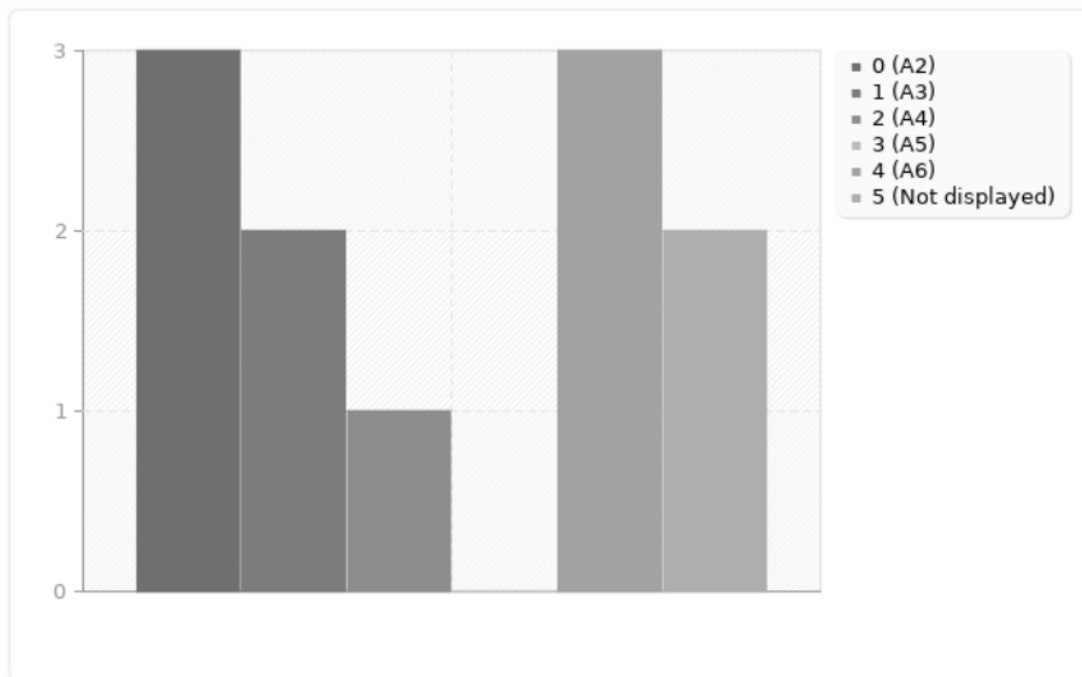
## Summary for S2Q09 [1]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 1]

Answer	Count	Percentage
Information about myself (A2)	3	27.27%
Information about people in my community (A3)	2	18.18%
Information about traditional lands (A4)	1	9.09%
Information about rights and title (A5)	0	0.00%
Information about cultural heritage, traditional knowledge and traditional cultural expressions (A6)	3	27.27%
Not displayed	2	18.18%

## Summary for S2Q09 [1]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 1]



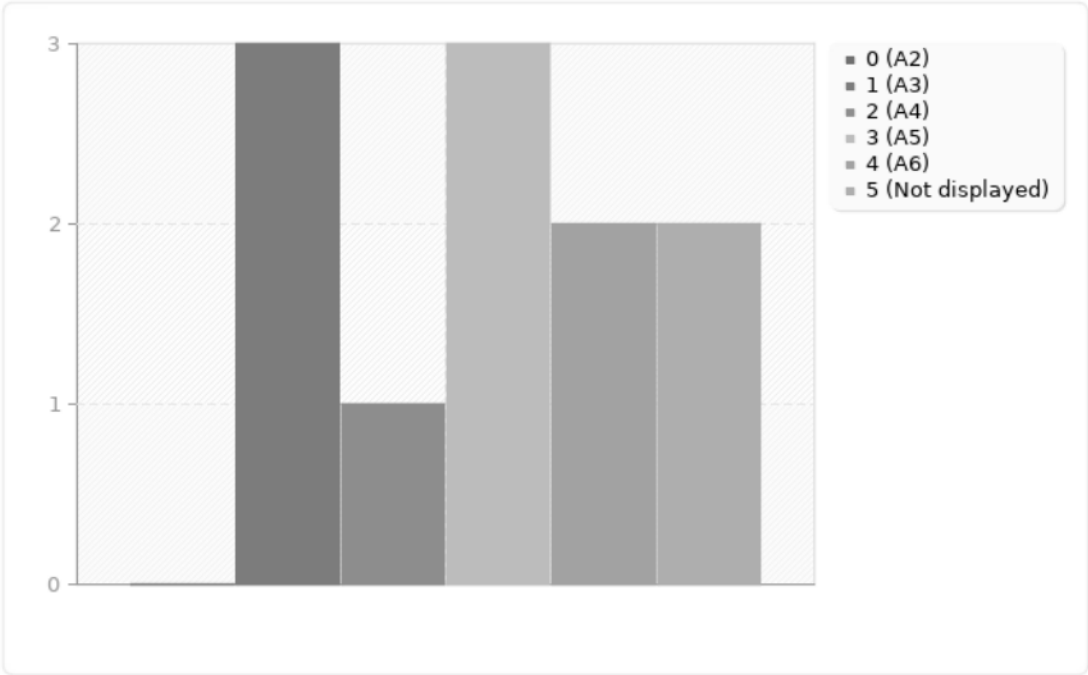
## Summary for S2Q09 [2]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 2]

Answer	Count	Percentage
Information about myself (A2)	0	0.00%
Information about people in my community (A3)	3	27.27%
Information about traditional lands (A4)	1	9.09%
Information about rights and title (A5)	3	27.27%
Information about cultural heritage, traditional knowledge and traditional cultural expressions (A6)	2	18.18%
Not displayed	2	18.18%

Summary for S2Q09 [2]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 2]



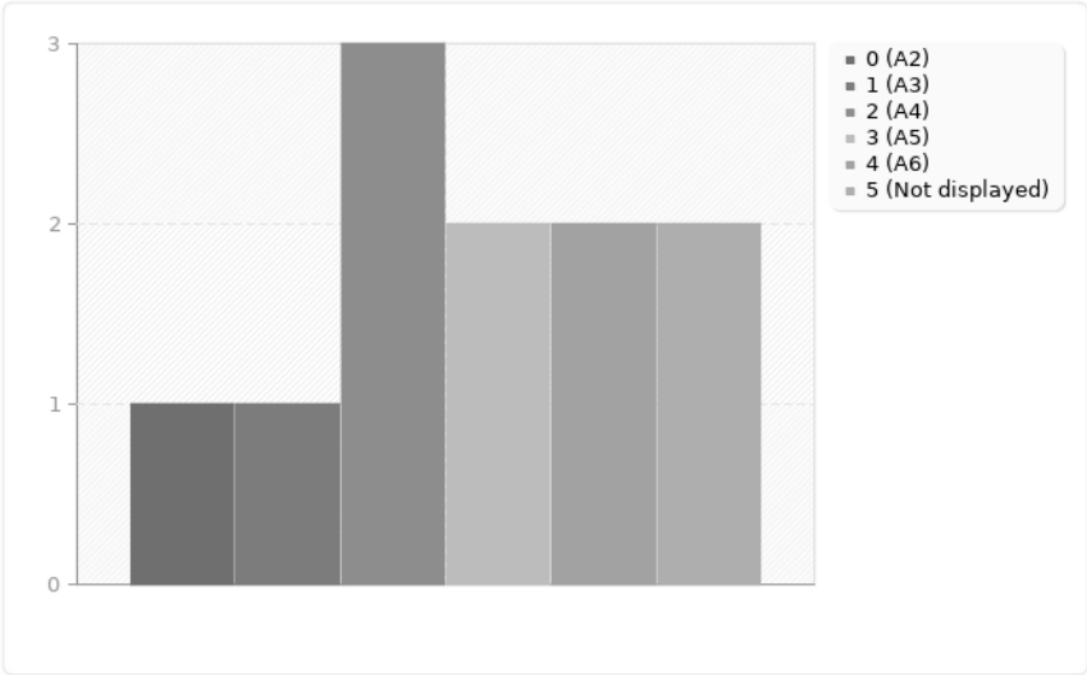
## Summary for S2Q09 [3]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 3]

Answer	Count	Percentage
Information about myself (A2)	1	9.09%
Information about people in my community (A3)	1	9.09%
Information about traditional lands (A4)	3	27.27%
Information about rights and title (A5)	2	18.18%
Information about cultural heritage, traditional knowledge and traditional cultural expressions (A6)	2	18.18%
Not displayed	2	18.18%

Summary for S2Q09 [3]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 3]



## Summary for S2Q09 [4]

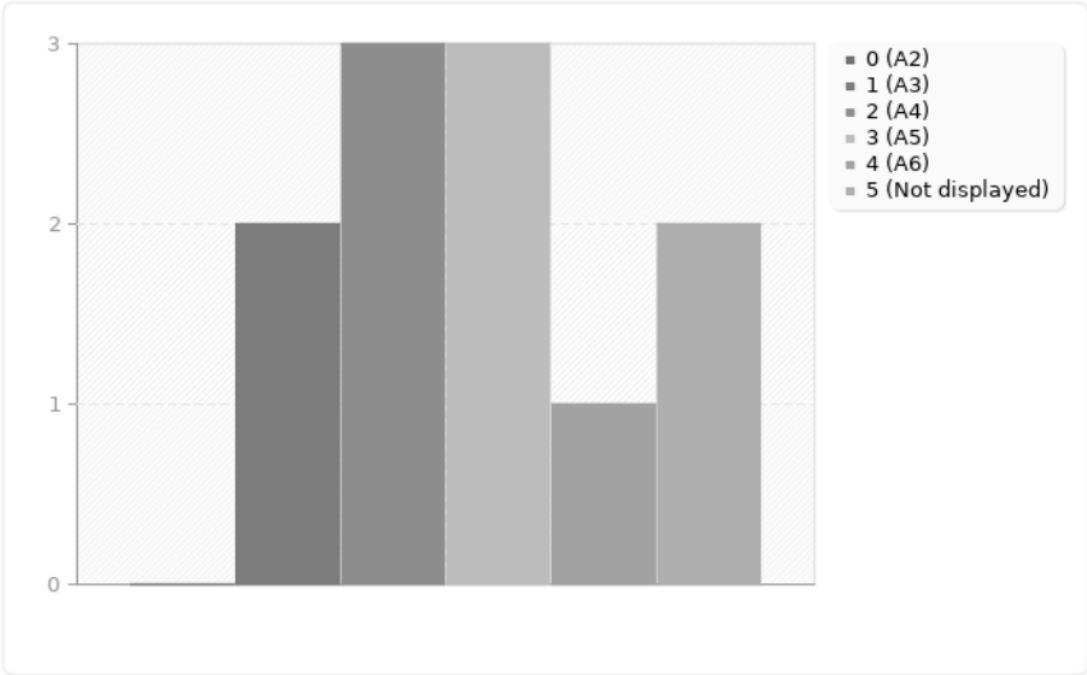
Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 4]

Answer	Count	Percentage
Information about myself (A2)	0	0.00%
Information about people in my community (A3)	2	18.18%
Information about traditional lands (A4)	3	27.27%
Information about rights and title (A5)	3	27.27%
Information about cultural heritage, traditional knowledge and traditional cultural expressions (A6)	1	9.09%
Not displayed	2	18.18%



Summary for S2Q09 [4]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 4]



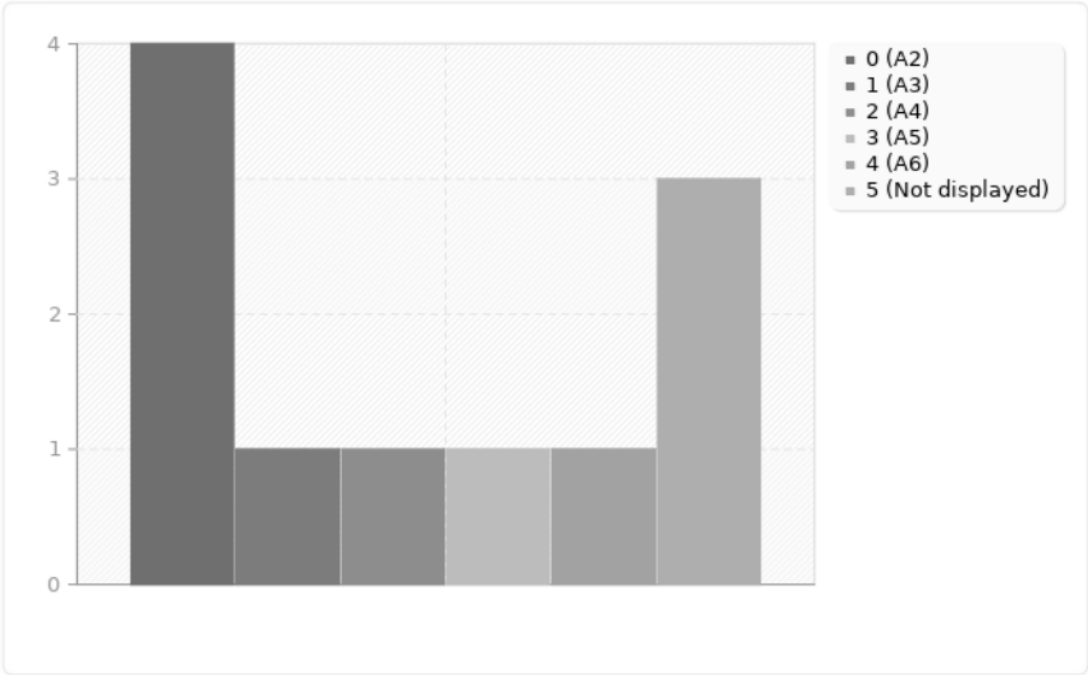
## Summary for S2Q09 [5]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 5]

Answer	Count	Percentage
Information about myself (A2)	4	36.36%
Information about people in my community (A3)	1	9.09%
Information about traditional lands (A4)	1	9.09%
Information about rights and title (A5)	1	9.09%
Information about cultural heritage, traditional knowledge and traditional cultural expressions (A6)	1	9.09%
Not displayed	3	27.27%

Summary for S2Q09 [5]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 5]



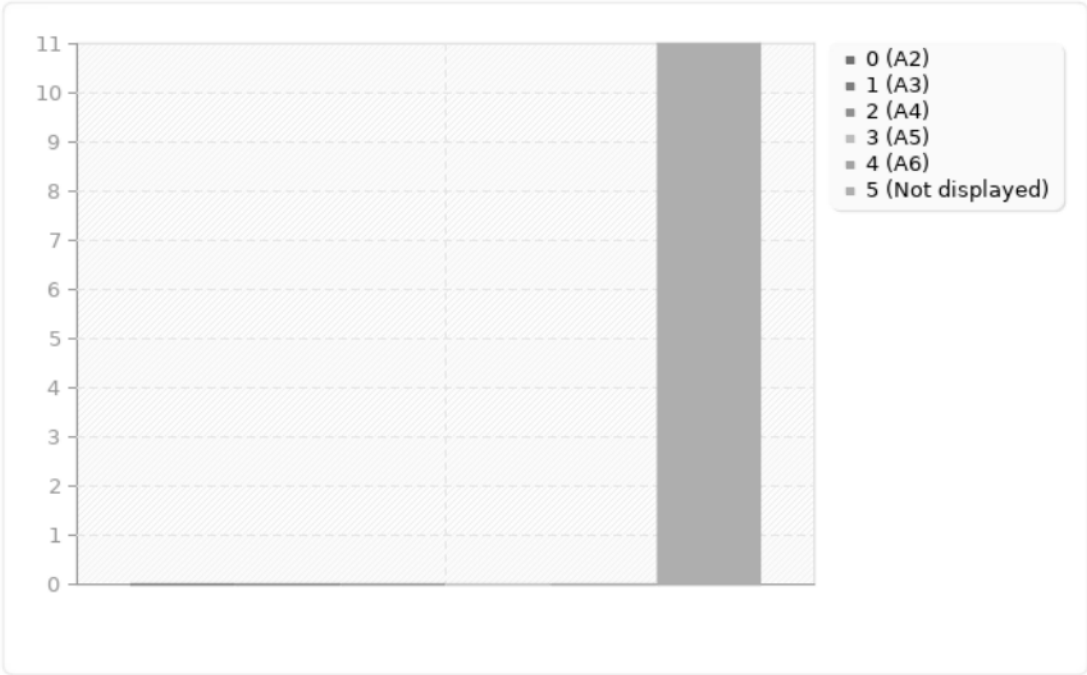
## Summary for S2Q09 [6]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 6]

Answer	Count	Percentage
Information about myself (A2)	0	0.00%
Information about people in my community (A3)	0	0.00%
Information about traditional lands (A4)	0	0.00%
Information about rights and title (A5)	0	0.00%
Information about cultural heritage, traditional knowledge and traditional cultural expressions (A6)	0	0.00%
Not displayed	11	100.00%

Summary for S2Q09 [6]

Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? (Please rank in order of greatest to least concerned)[Ranking 6]



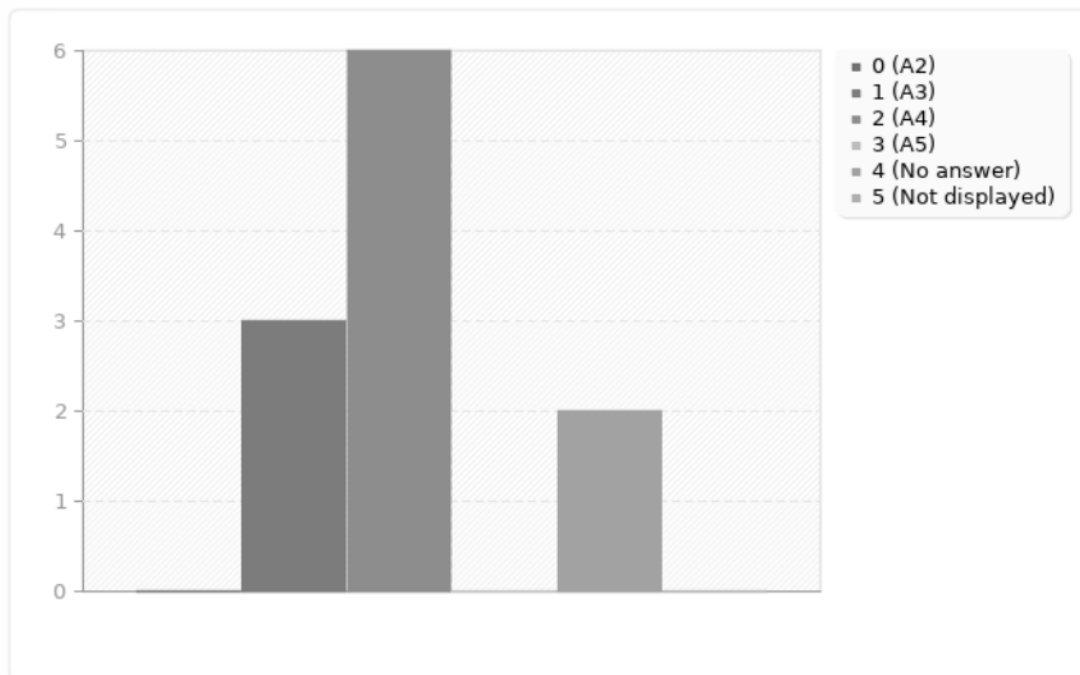
## Summary for S2Q10

When a Freedom of Information request is submitted to the provincial government for information about an Indigenous community (e.g. provincial funding applications for community projects or aggregated community health statistics), which of the following do you think would be the most appropriate process for government to follow in sharing the results?

Answer	Count	Percentage
The information should not be provided (A2)	0	0.00%
The information should only be provided to the Indigenous community the request is about (A3)	3	27.27%
The information could be provided following consultation with the Indigenous community the information is about (A4)	6	54.55%
The information should always be provided to the requestor (A5)	0	0.00%
No answer	2	18.18%
Not displayed	0	0.00%

## Summary for S2Q10

When a Freedom of Information request is submitted to the provincial government for information about an Indigenous community (e.g. provincial funding applications for community projects or aggregated community health statistics), which of the following do you think would be the most appropriate process for government to follow in sharing the results?



## Summary for S2Q11(SQ002)[Effective management of Indigenous lands and resources]

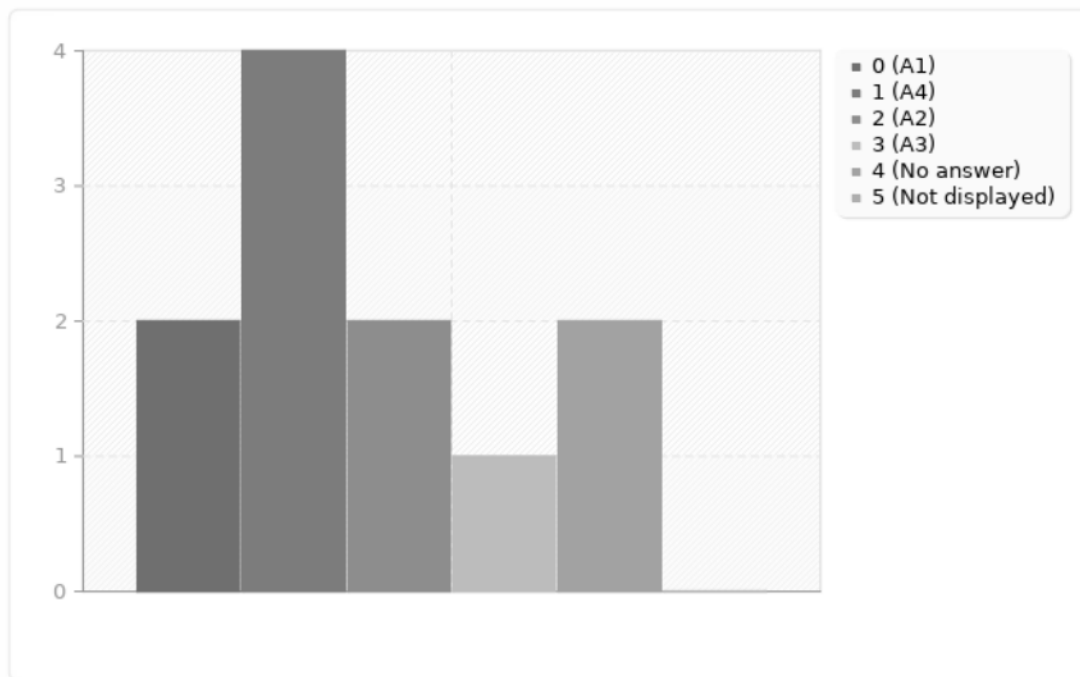
Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?

Answer	Count	Percentage
1 - Strong Negative Effect (A1)	2	18.18%
2 - Somewhat Negative Effect (A4)	4	36.36%
3 - No Negative Effect (A2)	2	18.18%
No Opinion (A3)	1	9.09%
No answer	2	18.18%
Not displayed	0	0.00%



## Summary for S2Q11(SQ002)[Effective management of Indigenous lands and resources]

Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?



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## Summary for S2Q11(SQ003)[Negotiation of agreements and treaties between the Province and Indigenous governments.]

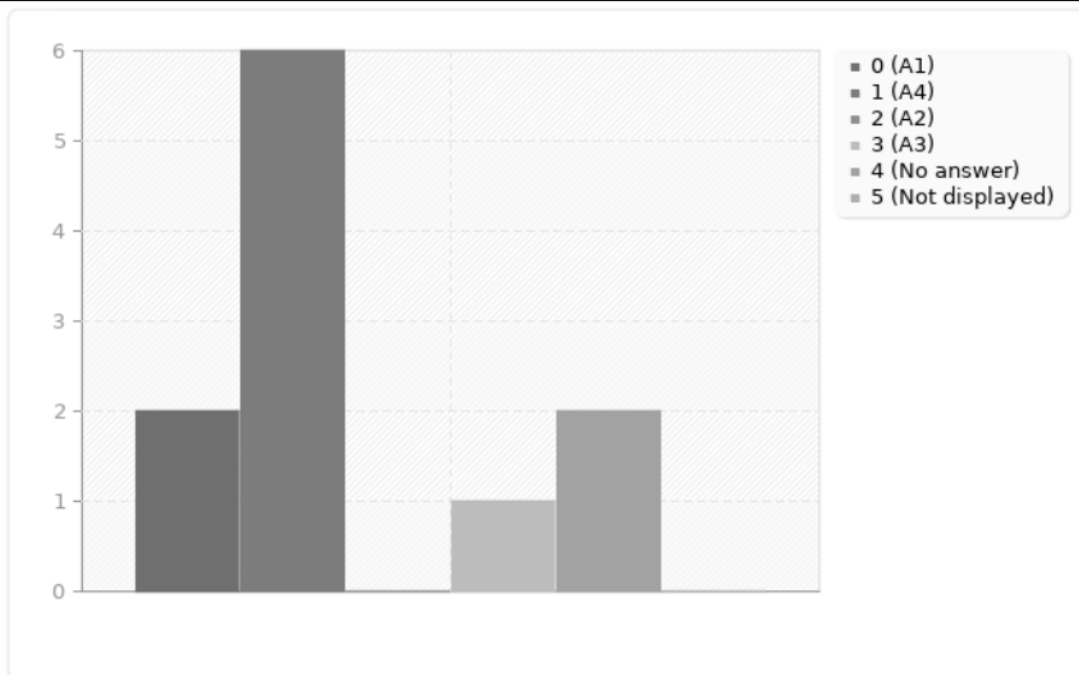
Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?

---

Answer	Count	Percentage
1 - Strong Negative Effect (A1)	2	18.18%
2 - Somewhat Negative Effect (A4)	6	54.55%
3 - No Negative Effect (A2)	0	0.00%
No Opinion (A3)	1	9.09%
No answer	2	18.18%
Not displayed	0	0.00%

## Summary for S2Q11(SQ003)[Negotiation of agreements and treaties between the Province and Indigenous governments.]

Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?



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## Summary for S2Q11(SQ004)[Effective collaboration to co-develop policies and programs.]

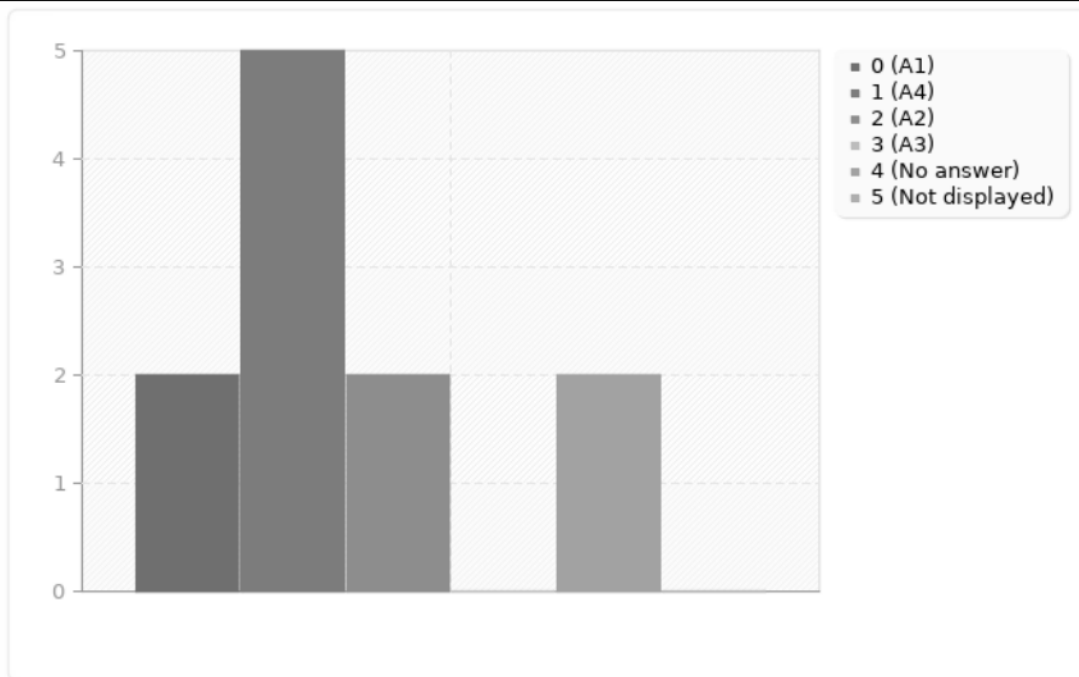
Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?

---

Answer	Count	Percentage
1 - Strong Negative Effect (A1)	2	18.18%
2 - Somewhat Negative Effect (A4)	5	45.45%
3 - No Negative Effect (A2)	2	18.18%
No Opinion (A3)	0	0.00%
No answer	2	18.18%
Not displayed	0	0.00%

## Summary for S2Q11(SQ004)[Effective collaboration to co-develop policies and programs.]

Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?



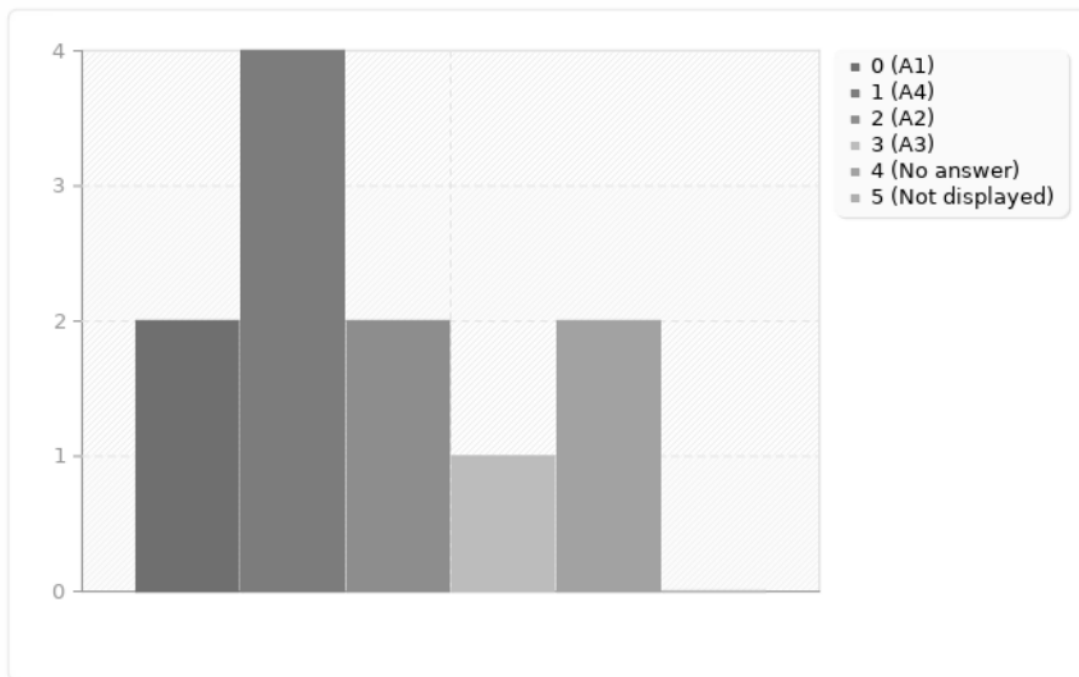
## Summary for S2Q11(SQ005)[Increasing joint enforcement and monitoring activities.]

Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?

Answer	Count	Percentage
1 - Strong Negative Effect (A1)	2	18.18%
2 - Somewhat Negative Effect (A4)	4	36.36%
3 - No Negative Effect (A2)	2	18.18%
No Opinion (A3)	1	9.09%
No answer	2	18.18%
Not displayed	0	0.00%

## Summary for S2Q11(SQ005)[Increasing joint enforcement and monitoring activities.]

Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following?



## Summary for S2Q12

What could the provincial government do to ensure that Indigenous peoples have more access and control over their information?

Answer	Count	Percentage
Answer	7	63.64%
No answer	4	36.36%
Not displayed	0	0.00%

ID	Response
51	Need better websites, ease of access - it is probably unknown to most what information the Province does hold on indigenous communities.
61	The First Nation community should have access to all its data and information that the provincial government has without the limitation and restriction of opting in to receive the information.
91	just making the information more accessible for indigenous people.
106	Take a hard look at policies that have negatively affected communities and rectify them...with indigenous leaders
116	recognize Indigenous jurisdiction over their own information. recognize Indigenous data sovereignty implement OCAP
126	Better embrace DRIPA; better standardize review process (uneven results); better consideration of jurisdiction and cultural protocols; less use of problematic sections of FOIPPA that provide no clear rationale for non-disclosure or disclosure; recognize agents and organizations working on behalf of communities, and where supported by community mandate, give equal access as communities. Agreements btwn those agents/orgs and communities should be recognized (BCR/mandate letter).
146	Talk to FNs about these processes before you do anything



## Summary for S2Q13

Do you have any other comments or input on how Indigenous information is managed by the provincial government?

Answer	Count	Percentage
Answer	5	45.45%
No answer	6	54.55%
Not displayed	0	0.00%

ID	Response
51	The Province needs to engage more with indigenous communities on information they hold - this questionnaire is a start but more needs to be done.
61	The provincial government should obtain consent in how Indigenous information is collected, stored and retained by the First Nations community.
91	none
106	Best be forthcoming with all policy of past and present concerning children and social systems...not making tensions greater with secrecy or withholding information without court orders...
126	Most concerned about any information that pre-determines level of consultation BEFORE proper engagement with communities. From my experience, public services staff interpretation of tools like CAD, and resulting engagement needs attention and correction. In my community, we have seen unequal engagement due to poor understanding of our interests, and this impacts our access to information. Other than the Act, which is subject to interpretation by Provincial staff, there is no information on how "indigenous information" is managed. It is also unclear where the line btwn "indigenous information" and other information is. Is a road through an IR included in "indigenous information"? Current understanding too narrow.

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## Summary for S3Q14

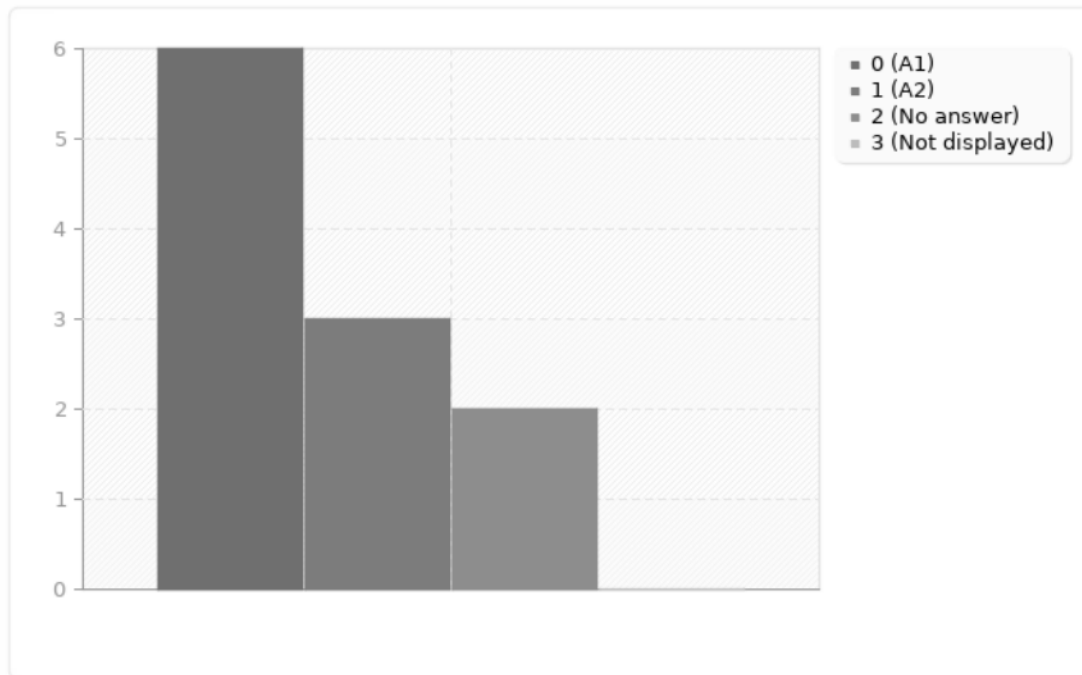
Do you identify as an Indigenous person, that is, First Nations, Métis or Inuk (Inuit)?

---

Answer	Count	Percentage
Yes (A1)	6	54.55%
No (A2)	3	27.27%
No answer	2	18.18%
Not displayed	0	0.00%

## Summary for S3Q14

Do you identify as an Indigenous person, that is, First Nations, Métis or Inuk (Inuit)?



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## Summary for S3Q14b

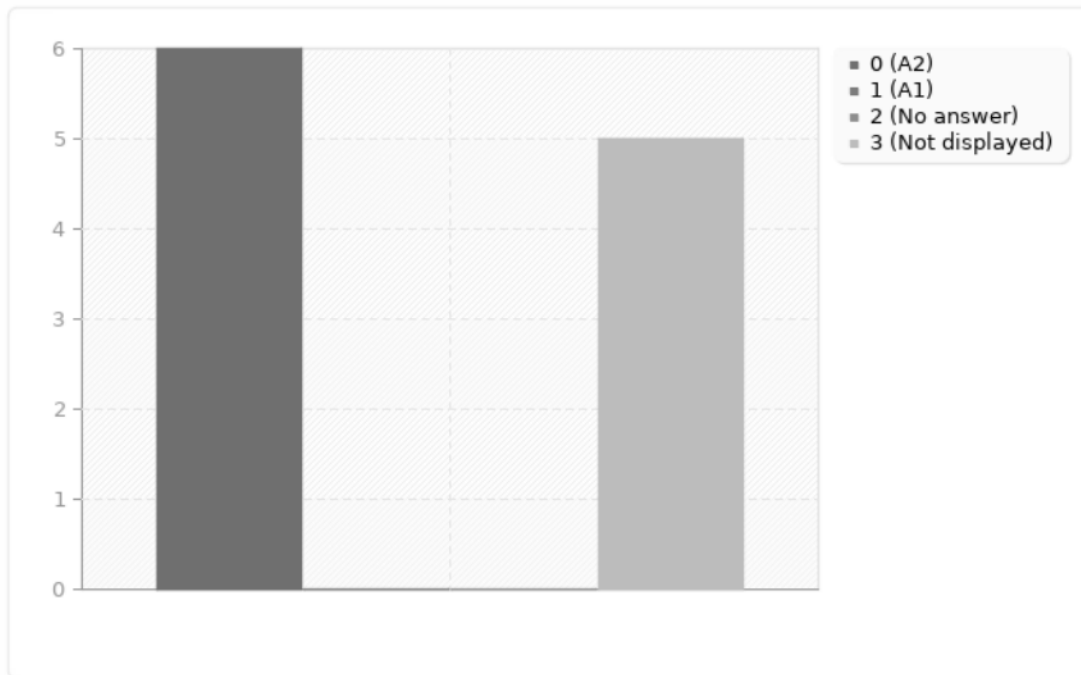
If you answered "yes" above, are you a member of a First Nation/Indian band?

---

Answer	Count	Percentage
Yes (A2)	6	54.55%
No (A1)	0	0.00%
No answer	0	0.00%
Not displayed	5	45.45%

## Summary for S3Q14b

If you answered "yes" above, are you a member of a First Nation/Indian band?



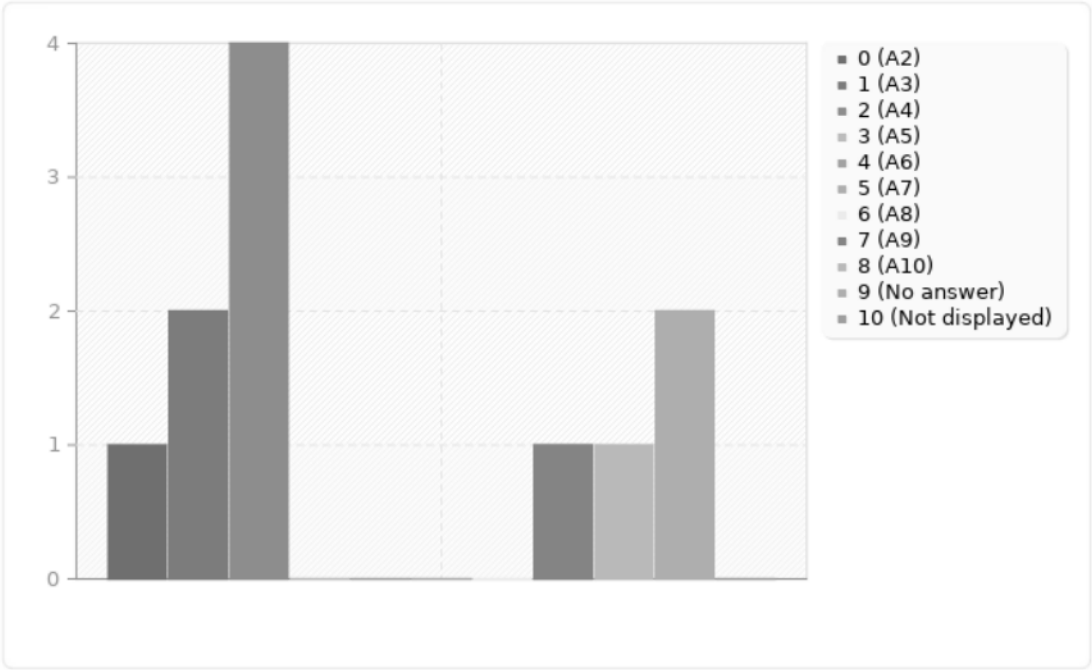
## Summary for S3Q15

In which region of the province do you live?

Answer	Count	Percentage
Vancouver Island / Coast (A2)	1	9.09%
Mainland / Southwest (A3)	2	18.18%
Thompson / Okanagan (A4)	4	36.36%
Kootenay (A5)	0	0.00%
Cariboo (A6)	0	0.00%
North Coast (A7)	0	0.00%
Nechako (A8)	0	0.00%
Northeast (A9)	1	9.09%
I live outside of B.C. (A10)	1	9.09%
No answer	2	18.18%
Not displayed	0	0.00%

Summary for S3Q15

In which region of the province do you live?



# FOIPPA update

August 26, 2021



Ministry of  
Citizens' Services



## Agenda

- Background
- Proposed amendment overview
- Closing and next steps

Other than the 2019 targeted amendments, FOIPPA has not been substantially amended since 2011.

Proposed amendments will:

Update the Act to enable better service in the digital era

Enhance privacy protections

Demonstrate government's commitment to diversity, inclusion, reconciliation and equity

Respond to long-standing recommendations from Special Committees, OIPC, the public and other stakeholders

# FOIPPA - Background

*Freedom of Information and Protection of Privacy Act (FOIPPA)* has 2 main purposes:



## Freedom of Information (FOI)

Make public bodies more open and accountable by providing the public with a legislated right of access to records held by a public body, including their own personal information, subject to reasonable exceptions.



## Protection of Privacy

Specify circumstances where public bodies are authorized to collect, use, and disclose personal information; and require public bodies to make reasonable efforts to ensure the accuracy and security of personal information.

## Public Bodies Covered by FOIPPA

Includes government ministries, agencies, boards commissions, Crown corporations, and "local public bodies" (which include municipalities, universities and colleges, school boards, health authorities, and self-governing bodies of professions).

2,900+



## Establishes an Independent Officer of the Legislature

Information and Privacy Commissioner has a mandate to monitor how the Act is administered to ensure that its purposes are achieved.

## FOIPPA Special Committee

At least once every 6 years, a Special Committee of the Legislative Assembly must be appointed to conduct a comprehensive review of the Act and submit a report to the Legislative Assembly within one year of the date of its appointment.



New Special Committee was struck in June 2021.

3

# Objectives

## Service Modernization

- Ensure government services remain responsive through the COVID-19 pandemic and recovery.
- Support delivery of government services in modern, digital ways that citizens expect.
- Enable important improvements to FOI services.

## Privacy Enhancement

- Continue to improve government's public sector data security and privacy practices to ensure that British Columbians' personal information is safeguarded.

## Support Diversity, Inclusion, Reconciliation and/or Equity

- Improvements based on the principles of lasting and meaningful reconciliation, and equity and anti-racism.
- Apply a critical *Gender-based Analysis Plus* lens to the Act, its purposes and its language reveals that there are unintended consequences to how the Act is currently drafted.

4

## Enable Information sharing with Indigenous governments

### **Proposed change:**

- Add a new disclosure authority to the Act to enable more sharing of personal information with Indigenous governments for the purposes of reconciliation and to further enable Indigenous self-government.

### **Objectives:**

- Expected to enable:
  - Indigenous governments to more effectively administer programs and manage lands and resources;
  - negotiation of agreements and treaties between the Province and Indigenous governments; and
  - more effective collaboration between the Province and Indigenous governments in co-developing policies and programs.

5

## Protection for sensitive Indigenous information

### **Proposed change:**

- Add protections (from public release via FOI) for information related to:
  - Indigenous cultural heritage;
  - traditional knowledge and traditional cultural expressions; and
  - the manifestations of sciences, technologies and cultures

### **Objective:**

- Enhance protections of Indigenous cultural heritage, traditional knowledge and traditional cultural expressions in alignment with DRIPA and other BC legislation (e.g., Environmental Assessment Act).

## Protection for sensitive Indigenous information cont'd

### **Proposed change:**

- Current 15-year limitation on the ability to refuse the disclosure of information if it will potentially harm intergovernmental relations is unreasonable in the Indigenous context.
- Will increase protections (from public release via FOI) of records that could harm relations or negotiations between the government of B.C. and an Indigenous government

### **Objective:**

- Addresses the risk of harm respecting information related to Indigenous governments, in a cultural context where the concept of time is non-linear.

7

## Indigenous government definition

### **Proposed change:**

- Replace the term “aboriginal government” with “Indigenous government”
- Replace “Aboriginal government” with a new definition of “Indigenous government”.

*“Indigenous government” means an Indigenous organization that exercises government functions, including but not limited to a band as defined in the Indian Act (Canada)*

### **Objective:**

- The Act does not adequately reflect contemporary standards respecting Indigenous identity.

# Questions?

Matt Reed, Executive Director  
Strategic Policy & Legislation Branch  
[Matt.Reed@gov.bc.ca](mailto:Matt.Reed@gov.bc.ca)

Mark Sime, Director  
Strategic Policy & Legislation Branch  
[Mark.Sime@gov.bc.ca](mailto:Mark.Sime@gov.bc.ca)



# Appendix

2021 proposed amendments



## Service Modernization

- Modernize data-residency.
- Enable public body head to apply to Commissioner for approval to disregard certain FOI requests.
- FOI application fees.
- Add offence for willfully destroying, altering, falsifying, or concealing records to evade FOI request.
- Specify that access rights apply only to records related to government business.

11

## Privacy Enhancements

- Mandatory breach reporting.
- Require public bodies to have a Privacy Management Program.
- Expand coverage of the Act to include subsidiary entities owned or controlled by public bodies.
- Make it an offence to willfully collect, use or access personal information in contravention of the Act.
- Increase maximum penalties for general offences and privacy offences.

12

## Support Diversity, Inclusion, Reconciliation and/or Equity

- Add protections for information related to Indigenous cultural heritage; traditional knowledge and traditional cultural expressions; and the manifestations of Indigenous sciences, technologies and cultures.
- Increase protections of records that could harm relations or negotiations between the Government of BC and an Indigenous government.
- Add new disclosure authority to enable more information sharing with Indigenous governments.
- Replace “Aboriginal government” with a new definition of “Indigenous government”.
- Remove outdated and non-inclusive language.

13



# Briefing on Proposed FOIPPA Amendments

June 29, 2021



Ministry of  
Citizens' Services

CONFIDENTIAL

# Agenda

- Welcome and Introductions
- Background – how we came to be where we are
- 2021 FOIPPA key issues – what we are proposing

2

# FOIPPA - Background

*Freedom of Information and Protection of Privacy Act (FOIPPA)* has 2 main purposes:



## Freedom of Information (FOI)

Make public bodies more open and accountable by providing the public with a legislated right of access to records held by a public body, including their own personal information, subject to reasonable exceptions.



## Protection of Privacy

Specify circumstances where public bodies are authorized to collect, use, and disclose personal information; and require public bodies to make reasonable efforts to ensure the accuracy and security of personal information.

## Public Bodies Covered by FOIPPA

Includes government ministries, agencies, boards commissions, Crown corporations, and "local public bodies" (which include municipalities, universities and colleges, school boards, health authorities, and self-governing bodies of professions).

2,900+



## Establishes an Independent Officer of the Legislature

Information and Privacy Commissioner has a mandate to monitor how the Act is administered to ensure that its purposes are achieved.

## FOIPPA Special Committee

At least once every 6 years, a Special Committee of the Legislative Assembly must be appointed to conduct a comprehensive review of the Act and submit a report to the Legislative Assembly within one year of the date of its appointment.



New Special Committee was struck in December 2020.

3



## Objectives

### Service Modernization

- Ensure government services remain responsive through the COVID-19 pandemic and recovery.
- Support delivery of government services in modern, digital ways that citizens expect.
- Enable important improvements to FOI services.

### Privacy Enhancement

- Continue to improve government's public sector data security and privacy practices to ensure that British Columbians' personal information is safeguarded.

### Support Diversity, Inclusion, Reconciliation and/or Equity

- Improvements based on the principles of lasting and meaningful reconciliation, and equity and anti-racism.
- Apply a critical GBA+ lens to the Act, its purposes and its language reveals that there are unintended consequences to how the Act is currently drafted.

4

## Service Modernization

- Modernize data-residency.
- Enable public body head to apply to Commissioner for approval to disregard certain FOI requests.
- FOI application fees.
- Add offence for willfully destroying, altering, falsifying, or concealing records to evade FOI request.
- Specify that access rights apply only to records related to government business.

5

## Privacy Enhancements

- Mandatory breach reporting.
- Require public bodies to have a Privacy Management Program.
- Define criteria to permit a subsidiary entity owned or controlled by a public body to be designated as a public body.
- Make it an offence to willfully collect, use or access personal information in contravention of the Act.
- Increase maximum penalties for general offences and privacy offences.
- Expand coverage of the Act to include subsidiary entities owned or controlled by public bodies.

6

## Support Diversity, Inclusion, Reconciliation and/or Equity

- Add protections for information related to Indigenous cultural heritage; traditional knowledge and traditional cultural expressions; and the manifestations of sciences, technologies and cultures.
- Increase protections of records that could harm relations or negotiations between the Government of BC and an Indigenous government.
- Add new disclosure authority to enable more information sharing with Indigenous governments.
- Replacing “Aboriginal government” with a new definition of “Indigenous government”.
- Remove outdated and non-inclusive language.

7



Questions?

9

# Briefing on Proposed FOIPPA Amendments

July 9, 2021



Ministry of  
Citizens' Services

CONFIDENTIAL

# Agenda

- Welcome and Introductions
- Background – how we came to be where we are
- 2021 FOIPPA key issues – what we are proposing

2



# FOIPPA - Background

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Specify circumstances where public bodies are authorized to collect, use, and disclose personal information; and require public bodies to make reasonable efforts to ensure the accuracy and security of personal information.

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## Service Modernization

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## Support Diversity, Inclusion, Reconciliation and/or Equity

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- Remove outdated and non-inclusive language.

7



Questions?

## Biggs, Jackie CITZ:EX

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**From:** IMIT Policy CITZ:EX  
**Sent:** June 29, 2021 3:31 PM  
**To:** 'IM.ITpolicy@gov.bc.ca'  
**Subject:** Input Requested - BC Freedom of Information and Protection of Privacy Act

Good afternoon:

The B.C. Ministry of Citizens' Services is seeking your input on possible improvements to how information relating to Indigenous peoples is managed by government through changes to the *Freedom of Information and Protection of Privacy Act*.

I first want to acknowledge with deep respect, the trauma and harms revealed at the former Kamloops residential school, and all residential schools in Canada. The Government of B.C. supports the leadership of Tk'emlúps te Secwépemc and all residential school survivors and their families in meeting the challenges ahead.

We have an opportunity to make changes to rules and processes to ensure Indigenous governments have access to the information needed to support reconciliation without compromising the privacy of the information they provide to the Province. The B.C. government also recognizes the need for Indigenous peoples to have more control over the information they entrust to government, including records related to cultural heritage, traditional knowledge and traditional cultural expression.

As we review and look for possible improvements to the rules and practices around information access and privacy protection, we want to be guided by the experiences and input of Indigenous communities. To gather this feedback, we invite you and those in your community to please complete this short questionnaire – <https://engage.gov.bc.ca/govtogetherbc/access-to-information-and-privacy-protection-for-indigenous-communities/>.

Topics covered include:

- Protection of information relating to Indigenous peoples,
- Access to information by Indigenous communities, and
- Control over Indigenous information.

This outreach builds upon a 2018/19 mail-out engagement, which provided some background on the work being done by the provincial government and sought Indigenous perspectives on access to information and privacy.

The questionnaire should take 10-15 minutes to complete and will be open until August 15, 2021. We hope that the timeframe for this survey provides some flexibility for participation when the timing is right for your community. We value your input and it will inform future improvements to how the B.C. government handles Indigenous information.

If you have any questions regarding the survey or wish to discuss this topic further, please contact Mark Sime, Project Director at [IM.ITpolicy@gov.bc.ca](mailto:IM.ITpolicy@gov.bc.ca).

Thank you.

**Kerry Pridmore** | Assistant Deputy Minister |  
Corporate Information and Records Management Office |  
Ministry of Citizen Services



## Access to information and privacy protection for Indigenous communities

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### Get Involved

The Province has made a commitment to work in partnership with Indigenous peoples to implement the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). As part of this work, the Province is reviewing policies, programs, and legislation to decide how to action the UN Declaration principles.

### **What is this engagement about?**

The *Freedom of Information and Protection of Privacy Act* (FOIPPA) makes the provincial government more accountable by enabling people to access records held by public bodies. The legislation also protects personal privacy by establishing appropriate authorities for the collection, use and disclosure of personal information by public bodies.

The Province recognizes FOIPPA has not been updated in many years and the Ministry of Citizens' Services is looking at opportunities to improve the rules and practices around information access and privacy protection. As part of this work, we want to ensure Indigenous governments and communities have access to the information needed to support reconciliation and that sensitive information Indigenous peoples share with the Province is protected.

This short questionnaire focuses on:

- protection of information relating to Indigenous peoples,
- access to information by Indigenous communities, and
- control over Indigenous information.

**Feedback will be accepted until 4 pm (PT) on August 15<sup>th</sup>, 2021**

### **How can my contribution make a difference?**

Your input will help the Province evaluate current and future work to improve access to information and privacy protections for Indigenous peoples.

### **Details:**

- Date: Open June 29 – August 15, 2021
- Status: Open
- Location: Province-wide
- Category: Government
- Type: Online, email

### Get Involved

## Questionnaire content - Main Page

### Access to information and privacy protection for Indigenous communities

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The Freedom of Information and Protection of Privacy Act has not been updated in many years and the Ministry of Citizens' Services is looking at ways to improve the rules and practices outlined in the Act. As part of this work, we want to ensure Indigenous governments and communities have access to the information needed to support reconciliation as well as protecting the sensitive information owned by Indigenous peoples that is shared with the Province.

All questions in this questionnaire are optional.

#### **How can my contribution make a difference?**

Your input will help the Province evaluate current and future work to improve access to information and privacy protections for Indigenous peoples.

The online questionnaire will be open until 4 pm PT on August 15th, 2021.

**Please note:** This online feedback form supports Internet Explorer 11 and all newer comparable browsers like Firefox, Chrome, Opera etc. with activated JavaScript. Your browser settings must have cookies enabled for the questionnaire to run properly and inactivity on the questionnaire for longer than one hour will result in the questionnaire timing out.

**Collection Notice:** Personal information is collected by the Ministry of Citizens' Services on under the authority of section 26(c) and 26(e) of the Freedom of Information and Protection of Privacy Act, for the access to information and privacy protection for indigenous communities. If you have any questions about the collection, use and disclosure of your personal information, please contact: Director, Citizen Engagement, PO Box 9484, STN PROV GOVT Victoria BC, V8W 9W6, ph: 250-208-3591, [citizenengagement@gov.bc.ca](mailto:citizenengagement@gov.bc.ca).

Please do not include any personally identifiable information about yourself or others in your response.

### Section 1 – Accessing provincial government information

1. What best describes your role in responding to this questionnaire? [Check all that apply]
  - Representative of a First Nations government
  - Representative of a First Nations community
  - Representative of an Indigenous organization
  - Interested member of the public
  - Representative of a commercial or non-profit organization
  - Representative from a local government
  - Other, please specify: \_\_\_\_\_
2. Currently, what is your primary source for information from the provincial government? [Choose one of the following answers]
  - Government websites
  - Newspapers
  - Government social media channels (e.g. Facebook, Instagram, Twitter etc.)
  - Other social media channels (e.g. Facebook, Instagram, Twitter etc.)
  - TV

- Other [text box]
3. Has your primary source of provincial government information changed since the start of the pandemic (compared to before March 2020)?
- Yes
  - No
- 3b. How has your primary source of provincial government information changed since the start of the pandemic? *[text box with 400-character limit]*

## Section 2 – Information access and privacy protection

4. Have you ever made a Freedom of Information (FOI) request?
- I have made a request for: [Check all that apply]
- a) My own information (e.g. employment record with a public body)
  - b) Information about my community (e.g. health statistics)
  - c) Other government information (e.g. infrastructure proposals or planning documents)
  - d) None of the above
- 4b. *[If b or c]* In the previous question, you answered that you had made an FOI request for “Information about my community” and/or “Other government information”. Do you think the FOI request you made for this information should have been accessible in another way? [Choose one of the following answers]
- Yes
  - No
  - Unsure
- 4c. If yes, please provide more detail on why.
5. What types of information held by the provincial government do you feel your community needs more access to?
- *Open text box [500 characters]*
6. What best describes your level of agreement with the following statement?
- My community has appropriate access to information held by the provincial government.
- *[array question, 1 Strongly disagree → 5 Strongly agree]*
  - Unknown – I have never tried to access information on my community.
7. The more sensitive a piece of information, the more strongly we should protect it. How would you rank the sensitivity of the following information types? *[ranking question]*
- My own personal information
  - Personal information about members of my community
  - Information about my community’s cultural heritage, traditional knowledge and traditional cultural expressions
  - Information about companies operating on Indigenous territories

8. When thinking about provincial government protection of sensitive information related to your community's cultural heritage, traditional knowledge and traditional cultural expressions, what is most important to you? [Please rank the following from greatest to least important.]
  - Ease of access for community members
  - Enabling provincial government decision-making with the participation of community members
  - Limiting access rights solely to community members
  - Enabling easier sharing between Indigenous communities and representative organizations
9. Which, if any, of the following types of information are you most worried about the provincial government sharing inappropriately? [Please rank in order of greatest to least concerned] *[randomized answer options]*
  - Information about myself
  - Information about people in my community
  - Information about traditional lands
  - Information about rights and title
  - Information about cultural heritage, traditional knowledge and traditional cultural expressions
10. When a Freedom of Information request is submitted to the provincial government for information about an Indigenous community (e.g. provincial funding applications for community projects or aggregated community health statistics), which of the following do you think would be the most appropriate process for government to follow in sharing the results? [Choose one of the following answers]
  - The information should not be provided
  - The information should only be provided to the Indigenous community the request is about
  - The information could be provided following consultation with the Indigenous community the information is about
  - The information should always be provided to the requestor
11. Government is committed to meaningful reconciliation with Indigenous peoples and supporting Indigenous self-government. We recognize improvements can be made to how public bodies share personal information with Indigenous governments for the purposes of reconciliation. In your opinion, has FOIPPA/privacy law had a negative effect on any of the following? *[Array question – 1 strong negative effect, 2 somewhat negative effect, 3 no negative effect, no opinion]*
  - Effective management of Indigenous lands and resources
  - Negotiation of agreements and treaties between the Province and Indigenous governments.
  - Effective collaboration to co-develop policies and programs.
  - Increasing joint enforcement and monitoring activities.
12. What could the provincial government do to ensure that Indigenous peoples have more access and control over their information?
  - *Open text box [500 characters]*
13. Do you have any other comments or input on how Indigenous information is managed by the provincial government?
  - *Open text box [750 characters]*

### Section 3 – Tell us about yourself

To get a better understanding about who is responding to this questionnaire, please provide a bit of detail about yourself. These questions, like the other questions in this questionnaire, are optional.

14. Do you identify as an Indigenous person, that is, First Nations, Métis or Inuk (Inuit)?

- No
- Yes

14b. If you answered “yes” above, are you a member of a First Nation/Indian band?

- Yes
- No

15. Which region of the Province do you reside in? *[include map]*

- Vancouver Island / Coast
- Mainland / Southwest
- Thompson / Okanagan
- Kootenay
- Cariboo
- North Coast
- Nechako
- Northeast
- I live outside of B.C.

Thank you for your feedback. Your input will help the Province evaluate current and future work to improve access to information and privacy protections for Indigenous peoples.

# Briefing on FOIPPA

June 29, 2021

9:28 AM

**Meeting Date:** 2021-06-29 9:30 AM

**Location:** Microsoft Teams Meeting

**Link to Outlook Item:** [click here](#)

**Invitation Message**

**Participants**

Sime, Mark CITZ:EX (Meeting Organizer)

blehmann@ratcliff.com

Reed, Matt CITZ:EX

Harriman, Rheannon CITZ:EX

Bose, Sara CITZ:EX

## Notes

Interplay between M treaty and provincial law depends on access or protection

Protection side where they have the meet or beat quality - provincial and federal law is paramount on M law on protection

Curious about both sides of the convo - in current law model, prov and fed law apply to M

13.9.0 of M treaty

Funded by M treaty society - represent all 5 treaty orgs on this

Service modernization

- Interplay with US patriot act and protection of Canadian data
- Fees - do they have to pay for the time it takes to gather the information?

DIRE

- Protections of information a key item that's of concern for M
  - Manifestations - is that tied to indigenous cultural heritage piece?  
s.16

No concerns regarding interplay with existing M laws

Access side that provincial/fed law prevails, no concerns

Request: Share slide deck

Will summarize for M and report back; no need to take it further

# Nisga'a briefing on FOIPPA

July 9, 2021

9:58 AM

**Meeting Date:** 2021-07-09 10:00 AM

**Location:** Microsoft Teams Meeting

**Link to Outlook Item:** [click here](#)

**Invitation Message**

**Participants**

Sime, Mark CITZ:EX (Meeting Organizer)

Stephanie Lysyk

Reed, Matt CITZ:EX

Harriman, Rheannon CITZ:EX

## Notes

Nisga'a as FOIPPA of it's own from 2007 - never had administrative support to bring it forward

Would be helpful to see what local governments are doing for PMPs (via LGMA)

Nisga'a has societies that performs government works on government dollars - how does FOIPPA apply?

If contracted, will be covered

If granted, won't be covered

When baked into public body - would be a sub corp

DIRE

Get a lot of FOI requests from gov of Canada - take position that whatever info they're looking for was provided in confidence so can't be provided. Don't get a lot from B.C. - not sure if just doesn't come up as much in the BC context or because of the old relationship with the feds

Know they have an obligation to protect info and provide access to Nisga'a info. But also modern treaty negotiations - have other colleagues that work on negotiations, will want to talk more about the element. Follow-up convo needed with Nisga'a on topic.

s.16

Info sharing - Conversations are important between everyone - if competing interests in indigenous communities, need to address it. Will be an area where BC will end up between rock and hard place. More process the better.

Indigenous gov definition - will want to take a look at draft language to make sure it is consistent with some changes that they've been asking for overtime. Lots of different terms/elements and discussions recently with groups across gov.

Clarification of deletion within government would be good - would be helpful to see what local governments use to manage

**Follow-up**

Questions re next steps / timing

Talking to BC Modern Treaty Alliance?

Has meeting set up with colleagues in modern treaty alliance - will flag info sharing item for her.

Further discussions may be needed there

Development of definitions - if working with language and want early input from Nisga'a - would be happy to provide. Frank Costa in MIRR would be able to provide more guidance on it - would be able to reach out to Nisga'a for further input.

Follow-up

Link to Information Management Act

Link to public survey

Information on Indigenous community questionnaire

Definition discussion



# INFORMATION ACCESS AND PRIVACY ENGAGEMENT

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UNION OF BC INDIAN CHIEFS  
FIRST NATIONS SUMMIT

Corporate Information & Records Management Office |  
October 2018



## 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

INFORMATION ACCESS AND PRIVACY ENGAGEMENT



# 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.

INFORMATION ACCESS AND PRIVACY ENGAGEMENT



## 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.

### INFORMATION ACCESS AND PRIVACY ENGAGEMENT



## UBCIC RECOMMENDATION

That the BC NDP Government work in full partnership with Indigenous Nations and their representative organizations to develop and enact mutually agreed-upon changes to policy and legislation regarding Freedom of Information and privacy, such that transparency, openness, and fairness are enhanced and Indigenous Nations' rights (especially the rights to joint oversight and redress for past wrongs) are implemented, as per the UNDRIP and the BC NDP Government's commitments to reconciliation.

INFORMATION ACCESS AND PRIVACY ENGAGEMENT



## ISSUES IDENTIFIED BY UBCIC

### **Current Barriers to Freedom of Information Faced by Indigenous Nations**

Indigenous Nations routinely experience the following barriers when attempting to obtain provincial government records through Freedom of Information:

1. Prolonged, unacceptable delays in obtaining information.
2. Unreasonably broad applications by public bodies of the exceptions to disclosure under the Act, resulting in excessive redactions or failures to release information.
3. Public bodies using extra-legislative rationales, such as “out of scope” or “not responsive” as a basis for withholding information.

## ISSUES IDENTIFIED BY UBCIC CONTINUED

### **Current Barriers to Freedom of Information Faced by Indigenous Nations**

4. Public bodies failing to create and retain records as required under the Act resulting in gaps in the public record.
5. Public bodies failing to transfer records to government archives, resulting in decades' worth of missing information.
6. Prohibitive fees required for documents and the denial of requests for fee waivers.
7. Information produced by public bodies or their subsidiaries is often required to substantiate Indigenous Nations' grievances, yet this information is currently excluded from either mandatory or discretionary disclosure under the existing legislation.

INFORMATION ACCESS AND PRIVACY ENGAGEMENT



## CONCERNS CONVEYED TO THE NATURAL RESOURCE SECTOR

- Information related to traditional use of land or other sensitive cultural information that is shared in confidence during the consultation process may be shared for other purposes.
- Sections 16 and 18 of FOIPPA are not sufficient to protect the information in the case of an FOI request.

INFORMATION ACCESS AND PRIVACY ENGAGEMENT





## WHAT ARE WE MISSING?

INFORMATION ACCESS AND PRIVACY ENGAGEMENT



## 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.

INFORMATION ACCESS AND PRIVACY ENGAGEMENT





May 5, 2021

Ref: 115408

Regional Chief Terry Teegee  
BC Assembly of First Nations  
1004 Landooz Road  
Prince George, BC V2K 5S3  
Via email: [regionalchief@bcafn.ca](mailto:regionalchief@bcafn.ca)

Dear Regional Chief Terry Teegee:

**Re: Proposed Amendments to FOIPPA**

The purpose of this letter is to invite you to discuss proposed amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA). This important piece of legislation makes government more accountable by enabling access to records held by public bodies, and it protects personal privacy by establishing appropriate authorities for the collection, use and disclosure of personal information by public bodies. FOIPPA covers over 2,900 public bodies, including government ministries, agencies, boards commissions, Crown corporations, and “local public bodies” (which include municipalities, universities and colleges, school boards, health authorities, and self-governing bodies of professions).

British Columbia’s *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and the Province’s commitment to reconciliation highlight the need for existing legislation to recognize and reflect the rights of Indigenous peoples. In this spirit, several amendments to FOIPPA have been proposed to directly address growing recognition that the Act falls short in several specific areas.

The Ministry of Citizens’ Services is proposing a number of amendments to FOIPPA which are directly relevant to Indigenous peoples. Specifically, amendments are proposed to:

- Update the definition of “aboriginal government” to a new definition for “Indigenous government”;
- Enable public bodies to share personal information with Indigenous governments for the purposes of reconciliation; and

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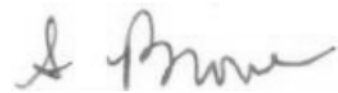
- Strengthen, in the context of freedom of information (FOI) requests, protections for:
  - Indigenous knowledge; and
  - Information that could reasonably be expected to:
    - harm the conduct of relations between the government of British Columbia and an Indigenous government;
    - reveal information received in confidence from an Indigenous government or its agencies; or
    - harm negotiations relating to Indigenous self-government or treaties.

These amendments are part of a larger package of proposals which may also be of interest to BCAFN. The proposed amendments are also aligned with the Minister of Citizens' Services' mandate letter, which reiterates government's commitment to true and lasting reconciliation with Indigenous peoples of B.C.

If BCAFN would like to hear more about these proposed amendments and provide us with your input, please let us know if you are interested in such a discussion with Ministry representatives. We believe that the amendments we are proposing will have a positive impact on BC's Indigenous peoples, but it is vital that we hear from organizations like yours to ensure we are on the right track. Given our anticipated timelines to advance this important initiative, we would appreciate a response by May 31, 2021.

If you have any questions or wish to schedule a session with your members or delegates, please contact Mark Sime, Director, Ministry of Citizens' Services at 778-698-5838 or [Mark.Sime@gov.bc.ca](mailto:Mark.Sime@gov.bc.ca) at your earliest convenience.

Sincerely,



Shauna Brouwer  
Deputy Minister

pc: Doug Caul, Deputy Minister  
Ministry of Indigenous Relations and Reconciliation



May 5, 2021

Ref: 115408

Cheryl Casimer  
Political Executive, First Nations Summit  
Suite 1200 - 100 Park Royal South  
West Vancouver, BC V7T 1A2  
Via email: [ccasimer@fns.bc.ca](mailto:ccasimer@fns.bc.ca)

Dear Cheryl Casimer:

**Re: Proposed Amendments to FOIPPA**

The purpose of this letter is to invite you to discuss proposed amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA). This important piece of legislation makes government more accountable by enabling access to records held by public bodies, and it protects personal privacy by establishing appropriate authorities for the collection, use and disclosure of personal information by public bodies. FOIPPA covers over 2,900 public bodies, including government ministries, agencies, boards commissions, Crown corporations, and “local public bodies” (which include municipalities, universities and colleges, school boards, health authorities, and self-governing bodies of professions).

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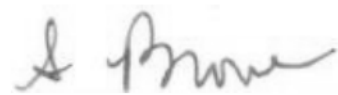
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    - reveal information received in confidence from an Indigenous government or its agencies; or
    - harm negotiations relating to Indigenous self-government or treaties.

These amendments are part of a larger package of proposals which may also be of interest to FNS. The proposed amendments are also aligned with the Minister of Citizens' Services' mandate letter, which reiterates government's commitment to true and lasting reconciliation with Indigenous peoples of B.C.

As you may recall, the Ministry pursued a similar package of amendments in 2018 and had discussions with members of your organization to seek input. If FNS is interested in reengaging to discuss these updated proposals, please let us know. We believe that the amendments we are proposing will have a positive impact on BC's Indigenous peoples, but it is vital that we hear from organizations like yours to ensure we are on the right track. Given our anticipated timelines to advance this important initiative, we would appreciate a response by May 31, 2021.

If you have any questions or wish to schedule a session with your members or delegates, please contact Mark Sime, Director, Ministry of Citizens' Services at 778-698-5838 or [Mark.Sime@gov.bc.ca](mailto:Mark.Sime@gov.bc.ca) at your earliest convenience.

Sincerely,



Shauna Brouwer  
Deputy Minister

pc: Doug Caul, Deputy Minister  
Ministry of Indigenous Relations and Reconciliation



May 5, 2021

Ref: 115408

Lissa Dawn Smith  
A/President, Métis Nation British Columbia  
107-5668 192nd St  
Surrey, BC V3S 2V7  
Via email: [lsmith@mnbc.ca](mailto:lsmith@mnbc.ca)

Dear Lissa Dawn Smith:

**Re: Proposed Amendments to FOIPPA**

The purpose of this letter is to invite you to discuss proposed amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA). This important piece of legislation makes government more accountable by enabling access to records held by public bodies, and it protects personal privacy by establishing appropriate authorities for the collection, use and disclosure of personal information by public bodies. FOIPPA covers over 2,900 public bodies, including government ministries, agencies, boards commissions, Crown corporations, and “local public bodies” (which include municipalities, universities and colleges, school boards, health authorities, and self-governing bodies of professions).

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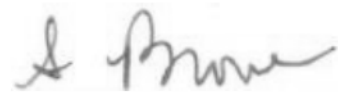
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    - reveal information received in confidence from an Indigenous government or its agencies; or
    - harm negotiations relating to Indigenous self-government or treaties.

These amendments are part of a larger package of proposals which may also be of interest to MNBC. The proposed amendments are also aligned with the Minister of Citizens' Services' mandate letter, which reiterates government's commitment to true and lasting reconciliation with Indigenous peoples of B.C.

If MNBC would like to hear more about these proposed amendments and provide us with your input, please let us know if you are interested in such a discussion with Ministry representatives. We believe that the amendments we are proposing will have a positive impact on B.C.'s Indigenous peoples, but it is vital that we hear from organizations like yours to ensure we are on the right track. Given our anticipated timelines to advance this important initiative, we would appreciate a response by May 31, 2021.

If you have any questions or wish to schedule a session with your members or delegates, please contact Mark Sime, Director, Ministry of Citizens' Services at 778-698-5838 or [Mark.Sime@gov.bc.ca](mailto:Mark.Sime@gov.bc.ca) at your earliest convenience.

Sincerely,



Shauna Brouwer  
Deputy Minister

pc: Doug Caul, Deputy Minister  
Ministry of Indigenous Relations and Reconciliation





May 5, 2021

Ref: 115408

Grand Chief Stewart Phillip  
President, Union of BC Indian Chiefs  
Suite 401 - 312 Main Street  
Vancouver, BC V6A 2T2  
Via email: [president@ubcic.bc.ca](mailto:president@ubcic.bc.ca)

Dear Grand Chief Stewart Phillip:

**Re: Proposed Amendments to FOIPPA**

The purpose of this letter is to invite you to discuss proposed amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA). This important piece of legislation makes government more accountable by enabling access to records held by public bodies, and it protects personal privacy by establishing appropriate authorities for the collection, use and disclosure of personal information by public bodies. FOIPPA covers over 2,900 public bodies, including government ministries, agencies, boards commissions, Crown corporations, and “local public bodies” (which include municipalities, universities and colleges, school boards, health authorities, and self-governing bodies of professions).

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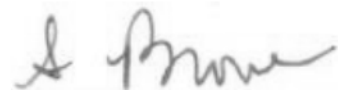
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As you may recall, the Ministry pursued a similar package of amendments in 2018 and had discussions with members of your organization to seek input. If UBCIC is interested in reengaging to discuss these updated proposals, please let us know. We believe that the amendments we are proposing will have a positive impact on B.C.'s Indigenous peoples, but it is vital that we hear from organizations like yours to ensure we are on the right track. Given our anticipated timelines to advance this important initiative, we would appreciate a response by May 31, 2021.

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Sincerely,



Shauna Brouwer  
Deputy Minister

pc: Doug Call, Deputy Minister  
Ministry of Indigenous Relations and Reconciliation