

2015 Meeting Note

Amrik Virk, Minister

Meeting Date: January 19th, 2015

Cliff #:

Attendees: Elizabeth Denham, Information and Privacy Commissioner for British Columbia (B.C.)

Issue: Introductory discussions with the Information and Privacy Commissioner (Commissioner).

Background / Facts:

Legislated Role

- Independent Officer of the Legislature
- Appointed for a six-year term in May 2010
- Issues orders, investigation reports and public comment on administration of the *Freedom of Information and Protection of Privacy Act* (FOIPPA)
- Strongest oversight powers of any Commissioner in Canada
- Also responsible for overseeing the *Personal Information Protection Act* (PIPA) which is B.C.'s private sector privacy legislation

Previous Experience

- Assistant Privacy Commissioner of Canada (2007 – 2010) – led investigation of Facebook which resulted in change to privacy practices on a global basis and discussions with Google which resulted in changes to its street imaging services in Canada
- Director, Private Sector, Office of the Information and Privacy Commissioner of Alberta (2003 - 2007)
- Master's degree in archival and information science from the University of B.C.

Analysis:

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Page 02

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Ministry of
Technology, Innovation
and Citizens' Services

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Attachment(s): Appendix A: Summary of OIPC Recommendations and Government's Response Status

Contact: *Sharon Plater, Executive Director, Privacy and Legislation Branch, 250-415-1921*

From: [Ralph, Kerri GCPE:EX](#)
To: [Ritchie, CJ MTIC:EX](#)
Cc: [Furtado, Angelina MTIC:EX](#); [Plater, Sharon MTIC:EX](#); [Wey, Melody GCPE:EX](#)
Subject: Updated - IN_Subsiary Corporations of Public Bodies FOIPP Act Amendments - Thursday AM
Date: Wednesday, February 5, 2014 2:22:10 PM
Attachments: [IN_Subsiary Corporations of Public Bodies FOIPP Act Amendments Jan 20.2014.docx](#)

Hi CJ,

Please find attached an updated version of the Subsidiary Corporations of Public Bodies FOIPP Act Amendments Issues Note for your final review/approval.

Sharon Plater has kindly assisted me with the updates and has approved this version.

Thanks so much,

Kerri Ralph

Public Affairs Officer

Ministry of Technology, Innovation and Citizens' Services

Government of B.C.

Direct (250) 356-0011

Mobile (250) 893-4136

From: Ralph, Kerri GCPE:EX
Sent: February-05-14 10:55 AM
To: Plater, Sharon MTIC:EX
Subject: RE: IN_Subsiary Corporations of Public Bodies FOIPP Act Amendments_Jan 20 2014

Hi Sharon,

I've cleaned The document up with all of the track changes, if this looks good to you I will pass along for further approval, this is going to CJ in BJH's absence correct?

Thanks so much,

Kerri Ralph

Public Affairs Officer

Ministry of Technology, Innovation and Citizens' Services

Government of B.C.

Direct (250) 356-0011

Mobile (250) 893-4136

From: Plater, Sharon MTIC:EX
Sent: February-04-14 3:05 PM
To: Ralph, Kerri GCPE:EX
Subject: IN_Subsiary Corporations of Public Bodies FOIPP Act Amendments_Jan 20 2014

Hi Kerri. I think I have addressed all of the questions. In the first comment, if it was to take out the word, 'important' – I agree with that change.

Let me know if I can be of further assistance.

Sharon

From: [Kolarich, Claudette MTIC:EX](#)
To: [Moreau, Denise MTIC:EX](#)
Cc: [Plater, Sharon MTIC:EX](#); [Harvey, Caylla MTIC:EX](#)
Subject: Special Committee - Subsidiary and Duty to Document
Date: Monday, April 7, 2014 2:27:16 PM
Attachments: [Special Committee - Subsidiary and Duty to Document.docx](#)

Hi Denise,

Please find attached a new Estimates note for the above mentioned. Bette-Jo asked Sharon to prepare it.

Thanks,
Claudette

Claudette Kolarich

Office Manager | [Legislation, Privacy and Policy](#)

Office of the CIO - Province of B.C.

Ministry of Technology, Innovation and Citizens' Services

Phone: 250 356-8660 | Mobile: 250 516-0204

From: [Reed, Matt MTIC:EX](#)
To: [Plater, Sharon MTIC:EX](#); [Francis, Celia MTIC:EX](#)
Subject: FW: DBN re: sub corps - draft
Date: Monday, April 28, 2014 10:49:48 AM
Attachments: [decision_note_SubCorps.docx](#)

Hi Celia, Sharon,

Here is the DBN that I prepared for Charmaine on the sub corps issue. It has not been reviewed yet by anyone, and the recommendation was based on my sense of the materials given to me, not based on any actual direction.

Thanks,
-m

Matt Reed
A/Manager, Corporate Privacy Initiatives, Awareness and Training
Legislation, Privacy and Policy Branch, OCIO
Ministry of Technology, Innovation and Citizens' Services
250-514-8870

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2014 Decision Note Advice to Minister

Date: xxxx

Cliff #: xxxxx

Issue: Should the scope of the *Freedom of Information and Protection of Privacy Act (FOIPPA)* be expanded to include the subsidiary corporations of all public bodies.

Recommendation / Next Steps (if any):

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Background / Facts:

- Currently FOIPPA includes within its scope the subsidiary corporations of local government bodies (e.g. municipalities), but excludes from its scope any subsidiary corporations of any other public body (including ministries, crown corporations, and educational bodies)
- In their report, the 2010 Special Committee of the Legislature that reviewed FOIPPA recommended that an amendment be made to “expand the definition of a public body in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body”
- Special interest groups and the Information and Privacy Commissioner have also recommended that these “subsidiary corporations of public bodies” be brought under the authority of the Act
- Consultations have been held with a selection of ministries and educational bodies on the expected effect of including subsidiary corporations into the scope of FOIPPA
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Analysis:

- The types of subsidiary corporations that may be included in an expanded definition include a wide variety of organizations, including, but not limited to: land trusts, holding companies, athletic centres, and bars.

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Other Options:

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| <p>1. s.13</p> <p>2.</p> |
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Approved/Not Approved

Minister to specify if the recommendation has been approved or one of the other options or simply not approved.

Honourable Andrew Wilkinson

Date

Attachment(s): N/A

Contact:

John Jacobson
250 387-8852

Bette Jo Hughes
250 387-0401



APPROVAL SLIP

| | | |
|-------------------------------------|---------------|-------------|
| PROGRAM AREA: (Start Date) | July 4 | 2014 |
| *Associate DM or ADM OFFICE: | | 2014 |
| *EFO OFFICE: | | 2014 |
| *DM OFFICE: | | 2014 |
| *MINISTER'S OFFICE | | 2014 |

Document For:
Minister Wilkinson

Document Type:
Response Letter

CLIFF #: 101298

Subject: MO Response – Amendment to the *Freedom of Information and Protection of Privacy Act (FOIPPA)* re Subsidiary Corporations

Branch Contact: Brittany Kitt

Branch Phone #: 6-0361

| Date Sent/Received | Approvals | Final Approval (Initials) | Date Approved | Approval Comments |
|--------------------|--|---------------------------|---------------|-------------------|
| Jul 6/14 | Program Area - Drafter: Matt Reed | <i>MR</i> | | |
| | Manager or Director: | | | |
| July 6/14 | Executive Director: Sharon Plater | <i>SP</i> | | |
| | Finance Office within ADM office: | | | |
| | Manager of Operations: | | | |
| | Associate DM or ADM OFFICE: (*Build in two full days for approval) | | | |
| | DM OFFICE - Deputy Minister: John Jacobson (*Build in two full days for approval) | | | |
| | GCPE - Communications Director: | | | |
| | Minister's Office: Honourable Andrew Wilkinson (*Build in three full days for approval) | | | |

Special instructions and or comments, including special rush or approval instructions etc.

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From: [Hoskins, Chad MTIC:EX](#)
To: [Plater, Sharon MTIC:EX](#)
Cc: [Lowe, Charmaine MTIC:EX](#)
Subject: copy of MO briefing PPT
Date: Wednesday, January 14, 2015 2:10:30 PM
Attachments: [FOI MO Presentation June 2013 edits SM.pptx](#)

I think this is the one Sharon.

Chad

Chad Hoskins | Director, FOI and Open Information | Information Access Operations | Shared Services BC
d: 250.356.7343 *m:* 250.516.5181 | *e:* chad.hoskins@gov.bc.ca | *m:* PO Box 9569, Stn Prov Gov, Victoria BC V8V 1S2



ADVICE TO MINISTER

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| <p>CONFIDENTIAL ISSUES NOTE</p> <p>Ministry: Technology, Innovation and Citizens' Services</p> <p>Date: Jan. 18, 2012; Updated: Feb. 5, 2014</p> <p>Minister Responsible: Hon. Andrew Wilkinson</p> <p>Created by Government Communications and Public Engagement</p> | <p>Subsidiary Corporations of Public Bodies – FOIPPA amendments</p> |
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ADVICE AND RECOMMENDED RESPONSE:

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KEY FACTS REGARDING THE ISSUE:

In May 2010, the Special Committee to Review the Freedom of Information and Privacy Act issued a report with 35 recommendations designed to ensure the FOIPP Act remains current.

Recommendation #4 is 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.

In Oct. 2006, the Ministry of Education made a commitment that school district business companies comply with the Freedom of Information and Protection of Privacy Act. Changes were made to the School Act in 2007 enabling school boards to create business entities that could generate extra funds for the districts.

However, the Ministry decided not to add school district business companies to coverage of FOIPPA and chose instead to achieve the accountability goals in other ways.

During the summer of 2012, Initial meetings were held with UBC, SFU, UVic and UNBC and in June 2013 the ministry met with the Ministries of Health, Education and Advanced Education who advised further consultation with universities, schools and health authorities.

As a result of these consultations, it was realized that the issue is complex and could have considerable impact including additional pressure to cover subsidiary corporations of ministries, Crown corporations and possibly other public bodies. As a result the implications of such changes

need to be explored further. Staff members have been looking at possible legislative amendments and will be seeking further direction very soon.

BACKGROUND:

In 2010, the Freedom of Information and Privacy Association was invited to participate in the consultations on the new legislation for the FOIPP Act, where it would have had an opportunity to raise this issue. It refused to participate.

On Oct. 2, 2012, Vincent Gogolek wrote Minister Stewart requesting that he follow through on Minister MacDiarmid's previous commitment to review the coverage of subsidiary corporations of educational institutions under the FOIPP Act. On Oct. 26, 2012, Minister Stewart responded to this letter from Mr. Gogolek informing him that the Ministry is continuing with the review.

On Oct. 20, 2011, the Information and Privacy Commissioner wrote a letter to Minister MacDiarmid requesting "the Ministry draft amendments to the FOIPP Act to ensure that the act covers subsidiary corporations of local public bodies."

The Information and Privacy Commissioner is concerned that the fact subsidiary corporations are not specifically covered as public bodies in their own right creates an "accountability gap." The Commissioner has requested this issue be rectified through an amendment to the FOIPP Act or other legislative options.

The Information and Privacy Commissioner made her request as a result of a B.C. Supreme Court Decision, *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*, [2009] BCSC 1481.

This decision held that Simon Fraser University did not exercise control, for the purposes of the FOIPP Act, 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 FOIPP Act.

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|--|-------------------------------------|----|-----------|--------------|
| Communications Contact: | Kerri Ralph | | | 250 356-0011 |
| Program Area Contact: | Sharon Plater | | | |
| Created: | Jan. 18, 2012/Updated Jan. 18, 2014 | | | |
| File path: n:\zz_citizens' services communications office\operations\issue notes\2014\1. draft\chief information officer - foippa\in_subsidary corporations of public bodies foipp act amendments_jan 20.2014.docx | | | | |
| Program Area | ADM | DM | Comm. Dir | MO |
| SP | | | | |

- In Investigation Report F13-01 the Commissioner recommended that government create a legislative duty to document key decisions.
- Government has committed to examine this recommendation and suggested that it be considered by the next Special Committee of the Legislative Assembly to review the FOIPPA, which is expected to be convened in 2016.

PREPARED BY:

Jodi Roach
Sr Legislative and Policy Analyst
Legislation, Privacy and Policy

REVIEWED BY:

Sharon Plater
Acting Executive Director
Legislation, Privacy and Policy

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From: [Plater, Sharon MTIC:EX](#)
To: [Reed, Matt MTIC:EX](#)
Subject: Subsidiary corps
Date: Wednesday, December 2, 2015 5:01:00 PM

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Sharon Plater

Executive Director

Privacy and Legislation Branch

Office of the Chief Information Officer

T. (250) 356-356-0322 | M. (250) 415-1921



OCIO

Office of the
Chief Information Officer

Ministry of Finance

BRIEFING DOCUMENT

To: Honourable Michael de Jong, Q.C.
Minister of Finance

Date Requested:
Date Required:

Initiated by:

Date Prepared:

**Ministry
Contact:**

Phone Number:
Email:

Cliff #:

TITLE: Subsidiary corporations under the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

PURPOSE:
(X) FOR INFORMATION

DATE PREPARED: December 23rd, 2015

TITLE: Subsidiary corporations under the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

ISSUE: Subsidiary corporations of ministries and most other public bodies are not subject to FOIPPA, as was recommend by the OIPC.

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 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. The 2015 Special Committee has shown significant and sustained interest in the issue of subsidiary corporations. Similarly, the OIPC's submission to the Special Committee recommended that subsidiary corporations of all public bodies be subject to FOIPPA, which is an expansion on her earlier recommendation.

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, by definition, covered by the Act.

Government has consulted with ministries, crowns, universities and school boards to understand the scope of the issue and the impact of covering these public bodies' corporations. Consultations have indicated that this is a complex issue due to the divergent types of corporations that are affiliated with local public bodies.

DISCUSSION:

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s.13 The Opposition members on the Special Committee remarked on government's inadequacy in resolving an issue after 5 years and suggested that the Commissioner should "lend a helping hand".^{s.13}

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Subsidiary Corporations of Local Public Bodies

KEY MESSAGES

- **Ariel 14, 1 ½ line spacing, bold**
- **Maximum ½ page**
- **To be completed by GCPE**

KEY POINTS AND BACKGROUND

- On October 20, 2011, the Minister received a letter from the Information and Privacy Commissioner asking the ministry to draft amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA) to ensure coverage of subsidiary corporations of local public bodies.
- The Commissioner made this request in response to a 2009 BC Supreme Court decision (*Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*, 2009 BCSC 1481) which held that the FOIPPA did not extend to the records of subsidiary corporations owned by Simon Fraser University.
- The 2010 Special Committee that reviewed FOIPPA made a similar, but slightly broader, recommendation (#4) 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 universities, school boards, health authorities and other types of “local public bodies”. These corporations are not, by definition, covered by the Act.
- Government has consulted with public bodies such as universities and school boards to understand the scope of the issue and the impact of covering these public bodies’ corporations.

- Consultations have indicated that this is a complex issue due to the divergent types of corporations that are affiliated with local public bodies. Further review and consideration is required.
- Government will be identifying and reviewing the options for extending coverage of the FOIPPA to subsidiary corporations of local public bodies once the scope of the issue and the impact of adding these corporations is fully understood.
- A question is often asked about the 2006 Ministry of Education commitment that school district business companies comply with the *Freedom of Information and Protection of Privacy Act*. While the ministry made changes to the *School Act* in 2007, enabling school boards to create business entities that could generate extra funds for the 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.

Wenezenki-Yolland, Cheryl FIN:EX

From: Hughes, Bette-Jo MTIC:EX
Sent: Friday, January 29, 2016 10:23 AM
To: Wenezenki-Yolland, Cheryl FIN:EX; Plater, Sharon MTIC:EX
Subject: FW: Freedom of Information and Protection of Privacy Act
Attachments: 2016-01-29 FIPPA re sec 30.1.pdf

The submission from the Research Universities. I will advise them to ensure you are copied on any correspondence going forward.

From: Anna Rozario [<mailto:Anna.Rozario@rucbc.ca>]
Sent: Friday, January 29, 2016 9:16 AM
To: McRae,MLA, Don LASS:EX
Cc: Minister, MTIC MTIC:EX; Minister, AVED AVED:EX; Carroll, Sandra AVED:EX; Hughes, Bette-Jo MTIC:EX; 'Martha Piper'; 'sfu_president@sfu.ca'; 'pres@uvic.ca'; 'president@unbc.ca'; 'president@royalroads.ca'; 'president@tru.ca'
Subject: Freedom of Information and Protection of Privacy Act

Please see the attached letter which has been sent on behalf of the research universities.

Anna Rozario
Executive Administrative Assistant
THE RESEARCH UNIVERSITIES' COUNCIL OF BC
Suite 400 - 880 Douglas Street, Victoria, BC V8W 2B7
Tel (250) 480-4869 anna.rozario@rucbc.ca

THE Research
Universities' Council
OF BRITISH COLUMBIA

January 29, 2016

Don McRae, MLA
Chair, Special Committee to Review the *Freedom of Information and Protection of Privacy Act*
c/o Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, BC V8V 1X4

Dear. Mr. McRae,

On behalf of the members of The Research Universities' Council of British Columbia (RUCBC), thank you for the opportunity to provide input on the effectiveness of the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

RUCBC represents and provides a common voice for its members - The University of British Columbia, Simon Fraser University, University of Victoria, University of Northern British Columbia, Royal Roads University and Thompson Rivers University – on public policy issues including funding, accountability, research and post-secondary education.

RUCBC member institutions take freedom of information and protection of privacy very seriously and welcome this opportunity to provide comment. Although we have broad interest in FIPPA, the submission focuses on the prohibition in section 30.1 against storage of personal information outside of Canada. This section affects a number of key areas of university business and the research universities' ability to meet their commitments to students, Government and British Columbians.

Specifically, Section 30.1 of the FIPPA has significant implications for the following:

- Administrative efficiency and security
- International engagement and student recruitment
- Online learning offerings
- Academic integrity

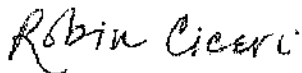
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The attached submission describes these challenges, suggests potential solutions and proposes amendments for consideration by the Special Committee. If further information is required, we would be pleased to provide it to you or to the Special Committee.

Thank you for your consideration and we look forward to the results of the Special Committee's review in the report due later this year.

Yours truly,



Robin Ciceri
President

copy: Hon. Amrik Virk, Minister of Technology, Innovation and Citizens' Services
Hon. Andrew Wilkinson, Minister of Advanced Education
Sandra Carroll, Deputy Minister of Advanced Education
Bette-Jo Hughes, Associate Deputy Minister and Chief Information Officer
Martha Piper, Interim President, The University of British Columbia
Andrew Petter, President, Simon Fraser University
Jamie Cassels, President, University of Victoria
Daniel J. Weeks, President, University of Northern British Columbia
Allan Cahoon, President, Royal Roads University
Alan Shaver, President, Thompson Rivers University

The Research Universities' Council of British Columbia

SUBMISSION TO THE SPECIAL COMMITTEE TO REVIEW THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Introduction

The Research Universities' Council of British Columbia (RUCBC) works with and on behalf of the six major universities – UBC, SFU, UVic, UNBC, RRU, and TRU – to improve the quality, accessibility and coordination of university education in British Columbia. The Council provides its members with a single voice with respect to public policy issues including funding, research, accountability, admissions and transfer.

The recommendation contained in this submission reflects the consensus view of the members of RUCBC with respect to the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). We also believe that these recommendations have broad support within the post-secondary education sector.

While post-secondary institutions have several comments about the FIPPA, we have chosen to focus this submission on the prohibition in section 30.1 against storage of personal information outside of Canada. No section of the FIPPA has caused greater difficulties for our sector.

Impacts of Section 30.1

Under section 30.1 of the FIPPA, public bodies and their service providers are prohibited, under most circumstances, from disclosing and storing personal information outside of Canada. British Columbia is one of only two jurisdictions in Canada that imposes this restriction. (The other jurisdiction is Nova Scotia, but that province is much less restrictive because it allows public bodies to make exceptions "if the head considers the storage or access is to meet the necessary requirements of the public body's operation").

As the world moves towards vendor hosted or "cloud computing" solutions, in our opinion the prohibition contained in section 30.1 of the FIPPA is putting universities at a disadvantage because we are prevented from using the same world-class tools that are used elsewhere. Despite the reality that these new solutions are often more expensive than traditional IT solutions, vendors are limiting the availability of choice to cloud services only. Here are a few examples of the impacts we are already experiencing:

Impact on administrative efficiency and security: Educational bodies, like many other organizations, depend on specialized enterprise resource planning (ERP) services to store and process HR, payroll, and student information. The major vendors of ERP services are planning a shift to the cloud over the next several years. Some vendors have informed us that on-premise services will not be available. Without changes, the current section 30.1 restrictions will prevent institutions from continuing to use these services. Our CIOs inform us that competitive alternatives for many of these systems are not available in Canada.

Impact on international engagement and recruitment: Some BC universities operate international offices for purposes such as student recruitment, exchange, development and career support; alumni engagement and support; fund-raising; and academic and research activities. Section 30.1 prevents

university employees who work in these offices from accessing university systems containing personal information, such as student information systems. This makes it virtually impossible for these offices to operate in an effective manner.

Impact on online learning: Universities across Canada and around the world are increasingly using sophisticated learning management systems to deliver electronic courses to their students. Many of these systems are designed to be seamlessly integrated with online learning, study and testing tools for students. However, British Columbia universities are not permitted to allow their students to use these tools, because of section 30.1. Thus students in this province are being deprived of learning opportunities that are available to their counterparts throughout the world.

Impact on academic integrity: Online plagiarism detection services, such as Turnitin.com, are used by many educational institutions in North America. The software is designed to seamlessly integrate with the learning management systems used by universities, but BC institutions have had to disable this integration because the service would have access to student names from outside Canada. The inability to efficiently use these services has made it more difficult for instructors to ensure the integrity of their educational programs.

These are only a few examples of the impact of section 30.1 upon the ability of BC post-secondary institutions to compete with institutions across Canada and around the world. This section has not appreciably enhanced the security of personal information.

We do not disagree with the goal of section 30.1 to protect the personal information of British Columbians from access by foreign intelligence and law enforcement agencies. In particular, the USA PATRIOT Act and the National Security Agency's mass electronic surveillance program have raised legitimate concerns about the confidentiality of personal information stored in the United States.

However, there are more effective ways to address these concerns other than by creating a near-absolute prohibition against storage or access to personal information outside of Canada. Other privacy regimes typically recognize the principle of proportionality: efforts to ensure security must be proportional to the risk of unauthorized disclosure. Factors such as the type(s), sensitivity and volume of the personal information involved must be considered. Section 30.1 contains no proportionality test; it applies to virtually all personal information, even if the information is of a low degree of sensitivity or is protected with state-of-the-art security features such as encryption.

While section 30.1(a) authorizes the disclosure of personal information outside Canada with the consent of the individual, securing consent is not always a viable option. As "forced consent" is an oxymoron, a valid consent process must provide a reasonable alternative for those who do not want to consent. However, designing a reasonable alternative for many of the specialized systems used by universities is effectively impossible. For example, an instructor who wants her students to use an online learning tool may not be able to design an alternative for those who choose to opt out. The result is that a single student who withholds consent may prevent the use of the tool by their entire class.

A robust privacy impact assessment (PIA) process will capture the proportionality test and apply it to the specific proposed system. We propose that the PIA for any system that allows foreign storage or access of personal information will be shared with the Office of the Information and Privacy Commissioner for its review and comment. Without the test of proportionality, section 30.1 remains a blunt instrument, which we are unable to demonstrate has significant public benefit.

In addition to the usual limits to the storage of personal information and the robust PIA process, we propose storage or access outside of Canada be permitted only where:

- a) the storage/access relates directly to and is necessary for a program or activity of the public body;
- b) there is no reasonable Canadian-based alternative available;
- c) security measures are in place to protect the personal information, that are proportional to the risk posed based upon an analysis of the type(s), sensitivity and volume of the personal information; and
- d) it is impractical to obtain consent.

For the above reasons, universities are seeking amendments to section 30.1. Public bodies should be allowed to store or allow access to personal information outside Canada when it has determined that they meet the above criteria. Any storage or access to personal data outside Canada would, of course, be subject to the oversight of the Information and Privacy Commissioner. These amendments will facilitate the delivery of the highest quality public services while maintaining British Columbia's position as a world leader in personal information protection.

Recommendation

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.