

Page 0001 of 1215 to/à Page 0013 of 1215

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Appendix: Repealed and Replaced Sections in the *Freedom of Information and Protection of Privacy Act* (FOIPPA)

Scope of the Act

3 (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

- (a) a court record, a record of a judge of the Court of Appeal, Supreme Court or Provincial Court, a record of a master of the Supreme Court, a record of a justice of the peace, a judicial administration record or a record relating to support services provided to the judges of those courts;
- (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity;
- (c) subject to subsection (3), a record that is created by or for, or is in the custody or control of, an officer of the Legislature and that relates to the exercise of that officer's functions under an Act;
- (c.1) [Repealed 2002-50-19.]
- (c.2) subject to subsection (4), a record that is created by or for, or is in the custody or control of, the auditor general appointed under the *Auditor General for Local Government Act* and that relates to the exercise of his or her functions under that Act;
- (d) a record of a question that is to be used on an examination or test;
- (e) a record containing teaching materials or research information of
 - (i) a faculty member, as defined in the *College and Institute Act* and the *University Act*, of a post-secondary educational body,
 - (ii) a teaching assistant or research assistant employed at a post-secondary educational body, or
 - (iii) other persons teaching or carrying out research at a post-secondary educational body;
- (f) material placed in the digital archives or the museum archives of government by or for a person or agency other than a public body;
- (g) material placed in the archives of a public body by or for a person or agency other than a public body;
- (h) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;
- (i) [Repealed 2011-17-1.]
- (j) a record that is available for purchase by the public;
- (k) a record of a service provider that is not related to the provision of services for a public body.

(2) This Act does not limit the information available by law to a party to a proceeding.

(3) The following sections apply to officers of the Legislature, their employees and, in relation to their service providers, the employees and associates of those service providers, as if the officers and their offices were public bodies:

- (a) section 30 [*protection of personal information*];
- (b) section 30.1 [*storage and access must be in Canada*];
- (c) section 30.2 [*obligation to report foreign demand for disclosure*];
- (d) section 30.3 [*whistle-blower protection*];
- (e) section 30.4 [*unauthorized disclosure prohibited*];
- (e.1) section 30.5 [*notification of unauthorized disclosure*];
- (f) section 33 [*disclosure of personal information*];
- (g) section 33.1 [*disclosure inside or outside Canada*];
- (h) section 33.2 [*disclosure inside Canada only*];
- (i) section 74.1 [*privacy protection offences*].

(4) The sections referred to in subsection (3) apply to the auditor general appointed under the *Auditor General for Local Government Act*, employees appointed under that Act and, in relation to service providers to the auditor general, the employees and associates of those service providers, as if the auditor general and his or her office were public bodies.

Obligation to report foreign demand for disclosure

30.2 (1) In this section:

"foreign demand for disclosure" means a subpoena, warrant, order, demand or request that is

- (a) from a foreign court, an agency of a foreign state or another authority outside Canada, and
- (b) for the unauthorized disclosure of personal information to which this Act applies;

"unauthorized disclosure of personal information" means disclosure of, production of or the provision of access to personal information to which this Act applies, if that disclosure, production or access is not authorized by this Act.

(2) If the head of a public body or an employee, officer or director of a public body or an employee or associate of a service provider

- (a) receives a foreign demand for disclosure,
- (b) receives a request to disclose, produce or provide access to personal information to which this Act applies, if the public body, employee or other person receiving the request
 - (i) knows that the request is for the purpose of responding to a foreign demand for disclosure, or
 - (ii) has reason to suspect that it is for such a purpose, or
- (c) has reason to suspect that unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure,

the head of the public body, the employee or other person must immediately notify the minister responsible for this Act.

(3) The notice under subsection (2) must include, as known or suspected,

- (a) the nature of the foreign demand for disclosure,
- (b) who made the foreign demand for disclosure,
- (c) when the foreign demand for disclosure was received, and
- (d) what information was sought by or disclosed in response to the foreign demand for disclosure.

Disclosure of personal information

33 A public body may disclose personal information in its custody or under its control only as permitted under section 33.1, 33.2 or 33.3.

Disclosure inside or outside Canada

33.1 (1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:

- (a) in accordance with Part 2;
 - (a.1) if the information or disclosure is of a type described in section 22 (4) (e), (f), (h), (i) or (j);
- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to its disclosure inside or outside Canada, as applicable;
- (c) in accordance with an enactment of British Columbia, other than this Act, or Canada that authorizes or requires its disclosure;
 - (c.1) if it is made available to the public in British Columbia under an enactment, other than this Act, that authorizes or requires the information to be made public;
- (d) in accordance with a provision of a treaty, arrangement or written agreement that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under an enactment of British Columbia, other than this Act, or Canada;
- (e) to an individual who is a minister, an officer of the public body or an employee of the public body other than a service provider, if
 - (i) the information is necessary for the performance of the duties of the minister, officer or employee, and
 - (ii) in relation to disclosure outside Canada, the outside disclosure is necessary because the individual is temporarily travelling outside Canada;
- (e.1) to an individual who is a service provider of the public body, or an employee or associate of such a service provider, if
 - (i) the information is necessary for the performance of the duties of the individual in relation to the public body, and
 - (ii) in relation to disclosure outside Canada,
 - (A) the individual normally receives such disclosure only inside Canada for the purpose of performing those duties, and
 - (B) the outside disclosure is necessary because the individual is temporarily travelling outside Canada;
- (f) to an officer or employee of the public body or to a minister, if the information is immediately necessary for the protection of the health or safety of the officer, employee or minister;

- (g) to the Attorney General or legal counsel for the public body, for the purpose of preparing or obtaining legal advice for the government or public body or for use in civil proceedings involving the government or public body;
- (h) to the minister responsible for the *Coroners Act* or a person referred to in section 31 (1) of that Act, for the purposes of that Act;
- (i) if
 - (i) the disclosure is for the purposes of collecting amounts owing to the government of British Columbia or a public body by
 - (A) an individual, or
 - (B) a corporation of which the individual the information is about is or was a director or officer, and
 - (ii) in relation to disclosure outside Canada, there are reasonable grounds for believing that
 - (A) the individual the information is about is in, resides in or has assets in the other jurisdiction, or
 - (B) if applicable, the corporation was incorporated in, is doing business in or has assets in the other jurisdiction;
- (i.1) for the purposes of
 - (i) a payment to be made to or by the government of British Columbia or a public body,
 - (ii) authorizing, administering, processing, verifying or canceling such a payment, or
 - (iii) resolving an issue regarding such a payment;
- (j) [Repealed 2011-17-13.]
- (k) for the purposes of
 - (i) licensing or registration of motor vehicles or drivers, or
 - (ii) verification of motor vehicle insurance, motor vehicle registration or drivers licences;
- (l) for the purposes of licensing, registration, insurance, investigation or discipline of persons regulated inside or outside Canada by governing bodies of professions and occupations;
- (m) if
 - (i) the head of the public body determines that compelling circumstances exist that affect anyone's health or safety, and
 - (ii) notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety;
- (m.1) for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur;

- (n) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;
- (o) in accordance with section 36 [*disclosure for archival or historical purposes*];
- (p) if the disclosure
 - (i) is necessary for
 - (A) installing, implementing, maintaining, repairing, trouble-shooting or upgrading an electronic system or equipment that includes an electronic system, or
 - (B) data recovery that is being undertaken following the failure of an electronic system
 that is used in Canada, by the public body or by a service provider for the purposes of providing services to a public body, and
 - (ii) in the case of disclosure outside Canada, results in temporary access and storage that is limited to the minimum period of time necessary to complete the installation, implementation, maintenance, repair, trouble-shooting, upgrading or data recovery referred to in subparagraph (i);
- (p.1) if the disclosure
 - (i) is necessary for the processing of information and if that processing does not
 - (A) involve the intentional access of the information by an individual, or
 - (B) result in the storage of personal information, other than personal information that is metadata, outside Canada, and
 - (ii) in the case of disclosure outside Canada, results in temporary access that is limited to the minimum period of time necessary to complete the processing;
- (p.2) if the information is metadata that
 - (i) is generated by an electronic system, and
 - (ii) describes an individual's interaction with the electronic system, and if,
 - (iii) if practicable, personal information in individually identifiable form has been removed from the metadata or destroyed, and
 - (iv) in the case of disclosure to a service provider, the public body has prohibited any subsequent use or disclosure of personal information in individually identifiable form without the express authorization of the public body;
- (q) if the information was collected by observation at a presentation, ceremony, performance, sports meet or similar event
 - (i) at which the individual voluntarily appeared, and
 - (ii) that was open to the public;
- (r) if the information

- (i) was disclosed on a social media site by the individual the information is about,
 - (ii) was obtained or compiled by the public body for the purpose of enabling the public body to engage individuals in public discussion or promotion respecting proposed or existing initiatives, policies, proposals, programs or activities of the public body or respecting legislation relating to the public body, and
 - (iii) is disclosed for a use that is consistent with the purpose described in subparagraph (ii);
 - (s) in accordance with section 35 [*disclosure for research or statistical purposes*];
 - (t) to comply with a subpoena, a warrant or an order issued or made by a court, person or body in Canada with jurisdiction to compel the production of information.
- (2) In addition to the authority under any other provision of this section or section 33.2, a public body that is a law enforcement agency may disclose personal information referred to in section 33
- (a) to another law enforcement agency in Canada, or
 - (b) to a law enforcement agency in a foreign country under an arrangement, a written agreement, a treaty or provincial or Canadian legislative authority.
- (3) The minister responsible for this Act may, by order, allow disclosure outside Canada under a provision of section 33.2 in specific cases or specified circumstances, subject to any restrictions or conditions that the minister considers advisable.
- (4) In addition to the authority under any other provision of this section or section 33.2, the Insurance Corporation of British Columbia may disclose personal information if
- (a) the information was obtained or compiled by that public body for the purposes of insurance provided by the public body, and
 - (b) disclosure of the information is necessary to investigate, manage or settle a specific insurance claim.
- (5) In addition to the authority under any other provision of this section or section 33.2, a provincial identity information services provider may disclose personal identity information
- (a) to enable the provincial identity services provider to provide services under section 69.2, or
 - (b) to a public body if the disclosure is necessary to enable the public body to identify an individual for the purpose of providing a service to the individual.
- (6) In addition to the authority under any other provision of this section or section 33.2, a public body may disclose personal identity information to a provincial identity information services provider if the disclosure is necessary to enable
- (a) the public body to identify an individual for the purpose of providing a service to the individual, or
 - (b) the provincial identity information services provider to provide services under section 69.2.

(7) Without limiting the authority under any other provision of this section or section 33.2, a public body may disclose personal information to the individual the information is about if

- (a) the individual has initiated contact with the public body about a matter and the public body is responding to that contact,
- (b) the public body discloses information only in respect of the matter, and
- (c) the public body uses
 - (i) the same communication method used by the individual to initiate contact, or
 - (ii) another communication method authorized by the individual.

Disclosure inside Canada only

33.2 A public body may disclose personal information referred to in section 33 inside Canada as follows:

- (a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34);
- (b) [Repealed 2011-17-14.]
- (c) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of the officer, employee or minister;
- (d) to an officer or employee of
 - (i) a public body, or
 - (ii) an agency,or to a minister, if the information is necessary for the delivery of a common or integrated program or activity and for the performance of the duties, respecting the common or integrated program or activity, of the officer, employee or minister to whom the information is disclosed;
- (e) to an officer or employee of a public body or to a minister, if the information is necessary for the protection of the health or safety of the officer, employee or minister;
- (f) to the auditor general or any other prescribed person or body for audit purposes;
- (g) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem;
- (h) to a representative of the bargaining agent, who has been authorized in writing by the employee whom the information is about, to make an inquiry;
- (i) to a public body or a law enforcement agency in Canada to assist in a specific investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
- (j) to the digital archives, the museum archives of government or the archives of a public body, for archival purposes;
- (k) [Repealed 2011-17-14.]

(l) to an officer or employee of a public body or to a minister, if the information is necessary for the purposes of planning or evaluating a program or activity of a public body.

Disclosure for research or statistical purposes

35 (1) A public body may disclose personal information in its custody or under its control for a research purpose, including statistical research, only if

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the commissioner,

(a.1) subject to subsection (2), the information is disclosed on condition that it not be used for the purpose of contacting a person to participate in the research,

(b) any data linking is not harmful to the individuals that information is about and the benefits to be derived from the data linking are clearly in the public interest,

(c) the head of the public body concerned has approved conditions relating to the following:

(i) security and confidentiality;

(ii) the removal or destruction of individual identifiers at the earliest reasonable time;

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body, and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

(2) Subsection (1) (a.1) does not apply in respect of research in relation to health issues if the commissioner approves

(a) the research purpose,

(b) the use of disclosed information for the purpose of contacting a person to participate in the research, and

(c) the manner in which contact is to be made, including the information to be made available to persons contacted.

Disclosure for archival or historical purposes

36 (1) In addition to the authority under sections 33.1, 33.2 and 33.3, the digital archives, the museum archives of government or the archives of a public body may disclose personal information in its custody or under its control for archival or historical purposes if

- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 22,
- (b) the disclosure is for historical research and is in accordance with section 35,
- (c) the information is about someone who has been dead for 20 or more years, or
- (d) the information is in a record that has been in existence for 100 or more years.

(2) For the purposes of subsection (3), "institution" means a museum, an archives or a similar institution that is or forms part of a public body or an organization, as the latter is defined in the *Personal Information Protection Act*.

(3) A board or a francophone education authority, as those are defined in the *School Act*, may disclose personal information in its custody or under its control to an institution if

- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 22,
- (b) the disclosure is for historical research and is in accordance with section 35,
- (c) the information is about someone who has been dead for 20 or more years, or
- (d) the information is in a record that has been in existence for 100 or more years.

Data-linking initiatives

36.1 (1) A public body participating in a new or significantly revised data-linking initiative must comply with the regulations, if any, prescribed for the purposes of this subsection.

(2) If all the participants in a new or significantly revised data-linking initiative are a health care body, the ministry of the minister responsible for the administration of the *Ministry of Health Act* or a health-related organization as prescribed, then subsection (1) does not apply to the participants.

(3) For the purposes of subsections (1) and (2), a public body is participating in

(a) a new data-linking initiative if the data-linking initiative is implemented after the date this section comes into force, or

(b) a significantly revised data-linking initiative if the data-linking initiative is an existing data-linking initiative and a public body participating in that data-linking initiative expands it by doing one or more of the following:

(i) adding a public body or an agency that is not already a participant in the data-linking initiative;

(ii) adding a database that is not already a part of the data-linking initiative;

(iii) undertaking a purpose that is not already a purpose of the data-linking initiative;

(iv) using a type of technology that is not already a part of the data-linking initiative.

(4) Despite subsection (3) (a), a public body is not participating in a new data-linking initiative if, before the date this section comes into force, the public body has completed a written project plan respecting the data-linking initiative that states

(a) the objectives of the project,

(b) the costs and benefits of the project, and

(c) the risks associated with those costs and benefits.

General offences and penalties

74 (1) A person must not wilfully do any of the following:

- (a) make a false statement to, or mislead or attempt to mislead, the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;
- (b) obstruct the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;
- (c) fail to comply with an order made by the commissioner under section 54.1 or 58 or by an adjudicator under section 65 (2).

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of up to \$5 000.

(3) Section 5 of the *Offence Act* does not apply to this Act

Privacy protection offences

74.1 (1) A person who contravenes section 30.4 [*unauthorized disclosure*] or 30.5 [*notification of unauthorized disclosure*] commits an offence.

(2) A person who is a service provider or an employee or associate of a service provider commits an offence if the person does any of the following:

- (a) stores or allows access to personal information to which section 30.1 [*location and access in Canada*] applies contrary to that section;
- (b) contravenes section 30.2 [*obligation to report foreign demand for disclosure*];
- (c) contravenes section 30.3 [*whistle-blower protection*].

(3) If an employee or associate of a service provider

- (a) stores or allows access to personal information to which section 30.1 applies contrary to that section,
- (b) contravenes section 30.2,
- (c) contravenes section 30.3,
- (d) contravenes section 30.4, or
- (e) contravenes section 30.5,

in relation to personal information that is held because of the service provider's status as a service provider, the service provider commits an offence.

(4) If a corporation commits an offence under this section, an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence, whether or not the corporation is prosecuted for the offence.

(5) A person who commits an offence under this section is liable

- (a) in the case of an individual, other than an individual who is a service provider, to a fine of up to \$2 000,
- (b) in the case of a partnership that is or individual who is a service provider, to a fine of up to \$25 000, and
- (c) in the case of a corporation, to a fine of up to \$500 000.

(6) The time limit for laying an information to commence a prosecution for an offence under this section is

- (a) one year after the date on which the act or omission that is alleged to constitute the offence occurred, **or**
- (b) if the minister responsible for this Act issues a certificate described in subsection (7), one year after the date on which the minister learned of the act or omission referred to in paragraph (a).

(7) A certificate purporting to have been issued by the minister responsible for this Act certifying the date referred to in subsection (6) (b) is proof of that date.

(8) In a prosecution for an offence under this section, it is a defence for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

Fees

75 (1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services:

- (a) locating, retrieving and producing the record;
- (b) preparing the record for disclosure;
- (c) shipping and handling the record;
- (d) providing a copy of the record.

(2) An applicant must not be required under subsection (1) to pay a fee for

- (a) the first 3 hours spent locating and retrieving a record, or
- (b) time spent severing information from a record.

(3) Subsection (1) does not apply to a request for the applicant's own personal information.

(4) If an applicant is required to pay a fee for services under subsection (1), the head of the public body

- (a) must give the applicant a written estimate of the total fee before providing the service, and
- (b) may require the applicant to pay a deposit in the amount set by the head of the public body.

(5) If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services, the head may excuse the applicant if, in the head's opinion,

- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
- (b) the record relates to a matter of public interest, including the environment or public health or safety.

(5.1) The head of a public body must respond under subsection (5) in writing and within 20 days after receiving the request.

(6) The fees that prescribed categories of applicants are required to pay for services under subsection (1) may differ from the fees other applicants are required to pay for them, but may not be greater than the actual costs of the services.

Page 0029 of 1215 to/à Page 0031 of 1215

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ADVICE TO MINISTER

<p>CONFIDENTIAL ISSUES NOTE</p> <p>Ministry: Citizens' Services Date: Sept. 24, 2021 Minister Responsible: Lisa Beare</p>	<p>FOIPPA amendments (2021)</p>
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ADVICE AND RECOMMENDED RESPONSE:

Problem:

- B.C. has long been a leader in Canada for privacy protection and access to information, but B.C.'s legislation has not kept pace with advancements in technology or the way people access government services.
- The pandemic has taught us there is high demand for safe and convenient online services that address the changing needs of people, families and organizations in B.C.

Solution:

- We are making significant changes to freedom of information and privacy law in B.C. to keep pace with new technology and enhance privacy protection – in line with other provinces.
- Updated data residency requirements will increase access to modern tools and technologies, such as cloud-based services, so the public sector can quickly and efficiently respond to people's changing needs.
- A nominal application fee for general freedom of information requests will encourage applicants to be more focused when making requests – it will not apply to those requesting their own information.
- Our amendments have been informed by comprehensive consultation and feedback from the public, Indigenous partners, businesses and organizations.

Benefit:

- These amendments strengthen government accountability and transparency while also enhancing privacy protections that are amongst the most robust in Canada.
- The changes to data-residency will help the B.C. public sector

provide the level of service people expect in the digital era.

- **We will be able to improve B.C.'s high-quality FOI services and be more responsive to the thousands of people who request access to information every year by freeing up government resources.**
- **The legislation will also better reflect the diversity, inclusion, reconciliation and equity that we strive for as British Columbians and as a government.**

KEY FACTS:

In the week of Oct. 18, 2021, FOIPPA amendments to are anticipated to be tabled in the legislature. The amendments will strengthen, modernize and better serve the people and organizations that depend on timely information access.^{s.13}

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B.C.'s Freedom of Information and Protection of Privacy Act (FOIPPA) has not been substantially changed since 2011 and proposed amendments will keep B.C. from falling out of step with other provinces. A legislative package prepared in 2018 to amend FOIPPA did not proceed.

Feedback from over a thousand people, organizations, Indigenous partners, Special Committees of the Legislative Assembly, B.C.'s privacy commissioner and businesses have led to proposed amendments in four categories:

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Privacy enhancement

People in B.C. will benefit from strengthened privacy protection and enhanced public sector accountability through improved access to information rules, mandatory breach reporting and increased penalties for general and privacy offences under the Act. Many of

ADVICE TO MINISTER

these proposed amendments satisfy long-standing recommendations made by Special Committees of the Legislative Assembly, the OIPC and other stakeholder groups.

Diversity, Inclusion, Reconciliation and Equity

Amendments have been proposed based on the principles of lasting and meaningful reconciliation, equity and anti-racism. These include increasing information sharing with Indigenous peoples, adding Indigenous cultural protections and replacing non-inclusive language. The Act has also been reviewed through a critical gender-based analysis plus (GBA+) lens which showed the need for some updates.

Housekeeping

While relatively minor in nature, proposed administrative and housekeeping amendments will eliminate redundancies and interpretation issues in the Act, resulting in progress on the Minister's mandate to improve access to information rules.

Media Interest: Anticipated to be high in the initial days after the amendments are tabled.

Communications:	Jeremy Uppenborn, Sr. PAO, CITZ GCPE	778 974-5825
Program:	Kerry Pridmore, ADM, CIRMO	778 698-1591
	Matt Reed, ED and Chief Policy Officer, CIRMO	778 698-5855
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Page 0035 of 1215 to/à Page 0044 of 1215

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Questions and Answers:

Freedom of Information and Protection of Privacy Act Amendments

Contents

General Questions	6
Q1. Why do we need to amend FOIPPA?.....	6
Q2. Why these amendments in particular?	6
Q3. Which amendments increase transparency and accountability?.....	7
Q4. Why do fees need to be introduced, and how will they help?.....	8
Q5. What consultations have taken place?	8
Q6. Which Indigenous partners have you spoken with?	9
Q7. s.16	10
Q8. Did you consult with advocacy groups such as the B.C. Freedom of Information and Privacy Association (FIPA)?	10
Q9. How does the package reflect input received through consultation and engagement?	11
Q10. How will the amendments address previous Special Committee and Commissioner recommendations?.....	12
Q11. Why aren't you waiting for the new Special Committee's recommendations?.....	12
Q12. Have you addressed all of the recommendation made by past Special Committees?	13
Q13. How will these amendments modernize services in the public sector?	13
Q14. How will the proposed amendments enhance privacy protections?.....	14
Q15. How will these amendments further diversity, inclusion, reconciliation and equity?	14
Q16. What legislative tools do we currently have in place to protect privacy?.....	15
Q17. What are the fiscal implications of these amendments?	16
Q18. What are the labour implications of these amendments?.....	17
Q19. When will the amendments come into force?	17
Q20. How will public bodies be supported in meeting their new obligations?	17
Removing Outdated Gendered and Non-Inclusive Language.....	18
Q1. Will these amendments address the gendered language identified by former MLA Andrew Weaver in his 2018 Private Member's Bill?	18
Q2. How does this relate to the Better Regulations for British Columbia Project? Is there some overlap here? 18	
Excluding Exam/Test Answers from Coverage Under FOIPPA.....	18

Q1. Why do we need to exclude exam/test answers from FOIPPA? Didn't the B.C. Court of Appeal rule on this issue already?	18
Ensuring "Records Available for Purchase" are Still Bound by the Act's Privacy Protection Provisions in Part 3	19
Q1. Aren't records available for purchase already contemplated under the Act? Why is this amendment needed?	19
Constraining Information Rights to Records that Relate to Public Body Business	20
Q1. Isn't FOIPPA already limited to records of public body business? Why is this amendment necessary?	20
Q2. Is anyone else in Canada doing this?	20
Q3. Can you provide some examples of requests that do not relate to public body business?	21
Q4. How will government prevent this provision from being used to avoid access requests?	21
Excluding Lawfully Deleted Electronic Records from FOI	22
Q1. Why is it necessary to exclude deleted records from Part 2 of the Act?	22
Q2. Won't this amendment prevent people from accessing records that are potentially responsive to their request?	22
Q3. Won't excluding deleted items from the scope of FOIPPA incentivize employees to retain as few records as possible?	23
Modernizing Business Contact Information Requirements	23
Q1. Are these amendments removing the requirement to provide a contact person when collecting personal information or responding to an access request?	23
Protecting Indigenous Information, Cultural Heritage and Relations and Negotiations with Indigenous Governments	24
Q1. Why are these amendments necessary?	24
Q2. To what extent were Indigenous nations and organizations consulted on these amendments?	24
Q3. Why did government remove the 15-year limitation for disclosing information related to Indigenous government relations or negotiations?	26
Q4. Does government expect any impacts or delays to FOI services because of this new requirement to consult Indigenous governing entities?	26
Protecting the Identity of a Third Party that Provided a Personal Recommendation or Evaluation or Character Reference	26
Q1. How will the proposed amendment better protect privacy?	26
Indirect Collection of Personal Information that is Disclosed Under Another Enactment	27
Q1. What kinds of indirect collections will this enable? Can you provide examples?	27
Repealing/Modernizing Data-residency Provisions	27
Q1. Will these amendments weaken privacy protections?	27

Q2. s.13	29
Q3. Did the 2019 FOIPPA amendments (re: temporary processing) not resolve this issue?	29
Q4. What are other jurisdictions doing?	30
Q5. Australia has recently mandated that its government store its data in Australia; why is B.C. going in the opposite direction?	30
Q6. What happens if we don't make this change?	31
Q7. s.13	32
Q8. Why can't we make the temporary COVID order permanent?	32
Q9. The Special Committee recommended retaining the Act's data-residency provisions. Why are we doing the opposite?	32
Enabling More Information Sharing with Indigenous Governing Entities	33
Q1. Why is this amendment necessary? Doesn't the Act already have authorities in place for this kind of sharing?	33
Q2. What consultation has been done to inform this amendment?	34
Q3. Does this amendment support reconciliation?	35
Q4. Why has the Ministry proposed their own definition of "Indigenous governing entity" when "Indigenous governing body" is already defined in the <i>Declaration on the Rights of Indigenous Peoples Act</i> (DRIPA)?	35
Data Linking	35
Q1. Why are amendments to the Act's data-linking provisions needed?	35
Q2. Will these amendments enhance privacy?	36
Q3. Will these proposed amendments increase inappropriate information sharing by public bodies?	36
Q4. Will there be any exemptions?	36
Public Bodies Must Have a Privacy Management Program	37
Q1. What is a privacy management program?	37
Q2. Will the requirement to have a privacy management program have significant impacts, financial or otherwise, on public bodies' operations?	37
Q3. When do you anticipate ministerial directions will be issued?	38
Mandatory Breach Notification	38
Q1. How will this impact ministries and broader public sector?	38
Q2. Why is this coming into force later?	38
Q3. What are other jurisdictions doing?	39
Expanding Criteria for Commissioner to Authorize Disregarding of FOI Requests	39
Q1. Why is it necessary to expand the Commissioner's ability to authorize a public body to disregard requests?	39

Q2. What evidence do we have showing that the current section 43 is not working effectively?.....	40
Q3. How frequently and in what circumstances would we expect the proposed provisions to be invoked?	40
Statements to the Information and Privacy Commissioner Given During an Audit are Not Admissible as Evidence	41
Q1. Why is this amendment necessary?	41
New Offence Provisions and Associated Penalties.....	41
General	41
Q1. Why are these new offence provisions necessary?	41
Q2. Why are the new offence provisions limited to wilful acts?	42
Q3. Can you provide a common example of a situation in which these offences would apply?.....	42
Offence Respecting Wilful Destruction	43
Q4. Do other jurisdictions in Canada have similar provisions regarding the wilful destruction of records to evade a request for access to information?	43
Q5. Why don't the proposed amendments provide the Commissioner with oversight over unauthorized destruction of government records, as per the recommendations from the Special Committee and the Commissioner?	43
Offences Respecting Unauthorized Collection and Use	43
Q6. Do other jurisdictions in Canada have similar provisions regarding the unauthorized collection and use of personal information?	43
Q7. What will the fine amount be for unauthorized collection and use?.....	43
Q8. Why increase the maximum offence penalties?	44
Strengthening Privacy Impact Assessment (PIA) Requirements.....	44
Q1. How will the updates to the Act's PIA requirements strengthen privacy?.....	44
Authorizing a Public Body to Withhold Information from a Record Released under Section 71 or 71.1 ...	44
Q1. Will this limit the quality or quantity of records currently disclosed without a request for access?	44
Application Fees for General FOI Requests	45
Q1. s.12; s.13	45
Q2. How many Canadian jurisdictions charge an application fee under their public access to information legislation?.....	45
Q3. Which Canadian jurisdictions charge the most (how much)?	46
Q4. What is the average application fee charged by Canadian jurisdictions?	46
Q5. s.13	46
s.13	46

Q6. s.13	47
Q7. What evidence is there that a small portion of applicants are monopolizing and affecting the system?.....	48
Q8. Will an application fee help to recoup costs of processing an FOI request?.....	48
Q9. How much does it cost government to process an FOI request?.....	49
Q10. How many FOI requests are received per year in B.C.?	49
Q11. How many general FOI requests currently generate a processing fee?.....	49
Q12. Of the current fee estimates issued, how many fees are actually paid?.....	49
Q13. Will the application fee be able to be waived? If not, why not?.....	50
Expanding Coverage of the Act.....	50
Q1. Have criteria been established for adding subsidiary entities?.....	50
Q2. Is there a list of subsidiary entities that are being considered for addition immediately?	50
Removing the Reference to the <i>Hospital (Auxiliary) Act</i>	51
Q1. Why is the removal of the reference to the <i>Hospital (Auxiliary) Act</i> necessary?.....	51
Removing the Definition of “Social Media Site”	51
Q1. Will the removal of prescribed social media sites relax the standards/safeguards for how public bodies use social media?	51
Q2. Will removing “site” from the definition of “social media” leave the term open to interpretation?	51
Covering British Columbia Association of Chiefs of Police (BCACP) and British Columbia Association of Municipal Chiefs of Police (BCAMCP) Under FOIPPA	52
Q1. Will this change affect BCACP’s and BCAMCP’s ability to have frank and effective conversations about matters of public safety or law enforcement?	52
Office of the Premier Coverage under FOIPPA	52
Q1. Is the Office of the Premier not already covered under FOIPPA under Schedule 2?	52
Q2. Why is this amendment necessary?	52

General Questions

Q1. Why do we need to amend FOIPPA?

- FOIPPA has not been substantially updated since 2011, and no longer reflects the expectations and experiences of the public and others affected by it.
- We want to ensure the legislation keeps pace with new technologies, enhances privacy protection, and provides the level of service that people expect from the government.
- The changes we're proposing will strengthen government accountability and transparency by enabling us to be more responsive to the needs of people.
- These amendments will reinforce the Act's original spirit and intent, and improve B.C.'s high-quality freedom of information services by freeing up government resources to respond to people's requests faster.

Q2. Why these amendments in particular?

- Proposed amendments to the Act will:
 - enable the B.C. public sector to provide the level of service people expect in the digital era;
 - enhance public sector privacy protections;
 - demonstrate the Province's commitments to diversity, inclusion, reconciliation and equity; and
 - clean up minor housekeeping issues in the Act, including redundancies and interpretation issues.
- Our amendments have been informed by input from the public, Indigenous leaders, businesses and organizations and will enhance our ability to respond to people's changing needs, quickly and efficiently, including improved support for diversity, inclusion, reconciliation and equity.

- Many of the amendments respond to recommendations made by the Office of the Information and Privacy Commissioner and previous Special Committees of the Legislative Assembly that reviewed FOIPPA.

Q3. Which amendments increase transparency and accountability?

- Mandatory breach notification (to individuals) and reporting (to the OIPC) will make us more accountable to individuals where their information is at risk.
- We are creating a new offence for wilfully destroying records to evade FOI, to ensure there is never another triple-delete scandal.
- New FOI protections for information that is important to Indigenous peoples will improve our accountability to our Indigenous partners and their wishes.
- We are also adding new information sharing abilities that will allow us to share more information with Indigenous governments.
- Requirements for public bodies to have privacy management programs will make them more accountable to individuals whose personal information they hold.
- Expanding the privacy offences in the Act will ensure public servants are held accountable if they wilfully encroach on someone's privacy.
- Raising the penalties for all offences will strengthen the overall accountability measures held within FOIPPA.
- Amended powers for the Minister will permit government to add subsidiary entities as new public bodies under the Act, as recommended by the Special Committee.
- Further, we are actively adding two new public bodies that will become subject to the Act – the BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police.

Q4. Why do fees need to be introduced, and how will they help?

- People, businesses and organizations deserve to have timely access to information, and British Columbians do not get full value from the FOI system when it is inundated by a small number of applicants.
- The backlog created by a handful of high-volume requestors having a direct impact on the resources available to respond to others – such as personal requests from youth in care, inmates, and disability or income assistance requestors.
- Introducing an application fee for general FOI requests and limiting requests to public body business will improve the health of our FOI system for the benefit of all British Columbians.
- The application fee is intended to reinforce the spirit and intent of the Act by encouraging applicants to be more focused when making requests, which will free up government resources so that we can be more responsive to requests that we receive.

Q5. What consultations have taken place?

- The proposed amendments reflect what we've heard through many engagements and consultations.
- In 2018/19, substantial engagement was completed to identify stakeholder concerns and priority issues. This engagement included:
 - An online public engagement through govTogetherBC on matters related to both access to information and protection of privacy
 - A series of roundtable discussions was held by the then-Minister of Citizens' Services with key stakeholder groups.
 - Ministry staff held discussions with the Union of B.C. Indian Chiefs and the First Nations Summit on the unique impacts access and privacy have on Indigenous peoples and conducted a mail-out engagement campaign, asking for input and recommendations from over 200 First Nations

communities throughout B.C. on privacy and access to information.

- Feedback from previous stakeholder sessions, input from subject-matter experts across government, and recommendations from the OIPC and past Special Committees informed the current package of proposed amendments.
- Building on earlier consultations, the Ministry re-engaged with stakeholder groups and partners to confirm previous inputs and to gain a current understanding of potential impacts.
- The latest round of engagement took place between April and September 2021 with government ministries, broader public sector public bodies, municipalities, Indigenous groups and communities, the B.C. tech sector, the OIPC and the public.
- Feedback was received through Minister and ADM roundtable meetings, presentations to stakeholder groups, meetings with Ministry staff and two public surveys administered by govTogetherBC and Ipsos, which received 1,600 and 800 responses, respectively.

Q6. Which Indigenous partners have you spoken with?

- The Ministry has had a number of meaningful discussions with the First Nations Leadership Council. Conversations included representatives from the Union of BC Indian Chiefs, First Nations Summit and the BC Assembly of First Nations. These discussions informed and shaped a number of the proposals which specifically relate to Indigenous peoples.
- An invitation was provided to the leaders of First Nations across the province to complete an online questionnaire, which sought to gain the perspective of Indigenous people on access to information and privacy.
 - In response to this invitation, representatives from the Stk'emlupsemc Te Secwepemc (stuh-KUM-loops tay shuh-WHEP-muhk) Nation requested a meeting with Ministry staff, which was held in early September 2021.

- In addition, Deputy Minister Shauna Brouwer sent a formal invitation to leaders of the Union of BC Indian Chiefs, First Nations Summit, BC Assembly of First Nations and Metis Nation BC to discuss the proposed amendments.
- Within the established Treaty First Nations notification framework, the Ministry also engaged with representatives from the five Maa-nulth (maw-nawlth) nations, Tsawwassen (tsa-wah-sen) First Nation and the Nisga'a Lisims (nis-gah liss-ums) Government.
- All of this built on engagement done in 2018/19, when Ministry staff held discussions with the Union of B.C. Indian Chiefs and the First Nations Summit on the unique impacts access and privacy have on Indigenous peoples and conducted a mail-out engagement campaign, asking for input and recommendations from over 200 First Nations communities throughout B.C on privacy and access to information.
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous peoples as we move forward with this work.

Q7. s.16

s.16

Q8. Did you consult with advocacy groups such as the B.C. Freedom of Information and Privacy Association (FIPA)?

- We engaged with FIPA in 2018/19 on a similar package of amendments

- We also considered FIPA's submissions to previous Special Committees of the Legislative Assembly that reviewed the Act when developing our amendments package.
- In spring and summer 2021, we focussed on talking to directly impacted stakeholders and partners, such as public bodies, the OIPC, the public and Indigenous representatives.

Q9. How does the package reflect input received through consultation and engagement?

- Several of the proposed amendments address recommendations made during consultation.
 - For example, the amendments to s. 16 and the addition of the new s. 18.1 were developed in response to issues raised by Indigenous representatives and the natural resource ministries and validated during consultations.
- Several other significant proposals address recommendations made by stakeholders, including the OIPC, Special Committees, and access to information and privacy advocates.
- These proposals include:
 - An offence and penalty for the wilful destruction of records with the intent to evade a request for access.
 - An offence and penalty for unauthorized collection or use of personal information.
 - The expansion of coverage of the Act to include subsidiary entities owned or controlled by public bodies.
 - A new legal requirement to notify affected individuals and report to the Commissioner where a privacy breach could reasonably be expected to cause significant harm to the individual.
 - A new legal requirement for public bodies to have a privacy management program.

- The proposed amendments to the Act's data-linking provisions were developed in close consultation with the OIPC.

Q10. How will the amendments address previous Special Committee and Commissioner recommendations?

- There are many longstanding recommendations from previous Special Committees of the Legislative Assembly that reviewed the Act, and from the Information and Privacy Commissioner.
 - The proposed amendments address several of these recommendations, including recommendations about mandatory breach reporting, privacy management programs and subsidiary corporations.
- Several of their other recommendations have also been addressed through other policy instruments or mechanisms.
 - For example, FOI applicant anonymity is protected through policy.
 - And we have issued several new proactive disclosure directives in recent years to address recommendations related to government accountability and transparency.

Q11. Why aren't you waiting for the new Special Committee's recommendations?

- Aside from the 2019 minor amendments, the Act has not been substantially updated since 2011 which means many recommendations from the last two Special Committees (2010/11 and 2015/16) remain unaddressed.
- We anticipate that the new Special Committee would, if we waited to amend the Act, repeat many previous recommendations.
- Updating the Act now allows the new Special Committee to focus on emerging issues.

Q12. Have you addressed all of the recommendation made by past Special Committees?

- While all recommendations made by past Special Committees have been thoroughly reviewed, not all of the recommendations will be addressed through this package.
- Several Special Committee recommendations have already been addressed through policy, while there were a number of records management related questions satisfied through the introduction of the *Information Management Act*.
- Additionally, there are a number of recommendations which cannot be addressed through amendments to FOIPPA, such as the recommendation to enact new health information privacy law.

s.13

Q13. How will these amendments modernize services in the public sector?

- Many of the proposed amendments, particularly proposed changes to the Act's data-residency provisions, will improve how people access government services.
- This will be especially important through the continuing COVID-19 pandemic and recovery.
- The proposed amendments will help people access more government services online, which they expect now and into the future.
- The amendments will also result in important improvements to FOI services.

- People, businesses and organizations deserve to have timely access to information, and British Columbians do not get full value from the FOI system when it is inundated by a small number of applicants.
- The backlog created by a handful of high-volume requestors having a direct impact on the resources available to respond to others – such as personal requests from youth in care, inmates, and disability or income assistance requestors.
- Introducing an application fee for general FOI requests and limiting requests to public body business will improve the health of our FOI system for the benefit of all British Columbians.
- The application fee is intended to reinforce the spirit and intent of the Act by encouraging applicants to be more focused when making requests, which will free up government resources so that we can be more responsive to requests that we receive.

Q14. How will the proposed amendments enhance privacy protections?

- Many of the proposed amendments will address privacy issues and help us strengthen privacy for British Columbians. These amendments include:
 - Mandatory breach notification;
 - Requirement to have a privacy management program; and
 - Increasing maximum penalties for privacy-related offences

Q15. How will these amendments further diversity, inclusion, reconciliation and equity?

- As part of this work, we reviewed the Act through a critical Gender-based Analysis Plus (GBA+) lens.

- This showed us that there are a few things in the Act that need an update.
- Amendments have been proposed based on the principles of lasting and meaningful reconciliation, and equity and anti-racism.
- These amendments will:
 - Enable more information sharing with Indigenous governments;
 - Protect sensitive information related to Indigenous peoples to protect information that if released could harm the rights of an Indigenous people to maintain, control, protect or develop their cultural heritage; traditional knowledge; traditional cultural expressions; or manifestations of sciences, technologies or cultures.
 - Ensure that information that could harm relations with Indigenous governing entities is protected; and
 - Remove outdated and non-inclusive language from the Act.

Q16. What legislative tools do we currently have in place to protect privacy?

- FOIPPA establishes the Information and Privacy Commissioner and provides them with oversight over privacy as well as access to information.
- FOIPPA requires public bodies to complete a Privacy Impact Assessment (PIA) on proposed initiatives.
- A PIA considers risk, case by case, based on the specific activities and information involved in each initiative. This includes ensuring that the security of personal information is reasonable and commensurate with the information's sensitivity.
- One of the proposed amendments will clarify the PIA requirements for public bodies.

Q17. What are the fiscal implications of these amendments?

- These proposals are expected to result in minimal fiscal impacts to ministries given that many of the amendments will simply formalize existing business practices.
 - For example, a new legal requirement will be created respecting privacy management programs, and mature privacy management programs are already in place in all ministries.
- Proposed amendments that are expected to have fiscal implications for the broader public sector will be brought into force in phases, to provide public bodies with enough time to prepare to implement these new requirements.
 - For example, non-ministry public bodies may not have privacy management programs in place at the same level of maturity as ministries.
- Changes to the Act's data-residency provisions are expected to have positive fiscal effects across the public sector.
 - These changes will result in more competitive procurements, less being spent on the negotiation and administration of complex contracts, and more cost-effective technology that does not need expensive customization in order to meet legal requirements.
- Several of the proposals are expected to reduce the numerous bad-faith or overly broad FOI requests currently being made to ministries, which is also expected to have a positive fiscal impact.
- The proposal to introduce an application fee for access requests is not expected to be a significant revenue source. In fact, the average FOI request costs government \$3,000 to process, and the application fee will,
s.13 be modest in comparison.

Q18. What are the labour implications of these amendments?

- The Ministry has consulted with the Public Service Agency and does not believe there are any significant labour relations implications associated with these amendments.

Q19. When will the amendments come into force?

- These amendments will come into force upon Royal Assent, with the exception of the following:
 - The requirement for public bodies to have a privacy management program (PMPs).
 - This will give non-ministry public bodies that don't already have PMPs time to prepare to meet this new legal requirement.
 - The requirement to notify affected individuals and report to the Information and Privacy Commissioner where a privacy breach could reasonably be expected to cause significant harm.
 - Ministries are already required to do this in policy, but delaying this requirement coming into force will give non-ministry public bodies and the Office of Information and Privacy Commissioner time to prepare.
 - The addition of the BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police.
 - This will allow these associations time to prepare to meet the Act's requirements.

Q20. How will public bodies be supported in meeting their new obligations?

- Ministry staff are working on guidance materials as well as a comprehensive training plan to support public bodies through the implementation of these new requirements.

- All public bodies, as well the public have access to the Privacy and Access Helpline, which is administered by the Ministry of Citizens' Services.

Removing Outdated Gendered and Non-Inclusive Language

Q1. Will these amendments address the gendered language identified by former MLA Andrew Weaver in his 2018 Private Member's Bill?

- These amendments will ensure the Act's language reflects contemporary standards with respect to gender identity and expression.
- In addition, the amendments will also ensure the Act's language is reflective of contemporary standards regarding Indigenous identity and disability.

Q2. How does this relate to the Better Regulations for British Columbia Project? Is there some overlap here?

- The Better Regulations for British Columbia Project updated 600 instances of gendered language in the regulations of 15 ministries – including the regulations for FOIPPA and PIPA.
- The recent Better Regulations project only included gendered language in regulations, and not in legislation.
- Our proposal aligns with this project as it seeks to similarly update the outdated gendered language in the Act, and simultaneously update other non-inclusive language.

Excluding Exam/Test Answers from Coverage Under FOIPPA

Q1. Why do we need to exclude exam/test answers from FOIPPA? Didn't the B.C. Court of Appeal rule on this issue already?

- There have been different interpretations of section 3(1)(d) of the Act, which excludes "a record of a question that is to be used on an examination or test" from disclosure.

- The current language does not explicitly exclude an answer to an examination or test question.
- In 2018, a decision from the B.C. Court of Appeal stated that “a record which discloses a question, either explicitly or implicitly, is included within the exclusion in s. 3(1)(d)”.
 - This supports the notion that a record that includes anything that is important to an exam question, including the answer, should not be disclosed in response to an FOI request.
- The intention of this amendment is to protect both questions and answers to exams or tests, and the change will make it clear that section 3(1)(d) applies to records that would reveal both questions and answers, whether explicitly or implicitly

Ensuring “Records Available for Purchase” are Still Bound by the Act’s Privacy Protection Provisions in Part 3

Q1. Aren’t records available for purchase already contemplated under the Act? Why is this amendment needed?

- Yes. Section 3(1) was amended in 2011 to clarify that records available for purchase by the public are not covered by the Act, and, therefore, are not subject to formal access to information requests and fee waivers under the Act.
- However, the amendments unintentionally excluded them from coverage under Part 3 of FOIPPA as well, which means they are not subject to the Act’s privacy protection requirements. This amendment aims to rectify that issue.
- The amendment will support personal information being adequately protected by FOIPPA’s privacy protections, even if that information is in records available for purchase.

Constraining Information Rights to Records that Relate to Public Body Business

Q1. Isn't FOIPPA already limited to records of public body business? Why is this amendment necessary?

- The original legislative intent of the Freedom of Information provisions of FOIPPA was to provide people with a mechanism to access government records of individual or public interest with minimal exceptions.
- Modern technology has led to an exponential increase in recorded information held by public bodies.
- Many of the records retained today are created without human intervention and reveal little or no information about the work or decisions of public bodies.
- These types of records could not have been contemplated by the legislators who created FOIPPA; however, they are subject to FOIPPA's access provisions.
- FOI applicants are increasingly requesting these types of records, which, although they may reasonably be held by an employee of a public body, have no direct relationship to the public body's operations.
- There also has been an increase in the number of FOI requests that target information associated with individual government employees.
 - This abuse of the FOI system amounts to inappropriate surveillance of government officials and public service employees.
- Providing access to a record that is wholly unrelated to the carrying out of a public function is not consistent with the spirit and intent of the Act and poses additional personal privacy risks.

Q2. Is anyone else in Canada doing this?

- Yes, New Brunswick's *Right to Information and Protection of Privacy Act* has a similar provision to what we are proposing.

- Most other jurisdictions in Canada have more latitude to simply disregard requests that are clearly unrelated to government business.
 - Many don't have to apply to their Commissioner for permission to do this.

Q3. Can you provide some examples of requests that do not relate to public body business?

- Examples of some types of requests that have become common include:
 - Screenshots of phones of named individuals, showing applications.
 - Internet browser histories of named individuals.
 - Lists of all file names and folder names located on the Desktop, My Downloads, My Documents and My Favourites folders from all electronic devices used by the Premier, Ministers, Ministers of State, and OIC appointees.

Q4. How will government prevent this provision from being used to avoid access requests?

- This amendment is not about restricting access to government records.
 - It is meant to help ensure that the FOI process is used as intended, to keep government accountable and transparent about its business.
- This provision does not limit an applicant from making a request for any record related to government business.
- If access to a record is denied for any reason, the applicant has the right to make a complaint with the Information and Privacy Commissioner.
 - The Commissioner may then investigate the matter and compel government to provide records to support their investigation.

Excluding Lawfully Deleted Electronic Records from FOI

Q1. Why is it necessary to exclude deleted records from Part 2 of the Act?

- This amendment aligns with current practice because under ordinary circumstances, records such as “backups” should not be restored and searched in response to FOI requests after these records have been appropriately disposed.
- Past orders from the Commissioner have long held that backups need not be searched and retrieved because the process is too costly and time-consuming to be considered reasonable.
- This is also consistent with the spirit and intent of the Act because the original records may be requested through FOI for the duration of their lifecycles.
- It should be noted that an employee’s deleted items folder is still subject to FOI, and if an employee has reason to believe that responsive records may exist in a deleted items folder, then an adequate search for records would require them to search that folder accordingly.
- This amendment does not change what an employee is legally permitted to delete.

Q2. Won’t this amendment prevent people from accessing records that are potentially responsive to their request?

- The amendment reflects past orders of the Information and Privacy Commissioner, whose office has long held that backups should not be searched and retrieved in response to FOI requests under normal circumstances.
- Good information management practices include creating, maintaining and destroying government records according to their approved information schedules, and regularly disposing of records that are “transitory” in nature.

- Backups of records are routinely created and retained for specified periods for legal or investigative purposes. If a record exists only in backup, then that record likely was disposed of lawfully.
- However, if a request for access includes “emails sent and received from this date to this date”, for example, a search of records must include ‘deleted items’ folders. A simple search of the ‘current mailbox’ would not qualify as a thorough search for responsive records.

Q3. Won’t excluding deleted items from the scope of FOIPPA incentivize employees to retain as few records as possible?

- No. Public body employees are trained to follow good information management practices.
 - This includes retaining important records and also includes deleting records, such as transitory records, when that information no longer has business value.
- Proper information management makes it easier to find records that are responsive to FOI requests.

Modernizing Business Contact Information Requirements

Q1. Are these amendments removing the requirement to provide a contact person when collecting personal information or responding to an access request?

- No. These amendments will give more flexibility by enabling a public body to provide alternate means of contact, such as an email address or a social media handle, in place of, or in addition to, a telephone number or physical address.
- These amendments will ensure that anyone who has questions about a public body's collection of their personal information or their FOI request have a means of contacting that public body that reflects current practice and technology.

Protecting Indigenous Information, Cultural Heritage and Relations and Negotiations with Indigenous Governments

Q1. Why are these amendments necessary?

- Right now, section 18 of FOIPPA protects information that could reasonably be expected to result in damage to, or interfere with, the conservation of fossil sites, natural sites or sites that have an anthropological or heritage value.
- This is limited in that the provision does not sufficiently describe all aspects of information related to Indigenous knowledge or cultural heritage—for instance, information related to intangible aspects of Indigenous culture such as language, resource cultivation practices, and traditional visual and performing arts.
- The Act also does not currently give Indigenous peoples the same input regarding disclosure that is afforded to other third parties when the head of a public body intends to give access to information that could be harmful to business interests or personal privacy.
- Section 16 of FOIPPA protects information that could reasonably be expected to harm intergovernmental relations—this is intended to include relations with Indigenous governing entities.
- We've heard from Indigenous partners that the current 15-year limitation on the protection of this information creates a hesitancy to share information with the Province because potential harm can persist beyond 15 years.

Q2. To what extent were Indigenous nations and organizations consulted on these amendments?

- In 2018, Ministry staff held discussions with the Union of B.C. Indian Chiefs and the First Nations Summit on the unique impacts access and privacy have on Indigenous peoples.
- In addition, government conducted a mail-out engagement campaign, soliciting input and recommendations from 200 Indigenous communities throughout B.C.

- We have worked with the Ministry of Indigenous Relations and Reconciliation ^{s.14} whose feedback informed these proposed amendments.
- In 2020/21, CITZ held a number of discussions with First Nations Leadership Council members. The input received in these discussions directly informed the language of this and other amendments which specifically relate to Indigenous peoples.
- CITZ also invited the leaders of First Nations in B.C. to provide feedback through an online questionnaire, which closed on August 15, 2021.
 - A total of 11 responses were received.
 - The majority of respondents were representatives of an Indigenous government, community or organization, while a small subset (2) were interested members of the public.
 - Participants signalled a need for changes to access to information and privacy law to improve the negotiation of agreements and treaties and enhance overall collaboration between the Province and Indigenous governments.
 - Responses also revealed a general concern about the Province inappropriately sharing personal information, as well as sensitive information respecting Indigenous cultural heritage, traditional knowledge and traditional cultural expressions.
- In the past few months, we have also had meaningful dialogues with representatives from the Maa-nulth (maw-nawlth) First Nations, the Tsawwassen (tsa-wah-sen) First Nation, the Nisga'a Lisims (nis-gah liss-ums) Government, the Tk'emlúps te Secwepemc (teh-kum-loops teh sec-wep-emc) band and the Skeetchestn (Skeet-ch-sin) band.

Q3. Why did government remove the 15-year limitation for disclosing information related to Indigenous government relations or negotiations?

- Indigenous representatives made it clear during our engagement, and in past communication with government, that the 15-year limitation of this provision is not appropriate for information related to an Indigenous governing entity, as the risk of harm persists long after 15 years has elapsed.

Q4. Does government expect any impacts or delays to FOI services because of this new requirement to consult Indigenous governing entities?

- The amendments will ensure that Indigenous communities are provided with written notice and the opportunity to make written representations to a public body if the public body intends to disclose sensitive information that relates to Indigenous cultural knowledge—a right that is afforded to other third parties such as commercial entities.
- This is consistent with the current requirements for public bodies to consult prior to giving access to records that contain personal information, business information, and information that could harm inter-governmental relations.
- This amendment is not expected to have significant fiscal or operational impacts.

Protecting the Identity of a Third Party that Provided a Personal Recommendation or Evaluation or Character Reference

Q1. How will the proposed amendment better protect privacy?

- Section 22(3)(h) already protects the content of a personal recommendation or evaluation from a third party.
- However, the provision does not explicitly protect the identity of the third party that provided the information for a reference or evaluation.
- The proposed amendment will establish that a disclosure of personal information is an unreasonable invasion of a third party's personal privacy if:

- the content of the recommendation or evaluation (such as a character reference), and/or
- the identity of the third party supplying that information could be revealed.

Indirect Collection of Personal Information that is Disclosed Under Another Enactment

Q1. What kinds of indirect collections will this enable? Can you provide examples?

- An example would be if a ministry entered into an Information Sharing Agreement with a public body from another jurisdiction.
- The existing language of FOIPPA permits public bodies to disclose personal information to other jurisdictions, but is unclear on permitting them to collect it from public bodies in those jurisdictions.
- This amendment would provide a clear authority for the indirect collection of personal information that aligns with existing authorities for disclosure.
- To be clear, this provision does not allow a public body to circumvent the privacy protections of FOIPPA. Public bodies must still complete privacy impact assessments before entering into agreements that deal with personal information.

Repealing/Modernizing Data-residency Provisions

Q1. Will these amendments weaken privacy protections?

- The Act's current data-residency requirements require all personal information to be stored and accessed within Canada except under limited circumstances.
- This blanket protection for all personal information doesn't take into account personal information that has little to no risk of causing harm.

The level of protection needed should be commensurate with the level of risk involved.

- Outside of data residency, the Act already requires public bodies to conduct a Privacy Impact Assessment (PIA).
- The PIA process considers risk, case by case, based on the specific activities and information involved in each proposed initiative.
- This includes ensuring that the security of personal information is reasonably commensurate with the information's sensitivity.
- Under the new regulation, public bodies will be required to conduct an additional assessment of any sensitive personal information being disclosed for storage outside of Canada.
- The perception that our data is safer within the physical borders of Canada is flawed.
 - Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
 - These larger companies have more resources to devote to data security.
 - We spend approximately \$25 million each year on information security, but the large tech firms spend over \$1 billion per year – each.
- The perception that the cloud is not safe is also flawed.
 - Cloud computing is used to house (non-critical) data belonging to:
 - The US Department of Defence
 - National Bank of Canada
 - Interpol

Q2. s.13
s.13

s.13

Q3. Did the 2019 FOIPPA amendments (re: temporary processing) not resolve this issue?

- In October 2019, targeted amendments to the Act were passed to enable features associated with Canadian-based cloud technology.
- These amendments permit the disclosure of personal information for temporary processing and the disclosure and storage of metadata outside

CONFIDENTIAL

29

of Canada, but place conditions on these disclosures to ensure privacy is protected.

- The amendments limit the use of cloud services to those that operate in Canada and otherwise meet FOIPPA's privacy protection requirements.
- These amendments have been well received, but many public bodies feel they do not go far enough.
- For example, we generally can't use Zoom or Google Docs lawfully.
- The new proposed amendments will give B.C. public bodies more latitude to use modern tools to provide modern, digital services that people need and expect.

Q4. What are other jurisdictions doing?

- With respect to disclosing personal information outside of Canada, B.C. currently has the strictest laws in the country.
- Only two other jurisdictions in Canada have data-residency provisions in legislation:
 - Nova Scotia's *Personal Information International Protection Disclosure Act* contains data-residency provisions.
 - New Brunswick's *Personal Health Information Privacy and Access Act* also contains data-residency requirements, but they are specific to personal health information.
- Even Europe's General Data Protection Regulation (GDPR) – widely lauded as the world's most robust privacy law – doesn't restrict data residency.

Q5. Australia has recently mandated that its government store its data in Australia; why is B.C. going in the opposite direction?

- Our Privacy Impact Assessment (PIA) process is incredibly thorough and considers risk, case by case, based on what the technology is meant to do and what data is being used for. As part of this assessment, we

make sure that the security of personal information is appropriate given the sensitivity of that information.

s.13

- B.C. will still have parameters for disclosing personal information outside of Canada, but the proposed amendments will allow public bodies to take a more flexible approach based on ensuring protections are commensurate with the sensitivity of the information.

Q6. What happens if we don't make this change?

- People have come to depend on the use of a variety of tools that have been available to them through the pandemic, such as apps for virtual doctor's visits and online collaboration tools for students to learn together in a diverse environment.
- The current restrictions force public bodies to use less effective and sometimes less secure technology solutions. Our vendors are moving to international solutions and are leaving B.C. behind without any alternatives.
- This means that, without change, public bodies in B.C. may be forced to build their own systems, at great expense, because they won't be able to access solutions on the market that comply with B.C.'s strict data-residency rules.
- Lack of access to modern tools and technologies also poses a risk to public bodies' innovation and competitiveness.
- For example, greater access to cloud-based services will improve B.C. post-secondary institutions' ability to attract students by allowing them to use many of the cloud-based education tools that their competitors can offer outside of B.C.

Q8. Why can't we make the temporary COVID order permanent?

- The current Ministerial Order enables health-care workers and other public sector staff to use tools that are not normally permitted during the COVID-19 state of emergency.
- For instance, technology has been leveraged by the Ministry of Health and Health Authorities to reduce crowding in waiting rooms and limit exposure in medical facilities through virtual medical appointment alerts (Patient Prompt), self-schedule and check-in appointments for flu shots (Waitwhile) and virtual care appointments (MyVirtual Visit).
- This order has been well received by the public sector and people in B.C., as it has temporarily enabled expanded access to modern digital communications tools, allowing government to better serve British Columbians during an incredibly challenging period.
- Although the Minister has the power to extend the Order, it can't be extended forever.
 - An amendment to the Act would avoid the need for a Ministerial Order and enable, in law, B.C. public bodies to use modern tools to provide modern, digital services that citizens need and expect.

Q9. The Special Committee recommended retaining the Act's data-residency provisions. Why are we doing the opposite?

- Amending the data-residency provisions will enable B.C. public bodies to continue to use tools to provide modern, digital services that people need and expect.

- We conducted a representative survey of British Columbians that confirmed that the priority should be about data security and online service delivery – both of which suffer as a result of data residency.
- The current restrictions force public bodies to use less effective and sometimes less secure technology solutions. Our vendors are moving to international solutions and are leaving B.C. behind without any alternatives.
- The current temporary COVID-19 Order has enabled health-care workers and other public sector staff to use tools that are not normally permitted during the COVID-19 state of emergency.
- This order has been well received by the public sector and citizens, as it has temporarily enabled expanded access to modern digital communications tools, allowing government to better serve British Columbians during an incredibly challenging period.
- We want to be able to maintain this level of service once the pandemic is over and ensure that the Act will permit us to take advantage of new technology in the future.

Enabling More Information Sharing with Indigenous Governing Entities

Q1. Why is this amendment necessary? Doesn't the Act already have authorities in place for this kind of sharing?

- Several use cases have been brought to CITZ that indicate the Act does not appropriately contemplate information sharing between the B.C. government and Indigenous governing entities in support of reconciliation activities or Indigenous self-government.
- For example, the Supreme Court of Canada's landmark Tsilhqot'in [sil-KO-tin] Nation v. British Columbia decision in 2014 resulted in Crown land becoming Aboriginal title land.
 - However, tenures and other interests that overlay those former Crown lands persist.

- The Province is working with the Tsilhqot'in [sil-KO-tin] Nation to transition management and control of the title lands, and to collaboratively undertake enforcement and monitoring tasks.
- In order to transition these responsibilities effectively, the Province needs to share personal information with the Tsilhqot'in [sil-KO-tin] Nation but is currently restricted from doing so by the Act.

Q2. What consultation has been done to inform this amendment?

- We have worked with the Ministry of Indigenous Relations and Reconciliation as well as Indigenous Legal Relations, whose feedback informed this proposal.
- In 2018/19, and more recently in 2020/21, CITZ held a number of discussions with First Nations Leadership Council members. The input received in these discussions directly informed the language of this and other amendments which specifically relate to Indigenous peoples.
- CITZ also invited the Indigenous leaders across B.C. to provide feedback through an online questionnaire, which closed on August 15, 2021.
 - A total of 11 responses were received.
 - The majority of respondents were representatives of an Indigenous government, community or organization, while a small subset (2) were interested members of the public.
 - Overall, responses to the questionnaire indicated that there is a desire to make it easier for Indigenous people and communities to access information held by public bodies.
- In the past few months, we have also had meaningful dialogues with representatives of meaningful dialogue with representatives from the Maa-nulth (maw-nawlh) First Nations, the Tsawwassen (tsa-wah-sen) First Nation, the Nisga'a Lisims (nis-gah liss-ums) Government, the Tk'emlúps te Secwepemc (teh-kum-loops teh sec-wep-emc) band and the Skeetchestn (Skeet-ch-sin) band.

Q3. Does this amendment support reconciliation?

- Yes. This amendment will directly support:
 - The rights of Indigenous governing entities to administer programs and manage lands and resources;
 - Negotiation of agreements and treaties between the Province and Indigenous governing entities; and
 - More effective collaboration between the Province and Indigenous governing entities in co-developing policies and programs, and in joint enforcement and monitoring activities.

Q4. Why has the Ministry proposed their own definition of “Indigenous governing entity” when “Indigenous governing body” is already defined in the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA)?

- The Ministry spent a great deal of time working through this very issue. While some of our Indigenous partners expressed a desire for “Indigenous governing body” to be used in place of our proposed “Indigenous governing entity”, it was determined that “Indigenous governing body” may not be sufficiently broad.
- It was decided to include the term “Indigenous governing body” within the proposed definition of “Indigenous governing entity”.

Data Linking

Q1. Why are amendments to the Act’s data-linking provisions needed?

- Provisions on data linking were added to FOIPPA in 2011, but they are not working as originally intended.
- The primary objective was to ensure appropriate controls were in place for data-linking initiatives.
 - This in turn was meant to ensure public bodies follow the “fair information practices” and protect the rights and interests of any affected individuals.

- Many stakeholders, including the Commissioner, feel the Act's current data-linking provisions are confusing and difficult to apply.
- The provisions also appear to have had unintended consequences.
 - For example, the current definition does not appear to cover activities that are likely to pose increased privacy risks to individuals.
- The proposed amendments will address the inefficacy of the Act's current data-linking provisions.
- The amendments will also ensure appropriate controls are applied to data-linking programs, which will ensure that public bodies follow the fair information practices and protect the rights and interests of individuals whose personal information is included in a data-linking program.

Q2. Will these amendments enhance privacy?

- Yes. These amendments will enable additional controls to be established through regulation for activities that pose a greater privacy risk to individuals.

Q3. Will these proposed amendments increase inappropriate information sharing by public bodies?

- No. The proposed amendments do not authorize any new information sharing.
- The proposed amendments address recommendations from the Commissioner and the Special Committee.

Q4. Will there be any exemptions?

- There will be no exemptions in the Act, but exemptions may be introduced at a later date once a regulation is established.
- (If asked)
 - The planned exemptions include sharing within the health sector (as is currently in the legislation), as well as for law

enforcement purposes, and for taxation and revenue purposes.

Public Bodies Must Have a Privacy Management Program

Q1. What is a privacy management program?

- An effective privacy management program includes governance and accountability, policies and processes, and training.
- A privacy management program ensures that public bodies have the necessary framework in place to meet their privacy obligations under the Act.
- Ministries are already required, through policy, to have a privacy management program
- This amendment will set that obligation in law and extend it to the broader public sector.
- The amendment will also enable the minister responsible for the Act to issue directions on privacy management programs.

Q2. Will the requirement to have a privacy management program have significant impacts, financial or otherwise, on public bodies' operations?

- This requirement will be brought into force by regulation at a later date in order to give non-ministry public bodies more time to prepare for this obligation.
- The ministerial directions will be broad and flexible enough to promote compliance while allowing public bodies to scale the program to meet their specific needs.
- The Ministry will consult with public bodies while developing the ministerial directions to ensure that the new requirements do not have significant negative impacts on public bodies' operations.
- The Ministry will also develop guidance and training to support public bodies in meeting their obligations.

Q3. When do you anticipate ministerial directions will be issued?

- We expect to be ready to issue ministerial directions on privacy management programs in approximately one year.
- The Ministry will consult with public bodies while developing the ministerial directions to ensure that the new requirements do not have significant negative impacts on public bodies' operations.

Mandatory Breach Notification

Q1. How will this impact ministries and broader public sector?

- Currently, there is no legislated requirement for public bodies to notify affected individuals or the Commissioner in the event of a privacy breach.
- Within ministries, current practice is to notify affected individuals and to report privacy breaches to the Commissioner when significant harm can be reasonably expected to occur.
- The requirement to notify and report a privacy breach would make current policy and best practice mandatory for both ministries and the broader public sector.
- This will benefit the public by enhancing accountability and transparency of ministries and the public sector.
- It will also help mitigate serious fallout of privacy breaches.

Q2. Why is this coming into force later?

- This requirement will be brought into force by regulation to provide the broader public sector time to prepare for this new obligation.
- Government intends to bring this item into force one year after royal assent, in order to provide public bodies the opportunity to prepare for this requirement.

Q3. What are other jurisdictions doing?

- Six Canadian provinces and territories have privacy breach notification and/or reporting requirements in their public sector privacy legislation.
- Quebec's proposed Bill-64 includes these requirements.
- Ontario added mandatory breach notification requirements in 2020 that apply to various data-integration units.
- Our proposed new mandatory breach reporting requirements also align with the European Union's General Data Protection Regulation (EU GDPR).

Expanding Criteria for Commissioner to Authorize Disregarding of FOI Requests

Q1. Why is it necessary to expand the Commissioner's ability to authorize a public body to disregard requests?

- Section 43 of the Act permits the Commissioner to authorize the head of a public body to disregard a request that would unreasonably interfere with the public body's operations, or that is frivolous or vexatious.
- However, the current criteria are too narrow to address the unreasonable interference with public bodies' operations and abuse of access rights that have unfortunately become more and more common.
- For example,
 - Requests made by former employees of public bodies for records related to former colleagues and managers that are clearly meant to be damaging and disruptive.
 - Repeated bad-faith requests from individual FOI applicants who are unsatisfied with the response received on an initial request and proceed to target individual public servants who processed the initial request with requests for their emails, calendars, Oaths of Employment, offer letters, etc.

- Requests made to all ministries for all emails sent to or received from a specified non-government email address, including Cc's and Bcc's, for a specified period.
- Requests of this nature are being submitted with increasing frequency by a small number of FOI applicants, and they reduce the capacity of public bodies to provide service to other FOI applicants.
- This amendment will give the Commissioner more leeway by establishing additional grounds to authorize public bodies to disregard FOI requests.
 - For example, the amendment would enable the Commissioner to authorize a public body to disregard an overly broad FOI request (e.g., a request made to all ministries for all emails sent to or received from a specified non-government email address, including Cc's and Bcc's).
- This is one of several proposed amendments that will help improve the FOI system for the benefit of all applicants.

Q2. What evidence do we have showing that the current section 43 is not working effectively?

- Section 43 approval is rarely requested or obtained (approved approximately 10 times in the past 10 years) because the existing criteria is too narrow to address the unreasonable interference with public bodies' operations and abuse of access rights that have become more common.
- Because the expectation of success is so low under the current provision, many instances of system abuse are not brought forward to the OIPC for consideration.

Q3. How frequently and in what circumstances would we expect the proposed provisions to be invoked?

- While section 43 requests may increase somewhat with the expanded criteria, this provision will continue to be used only when applicants are

clearly abusing access rights or when the operations of a public body are significantly impeded.

- While we don't anticipate this section will be used a lot in the future, the amendment will expand the circumstances where it could be applied.
- Commissioner approval will continue to be required for section 43 to be invoked.
- Applying the proposed expanded criteria should help curb frequent misuse of FOIPPA's access rights by a small number of applicants, which would free up public body resources and increase their capacity to provide services to other applicants and the public.

Statements to the Information and Privacy Commissioner Given During an Audit are Not Admissible as Evidence

Q1. Why is this amendment necessary?

- This amendment will allow for a measure of consistency within the existing provisions respecting the powers of the Information and Privacy Commissioner.
- Currently, any statement or answer provided to the Commissioner during an investigation or an inquiry is inadmissible as evidence in court (or any other legal proceeding). This amendment will make this true for information provided during an audit as well.
- This will support the Commissioner's ability to have frank and open discussions with interviewees during audits.

New Offence Provisions and Associated Penalties

General

Q1. Why are these new offence provisions necessary?

- These new provisions respond to recommendations made by the 2015/16 Special Committee of the Legislative Assembly that reviewed FOIPPA, the Commissioner, and other stakeholders.

- These new provisions will enhance accountability and strengthen public confidence in the FOI system and privacy protection, and will encourage compliance with the Act.

Q2. Why are the new offence provisions limited to wilful acts?

- Our provision respecting the wilful destruction of records aligns with recommendations from the 2015/16 Special Committee and former Commissioner David Loukidelis to make it an offence to destroy records with the intention of denying access rights under FOIPPA.
- Limiting the offence provision respecting the destruction of records to wilful acts is intended to ensure that employees are not punished when they're managing their records in good faith.
 - The provision targets only “wilful” acts of destruction for the purpose of evading a request for access to records.
- Similarly, the new offences respecting unauthorized collection and use of personal information are intended to ensure incidents of an unintentional or accidental nature are not penalized.

Q3. Can you provide a common example of a situation in which these offences would apply?

- These offences would apply in cases where someone has knowingly and intentionally contravened FOIPPA.
- They would not apply to acts committed by accident, without knowledge, or in good faith.
- For example, a government employee who, in the course of their work, inadvertently searches the wrong name in a database would not be charged under these new offences.
- Government expects these offences to apply only in rare and exceptional cases.
- Employees will not be discouraged, for example, from appropriately disposing of transitory and obsolete records for fear of committing an offence.

Offence Respecting Wilful Destruction

Q4. Do other jurisdictions in Canada have similar provisions regarding the wilful destruction of records to evade a request for access to information?

- Yes, eight other provinces, as well as the Yukon and the federal government, have similar provisions where the wilful destruction of records with the intent to evade an access to information request is an offence in their freedom of information legislation.

Q5. Why don't the proposed amendments provide the Commissioner with oversight over unauthorized destruction of government records, as per the recommendations from the Special Committee and the Commissioner?

- Government's position is that oversight over the destruction of government information, including unauthorized destruction, rests with the Chief Records Officer under the *Information Management Act* (IMA).
- Government's position is consistent with frameworks of other provinces and territories, which do not provide their Information and Privacy Commissioner (or equivalent position) with oversight over records and/or information management.

Offences Respecting Unauthorized Collection and Use

Q6. Do other jurisdictions in Canada have similar provisions regarding the unauthorized collection and use of personal information?

- Yes, seven other provinces and all three territories have similar provisions in their public sector privacy legislation.

Q7. What will the fine amount be for unauthorized collection and use?

- The existing offence scheme for these offences is currently as follows:
 - in the case of an individual, other than an individual who is a service provider, to a fine of up to \$50 000; and
 - in the case of a service provider, including a partnership that or an individual who is a service provider, to a fine of up to

\$50 000, and in the case of a corporation, to a fine of up to \$500 000. Maximum Offence Penalties.

Q8. Why increase the maximum offence penalties?

- These increases respond to recommendations made by the 2015/16 Special Committee of the Legislative Assembly that reviewed FOIPPA, the Commissioner, and other stakeholders.
- The proposed amendments will simplify the Act's fine schema by raising the maximum fines for individuals and service providers to \$50,000 for all offences.
- Raising fines for individuals and service providers to \$50,000 also aligns B.C. with Saskatchewan and Manitoba.
- Higher fines are expected to further deter persons from committing offences under FOIPPA.

Strengthening Privacy Impact Assessment (PIA) Requirements

Q1. How will the updates to the Act's PIA requirements strengthen privacy?

- The current wording of the provisions respecting Privacy Impact Assessments (PIAs) can be interpreted to mean public bodies do not always have to do PIAs.
- The intent of the provision has always been for all public bodies to do PIAs on any proposed system, project, program or activity.
- The amendments will give public bodies more clarity around their privacy obligations.

Authorizing a Public Body to Withhold Information from a Record Released under Section 71 or 71.1

Q1. Will this limit the quality or quantity of records currently disclosed without a request for access?

- No. This amendment provides certainty with respect to current practice.

- Section 70 permits the head of a public body to sever information from a record that they would be entitled to refuse to disclose in response to a request for access, but sections 71 and 71.1 do not.
- The directives issued to date by the minister responsible for the Act already require ministries to do this when applying sections 71 and 71.1.
- For transparency, when such information is deleted, the disclosed record must include a statement of
 - the fact that information has been deleted, and
 - the reason for the deletion.

Application Fees for General FOI Requests

Q1. s.12; s.13

- Application fees are not intended to recover the full cost—or even a significant proportion of the costs—for an information request, and it won't apply to people requesting their own information.
- The intent is to encourage applicants to be more specific in their requests about the records they are seeking, and the ministries they are seeking the records from, so that we can improve freedom of information services for people by freeing up government resources.
- Across Canada, application fees for general information requests range from \$5 to \$50.

s.12; s.13

Q2. How many Canadian jurisdictions charge an application fee under their public access to information legislation?

- Four provinces (Alberta, Ontario, PEI and Nova Scotia), Nunavut and the federal government charge application fees for general access to information requests.

- In addition, Saskatchewan charges for access to information requests made to local governments.
- Ontario is the only jurisdiction that charges an application fee for personal information requests.

Q3. Which Canadian jurisdictions charge the most (how much)?

- Nunavut charges a \$25 application fee for general requests.
- Alberta charges \$25 for a one-time general request and \$50 for continuing general requests.

Q4. What is the average application fee charged by Canadian jurisdictions?

- The average application fee across Canada is \$5 (which includes the federal government and those jurisdictions that charge no application fee).
- Across Canada, application fees for general information requests range from \$5 to \$50.
- The federal government, along with the provinces of Ontario, Prince Edward Island (PEI) and Nova Scotia all charge a \$5 application fee for general requests.

Q5. ^{s.13}
s.13

- Newfoundland and Labrador has not had any access to information fees since 2015. However, the province has recently received media coverage for telling the Committee appointed to review its access to information access legislation that it wishes to reinstate fees to deal with the ever-increasing number of access to information requests it is receiving.
- While an application fee will not be a barrier for access to information, it will be an effective means to incentivize the few applicants who make numerous complex requests to better focus those requests (e.g., only targeting ministries likely to hold records).

s.13

Q6. s.13

s.12; s.13

s.13

Q7. What evidence is there that a small portion of applicants are monopolizing and affecting the system?

- Government processed the following number of requests in 2020/21 from the top 2 most prolific applicants:
 - 1 Political Party requestor: 4,772 (\$14.3 million)
 - 1 Media requestor: 397 (\$1.2 million)
- Compared to 328 (\$1 million) from all other media requestors combined
- British Columbians do not get full value from the FOI system when a small number of applicants inundate the system.
- The backlog created by a handful of prolific requestors has a direct impact on the resources available to respond to others – such as personal requests from youth in care, inmates, and disability or income assistance requestors.

Q8. Will an application fee help to recoup costs of processing an FOI request?

- No. Application fees are not intended to recover the full cost—or even a significant portion of the costs—of operating an access to information program.
- With or without fees, FOI is considered a justifiable expense because it enhances democratic governance and maintains accountability, integrity and efficiency in public bodies' work.

Q9. How much does it cost government to process an FOI request?

- As of spring 2019, the average cost of processing a single FOI request was \$3,000. (Source: Deloitte “Freedom of Information Process Review” report.)

Q10. How many FOI requests are received per year in B.C.?

- In FY 2020/21:
 - Government processed and closed 10,839 FOI requests (cost to government was approximately \$32.5 million).
 - 3,691 were personal requests, where fees would not apply (cost to government was approximately \$11 million).
 - 7,148 were General Requests, where application fees could be applicable (cost to government was approximately \$21.4 million).
- Over the previous 3 fiscal years, government has processed an average of 11,842 FOI requests annually.

Q11. How many general FOI requests currently generate a processing fee?

- Of the 22,680 general requests received by government in the previous three fiscal years:
 - Approximately 13%, resulted in a fee estimate being sent to the applicant.

Q12. Of the current fee estimates issued, how many fees are actually paid?

- Of the 22,680 general requests received by received by government in the previous three fiscal years:
 - Only 400, or approximately 2%, resulted in a fee being paid.
 - The total amount of fees paid, on files estimated to cost government approximately \$68 million to process, was approximately \$163,800.

Q13. Will the application fee be able to be waived? If not, why not?

- No. The cost of processing a fee waiver would negate any potential benefit derived from a modest application fee.

s.12; s.13

- No fees are being proposed for people requesting their own personal information.

Expanding Coverage of the Act

Q1. Have criteria been established for adding subsidiary entities?

- Yes. The proposed amendment will permit the minister responsible for FOIPPA, myself, to add under the coverage of the Act any agency, board, commission, corporation, person, office or other body that meet the following criteria:
 - any member, director or officer appointed by or under the authority of the Lieutenant Governor in Council or a minister;
 - a controlling interest in the share capital is owned by the government of British Columbia or any of its agencies or a public body; or
 - performs functions under an enactment.
- The proposed amendments will also enable the Minister responsible for FOIPPA to add an agency, board, commission, corporation, office or other body to Schedule 2 of the Act if the Minister considers it in the public interest to do so.

Q2. Is there a list of subsidiary entities that are being considered for addition immediately?

- No. We are delaying adding any subsidiary entities pending further consultation with the broader public sector and the OIPC.

- The OIPC has recommended a number of entities for inclusion under the Act, and these organizations will be evaluated for inclusion in the future.

Removing the Reference to the *Hospital (Auxiliary) Act*

Q1. Why is the removal of the reference to the *Hospital (Auxiliary) Act* necessary?

- A consequential amendment to FOIPPA was included in the 1999 bill repealing the *Hospital Auxiliary Act*; however, this change was never reflected in FOIPPA.
- The proposed amendment will ensure that the definition of a “health care body” is accurate and up to date.

Removing the Definition of “Social Media Site”

Q1. Will the removal of prescribed social media sites relax the standards/safeguards for how public bodies use social media?

- This change takes a more common-sense approach to defining social media – but it will not change how government uses social media (i.e., for promotion and public discussion).
- Public bodies that use social media as a means of engaging the public are still required to complete a Privacy Impact Assessment and will still need to meet applicable security requirements.
- Government has also issued guidelines for social media use.

Q2. Will removing “site” from the definition of “social media” leave the term open to interpretation?

- No. The term “social media” has matured enough that the term is now consistently understood.
- This amendment will provide more flexibility for public bodies that use social media to engage with the public, as public bodies will not be limited to using only those platforms identified in the regulation.

Covering British Columbia Association of Chiefs of Police (BCACP) and British Columbia Association of Municipal Chiefs of Police (BCAMCP) Under FOIPPA

Q1. Will this change affect BCACP's and BCAMCP's ability to have frank and effective conversations about matters of public safety or law enforcement?

- No. Currently, the public is able make requests for records respecting the BCACP and the BCAMCP through individual police detachments. This amendment will simply allow FOI applicants to make requests directly to the associations themselves.
- This amendment will be brought into force through regulation at a later date to allow these police associations the time to prepare to meet their obligations under the Act.

Office of the Premier Coverage under FOIPPA

Q1. Is the Office of the Premier not already covered under FOIPPA under Schedule 2?

- Yes, the Office of the Premier is currently listed in Schedule 2 as a public body.

Q2. Why is this amendment necessary?

- Some requirements apply differently to ministries than to non-ministry public bodies.
- In practice, the requirements of the Act that apply to ministries differently than to non-ministry public bodies have been considered to apply to the Office of the Premier.
- However, the presence of the Office of the Premier in Schedule 2 creates uncertainty with respect to whether the Office of the Premier is a ministry.

- This amendment will make explicit that the operations and function of the Office of the Premier are reflected in its classification as a government ministry.

Page 0098 of 1215 to/à Page 0105 of 1215

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s.12 ; s.13

**Freedom of Information and Protection of Privacy Act
Amendments
House and Section Notes**

**Section 1 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 2 (1) (c) of the
*Freedom of Information and Protection of Privacy Act***

Purpose of this Act

2 (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records,
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
- (c) specifying limited exceptions to the ~~rights~~ right of access,
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
- (e) providing for an independent review of decisions made under this Act.

Page 0108 of 1215

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**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and **substitutes
a new subsection 3 (1)****

Scope of this Act

~~3 (1) Subject to This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:~~

~~[see Appendix for full section repealed]~~

Application

3 (1) Subject to subsections (3) to (5), this Act applies to all records in the custody or under the control of a public body, including court administration records.

Page 0110 of 1215

Withheld pursuant to/removed as

s.13

**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and **substitutes
a new subsection 3 (2)****

- 3** (2) Part 3 applies
- (a) to all employees, officers and directors of a public body, and
 - (b) in the case of an employee that is a service provider, to all employees and associates of the service provider.

Page 0112 of 1215

Withheld pursuant to/removed as

s.13

**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and **substitutes
a new subsection 3 (3)****

3 (3) This Act does not apply to the following:

- (a) a court record;
- (b) a record of
 - (i) a judge of the Court of Appeal, Supreme Court or Provincial Court,
 - (ii) a master of the Supreme Court, or
 - (iii) a justice of the peace;
- (c) a judicial administration record;
- (d) a record relating to support services provided to a judge of a court referred to in paragraph (b) (i);
- (e) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
- (f) a record that is created by or for, or is in the custody or under the control of, an officer of the Legislature and that relates to the exercise of functions under an Act;
- (g) a record that is created by or for, or is in the custody or under the control of
 - the auditor general under the *Auditor General for Local Government Act*
 - and that relates to the exercise of functions under that Act;
- (h) a record of a question or **answer** to be used on an examination or test;
- (i) a record containing teaching or research materials of
 - i) a faculty member, as defined in the *College and Institute Act* and the *University Act*, of a post-secondary educational body,
 - (ii) a teaching assistant or research assistant employed at a post-secondary educational body, or
 - (iii) another person teaching or carrying out research at a post-secondary educational body;
- (j) a record placed in the archives of a public body, or the digital archives or museum archives of government, by or for a person or agency other than a public body;
- (k) a record relating to a prosecution if not all proceedings in respect of the prosecution have been completed;
- (l) a record of a service provider that is not related to the provision of services for a public body.

Page 0114 of 1215

Withheld pursuant to/removed as

s.13

**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and **substitutes
a new subsection 3 (4)****

3 (4) This Act, other than sections 30, 30.3, 30.5 (2), 33 and 65.3 to 65.6, does not apply to

- (a) an officer of the Legislature, including all employees of the officer of the Legislature and, in the case of an employee that is a service provider, all employees and associates of the service provider, or
- (b) the auditor general under the *Auditor General for Local Government Act*, including all employees of that auditor general and, in the case of an employee that is a service provider, all employees and associates of the service provider.

Page 0116 of 1215

Withheld pursuant to/removed as

s.13

**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and adds
a new subsection 3 (5)**

3 (5) Part 2 does not apply to the following:

- (a) a record that is available for purchase by the public;
- (b) a record that does not relate to the business of the public body;
- (c) a record of metadata that
 - (i) is generated by an electronic system, and
 - (ii) describes an individual's interaction with the electronic system;
- (d) an electronic record that has been lawfully deleted by an employee of a public body and can no longer be accessed by the employee.

Page 0118 of 1215

Withheld pursuant to/removed as

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**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and adds
a new subsection 3 (6)**

3 (6) This Act does not limit the information available by law to a party to a proceeding.

Page 0120 of 1215

Withheld pursuant to/removed as

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**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 3 of the
Freedom of Information and Protection of Privacy Act and adds
a new subsection 3 (7)**

3 (7) If a provision of this Act is inconsistent or in conflict with a provision of another Act, this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

Page 0122 of 1215

Withheld pursuant to/removed as

s.13

**Section 2 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 4 of the
Freedom of Information and Protection of Privacy Act to amend the provisions
respecting access rights**

Information rights

~~4 (1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.~~

~~(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.~~

~~(3) The right of access to a record is subject to the payment of any fee required under section 75.~~

4 (1) Subject to subsections (2) and (3) an applicant who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record is subject to the payment of fees, if any, required under section 75.

Page 0124 of 1215

Withheld pursuant to/removed as

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**Section 3 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 5 (1) (a) of the
*Freedom of Information and Protection of Privacy Act***

How to make a request

- 5 (1)** To obtain access to a record, the applicant must make a written request that
- (a) provides ~~sufficient~~ enough detail to enable an experienced employee of the public body, with a reasonable effort, to identify the ~~records sought~~ record sought,
 - (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and
 - (c) is submitted to the public body that the applicant believes has custody or control of the record.

Page 0126 of 1215

Withheld pursuant to/removed as

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**Section 4 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 6 (2) of the
*Freedom of Information and Protection of Privacy Act***

Duty to assist applicants

6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

(2) Moreover, the head of a public body ~~must create a record for an applicant~~ must create for an applicant a record to which section 4 gives a right of access

(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

Page 0128 of 1215

Withheld pursuant to/removed as

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**Section 5 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 7 of the
*Freedom of Information and Protection of Privacy Act***

Time limit for responding

~~7 (4) If the head of a public body determines that an applicant is to pay fees for services related to a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the head of the public body gives the applicant a written estimate of the total fees to the end of the day one of the following occurs:~~

~~(a) the head of the public body excuses the applicant from paying all of the fees under section 75 (5);~~

~~(b) the head of the public body excuses the applicant from paying part of the fees under section 75 (5), and the applicant agrees to pay the remainder and, if required by the head of a public body, pays the deposit required;~~

~~(c) the applicant agrees to pay the fees set out in the written estimate and, if required by the head of a public body, pays the deposit required.~~

7 (4) If the head of a public body determines that an applicant is to pay fees under section 75 (1) (a) or (b), the 30 days referred to in subsection (1) of this section do not include the period of time from that determination until one of the following occurs:

(a) the head of the public body excuses the applicant from paying all of the fees for services;

(b) the head of the public body excuses the applicant from paying some of the fees for services and the applicant agrees to pay the remainder and, if required by the head of the public body, pays the deposit required;

(c) the applicant agrees to pay the fees for services set out in the written estimate and, if required by the head of the public body, pays the deposit required;

(d) the applicant pays the application fee.

(5) If an applicant asks the commissioner under section 52 (1) to review a fee estimate or a refusal to excuse the payment of all or part of ~~the fee~~ a fee required by the head of the public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the applicant asks for the review to the end of the day the commissioner makes a decision.

Page 0130 of 1215

Withheld pursuant to/removed as

s.13

**Section 6 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces subsection 8 (1) (c) (ii) of the
*Freedom of Information and Protection of Privacy Act***

Contents of response

- 8 (1)** In a response under section 7, the head of the public body must tell the applicant
- (a) whether or not the applicant is entitled to access to the record or to part of the record,
 - (b) if the applicant is entitled to access, where, when and how access will be given, and
 - (c) if access to the record or to part of the record is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
 - (ii) ~~the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and~~
 - (ii) the contact information of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - (iii) that the applicant may ask for a review under section 53 or 63.

Page 0132 of 1215

Withheld pursuant to/removed as

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**Section 7 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 9 (1) of the
*Freedom of Information and Protection of Privacy Act***

How access will be given

9 (1) If an applicant is told under section 8 (1) that access will be given, the head of the public body ~~concerned~~ must comply with subsection (2), (2.1) or (3) of this section.

Page 0134 of 1215

Withheld pursuant to/removed as

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**Section 8 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 16 (1) and repeals and replaces subsection 16 (3) of the
*Freedom of Information and Protection of Privacy Act***

Disclosure harmful to intergovernmental relations or negotiations

16 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:

(i) the government of Canada or a province of Canada;

(ii) the council of a municipality or the board of a regional district;

(iii) an ~~aboriginal government~~ indigenous governing entity;

(iv) the government of a foreign state;

(v) an international organization of states,

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, or

(c) harm the conduct of negotiations relating to ~~aboriginal self-government~~ Indigenous self-government or treaties.

(2) Moreover, the head of a public body must not disclose information referred to in subsection(1) without the consent of

(a) the Attorney General, for law enforcement information, or

(b) the Executive Council, for any other type of information.

~~(3) Subsection(1) does not apply to information that is in a record that has been in existence for 15 or more years unless the information is law enforcement information.~~

(3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 or more years unless the information is

(a) law enforcement information, or

(b) information referred to in subsection (1) (a) (iii) or (c)

Page 0136 of 1215

Withheld pursuant to/removed as

s.13

**Section 9 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

adds section 18.1 to the
Freedom of Information and Protection of Privacy Act

Disclosure harmful to interests of an Indigenous people

18.1 (1) The head of a public body must refuse to disclose information if the disclosure could reasonably be expected to harm the rights of an Indigenous people to maintain, control, protect or develop any of the following with respect to the Indigenous people:

- (a) cultural heritage;
- (b) traditional knowledge;
- (c) traditional cultural expressions;
- (d) manifestations of sciences, technologies or cultures

(2) Subsection (1) does not apply if the Indigenous people has consented in writing to the disclosure.

Page 0138 of 1215

Withheld pursuant to/removed as

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**Section 10 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends subsection 21 (3) (b) of the
Freedom of Information and Protection of Privacy Act

Disclosure harmful to the business interests of a third party

21 (3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure, or
- (b) the information is in a record that is ~~in the custody or control of the archives of the government of British Columbia or~~ in the custody or under the control of the digital archives or museum archives of government or the archives of a public body and that has been in existence for 50 or more years.

Page 0140 of 1215

Withheld pursuant to/removed as

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**Section 11 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 22 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure harmful to personal privacy

22 (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether [...]

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of ~~aboriginal people~~ Indigenous peoples, [...]

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if [...]

~~h) the disclosure could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party,~~

h) the disclosure would reveal

(i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or

(ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party,

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if []

(d) the disclosure is for a research or statistical purpose and is in accordance with ~~section 35~~ section 33 (4),

Page 0142 of 1215

Withheld pursuant to/removed as

s.13

**Section 12 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section subsections 23 (1) and (2) of the
*Freedom of Information and Protection of Privacy Act***

Notifying the third party

23 (1) If the head of a public body intends to give access to a record that the head has reason to believe contains information that might be excepted from disclosure under ~~section 21 or 22~~ section 18.1, 21 or 22, the head must give the third party a written notice under subsection (3).

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under ~~section 21 or 22~~ section 18.1, 21 or 22, the head may give the third party a written notice under subsection (3).

Page 0144 of 1215

Withheld pursuant to/removed as

s.13

**Section 13 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**adds section 25.1 to Division 1 of Part 3 of the
*Freedom of Information and Protection of Privacy Act***

Unauthorized collection, use and disclosure of personal information prohibited

25.1 An employee, officer or director of a public body or an employee or associate of a service provider must not collect, use or disclose personal information except as authorized by this Act.

Page 0146 of 1215

Withheld pursuant to/removed as

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**Section 14 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 27 (1) of the
*Freedom of Information and Protection of Privacy Act***

How personal information is to be collected

27 (1) A public body must collect personal information directly from the individual the information is about unless [...]

(b) the information may be disclosed to the public body under sections ~~33 to 36~~
section 33, ~~to 36~~

(c) the information is collected for the purpose of

- (i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,
- (ii) a proceeding before a court or a judicial or ~~quasi-judicial~~ quasi-judicial tribunal,
- (iii) collecting a debt or fine or making a payment,
- (iv) law enforcement, or
- (v) reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur,

(c.1) the information is collected from a body disclosing it in accordance with a provision of a treaty, arrangement or written agreement that

- (i) authorizes or requires the disclosure, and
- (ii) is made under an enactment of British Columbia, other than this Act, or an enactment of Canada,

(c.2) the information is collected from a body disclosing it under an enactment of another province or of Canada,

Page 0148 of 1215

Withheld pursuant to/removed as

s.13

**Section 14 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces subsection 27 (2) (c) of the
*Freedom of Information and Protection of Privacy Act***

How personal information is to be collected

27 (2) A public body must ensure that an individual from whom it collects personal information is told

- (a) the purpose for collecting it,
- (b) the legal authority for collecting it, and
- ~~(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.~~
- (c) the contact information of an officer or employee of the public body who can answer the individual's questions about the collection.

Page 0150 of 1215

Withheld pursuant to/removed as

s.13

**Section 15 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces subsection 29 (1) of the
*Freedom of Information and Protection of Privacy Act***

Right to request correction of personal information

~~**29** (1) An applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.~~

29 (1) An individual who believes there is an error or omission in personal information about the individual that is in the custody or under the control of a public body may request the head of the public body to correct the information.

Page 0152 of 1215

Withheld pursuant to/removed as

s.13

**Section 16 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends section 30 of the
Freedom of Information and Protection of Privacy Act

Protection of personal information

30 A public body must protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized ~~access,~~
~~collection~~ collection, use, disclosure, disposal.

Page 0154 of 1215

Withheld pursuant to/removed as

s.13

**Section 17 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 30.1, 30.2, 30.4 and 30.5 (1) of the
*Freedom of Information and Protection of Privacy Act***

~~Storage and access must be in Canada~~

~~30.1~~ A public body must ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada, unless one of the following applies:

- ~~(a) if the individual the information is about has identified the information and has consented, in the prescribed manner, to it being stored in or accessed from, as applicable, another jurisdiction;~~
- ~~(b) if it is stored in or accessed from another jurisdiction for the purpose of disclosure allowed under this Act;~~
- ~~(c) if it was disclosed under section 33.1 (1) (i.1).~~

~~Obligation to report a foreign demand for disclosure~~

~~30.2~~ (1) In this section:

"foreign demand for disclosure" means a subpoena, warrant, order, demand or request that is

- ~~(a) from a foreign court, an agency of a foreign state or another authority outside Canada, and~~
- ~~(b) for the unauthorized disclosure of personal information to which this Act applies;~~

[see Appendix for full repeal]

~~Unauthorized disclosure prohibited~~

~~30.4~~ An employee, officer or director of a public body or an employee or associate of a service provider who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act.

~~Notification of unauthorized disclosure~~

~~30.5~~ (1) In this section, "unauthorized disclosure of personal information" has the same meaning as in section 30.2 (1).

- ~~(2) An employee, officer or director of a public body, or an employee or associate of a service provider, who knows that there has been an unauthorized disclosure of personal information that is in the custody or under the control of the public body must immediately notify the head of the public body.~~

Page 0156 of 1215

Withheld pursuant to/removed as

s.13

**Section 18 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 30.3 of the
*Freedom of Information and Protection of Privacy Act***

Protection of personal information

Whistle-blower protection

30.3 An employer, whether or not a public body, must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee of the employer, or deny that employee a benefit, because

- (a) ~~the employee, acting in good faith and on the basis of reasonable belief, has notified the minister responsible for this Act under section 30.2,~~
- (b) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the commissioner that the employer or any other person has contravened or is about to contravene this Act,
- (c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act,
- (d) the employee, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act, or
- (e) the employer believes that an employee will do anything described in paragraph ~~(a)~~, (b), (c) or (d).

Page 0158 of 1215

Withheld pursuant to/removed as

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**Section 19 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

repeals section 31.1 of the
Freedom of Information and Protection of Privacy Act

~~Application to employees and others~~

~~31.1~~ The requirements and restrictions established by this Part also apply to
(a) the employees, officers and directors of a public body, and
(b) in the case of an employee that is a service provider, all employees and
associates of the service provider.

Page 0160 of 1215

Withheld pursuant to/removed as

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**Section 20 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**Repeals and replaces section 32 of the *Freedom of Information
and Protection of Privacy Act***

Use of personal information

~~**32** A public body may use personal information in its custody or under its control only~~
~~(a) for the purpose for which that information was obtained or compiled, or~~
~~for a use consistent with that purpose (see section 34),~~
~~(b) if the individual the information is about has identified the information~~
~~and has consented, in the prescribed manner, to the use, or~~
~~(c) for a purpose for which that information may be disclosed to that public~~
~~body under sections 33 to 36.~~

Use of personal information

32 A public body may use personal information in its custody or under its control only
(a) for the purpose for which that information was obtained or compiled, or
for a use consistent with that purpose,
(b) if the individual the information is about has identified the information
and has consented, in the prescribed manner, to the use, or
(c) for a purpose for which that information may be disclosed to the public
body under section 33.

Page 0162 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information

33 (1) A public body may disclose personal information in its custody or under its control only as permitted by subsections (2) to (9) or by section 33.3.

(2) A public body may disclose personal information in any of the following circumstances:

- (a) in accordance with Part 2;
- (b) if the information or disclosure is of a type described in section 22 (4) (e), (f), (h), (i) or (j);
- (c) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the disclosure;
- (d) for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose within the meaning of section 34 [*definition of consistent purpose*];
- (e) in accordance with an enactment of British Columbia or of Canada that authorizes or requires the disclosure;
- (f) if the information is made available to the public under an enactment that authorizes or requires the information to be made public;
- (g) in accordance with a provision of a treaty, arrangement or written agreement that
 - (i) authorizes or requires the disclosure, and
 - (ii) is made under an enactment of British Columbia, other than this Act, or an enactment of Canada;
- (h) to an officer or employee of the public body, or to a minister, if the information is necessary for the performance of the duties of the officer, employee or minister;
- (i) to an officer or employee of a public body, or to a minister, if the information is necessary to protect the health or safety of the officer, employee or minister;
- (j) to an officer or employee of a public body, or to a minister, if the information is necessary for the purposes of planning or evaluating a program or activity of a public body;

Cont'd

Page 0164 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information (Cont'd)

- (k) to an officer or employee of a public body or an agency or to a minister, if the information is necessary for the delivery of a common or integrated program or activity and for the performance of the duties, respecting the common or integrated program or activity, of the officer, employee or minister to whom the information is disclosed;
- (l) to comply with a subpoena, warrant or order issued or made by a court or person in Canada with jurisdiction to compel the production of information in Canada;
- (m) to the Attorney General or legal counsel for the public body
 - (i) for the purpose of preparing or obtaining legal advice for the government or public body, or
 - (ii) for use in civil proceedings involving the government or public body;
- (n) to the minister responsible for the *Coroners Act* or a person referred to in section 31 (1) of that Act, for the purposes of that Act;
- (o) for the purpose of collecting amounts owing to the government or a public body by
 - (i) an individual, or
 - (ii) a corporation of which the individual the information is about is or was a director or officer;
- (p) for the purposes of
 - (i) a payment to be made to or by the government or a public body,
 - (ii) authorizing, administering, processing, verifying or cancelling a payment, or
 - (iii) resolving an issue regarding a payment;
- (q) for the purposes of licensing, registering, insuring, investigating or disciplining persons regulated by governing bodies of professions or occupations;
- (r) if the information was collected by observation at a presentation, ceremony, performance, sports meet or similar event
 - (i) that was open to the public, and
 - (ii) at which the individual the information is about appeared voluntarily;

Cont'd

Page 0166 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information (Cont'd)

- (s) to the auditor general or a prescribed person or body for audit purposes;
- (t) if the disclosure is necessary for
 - (i) installing, implementing, maintaining, repairing, troubleshooting or upgrading an electronic system or equipment that includes an electronic system, or
 - (ii) data recovery that is undertaken following the failure of an electronic system,that is used by the public body, or by a service provider for the purposes of providing services to a public body;
- (u) if the disclosure is necessary for the processing of information and the following apply:
 - (i) the processing does not involve the intentional accessing of the information by an individual;
 - (ii) any processing done outside of Canada is temporary;
- (v) if the information is metadata and the following apply:
 - (i) the metadata is generated by an electronic system;
 - (ii) the metadata describes an individual's interaction with the electronic system;
 - (iii) if practicable, information in individually identifiable form has been removed from the metadata or destroyed;
 - (iv) in the case of disclosure to a service provider, the public body has prohibited subsequent use or disclosure of information in individually identifiable form without the express authorization of the public body;
- (w) if the information
 - (i) was disclosed on social media by the individual the information is about,
 - (ii) was obtained or compiled by the public body for the purpose of enabling the public body to engage individuals in public discussion or promotion respecting proposed or existing initiatives, policies, programs or activities of the public body or respecting legislation relating to the public body, and
 - (iii) is disclosed for a use that is consistent with the purpose described in subparagraph (ii);

Page 0168 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information (Cont'd)

**(x) to an Indigenous governing entity for the purposes of a program or activity
that supports the exercise of the rights recognized and affirmed
by section 35 of the *Constitution Act*.**

(3) A public body may disclose personal information in any of the following circumstances:

- (a) if
 - (i) the head of the public body determines that compelling circumstances that affect anyone's health or safety exist, and
 - (ii) notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that the notice could harm anyone's health or safety;
- (b) for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur;
- (c) to enable the next of kin or a friend of an injured, ill or deceased individual to be contacted;
- (d) to a public body, or a law enforcement agency in Canada, to assist in a specific investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
- (e) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem;
- (f) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry;
- (g) to the digital archives or museum archives of government or the archives of a public body, for archival purposes;

Cont'd

Page 0170 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information (Cont'd)

- (h) for a research purpose, including statistical research, if
 - (i) the research purpose cannot be accomplished unless the information is disclosed in individually identifiable form, or the research purpose has been approved by the commissioner,
 - (ii) the information is disclosed on condition that it not be used for the purpose of contacting a person to participate in the research unless
 - (A) the research is in relation to health issues, and
 - (B) the commissioner has approved the research purpose, the use of the information for the purpose of contacting a person to participate in the research and the manner in which contact is to be made, including the information to be made available to the person contacted,
 - (iii) any data-linking is not harmful to the individual the information is about and the benefits to be derived from the data-linking are clearly in the public interest,
 - (iv) the head of the public body has approved conditions relating to the following:
 - (A) security and confidentiality;
 - (B) the removal or destruction of individual identifiers at the earliest reasonable time;
 - (C) the prohibition of subsequent use or disclosure of the information in individually identifiable form without the express authorization of the public body, and
 - (v) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and the public body's policies and procedures relating to the confidentiality of personal information.

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**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information (Cont'd)

- 33** (4) In addition to the authority under any other provision of this section, the digital archives, museum archives of government or archives of a public body may disclose personal information in its custody or under its control for archival or historical purposes if
- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 22,
 - (b) the information is about an individual who has been deceased for 20 or more years, or
 - (c) the information is in a record that has been in existence for 100 or more years.
- (5) In addition to the authority under any other provision of this section, a board or a francophone education authority, as those are defined in the *School Act*, may disclose personal information in its custody or under its control to a museum, an archives or a similar institution that is or forms part of a public body or an organization, as the latter is defined in the *Personal Information Protection Act*, if
- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 22 of this Act,
 - (b) the information is about an individual who has been deceased for 20 or more years, or
 - (c) the information is in a record that has been in existence for 100 or more years.

Page 0174 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure of personal information (Cont'd)

- 33** (6) In addition to the authority under any other provision of this section, a public body that is a law enforcement agency may disclose personal information
- (a) to another law enforcement agency in Canada, or
 - (b) to a law enforcement agency in a foreign state under an arrangement, written agreement or treaty or under provincial or Canadian legislative authority.
- (7) In addition to the authority under any other provision of this section, the Insurance Corporation of British Columbia may disclose personal information
- (a) for the purposes of
 - (i) licensing or registering motor vehicles or drivers, or
 - (ii) verifying motor vehicle registration, insurance or driver licences, or
 - (b) if
 - (i) the information was obtained or compiled by the Insurance Corporation of British Columbia for the purposes of insurance it provides, and
 - (ii) the disclosure is necessary to investigate, manage or settle a specific insurance claim.
- (8) In addition to the authority under any other provision of this section, a personal identity information services provider may disclose personal identity information
- (a) to enable the personal identity information services provider to provide a service under section 69.2, or
 - (b) to a public body if the disclosure is necessary to enable the public body to identify an individual for the purpose of providing a service to the individual.
- (9) In addition to the authority under any other provision of this section, a public body may disclose personal identity information to a personal identity information services provider if the disclosure is necessary to enable
- (a) the public body to identify an individual for the purpose of providing a service to the individual, or
 - (b) the personal identity information services provider to provide a service under section 69.2.

Page 0176 of 1215

Withheld pursuant to/removed as

s.13

**Section 21 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals sections 33, 33.1, 33.2, 35, 36 and substitutes them with new sections 33
and 33.1 of the
*Freedom of Information and Protection of Privacy Act***

Disclosure outside of Canada

33.1 A public body may disclose personal information outside of Canada, only if the disclosure is in accordance with the regulations, if any, made by the minister responsible for this Act.

Page 0178 of 1215

Withheld pursuant to/removed as

s.13

**Section 22 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends section 34 of the
Freedom of Information and Protection of Privacy Act

Definition of consistent purpose

34 For the purposes of ~~section 32 (a), 33.1 (1) (r) (iii) or 33.2 (a), or paragraph (b) of the definition of "data linking" in Schedule 1~~ section 32 (a) or 33 (2) (d) or (w), a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use

- (a) has a reasonable and direct connection to that purpose, and
- (b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information.

Page 0180 of 1215

Withheld pursuant to/removed as

s.13

**Section 23 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**Amends the heading for Division 3 of Part 3 of the
*Freedom of Information and Protection of Privacy Act***

Division 3 — Data-linking ~~Initiatives~~ Programs

Page 0182 of 1215

Withheld pursuant to/removed as

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**Section 24 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 36.1 of the
*Freedom of Information and Protection of Privacy Act***

Data-linking initiatives

~~**36.1** (1) A public body participating in a new or significantly revised data-linking initiative must comply with the regulations, if any, prescribed for the purposes of this subsection.~~

~~(2) If all the participants in a new or significantly revised data-linking initiative are a health care body, the ministry of the minister responsible for the administration of the Ministry of Health Act or a health-related organization as prescribed, then subsection (1) does not apply to the participants....~~

[see Appendix for full repeal]

Data-linking programs

- 36.1** (1) This section does not apply to a data-linking program that is part of research for the purpose of which personal information may be disclosed under section 33 (3) (h).
- (2) A public body conducting a data-linking program must comply with the regulations, if any, made for the purposes of this section.

Page 0184 of 1215

Withheld pursuant to/removed as

s.13

**Section 25 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**adds a new Division to Part 3 of the
Freedom of Information and Protection of Privacy Act
entitled:**

**“Division 4 – Privacy Management Programs and Privacy Breach Notifications”
which includes a new section 36.2 [Privacy management programs]**

Privacy management programs

- 36.2** The head of a public body must develop a privacy management program for the public body and must do so in accordance with the directions of the minister responsible for this Act.

Page 0186 of 1215

Withheld pursuant to/removed as

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**Section 25 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**adds a new Division to Part 3 of the
Freedom of Information and Protection of Privacy Act
entitled:**

**“Division 4 –Privacy Management Programs and Breach Notifications”
which includes a new section 36.3 [Privacy breach notifications]**

Privacy breach notifications

36.3 (1) In this section, “**privacy breach**” means the theft or loss, or the collection, use or disclosure that is not authorized by this Part, of personal information in the custody or under the control of a public body.

(2) Subject to subsection (5), if a privacy breach involving personal information in the custody or under the control of a public body occurs, the head of the public body must, without unreasonable delay,

(a) notify an affected individual if the privacy breach could reasonably be expected to result in significant harm to the individual, including identity theft or significant

- (i) bodily harm,
- (ii) humiliation,
- (iii) damage to reputation or relationships,
- (iv) loss of employment, business or professional opportunities,
- (v) financial loss,
- (vi) negative impact on a credit record, or
- (vii) damage to, or loss of, property, and

(b) notify the commissioner if the privacy breach could reasonably be expected to result in significant harm referred to in paragraph (a).

(3) The head of a public body is not required to notify an affected individual under subsection (2) if notification could reasonably be expected to

- (a) result in immediate and grave harm to the individual’s safety or physical or mental health, or
- (b) threaten another individual’s safety or physical or mental health.

(4) If notified under subsection (2) (b), the commissioner may notify an affected individual.

(5) A notification under subsection (2) (a) or (b) must be made in the prescribed manner.

Page 0188 of 1215

Withheld pursuant to/removed as

s.13

**Section 26 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals subsection 42 (1) (h) of the
*Freedom of Information and Protection of Privacy Act***

General powers of commissioner

42 (1) In addition to the commissioner's powers and duties under Part 5 with respect to reviews, the commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

- (a) conduct investigations and audits to ensure compliance with any provision of this Act or the regulations,
- (b) make an order described in section 58 (3), whether the order results from an investigation or audit under paragraph (a) or an inquiry under section 56,
- (c) inform the public about this Act,
- (d) receive comments from the public about the administration of this Act,
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act,
- (f) comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs or activities of public bodies,
- (g) comment on the implications for access to information or for protection of privacy of automated systems for collection, storage, analysis or transfer of information,
- ~~(h) comment on the implications for protection of privacy of using or disclosing personal information for data linking,~~
- (i) authorize the collection of personal information from sources other than the individual the information is about, and
- (j) bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants.

Page 0190 of 1215

Withheld pursuant to/removed as

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**Section 27 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 43 of the
*Freedom of Information and Protection of Privacy Act***

~~Power to authorize a public body to disregard requests~~

~~43~~ ~~If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that~~

~~(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or~~

~~(b) are frivolous or vexatious.~~

Power to authorize a public body to disregard a request

43 If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because

(a) the request is frivolous or vexatious,

(b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source, or

(c) responding to the request would unreasonably interfere with the operations of the public body because the request

(i) is excessively broad, or

(ii) is repetitious or systematic.

Page 0192 of 1215

Withheld pursuant to/removed as

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**Section 28 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends subsection 44 (5) of the
Freedom of Information and Protection of Privacy Act

Powers of commissioner in conducting investigations, audits or inquiries

44 (5) After completing a review or investigating a complaint, the commissioner must return any record or any copy of any record ~~produced by the public body concerned~~ produced under subsection (3) by the public body.

Page 0194 of 1215

Withheld pursuant to/removed as

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**Section 29 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 44.1 (1) of the
*Freedom of Information and Protection of Privacy Act***

Maintenance of order at hearings

44.1 (1) At an oral hearing, the commissioner may make orders or give directions that ~~he or she considers~~ the commissioner considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the commissioner may call on the assistance of any peace officer to enforce the order or direction.

Page 0196 of 1215

Withheld pursuant to/removed as

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**Section 30 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 45 (1) and section 46 of the
*Freedom of Information and Protection of Privacy Act***

Statements made to the commissioner not admissible in evidence

45 (1) A statement made or an answer given by a person during an ~~investigation or inquiry~~, investigation, audit or inquiry by the commissioner is inadmissible in evidence in court or in any other proceeding, except

- (a) in a prosecution for perjury in respect of sworn testimony,
- (b) in a prosecution for an offence under this Act, or
- (c) in an application for judicial review or an appeal from a decision with respect to that application.

Protection against libel or slander actions

46 Anything said, any information supplied or any record produced by a person during an ~~investigation or inquiry~~ investigation, audit or inquiry by the commissioner is privileged in the same manner as if the ~~investigation or inquiry~~ investigation, audit or inquiry were a proceeding in a court.

Page 0198 of 1215

Withheld pursuant to/removed as

s.13

**Section 31 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends subsection 47 (1) of the
Freedom of Information and Protection of Privacy Act

Restrictions on disclosure of information by the commissioner and staff

47 (1) The commissioner and anyone acting for or under the direction of the commissioner must not disclose any information obtained in ~~performing their duties,~~
~~powers and functions~~ performing their duties or exercising their powers and functions under this Act, except as provided in subsections (2) to (5).

Page 0200 of 1215

Withheld pursuant to/removed as

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**Section 32 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 52 (1) of the
*Freedom of Information and Protection of Privacy Act***

Right to ask for a review

52 (1) A person who makes a request to the head of a public body, other than the commissioner or the registrar under the *Lobbyists Transparency Act*, for access to a record or for correction of personal information may ask the commissioner to review ~~any decision, act or failure to act~~ any decision, act or failure to act, other than to require an application fee, of the head that relates to that request, including any matter that could be the subject of a complaint under section 42 (2).

Page 0202 of 1215

Withheld pursuant to/removed as

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**Section 33 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 54.1 of the
*Freedom of Information and Protection of Privacy Act***

Order for severing of records

54.1 (1) After the head of a public body has responded to a request under section 5 and a request for review of that response has been received under section 52, the commissioner may, at any time, by order,

(a) confirm that the ~~head of a public body~~ head of the public body has failed to ~~sever the records~~ sever the information from the records that are the subject of the review, as required by this Act, and

(b) require the head of the public body to ~~sever the records~~ severing information from the records in accordance with the directions and within the period set out in the order

(2) The commissioner may not set a period for ~~severing a record~~ severing information from a record under subsection (1) that is less than 30 days after the date a copy of the order is given to the head of the public body ~~concerned~~.

Page 0204 of 1215

Withheld pursuant to/removed as

s.13

**Section 34 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 60 (2) of the
*Freedom of Information and Protection of Privacy Act***

Adjudicator to investigate complaints and review decisions

60 (2) An adjudicator may retain the services of any persons necessary to assist the adjudicator in performing ~~his or her functions~~ the adjudicator's functions under this Act.

Page 0206 of 1215

Withheld pursuant to/removed as

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**Section 35 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 60.1 of the
Freedom of Information and Protection of Privacy Act**

~~Disregard of request under section 5 or 29~~

~~**60.1** The commissioner may request an adjudicator designated under section 60 to authorize the commissioner as head of a public body to disregard requests made under section 5 or 29 that~~

- ~~(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or~~
- ~~(b) are frivolous or vexatious~~

Adjudicator may authorize commissioner to disregard requests

60.1 The commissioner may ask an adjudicator designated under section 60 to authorize the commissioner as head of a public body to disregard a request made under section 5 or 29.

Page 0208 of 1215

Withheld pursuant to/removed as

s.13

**Section 36 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 61 (2) of the
*Freedom of Information and Protection of Privacy Act***

Powers, duties and protections of adjudicator

61 (2) Sections 45, 46, 48 and 50 apply for the purposes of an investigation, inquiry or ~~review~~ investigation, audit or inquiry by an adjudicator.

Page 0210 of 1215

Withheld pursuant to/removed as

s.13

**Section 37 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**adds a new Part 5.1 to the
Freedom of Information and Protection of Privacy Act
entitled “Offences”**

PART 5.1 – OFFENCES

Offence Act

65.1 Section 5 of the *Offence Act* does not apply to this Act.

Offence to wilfully mislead, obstruct or fail to comply with commissioner

65.2 A person who wilfully does any of the following commits an offence:

- (a) makes a false statement to, or misleads or attempts to mislead,
 - (i) the commissioner or anyone acting for or under the direction of the commissioner in the performance of duties or exercise of powers and functions under this Act, or
 - (ii) an adjudicator or anyone acting for or under the direction of an adjudicator in the performance of duties or exercise of powers and functions under this Act;
- (b) obstructs
 - (i) the commissioner or anyone acting for or under the direction of the commissioner in the performance of duties or exercise of powers and functions under this Act, or
 - (ii) an adjudicator or anyone acting for or under the direction of the adjudicator in the performance of duties or exercise of powers and functions under this Act;
- (c) fails to comply with an order made by
 - (i) the commissioner under section 54.1 or 58, or
 - (ii) an adjudicator under section 65 (2).

Offence to wilfully evade access provisions

65.3 A person who wilfully conceals, destroys or alters any record to avoid complying with a request for access to the record commits an offence.

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Page 0212 of 1215

Withheld pursuant to/removed as

s.13

**Section 37 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**adds a new Part 5.1 to the
Freedom of Information and Protection of Privacy Act
entitled “Offences”**

Privacy offences

- 65.4** (1) An individual, other than an individual who is a service provider or an employee or associate of a service provider, who wilfully does any of the following commits an offence:
- (a) collects personal information except as authorized by Part 3;
 - (b) uses personal information except as authorized by Part 3;
 - (c) discloses personal information except as authorized by Part 3;
 - (d) fails to notify the head of a public body of unauthorized disclosure as required by Part 3.
- (2) A service provider or an employee or associate of a service provider who does any of the following commits an offence:
- (a) collects personal information except as authorized by Part 3;
 - (b) uses personal information except as authorized by Part 3;
 - (c) discloses personal information except as authorized by Part 3;
 - (d) fails to notify the head of a public body of unauthorized disclosure as required by Part 3;
 - (e) dismisses, suspends, demotes, disciplines, harasses or otherwise disadvantages an employee, or denies the employee a benefit, because the employee has done, or the employer believes that the employee will do, anything described in section 30.3 (b) to (d).
- (3) A service provider commits an offence if an employee or associate of the service provider commits any of the offences under subsection (2).
- (4) It is a defence to a charge under subsections (2) and (3) if the person charged demonstrates that the person exercised due diligence to avoid committing the offence.

Corporate liability

- 65.5** If a corporation commits an offence under section 65.3 or 65.4, an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence, whether or not the corporation is prosecuted for the offence.

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Page 0214 of 1215

Withheld pursuant to/removed as

s.13

**Section 37 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**adds a new Part 5.1 to the
Freedom of Information and Protection of Privacy Act
entitled “Offences”**

Penalties

- 65.6** (1) A person who commits an offence under section 65.2 is liable on conviction to a fine of up to \$50 000.
- (2) A person who commits an offence under section 65.3 or 65.4 is liable on conviction,
- (a) in the case of an individual, other than an individual who is a service provider, to a fine of up to \$50 000,
 - (b) subject to paragraph (c), in the case of a service provider, including a partnership that or an individual who is a service provider, to a fine of up to \$50 000, and
 - (c) in the case of a corporation, to a fine of up to \$500 000.

Time limit for laying an information to commence a prosecution

- 65.7** (1) The time limit for laying an information to commence a prosecution for an offence under sections 65.3 and 65.4 is
- (a) one year after the date on which the act or omission that is alleged to constitute the offence occurred, or
 - (b) if the minister responsible for this Act issues a certificate described in subsection (2), one year after the date on which the minister learned of the act or omission referred to in paragraph (a) of this subsection.
- (2) A certificate issued by the minister responsible for this Act certifying the date referred to in subsection (1) (b) is proof of that date.

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**Section 38 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 69 of the
*Freedom of Information and Protection of Privacy Act***

General information respecting use of personal information

69 (1) In this section:

"personal information bank" means ~~a collection of~~ an aggregation of personal information that is organized or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to an individual

69 (3) The personal information directory must include a summary that meets the requirements of the minister responsible for this Act of the following information:

- (a) the personal information banks that are ~~in the custody or control of~~ in the custody or under the control of each ministry of the government of British Columbia;

(5) The head of a ministry ~~must conduct a privacy impact assessment in accordance with the directions of the minister~~ must conduct a privacy impact assessment and must do so in accordance with the directions of the minister responsible for this Act.

(5.2) If the minister responsible for this Act receives a privacy impact assessment under subsection (5.1) respecting a common or integrated program or activity ~~or a data-linking initiative~~, the minister must submit, during the development of the proposed enactment, system, project, program or activity, the privacy impact assessment to the commissioner for the commissioner's review and comment.

(5.3) The head of a public body that is not a ministry ~~must conduct a privacy impact assessment in accordance with the directions of the minister~~ must conduct a privacy impact assessment and must do so in accordance with the directions of the minister responsible for this Act.

(5.4) The head of a public body that is not a ministry, with respect to a proposed system, project, program or activity, must submit, during the development of the proposed system, project, program or activity, the privacy impact assessment, if it addresses a common or integrated program or activity ~~or a data-linking initiative~~, to the commissioner for the commissioner's review and comment.

(5.5) The head of a public body must notify the commissioner ~~of a data-linking initiative or of a common or integrated program or activity~~ at an early stage of developing the initiative, program or activity.

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Page 0218 of 1215

Withheld pursuant to/removed as

s.13

**Section 38 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**Amends section 69 of the
*Freedom of Information and Protection of Privacy Act***

Cont'd

General information respecting use of personal information

~~69 (5.6) If all the participants in a data-linking initiative are either a health care body, the ministry of the minister responsible for the administration of the *Ministry of Health Act* or a health-related organization as prescribed, then~~

~~(a) subsections (5.3), (5.4) and (5.5) do not apply with respect to a participant that is a health care body or a health-related organization as prescribed, and~~

~~(b) subsections (5), (5.1) and (5.5) do not apply with respect to a participant that is the ministry of the minister responsible for the administration of the *Ministry of Health Act*.~~

~~(8) Not later than 60 days after making an order under section 33.1 (3) orders allowing disclosure outside Canada, the minister responsible for this Act must publish a summary of the order.~~

(5.10) The minister responsible for this Act may, under subsections (5) or (5.3), give different directions for different categories of personal information.

Page 0220 of 1215

Withheld pursuant to/removed as

s.13

**Section 39 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 69.1 of the
*Freedom of Information and Protection of Privacy Act***

Public information regarding health information banks

69.1 (3) For the purposes of subsection (2), the personal information directory must include the following information in accordance with the requirements of the minister responsible for this Act:

- (a) the provisions of the order under section 3 [establishment or designation of health information banks] of the *E-Health (Personal Health Information Access and Protection of Privacy) Act* in relation to each health information bank that is ~~in the custody or control of~~ in the custody or under the control of each health care body;
- (b) a summary of the health information-sharing agreements into which each health care body has entered;
- (c) any other information the minister responsible for this Act considers appropriate.

~~(5) A ministry that is a health care body must conduct a privacy impact assessment that is in relation to~~

- ~~(a) a health information bank in its custody or control, or~~
- ~~(b) a health information-sharing agreement to which it is a party in accordance with the directions of the minister responsible for this Act.~~

(5) A ministry that is a health care body must conduct a privacy impact assessment, and must do so in accordance with the directions of the minister responsible for this Act, in relation to

- (a) a health information bank in its custody or under its control, and
- (b) a health information-sharing agreement to which it is a party.

(6) The minister responsible for this Act may, under subsection (5), give different directions for different categories of personal information.

Page 0222 of 1215

Withheld pursuant to/removed as

s.13

**Section 40 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 70 of the
*Freedom of Information and Protection of Privacy Act***

Policy manuals available without request

~~70 (1) The head of a public body must make available to the public, without a request for access under this Act,~~

- ~~(a) manuals, instructions or guidelines issued to the officers or employees of the public body, or~~
- ~~(b) substantive rules or policy statements adopted by the public body,~~

~~for the purpose of interpreting an enactment or of administering a program or activity that affects the public or a specific group of the public.~~

~~(2) The head of a public body may delete from a record made available under this section any information he or she would be entitled to refuse to disclose to an applicant.~~

~~(3) If information is deleted, the record must include a statement of [.....]~~

Certain records available without request

70 (1) The head of a public body must make available to the public, without a request for access under this Act, the following records if they were created for the purpose of interpreting an enactment or for the purpose of administering a program or activity that affects the public:

- (a) manuals, instructions or guidelines issued to the officers or employees of the public body;
- (b) substantive rules or policy statements adopted by the public body.

(2) The head of a public body may sever from a record made available under this section any information the head of the public body would be entitled under Part 2 of this Act to refuse disclose to an applicant.

(3) If information is severed from a record, the record must include a statement of

- (a) the fact that information has been severed from the record,
- (b) the nature of the information severed from the record, and
- (c) the reason for severing the information from the record.

(4) The head of a public body may require a person who asks for a copy of a record made available under this section to pay a fee to the public body.

Page 0224 of 1215

Withheld pursuant to/removed as

s.13

**Section 41 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 71 of the
*Freedom of Information and Protection of Privacy Act***

Records available without request

71 (1) Subject to subsection (1.1), the head of a public body must establish categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.

(1.1) The head of a public body must not establish a category of records that contain personal information unless the information

- (a) may be disclosed under ~~section 33.1 or 33.2~~ section 33, or
- (b) would not constitute, if disclosed, an unreasonable invasion of the personal privacy of the individual the information is about.

(1.2) Section 22 (2) to (4) applies to the determination of unreasonable invasion of personal privacy under subsection (1.1) (b) of this section.

(1.3) The head of a public body may sever from a record made available under this section any information the head of the public body would be entitled under Part 2 of this Act to refuse to disclose to an applicant.

- (1.4) If information is severed from a record, the record must include a statement of
- (a) the fact that information has been severed from the record,
 - (b) the nature of the information severed from the record, and
 - (c) the reason for severing the information from the record.

(2) The head of a public body may require a person who asks for a copy of an available record to pay a fee to the public body.

(3) Subsection (1) does not limit the discretion of the government of British Columbia or a public body to disclose records that do not contain personal information.

Page 0226 of 1215

Withheld pursuant to/removed as

s.13

**Section 42 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 71.1 of the
*Freedom of Information and Protection of Privacy Act***

Records that ministries must disclose

71.1 (1) Subject to subsection (2), the minister responsible for this Act may establish categories of records that are in the custody or under the control of one or more ministries and are available to the public without a request for access under this Act.

(2) The minister responsible for this Act must not establish a category of records that contain personal information unless the information

(a) may be disclosed under ~~section 33.1 or 33.2~~ section 33, or

(b) would not constitute, if disclosed, an unreasonable invasion of the personal privacy of the individual the information is about.

(3) Section 22 (2) to (4) applies to the determination of unreasonable invasion of personal privacy under subsection (2) (b) of this section.

(4) The minister responsible for this Act may require one or more ministries to disclose a record that is within a category of records established under subsection (1) of this section or section 71 (1).

(5) If required to disclose a record under subsection (4), a ministry must do so in accordance with any directions issued relating to the disclosure by the minister responsible for this Act.

(6) The head of a public body may sever from a record made available under this section any information the head of the public body would be entitled under Part 2 of this Act to refuse to disclose to an applicant.

(7) If the information is severed from a record, the record must include a statement of

- a) the fact that information has been severed from the record,
- b) the nature of the information severed from the record, and
- c) the reason for severing the information from the record.

Page 0228 of 1215

Withheld pursuant to/removed as

s.13

**Section 43 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals section 74 and 74.1 of the
*Freedom of Information and Protection of Privacy Act***

General offences and penalties

~~74 (1) A person must not wilfully do any of the following:~~

~~(a) make a false statement to, or mislead or attempt to mislead, the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;~~

~~(b) obstruct the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;~~

~~(c) fail to comply with an order made by the commissioner under section 54.1 or 58 or by an adjudicator under section 65 (2).~~

~~(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of up to \$5 000.~~

~~(3) Section 5 of the Offence Act does not apply to this Act.~~

Privacy protection offences

~~74.1 (1) A person who contravenes section 30.4 [unauthorized disclosure] or 30.5 [notification of unauthorized disclosure] commits an offence.~~

~~(2) A person who is a service provider or an employee or associate of a service provider commits an offence if the person does any of the following:~~

~~(a) stores or allows access to personal information to which section 30.1 [location and access in Canada] applies contrary to that section;~~

~~(b) contravenes section 30.2 [obligation to report foreign demand for disclosure];~~

~~(c) contravenes section 30.3 [whistle-blower protection].~~

~~(3) If an employee or associate of a service provider~~

~~(a) stores or allows access to personal information to which section 30.1 applies contrary to that section,~~

~~(b) contravenes section 30.2,~~

~~(c) contravenes section 30.3,~~

~~(d) contravenes section 30.4, or~~

~~(e) contravenes section 30.5, ... [see Appendix for full repeal]~~

Page 0230 of 1215

Withheld pursuant to/removed as

s.13

**Section 44 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 75 of the
*Freedom of Information and Protection of Privacy Act***

[see Appendix for repeal]

Fees

- 75** (1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body the following:
- (a) a prescribed application fee;
 - (b) prescribed fees for the following services:
 - (i) locating and retrieving the record;
 - (ii) producing the record;
 - (iii) preparing the record for disclosure, except for time spent severing information from the record;
 - (iv) shipping and handling the record;
 - (v) providing a copy of the record.
- (2) Subsection (1) (b) (i) does not apply to the first 3 hours spent on a request.
- (3)** Subsection (1) does not apply to a request for the applicant's own personal information.
- (4) If an applicant is required to pay fees for services under subsection (1) (b), the head of the public body
- (a) must give the applicant a written estimate of the total fees before providing the services, and
 - (b) may require the applicant to pay a deposit in an amount set by the head of the public body.
- (5) If the head of a public body receives an applicant's written request to excuse payment of all or part of the fees required under subsection (1) (b), the head of the public body may excuse payment, if, in the head of the public body's opinion,
- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
 - (b) the record relates to a matter of public interest, including the environment or public health or safety.
- (6) The head of a public body must respond to a request under subsection (5) in writing and within 20 days after receiving the request.
- (7) The fees that prescribed categories of applicants are required to pay for services under subsection (1) (b) may differ from the fees other applicants are required to pay for the services but may not be greater than the actual costs of the services.

Page 0232 of 1215

Withheld pursuant to/removed as

s.13

**Section 45 of the *Freedom of Information and Protection of Privacy*
*Amendment Act, 2021***

amends section 76 of the
Freedom of Information and Protection of Privacy Act

Power to make regulations

76 (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(h) prescribing the classes of individuals who may act for minors, ~~incompetents~~ deceased persons or any other individuals under this Act and regulating the manner in which, and the extent to which, any rights or powers of individuals under this Act may be exercised on their behalf;

(i.1) prescribing an application fee and fees for services;

(2.1) The Lieutenant Governor in Council, after consultation with the commissioner, may make regulations as follows:

(a) for the purposes of section 26 (d);

~~(b) for the purposes of section 36.1 (1), respecting how data-linking initiatives must be carried out~~

(b) for the purposes of section 36.1

(i) establishing how data-linking programs must be conducted, and

(ii) exempting a data-linking program or class of data-linking program from regulations made under subparagraph (i) of this paragraph.

Page 0234 of 1215

Withheld pursuant to/removed as

s.13

**Section 46 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 76.1 of the
*Freedom of Information and Protection of Privacy Act***

Ministerial regulation making power

76.1 (1) The minister responsible for this Act may, by regulation, amend Schedule 2 to do one or more of the following:

- (a) add to it any agency, board, commission, corporation, office or other body
 - (i) of which any ~~member~~ member, director, officer is appointed by the Lieutenant Governor in Council or a minister,
 - (ii) of which a controlling interest in the share capital is owned by the government of British Columbia or any of its ~~agencies~~, or agencies or a public body;
 - (iii) that performs functions under an ~~enactment~~ enactment, or
 - (iv) if the minister responsible for this Act determines that it would be in the public interest to add the agency, board, commission, corporation, office or other body to Schedule 2;
- (b) designate or change the designation of the head of a public body;
- (c) ~~delete~~ remove from it an agency, board, commission, corporation, office or other body that
 - (i) no longer exists, or
 - (ii) no longer meets the criteria established by paragraph (a).

(2) The minister responsible for this Act may, by regulation, amend Schedule 3 to do one or more of the following:

- (a) add to it the name of the governing body of a profession or occupation if
 - (i) any member of that body is appointed by the Lieutenant Governor in Council, a minister or an Act, or
 - (ii) the profession or occupation is governed under an Act;
- (b) ~~delete~~ remove from it a governing body that
 - (i) no longer exists, or
 - (ii) no longer meets the criteria established by paragraph (a).

(3) The minister responsible for this Act may make regulations establishing measures that must be taken by a public body in relation to respecting programs, projects and systems in which the public body discloses personal information outside of Canada.

Page 0236 of 1215

Withheld pursuant to/removed as

s.13

**Section 47 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

repeals section 79 of the
Freedom of Information and Protection of Privacy Act

~~Relationship of Act to other Acts~~

~~79 If a provision of this Act is inconsistent or in conflict with a provision of another Act,
the provision of this Act prevails unless the other Act expressly provides that it, or a
provision of it, applies despite this Act.~~

Page 0238 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by repealing and replacing the definition of “aboriginal government” and adding a
definition of “Indigenous governing entity”**

Definitions

In this Act:

“~~aboriginal government~~” means ~~an aboriginal organization exercising governmental functions;~~

“Indigenous governing entity” means an Indigenous entity that exercises governmental functions, and includes but is not limited to an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act*;

Page 0240 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by repealing the definition of “access”**

Definitions

In this Act:

"access" means, for the purposes of Part 3, disclosure of personal information by the provision of access to personal information;

Page 0242 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by amending the definition of “agency”**

Definitions

In this Act:

“agency” means, ~~for the purposes of sections 33.2 (d) and 36.1 (3) (b) (i) for the~~
purposes of section 33 (2) (k) and the definitions of “common or integrated program or
activity” and ~~“data-linking initiative data-linking program”,~~

Page 0244 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by repealing and replacing definitions related to data linking**

Definitions

In this Act

data linking means ~~the linking or combining of personal information in one database with personal information in one or more other databases if the purpose of the linking or combining is different from~~

- ~~(a) the purpose for which the information in each database was originally obtained or compiled, and~~
- ~~(b) every purpose that is consistent with each purpose referred to in paragraph (a);~~

"data-linking initiative" means ~~a new or newly revised enactment, system, project, program or activity that has, as a component, data linking between~~

- ~~(a) two or more public bodies, or~~
- ~~(b) one or more public bodies and one or more agencies;~~

"common key" means information about an identifiable individual that is common to 2 or more data sets;

"data-linking" means the linking, temporarily or permanently, of 2 or more data sets using one or more common keys;

"data-linking program" means a program of a public body that involves data-linking if at least one data set in the custody or under the control of a public body is linked with a data set in the custody or under the control of one or more other public bodies or agencies without the consent of the individuals whose personal information is contained in the data set;

"data set" means an aggregation of information that contains personal information;

Page 0246 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by removing the reference to “Provincial auxiliary hospital”**

Definitions

In this Act

"health care body" means

- (a) a hospital as defined in section 1 of the Hospital Act,
- ~~(b) a Provincial auxiliary hospital established under the *Hospital (Auxiliary) Act*,~~
- (c) a regional hospital district and a regional hospital district board under the Hospital District Act,

Page 0248 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by adding the definition of Indigenous peoples**

“Indigenous peoples” has the same meaning as in the Declaration on the Rights of Indigenous Peoples Act;

Page 0250 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy*
Amendment Act, 2021**

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by repealing and replacing the definition of “intimate partner”**

Definitions

In this Act

~~“intimate partner” includes, with respect to an individual,~~

- ~~(a) a current or former spouse of the individual, by marriage or common law,~~
- ~~(b) a current or former boyfriend or girlfriend of the individual, and~~
- ~~(c) an individual referred to in paragraph (a) or (b) who is the same gender as the individual;~~

“intimate partner” means, with respect to an individual, any of the following:

- (a) an individual who is or was a spouse, dating partner or sexual partner of the individual;
- (b) an individual who is or was in a relationship with the individual that is similar to a relationship described in paragraph (a);

Page 0252 of 1215

Withheld pursuant to/removed as

s.13

**Section 48 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 1 of the
Freedom of Information and Protection of Privacy Act
by repealing the definition of “social media site”**

Definitions

In this Act

~~“social media site”~~ means the Internet site referred to as Facebook, YouTube,
~~Twitter or MySpace or a prescribed social media site;~~

Page 0254 of 1215

Withheld pursuant to/removed as

s.13

**Section 49 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends Schedule 2 of the
Freedom of Information and Protection of Privacy Act
by adding police associations**

Public Bodies

Public Body: BC Association of Chiefs of Police

Head: President

Public Body: BC Association of Municipal Chiefs of Police

Head: President

Page 0256 of 1215

Withheld pursuant to/removed as

s.13

**Section 50 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**Amends Schedule 2 of the
Freedom of Information and Protection of Privacy Act
by removing “Office of the Premier”**

Public Bodies

~~Public Body: Office of the Premier and Executive Council Operations~~

~~Head: Premier~~

Page 0258 of 1215

Withheld pursuant to/removed as

s.13

**Section 51 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

Transitional Provisions

Transition – data-linking programs

74 A data-linking initiative that started before section 24 of this Act is brought into force is subject to section 36.1 of the *Freedom of Information and Protection of Privacy Act* as it read before the coming into force of section 24 of this Act.

Page 0260 of 1215

Withheld pursuant to/removed as

s.13

Section 52 of the *Freedom of Information and Protection of Privacy Amendment Act, 2021*

**amends subsection 68 (4) (a) of the
*Assessment Act***

Protection of privacy in assessment roll and records

68 (4) Subsections (1) and (3) do not apply to an assessment roll or record that is supplied

(a) to a person or for a purpose specified in ~~section 33.1 or 33.2~~ section 33 of the *Freedom of Information and Protection of Privacy Act*,

Page 0262 of 1215

Withheld pursuant to/removed as

s.13

**Section 53 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 74 (2) of the
*Child, Family and Community Service Act***

Freedom of Information and Protection of Privacy Act

74 (2) For the purpose of its application to this Act, the *Freedom of Information and Protection of Privacy Act* is deemed to be modified as follows:

[.....]

(e) the only provisions of sections 33 that apply to a director are the following:

- (i) section 33 (2) (a) [*in accordance with Part 2*];
- (ii) section 33 (2) (c) [*individual consent*];
- (iii) section 33 (2) (j) [*evaluating program or activity*];
- (iv) section 33 (2) (k) [*common or integrated program or activity*];
- (v) section 33 (2) (p) [*payment to government or a public body*];
- (vi) section 33 (3) (b) [*domestic violence*];
- (vii) section 33 (3) (g) [*to archives for archival purposes*];
- (viii) section 33 (3) (h) [*research purposes*];
- (ix) section 33 (4) [*by archives for archival or historical purposes*];
- (x) section 33 (8) [*identity management services*], except that the reference to “any other provision of this section” is to be read as a reference to any provision referred to in subparagraph (i) to (vi) and (viii) to (x) of this paragraph;

(e.1) the authority for a public body to disclose personal information under ~~section 33.1 (1) (q) or (r) or (7) or 33.3~~ section 33.1 (2) (r) or (w) or 33.3 does not include the authority to disclose information that could reasonably be expected to reveal that

- (i) a child is a child in care, or
- (ii) an individual is an individual who has made a report under section 14 of this Act;

Page 0264 of 1215

Withheld pursuant to/removed as

s.13

**Section 54 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends section 79 of the
Child, Family and Community Service Act

Disclosure without consent

79 A director may, without the consent of any person, disclose information obtained under this Act if the disclosure is

[....]

(j) ~~made in Canada to~~ made to caregivers or prospective adoptive parents and the information relates to children in their care, or

(k) ~~made in Canada and necessary~~ necessary for the administration of this Act.

Page 0266 of 1215

Withheld pursuant to/removed as

s.13

**Section 55 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

repeals section 86 (2) of the *Civil Resolution Tribunals Act*

Protection of personal information

86 (2) ~~The tribunal must ensure that personal information in its custody or under its control is stored only in Canada.~~

Page 0268 of 1215

Withheld pursuant to/removed as

s.13

**Section 56 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

amends subsection 6 (3) of the *Criminal Records Review Act*

Use of information

6 (3) Information provided under this Act must not be used or disclosed for any purpose other than the purpose set out in section 2 of this Act or in ~~section 33.1 (1) (m), 33.2 (i) or section 33 (3) (a) or (d) or 44 (2) or (3) of the *Freedom of Information and Protection of Privacy Act*.~~

Page 0270 of 1215

Withheld pursuant to/removed as

s.13

**Section 57 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 10 (1) (b) of the
*E-Health (Personal Health Information Access and Protection of Privacy) Act***

Effect of disclosure directives

10 (1) A person who is otherwise permitted to collect, use or disclose personal health information from a health information bank must not do so in any manner that is inconsistent with a disclosure directive except as follows:

(a) to notify a person that a disclosure directive applies to personal health information that would otherwise be available to the person;

(b) for a purpose described in section ~~33.1(1)(e)~~ section 33 (2) (e) of the *Freedom of Information and Protection of Privacy Act*;

(c) with the express consent of the person who made the disclosure directive;

(d) if section 12 [*exception — urgent or emergency health care*] of the *Health Care (Consent) and Care Facility (Admission) Act* applies and a health care provider acting under that section reasonably believes that the personal health information may be required to provide health care in accordance with that section.

Page 0272 of 1215

Withheld pursuant to/removed as

s.13

**Section 58 of the *Freedom of Information and Protection of Privacy*
*Amendment Act, 2021***

amends section 18 of the
E-Health (Personal Health Information Access and Protection of Privacy) Act

Purposes for which disclosure always authorized

18 (1) An administrator may disclose personal health information inside Canada from a health information bank for one or more of the following purposes:

- (a) a purpose described in ~~section 33.2 (f) and (i)~~ section 33 (2) (s) and (3) (d) of the *Freedom of Information and Protection of Privacy Act*;
- (b) to investigate or discipline a person regulated by a governing body of a health profession that has authority, under an enactment, to investigate or discipline the person;
- (c) to monitor, by a governing body of a health profession, the practice of a health profession that is, under an enactment, regulated by that body;
- (d) a purpose for which the person who is the subject of the personal health information has expressly consented.

(2) An administrator may disclose personal health information inside or outside Canada from a health information bank for one or more of the following purposes:

- (a) a purpose described in ~~section 33.1 (1) (a), (c), (e), (e.1), (g), (i), (i.1), (m), (m.1), (n), (p), (p.1), (p.2) or (t), (6) or (7)~~ section 33 (2) (a), (e), (h), (l), (m), (o), (p), (t), (u) or (v), (3) (a), (b), or (c), (8) or (9) of the *Freedom of Information and Protection of Privacy Act*, or
- (b) a purpose for which the person who is the subject of the personal health information has expressly consented in writing.

Page 0274 of 1215

Withheld pursuant to/removed as

s.13

**Section 59 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 19 of the
*E-Health (Personal Health Information Access and Protection of Privacy) Act***

Information-sharing agreements required for disclosure

19 (1) Personal health information contained in a health information bank may be disclosed only if

- (a) disclosure is authorized by the terms of the designation order that relates to the health information bank,
- (b) the administrator of the health information bank enters into an information-sharing agreement under this section, and
- (c) if personal health information is to be disclosed on a bulk or regular basis, it is disclosed only to one or more of the following persons:
 - (i) an agency or ministry of the government of British Columbia, of another province or of Canada, including a Crown corporation;
 - (ii) a health care body;
 - (iii) an ~~aboriginal government~~ Indigenous governing entity, an educational body or a social services body, as those terms are defined in the *Freedom of Information and Protection of Privacy Act*;
 - (iv) a public body in another jurisdiction of Canada that is equivalent to one described in subparagraphs (ii) and (iii);
 - (v) a health service provider;
 - (vi) a body responsible for the regulation of health professionals;
 - (vii) an association of health professionals;
 - (viii) a prescribed body that is public in nature.

Page 0276 of 1215

Withheld pursuant to/removed as

s.13

**Section 60 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 90 (9) of the
*Employer Health Tax Act***

Communication of information

90 (9) To the extent of any inconsistency or conflict with ~~sections 32 [use of personal information], 33 [disclosure of personal information], 33.1 [disclosure inside or outside Canada] and 33.2 [disclosure inside Canada only]~~ sections 32 [use of personal information] and 33 [disclosure of personal information] of the Freedom of Information and Protection of Privacy Act, this section applies despite that Act

Page 0278 of 1215

Withheld pursuant to/removed as

s.13

**Section 61 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 30 (2.3) of the
*Employment and Assistance Act***

Agreements

30 (2.3) An information-sharing agreement under this section is not required for the purpose of sharing for research purposes personal information collected under this Act if the personal information is disclosed in accordance with ~~section 35~~ section 33 (3) (h) of the *Freedom of Information and Protection of Privacy Act*.

Page 0280 of 1215

Withheld pursuant to/removed as

s.13

**Section 62 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 21 (2.3) of the
*Employment and Assistance for Persons with Disabilities Act***

Agreements

21 (2.3) An information-sharing agreement under this section is not required for the purpose of sharing for research purposes personal information collected under this Act if the personal information is disclosed in accordance with ~~section 35~~ section 33 (3) (h) of the *Freedom of Information and Protection of Privacy Act*.

Page 0282 of 1215

Withheld pursuant to/removed as

s.13

**Section 63 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 243 (4) (c) of the
*Family Law Act***

Restrictions on disclosure of information

243 (4) This section does not apply to

- (a) personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for 100 years or more,
- (b) information not described by paragraph (a) that has been in existence for 50 years or more, or
- (c) information for research purposes disclosed under ~~section 33.1 (1) (s)~~ section 33 (3) (h) of the *Freedom of Information and Protection of Privacy Act*.

Page 0284 of 1215

Withheld pursuant to/removed as

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**Section 64 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 43 (2) of the
*Family Maintenance Enforcement Act***

Information confidential

43 (2) Subsection (1) does not apply to information for research purposes disclosed in accordance with ~~section 33.1 (1) (e)~~ section 33 (3) (h) of the *Freedom of Information and Protection of Privacy Act*.

Page 0286 of 1215

Withheld pursuant to/removed as

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**Section 65 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 64 (8) of the
*Income Tax Act***

Communication of information and related offences

64 (8) To the extent of any inconsistency or conflict with ~~sections 32, 33, 33.1 and 33.2~~
sections 32 and 33 of the *Freedom of Information and Protection of Privacy Act*, this
section applies despite that Act.

Page 0288 of 1215

Withheld pursuant to/removed as

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**Section 66 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 6.1 (2) of the
*Ministry of Environment Act***

Disclosure of information

6.1 (2) In accordance with ~~section 33.1 (1) (c)~~ section 33 (2) (e) of the *Freedom of Information and Protection of Privacy Act*, the minister may disclose the following information ~~inside or outside Canada~~ with respect to a person who is convicted of an offence, has paid or is liable to pay an administrative penalty or is subject to another sanction under an enactment:

- (a) the name of the person;
- (b) the provision of the enactment that the person contravened or under which a sanction has been imposed;
- (c) the location at which the contravention occurred or the conduct or circumstances that resulted in the sanction arose;
- (d) a description of the contravention or the conduct or circumstances that resulted in the sanction;
- (e) the fine, sentence, administrative penalty or other sanction to which the person is subject;
- (f) if a fine or administrative penalty is overdue, the date it was due and the outstanding amount.

Page 0290 of 1215

Withheld pursuant to/removed as

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**Section 67 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 23 of the
*Pharmaceutical Services Act***

Disclosure of personal information

23 (1) The minister may disclose, inside Canada, personal information under this Act for one or more of the following purposes:

- (a) for a purpose described in ~~section 33.2 (f) or (i)~~ section 33 (2) (s) or (3) (d) of the *Freedom of Information and Protection of Privacy Act* only;
- (b) to investigate or discipline a person regulated by a governing body of a health profession that has authority, under an enactment of any jurisdiction, to investigate or discipline the person;
- (c) to monitor, by a governing body of a health profession, the practice of a health profession that is, under an enactment of any jurisdiction, regulated by that body;
- (d) for a purpose to which the person who is the subject of the personal information has consented.

(2) The minister may disclose personal information under this Act inside or outside Canada for one or more of the following purposes:

- (a) for a purpose described in ~~section 33.1 (1) (a), (c), (e), (e.1), (g), (i), (i.1), (m), (m.1), (n), (p), (p.1), (p.2) or (t), (6) or (7)~~ section 33 (2) (a), (e), (h), (l), (m), (o), (p), (t), (u) or (v), (3) (a), (b) or (c), (8) or (9) of the *Freedom of Information and Protection of Privacy Act* only;
- (b) for a purpose to which the person who is the subject of the personal information has consented in writing.

Page 0292 of 1215

Withheld pursuant to/removed as

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**Section 68 of the *Freedom of Information and Protection of Privacy*
*Amendment Act, 2021***

**amends subsection 29 (1) (b) of the
*Pharmaceutical Services Act***

Effect of protective words

29 (1) A person within a prescribed class of persons who is otherwise permitted under this Act to collect, use or disclose personal information from prescribed information management technology must not do so if a protective word is attached to the personal information, except as follows:

(a) to notify a person that a protective word applies to personal information that would otherwise be available to the person;

(b) for a purpose described in ~~section 33.1 (1) (c)~~ section 33 (2) (e) of the *Freedom of Information and Protection of Privacy Act*;

(c) with the express consent of the person to whose personal information the protective word applies;

(d) if section 12 of the *Health Care (Consent) and Care Facility (Admission) Act* applies and a health care provider acting under that section reasonably believes that the personal information may be required to provide health care in accordance with that section.

Page 0294 of 1215

Withheld pursuant to/removed as

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**Section 69 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 182 of the
*Police Act***

***Freedom of Information and Protection of Privacy Act* does not apply**

182 ~~Except as provided by this Act and by section 3 (3)~~ Except as provided by this Act and section 3 (4) of the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to

(a) any record of a complaint concerning the conduct of a member that is made, submitted, registered or processed under this Part,

(b) any record related to a record described in paragraph (a), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,

(c) any information or report in respect of which an investigation is initiated under this Part, or

(d) any record related to information or a report described in paragraph (c), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,

whether that record, information or report is created on or after a complaint is made, submitted or registered or the investigation is initiated, as the case may be.

Page 0296 of 1215

Withheld pursuant to/removed as

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**Section 70 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends subsection 170.2 (5) (b) of the
*School Act***

Public post-secondary students

170.2 (5) The personal information of a student obtained under this section by the minister responsible for public post-secondary institutions may be used only for the following purposes:

- (a) conducting research and statistical analysis relating to students, including research and analysis as authorized under the *Freedom of Information and Protection of Privacy Act*;
- (b) delivering a common or integrated program or activity within the meaning of ~~section 33.2 (d)~~ section 33 (2) (k) of the *Freedom of Information and Protection of Privacy Act*;
- (c) facilitating the administration of the BC Student Assistance Program by the minister responsible for the program;
- (d) conducting research and statistical analysis related to the BC Student Assistance Program;
- (e) evaluating the effectiveness of the BC Student Assistance Program.

Page 0298 of 1215

Withheld pursuant to/removed as

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**Section 71 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**repeals and replaces section 49 of the
*Secure Care Act***

**~~49 Section 3 (1) of the *Freedom of Information and Protection of Privacy Act*,
R.S.B.C. 1996, c. 165, is amended by adding the following paragraph:~~**

~~(c.2) a record that is created by or for, or is in the custody or control of, the
Secure Care Board and that relates to the exercise of that board's functions
under the *Secure Care Act*;~~

**49 Section 3 (3) of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C.
1996, c. 165, is amended by adding the following paragraph:**

(g.1) a record that is created by or for, or is in the custody or under the control
of, the Secure Care Board and that relates to the exercise of that board's
functions under the *Secure Care Act*;

Page 0300 of 1215

Withheld pursuant to/removed as

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**Section 72 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 120 (10) of the
*Speculation and Vacancy Tax Act***

Communication of information

120 (10) To the extent of any inconsistency or conflict with ~~sections 32 [use of personal information], 33 [disclosure of personal information], 33.1 [disclosure inside or outside Canada] and 33.2 [disclosure inside Canada only]~~ sections 32 [use of personal information] and 33 [disclosure of personal information] of the *Freedom of Information and Protection of Privacy Act*, this section applies despite that Act.

Page 0302 of 1215

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**Section 73 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

**amends section 41.1 (2) (b) of the
*Vital Statistics Act***

Information-sharing agreements

41.1 (2) The registrar general may enter into an information-sharing agreement under subsection (1) only with the following bodies:

- (a) an agency or ministry of the government of British Columbia, of another province, or of Canada, including a Crown corporation;
- (b) an ~~aboriginal government~~ Indigenous governing entity, an educational body, a health care body or a social services body, as those terms are defined in the *Freedom of Information and Protection of Privacy Act*;
- (c) a public body in another jurisdiction of Canada that is equivalent to one described in paragraph (b);
- (d) a prescribed body that is public in nature.

Page 0304 of 1215

Withheld pursuant to/removed as

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**Section 74 of the *Freedom of Information and Protection of Privacy
Amendment Act, 2021***

Commencement

The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Section 25	By regulation of the Lieutenant Governor in Council
3	Section 49	By regulation of the Lieutenant Governor in Council

Page 0306 of 1215

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Page 0307 of 1215 to/à Page 0311 of 1215

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Page 0312 of 1215 to/à Page 0314 of 1215

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FIRST READING SPEAKING NOTES

Bill 22 – 2021

***Freedom of Information and Protection of Privacy
Amendment Act, 2021***

[After “Introduction of the Bill” is called]

The Minister stands to be recognized by the Speaker.

[The Speaker calls upon the Minister.]

**Mr. Speaker, I have the honour to present a
Message from Her Honour the Lieutenant
Governor.**

[Chamber staff takes the Message to the Speaker]

The Minister sits

[The Speaker reads the message.]

[The Speaker calls upon the Minister.]

The Minister stands and states:

**I move that the Bill be introduced and read a
first time now.**

- **Mr. Speaker, I am pleased to introduce Bill 22. This bill amends the *Freedom of Information and Protection of Privacy Act*.**
- **The Act has not been substantially updated since 2011 and we are quickly falling behind other jurisdictions and advancements in technology.**
- **The COVID-19 pandemic has highlighted people's need for safe and convenient online services.**
- **This bill proposes amendments to ensure government provide the level of service people deserve, keep pace with new technology, and enhance privacy protection.**
- **The changes we're proposing will strengthen government accountability and transparency by enabling us to be more responsive to the needs of people; to add more public bodies; and to charge new offences for destroying records to evade FOI.**
- **By updating FOIPPA's data-residency provisions, we will improve how people access government services, while continuing to ensure that the personal information people trust us with is protected.**
- **By improving B.C.'s high-quality FOI services, we will free up government resources to respond to the thousands of people, businesses and organizations who request access to information every year.**
- **We will also enhance public-sector privacy protections and increase accountability by implementing mandatory privacy breach reporting and increasing penalties for general and privacy offences under the Act.**

- **And we are demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding Indigenous cultural protections and removing non-inclusive language.**
- **Indigenous leaders, stakeholders, and public body representatives have been asking for changes for over a decade.**
- **These amendments will address their feedback and make it easier for people to access information, while also maintaining B.C.'s leadership role in safeguarding information.**

The Minister sits

[The Speaker puts the motion.]

[The Speaker calls upon the Minister.]

The Minister stands and states:

Mr. Speaker, I move that the Bill be placed on the Orders of the Day for Second Reading at the next sitting of the House after today.

[The Speaker puts the motion.]

SECOND READING SPEAKING NOTES

Bill 22 – 2021

*Freedom of Information and Protection of Privacy
Amendment Act, 2021*

[The House Leader calls for Second Reading of Bill 22 entitled
*Freedom of Information and Protection of Privacy Amendment Act,
2021*]

The Minister stands to be recognized by the Speaker.

[The Speaker calls upon the Minister.]

Opening

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Page 0319 of 1215 to/à Page 0321 of 1215

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Closing

s.13

The Minister sits

[Bill is debated]

[When the debate is concluded, the Speaker will recognize the Minister to
close debate:]

The Minister stands

The Minister makes final second reading comments followed by:

And with that, Mr. Speaker, I move second reading.

The Minister sits

[The Speaker puts the motion]

[The Speaker calls upon the Minister.]

The Minister stands and states:

Mr. Speaker, I move that the bill be referred to a Committee of the Whole House to be considered at the next sitting of the House after today.

The Minister sits

[The Speaker puts the motion]

THIRD READING SPEAKING NOTES
(FOLLOWING COMMITTEE)
Bill 22 – 2021
Freedom of Information and Protection of Privacy
Amendment Act 2021

When the title has passed,

OPTION 1 - WITHOUT AMENDMENT

**Minister: "I move that the Committee rise and report the
Bill complete without amendment."**

[Committee Chair: Puts motion, Chair sends for the Speaker and
when the Speaker has taken the Chair:

The Committee Chair: "The Committee on Bill No. 22 reports the
Bill complete without amendment."

The Speaker asks: "When shall the Bill be read a third time?"]

Minister: "Now, Mister Speaker."

[Speaker: "The question is Third Reading of Bill No. 22
Speaker announces result of vote and
if the "ayes" have it, declares the Bill "an act".]

OR

OPTION 2 - WITH AMENDMENT

Minister: "Mister Speaker, I move that the Committee rise and report Bill 22 complete with amendments."

[Committee Chair: Puts motion, Chair sends for the Speaker and when the Speaker has taken the Chair:

The Committee Chair: "The Committee on Bill No. 22 reports the Bill complete with amendment."

The Speaker asks: "When shall the Bill be considered as reported?"]

Minister: "With leave of the House, now, Mister Speaker."

OR

"At the next sitting, Mister Speaker."

BEGINNING OF COMMITTEE STAGE

Second reading is finished and the Bill is on the Order Paper under Committee

- The House leader calls, "Committee stage debate on Bill 22 - 2021"
- The Speaker calls the Chairman of the Committee and vacates the chair.
- The Chairman of the Committee takes the Chair, calls the whole Committee to order and proceeds with consideration of the bill, **section by section (See TAB 5)**
- Members may speak more than once on each section and amendment.
- The Chairman calls the question on each section, amendment and title.

NEWS RELEASE

For Immediate Release
2021CITZ0048-001990
Oct. 18, 2021

Ministry of Citizens' Services

Amendments strengthen access to information, protect people's privacy

VICTORIA – British Columbia is taking important steps to strengthen B.C.'s Freedom of Information and Privacy Protection Act (FOIPPA) to deliver better, more inclusive services to people, businesses and public sector organizations.

"The COVID-19 pandemic changed the way we live, work, connect with loved ones and access the services we need. Today, people can safely talk to their doctor via Zoom, learn online and do business, faster," said Lisa Beare, Minister of Citizens' Services. "These amendments help people continue to access the services they need, faster, while ensuring their privacy is protected. We're making changes today to keep pace with advancements in technology and provide the level of service that people expect in the digital era."

With input from thousands of people, businesses, Indigenous communities and public bodies, proposed changes to FOIPPA will help B.C. keep pace with new technology, strengthen privacy protections and improve services for thousands of people who request information each year.

Highlights of the proposed amendments include:

- updating FOIPPA's data-residency provisions so public bodies can use modern tools while continuing to protect personal information;
- enhancing public-sector privacy protections and increasing accountability by implementing mandatory privacy-breach reporting;
- introducing a modest application fee for non-personal FOI requests; and
- demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous Peoples, adding Indigenous cultural protections and removing non-inclusive language.

Data-residency requirement changes will bring B.C. in line with other jurisdictions by removing restrictions that prevent access to digital tools and technologies. These changes will increase access to technologies and streamline service delivery for public bodies. For example, greater access to cloud-based services will improve B.C. post-secondary institutions' ability to attract students by allowing them to use cloud-based education tools offered outside of B.C.

"This is a positive development from government that B.C.'s tech industry welcomes," said Jill Tipping, president and CEO, BC Tech Association. "The changes to B.C.'s data residency requirements will allow local companies to leverage cutting-edge technology to help B.C.'s public sector deliver the modern tools that citizens expect with the privacy protections they need."

“UBC welcomes these proposed amendments. They will substantially increase the privacy and security of personal data with more robust and resilient services by allowing us to select the most secure and effective solutions,” said Jennifer Burns, associate vice-president, information technology & chief information officer, University of British Columbia. “We appreciate the opportunity to collaborate with government on changes that will boost the competitiveness and efficiency of B.C. post-secondary institutions while helping protect our students, faculty and staff.”

B.C. is strengthening our privacy protection through added privacy-protection controls to safeguard people’s information, while remaining transparent and accountable. Enhancements to mandatory breach reporting require privacy management programs and clarify requirements for public bodies’ privacy impact assessments, while proposed amendments will increase penalties for offences under the Act and introduce new penalties, such as for knowingly accessing information without authorization.

“As an organization that values innovation in order to maintain the highest level of care to patients, Vancouver Coastal Health welcomes improvements made to the data residency requirements within the Freedom of Information and Protection of Privacy Act,” said Steven Tam, general counsel and chief privacy officer, Vancouver Coastal Health. “These changes not only provide more flexibility and opportunity to implement the best available technologies to improve health-care services, but they also enable us to access the most robust technology solutions to secure sensitive health-care data and protect patient privacy.”

Proposed amendments also reflect the Province’s commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous Peoples, adding cultural protections and removing non-inclusive language, which aligns with B.C.’s Declaration on the Rights of Indigenous Peoples Act. The act has also been reviewed through a critical, gender-based analysis plus (GBA+) lens to make the Act more inclusive and equitable.

Quotes:

Jazz Pabla, information services director, City of Kelowna –

“Local governments are being asked to deliver services effectively and efficiently with the best citizen experience possible. With changes to the data-residency policy, this will allow organizations to meet the need of our customers while still protecting our digital assets.”

Kelly Pollack, executive director, Focused Education Resources –

“Focused Education Resources recognizes the learning environment is moving more online each year. These changes to the data-residency requirement will increase access to learning resources and give educators more ability to customize learning in their classroom for students, while still protecting students’ and educators’ personal information.”

Quick Facts:

- Introduced in 1993, the FOIPPA applies to over 2,900 public bodies in B.C. and keeps government accountable to the public and protects the privacy of British Columbians.

- Apart from minor amendments in 2019, FOIPPA has not substantially changed since 2011.
- The Province processes more than 10,000 FOI requests annually, with the volume of requests increasing by more than 40% over a two-year period, reaching an all-time high of more than 13,000 requests in 2019-20 (13,055).
- The average cost to government for processing a single FOI request is \$3,000, though some large, complex requests can exceed this. Fees to produce records are currently collected in fewer than 2% of FOI requests.
- Approximately, 40% of requests are for personal records, which people are not charged for. The proposed amendments will not change this.

Learn More:

For more information on the FOIPPA, including sections of the act in categories about freedom of information, protection of privacy and the powers of the information and privacy commissioner, visit:

<https://www2.gov.bc.ca/gov/content?id=349D4E81633F4E49AEAE121F1CC058DB>

A backgrounder follows.

Contact:

Ministry of Citizens' Services
Government Communications and Public
Engagement
778 974-5825

Connect with the Province of B.C. at: news.gov.bc.ca/connect

BACKGROUND

Extensive consultation informs information access, privacy protection amendments

Thousands of people, businesses, Indigenous leaders, and organizations, and the Office of the Information and Privacy Commissioner (OIPC) provided valuable input into proposed amendments to B.C.'s Freedom of Information and Privacy Act (FOIPPA). The Province also received recommendations from two all-party special committees of the legislative assembly.

Consultations through 2017-2019 helped identify and understand stakeholder concerns and priorities. Between April and August 2021, the Ministry of Citizens' Services engaged with stakeholder groups to confirm previous input and present proposed improvements based on their feedback, including gaining an understanding of how potential changes may affect their organizations. Participants included B.C. public-sector bodies, provincial government ministries, Indigenous groups, the B.C. tech sector, and the public. Feedback was also received through roundtable meetings and presentations in the broader public sector, such as post-secondary institutions, local governments and health authorities.

From June 15 to July 15, 2021, a govTogetherBC survey asked people how, or if, their thoughts on access to government information and the protection of privacy have changed with the pandemic's shift to more government services being delivered online. The questions focused on how individuals access information, data residency, the freedom of information process, reporting privacy breaches, and offences and penalties. More than 1,700 individuals responded.

Engagement with Indigenous leaders and communities to better understand how reconciliation efforts can be supported through improved access to information and privacy was a priority. This work continues and has included meetings with Indigenous organizations, discussions with Treaty First Nations representatives, and a 2021 questionnaire sent to over 200 First Nations leaders in communities throughout the province. This builds on similar engagement with Indigenous community leaders and Treaty First Nations in winter 2018-2019.

Proposed amendments have also been informed through more than a dozen meetings with the OIPC between April and August 2021.

A summary of the 2021 engagement, including public surveys, is available at:
<https://engage.gov.bc.ca/govtogetherbc/impact/information-access-and-privacy-2021-results>

Contact:

Ministry of Citizens' Services
Government Communications and Public
Engagement
778 974-5825

Connect with the Province of B.C. at: news.gov.bc.ca/connect

Content for legislation website (<https://workingforyou.gov.bc.ca/legislation>)

Title

Benefit of legislation in plain language – no more than 8 words.

Delivering better, more inclusive information access services, privacy protection

Brief Summary

Description briefly introducing the legislation – no more than a small paragraph.

The Freedom of Information and Protection of Privacy Amendment Act will help B.C. keep pace with new technology, strengthen privacy protections and improve services for thousands of people who request information each year.

Larger description of the legislation

Avoid repeating the brief description.

Through the COVID-19 pandemic, B.C. found a better, more effective way to deliver services that people have come to expect, including timely access to their personal information as well as to healthcare, education and the technology that's making their lives easier. With these amendments, B.C. will strengthen privacy protections, while allowing people to continue to access the services they need, faster and more effectively. Specifically, the amendments:

- Update data-residency provisions so public bodies such as universities or health authorities can use modern tools while continuing to protect personal information;
- Strengthen public-sector privacy protections and increase accountability by implementing mandatory privacy breach reporting and increase penalties for offences, and add new offences;
- Introduce a modest fee for non-personal FOI requests;
- Demonstrate the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous Peoples, adding cultural protections and removing non-inclusive language.

Link to read more

Preferably to a news article and not directly to the legislation

Permalink: <https://news.gov.bc.ca/25550>

Photo preference:

Please send me a photo option or idea, so I can source an appropriate image for the post.

https://www.freepik.com/free-photo/female-scientist-white_4103194.htm#page=1&query=access%20to%20information%20&position=0



Page 0333 of 1215

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Page 0334 of 1215 to/à Page 0364 of 1215

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Page 0365 of 1215 to/à Page 0592 of 1215

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Page 0593 of 1215 to/à Page 0609 of 1215

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Page 0610 of 1215

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Page 0611 of 1215 to/à Page 0612 of 1215

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Page 0613 of 1215 to/à Page 0673 of 1215

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Page 0674 of 1215 to/à Page 0676 of 1215

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Page 0677 of 1215 to/à Page 0679 of 1215

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***Speaking Notes for Opposition briefing: FOIPPA Amendments
October 18, 2021***

Intro:

- Thank you for your time today.
- As you will be aware, today amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA) were introduced. Today's briefing provides an opportunity to provide some high-level context and importantly we are available to answer any questions you may have.
- I am joined by ministry staff:
 - CJ Ritchie, Government's Chief Information Officer
 - Kerry Pridmore, ADM of Corporate Information Management
 - Matt Reed, ED of Strategic Policy and Legislation

Scope:

- BC's FOIPPA legislation was last significantly updated a decade ago and it requires a comprehensive update to keep pace with other jurisdictions and for the delivery of services that the public has come to expect.
- These amendments bring us in line with the rest of Canada, and ensures we are managing people's information safely while delivering the tools and services they need.
- The main highlights include in these amendments are:
 - updating FOIPPA's data-residency provisions so public bodies can use modern tools while continuing to protect personal information;
 - enhancing public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting, increasing penalties, and adding new offences;
 - introducing a modest application fee for non-personal FOI requests to encourage applicants to be more focused so government can respond to personal requests faster;
 - demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding Indigenous cultural protections and removing non-inclusive language.

Consultations:

- Beginning in late 2017, the first consultations were initiated on this legislation. Since then, we have heard from thousands of people, Indigenous groups, businesses, organizations and representatives from the public sector, over several years.
- The proposed amendments reflect what we've heard through that consultation, as well as input from subject-matter experts across the public sector, and recommendations from the Office of the Privacy and Information Commissioner and past Special Committees of the Legislative Assembly.

- We held extensive discussions with the OIPC on these amendments. Feedback and recommendations from the OIPC have influenced how these amendments have been drafted. ^{s.13}
§.13
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous peoples as we move forward with this work and have been in active consultation on these amendments.
- A summary of the most recent 2021 engagement, that took place between April to August is available online (<https://engage.gov.bc.ca/govtogetherbc/impact/information-access-and-privacy-2021—results>)

Closing:

- In closing we have worked hard to balance the various interests on FOIPPA and welcome any questions you may have.

Page 0682 of 1215 to/à Page 0686 of 1215

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Page 0688 of 1215 to/à Page 0692 of 1215

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Page 0693 of 1215 to/à Page 0805 of 1215

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Page 0806 of 1215

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October 21, 2021

Lisa Beare
Minister of Citizens' Services
Government of British Columbia

Minister Beare:

As journalism educators, we are deeply disappointed by the B.C. government's plans to begin charging a \$25 fee to file a Freedom of Information (FOI) request. B.C.'s proposed fee would be 5 times as high as a federal request (\$5) and the highest fee in the country, tied with Alberta and Nunavut.

B.C. plans to adopt the highest FOI fees in Canada

B.C.	\$25
Alberta	\$25
Nunavut	\$25
Federal	\$5
Nova Scotia	\$5
Ontario	\$5
PEI	\$5
Manitoba	\$0
New Brunswick	\$0
Newfoundland	\$0
NWT	\$0
Quebec	\$0
Saskatchewan	\$0
Yukon	\$0

We believe this new fee will be particularly onerous for student journalists, who often use FOI requests to uncover newsworthy information which they then publish through student newspapers. Requiring students who are already struggling to pay for tuition and textbooks to pay \$25 every time they want to access government records will discourage many of them from making such requests.

Journalists, activists and members of the public use FOI requests to hold the government accountable and help inform their fellow citizens. The value to the public of the information uncovered by FOI requests is perhaps best illustrated by the fact your own government publishes all the information released in response to FOI requests online, so all citizens can access it (<https://bit.ly/foisbc>).

We appreciate that some people may abuse the FOI system, placing undue pressure on government resources. But there are better ways of dealing with that challenge than a blanket \$25 fee. The Act already allows government agencies to charge requesters for any search that takes longer than 3 hours. And the government could impose a fee on requesters who make more than, say, 100 requests a year.

This new fee is a step backward for government transparency and openness and is particularly unfair to requesters of limited means, like students. We strongly urge you not to adopt this fee.

Sincerely,

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CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

What's changing with FOIPPA, and why?

- People's lives have changed. The COVID-19 pandemic changed the way we live, work, connect with loved ones and access the services we need.
- B.C.'s outdated *Freedom of Information and Protection of Privacy* legislation, last updated a decade ago, is not working for people.
- Through the COVID-19 pandemic, B.C. found a better, faster, more effective way to deliver the services people have come to expect.
- People want timely access to their personal information as well as to healthcare, education tools and the technology that's making their lives easier.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- Highlights of the proposed amendments include:
 - Updating data-residency provisions so public bodies such as universities or health authorities can use modern tools while continuing to protect the personal information people trust us with.
 - Strengthening public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting and increasing penalties for offences.
 - Introducing a modest fee for non-personal FOI requests.
 - Demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding cultural protections and removing non-inclusive language.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

Why changing data residency requirements is the right thing to do:

- We listened and learned from the public, Indigenous leaders, businesses and organizations through extensive consultation over several years on FOIPPA.
- Organizations like universities, health authorities and tech companies repeatedly told us that our data residency rules were outdated.
- They stopped them from being competitive or most importantly, responsive to people's evolving needs.
- It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're proposing these amendments.
- Today, people can **safely and securely** access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- People want access to healthcare, education opportunities and the technology that is making their lives easier through COVID.
- The order making these advancements possible expires at the end of this year.
- We need to do the work today, to deliver the services people deserve.
- We won't go backwards -- we must move forward, together.
- Thousands of people, businesses, Indigenous groups and organizations provided input through extensive consultation over several years.
- The amendments reflect that important input and those perspectives.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

What about people's health data? Can you promise it will be safe?

- People's data will continue to be safe and protected with these proposed amendments.
- This FOIPPA change will align data residency requirements, creating consistency across the health sector and providing opportunities to store data with greater security.
- Now, healthcare providers will be able to access to more specialized diagnostic testing tools outside the country.
- Patients will also have access to more tools to help them manage their healthcare with better security to keep their data safe.
- People can safely and securely access telehealth from home or talk to their doctor via Zoom: services that are making people's lives easier through COVID.
- None of that was possible under the old legislation, and the order making these advancements possible expires at the end of this year.
- We learned from the pandemic that we can safely make these changes.
- It's important to remember that your information is safe, no matter where it is stored and that it's protected by many layers of protection and encryption.
- Data residency doesn't protect information – effective privacy controls protect information.
- And because of the Act's current data-residency requirements, often public bodies are forced to use services that are possibly less secure than those offered by established tech companies based abroad.
- The amendments don't change government's need for Canadian datacentres. Where our service providers have Canadian options, we will opt for those.
- The Patriot Act in the US does not pose the same risks it did when data residency was first added to the Act. Technology evolution, new protections and legislation replacing the Patriot Act have all resulted in less risk.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

What about the privacy Commissioner's concerns?

- My staff and I have met with the Commissioner 20 times.
- We value the meaningful consultation that has occurred with the Commissioner.
- We have included many items in this package that respond directly to recommendations made by the Commissioner
- We have also revised items in response to his feedback.
- The OIPC is an independent office and is meant to be an advocate for privacy and access.
- As government, we need to balance his concerns with the concerns of others, including those of public bodies.

If asked about openness and transparency

- This government is committed to transparency and accountability; you only have to look at my mandate letter to see that one of my main priorities as Minister of Citizens' Services is to provide even greater accountability to the people of this province.
- In fact, this government was the one who saw the need for greater transparency and accountability for British Columbians, nearly three decades ago.
- In 1993, we were the ones who enacted the FOIPPA legislation to hold current, and future, governments accountable to the people who trust them to make decisions on their behalf and to act with integrity.
- And today, we continue this tradition in culture and in practice, through:
 - Insisting on more proactive disclosures of information that the public can access for free. Just last week, we released each Minister's estimates binder, arguably the most crucial document to government's priorities and decision-making.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Increasing the number of data sets open to the public. In 2017, there were 2,700 and today we are closing in on 3,200 data sets available to people, organizations and media.
- BC has also begun to proactively publish information on integrated data projects underway in BC's data innovation program.
- Our Premier sets the tone as an example for us all, making himself available for weekly availabilities with media, a public platform that encourages openness and transparency between government and members of the media who help hold us accountable.
- We're also consulting with the people of this province, often and more in-depth, than any government before us because the policies that we set in place must reflect the perspectives and input of the people of BC. In fact, in the last four years since we took office, we have embarked on 244 consultation projects, compared to the last four years of the previous government, almost half that.
- Here is the summary of the transparency items added through FOIPPA:
 - Adding ministerial power to add subsidiary entities as new public bodies
 - Requiring mandatory breach reporting to the potentially harmed individual
 - Requiring mandatory breach reporting to the Commissioner
 - Adding requiring for privacy management programs, which may include transparency measures (e.g. posted privacy policy)
 - Adding a new offence for wilfully evading FOI
 - Increasing public bodies' ability to disclose to Indigenous governing entities
 - Requiring public bodies to seek consent from Indigenous governing entities in order to disclose information that is culturally sensitive through FOI
 - Increasing transparency consistency across ministries when severing proactively disclosed records
 - Adding two new public bodies (BC Assoc of Chiefs of Police; BC Assoc. of Municipal Chiefs of Police).

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

What is the rationale behind implementing fees for FOI requests?

- The proposed application fee for non-personal requests is designed to get people the information that they deserve, faster and more efficiently.
- Because although we've increased BC's on-time FOI response rate significantly, we're hearing from people that it's taking too long to respond.
- This is mostly because of overly broad requests that are slowing down the system.
- Application fees are a tool that other jurisdictions use to deliver more efficient FOI services.
- A small fee encourages requesters to focus and streamline their requests.
- And remember, for the thousands of people in B.C. requesting their own personal information each year, there will continue to be no fee.

If pressed on how much it will be:

- The proposed amount will be decided through regulation.
- Fees in other jurisdictions across Canada range from \$5 - \$50 and I am recommending a fee amount within that range.

If asked about the breakdown of fees charged:

s.13

- Of the remaining 2% of respondents, by far the most impact would be for the top 2 requesters who submit more than 4500 requests annually costing more than \$14M or half the cost of the FOI program annually.
- For all FOI requests, including both personal and non-personal requests:
 - 77% make a single request and
 - 21% of people make five or less requests a year.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- And 85% of requests that result in a search fee, are dropped after hours of time and resources spent to identify records and provide a fee estimate. 15% proceed when there is a fee estimate.

For all requests received in 2020/21 (fiscal impact is coming):

- 3,994 unique applicants
- 77% of applicants submitted only 1 request
- 90% of applicants submitted 2 or fewer requests
- 95% of applicants submitted 3 or fewer requests
- 97% of applicants submitted 4 or fewer requests
- 98% of applicants submitted 5 or fewer requests
- Only 32 applicants submitted 10 or more requests
- Only 11 applicants submitted 20 or more requests
- Only 3 applicants submitted 50 or more requests
- Only 2 applicants submitted 100 or more requests
- The top two applicants combined submitted nearly 4,500 requests

Focus only on non-personal requests, the numbers for 2020/21 look like this:

- 964 unique applicants
- 66% of applicants submitted only 1 request
- 81% of applicants submitted 2 or fewer requests
- 88% of applicants submitted 3 or fewer requests
- 92% of applicants submitted 4 or fewer requests
- 94% of applicants submitted 5 or fewer requests
- Only 25 applicants submitted 10 or more requests
- Only 8 applicants submitted 20 or more requests
- Only 2 applicants submitted 50 or more requests
- Only 2 applicants submitted 100 or more requests
- The top two applicants combined submitted nearly 4,500 requests

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

How does this support Indigenous relationships and service delivery?

- FOIPPA isn't working for people anymore, and we're making these changes based on what we've heard from extensive consultation with thousands of people, Indigenous leaders, communities and groups, organizations and businesses.
- We are creating new powers to share information with Indigenous governments
- We are adding new protections to Indigenous peoples' sensitive cultural information.
- We are removing the 15-year limit on the existing protections where information may harm an Indigenous government.
- We are also removing outdated language in reference to Indigenous partners.
- We must work together to remove barriers and ensure an improved relationship between governments.
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous Peoples as we move forward with this work.

If asked about long outstanding FOI requests:

- Our intention is to always respond within the legislative timelines.
- Some requests take longer because they may contain personal information that would be harmful to release, or it needs to be reviewed by third parties to prevent harms.
- Those steps need to happen in order to fulfill our duty to protect people's privacy.

If asked about a specific ministry's outstanding requests ie Health:

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- While I can't speak to specific FOIs, some requests take longer to process simply because of the nature of the information and because of the multiple layers of review that are necessary to prevent harms if released.
- Our intention is to always respond within the legislative timelines.

Why can't you just put a cap on the number of free requests?

- A cap system on the number of free requests is not an effective solution.
- A cap system could encourage applicants with large numbers of requests to create multiple 'usernames and contact details' to avoid being charged a fee.
- For this reason, other jurisdictions have not pursued this approach.
- By implementing an application fee, we can cut down on broad, vexatious or "fishing" requests and focus resources on people who are asking for the information that they need.

What about personal FOI requests? How many of those are there?

- One of my ministry's top priorities is improving the FOI system for people in B.C. and more than 40% of all FOI requests are from people wanting their own personal information.
- People deserve to know that the information they need from government, often their own personal records, can be easily obtained in a timely manner.
- **Since 2017/18**, Ministries have responded to approximately **20,000** personal FOI requests
 - To accomplish this, professional public servants conducted a line-by-line review of **over 5.5 million pages of records**
 - During this timeframe, the average personal request was processed in **48 days**; In **2020/21 this jumped to 62 business days, and depending on the ministry, this jumps to 99 days to process**. This is because requests for personal records usually results in the analyst reviewing large volumes of complex records that require comprehensive review in order to protect very sensitive personal information (e.g. reviewing adoption

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- records to ensure only appropriate information about birth parents is disclosed).
- **64% of these personal requests were responded to within 30 days and 83% within 60 days.**
 - B.C. is committed to providing timely and helpful FOI service to the people of British Columbia.
 - Applying an application fee will help preserve FOI resources for people who use the system to access the information they need, including citizens requesting access to their own personal information.
 - FOI staff regularly work with applicants to assist in focussing their requests so that they can receive the information they need, faster and more efficiently
 - FOI staff will be available to support requestors in identifying which ministry may hold the records they are seeking
 - An upgraded intake process, including a modernized phone system, will allow requestors to connect with FOI staff more efficiently. This will be implemented on November 1st. (Pending discussion with Kerry this afternoon)

How are you modernizing the legislation with these changes?

- The volume of Freedom of Information (FOI) requests to the Province of British Columbia has grown substantially, and requests are more complex to resolve as new digital platforms generate new types of government records.
- Beginning June 2021, the Ministry of Citizens' Services committed \$5.3M to modernize the process to manage the 12,000 to 13,000 Freedom of Information (FOI) requests the Province receives annually.
- The FOI Modernizations Project demonstrates the Province's commitment to decrease average processing days for FOI requests from 49 to 30 days.
- The FOI Modernization Project will improve business processes as needed and build a new software system to increase efficiencies when responding to the growing number of FOI requests.
- Planned improvements include:
 - Automating routine administrative tasks related to managing requests, such as tracking, notifications and correspondence.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Eliminating or improving business processes to lower response times.
- Software tools to help staff speed up the analysis of the thousands of pages of records related to requests.
- The project has already delivered a software tool to automate removing duplicate records in a request, which is estimated to save over 400 hours annually. This speeds up request response as staff do not need to review duplicates of the same record.

If asked about data residency requirements and keeping people's data safe?

- In 2004, B.C. increased data residency controls and no other province followed our lead on that.
- The Act's current data-residency requirements require all personal information to be stored and accessed within Canada except under limited circumstances.
- This blanket protection for all personal information doesn't take into account personal information that has little to no risk of causing harm.
- The level of protection needed should be aligned with the level of risk involved, and right now it is not.
- Under the new regulation, public bodies will be required to conduct an additional assessment of any sensitive personal information being disclosed for storage outside of Canada.
- Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
- These larger companies have more resources to devote to data security.
- We spend approximately \$25 million each year on information security, but the large tech firms spend over \$1 billion per year – each.
- Data residency doesn't protect information – effective controls protect information.

If asked about removal of Office of the Premier from Schedule 2:

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- The Commissioner suggests there is no harm in the Premier's Office being a Schedule 2 public body – this is not the case.
- Being a ministry, and not a schedule 2 body, means that the Premier's Office is subject to higher level of scrutiny and accountability
- This amendment makes it clear that our many proactive disclosure directives apply to the Premier's Office – including for ministers' travel receipts, ministers' calendars and more.
- Essentially, this change is a clarification of legal language.
- The Premier's Office was under the list of public bodies that are not ministries and therefore officially subject to different rules under the legislation. However, they've always been treated as a ministry, and this change reinforces that.
- The Premier is considered the First Minister, and the Office of the Premier the ministry of the first minister. It is treated as such under BC's Constitution Act and elsewhere.
- Removing the Office of the Premier from Schedule 2 will clarify that they are subject to requirements under the Act that reference "ministries" and not those that reference "a public body that is not a ministry" – the former being the higher standard (e.g. for doing privacy impact assessments under 69(5)).
- Applicants may direct access requests to the Office of the Premier and using the online form will still be able to select "Office of the Premier".

If asked about MLA Stone's assertions regarding Social Media/Data Linking:

- This bill does not increase the amount of data linking permitted in any way.
- This bill expands the criteria to capture more initiatives such as data linking and subject those initiatives to additional oversight.
- This bill does not change what information can be collected/used/disclosed on social media.

Key Messages / Topic Scripts / Questions and Answers

**Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021**

- The only change with respect to social media is to remove the definition – because the current definition requires social media sites to be listed and lists outdated platforms like MySpace.
- Government does not scrape data from social media sites – government uses social media to enable public discussion or sharing information.
- Government has removed the requirements to submit data linking PIAs to the Commissioner on the recommendation of the OIPC – an effort to modernize their oversight model.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

Questions and Answers

1. Why are you amending the *Freedom of Information and Protection of Privacy Act*?

- B.C.'s *Freedom of Information and Protection of Privacy Act* has not been substantially changed since 2011.
- Through the pandemic, B.C. found a better, more effective way to deliver services.
- It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're making significant changes to:
 - provide the level of service that people and organizations expect,
 - keep pace with new technology,
 - ensure timely access to information for people, and
 - strengthen privacy protection.
- The proposed amendments will enhance our ability to respond to people's changing needs quickly while strengthening protections. Highlights include:
 - Updating data-residency provisions so public bodies can use modern tools while continuing to protect the personal information people trust us with. The data is encrypted with multiple layers of protection, ensuring mine and your information is safe in the cloud.
 - Strengthening public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting and increasing penalties for offences.
 - Introducing a modest fee for non-personal FOI requests.
 - Demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding cultural protections and removing non-inclusive language.
- These amendments will reinforce the Act's original spirit and intent and improve B.C.'s high-quality freedom of information services to respond to people's requests faster.

2. People are already learning online, accessing telehealth from home and seeing their doctors online, so why do we need these amendments?

- The pandemic taught us better ways of doing things, making everybody's lives a little bit easier through access to online healthcare, education opportunities and technology.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- The order making these advancements possible expires at the end of this year.
- We need to do the work today, to deliver the services people deserve.
- We won't go backwards -- we must move forward, together.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

3. Your government says they are open and transparent, and making life more affordable. How can you say that when you're putting barriers between people and their right to information?

- It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're proposing these amendments today, and not waiting.
- We are a government that's focused on transparency, that's why we've increased our proactive disclosures and have committed to updating FOIPPA.
- We're making it easier and faster for people to access their information.
- Under the old legislation, people waited too long for the information they deserve because of a small number of requestors whose broad and often vexatious requests for information were slowing down the system.
- The volume of requests has increased by more than 40% over a two-year period, reaching an all-time high of over 13,000 requests in 2019/20 (13,055).
- Adding a fee to non-personal FOI requests is in line with other jurisdictions in Canada. It wasn't a barrier to information elsewhere and it won't be here in B.C.
- The fee will apply to only those requesting non-personal requests – mostly to the top 2% of frequent requestors.
- Those asking for personal information will not pay a fee at all.

DATA-RESIDENCY: PRIVACY PROTECTION

4. B.C.'s privacy commissioner complained about x, y and z. What are you doing to address his concerns? For Minister: SEE SEPARATE TABLE for OIPC Summary of concerns

- We wouldn't be introducing these amendments today if it weren't for the expert advice and guidance by the OIPC.
- Through more than a dozen meetings, we worked together with the OIPC on these proposed amendments.
- His input and perspective is integral to getting these right, for the people of B.C.
- It's important to remember that people's data is safe no matter where the data is stored.
- We have protections in place with companies to protect your information, and data is encrypted in multiple layers when stored in the cloud.

5. The OIPC says you are stripping B.C.'s privacy protections – especially with the changes to data residency. Is this true?

- Most other jurisdictions in Canada have been operating safely for years without similar data residency restrictions.
- Our proposed framework builds on and improves what the other provinces have.
- Data residency doesn't protect information; effective controls protect information.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Even Europe's General Data Protection Regulation – widely lauded as the world's most robust privacy law – doesn't restrict data residency.
 - No other province mandates privacy management programs like we are proposing.
 - The level of protection should reflect the level of risk involved, which is why we are strengthening due diligence requirements for public bodies, particularly requiring privacy impact assessments.
 - Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
 - These larger companies, based abroad, have more resources devoted to data security, with some large tech firms investing over \$1 billion per year to keep information secure.
 - In cases where there has been a breach of personal information that could cause significant harm, we will require public bodies to notify the affected person and the Office of the Information and Privacy Commissioner.
- 6. The privacy commissioner, privacy groups and others believe that relaxing data-residency requirements is a step backward. What do you say to those concerned about the perceived softening of privacy protections?**
- Updated data residency requirements will bring B.C. in line with the rest of Canada, who have been managing information safely without similar restrictions.
 - It's important to remember that data residency doesn't protect information – effective controls protect information.
 - B.C.'s legislation has not kept pace with advancements in technology, or the way people access government services.
 - The pandemic has taught us there is high demand for safe and convenient online services that address the changing needs of people, families and organizations in B.C.
 - It will also increase access to modern tools and technologies, such as cloud-based services, so the public sector can quickly and efficiently respond to people's changing needs.
- 7. You say you care about people's right to privacy and information protection. You've also said for years that B.C.'s data is safe within the borders of Canada – so why are you putting it at risk by allowing it to be stored across borders?**
- We've heard from organizations like universities, health authorities and tech companies that our data residency rules were outdated and stopped them from being competitive or responsive to people's evolving needs.
 - It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're proposing these amendments, and not waiting.
 - People want access to healthcare, education opportunities and the technology that is making their lives easier through COVID.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- The Act's current data-residency requirements are blanket protections that require all personal information to be stored and accessed within Canada, except under limited circumstances, even if the personal information has little-to-no risk of causing harm.
- The level of protection should reflect the level of risk involved, which is why we are strengthening due diligence requirements for public bodies, particularly requiring privacy impact assessments.
- Privacy impact assessments consider risk on a case-by-case basis, based on the expected activities and sensitivity of the information involved.
- Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
- These larger companies, based abroad, have more resources devoted to data security, with some large tech firms investing over \$1 billion per year to keep information secure.
- Most data are encrypted in multiple layers, regardless of where it is stored.

8. Will these amendments put health information at risk? With HLTH GCPE for approval

- This FOIPPA change will align data residency requirements, creating consistency across the health sector and providing opportunities to store data with greater security.
- Now, healthcare providers will be able to access to more specialized diagnostic testing tools outside the country.
- Patients will also have access to more tools to help them manage their healthcare with better security to keep their data safe.
- People can safely and securely access telehealth from home or talk to their doctor via Zoom: services that are making people's lives easier through COVID.
- None of that was possible under the old legislation, and the order making these advancements possible expires at the end of this year.
- We learned from the pandemic that we can safely make these changes.
- It's important to remember that your information is safe, no matter where it is stored and that it's protected by many layers of protection and encryption.
- Data residency doesn't protect information – effective privacy controls protect information.
- And because of the Act's current data-residency requirements, often public bodies are forced to use services that are possibly less secure than those offered by established tech companies based abroad.
- The amendments don't change government's need for Canadian datacentres. Where our service providers have Canadian options, we will opt for those.
- The Patriot Act in the US does not pose the same risks it did when data residency was first added to the Act. Technology evolution, new protections and legislation replacing the Patriot Act have all resulted in much less risk.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- The Act already requires ministries to conduct a Privacy Impact Assessment (PIA), which considers risk, case by case, based on the specific activities and information involved and with our changes all public bodies will be required to conduct a PIA when disclosing sensitive information.
 - Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are possibly less secure than similar services offered by established tech companies based abroad that may have more resources to devote to data security.
 - We spend approximately \$25 million each year on information security, but the large tech firms spend over \$1 billion per year – each.
- 9. The pandemic may have shown us better ways to do things, but it also opened us up to increased and more sophisticated cyber threats. How are you keeping our information safe from cyber criminals?**
- In this age of increased cyber security risk, people are understandably concerned about their privacy and protecting their personal information. So are we.
 - Privacy breaches can happen in any jurisdiction, whether the data is stored in a filing cabinet, in a computer system or on a cloud.
 - We are making these changes based on the advice of privacy experts and are confident in the multiple layers of encryption and security measures in place to protect people's data.
- 10. Many of the applications that will use, or store peoples' information are cloud-based. We've seen prominent people have their cloud-based information compromised. How are you going to protect our cloud-based information?**
- Larger, more established tech companies abroad have more resources devoted to data security, with some large tech firms investing over \$1 billion per year to keep information secure.
 - Data is encrypted through multiple layers of protection, regardless of where it is stored.
 - Notably, cloud computing is already used to house non-critical data belonging to:
 - The U.S. Department of Defence
 - National Bank of Canada
 - Interpol
 - In cases where there has been a breach of personal information that could cause significant harm to someone, we will require public bodies to notify the affected person and the Office of the Information and Privacy Commissioner.
 - This will ensure people understand how their information has been handled and allow them to make choices for their own protection.
 - We are strengthening that privacy impact assessments (PIAs) are required by all public bodies, which will ensure that public servants are conducting the due diligence necessary to appropriately handle personal information.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

11. What about the risks posed by the U.S. Patriot Act? British Columbians' information could be compromised by American authorities and we wouldn't be able to stop it.

- Data residency is not the only way to protect information.
- Strong technical controls can be effective in keeping data out of the hands of others.
- When American law enforcement needs B.C. data, there are legal government-to-government processes that can be used.
- The Patriot Act in the US does not pose the same risks it did when data residency was first added to the Act.
- Technology evolution, new protections and legislation replacing the Patriot Act have all resulted in less risk. Broad requests and bulk data collection are no longer permitted.
- The USA Freedom and Cloud acts, which replace much of the Patriot Act, also include a process for challenging requests that did not exist under the Patriot Act.
- Increased automation further decreases risk because it reduces the number of people that can see information and includes new security measures that better protect information.
- This means that it is more difficult to make legitimate law enforcement requests for B.C. data when appropriate controls are in place.

12. The privacy commissioner says he wasn't consulted on the changes to data-residency requirements. Why wouldn't you consult the commissioner on something so important?

- The proposed amendments have been informed through regular meetings and consultation with the Office of the Information and Privacy Commissioner (OIPC), including 18 engagements between April and September 2021.
- While we regularly consult the OIPC on privacy-related issues, their duty isn't to set policy.
- We heard from several public bodies that data residency requirements were making them less competitive and making it harder to deliver the services people deserve.
- The pandemic has taught us that there is a high demand for safe, convenient online services and that we need to remain flexible to keep pace with advancements in technology and the way people access government services.
- We must balance the advice of the OIPC and our top priority of information privacy with our duty to provide responsive, modern services to people in B.C.
- Our amendments have been informed by comprehensive consultation and feedback from the public, Indigenous partners, businesses and organizations.

13. When was section 13 of FOIPPA introduced?

- Section 13 [Policy advice or recommendations] has remained relatively unchanged since the Act first came into force in 1993.
- Minor amendments to this section were last made in 2011, but these were unrelated to issues raised by the Commissioner.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

14. Both the Commissioner and the Special Committee have recommended amending s13. Why aren't you doing this?

- The 2015/16 Special Committee report identified concerns about the scope of S.13.
- Specifically, the Special Committee recommended establishing a publication scheme that would apply to all public bodies for mandatory proactive disclosure of those records listed in s. 13(2)(a) to (n)
- While all recommendations made by the OIPC and past Special Committees were thoroughly reviewed, this is not under consideration at this time.
- Government would like to ensure that the ability for public servants to have full and frank discussion of policy issues remains intact.

15. How does the application of Section 13 of FOIPPA to “factual information” compare against other jurisdictions?

- The laws governing freedom of information in Ontario and Newfoundland contain very similar language to FOIPPA on this issue.
- Most other jurisdictions across Canada take a narrower approach to background information that is used for policy development. A common approach in other provinces is that the head of a public body cannot consider “background research of a scientific or technical nature” as advice or recommendations.
- Some others, such as Quebec, and the federal government, do not clearly address the issue of background information used in policy development.

16. Have there been any significant court rulings respecting the interpretation of section 13 that have implications for B.C.?

- On May 9, 2014, the Supreme Court of Canada (SCC) ruled on an appeal of an Ontario court decision involving an FOI request where Ontario's Ministry of Finance denied the applicant access to the records on the basis that they would reveal advice or recommendations of a public servant (similar to s. 13 of B.C.'s FOIPPA).
- An Adjudicator in the Office of the Information and Privacy Commissioner of Ontario ordered the disclosure of the records and denied the Ministry's application for reconsideration.
- While the Superior Court later dismissed the Ministry's subsequent application for judicial review, the Court of Appeal found the disclosure order was unreasonable, allowed the appeal and remitted the matter to the Ontario IPC.
- The SCC found that the terms "advice" and "recommendations" have distinct meaning and held that "advice" was broader than "recommendations".
- The SCC decision supported and aligns with the B.C. government's interpretation of FOIPPA s. 13.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- The SCC's reasoning focused on maintaining the confidentiality needed to ensure an effective public service; the protection of advice and recommendations is vital to ensuring free and frank discussions within the public service.

17. What happens if we don't make this change to data residency requirements?

- People have come to depend on the use of a variety of tools that have been available to them through the pandemic.
- The ministerial order allowing these tools by law will expire at the end of the year.
- The current restrictions force public bodies to use less effective and sometimes less secure technology solutions. Our vendors are moving to international solutions and are leaving B.C. behind without any alternatives.
- This means that, without change, public bodies in B.C. may be forced to build their own systems, at great expense, because they won't be able to access solutions on the market that comply with B.C.'s strict data-residency rules.
- Lack of access to modern tools and technologies also poses a risk to public bodies' innovation and competitiveness. For example, greater access to cloud-based services will improve B.C. post-secondary institutions' ability to attract students by allowing them to use many of the cloud-based education tools that their competitors can offer outside of B.C.

18. What privacy protection controls are you putting in place to reinforce the province's role in safeguarding information given the relaxation of data-residency requirements?

- The existing government requirements for a privacy management program to be in place will be extended to the entire public sector. A privacy management program includes governance, accountability, policies, processes and training on protecting information.
- Context is critical - privacy protection controls should be scaled to the potential risks to information and based on the specific context of that information.
- These changes will also allow the use of security tools that were not previously available to B.C. public bodies – for example, tools that help scan emails for different threats.
- In cases where there has been a breach of personal information that could cause significant harm to someone, we will be requiring public bodies to notify the affected person and the Office of the Information and Privacy Commissioner.
- This will ensure people understand how their information has been handled and allow them to make choices for their own protection.
- We are requiring all public bodies to conduct privacy impact assessments (PIAs), to ensure they appropriately handle personal information.
- And it's important to remember that storing personal data outside of Canada is not new: there are 30 existing purposes under the Act currently that permit this.

19. What is mandatory breach reporting and why is it just now being introduced?

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Mandatory breach reporting is current practice in provincial ministries and requires public bodies to notify affected individuals and the privacy commissioner in the event of a privacy breach where there is reasonable expectation of significant harm.
- We are strengthening government accountability and transparency by making this current policy and best practice mandatory for both ministries and the broader public sector.

20. Why is mandatory breach reporting coming into force later?

- We intend to bring mandatory breach reporting into force one year after Royal Assent to give public bodies time to prepare for new legal requirements.
- Government will continue this practice, as it has been doing for many years.

CONSULTATION:

21. I thought you consulted with public institutions about fees and that they advocated for them? But some are saying they didn't advocate for fees?

- I'd like to clarify my previous comments about the FOIPPA consultation with public bodies.
- We consulted with thousands of people, businesses, Indigenous communities and public sector bodies, including health authorities and post-secondary institutions.
- As part of our extensive consultation process, we brought recommendations to participants and asked for their feedback on how an application fee may or may not impact their organization.
- I can confirm that public bodies didn't advocate for fees during consultation.
- We also did not hear any objections.
- We took the feedback we received into consideration as we drafted proposed amendments and thank the thousands of people who helped us.

22. How have you consulted people prior to making these amendments?

- We have heard from thousands of people, Indigenous communities businesses and organizations.
- The proposed amendments reflect what we've heard through many engagements and consultations including with Indigenous communities, the public, input from subject-matter experts across government, and recommendations from the OIPC and past Special Committees of the Legislative Assembly.
- In 2018-19, substantial engagement was completed to identify stakeholder concerns and priority issues including through an online govTogetherBC public engagement, a series of roundtables with key stakeholder groups, discussions with Indigenous communities and a mail-out campaign asking for input and recommendations from over 200 First Nations communities.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Building on these earlier consultations, between April and August 2021, the Ministry of Citizens' Services re-engaged with many of the same groups, including government ministries, broader public sector public bodies, municipalities, Indigenous leaders and communities, the B.C. tech sector, the OIPC and the general public to confirm previous inputs and gain a current understanding of potential impacts.
- Feedback was received through Minister and ADM roundtable meetings, presentations to stakeholder groups, meetings with ministry staff, two public surveys administered by govTogetherBC and Ipsos, which received 1,600 and 800 responses, respectively, a questionnaire distributed to leaders in the over 200 First Nations in B.C., and discussions with Treaty First Nations representatives.

23. Which Indigenous partners have you spoken with?

- The Ministry of Citizens' Services has had meaningful discussions with the Union of BC Indian Chiefs, First Nations Summit, First Nations Leadership Council, the BC Assembly of First Nations.
- The Ministry also engaged with Treaty First Nations including meetings with representatives from the five Maa-nulth nations, Tsawwassen First Nation and the Nisga'a Lisims Government.
- To gain the perspective of Indigenous Peoples on access to information and privacy, we have twice invited leaders of over 200 B.C. First Nations to provide input, most recently, through an online questionnaire.
 - In response to this invitation, representatives from the Stk'emlupsemc Te Secwepemc Nation requested a meeting with Ministry staff, which was held in early September 2021.
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous Peoples as we move forward with this work.

24. Did you consult with advocacy groups such as the B.C. Freedom of Information and Privacy Association (FIPA)? If yes, how did you consider their input?

- We engaged with FIPA in 2018-19 on similar amendments.
- We also considered FIPA's submissions to previous Special Committees of the Legislative Assembly that reviewed the Act when developing our amendments package.
- In summer 2021, we focused on talking to directly impacted stakeholders and partners, such as public bodies, the OIPC, the public and Indigenous representatives.

25. How will the amendments address previous Special Committee and Commissioner recommendations?

- Recommendations by privacy experts, including the OIPC and Special Committee, are integral to our proposed amendments.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- There are many longstanding recommendations from previous Special Committees of the Legislative Assembly that reviewed the Act, and from the Information and Privacy Commissioner.
- The proposed amendments address several of these recommendations, including recommendations about mandatory breach reporting, privacy management programs and subsidiary corporations.
- Several of their other recommendations have also been addressed through policy, for example, FOI applicant anonymity protection.
- And we have issued several new proactive disclosure directives in recent years to address recommendations related to government accountability and transparency.

26. Why aren't you waiting for the new Special Committee's recommendations?

- The ministerial order that currently allows government to offer services that people have come to expect in the digital era is expiring at the end of December.
- For example, right here in the house with Zoom...
- The last two Special Committees made several recommendations that were not enacted by the previous government.
- In fact, the Act has not been substantially updated since 2011.
- The legislation tabled this week includes many of the recommendations of the past two Special Committees, such as:
 - Making the destruction of documents to evade access an offense; and
 - Making it mandatory to notify individuals and the commissioner of privacy breaches.
- We've also acted on other key recommendations to create a duty to document and expand proactive disclosures.
- We anticipate that the new Special Committee would, if we waited to amend the Act, repeat many of these previous recommendations.
- Updating the Act now allows the new Special Committee to focus on emerging issues.
- This legislation allows us to continue offering these services to people in BC while the Special Committee does its important work.

FEES

27. How will a fee help deliver better services to people, and get them the information they are entitled to under the very Act you are amending?

- You only have to take a look at other jurisdictions to see how implementing a modest fee helps reduce overall FOI requests.
- Right now, B.C. receives more FOI requests annually than the three western provinces, combined.
- The fee was designed so people can access the information they need, but currently can't because a small group of requestors are overloading the system.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- It's slowing down our ability to get people's personal information to them, and that's unacceptable.
- If charging a modest fee for non-personal requests helps people focus their request, then we know we're on the right track.

28. If your government is all about making life more affordable, why are you adding yet another fee?

- We're proposing a modest fee that will only impact those making general, non-personal requests.
- Those asking for personal information will continue to not pay a fee at all.
- This isn't about revenue, this is about supporting the people making information requests to focus them so they get the most useful information, faster.

29. The fee seems like a money grab. Is the deficit so big that you need to nickel and dime people?

- A modest application fee is about reinforcing the spirit and intent of the Act.
- Those requesting their own personal information will continue to pay no fee at all.
- Under the old legislation, people waited too long for the information they deserve because of a small number of requestors whose broad and often vexatious requests for information were slowing down the system.
- Government processes more than 10,000 freedom of information requests each year and the average cost of processing a single FOI request is \$3,000, though some large, complex requests can exceed this.
- The volume of requests has increased by more than 40% over a two-year period, reaching an all-time high of over 13,000 requests in 2019/20 (13,055).
- Adding a fee to non-personal FOI requests is in line with other jurisdictions in Canada. It wasn't a barrier to information elsewhere and it won't be here in B.C.
- The fee will apply to only those requesting non-personal requests – **mostly** to the top 2% of frequent requestors. The application fee is not intended to recover the cost – or even a significant portion of the costs – for an information request.
- The intent is to encourage applicants to be more specific in their requests about the records they are seeking, and the ministries they are seeking the records from, so that we can improve freedom of information services for people so they can get their information, faster.

30. The fee seems targeted at media and political parties. Are you trying to stifle requests? What are you hiding?

- Those making personal requests will continue to pay no fee at all.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- By making the fee for non-personal requests modest, we are ensuring the application fee is not a barrier to information access.
- People, businesses and organizations deserve to have timely access to information.
- They do not get full value from the FOI system when it is inundated by a small number of applicants making overly broad or intentionally vexatious requests.
- The fee is intended to focus requests made and improve B.C.'s freedom of information services to the thousands of people who request access to information every year.

31. You haven't been explicit on how much this 'application fee' will be. How much are you planning to charge people for public access to information?

- B.C.'s modest fee will not be a barrier to access and it won't apply to those requesting their own information.
- Across Canada, application fees for general information requests range from \$5 to \$50. B.C.'s will be consistent with other administrative fees.
- Other provinces have been charging fees for more than a decade.
- The fee will be set through regulation following Royal Assent.

32. How much revenue is the application fee expected to raise and where will it go?

- We expect approximately \$100,000 annually will be generated by application fees.
- This is a fraction of more than an estimated \$30 million annually that it costs to process general FOI requests.

s.12; s.13

33. What happens if a request is met with a no records response? Do people get their money back?

- This is a modest application fee, not a response fee.
- Requestors are encouraged to be as focused and specific as possible in their request in order to get the information that they are seeking.
- There will be no refunds.

34. Are there other jurisdictions that charge a fee for information access?

- The federal government, Alberta, Ontario, PEI and Nova Scotia and Nunavut charge application fees for general access to information requests.
- In Saskatchewan, local governments charge for their access to information requests.
- Fees in other jurisdictions range from \$5 - \$50.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

35. So who are making the most requests? Can you prove that a small portion of applicants are backing up the system?

- The two most prolific FOI applicants in 2020-21 were:
 - One political party requestor with 4,772 requests at a cost of \$14.3 million. That's more than 13 requests a day.
 - And one media requestor with 397 requests at a cost of \$1.2 million. That's more than one a day, for every day of the year.
- By comparison, all other media requestors combined accounted for 328 requests at a cost of \$1 million.
- If applicants were encouraged to focus their requests, it would save the FOI system from having to seek and produce sometimes upwards of thousands of records that aren't helpful to the applicant but are extremely time and resource-consuming to produce.
- If we can make changes to help people get the information they deserve, faster, we're going to do it.

36. So, the application fee is about putting a stop to one political party's and one media outlet's perceived, excessive requests?

- As in other jurisdictions, the modest fee is meant to encourage requestors to focus on the information that they need and deserve, not thousands of pages that are of no use to the applicant.
- If we can help people get the information they need, faster, by introducing a modest fee, then we will.
- People do not get full value from the FOI system when it is inundated by a small number of applicants.
- The backlog created by a handful of high-volume requestors has a direct impact on the resources available to respond to others – such as personal requests from youth in care, inmates, and disability or income assistance requestors.
- The application fee is intended to reinforce the spirit and intent of the Act by encouraging applicants to be more focused when making requests, which will free up resources so that we can be more responsive to requests that we receive.

37. Health Authorities are saying they didn't advocate for the FOI fees – is that accurate?

- A proposed FOI application fee is to focus the significant volume of FOI requests and ensure that public resources are also focused on giving people access to the information as quickly and easily as possible.
- Consultation engagements were held with public bodies in June 2021, including post-secondary institutions and health authorities, to hear broad feedback on FOIPPA.
- The organizations were presented with an overview of the broad amendments including FOI potential changes.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 21, 2021

- Feedback from both post-secondary and health authorities were focused on data residency, with the health authorities also speaking to the substantial increase of general requests during the COVID-19 pandemic. Feedback included encouragement to review the fees as they currently don't align with the cost of processing a request.
- Public sector comments focussed on operational impacts related to FOI requests, the results of both the govTogetherBC and Ipsos surveys highlighted that the accuracy of the information the public receives from government through the FOI processes is paramount. The speed of response and low/no fees were secondary.

38. It sometimes takes several attempts to get an FOI right – that's going to get very expensive. How are you ensuring people don't get dinged unjustly?

- B.C. is committed to providing timely and helpful FOI service to the people of British Columbia.
- Applying an application fee will help preserve FOI resources for people who use the system to access the information they need, including citizens requesting access to their own personal information.
- FOI staff regularly work with applicants to assist in focussing their requests so that they can receive the information they need, faster and more efficiently.
- FOI staff will be available to support requestors in identifying which ministry may hold the records they are seeking.

OTHER:

39. How was this legislation reviewed using a GBA+ lens?

- For one, we're removing all gendered and non-inclusive language from the legislation.
- The legislation hasn't been substantially updated since 2011; we had a lot of work to do.

40. When will the amendments come into force?

- All amendments to the Act are anticipated to come into force within a year.
- Some amendments won't come into force immediately so that public bodies can prepare to meet the new legal requirements.

Media scan – FOIPPA (Oct. 18-21, 2021)

Index

1. [Morning issues report summaries](#)
2. [Summaries of comments from clips](#)
3. [TNO clips Oct. 19-21](#)
4. [News releases, statements, etc.](#)
 - a. [OIPC letter to Minister Beare](#)
 - b. [Privacy Commissioner statement](#)
 - c. [FIPA news release](#)
5. [Twitter](#)
6. [Hansard](#)
 - a. [Wednesday, Oct. 20 – afternoon sitting\(BLUES\)](#)
 - b. [Tuesday, Oct. 19 – afternoon sitting\(BLUES\)](#)
 - c. [Tuesday, Oct. 19 – morning sitting\(BLUES\)](#)
 - d. [Monday, Oct. 18 – afternoon sitting\(BLUES\)](#)

Morning issues report summaries

From morning issues report – Oct. 21

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Page 0838 of 1215 to/à Page 1049 of 1215

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MLA KIT

Ministry of Citizens' Services

FOIPPA amendments

Dear Member,

On Oct. 18, 2021, I introduced a bill in the Legislative Assembly, proposing amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Outdated FOIPPA legislation, last updated a decade ago, is not working for people. Through the COVID-19 pandemic, B.C. found a better, more effective way to deliver services that people have come to expect.

With input from thousands of people, businesses, Indigenous communities and public bodies, proposed changes to FOIPPA will help B.C. keep pace with new technology, strengthen privacy protections and improve services for thousands of people who request information each year. Highlights include:

- updating FOIPPA's data-residency provisions so public bodies can use modern tools while continuing to protect personal information;
- enhancing public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting, increasing penalties, and adding new offences;
- introducing an application fee for non-personal FOI requests;
- demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding Indigenous cultural protections and removing non-inclusive language.

B.C.'s *Freedom of Information and Protection of Privacy Act* keeps government accountable to the public, provides people with a way to access records held by public bodies and protects their privacy by establishing how public bodies collect, use and disclose personal information.

There are more than 2,900 public bodies covered by the Act including government ministries, Crown corporations, and public bodies such as municipalities, universities, colleges, school boards and health authorities.

Apart from minor amendments in 2019, the Act has not been substantially updated since 2011.

Since 2017, we undertook extensive public, stakeholder and Indigenous community engagement to hear feedback on the Act. This engagement and recommendations from two all-party Special Committees of the Legislative Assembly as well as B.C.'s privacy commissioner have informed proposed amendments.

Below, you will find information that will help you with general response to questions from your constituents. I ask that you refer media to Kirsten.Youngs@gov.bc.ca, GCPE-CITZ, and any technical questions to the Privacy and Access Helpline: Privacy.Helpline@gov.bc.ca or 250 356-1851. Questions may also be directed to Samantha.Scott@gov.bc.ca in my ministerial office.

KEY MESSAGES

- People's lives have changed. The COVID-19 pandemic changed the way we live, work, connect with loved ones and access the services we need.
- B.C.'s *Freedom of Information and Protection of Privacy* legislation is outdated, last updated a decade ago, and is not working for people.
- These amendments bring us in line with the rest of Canada, and ensure we are managing people's information safely while delivering the tools and services they need.
- Through the COVID-19 pandemic, B.C. found a better, more effective way to deliver services that people have come to expect.
- People want timely access to their personal information as well as to healthcare, education and the technology that's making their lives easier.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business faster, and can access online education tools.
- With these amendments, people can continue to access the services they need, faster and more effectively, while strengthening protections. We are:
 - Updating data-residency provisions so public bodies can use modern tools while continuing to protect the personal information people entrust to us.
 - Enhancing public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting and increasing penalties for offences.
 - Introducing an application fee for non-personal FOI requests.
 - Demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding Indigenous cultural protections and replacing non-inclusive language.

SOCIAL MEDIA

Social media will be shared **upon Royal Assent**. In the interim, I ask that you please retweet/reshare any posts that I make on my Twitter (@lisabeare) or Facebook (www.facebook.com/lisabeare) accounts.

Q&A

1. Why are you amending the Freedom of Information and Protection of Privacy Act?

- The COVID-19 pandemic changed people's lives. It has changed the way we live, work, connect with loved ones and access the services we need.
- British Columbians want to continue accessing the services they have come to rely on such as meeting your doctor online from home or virtual education tools. They want to access their personal information quickly, and they want to ensure their privacy is protected.
- Under the old legislation, BC was falling behind. And we are fixing that.

If pressed:

- B.C.'s Freedom of Information and Protection of Privacy legislation is outdated and is not working for people.
- These amendments bring us in line with the rest of Canada, and ensure we are managing people's information safely while delivering the tools and services they need.
- Through the COVID-19 pandemic, B.C. found a better, more effective way to deliver services that people have come to expect and that make their lives easier.
- Our changes will help B.C. keep pace with new technology, ensure timely access to information, strengthen privacy protections and improve services for people in B.C.

2. Why are you introducing an application fee for general freedom of information requests?

- B.C.'s *Freedom of Information and Protection of Privacy* legislation is outdated, last updated a decade ago, and is not working for people.
- The proposed application fee for non-personal requests brings us in line with the rest of Canada and is designed to get people the information that they deserve, faster and more efficiently.
- Fees in other jurisdictions:
 - Alberta: \$25 for first request - \$50 per continuing request
 - Saskatchewan: \$20 per requests to local governments
 - Ontario: \$5 per request
 - Nova Scotia: \$5 per request
 - Prince Edward Island: \$5 per request
 - Nunavut: \$25 per request
 - Canada: \$5 per request.
 - At this time, Manitoba, Quebec, New Brunswick, Newfoundland and Labrador, Yukon and Northwest Territories have no fees.
- Because although we've increased B.C.'s on-time FOI response rate significantly, we're hearing from people that it's taking too long to respond.
- This is mostly because of overly broad requests that are slowing down the system.
- A small fee encourages requesters to focus and streamline their requests.
- And for the thousands of people in B.C. requesting their own personal information each year, there will continue to be no fee.
- We have increased the number of public proactive disclosures that make government information available to everyone for free, including every Minister's estimates binder, which are available to everyone for free.

If pressed: why can't you just put a cap on the number of free requests?

- A cap system on the number of free requests is not an effective solution.
- A cap system could encourage applicants with large numbers of requests to create multiple 'usernames and contact details' to avoid being charged a fee in a cap system.
- For this reason, other jurisdictions have not pursued this approach.
- By implementing an application fee, we can cut down on broad, vexatious or "fishing" requests and focus resources on people who are asking for the information that they need.

3. By relaxing data-residency requirements, aren't we also sacrificing privacy protections?

- It's our role to listen to what's going on in people's lives. People want access to continue accessing the services they have had under COVID like telehealth from home and online education.
- In 2004, B.C. increased data residency controls and no other province followed our lead on that.
- We won't go backwards.
- Businesses, universities, health authorities have repeatedly told us that our data residency rules were outdated and stopped them from being competitive and responsive to the needs of people - and we've listened.
- B.C. fell behind and this legislation is bringing us in line with the rest of Canada and ensuring that we are managing people's information safely while delivering the tools and services they need.

If pressed:

- B.C.'s *Freedom of Information and Protection of Privacy* legislation is outdated and is not working for people.
- These amendments bring us in line with the rest of Canada, and ensure we are managing people's information safely while delivering the tools and services they need.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their co-workers and do business, faster, and can access online education tools.
- The Ministerial order making these advancements possible expires at the end of the year.
- We need to do the work today, to deliver the services people deserve.
- It's important to remember that your information is safe, no matter where it is stored.
- Data residency doesn't protect information – effective privacy controls do, and with these proposed amendments, we are making sure those are in place.

4. Why aren't you waiting for the new Special Committee's recommendations?

- The ministerial order that currently allows government to offer services that people have come to expect in the digital era is expiring at the end of December.
- The last two Special Committees made several recommendations that were not enacted by the previous government. In fact, the Act has not been substantially updated since 2011.
- The legislation tabled this week includes many of the recommendations of the past two Special Committees, such as:
 - Making the destruction of documents to evade access an offense; and

- Making it mandatory to notify individuals and the commissioner of privacy breaches.
- We've also acted on other key recommendations to create a duty to document and expand proactive disclosures.
- We anticipate that the new Special Committee would, if we waited to amend the Act, repeat many of these previous recommendations, so we took action now.

5. What about the privacy Commissioner's concerns?

- We value the meaningful consultation that has occurred with the Commissioner and have included many items in the legislative package that respond directly to recommendations made by the Commissioner. We have also revised items in response to his feedback.
- The OIPC is an independent office and an advocate for privacy and access.
- As government, we need to balance his concerns with the concerns of others, including those of public bodies.
- We are hearing from people and businesses that B.C.'s legislation has not kept pace with advancements in technology, or the way people access services.
- We are taking action to fix that.

6. What privacy protection controls are you putting in place to reinforce the province's role in safeguarding information given the relaxation of data-residency requirements?

- FOIPPA's current security requirements (s. 30) remain in place and require more security controls where risks are higher.
- We are implementing mandatory breach reporting and extending the privacy management program to the entire public sector.
- We are requiring all public bodies to conduct privacy impact assessments (PIAs), to ensure they appropriately handle personal information.
- And the amendments will allow the use of security tools for that scan emails for threats, for example.

7. What do you say to critics who claim the NDP bombarded the now-Opposition with FOI requests in the past, and have now done an about face?

- That is simply not true.
- We accessed the FOI system to better understand how government was making decisions, but the numbers don't lie:
 - in 2016/17, the year before the election, the NDP made 1,588 FOI requests.
 - in 2020/21, political parties made more than 4,700 – **three times the amount**.

8. What about people's health data? Can you promise it will be safe?

- People want to continue to access the health services they have come to expect during COVID-19.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, or access specialized diagnostic tests which wasn't possible under the old legislation, so we are fixing it.

- British Columbians deserve to know that their information will be kept safe no matter where it is stored and that we are increasing privacy protections.
- In 2004, B.C. increased data residency controls and no other province followed our lead.
- This legislation is bringing B.C. in line with the rest of Canada and the provinces who have been managing health information like this safely for decades.

9. Who did you consult before proposing these amendments?

- We have heard from thousands of people, Indigenous groups, businesses, organizations and representatives from the public sector, over several years.
- The proposed amendments reflect what we've heard through that consultation, as well as input from subject-matter experts across the public sector, and recommendations from the OIPC and past Special Committees of the Legislative Assembly.
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous peoples as we move forward with this work.
- A summary of the 2021 engagement, including public surveys, is available at:
<https://engage.gov.bc.ca/govtogetherbc/impact/information-access-and-privacy-2021—results>

FOIPPA facts and figures

There are more than 2,900 public bodies covered by the Freedom of Information and Protection of Privacy Act including government ministries, Crown corporations, and local public bodies such as municipalities, universities, colleges, school boards and health authorities.

BC Government FOIPPA by the numbers (2020/21)

10,265	Total number of FOI requests (6,467 general and 3,798 personal)
\$30 million	Total annual cost for government to process general FOI requests
\$51,000	Total fees collected by Ministries for FOI requests
3.3 million	Number of responsive pages processed
85%	On time response rate for FOI requests
58	Average number of days to process an FOI request
\$3,000	Average cost to government to process one FOI request
62%	Percent of the general requests from political parties
3,521	Proactive disclosures made under Ministerial directives
90%	Percentage of ministry employees completed privacy/FOI training
972	Number of privacy impact assessments conducted

FOI requests

- One political party requestor has made 4,772 requests at a cost of \$14.3 million – that's more than 13 requests a day. This requester makes more general requests in a year than the province of Alberta receives from all general requestors in a year.
- One media requestor with 397 requests at a cost of \$1.2 million – that's more than one per day.
- All other media requestors combined accounted for 328 requests at a cost of \$1 million.
- Approximately 98% of applicants make fewer than five requests annually, with most making only one.
- B.C. receives requests per capita than in the three prairie provinces (AB, SK, MB) combined.
- Under the existing fee schedule (which allows fees to be charged for locating/producing records), the average amount recouped per FOI request is \$5. Fees are only collected in 2% of all general requests.
- In 2016/17, 1,588 FOI requests were closed, whereas in 2020/21, this government closed 4,773.

Political Party Requests

***Numbers change daily**

Fiscal	# FOIs received	Cost to government	# FOIs closed	On-time rate (%)
2016/17	1,279	\$3.9M	1,588	77%
2018/19	4,925	\$14.8M	4,513	93%
2019/20	5,837	\$17.5M	5,948	82%
2020/21	4,033	\$12.1M	4,772	84%
2021/22 YTD	1,125*	\$3.4M*	1,164*	74%*

Fees

<i>Jurisdiction</i>	<i>Application Fee</i>
<i>Alberta</i>	\$25 for first request / \$50 per continuing request
<i>Saskatchewan</i>	\$20 per requests to local governments
<i>Ontario</i>	\$5 per request
<i>Nova Scotia</i>	\$5 per request
<i>Prince Edward Island</i>	\$5 per request
<i>Nunavut</i>	\$25 per request
<i>Canada</i>	\$5 per request
Manitoba, Quebec, New Brunswick, Newfoundland and Labrador, Yukon and Northwest Territories have no fees.	

Privacy

Data residency restrictions

- Provisions in Privacy Legislation
 - Nova Scotia has specific provisions related to data residency outlined in their legislation.
 - Quebec describes the parameters required for disclosure outside Quebec (public body responsibility to ensure equivalent protection or else it must refuse to release)
 - Some other jurisdictions have some data residency requirements in sector specific legislation (e.g. Health sector), or in policy.

Privacy management programs

- With these amendments BC will be the only jurisdiction in Canada to require privacy management programs in law.

Information security spending

- BC government spends approximately \$25 million each year on information security whereas many large tech firms can each spend over \$1 billion per year.

FOIPPA consultations (April to September 2021)

1,600 and 800	Responses to two public surveys
200+	Leaders of First Nations in B.C. surveyed (12 total responses across 2 separate surveys)
60+	Organizations participated in roundtable conversations
100+	Engagements with B.C broader public sector bodies, government ministries, Indigenous partners, the technology sector, the Office of the Information and Privacy Commissioner and the public
18	Engagements with the Office of the Information and Privacy Commissioner

Special Committees of the Legislative Assembly

- While all recommendations made by the 2010/11 and 2015/16 Special Committees have been thoroughly reviewed, not all of the recommendations will be addressed through this package.

- 9 recommendations will be addressed through the Bill.
- 8 recommendations have been addressed either through policy or other means.
- 22 recommendations remain unaddressed.
- Proposals to address Special Committee recommendations include:
 - An offence and penalty for the wilful destruction of records with the intent to evade a request for access.
 - An offence and penalty for unauthorized collection or use of personal information.
 - The expansion of coverage of the Act to include subsidiary entities owned or controlled by public bodies.
 - A new legal requirement to notify affected individuals and report to the Commissioner where a privacy breach could reasonably be expected to cause significant harm to the individual.
 - A new legal requirement for public bodies to have a privacy management program.

Appendix: Detailed data

Types of FOI requests	2018/19	2019/20	2020/21
General	7,622	8,147	6,467
Personal	4,633	4,908	3,798
Total	12,255	13,055	10,265*

* drop in volume is attributed to significantly fewer requests from political parties and individuals during the COVID-19 pandemic.

General FOI requests by applicant type	2019/20	2020/21
Political Party	5,836	4,033
Individual	946	896
Media	536	760
Business	302	238
Law Firm	213	214
Interest Group	195	210
Researcher	68	87
Other Government	34	17
Other Public Body	17	12

FOIs	2019/20	2020/21
Total Number of FOI Requests Closed	12,899	10,841
Total Number of General Requests Closed	8,317	7,151
Number of Requests Where Fees Paid	145	144
Sum of Fees Paid (nearest thousand)	\$44,000	\$51,000
Percent of General Requests Where Fees Paid	1.74%	2.01%
Average Fee per FOI Request	\$3	\$5

PIAs	2019/20	2020/21
Total PIA	1,171	972
Operational PIA	846	620
LPIA/RPIA	325	352

Privacy	2019/20	2020/21
Reported (Privacy Breaches and Complaints)	2,234	1,977
Investigations Conducted	1,889	1,622
Violations Occurred	1,405	1,493

Proactive disclosure	2018/19	2019/20	2020/21
FOI requests	2,493	2,570	1,841
Other directives	1,533	1,494	1,680
Total	4,026	4,064	3,521

Page 1060 of 1215 to/à Page 1062 of 1215

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FOIPPA Legislation – Validator Quotes

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Page 1064 of 1215

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INFORMATION ACCESS AND PRIVACY PUBLIC ENGAGEMENT

"WHAT WE HEARD"

TRANSPARENCY

Documenting Government Decisions

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

A few suggested that if public bodies fail to create and retain appropriate records, the public's perception of government transparency is negatively affected.

Expanding Coverage of the Act to Subsidiary Entities

Some public bodies own or control other entities, which have been created to carry out specific functions on behalf of the public body. Several participants noted that entities that perform a public function should be held to the same level of transparency and accountability as public bodies

THE FOI PROCESS

Fees for Requests

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

Some participants were concerned that fees could discourage low-income British Columbians or not-for-profit groups from making requests. Some suggested that fees should be either reduced or simplified, for example by charging a flat-rate application fee for general requests. A few participants suggested that no fees should be charged for electronic documents.

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

Fee Waivers

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

Fees for Broad or Voluminous Requests

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

Training and Resources

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

The Application Process

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

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

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

Timelines for Responding to Requests

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

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

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

PROTECTING PRIVACY

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

WHISTLEBLOWER PROTECTION

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

DUTY TO ARCHIVE

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

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

PROACTIVE DISCLOSURE

To support transparency, several participants agreed that government has a duty to provide routine, timely proactive access to records, without the need for an FOI request.

A few participants noted that information that is already frequently requested via FOI requests should be released proactively. Some respondents felt that the routine and timely, predictable and proactive release of records may reduce the quantity of FOI requests, therefore improving timeliness.

DISCLOSURE IN THE PUBLIC INTEREST

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

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

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

OFFENCES AND PENALTIES

FOIPPA contains both general and specific offences for which an individual or organization is liable, upon conviction, to a fine. Several participants felt that public bodies need to be held more accountable and supported increased penalties or fines for those who fail to meet the requirements of the Act.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

Contents

Key Messages	4
What's changing with FOIPPA, and why?	4
Why changing data residency requirements is the right thing to do:	5
What about people's health data? Can you promise it will be safe?	6
What about the privacy Commissioner's concerns?	7
If asked about openness and transparency	7
What is the rationale behind implementing fees for FOI requests?	9
If pressed on how much it will be:	9
If asked about the breakdown of fees charged:	9
How does this support Indigenous relationships and service delivery? ^{s.13}	11
If asked about long outstanding FOI requests:	11
Why can't you just put a cap on the number of free requests?	12
What about personal FOI requests? How many of those are there?	12
How are you modernizing the legislation with these changes?	13
If asked about data residency requirements and keeping people's data safe?	14
If asked about removal of Office of the Premier from Schedule 2:	15
If asked about MLA Stone's assertions regarding Social Media/Data Linking:	15
Questions and Answers	17
1. Why are you amending the Freedom of Information and Protection of Privacy Act?	17
2. People are already learning online, accessing telehealth from home and seeing their doctors online, so why do we need these amendments?	17
3. Your government says they are open and transparent, and making life more affordable. How can you say that when you're putting barriers between people and their right to information?	18
DATA-RESIDENCY: PRIVACY PROTECTION	18
4. B.C.'s privacy commissioner complained about x, y and z. What are you doing to address his concerns?	18
5. The OIPC says you are stripping B.C.'s privacy protections – especially with the changes to data residency. Is this true?	18
6. The privacy commissioner, privacy groups and others believe that relaxing data-residency requirements is a step backward. What do you say to those concerned about the perceived softening of privacy protections?	19

CONFIDENTIAL ADVICE FOR MINISTER

Key Messages / Topic Scripts / Questions and Answers

**Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021**

7. You say you care about people's right to privacy and information protection. You've also said for years that B.C.'s data is safe within the borders of Canada – so why are you putting it at risk by allowing it to be stored across borders?	19
8. Will these amendments put health information at risk?	20
9. The pandemic may have shown us better ways to do things, but it also opened us up to increased and more sophisticated cyber threats. How are you keeping our information safe from cyber criminals?	21
10. Many of the applications that will use, or store peoples' information are cloud-based. We've seen prominent people have their cloud-based information compromised. How are you going to protect our cloud-based information?	21
12. The privacy commissioner says he wasn't consulted on the changes to data-residency requirements. Why wouldn't you consult the commissioner on something so important?	22
13. When was section 13 of FOIPPA introduced?	22
14. Both the Commissioner and the Special Committee have recommended amending s13. Why aren't you doing this?	23
15. How does the application of Section 13 of FOIPPA to "factual information" compare against other jurisdictions?	23
16. Have there been any significant court rulings respecting the interpretation of section 13 that have implications for B.C.?	23
17. What happens if we don't make this change to data residency requirements?	24
18. What privacy protection controls are you putting in place to reinforce the province's role in safeguarding information given the relaxation of data-residency requirements?	24
19. What is mandatory breach reporting and why is it just now being introduced?	25
20. Why is mandatory breach reporting coming into force later?	25
CONSULTATION	25
21. I thought you consulted with public institutions about fees and that they advocated for them? But some are saying they didn't advocate for fees?	25
22. How have you consulted people prior to making these amendments?	25
23. Which Indigenous partners have you spoken with?	26
24. Did you consult with advocacy groups such as the B.C. Freedom of Information and Privacy Association (FIPA)? If yes, how did you consider their input?	26
25. How will the amendments address previous Special Committee and Commissioner recommendations?	27
26. Why aren't you waiting for the new Special Committee's recommendations?	27
FEES	27

CONFIDENTIAL ADVICE FOR MINISTER

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

-
27. How will a fee help deliver better services to people, and get them the information they are entitled to under the very Act you are amending?27
28. If your government is all about making life more affordable, why are you adding yet another fee? 28
29. The fee seems like a money grab. Is the deficit so big that you need to nickel and dime people?28
30. The fee seems targeted at media and political parties. Are you trying to stifle requests? What are you hiding?29
31. You haven't been explicit on how much this 'application fee' will be. How much are you planning to charge people for public access to information?29
32. How much revenue is the application fee expected to raise and where will it go?29
33. What happens if a request is met with a no records response? Do people get their money back? 29
34. Are there other jurisdictions that charge a fee for information access?29

s.13

s.13; s.16

38. So who are making the most requests? Can you prove that a small portion of applicants are backing up the system?30
39. So, the application fee is about putting a stop to one political party's and one media outlet's perceived, excessive requests?31
40. Health Authorities are saying they didn't advocate for the FOI fees – is that accurate?31
41. It sometimes takes several attempts to get an FOI right – that's going to get very expensive. How are you ensuring people don't get dinged unjustly?32
- OTHER32**
42. How was this legislation reviewed using a GBA+ lens?32
43. When will the amendments come into force?32

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

Key Messages

What's changing with FOIPPA, and why?

- People's lives have changed. The COVID-19 pandemic changed the way we live, work, connect with loved ones and access the services we need.
- B.C.'s outdated *Freedom of Information and Protection of Privacy* legislation, last updated a decade ago, is not working for people.
- Through the COVID-19 pandemic, B.C. found a better, faster, more effective way to deliver the services people have come to expect.
- People want timely access to their personal information as well as to healthcare, education tools and the technology that's making their lives easier.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- Highlights of the proposed amendments include:
 - Updating data-residency provisions so public bodies such as universities or health authorities can use modern tools while continuing to protect the personal information people trust us with.
 - Strengthening public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting and increasing penalties for offences.
 - Introducing a modest fee for non-personal FOI requests.
 - Demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding cultural protections and removing non-inclusive language.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

Why changing data residency requirements is the right thing to do:

- We listened and learned from the public, Indigenous leaders, businesses and organizations through extensive consultation over several years on FOIPPA.
- Organizations like universities, health authorities and tech companies repeatedly told us that our data residency rules were outdated.
- They stopped them from being competitive or most importantly, responsive to people's evolving needs.
- It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're proposing these amendments.
- Today, people can **safely and securely** access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- People want access to healthcare, education opportunities and the technology that is making their lives easier through COVID.
- The order making these advancements possible expires at the end of this year.
- We need to do the work today, to deliver the services people deserve.
- We won't go backwards -- we must move forward, together.
- Thousands of people, businesses, Indigenous groups and organizations provided input through extensive consultation over several years.
- The amendments reflect that important input and those perspectives.

Key Messages / Topic Scripts / Questions and Answers

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

October 27, 2021

What about people's health data? Can you promise it will be safe?

- People's data will continue to be safe and protected with these proposed amendments.
- This FOIPPA change will align data residency requirements, creating consistency across the health sector and providing opportunities to store data with greater security.
- Now, healthcare providers will be able to access to more specialized diagnostic testing tools outside the country.
- Patients will also have access to more tools to help them manage their healthcare with better security to keep their data safe.
- People can safely and securely access telehealth from home or talk to their doctor via Zoom: services that are making people's lives easier through COVID.
- None of that was possible under the old legislation, and the order making these advancements possible expires at the end of this year.
- We learned from the pandemic that we can safely make these changes.
- It's important to remember that your information is safe, no matter where it is stored and that it's protected by many layers of protection and encryption.
- Data residency doesn't protect information – effective privacy controls protect information.
- And because of the Act's current data-residency requirements, often public bodies are forced to use services that are possibly less secure than those offered by established tech companies based abroad.
- The amendments don't change government's need for Canadian datacentres. Where our service providers have Canadian options, we will opt for those.
- The Patriot Act in the US does not pose the same risks it did when data residency was first added to the Act. Technology evolution, new protections and legislation replacing the Patriot Act have all resulted in less risk.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

What about the privacy Commissioner's concerns?

- My staff and I have met with the Commissioner 20 times.
- We value the meaningful consultation that has occurred with the Commissioner.
- We have included many items in this package that respond directly to recommendations made by the Commissioner
- We have also revised items in response to his feedback.
- The OIPC is an independent office and is meant to be an advocate for privacy and access.
- As government, we need to balance his concerns with the concerns of others, including those of public bodies.

If asked about openness and transparency

- This government is committed to transparency and accountability; you only have to look at my mandate letter to see that one of my main priorities as Minister of Citizens' Services is to provide even greater accountability to the people of this province.
- In fact, this government was the one who saw the need for greater transparency and accountability for British Columbians, nearly three decades ago.
- In 1993, we were the ones who enacted the FOIPPA legislation to hold current, and future, governments accountable to the people who trust them to make decisions on their behalf and to act with integrity.
- And today, we continue this tradition in culture and in practice, through:
 - Insisting on more proactive disclosures of information that the public can access for free. Just last week, we released each Minister's estimates binder, arguably the most crucial document to government's priorities and decision-making.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- Increasing the number of data sets open to the public. In 2017, there were 2,700 and today we are closing in on 3,200 data sets available to people, organizations and media.
- BC has also begun to proactively publish information on integrated data projects underway in BC's data innovation program.
- Our Premier sets the tone as an example for us all, making himself available for weekly availabilities with media, a public platform that encourages openness and transparency between government and members of the media who help hold us accountable.
- We're also consulting with the people of this province, often and more in-depth, than any government before us because the policies that we set in place must reflect the perspectives and input of the people of BC. In fact, in the last four years since we took office, we have embarked on 244 consultation projects, compared to the last four years of the previous government, almost half that.
- Here is the summary of the transparency items added through FOIPPA:
 - Adding ministerial power to add subsidiary entities as new public bodies
 - Requiring mandatory breach reporting to the potentially harmed individual
 - Requiring mandatory breach reporting to the Commissioner
 - Adding requiring for privacy management programs, which may include transparency measures (e.g. posted privacy policy)
 - Adding a new offence for wilfully evading FOI
 - Increasing public bodies' ability to disclose to Indigenous governing entities
 - Requiring public bodies to seek consent from Indigenous governing entities in order to disclose information that is culturally sensitive through FOI
 - Increasing transparency consistency across ministries when severing proactively disclosed records
 - Adding two new public bodies (BC Assoc of Chiefs of Police; BC Assoc. of Municipal Chiefs of Police).

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

What is the rationale behind implementing fees for FOI requests?

- The proposed application fee for non-personal requests is designed to get people the information that they deserve, faster and more efficiently.
- Because although we've increased BC's on-time FOI response rate significantly, we're hearing from people that it's taking too long to respond.
- This is mostly because of overly broad requests that are slowing down the system.
- Application fees are a tool that other jurisdictions use to deliver more efficient FOI services.
- A small fee encourages requesters to focus and streamline their requests.
- And remember, for the thousands of people in B.C. requesting their own personal information each year, there will continue to be no fee.

If pressed on how much it will be:

- The proposed amount will be decided through regulation.
- Fees in other jurisdictions across Canada range from \$5 - \$50 and I am recommending a fee amount within that range.

If asked about the breakdown of fees charged:

s.13

- Of the remaining 2% of respondents, by far the most impact would be for the top 2 requesters who submit more than 4500 requests annually costing more than \$14M or half the cost of the FOI program annually.
- For all FOI requests, including both personal and non-personal requests:
 - 77% make a single request and
 - 21% of people make five or less requests a year.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- And 85% of requests that result in a search fee, are dropped after hours of time and resources spent to identify records and provide a fee estimate. 15% proceed when there is a fee estimate.

For all requests received in 2020/21 (fiscal impact is coming):

- 3,994 unique applicants
- 77% of applicants submitted only 1 request
- 90% of applicants submitted 2 or fewer requests
- 95% of applicants submitted 3 or fewer requests
- 97% of applicants submitted 4 or fewer requests
- 98% of applicants submitted 5 or fewer requests
- Only 32 applicants submitted 10 or more requests
- Only 11 applicants submitted 20 or more requests
- Only 3 applicants submitted 50 or more requests
- Only 2 applicants submitted 100 or more requests
- The top two applicants combined submitted nearly 4,500 requests

Focus only on non-personal requests, the numbers for 2020/21 look like this:

- 964 unique applicants
- 66% of applicants submitted only 1 request
- 81% of applicants submitted 2 or fewer requests
- 88% of applicants submitted 3 or fewer requests
- 92% of applicants submitted 4 or fewer requests
- 94% of applicants submitted 5 or fewer requests
- Only 25 applicants submitted 10 or more requests
- Only 8 applicants submitted 20 or more requests
- Only 2 applicants submitted 50 or more requests
- Only 2 applicants submitted 100 or more requests
- The top two applicants combined submitted nearly 4,500 requests

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

How does this support Indigenous relationships and service delivery?

s.13

s.13

- Through the legislation, we are:
 - Removing outdated language in reference to Indigenous partners.
 - Creating new powers that increase public bodies' ability to share information with Indigenous governments and governing entities.
- s.13
- And removing the 15-year limit on the existing protections where information may harm an Indigenous government, s.13
- s.13
- We must work together to remove barriers and we will continue to work in consultation and co-operation with Indigenous Peoples as we move forward with this work. [which aligns with B.C.'s Declaration Act]

If asked about long outstanding FOI requests:

- Our intention is to always respond within the legislative timelines.
- Some requests take longer because they may contain personal information that would be harmful to release, or it needs to be reviewed by third parties to prevent harms.
- Those steps need to happen in order to fulfill our duty to protect people's privacy.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

If asked about a specific ministry's outstanding requests ie Health:

- While I can't speak to specific FOIs, some requests take longer to process simply because of the nature of the information and because of the multiple layers of review that are necessary to prevent harms if released.
- Our intention is to always respond within the legislative timelines.

Why can't you just put a cap on the number of free requests?

- A cap system on the number of free requests is not an effective solution.
- A cap system could encourage applicants with large numbers of requests to create multiple 'usernames and contact details' to avoid being charged a fee.
- For this reason, other jurisdictions have not pursued this approach.
- By implementing an application fee, we can cut down on broad, vexatious or "fishing" requests and focus resources on people who are asking for the information that they need.

What about personal FOI requests? How many of those are there?

- One of my ministry's top priorities is improving the FOI system for people in B.C. and more than 40% of all FOI requests are from people wanting their own personal information.
- People deserve to know that the information they need from government, often their own personal records, can be easily obtained in a timely manner.
- **Since 2017/18**, Ministries have responded to approximately **20,000** personal FOI requests
 - To accomplish this, professional public servants conducted a line-by-line review of **over 5.5 million pages of records**
 - During this timeframe, the average personal request was processed in **48 days**; In **2020/21 this jumped to 62 business days, and depending on the ministry, this jumps to 99 days to process**. This is because requests for personal records usually results in the analyst reviewing large volumes of complex records that require comprehensive review in order

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- to protect very sensitive personal information (e.g. reviewing adoption records to ensure only appropriate information about birth parents is disclosed).
- **64% of these personal requests were responded to within 30 days and 83% within 60 days.**
 - B.C. is committed to providing timely and helpful FOI service to the people of British Columbia.
 - Applying an application fee will help preserve FOI resources for people who use the system to access the information they need, including citizens requesting access to their own personal information.
 - FOI staff regularly work with applicants to assist in focussing their requests so that they can receive the information they need, faster and more efficiently
 - FOI staff will be available to support requestors in identifying which ministry may hold the records they are seeking
 - An upgraded intake process, including a modernized phone system, will allow requestors to connect with FOI staff more efficiently. This will be implemented on November 1st. (Pending discussion with Kerry this afternoon)

How are you modernizing the legislation with these changes?

- The volume of Freedom of Information (FOI) requests to the Province of British Columbia has grown substantially, and requests are more complex to resolve as new digital platforms generate new types of government records.
- Beginning June 2021, the Ministry of Citizens' Services committed \$5.3M to modernize the process to manage the 12,000 to 13,000 Freedom of Information (FOI) requests the Province receives annually.
- The FOI Modernizations Project demonstrates the Province's commitment to decrease average processing days for FOI requests from 49 to 30 days.
- The FOI Modernization Project will improve business processes as needed and build a new software system to increase efficiencies when responding to the growing number of FOI requests.
- Planned improvements include:

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- Automating routine administrative tasks related to managing requests, such as tracking, notifications and correspondence.
- Eliminating or improving business processes to lower response times.
- Software tools to help staff speed up the analysis of the thousands of pages of records related to requests.
- The project has already delivered a software tool to automate removing duplicate records in a request, which is estimated to save over 400 hours annually. This speeds up request response as staff do not need to review duplicates of the same record.

If asked about data residency requirements and keeping people's data safe?

- In 2004, B.C. increased data residency controls and no other province followed our lead on that.
- The Act's current data-residency requirements require all personal information to be stored and accessed within Canada except under limited circumstances.
- This blanket protection for all personal information doesn't take into account personal information that has little to no risk of causing harm.
- The level of protection needed should be aligned with the level of risk involved, and right now it is not.
- Under the new regulation, public bodies will be required to conduct an additional assessment of any sensitive personal information being disclosed for storage outside of Canada.
- Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
- These larger companies have more resources to devote to data security.
- We spend approximately \$25 million each year on information security, but the large tech firms spend over \$1 billion per year – each.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- Data residency doesn't protect information – effective controls protect information.

If asked about removal of Office of the Premier from Schedule 2:

- The Commissioner suggests there is no harm in the Premier's Office being a Schedule 2 public body – this is not the case.
- Being a ministry, and not a schedule 2 body, means that the Premier's Office is subject to higher level of scrutiny and accountability
- This amendment makes it clear that our many proactive disclosure directives apply to the Premier's Office – including for ministers' travel receipts, ministers' calendars and more.
- Essentially, this change is a clarification of legal language.
- The Premier's Office was under the list of public bodies that are not ministries and therefore officially subject to different rules under the legislation. However, they've always been treated as a ministry, and this change reinforces that.
- The Premier is considered the First Minister, and the Office of the Premier the ministry of the first minister. It is treated as such under BC's Constitution Act and elsewhere.
- Removing the Office of the Premier from Schedule 2 will clarify that they are subject to requirements under the Act that reference "ministries" and not those that reference "a public body that is not a ministry" – the former being the higher standard (e.g. for doing privacy impact assessments under 69(5)).
- Applicants may direct access requests to the Office of the Premier and using the online form will still be able to select "Office of the Premier".

If asked about MLA Stone's assertions regarding Social Media/Data Linking:

- This bill does not increase the amount of data linking permitted in any way.

Key Messages / Topic Scripts / Questions and Answers

**Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021**

- This bill expands the criteria to capture more initiatives such as data linking and subject those initiatives to additional oversight.
- This bill does not change what information can be collected/used/disclosed on social media.
- The only change with respect to social media is to remove the definition – because the current definition requires social media sites to be listed and lists outdated platforms like MySpace.
- Government does not scrape data from social media sites – government uses social media to enable public discussion or sharing information.
- Government has removed the requirements to submit data linking PIAs to the Commissioner on the recommendation of the OIPC – an effort to modernize their oversight model.

CONFIDENTIAL ADVICE FOR MINISTER
Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

Questions and Answers

1. Why are you amending the Freedom of Information and Protection of Privacy Act?

- B.C.'s *Freedom of Information and Protection of Privacy Act* has not been substantially changed since 2011.
- Through the pandemic, B.C. found a better, more effective way to deliver services.
- It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're making significant changes to:
 - provide the level of service that people and organizations expect,
 - keep pace with new technology,
 - ensure timely access to information for people, and
 - strengthen privacy protection.
- The proposed amendments will enhance our ability to respond to people's changing needs quickly while strengthening protections. Highlights include:
 - Updating data-residency provisions so public bodies can use modern tools while continuing to protect the personal information people trust us with. The data is encrypted with multiple layers of protection, ensuring mine and your information is safe in the cloud.
 - Strengthening public-sector privacy protections and increasing accountability by implementing mandatory privacy breach reporting and increasing penalties for offences.
 - Introducing a modest fee for non-personal FOI requests.
 - Demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding cultural protections and removing non-inclusive language.
- These amendments will reinforce the Act's original spirit and intent and improve B.C.'s high-quality freedom of information services to respond to people's requests faster.

2. People are already learning online, accessing telehealth from home and seeing their doctors online, so why do we need these amendments?

- The pandemic taught us better ways of doing things, making everybody's lives a little bit easier through access to online healthcare, education opportunities and technology.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- The order making these advancements possible expires at the end of this year.
- We need to do the work today, to deliver the services people deserve.
- We won't go backwards -- we must move forward, together.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

3. Your government says they are open and transparent, and making life more affordable. How can you say that when you're putting barriers between people and their right to information?

- It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're proposing these amendments today, and not waiting.
- We are a government that's focused on transparency, that's why we've increased our proactive disclosures and have committed to updating FOIPPA.
- We're making it easier and faster for people to access their information.
- Under the old legislation, people waited too long for the information they deserve because of a small number of requestors whose broad and often vexatious requests for information were slowing down the system.
- The volume of requests has increased by more than 40% over a two-year period, reaching an all-time high of over 13,000 requests in 2019/20 (13,055).
- Adding a fee to non-personal FOI requests is in line with other jurisdictions in Canada. It wasn't a barrier to information elsewhere and it won't be here in B.C.
- The fee will apply to only those requesting non-personal requests – mostly to the top 2% of frequent requestors.
- Those asking for personal information will not pay a fee at all.

DATA-RESIDENCY: PRIVACY PROTECTION

4. B.C.'s privacy commissioner complained about x, y and z. What are you doing to address his concerns? For Minister: SEE SEPARATE TABLE for OIPC Summary of concerns

- We wouldn't be introducing these amendments today if it weren't for the expert advice and guidance by the OIPC.
- Through more than a dozen meetings, we worked together with the OIPC on these proposed amendments.
- His input and perspective is integral to getting these right, for the people of B.C.
- It's important to remember that people's data is safe no matter where the data is stored.
- We have protections in place with companies to protect your information, and data is encrypted in multiple layers when stored in the cloud.

5. The OIPC says you are stripping B.C.'s privacy protections – especially with the changes to data residency. Is this true?

- Most other jurisdictions in Canada have been operating safely for years without similar data residency restrictions.
- Our proposed framework builds on and improves what the other provinces have.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- Data residency doesn't protect information; effective controls protect information.
 - Even Europe's General Data Protection Regulation – widely lauded as the world's most robust privacy law – doesn't restrict data residency.
 - No other province mandates privacy management programs like we are proposing.
 - The level of protection should reflect the level of risk involved, which is why we are strengthening due diligence requirements for public bodies, particularly requiring privacy impact assessments.
 - Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
 - These larger companies, based abroad, have more resources devoted to data security, with some large tech firms investing over \$1 billion per year to keep information secure.
 - In cases where there has been a breach of personal information that could cause significant harm, we will require public bodies to notify the affected person and the Office of the Information and Privacy Commissioner.
- 6. The privacy commissioner, privacy groups and others believe that relaxing data-residency requirements is a step backward. What do you say to those concerned about the perceived softening of privacy protections?**
- Updated data residency requirements will bring B.C. in line with the rest of Canada, who have been managing information safely without similar restrictions.
 - It's important to remember that data residency doesn't protect information – effective controls protect information.
 - B.C.'s legislation has not kept pace with advancements in technology, or the way people access government services.
 - The pandemic has taught us there is high demand for safe and convenient online services that address the changing needs of people, families and organizations in B.C.
 - It will also increase access to modern tools and technologies, such as cloud-based services, so the public sector can quickly and efficiently respond to people's changing needs.
- 7. You say you care about people's right to privacy and information protection. You've also said for years that B.C.'s data is safe within the borders of Canada – so why are you putting it at risk by allowing it to be stored across borders?**
- We've heard from organizations like universities, health authorities and tech companies that our data residency rules were outdated and stopped them from being competitive or responsive to people's evolving needs.
 - It's our role as your government to listen to what's going on in people's lives and adapt – that's why we're proposing these amendments, and not waiting.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- People want access to healthcare, education opportunities and the technology that is making their lives easier through COVID.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- The Act's current data-residency requirements are blanket protections that require all personal information to be stored and accessed within Canada, except under limited circumstances, even if the personal information has little-to-no risk of causing harm.
- The level of protection should reflect the level of risk involved, which is why we are strengthening due diligence requirements for public bodies, particularly requiring privacy impact assessments.
- Privacy impact assessments consider risk on a case-by-case basis, based on the expected activities and sensitivity of the information involved.
- Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are perhaps less secure than similar services offered by more established tech companies based abroad.
- These larger companies, based abroad, have more resources devoted to data security, with some large tech firms investing over \$1 billion per year to keep information secure.
- Most data are encrypted in multiple layers, regardless of where it is stored.

8. Will these amendments put health information at risk?

- This FOIPPA change will align data residency requirements, creating consistency across the health sector and providing opportunities to store data with greater security.
- Now, healthcare providers will be able to access to more specialized diagnostic testing tools outside the country.
- Patients will also have access to more tools to help them manage their healthcare with better security to keep their data safe.
- People can safely and securely access telehealth from home or talk to their doctor via Zoom: services that are making people's lives easier through COVID.
- None of that was possible under the old legislation, and the order making these advancements possible expires at the end of this year.
- We learned from the pandemic that we can safely make these changes.
- It's important to remember that your information is safe, no matter where it is stored and that it's protected by many layers of protection and encryption.
- Data residency doesn't protect information – effective privacy controls protect information.
- And because of the Act's current data-residency requirements, often public bodies are forced to use services that are possibly less secure than those offered by established tech companies based abroad.
- The amendments don't change government's need for Canadian datacentres. Where our service providers have Canadian options, we will opt for those.

Key Messages / Topic Scripts / Questions and Answers

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

October 27, 2021

- The Patriot Act in the US does not pose the same risks it did when data residency was first added to the Act. Technology evolution, new protections and legislation replacing the Patriot Act have all resulted in much less risk.
 - The Act already requires ministries to conduct a Privacy Impact Assessment (PIA), which considers risk, case by case, based on the specific activities and information involved and with our changes all public bodies will be required to conduct a PIA when disclosing sensitive information.
 - Often, because of the Act's current data-residency requirements, public bodies are forced to use services that are possibly less secure than similar services offered by established tech companies based abroad that may have more resources to devote to data security.
 - We spend approximately \$25 million each year on information security, but the large tech firms spend over \$1 billion per year – each.
- 9. The pandemic may have shown us better ways to do things, but it also opened us up to increased and more sophisticated cyber threats. How are you keeping our information safe from cyber criminals?**
- In this age of increased cyber security risk, people are understandably concerned about their privacy and protecting their personal information. So are we.
 - Privacy breaches can happen in any jurisdiction, whether the data is stored in a filing cabinet, in a computer system or on a cloud.
 - We are making these changes based on the advice of privacy experts and are confident in the multiple layers of encryption and security measures in place to protect people's data.
- 10. Many of the applications that will use, or store peoples' information are cloud-based. We've seen prominent people have their cloud-based information compromised. How are you going to protect our cloud-based information?**
- Larger, more established tech companies abroad have more resources devoted to data security, with some large tech firms investing over \$1 billion per year to keep information secure.
 - Data is encrypted through multiple layers of protection, regardless of where it is stored.
 - Notably, cloud computing is already used to house non-critical data belonging to:
 - The U.S. Department of Defence
 - National Bank of Canada
 - Interpol
 - In cases where there has been a breach of personal information that could cause significant harm to someone, we will require public bodies to notify the affected person and the Office of the Information and Privacy Commissioner.
 - This will ensure people understand how their information has been handled and allow them to make choices for their own protection.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- We are strengthening that privacy impact assessments (PIAs) are required by all public bodies, which will ensure that public servants are conducting the due diligence necessary to appropriately handle personal information.

11. What about the risks posed by the U.S. Patriot Act? British Columbians' information could be compromised by American authorities and we wouldn't be able to stop it.

- Data residency is not the only way to protect information.
- Strong technical controls can be effective in keeping data out of the hands of others.
- When American law enforcement needs B.C. data, there are legal government-to-government processes that can be used.
- The Patriot Act in the US does not pose the same risks it did when data residency was first added to the Act.
- Technology evolution, new protections and legislation replacing the Patriot Act have all resulted in less risk. Broad requests and bulk data collection are no longer permitted.
- The USA Freedom and Cloud acts, which replace much of the Patriot Act, also include a process for challenging requests that did not exist under the Patriot Act.
- Increased automation further decreases risk because it reduces the number of people that can see information and includes new security measures that better protect information.
- This means that it is more difficult to make legitimate law enforcement requests for B.C. data when appropriate controls are in place.

12. The privacy commissioner says he wasn't consulted on the changes to data-residency requirements. Why wouldn't you consult the commissioner on something so important?

- The proposed amendments have been informed through regular meetings and consultation with the Office of the Information and Privacy Commissioner (OIPC), including 18 engagements between April and September 2021.
- While we regularly consult the OIPC on privacy-related issues, their duty isn't to set policy.
- We heard from several public bodies that data residency requirements were making them less competitive and making it harder to deliver the services people deserve.
- The pandemic has taught us that there is a high demand for safe, convenient online services and that we need to remain flexible to keep pace with advancements in technology and the way people access government services.
- We must balance the advice of the OIPC and our top priority of information privacy with our duty to provide responsive, modern services to people in B.C.
- Our amendments have been informed by comprehensive consultation and feedback from the public, Indigenous partners, businesses and organizations.

13. When was section 13 of FOIPPA introduced?

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- Section 13 [Policy advice or recommendations] has remained relatively unchanged since the Act first came into force in 1993.
- Minor amendments to this section were last made in 2011, but these were unrelated to issues raised by the Commissioner.

14. Both the Commissioner and the Special Committee have recommended amending s13. Why aren't you doing this?

- The 2015/16 Special Committee report identified concerns about the scope of S.13.
- Specifically, the Special Committee recommended establishing a publication scheme that would apply to all public bodies for mandatory proactive disclosure of those records listed in s. 13(2)(a) to (n)
- While all recommendations made by the OIPC and past Special Committees were thoroughly reviewed, this is not under consideration at this time.
- Government would like to ensure that the ability for public servants to have full and frank discussion of policy issues remains intact.

15. How does the application of Section 13 of FOIPPA to “factual information” compare against other jurisdictions?

- The laws governing freedom of information in Ontario and Newfoundland contain very similar language to FOIPPA on this issue.
- Most other jurisdictions across Canada take a narrower approach to background information that is used for policy development. A common approach in other provinces is that the head of a public body cannot consider “background research of a scientific or technical nature” as advice or recommendations.
- Some others, such as Quebec, and the federal government, do not clearly address the issue of background information used in policy development.

16. Have there been any significant court rulings respecting the interpretation of section 13 that have implications for B.C.?

- On May 9, 2014, the Supreme Court of Canada (SCC) ruled on an appeal of an Ontario court decision involving an FOI request where Ontario's Ministry of Finance denied the applicant access to the records on the basis that they would reveal advice or recommendations of a public servant (similar to s. 13 of B.C.'s FOIPPA).
- An Adjudicator in the Office of the Information and Privacy Commissioner of Ontario ordered the disclosure of the records and denied the Ministry's application for reconsideration.
- While the Superior Court later dismissed the Ministry's subsequent application for judicial review, the Court of Appeal found the disclosure order was unreasonable, allowed the appeal and remitted the matter to the Ontario IPC.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- The SCC found that the terms "advice" and "recommendations" have distinct meaning and held that "advice" was broader than "recommendations".
- The SCC decision supported and aligns with the B.C. government's interpretation of FOIPPA s. 13.
- The SCC's reasoning focused on maintaining the confidentiality needed to ensure an effective public service; the protection of advice and recommendations is vital to ensuring free and frank discussions within the public service.

17. What happens if we don't make this change to data residency requirements?

- People have come to depend on the use of a variety of tools that have been available to them through the pandemic.
- The ministerial order allowing these tools by law will expire at the end of the year.
- The current restrictions force public bodies to use less effective and sometimes less secure technology solutions. Our vendors are moving to international solutions and are leaving B.C. behind without any alternatives.
- This means that, without change, public bodies in B.C. may be forced to build their own systems, at great expense, because they won't be able to access solutions on the market that comply with B.C.'s strict data-residency rules.
- Lack of access to modern tools and technologies also poses a risk to public bodies' innovation and competitiveness. For example, greater access to cloud-based services will improve B.C. post-secondary institutions' ability to attract students by allowing them to use many of the cloud-based education tools that their competitors can offer outside of B.C.

18. What privacy protection controls are you putting in place to reinforce the province's role in safeguarding information given the relaxation of data-residency requirements?

- The existing government requirements for a privacy management program to be in place will be extended to the entire public sector. A privacy management program includes governance, accountability, policies, processes and training on protecting information.
- Context is critical - privacy protection controls should be scaled to the potential risks to information and based on the specific context of that information.
- These changes will also allow the use of security tools that were not previously available to B.C. public bodies – for example, tools that help scan emails for different threats.
- In cases where there has been a breach of personal information that could cause significant harm to someone, we will be requiring public bodies to notify the affected person and the Office of the Information and Privacy Commissioner.
- This will ensure people understand how their information has been handled and allow them to make choices for their own protection.
- We are requiring all public bodies to conduct privacy impact assessments (PIAs), to ensure they appropriately handle personal information.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- And it's important to remember that storing personal data outside of Canada is not new: there are 30 existing purposes under the Act currently that permit this.

19. What is mandatory breach reporting and why is it just now being introduced?

- Mandatory breach reporting is current practice in provincial ministries and requires public bodies to notify affected individuals and the privacy commissioner in the event of a privacy breach where there is reasonable expectation of significant harm.
- We are strengthening government accountability and transparency by making this current policy and best practice mandatory for both ministries and the broader public sector.

20. Why is mandatory breach reporting coming into force later?

- We intend to bring mandatory breach reporting into force one year after Royal Assent to give public bodies time to prepare for new legal requirements.
- Government will continue this practice, as it has been doing for many years.

CONSULTATION

21. I thought you consulted with public institutions about fees and that they advocated for them? But some are saying they didn't advocate for fees?

- I'd like to clarify my previous comments about the FOIPPA consultation with public bodies.
- We consulted with thousands of people, businesses, Indigenous communities and public sector bodies, including health authorities and post-secondary institutions.
- As part of our extensive consultation process, we brought recommendations to participants and asked for their feedback on how an application fee may or may not impact their organization.
- I can confirm that public bodies didn't advocate for fees during consultation.
- We also did not hear any objections.
- We took the feedback we received into consideration as we drafted proposed amendments and thank the thousands of people who helped us.

22. How have you consulted people prior to making these amendments?

- We have heard from thousands of people, Indigenous communities businesses and organizations.
- The proposed amendments reflect what we've heard through many engagements and consultations including with Indigenous communities, the public, input from subject-matter experts across government, and recommendations from the OIPC and past Special Committees of the Legislative Assembly.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- In 2018-19, substantial engagement was completed to identify stakeholder concerns and priority issues including through an online govTogetherBC public engagement, a series of roundtables with key stakeholder groups, discussions with Indigenous communities and a mail-out campaign asking for input and recommendations from over 200 First Nations communities.
- Building on these earlier consultations, between April and August 2021, the Ministry of Citizens' Services re-engaged with many of the same groups, including government ministries, broader public sector public bodies, municipalities, Indigenous leaders and communities, the B.C. tech sector, the OIPC and the general public to confirm previous inputs and gain a current understanding of potential impacts.
- Feedback was received through Minister and ADM roundtable meetings, presentations to stakeholder groups, meetings with ministry staff, two public surveys administered by govTogetherBC and Ipsos, which received 1,600 and 800 responses, respectively, a questionnaire distributed to leaders in the over 200 First Nations in B.C., and discussions with Treaty First Nations representatives.

23. Which Indigenous partners have you spoken with?

- The Ministry of Citizens' Services has had meaningful discussions with the Union of BC Indian Chiefs, First Nations Summit, First Nations Leadership Council, the BC Assembly of First Nations.
- The Ministry also engaged with Treaty First Nations including meetings with representatives from the five Maa-nulth nations, Tsawwassen First Nation and the Nisga'a Lisims Government.
- To gain the perspective of Indigenous Peoples on access to information and privacy, we have twice invited leaders of over 200 B.C. First Nations to provide input, most recently, through an online questionnaire.
 - In response to this invitation, representatives from the Stk'emlupsemc Te Secwepemc Nation requested a meeting with Ministry staff, which was held in early September 2021.
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous Peoples as we move forward with this work.

24. Did you consult with advocacy groups such as the B.C. Freedom of Information and Privacy Association (FIPA)? If yes, how did you consider their input?

- We engaged with FIPA in 2018-19 on similar amendments.
- We also considered FIPA's submissions to previous Special Committees of the Legislative Assembly that reviewed the Act when developing our amendments package.
- In summer 2021, we focused on talking to directly impacted stakeholders and partners, such as public bodies, the OIPC, the public and Indigenous representatives.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

25. How will the amendments address previous Special Committee and Commissioner recommendations?

- Recommendations by privacy experts, including the OIPC and Special Committee, are integral to our proposed amendments.
- There are many longstanding recommendations from previous Special Committees of the Legislative Assembly that reviewed the Act, and from the Information and Privacy Commissioner.
- The proposed amendments address several of these recommendations, including recommendations about mandatory breach reporting, privacy management programs and subsidiary corporations.
- Several of their other recommendations have also been addressed through policy, for example, FOI applicant anonymity protection.
- And we have issued several new proactive disclosure directives in recent years to address recommendations related to government accountability and transparency.

26. Why aren't you waiting for the new Special Committee's recommendations?

- The ministerial order that currently allows government to offer services that people have come to expect in the digital era is expiring at the end of December.
- For example, right here in the house with Zoom...
- The last two Special Committees made several recommendations that were not enacted by the previous government.
- In fact, the Act has not been substantially updated since 2011.
- The legislation tabled this week includes many of the recommendations of the past two Special Committees, such as:
 - Making the destruction of documents to evade access an offense; and
 - Making it mandatory to notify individuals and the commissioner of privacy breaches.
- We've also acted on other key recommendations to create a duty to document and expand proactive disclosures.
- We anticipate that the new Special Committee would, if we waited to amend the Act, repeat many of these previous recommendations.
- Updating the Act now allows the new Special Committee to focus on emerging issues.
- This legislation allows us to continue offering these services to people in BC while the Special Committee does its important work.

FEES

27. How will a fee help deliver better services to people, and get them the information they are entitled to under the very Act you are amending?

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- You only have to take a look at other jurisdictions to see how implementing a modest fee helps reduce overall FOI requests.
- Right now, B.C. receives more FOI requests annually than the three western provinces, combined.
- The fee was designed so people can access the information they need, but currently can't because a small group of requestors are overloading the system.
- It's slowing down our ability to get people's personal information to them, and that's unacceptable.
- If charging a modest fee for non-personal requests helps people focus their request, then we know we're on the right track.

28. If your government is all about making life more affordable, why are you adding yet another fee?

- We're proposing a modest fee that will only impact those making general, non-personal requests.
- Those asking for personal information will continue to not pay a fee at all.
- This isn't about revenue, this is about supporting the people making information requests to focus them so they get the most useful information, faster.

29. The fee seems like a money grab. Is the deficit so big that you need to nickel and dime people?

- A modest application fee is about reinforcing the spirit and intent of the Act.
- Those requesting their own personal information will continue to pay no fee at all.
- Under the old legislation, people waited too long for the information they deserve because of a small number of requestors whose broad and often vexatious requests for information were slowing down the system.
- Government processes more than 10,000 freedom of information requests each year and the average cost of processing a single FOI request is \$3,000, though some large, complex requests can exceed this.
- The volume of requests has increased by more than 40% over a two-year period, reaching an all-time high of over 13,000 requests in 2019/20 (13,055).
- Adding a fee to non-personal FOI requests is in line with other jurisdictions in Canada. It wasn't a barrier to information elsewhere and it won't be here in B.C.
- The fee will apply to only those requesting non-personal requests – **mostly** to the top 2% of frequent requestors. The application fee is not intended to recover the cost – or even a significant portion of the costs – for an information request.
- The intent is to encourage applicants to be more specific in their requests about the records they are seeking, and the ministries they are seeking the records from, so that we can

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

improve freedom of information services for people so they can get their information, faster.

30. The fee seems targeted at media and political parties. Are you trying to stifle requests? What are you hiding?

- Those making personal requests will continue to pay no fee at all.
- By making the fee for non-personal requests modest, we are ensuring the application fee is not a barrier to information access.
- People, businesses and organizations deserve to have timely access to information.
- They do not get full value from the FOI system when it is inundated by a small number of applicants making overly broad or intentionally vexatious requests.
- The fee is intended to focus requests made and improve B.C.'s freedom of information services to the thousands of people who request access to information every year.

31. You haven't been explicit on how much this 'application fee' will be. How much are you planning to charge people for public access to information?

- B.C.'s modest fee will not be a barrier to access and it won't apply to those requesting their own information.
- Across Canada, application fees for general information requests range from \$5 to \$50. B.C.'s will be consistent with other administrative fees.
- Other provinces have been charging fees for more than a decade.
- The fee will be set through regulation following Royal Assent.

32. How much revenue is the application fee expected to raise and where will it go?

- We expect approximately \$100,000 annually will be generated by application fees.
- This is a fraction of more than an estimated \$30 million annually that it costs to process general FOI requests.

s.12; s.13

33. What happens if a request is met with a no records response? Do people get their money back?

- This is a modest application fee, not a response fee.
- Requestors are encouraged to be as focused and specific as possible in their request in order to get the information that they are seeking.
- There will be no refunds.

34. Are there other jurisdictions that charge a fee for information access?

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- The federal government, Alberta, Ontario, PEI and Nova Scotia and Nunavut charge application fees for general access to information requests.
- In Saskatchewan, local governments charge for their access to information requests.
- Fees in other jurisdictions range from \$5 - \$50.

s.13

s.13; s.16

38. So who are making the most requests? Can you prove that a small portion of applicants are backing up the system?

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

- The two most prolific FOI applicants in 2020-21 were:
 - One political party requestor with 4,772 requests at a cost of \$14.3 million. That's more than 13 requests a day.
 - And one media requestor with 397 requests at a cost of \$1.2 million. That's more than one a day, for every day of the year.
- By comparison, all other media requestors combined accounted for 328 requests at a cost of \$1 million.
- If applicants were encouraged to focus their requests, it would save the FOI system from having to seek and produce sometimes upwards of thousands of records that aren't helpful to the applicant but are extremely time and resource-consuming to produce.
- If we can make changes to help people get the information they deserve, faster, we're going to do it.

39. So, the application fee is about putting a stop to one political party's and one media outlet's perceived, excessive requests?

- As in other jurisdictions, the modest fee is meant to encourage requestors to focus on the information that they need and deserve, not thousands of pages that are of no use to the applicant.
- If we can help people get the information they need, faster, by introducing a modest fee, then we will.
- People do not get full value from the FOI system when it is inundated by a small number of applicants.
- The backlog created by a handful of high-volume requestors has a direct impact on the resources available to respond to others – such as personal requests from youth in care, inmates, and disability or income assistance requestors.
- The application fee is intended to reinforce the spirit and intent of the Act by encouraging applicants to be more focused when making requests, which will free up resources so that we can be more responsive to requests that we receive.

40. Health Authorities are saying they didn't advocate for the FOI fees – is that accurate?

- A proposed FOI application fee is to focus the significant volume of FOI requests and ensure that public resources are also focused on giving people access to the information as quickly and easily as possible.
- Consultation engagements were held with public bodies in June 2021, including post-secondary institutions and health authorities, to hear broad feedback on FOIPPA.
- The organizations were presented with an overview of the broad amendments including FOI potential changes.
- Feedback from both post-secondary and health authorities were focused on data residency, with the health authorities also speaking to the substantial increase of general requests

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
October 27, 2021

during the COVID-19 pandemic. Feedback included encouragement to review the fees as they currently don't align with the cost of processing a request.

- Public sector comments focussed on operational impacts related to FOI requests, the results of both the govTogetherBC and Ipsos surveys highlighted that the accuracy of the information the public receives from government through the FOI processes is paramount. The speed of response and low/no fees were secondary.

41. It sometimes takes several attempts to get an FOI right – that's going to get very expensive. How are you ensuring people don't get dinged unjustly?

- B.C. is committed to providing timely and helpful FOI service to the people of British Columbia.
- Applying an application fee will help preserve FOI resources for people who use the system to access the information they need, including citizens requesting access to their own personal information.
- FOI staff regularly work with applicants to assist in focussing their requests so that they can receive the information they need, faster and more efficiently.
- FOI staff will be available to support requestors in identifying which ministry may hold the records they are seeking.

OTHER

42. How was this legislation reviewed using a GBA+ lens?

- For one, we're removing all gendered and non-inclusive language from the legislation.
- The legislation hasn't been substantially updated since 2011; we had a lot of work to do.

43. When will the amendments come into force?

- All amendments to the Act are anticipated to come into force within a year.
- Some amendments won't come into force immediately so that public bodies can prepare to meet the new legal requirements.

Page 1101 of 1215 to/à Page 1132 of 1215

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CITY OF SURREY

OFFICE OF THE MAYOR

October 28, 2021

The Honourable Lisa Beare
Minister of Citizens' Services
PO Box 9440 Stn Prov. Govt
Victoria, BC
V8W 9V3

Dear Minister Beare:

Re: Bill 22 Freedom of Information and Protection of Privacy Amendment Act, 2021 Section 75 - Application Fee

As Mayor of the City of Surrey, I support the rights of the public to access non-personal information through the Freedom of Information and Protection of Privacy Act (FOIPPA). Unfortunately, in recent years Surrey has experienced an increasingly high volume of Freedom of Information (FOI) requests, many of which are, in my opinion, frivolous in nature.

These requests bog down the system, slow overall FOI response times and negatively impact staff resources. For example, full-time staff dedicated to processing Freedom of Information requests at the City of Surrey has grown from two staff to five staff over the last five years.

For these reasons, I support the Bill 22 Section 75 amendment which would enable the head of a public body to charge an application fee for FOI requests.

Please feel free to contact me if you require any further information.

Sincerely,



Doug McCallum
Mayor
City of Surrey



P 604 591 4126 MAYOR@SURREY.CA

13450-104 AVENUE SURREY BRITISH COLUMBIA CANADA V3T 1V8

WWW.SURREY.CA

Page 1134 of 1215 to/à Page 1135 of 1215

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INFORMATION BULLETIN

For Immediate Release

Ministry of Citizens' Services

[release number]

Nov. 25, 2021

B.C. modernizes freedom of information to deliver better services

s.13

Page 1137 of 1215 to/à Page 1140 of 1215

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s.13

INFORMATION BULLETIN

For Immediate Release

Ministry of Citizens' Services

[release number]

Nov. 25, 2021

B.C. modernizes freedom of information to deliver better services

s.13

Page 1142 of 1215

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OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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November 23, 2021

The Honourable John Horgan
Premier of British Columbia
Via email only: premier@gov.bc.ca

The Honourable Lisa Beare
Minister of Citizens' Services
Via email only: CITZ.Minister@gov.bc.ca

OPEN LETTER: Call for the Immediate Withdrawal of Bill 22, *Freedom of Information and Protection of Privacy Amendment Act, 2021*

Dear Premier Horgan and Minister Beare,

On October 18, 2021, your government introduced amendments to British Columbia's *Freedom of Information and Protection of Privacy Act* (FIPPA) through Bill 22. We have learned that Bill 22 is quickly proceeding through the legislature and is anticipated to receive Royal Assent before the end of the current legislative session on November 25th. However, the bill in its current form fails to uphold First Nations' unique rights of access to information as many of the proposed amendments will create new barriers for First Nations requiring access to provincial government records to substantiate their historical grievances against the Crown. Further, several proposed amendments disregard significant concerns we identified in formal submissions to the public engagement process, and introduce measures about which we were never informed, contravening Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), and your government's legal obligations under the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA).

We call on your government now to withdraw Bill 22 and establish a process of substantive engagement with Indigenous governing bodies affected by the FIPPA to ensure that transparency, openness, and fairness are enhanced and First Nations' rights under the UN Declaration are upheld.

The right to access information is a fundamental component of First Nations' efforts to resolve historical land-related grievances, such as specific claims. Because First Nations are required to produce a wide range of records to substantiate their land claims and historical land-related grievances against the Crown, Freedom of Information has direct impacts on the ability of First

Nations to achieve justice through government mechanisms of redress, a right articulated in Article 28 of the UN Declaration.

In April 2018, the Union of BC Indian Chiefs made a formal submission to the Ministry of Citizens' Services' engagement process in which we identified key barriers First Nations routinely experience when attempting to obtain provincial government records through Freedom of Information, including prohibitive fees and the denial of requests for fee waivers, prolonged delays, overly broad applications of exceptions to disclosure, widespread failures to create, retain, and transfer records, and the exclusion of subsidiaries from duties of disclosure. We emphasized that the barriers faced by First Nations seeking information access must be specifically and systematically targeted, such that rights to redress are advanced and protected.

The provisions in Bill 22 ignore our concerns and further entrench barriers to access. The introduction of an application fee for all Freedom of Information requests will disproportionately harm First Nations requesters since they experience higher levels of poverty and often lack resource capacity. Your characterization of the new fee as "modest" displays astounding ignorance and insensitivity since legal processes of redress for historical losses require First Nations to make multiple formal requests for records from various public bodies in order to obtain evidence. It is nonsensical that a government publicly committed to reconciliation, transparency, and accountability would impose further financial hardships on First Nations who require access to provincial government records to substantiate claims of government wrongdoing. The bill also prevents the Information and Privacy Commissioner from waiving the application fee if the request is in the public interest.

It is especially egregious that the introduction of an application fee was never discussed with First Nations or their representative organizations, and as such contravenes Article 19 of the UN Declaration which 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. The provincial government's selective application of Article 19 violates the DRIPA and betrays a colonial attitude toward its implementation.

Bill 22 introduces no penalties for public bodies who exceed legislated timelines for providing requested information, which will do nothing to address delays and the under-resourcing of the information management system which accounts for it. The bill continues to exclude subsidiaries from mandatory disclosure, compromising First Nations' abilities to obtain complete historical records required for their claims to succeed.

Alarmingly, the bill removes the Office of the Premier and Executive Council Operations from the list of public bodies covered by the FIPPA, and fails to create, enforce, or oversee a 'duty to document'. This amounts to willful obstruction and hampers First Nations seeking access to information. While specific claims are historical grievances that occurred at least fifteen years prior to the filing of a claim, this bill effectively absolves your office of any legal responsibility to disclose records related to the actions or decisions which may be subject to future claims. The same can be said about the bill's failure to make it mandatory for public bodies to create records of all actions and decisions, something the provincial NDP championed when it was in

opposition and about which it now, holding a majority in the legislature, seems to regard with disdain.

Advocates for government accountability and transparency, organizations committed to human rights, and the provincial Information and Privacy Commissioner are condemning this bill, calling it a highly unethical step backward. The amendments introduced through Bill 22 as discussed above will have concrete, negative impacts on First Nations' access to justice. This is a fundamental concern for the communities we represent.

We reiterate our call for you to withdraw Bill 22 and take immediate steps to make meaningful, direct dialogue with First Nations a priority. This work must be guided by transparency, due process, and full enactment of the government-to-government approaches articulated within the UN Declaration and outlined in DRIPA.

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Stewart Phillip
President



Chief Don Tom
Vice-President



Kukpi7 Judy Wilson
Secretary-Treasurer

CC: UBCIC Chiefs Council
BC Assembly of First Nations
First Nations Summit
Special Committee to Review the Freedom of Information and Protection of Privacy Act

Page 1146 of 1215 to/à Page 1147 of 1215

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CONFIDENTIAL ADVICE FOR MINISTER

Key Messages / Topic Scripts / Questions and Answers

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

November 22, 2021

Contents

1. What's changing with FOIPPA, and why?	1
2. What about the concerns from the Union of BC Indian Chiefs on impacts to Indigenous rights to information and barriers First Nations will face?	1
3. What is the rationale behind implementing fees for FOI requests?.....	2
4. When will details of regulations be made available, particularly around fees?	2
5. Why the rush? Why didn't you wait for the new Special Committee's recommendations?.....	3

1. What's changing with FOIPPA, and why?

- People's lives have changed. The COVID-19 pandemic changed the way we live, work, connect with loved ones and access the services we need.
- B.C.'s outdated Freedom of Information and Protection of Privacy legislation, last updated a decade ago, is not working for people.
- Through the COVID-19 pandemic, B.C. found a better, faster, more effective way to deliver the services people have come to expect.
- People want timely access to their personal information as well as to healthcare, education tools and the technology that's making their lives easier.
- Today, people can safely and securely access telehealth from home, talk to their doctor via Zoom, learn online, meet with their coworkers and do business, faster.
- Highlights of the amendments include:
 - Updated data-residency provisions so public bodies such as universities or health authorities can use modern tools while continuing to protect the personal information people trust us with.
 - Strengthened public-sector privacy protections and increased accountability by implementing mandatory privacy breach reporting and increased penalties for offences.
 - Introducing a modest fee for non-personal FOI requests.
 - Demonstrating the Province's commitment to diversity, inclusion, reconciliation and equity by increasing information sharing with Indigenous peoples, adding cultural protections and removing non-inclusive language, including through a critical, gender-based analysis plus (GBA+) lens.

2. What about the concerns from the Union of BC Indian Chiefs on impacts to Indigenous rights to information and barriers First Nations will face?

- B.C. remains committed to meaningful reconciliation with Indigenous partners. Through the legislation, we have:
 - Created new powers that increase public bodies' ability to share information with Indigenous governments and governing entities.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
November 22, 2021

- Added new protections to Indigenous Peoples' sensitive cultural information by requiring public bodies to seek consent from Indigenous governing entities before disclosing information through FOI.
- Removed the 15-year limit on the existing protections where information may harm an Indigenous government, so that we can protect that information indefinitely.
- Removed outdated language in reference to Indigenous partners.
- We will continue to encourage public bodies to disclose more information outside of the FOI process, where possible.
- In the lead up to this legislation, the Ministry of Citizens' Services had meaningful discussions with the Union of BC Indian Chiefs, First Nations Summit, First Nations Leadership Council, the BC Assembly of First Nations.
- The ministry also engaged with Treaty First Nations, including meetings with representatives from the five Maa-nulth nations, Tsawwassen First Nation and the Nisga'a Lisims Government.
- To gain the perspective of Indigenous Peoples on access to information and privacy, we twice invited leaders of over 200 B.C. First Nations to provide input.
- In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous Peoples as we move forward with this work.
- Government considered how FOIPPA impacts Indigenous Peoples, and developed proposals to address these impacts, including:
 - Increased information sharing where Indigenous Peoples are exercising their rights and title.
 - We consulted with Indigenous groups on those proposals that impact Indigenous Peoples in ways not felt by others.
 - We made substantive changes to our proposal to incorporate the feedback provided by UBCIC and other organizations.

3. What is the rationale behind implementing fees for FOI requests?

- The application fee for non-personal requests is designed to get people the information that they deserve, faster and more efficiently.
- Because, although we've increased B.C.'s on-time FOI response rate significantly, we're hearing from people that it's taking too long to respond.
- This is mostly because of overly broad requests that are slowing down the system.
- Application fees are a tool that other jurisdictions use to deliver more efficient FOI services.
- A small fee encourages requesters to focus and streamline their requests.
- And remember, for the thousands of people in B.C. requesting their own personal information each year, there will continue to be no fee.

4. When will details of regulations be made available, particularly around fees?

- The proposed amount will be decided through regulation, shortly.

Key Messages / Topic Scripts / Questions and Answers
Freedom of Information and Protection of Privacy Act (FOIPPA) amendments
November 22, 2021

s.13

5. Why the rush? Why didn't you wait for the new Special Committee's recommendations?

- The ministerial order that currently allows government to offer services that people have come to expect in the digital era is expiring at the end of December.
- For example, right here in the house with Zoom...
- The last two Special Committees made several recommendations that were not enacted by the previous government.
- In fact, the Act has not been substantially updated since 2011.
- The legislation includes many of the recommendations of the past two Special Committees, such as:
 - Making the destruction of documents to evade access an offense; and
 - Making it mandatory to notify individuals and the commissioner of privacy breaches.
- We've also acted on other key recommendations to create a duty to document and expand proactive disclosures.
- We anticipate that the new Special Committee would, if we had waited to amend the Act, repeated many of these previous recommendations.
- Updating the Act now allows the new Special Committee to focus on emerging issues.
- This legislation allows us to continue offering these services to people in B.C. while the Special Committee does its important work.

Page 1151 of 1215 to/à Page 1152 of 1215

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Page 1153 of 1215 to/à Page 1155 of 1215

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Social media for Minister Beare re: FOIPPA legislation Royal Assent

Twitter and Facebook:

People's lives have changed and so have their needs. Royal Assent has just been given to FOIPPA legislation that will let people keep using tools and #tech that makes their lives easier.

Page 1157 of 1215 to/à Page 1158 of 1215

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s.13

Bowness, Lianne GCPE:EX

From: Jeremy Uppenborn <Jeremy.Uppenborn@gov.bc.ca>
Sent: November 25, 2021 1:20 PM
To: Bowness, Lianne GCPE:EX
Subject: CITZ Media Request: INVU: FOIPPA legislation

Reporter

Bhinder Sajan, Reporter
CTV News (BC)
bhinder.sajan@bellmedia.ca
250-383-2480 c: 250-418-5207

Deadline Thursday, November 25, 2021 12:30 PM

Request

Reporter looking to Zoom interview Minister Beare about Freedom of Information and Protection of Privacy amendment legislation (Bill 22) re: scope, details.

Recommendation

Background

Bowness, Lisanne GCPE:EX

From: Bowness, Lisanne GCPE:EX
Sent: November 25, 2021 1:00 PM
To: Uppenborn, Jeremy GCPE:EX
Cc: Williams, Susan GCPE:EX
Subject: FW: TOPLINE KMs and QA - FOIPPA
Attachments: FOIPPA -- short form QA.docx

Hey Jeremy – do you mind saving this down to your FOIPPA folder? This was the quick condensed QA that we did up for the interview.

From: Bowness, Lisanne GCPE:EX
Sent: November 25, 2021 11:50 AM
To: Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>; Djonlic, Matt FIN:EX <Matt.Djonlic@gov.bc.ca>; Maher, Melissa PSSG:EX <Melissa.Maher@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: TOPLINE KMs and QA - FOIPPA

Hi – here is this one condensed to a 2 pager- please let us know if this works for you.
We updated with the fee KMs that are more recent/ relevant.
Thx!

Uppenborn, Jeremy GCPE:EX

From: Uppenborn, Jeremy GCPE:EX
Sent: November 25, 2021 2:32 PM
To: Bowness, Lianne GCPE:EX; Pridmore, Kerry CITZ:EX
Cc: Reed, Matt CITZ:EX; Williams, Susan GCPE:EX
Subject: RE: RUSH: FOIPPA mats for media interview
Attachments: s.13

Lianne pointed out a couple of messaging updates for the IN. Please use this version.

From: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Sent: November 25, 2021 2:21 PM
To: Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Cc: Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: RUSH: FOIPPA mats for media interview

Correct. I think the MO still wants the QAs finalized/ updated just in case we get media calls/ questions tonight (after royal assent) or tomorrow.

s.13

From: Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>
Sent: November 25, 2021 2:20 PM
To: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Cc: Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>; Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: Re: RUSH: FOIPPA mats for media interview

Will look - is this now just for background? I think the 12:30 media was completed and the offer of an interview at 5:30 declined.

On Nov 25, 2021, at 2:08 PM, Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca> wrote:

I realize you are in committee. Lianne is hoping to have for MO by 3 p.m. if you get a break and a chance to look.

s.13

Thank you,
Jeremy

From: Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>
Sent: November 25, 2021 12:28 PM
To: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>; Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>
Cc: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: RUSH: FOIPPA mats for media interview

Thanks, we are in MO and actively discussing.

From: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Sent: November 25, 2021 12:14 PM
To: Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>; Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>
Cc: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: RUSH: FOIPPA mats for media interview

Now with some of Sam's feedback and a few small, suggested adjustments from me in response. s.13

s.13

From: Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>
Sent: November 25, 2021 11:39 AM
To: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Cc: Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>; Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: Re: RUSH: FOIPPA mats for media interview

No issues from me.
-m

Sent from my phone

On Nov 25, 2021, at 11:09 AM, Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca> wrote:

Hi Kerry/Matt,
MLB will probably do a quick interview with Bhinder Sajan CTV at noon today, we need to get the updated IN & top 10 QA into MO asap. Please take a look. Are you able to get back in 10 mins or so, please?

Sorry for rush.

Thank you,

Jeremy Uppenborn

Senior Public Affairs Officer

Ministry of Citizens' Services

Unified phone: 778 974-5825

jeremy.uppenborn@gov.bc.ca

Uppenborn, Jeremy GCPE:EX

From: Scott, Samantha CITZ:EX
Sent: November 25, 2021 11:50 AM
To: Bowness, Lianne GCPE:EX; Lawal, Cassandra CITZ:EX
Cc: Williams, Susan GCPE:EX; Uppenborn, Jeremy GCPE:EX
Subject: RE: FYI - FOIPPA comm materials for media interview
Attachments: s.13

My edits.

Samantha Scott | Ministerial Advisor to the Honourable Minister Beare
Ministry of Citizens' Services
PO Box 9044 Stn Prov Gov, Victoria, BC, V8W 9E2 | 778-679-4889

From: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Sent: November 25, 2021 11:13 AM
To: Lawal, Cassandra CITZ:EX <Cassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>; Djonlic, Matt FIN:EX <Matt.Djonlic@gov.bc.ca>; Maher, Melissa PSSG:EX <Melissa.Maher@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: FYI - FOIPPA comm materials for media interview
Importance: High

Hi to MO – these materials (IN and top 5 QA) have been updated as requested.
Please let us know if you would like any changes made.
These are from previously approved materials and are getting approved by Kerry but not likely to change.
Thx!

Uppenborn, Jeremy GCPE:EX

From: Bowness, Lianne GCPE:EX
Sent: November 24, 2021 8:03 AM
To: Harbord, Chris GCPE:EX; Pocock, Sharon GCPE:EX
Cc: Williams, Susan GCPE:EX; Uppenborn, Jeremy GCPE:EX
Subject: FYI - OPEN LETTER: Call for the Immediate Withdrawal of Bill 22 (FOIPPA)
Attachments: 2021-11-23 OPEN LETTER Call for the Immediate Withdrawal of Bill 22 FOIPPA.pdf

Importance: High

Hi – linking in you both on this letter if you are not already aware of it.

Here is an open letter from the Union of BC Indian Chiefs on Bill 22.

Our issues manager is working on a response for this, and Jeremy has sent me some QAs that pertain to indigenous consultations.

Please let us know of any questions.

*We have no media calls on this so far, but will link you in if we do get any

Uppenborn, Jeremy GCPE:EX

From: Williams, Susan GCPE:EX
Sent: November 22, 2021 10:34 AM
To: Uppenborn, Jeremy GCPE:EX
Cc: Bowness, Lianne GCPE:EX
Subject: RE: REVIEW/APPROVE:s.13
Attachments: s.13

Looks good! Just a few small things.

From: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Sent: November 22, 2021 10:23 AM
To: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Cc: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Subject: REVIEW/APPROVE: s.13

Hi Susan,
Here is s.13 for your review and approval before I go to Lianne. CJ
Ritchie, Kerry Pridmore and Matt Reed have approved.
Updating the issues note and Q&A this morning. Should be coming your way later today.
Thank you,

Jeremy Uppenborn
Senior Public Affairs Officer
Ministry of Citizens' Services
Unified phone: 778 974-5825
jeremy.uppenborn@gov.bc.ca

Page 1167 of 1215 to/à Page 1168 of 1215

Withheld pursuant to/removed as

s.13

Uppenborn, Jeremy GCPE:EX

From: Pridmore, Kerry CITZ:EX
Sent: November 21, 2021 8:46 AM
To: Uppenborn, Jeremy GCPE:EX
Cc: Reed, Matt CITZ:EX; Bowness, Lianne GCPE:EX; Williams, Susan GCPE:EX
Subject: RE: REVIEW/APPROVE: s.13
Attachments: s.13

Thanks Jeremy – minor suggestion in the enclosed.

From: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Sent: November 19, 2021 4:25 PM
To: Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>
Cc: Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>; Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: REVIEW/APPROVE:s.13

Hi Kerry,
Here is s.13

for your review and approval. Matt has approved.

MO is looking for this EoD, Monday.

Thank you,

Jeremy Uppenborn

Senior Public Affairs Officer
Ministry of Citizens' Services
Unified phone: 778 974-5825
jeremy.uppenborn@gov.bc.ca

Uppenborn, Jeremy GCPE:EX

From: Bowness, Lianne GCPE:EX
Sent: November 16, 2021 7:47 AM
To: Lawal, Kassandra CITZ:EX; Scott, Samantha CITZ:EX; Djonlic, Matt FIN:EX; Maher, Melissa PSSG:EX; Olson, Michael GCPE:EX
Cc: McEwen, Shaylene CITZ:EX; Williams, Susan GCPE:EX; Uppenborn, Jeremy GCPE:EX
Subject: FYI- News Release - FIPA IPSOS Polling Results

Hi to MO – I believe you may already be aware of this, but just in case not, I am sending as an FYI.

From: Freedom of Information and Privacy Association <fipa@fipa.bc.ca>
Date: November 16, 2021 at 4:02:14 AM PST
To: "Reed, Matt CITZ:EX" <Matt.Reed@gov.bc.ca>
Subject: 20211116 News Release - FIPA IPSOS Polling Results
Reply-To: fipabusiness@fipa.bc.ca

[Click here to view this newsletter in your browser](#)

FIPA

Your Data
Your Rights



News Release

Bill 22: Out of step with public opinion

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Page 1171 of 1215 to/à Page 1175 of 1215

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Copyright

Page 1176 of 1215 to/à Page 1178 of 1215

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s.13

Uppenborn, Jeremy GCPE:EX

From: Uppenborn, Jeremy GCPE:EX
Sent: October 15, 2021 3:25 PM
To: Ghag, Kris CITZ:EX; Reed, Matt CITZ:EX; Begley, Rhianna CITZ:EX
Cc: Williams, Susan GCPE:EX; Youngs, Kirsten R GCPE:EX
Subject: RE: IN FOI requests for device screenshots_26 May 2021_FINAL
Attachments: IN FOI requests for device screenshots_26 May 2021_FINAL.docx

Thanks. Perhaps Kirsten would like to weigh in. Re-including attachment.

From: Ghag, Kris CITZ:EX <Kris.Ghag@gov.bc.ca>
Sent: October 15, 2021 3:04 PM
To: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>; Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>; Begley, Rhianna CITZ:EX <Rhianna.Begley@gov.bc.ca>
Subject: RE: IN FOI requests for device screenshots_26 May 2021_FINAL

s.13

Kris

From: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Sent: October 15, 2021 2:04 PM
To: Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>; Begley, Rhianna CITZ:EX <Rhianna.Begley@gov.bc.ca>; Ghag, Kris CITZ:EX <Kris.Ghag@gov.bc.ca>
Subject: IN FOI requests for device screenshots_26 May 2021_FINAL

Should I be applying the same lens to this note, given the amendments? I'm not clear if this was a one-time thing, is likely to happen again and am not sure if the amendments address this (but I believe they do).

Thank you,
Jeremy

Uppenborn, Jeremy GCPE:EX

From: Youngs, Kirsten R GCPE:EX
Sent: November 10, 2021 3:32 PM
To: Harbord, Chris GCPE:EX
Cc: Pocock, Sharon GCPE:EX; Kulmala, Peggy GCPE:EX; Williams, Susan GCPE:EX; Uppenborn, Jeremy GCPE:EX; Bowness, Lisanne GCPE:EX
Subject: CITZ INs re FNLG - Request for Issues Notes/Announcements - Nov. 10
Attachments: IN_Indigenous consultation on FOIPPA_Nov 10 2021_for MIRR.docx; IN Indigenous names on ID docs_Nov 10 2021_for MIRR.docx; IN Indigenous connectivity_04Oct2021_for MIRR.docx

No announcements from us but here are our INs.
Including Lisanne who is taking the reins over at CITZ as of Monday 😊

From: Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>
Sent: November 5, 2021 2:18 PM
To: GCPE Comm Directors <PABDirectors@Victoria1.gov.bc.ca>; GCPE Comm Managers <GCPECM@Victoria1.gov.bc.ca>
Cc: Pocock, Sharon GCPE:EX <Sharon.Pocock@gov.bc.ca>; Kulmala, Peggy GCPE:EX <Peggy.Kulmala@gov.bc.ca>
Subject: Reminder: FNLG - Request for Issues Notes/Announcements - Nov. 10

Hi All – a friendly reminder for your INs and potential announcements for FNLG. We're very much hoping to get them all by Nov. 10 – next Wednesday.

Thanks to ENV and LBR for sending yours. 😊

Happy (almost) break week!

Cheers, Chris

From: Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>
Sent: October 29, 2021 1:34 PM
To: GCPE Comm Managers <GCPECM@Victoria1.gov.bc.ca>; GCPE Comm Directors <PABDirectors@Victoria1.gov.bc.ca>
Cc: Pocock, Sharon GCPE:EX <Sharon.Pocock@gov.bc.ca>
Subject: FNLG - Request for Issues Notes/Announcements - Nov. 10

Good afternoon,

This year, the BC Cabinet-First Nations Leaders' Gathering (FNLG) will be held Nov. 30 and Dec. 1. The event will be mainly virtual, however ministers and a few staff from government and the First Nations Leadership Council (FNLCL) will be in person at the Vancouver Convention Centre.

Please use the attached template to share your top 3-5 issues involving First Nations-government (separate note per issue please) and let us know of any announcements you may have that could take place during the event by **Nov. 10**. The INs will be included in an event binder provided to each minister. Please send to Peggy Kulmala and cc Sharon Pocock and myself.

Also, as the FNLC co-hosts FNLG, only announcements of projects/programs/services etc. created in partnership with FNLC are eligible to be highlighted at the event.

The event web site is up and running - <https://firstnationsleadersgathering.gov.bc.ca/index.html> - and the invitation is attached FYI.

Please let me know if you have any questions.

And Happy Friday!

Cheers, Chris

Chris Harbord, MA
Communications Director
Ministry of Indigenous Relations and Reconciliation
Government Communications and Public Engagement
P/M: 250 920-5079 | chris.harbord@gov.bc.ca

ADVICE TO MINISTER

<p>CONFIDENTIAL ISSUES NOTE</p> <p>Ministry of Citizens' Services Date: November 10, 2021 Minister Responsible: Lisa Beare</p>	<p>Indigenous consultation on FOIPPA</p>
---	---

ADVICE AND RECOMMENDED RESPONSE:

- **FOIPPA isn't working for people anymore, and we're making these changes based on what we've heard from extensive consultation with thousands of people, Indigenous leaders, communities and groups, organizations and businesses.**
- **We are creating new powers to share information with Indigenous governments**
- **We are adding new protections to Indigenous peoples' sensitive cultural information.**
- **We are removing the 15-year limit on the existing protections where information may harm an Indigenous government.**
- **We are also removing outdated language in reference to Indigenous partners.**
- **We must work together to remove barriers and ensure an improved relationship between governments.**
- **In alignment with B.C.'s Declaration Act, we will continue to work in consultation and co-operation with Indigenous Peoples as we move forward with this work.**
- **Several proposed amendments came directly from Indigenous input and demonstrate the Province's commitment to inclusion and reconciliation through increased information sharing with Indigenous Peoples, adding cultural protections and removing non-inclusive language, including:**
 - **Increasing public bodies' ability to disclose to Indigenous governing entities.**
 - **Requiring public bodies to seek consent from Indigenous governing entities in order to disclose information that is culturally sensitive through FOI.**

KEY FACTS:

On October 18, 2021, the Ministry of Citizens' Services introduced proposed amendments to the Freedom of Information and Privacy Protection Act after significant consultation over several years with people, Indigenous communities, leaders and organizations and businesses, including with the Union of BC Indian Chiefs, First Nations Summit, First Nations Leadership Council, the BC Assembly of First Nations on proposed amendments.

The Ministry also engaged with Treaty First Nations including meetings with representatives from the five Maa-nulth nations, Tsawwassen First Nation and the Nisga'a Lisims Government.

To gain the perspective of Indigenous Peoples on access to information and privacy, the Ministry twice invited leaders of over 200 B.C. First Nations to provide input, most recently, through an online questionnaire.

In response to this invitation, representatives from the Stk'emlupsemc Te Secwepemc Nation requested a meeting with Ministry staff, which was held in early September 2021.

Shannon Waters most recently wrote about Indigenous consultation re FOIPPA and Opposition has called the Ministry's consultation with Indigenous groups into question in the House.

Communications:	Kirsten Youngs	
Program:	Carol Prest, Registrar, BC Business Registry	778 698-1401

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE Ministry: Citizens' Services Date: June 24, 2021 Minister Responsible: Lisa Beare	Indigenous connectivity
--	--------------------------------

ADVICE AND RECOMMENDED RESPONSE:

Problem:

- Less than 40% of non-urban Indigenous communities have internet speeds that meet the target set by the federal government (50/10).

Solution:

- Bridging the digital divide is a critical part of British Columbia's Declaration on the Rights of Indigenous Peoples and our commitment to UNDRIP.
- Working together with Indigenous communities, service providers and other organizations, we are seeing steady progress.
- Our goal for the Connecting British Columbia program is to improve internet access for 75 Indigenous communities this year.
- As of April 30, 2021, funding has been conditionally approved for projects to improve internet access in 62 Indigenous communities.

Benefit:

- Nearly 90 Indigenous communities are closer to achieving their connectivity goals because of Connecting British Columbia program grants since July 2017.
- With record investments we are making in connectivity, this number will continue to grow.
- Internet connectivity improves access to education, health care services, economic development and training opportunities.

Success story:

- The Connecting British Columbia program helped connect Williams Lake First Nation to the internet over a high-speed fibre line.

- **Williams Lake Chief Willie Sellars wrote an article saying connectivity allows his community to set its own priorities, both culturally and economically, and develop programming that will improve lives.**

KEY FACTS:

Local governments and stakeholders, including regional media, often have questions about timelines regarding connectivity projects in their communities.

The length of time it can take to complete a project after it is announced can often be several years. For example, Connected Coast was announced in January 2018 and as of February 2021, construction still has not begun.

Most of this time is generally spent on planning and obtaining the necessary permissions to build on land that crosses different government jurisdictions and is sometimes privately owned. Service providers may also need permissions from BC Hydro and other utilities to attach cables to existing infrastructure like power poles.

Once construction begins, it tends to move quickly. In the case of transport fibre projects like Connected Coast, further investments will be required in order to complete last-mile connections to homes and workplaces.

A major exception to this involves projects the Connecting British Columbia program has supported during the COVID-19 pandemic. In the case of both the COVID-19 Response Intake (April 2020) and the Economic Recovery Intake (ongoing), the grants are being awarded for projects that can upgrade existing infrastructure in a matter of months.

Media Interest: Significant as high-speed internet has become essential to access services.

Communications:	Ben Ingram	778 698-5379
Program:	Howard Randell	250 953-3978

Uppenborn, Jeremy GCPE:EX

From: Pridmore, Kerry CITZ:EX
Sent: October 22, 2021 7:48 AM
To: Brouwer, Shauna CITZ:EX; Lawal, Cassandra CITZ:EX; Scott, Samantha CITZ:EX; Youngs, Kirsten R GCPE:EX
Subject: FW: FIPA launches Transparency Matters

FYI – encouraging a letter campaign below.

Begin forwarded message:

From: Freedom of Information and Privacy Association <fipa@fipa.bc.ca>
Date: October 22, 2021 at 12:57:46 AM PDT
To: "Reed, Matt CITZ:EX" <Matt.Reed@gov.bc.ca>
Subject: FIPA launches Transparency Matters
Reply-To: transparencymatters@fipa.bc.ca

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

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News Release

FIPA launches Transparency Matters.

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Page 1187 of 1215 to/à Page 1188 of 1215

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Uppenborn, Jeremy GCPE:EX

From: Lawal, Cassandra CITZ:EX
Sent: October 21, 2021 11:52 AM
To: Youngs, Kirsten R GCPE:EX
Cc: Scott, Samantha CITZ:EX
Subject: FW: Incoming of eApp 17816

As discussed.

Kassandra Lawal

Office 778-974-6009 | Cell 778-678-3776
kassandra.lawal@gov.bc.ca

From: Ritchie, CJ CITZ:EX <CJ.Ritchie@gov.bc.ca>
Sent: October 21, 2021 11:15 AM
To: Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>
Cc: Brouwer, Shauna CITZ:EX <Shauna.Brouwer@gov.bc.ca>; Cook, Jeannette CITZ:EX <Jeannette.Cook@gov.bc.ca>; Brown, Taylor J CITZ:EX <Taylor.Brown@gov.bc.ca>; Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>
Subject: FW: Incoming of eApp 17816

Kass,

See below for an incoming letter forwarded to us from EDUC from a teacher expressing frustration at the current legislative framework and it prohibiting the use of Google classrooms.^{s.13}

s.13

From: Brown, Taylor J CITZ:EX <Taylor.Brown@gov.bc.ca>
Sent: October 21, 2021 9:50 AM
To: Ritchie, CJ CITZ:EX <CJ.Ritchie@gov.bc.ca>
Subject: Incoming of eApp 17816

Dear Honourable Jennifer Whiteside,

Firstly, thanks for doing a stressful and thankless job during a challenging time. I'm glad someone wants to do it!

s.22 and took a teaching position at s.22 encouraged teachers to use Google Classroom. After using it for several years it was obvious to see why. G Suite is so simple and streamlined, even students with little computer experience were able to quickly navigate Google Docs, Sheets, and Slides, Google's equivalent of Microsoft Word, Excel, and PowerPoint.

From a teaching standpoint, Google Classroom is superior to Microsoft 365 in every way. Google Classroom is intuitive and efficient, while Microsoft Office 365 is clunky and complicated. I was disappointed to discover that BC school districts rarely use Google.^{s.22} I have since learned that it is because BC has some of the most stringent privacy laws in North America. And while Microsoft stores all student data in Montreal, Google stores data wherever it is cheapest and most convenient.

s.22

My request as an educator (and as someone who likes efficiency) is that you pressure Google to store students' data within Canada to comply with FOIPPA, or change BC law to allow Google to be contractually obligated to protect student data if it is stored outside of Canada.

Furthermore, while a company as big as Google may not be concerned about pressure from the BC government, they should note that many jurisdictions across North America are looking at BC as a model for increasing their own FOIPPA regulations. If Google does not change course soon they may find themselves pushed out of the North American market in the Education sector.

Thank you for taking the time to read this. I hope that you will consider this matter carefully as it could have immeasurable benefits for every student in BC.

Have a great day!

Sincerely,

s.22

From: [Bowness, Lianne GCPE:EX](#)
To: [Olson, Michael GCPE:EX](#)
Subject: FW: FYI - OPEN LETTER: Call for the Immediate Withdrawal of Bill 22
Date: November 23, 2021 5:36:30 PM

Hi Michael – here are some QAs that can help inform your response for QP. We are also checking with program to see if they have more for the response.

From: Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Sent: November 23, 2021 5:33 PM
To: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>; Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: FYI - OPEN LETTER: Call for the Immediate Withdrawal of Bill 22

From our QA:

s.13

- Through the legislation, we have:
 - Removed outdated language in reference to Indigenous partners.
 - Created new powers that increase public bodies' ability to share information with Indigenous governments and governing entities.
 - Added new protections to Indigenous Peoples' sensitive cultural information by requiring public bodies to seek consent from Indigenous governing entities before disclosing information through FOI.
 - Removed the 15-year limit on the existing protections where information may harm an Indigenous government, so that we can protect that information indefinitely.

s.13

From: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Sent: November 23, 2021 5:32 PM
To: Pridmore, Kerry CITZ:EX <Kerry.Pridmore@gov.bc.ca>; Reed, Matt CITZ:EX <Matt.Reed@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: FYI - OPEN LETTER: Call for the Immediate Withdrawal of Bill 22
Importance: High

Good evening Kerry & Matt –

You are probably already aware of this but just in case not – here is an open letter from the Union of BC Indian Chiefs on Bill 22.

Our issues manager is working on a response for this, and Jeremy is sending me some QAs that pertain to indigenous consultations.

Please let us know if you have further input on what can be said in response.

Many thanks

*And we will let you know if we get any media inquiries on this too

Olson, Michael GCPE:EX

From: Youngs, Kirsten R GCPE:EX
Sent: October 20, 2021 9:00 AM
To: Olson, Michael GCPE:EX
Subject: RE: For discussion today: Proposed lines

Great, anytime from now until 9:30 is free 😊

-----Original Message-----

From: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Sent: October 20, 2021 8:06 AM
To: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: For discussion today: Proposed lines

Yep, I can come by the office anytime after 9:00

-----Original Message-----

From: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Sent: October 20, 2021 8:00 AM
To: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: For discussion today: Proposed lines

FYI Michael, have time to pop by later this morning by chance to discuss?

-----Original Message-----

From: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Sent: October 20, 2021 6:44 AM
To: Harris, Megan GCPE:EX <Megan.Harris@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: Re: Proposed lines for tomorrow - would love your input!

Good point, how about:

s.13

s.13

Kirsten Youngs, Communications Director
(250) 858-0555

> On Oct 20, 2021, at 6:18 AM, Harris, Megan GCPE:EX <Megan.Harris@gov.bc.ca> wrote:

s.13

>

>> On Oct 19, 2021, at 11:27 PM, Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca> wrote:

>>

>> Hi Megan,

>> For tomorrow, some lines below for consideration. Haven't been reviewed by issues, MO or CITZ exec yet. Fresh eyes are needed!

>> Not including Jeremys.s.22

>>

s.13

>>>

>>> Kirsten Youngs, Communications Director

>>> (250) 858-0555

>>>

Olson, Michael GCPE:EX

From: Lawal, Cassandra CITZ:EX
Sent: October 27, 2021 1:44 PM
To: Youngs, Kirsten R GCPE:EX; Scott, Samantha CITZ:EX; Olson, Michael GCPE:EX
Cc: Williams, Susan GCPE:EX; Uppenborn, Jeremy GCPE:EX
Subject: RE: KMs ahead of scrum - for input

s.13

Kassandra Lawal

Office 778-974-6009 | Cell 778-678-3776
kassandra.lawal@gov.bc.ca

From: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Sent: October 27, 2021 1:18 PM
To: Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>; Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: KMs ahead of scrum - for input

s.13

- Through the legislation, we are:
 - Removing outdated language in reference to Indigenous partners
 - Creating new powers that increase public bodies' ability to share information with Indigenous governments and governing entities.
 - Adding new protections to Indigenous peoples' sensitive cultural information by requiring public bodies to seek consent from Indigenous governing entities before disclosing information through FOI.
 - And removing the 15-year limit on the existing protections where information may harm an Indigenous government, so that we can protect that information indefinitely.

s.13

Kirsten Youngs, MAIC (she/her/hers) | Communications Director
Ministry of Citizens' Services | Government Communications & Public Engagement
T: (250) 356-0543 | C: (250) 858-0555

I acknowledge and respect that I live and work on the traditional territory of the Lekwungen peoples, known today as the Esquimalt and Songhees Nations.

Olson, Michael GCPE:EX

From: Uppenborn, Jeremy GCPE:EX
Sent: October 27, 2021 4:14 PM
To: Youngs, Kirsten R GCPE:EX; Olson, Michael GCPE:EX; Lawal, Cassandra CITZ:EX; Scott, Samantha CITZ:EX
Cc: Williams, Susan GCPE:EX
Subject: RE: Updated & NEW: KMs ahead of scrum - for input

On it.

From: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Sent: October 27, 2021 4:12 PM
To: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>; Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: RE: Updated & NEW: KMs ahead of scrum - for input

One added section about nova scotia. Jeremy, could you pls add to KMQA?

From: Youngs, Kirsten R GCPE:EX
Sent: October 27, 2021 3:08 PM
To: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>; Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: RE: Updated & NEW: KMs ahead of scrum - for input

Agree with ^{s.13} – I think MLB is comfortable with that now too.

From: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Sent: October 27, 2021 3:02 PM
To: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>; Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: RE: Updated & NEW: KMs ahead of scrum - for input

I like this. I have a couple of suggestions – new stuff in red, strikethrough highlighted in grey.
How do folks feel about transitioning to saying ^{s.13}

From: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Sent: October 27, 2021 2:09 PM
To: Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>; Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: Updated & NEW: KMs ahead of scrum - for input

Thanks Kass, how do you (and anyone else!) feel about new and updated language after discussion:

If asked about the fee structure and other jurisdictions:

s.13

If asked about information-sharing with First Nations:

s.13

- Through the legislation, we are:
 - Removing outdated language in reference to Indigenous partners.
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 - And removing the 15-year limit on the existing protections where information may harm an Indigenous government, so that we can protect that information indefinitely.

s.13

From: Lawal, Cassandra CITZ:EX <Cassandra.Lawal@gov.bc.ca>
Sent: October 27, 2021 1:44 PM
To: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>; Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: RE: KMs ahead of scrum - for input

s.13

Kassandra Lawal
Office 778-974-6009 | Cell 778-678-3776
kassandra.lawal@gov.bc.ca

From: Youngs, Kirsten R GCPE:EX <Kirsten.Youngs@gov.bc.ca>
Sent: October 27, 2021 1:18 PM
To: Lawal, Cassandra CITZ:EX <Cassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>; Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Cc: Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>; Uppenborn, Jeremy GCPE:EX <Jeremy.Uppenborn@gov.bc.ca>
Subject: KMs ahead of scrum - for input

s.13

- Through the legislation, we are:
 - Removing outdated language in reference to Indigenous partners
 - Creating new powers that increase public bodies' ability to share information with Indigenous governments and governing entities.
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- And removing the 15-year limit on the existing protections where information may harm an Indigenous government, so that we can protect that information indefinitely.

s.13

Kirsten Youngs, MAIC (she/her/hers) | Communications Director
Ministry of Citizens' Services | Government Communications & Public Engagement
T: (250) 356-0543 | C: (250) 858-0555

I acknowledge and respect that I live and work on the traditional territory of the Lekwungen peoples, known today as the Esquimalt and Songhees Nations.

From: [Olson, Michael GCPE:EX](#)
To: [Bowness, Lianne GCPE:EX](#); [Williams, Susan GCPE:EX](#)
Subject: RE: KMs
Date: November 25, 2021 11:33:35 AM
Attachments: 2021.10.26 FOIPPA Fees.docx

Here's the note we've made for various fee questions.

From: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Sent: November 25, 2021 11:30 AM
To: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: KMs

Thx! Perfect. Susan can include. Do you have KMs about bringing the fees in line with other jurisdictions?

From: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Sent: November 25, 2021 11:28 AM
To: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: FW: KMs

Hi Lianne and Susan,

Here are KMs about the closure of Bill 22 that I sent to Cassandra yesterday.

Cheers,
Michael

From: Olson, Michael GCPE:EX
Sent: November 24, 2021 8:50 AM
To: Lawal, Cassandra CITZ:EX <Kassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>
Subject: KMs

Some KMs for your review.

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FOIPPA Legislation - Fees

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- The opposition likes to point to the premier's use of FOI when in opposition.
- But they fail to mention the dramatic increase from then to now.
- The number of requests from political parties is up 215% since we formed government
 - Many of which are mass fishing exercises that seek **all** emails and text messages from a large number of individuals on a monthly basis.
- This government has increased access to information.
 - We formalized public servants' obligation to document decisions, and
 - We're providing more records through proactive disclosure than ever before [e.g. transition + estimates binders]
- Our actions have and will continue to demonstrate our commitment to transparency.

- I completely agree.
- That is why this government has made changes that ensure people can get that information – like formalizing the obligation for public servants to document decisions.
- But let's for a moment talk about some of the requests that clog up our system:
 - Seeking a listing of file folders and screen shots of desktops; or
 - Seeking **all** emails and text messages from a large number of individuals on a monthly basis; or
 - Requests that would take thousands of hours to compile, that are dropped as soon as a fee estimate is issued.
- This is not the high value information the opposition makes it out to be.
- This legislation is intended to bring BC in line with other jurisdictions in Canada that also have an application fee.
- Those making personal requests will continue to pay no fee at all.

Main message on implementing an application fee:

- People deserve access to information as quickly and easily as possible.
- However, the volume of requests has increased significantly over the past four years.
- This has been driven by requests from political parties, which have more than tripled since 2017.
 - Many of which are mass fishing exercises that seek **all** emails and text messages from a large number of individuals on a monthly basis.
- These types of requests ^{s.13}
_{s.13} create serious backlogs for other requests.
- Individuals seeking personal information will not pay an application fee.
- Nearly 98% of requestors make less than 5 requests each year – I’m confident they would agree that an application fee won’t be a barrier.
- We want to improve BC’s high-quality FOI services to be more responsive to the thousands of people who request access to information each year.
- Introducing an application fee for non-personal FOI will encourage applicants to be more focused when making requests, so we can respond to people’s personal requests faster.

On charging fee to media requestors:

- Our communications teams answer a large number of media requests every day – and that will stay the same.
- When media seeks access to documents that contain personal or confidential information, our access to information teams work to provide the material as quickly as possible.
- Last year, all media requestors (less one) made only 328 applications combined.
- An application fee isn't meant to be and shouldn't be a barrier to these levels of requests.

Page 1207 of 1215 to/à Page 1209 of 1215

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Olson, Michael GCPE:EX

From: Bowness, Lianne GCPE:EX
Sent: November 25, 2021 11:47 AM
To: Williams, Susan GCPE:EX; Olson, Michael GCPE:EX
Subject: RE: KMs
Attachments: FOIPPA -- short form QA.docx

Thoughts? OK to send up?

From: Williams, Susan GCPE:EX Susan.Williams@gov.bc.ca
Sent: November 25, 2021 11:40 AM
To: Bowness, Lianne GCPE:EX Lianne.Bowness@gov.bc.ca; Olson, Michael GCPE:EX Michael.Olson@gov.bc.ca
Subject: RE: KMs

With the extra Q it's up to 2 pages but still pretty tight

From: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Sent: November 25, 2021 11:37 AM
To: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: KMs

Thx! Susan can you use these 2 lines...

- This legislation is intended to bring BC in line with other jurisdictions in Canada that also have an application fee.
- Those making personal requests will continue to pay no fee at all.

From: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>
Sent: November 25, 2021 11:34 AM
To: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
Subject: RE: KMs

Here's the note we've made for various fee questions.

From: Bowness, Lianne GCPE:EX <Lianne.Bowness@gov.bc.ca>
Sent: November 25, 2021 11:30 AM
To: Olson, Michael GCPE:EX <Michael.Olson@gov.bc.ca>; Williams, Susan GCPE:EX <Susan.Williams@gov.bc.ca>
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Subject: FW: KMs

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Michael

From: Olson, Michael GCPE:EX
Sent: November 24, 2021 8:50 AM
To: Lawal, Cassandra CITZ:EX <Cassandra.Lawal@gov.bc.ca>; Scott, Samantha CITZ:EX <Samantha.Scott@gov.bc.ca>
Subject: KMs

Some KMs for your review.

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TOPLINE KMS ON FOIPPA

- B.C.'s outdated Freedom of Information and Protection of Privacy legislation, last updated a decade ago, was not working for people.
- People want timely access to their personal information as well as to healthcare, education tools and technology that makes their lives easier.
- Highlights of the amendments include:
 - Updated data-residency provisions so public bodies can use modern tools while continuing to protect personal information.
 - mandatory privacy breach reporting and increased penalties for offences.
 - Adding cultural protections and removing non-inclusive language

Fees?:

- This legislation is intended to bring BC in line with other jurisdictions in Canada that also have an application fee.
- Those making personal requests will continue to pay no fee at all.

Concerns from the Union of BC Indian Chiefs?

- B.C. remains committed to meaningful reconciliation with Indigenous partners.
- In the lead up to this legislation, the ministry had discussions with the Union of BC Indian Chiefs, First Nations Summit, First Nations Leadership Council, the BC Assembly of First Nations. As well, we engaged with Treaty First Nations.
- Through the legislation, we've:
 - Created new powers that increase public bodies' ability to share information with Indigenous governments and governing entities.
 - Added new protections to Indigenous Peoples' sensitive cultural information.
 - Removed outdated language in reference to Indigenous partners.

Page 1215 of 1215

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